



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to the Police Service of Northern  
Ireland's Consultation on its Equality Impact  
Assessment on the use of Spit and Bite Guards**

**May 2021**

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## Recommendations

- 2.16** The NIHRC recommends that, in line with a recommendation by the NIPB, spit and bite guards should be withdrawn by the PSNI and officers should be provided with appropriate PPE as an alternative.
- 2.21** The NIHRC advises that other methods of dealing with individuals who may spit or bite, such as more robust Personal Protection Equipment or restraint holds are available to the PSNI as an alternative to spit and bite guards.
- 2.22** The NIHRC recommends that PSNI officers are trained in de-escalation techniques as an alternative to Spit and Bite guards. Given the EQIA identifies that most Spit and Bite guards are used on young males, a neurobiological element to the training would be useful.
- 2.34** The NIHRC recommends that Spit and Bite guards should not be used on any child under the age of 18.
- 2.35** The NIHRC recommends that the PSNI develop and put in place robust safeguards to limit the possibility that a child under the age of 18 is mistaken for someone who has reached adulthood.
- 3.2** The NIHRC recommends that, if the enhanced roll out of spit and bite guards is to continue, they should only be used as a last resort, when all other options have been exhausted. Any use of such force should be guided by the principles of proportionality and necessity.
- 3.7** The NIHRC recommends that the PSNI continues to carefully monitor and record information around religious background to ensure that there is no differential or adverse impact based on community background.
- 3.8** The NIHRC recommends that, where an individual on whom a spit guard is used refuses to identify with a religion or where the religion remains unknown, the PSNI could utilise the Residuary Method to make an informed assumption as to the individual's potential community background.
- 3.13** The NIHRC advises that, data collected on the use of spit and bite guards on children should be disaggregated by other characteristics including racial and community background, disability or mental health conditions.
- 3.14** Any policy governing the use of spit and bite guards on children under 18 should be produced in consultation with children and young people in line with Article 12 UNCRC.

**3.18 The NIHRC recommends that the PSNI create a target education campaign directed at younger people, particularly males, to outline unacceptability of spitting and biting, the dangers involved and legal ramifications alongside the PSNI's policy on the use of Spit and Bite guards.**

**3.28 The NIHRC recommends that data on the use of spit and bite guards in relation to disability is disaggregated into different types of disability.**

**3.29 The NIHRC recommends that disability rights groups are engaged in the formation of policy in relation to the application of spit and bite guards on persons with disabilities.**

## 1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). In accordance with this function, the following advice is submitted in response to a public consultation on an Equality Impact Assessment on the use of Spit and Bite Guards by the Police Service of Northern Ireland (PSNI).
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:
  - European Convention on Human Rights 1950 (ECHR);<sup>1</sup>
  - UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);<sup>2</sup>
  - UN Convention against Torture 1984 (UN CAT);<sup>3</sup>
  - UN Convention on the Rights of the Child 1989 (UN CRC);<sup>4</sup>
  - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD).<sup>5</sup>
- 1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.
- 1.4 The NIHRC welcomes the opportunity from the PSNI to respond to the public consultation on the equality impact assessment on the use of Spit and Bite guards. This response will set out the Commission's reservations around a full roll out of Spit and Bite guards beyond the Covid-19 pandemic. However, if a roll out of the use of these guards is intended to go ahead, the Commission has addressed its main issues highlighted within the EQIA.

## 2.0 Extending the use of Spit and Bite Guards beyond the Covid-19 pandemic response

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<sup>1</sup> Ratified by the UK in 1951.

<sup>2</sup> Ratified by the UK in 1976.

<sup>3</sup> Ratified by the UK in 1988.

<sup>4</sup> Ratified by the UK in 1991.

<sup>5</sup> Ratified by the UK in 2009.

## Background

- 2.1 Spit guards, also known as spit hoods or spit masks, are devices that are fitted over the mouth, face and head of a person in order to prevent them from spitting or biting others.<sup>6</sup> These devices are generally comprised of synthetic mesh, which is fitted over a person's head, with a panel at the front, reinforced to cover the mouth and nose.<sup>7</sup>
- 2.2 In March 2020, in response to the Covid-19 pandemic and the associated potential dangers to officers dealing with persons who may spit or bite, the PSNI's Chief Constable made a decision to temporarily issue spit and bite guards to Covid-19 Response Teams, Custody Staff, Armed Response Units and Cell Van Crews.<sup>8</sup>
- 2.3 An Garda Síochána also introduced spit and bite guards during the Covid-19 pandemic. The Policing Authority have asked the Garda Commissioner when they expect to withdraw spit guards. The Commissioner did not commit to the withdrawal of spit and bite guards but noted that a decision may be made on their use subject to a review, which will conclude on 30<sup>th</sup> September 2021.<sup>9</sup>
- 2.4 After having conducted research into spitting and biting, finding that most incidents were reported by Local Policing Team and Neighbourhood Policing Team officers, the PSNI have decided to issue all operational officers with spit and bite guards for the duration of the pandemic.<sup>10</sup>

## Safety issues associated with Spit and Bite Guards

- 2.5 There is a legal requirement on the PSNI as an employer to ensure that the health, safety and welfare of its employees is ensured as far as is possible to do so.<sup>11</sup> The introduction of spit and bite guards was initially proposed as a response to the Covid-19 pandemic in order to keep officers safe from a contagious virus while at work.<sup>12</sup>
- 2.6 At the outset, the biting and spitting of a police officer is an egregious act. No police officer should be subjected to spitting and biting during the course of their job. Moreover, there is a responsibility of the Police Service to look after the safety and well being of its staff including police officers managing difficult public order issues. Nonetheless, there is a lack of

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<sup>6</sup> Kieran Kennedy et al, 'The Use of Spit Guards (Also Known as Spit Hoods) by Police Services in England, Wales and Northern Ireland: To Prevent Transmission of Infection or Another Form of Restraint?' (2019) 66 Journal of Forensic and Legal Medicine 147, at 147.

<sup>7</sup> Ibid.

<sup>8</sup> PSNI, 'Police Service of Northern Ireland Extends use of Spit and Bite Guards', 23 November 2020, accessed at [\[23/11/20\] Police Service of Northern Ireland extends use of Spit and Bite Guards \(psni.police.uk\)](https://psni.police.uk/news/23-11-20-police-service-of-northern-ireland-extends-use-of-spit-and-bite-guards)

<sup>9</sup> Policing Authority Meeting With The Garda Commissioner, 29th April 2021.

<sup>10</sup> Ibid.

<sup>11</sup> Health and Safety at Work Order (NI) 1978.

<sup>12</sup> Northern Ireland Policing Board, 'Report on the Thematic Review of the Policing Response to Covid-19', (NIPB, 2021), at 67.

evidence relating to the connection between spitting and biting and the contraction of infectious diseases by police officers.<sup>13</sup> A study into the use of spit and bite guards by police services in the UK has identified that “the risk of acquiring serious infection as a result of spitting, and the likelihood of a requirement for post exposure prophylaxis is overstated”.<sup>14</sup> The study accepts that this conclusion cannot factor in the concern by police officers and staff of the possibility of contracting infectious diseases in the course of their job.<sup>15</sup>

- 2.7 While there is a lack of evidence of a link between contracting infectious diseases and spitting and biting, there are safety concerns regarding spit guards that impact on a person on whom a spit guard is applied. The human rights organisation Liberty has identified that spit guards are designed to block spit, vomit, blood or other substances, so if a wearer were to discharge these substances into the hood the breathability of the fabric is significantly reduced.<sup>16</sup> Appendix G of the EQIA identifies that the PSNI’s policy is that spit or bite guards should not be used on a person who is vomiting or excessively bleeding from the mouth or nose.<sup>17</sup>
- 2.8 Liberty have also identified that spit guards, in obstructing the wearer’s face, “can impair police officers’ ability to identify medical conditions and notice distress or pain”.<sup>18</sup> Spit guards have also been linked to a number of deaths in police custody.<sup>19</sup> The PSNI’s policy of the use of spit and bite guards identifies that in a medical emergency the spit guard should be removed immediately and suspects should be closely monitored for signs of asphyxiation.<sup>20</sup> While it is encouraging that these safeguards are being addressed within the PSNI’s policy, it is arguably difficult to monitor a suspect continuously to ensure that they are not having difficulty breathing, particularly where there may be other issues arising when dealing with, for example, a wider public order incident.
- 2.9 Safety issues around spit guards engages Article 2 ECHR, which states, “everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”. Article 2 creates a positive obligation on the State to take all appropriate measures to safeguard the lives of those in its jurisdiction. Article 2 is a limited right, meaning that State Party can permit

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<sup>13</sup> Kieran Kennedy et al, ‘The Use of Spit Guards (Also Known as Spit Hoods) by Police Services in England, Wales and Northern Ireland: To Prevent Transmission of Infection or Another Form of Restraint?’ (2019) 66 Journal of Forensic and Legal Medicine 147, at 152.

<sup>14</sup> Ibid at 153.

<sup>15</sup> Ibid.

<sup>16</sup> Liberty, ‘The Rise of Spit Hoods: Dangerous, Degrading and Unjustified’, 21 February 2019, accessed at [The rise of spit hoods: dangerous, degrading and unjustified - Liberty \(libertyhumanrights.org.uk\)](https://libertyhumanrights.org.uk/the-rise-of-spit-hoods-dangerous-degrading-and-unjustified/)

<sup>17</sup> Police Service of Northern Ireland, ‘The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment’, (PSNI, 2021), at Appendix G.

<sup>18</sup> Liberty, ‘The Rise of Spit Hoods: Dangerous, Degrading and Unjustified’, 21 February 2019, accessed at [The rise of spit hoods: dangerous, degrading and unjustified - Liberty \(libertyhumanrights.org.uk\)](https://libertyhumanrights.org.uk/the-rise-of-spit-hoods-dangerous-degrading-and-unjustified/)

<sup>19</sup> Ibid.

<sup>20</sup> Police Service of Northern Ireland, ‘The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment’, (PSNI, 2021), at Appendix G.

deprivations in exceptional circumstances. These circumstances are defined in Article 2(2), which states:

Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- a) In defence of any person from unlawful violence;
- b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c) In action lawfully taken for the purpose of quelling a riot or insurrection.

- 2.10 The ECHR, Article 15(2), states there should be “no derogation from Article 2, except in respect of deaths resulting from lawful acts of war”.
- 2.11 Similarly, Article 6 ICCPR states that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. The UN Human Rights Committee (HRC) identify, through general comment No 36, that Article 6 obligates “States parties to respect and ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life”.<sup>21</sup>
- 2.12 The UN CRC, Article 6, recognises “that every child has the inherent right to life” and that “States Parties shall ensure to the maximum extent possible the survival and development of the child”. Article 10 UN CRPD affirms that “every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”
- 2.13 The conclusion of a study on the use of spit and bite guards identified that, where there is a lack of information evidencing that spit guards are used to prevent the transmission of infection, “consideration must be afforded to the possibility that the use of the guards represents a form of mechanical restraint”.<sup>22</sup>
- 2.14 Any form of restraint is a use of force. The PSNI is guided on its use of force by the Criminal Law (Northern Ireland) Act 1967, the Police and Criminal Evidence (Northern Ireland) Order 1989 and the Human Rights Act 1998, which incorporates the ECHR.<sup>23</sup> Any use of force by the PSNI must be used as a last resort and be guided by the principles of proportionality, necessity and lawfulness.<sup>24</sup> In a joint statement, UN

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<sup>21</sup> UN Human Rights Committee, General Comment No 36, at para 4.

<sup>22</sup> Kieran Kennedy et al, ‘The Use of Spit Guards (Also Known as Spit Hoods) by Police Services in England, Wales and Northern Ireland: To Prevent Transmission of Infection or Another Form of Restraint?’ (2019) 66 Journal of Forensic and Legal Medicine 147, at 153.

<sup>23</sup> Northern Ireland Policing Board, ‘Report on the Thematic Review of the Policing Response to Covid-19’, (NIPB, 2021), at 79.

<sup>24</sup> Ibid.



Special Rapporteurs have stated that even during states of emergency such as the Covid-19 pandemic, “the use of force remains guided by the principles of legality, necessity, proportionality and precaution”.<sup>25</sup>

- 2.15 The Northern Ireland Policing Board (NIPB) identified that, as an alternative to spit and bite guards, PSNI officers should be provided with sufficient Personal Protection Equipment (PPE) and the “use of spit and bite guards should cease”.<sup>26</sup>
- 2.16 **The NIHRC recommends that, in line with a recommendation by the NIPB, spit and bite guards should be withdrawn by the PSNI and officers should be provided with appropriate PPE as an alternative.**

### Torture, Inhumane or Degrading Treatment or Punishment

- 2.17 Article 3 ECHR states “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. Article 15(2) ECHR identifies that Article 3 is a non-derogable rights and should not be interfered with under any circumstances. ECt.HR jurisprudence has reflected that this right should be guaranteed “irrespective of the victim’s conduct”.<sup>27</sup> An individual’s suffering must be as a result of the State’s action or inaction, not as a result of the individual’s own conduct.<sup>28</sup>
- 2.18 Article 7 ICCPR states no one shall be subject to torture or inhumane or degrading treatment or punishment”. In General Comment No 20, the HRC note that Article 7 “allows of no limitation” or derogation under any circumstances.<sup>29</sup> General Comment No 20 identifies that this extends to acts that cause physical pain or mental suffering to the victim.<sup>30</sup>
- 2.19 The right to freedom from torture, inhumane or degrading treatment and punishment is also protected by the UNCAT, Article 37 UNCRC and Article 15 UNCRPD.
- 2.20 Hooding in any context may raise concerns around reaching the threshold of cruel and degrading treatment. There are other professions where spitting and biting is an issue for staff, for example healthcare workers, yet

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<sup>25</sup> UN Office of the High Commissioner for Human Rights, Covid-19 Security Measures no excuse for excessive use of force, say UN Special Rapporteurs’, accessed at [OHCHR | COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs](#)

<sup>26</sup> Northern Ireland Policing Board, ‘Report on the Thematic Review of the Policing Response to Covid-19’, (NIPB, 2021), at 86.

<sup>27</sup> *Chalal v UK* (1996) 23 EHRR 413, at para 79; *D v UK* (1997) 24 EHRR 423, at paras 47 and 49; *Bensaid v UK* (2001) 33 EHRR 205, at para 32.

<sup>28</sup> *Keenan v UK* (2001) 33 EHRR 913; *Ilhan v Turkey* (2002) 24 EHRR 36; *Price v UK* (2002) 34 EHRR 1285.

<sup>29</sup> UN Human Rights Committee, CCPR General Comment No 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhumane or Degrading Treatment or Punishment), 10 March 1992, at para 3.

<sup>30</sup> *Ibid*, at para 5.

spit guards are not used in these settings.<sup>31</sup> Again the Commission recognises that police officers operate in particularly difficult circumstances on occasions. There are, however, alternative methods of dealing with individuals who may spit or bite available to police officers such as restraint holds or visors which do not carry the same human rights concerns.<sup>32</sup>

- 2.21 **The NIHRC advises that other methods of dealing with individuals who may spit or bite, such as more robust Personal Protection Equipment or restraint holds are available to the PSNI as an alternative to spit and bite guards.**
- 2.22 **The NIHRC recommends that PSNI officers are trained in de-escalation techniques as an alternative to Spit and Bite guards. Given the EQIA identifies that most Spit and Bite guards are used on young males, a neurobiological element to the training would be useful.**

#### Trauma resulting from Spit and Bite Guards

- 2.23 Article 8 ECHR protects the right to private life. The ECt.HR has identified that Article 8 encompasses a person's physical and moral integrity on the basis that "a person's body concerns the most intimate aspect of private life".<sup>33</sup> The ECt.HR has identified that the "preservation of mental stability is ... an indispensable precondition to effective enjoyment of the right to respect for private life".<sup>34</sup> The ECt.HR has further noted that, while adverse impacts on physical or moral integrity will not always breach Article 8, the Court's case-law "does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private-life aspect".<sup>35</sup>
- 2.24 Furthering this point, the ECt.HR has stated that "even a minor interference with the physical integrity of an individual must be regarded as an interference with the right to respect for private life under Article 8, if it is carried out against the individual's will".<sup>36</sup>
- 2.25 Article 8(2) ECHR identifies that this is a qualified right, recognising that restrictions on this right are permissible in certain circumstances. Article 8(2) states:

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<sup>31</sup> Kieran Kennedy et al, 'The Use of Spit Guards (Also Known as Spit Hoods) by Police Services in England, Wales and Northern Ireland: To Prevent Transmission of Infection or Another Form of Restraint?' (2019) 66 *Journal of Forensic and Legal Medicine* 147, at 153.

<sup>32</sup> Kevin Donoghue, 'Five Things You Should Know About Spit Hoods'. Available at: <https://www.donoghue-solicitors.co.uk/five-things-spit-hoods/>

<sup>33</sup> *YF v Turkey* (2003) ECHR 391, at para 33.

<sup>34</sup> *Bensaid v United Kingdom* (2001) ECHR 82, at para 47.

<sup>35</sup> *Bensaid v United Kingdom* (2001) ECHR 82, at para 46.

<sup>36</sup> *Storck v Germany* (2005) ECHR 406, at para 143.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- 2.26 The ECt.HR will provide a margin of appreciation to States in relation to qualified rights, such as Article 8. States have a certain amount of discretion in how they choose to limit certain rights where there is a need to do so.<sup>37</sup> However, any limitation to Article 8 must be necessary and proportionate in line with Article 8(2).
- 2.27 Amnesty International has identified that the use of spit guards can cause “anxiety, stress and panic” for the wearer.<sup>38</sup> Academic research has suggested that spit guards can induce panic and emotional distress on the wearer.<sup>39</sup> Where it may be argued that spit and bite guards do not engage Article 3 ECHR, they could still engage Article 8 given the adverse impact they may have on the wearer’s mental state.

### The use of spit and bite guards on Children and Young People

- 2.28 Article 1 UN CRC identifies that a child is a human being under the age of 18. The Commission remains particularly concerned regarding the use of spit and bite guards on children under the age of 18. The PSNI policy on the use of spit and bite guards identifies that where officers are aware that the suspect is under the age of 18 “the presumption will be that a spit and bite guard will not be used”.<sup>40</sup> However, since the introduction of spit and bite guards in March 2020, they have been used six times on persons under 18.
- 2.29 The UN CRC, Article 3(1), continues that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

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<sup>37</sup> Dudgeon v UK (1981) ECHR 5, at paras 51-53.

<sup>38</sup> Amnesty International UK, ‘The case against the use of spit hoods in response to Covid-19’, 5 November 2020, accessed at [The case against the use of spit hoods in response to Covid-19 | Belfast and Beyond | 5 Nov 2020 | Amnesty International UK](#)

<sup>39</sup> Kieran Kennedy et al, ‘The Use of Spit Guards (Also Known as Spit Hoods) by Police Services in England, Wales and Northern Ireland: To Prevent Transmission of Infection or Another Form of Restraint?’ (2019) 66 Journal of Forensic and Legal Medicine 147, at 153.

<sup>40</sup> Police Service of Northern Ireland, ‘The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment’, (PSNI, 2021), at Appendix G

2.30 The Children's Rights Alliance for England has drawn attention to recent developments in neuroscience that identify that the frontal lobes of the brain are still developing in humans into their 20s. This area of the brain regulates decision making, impulse control and affects a child's ability to cope with stressful situations. The Children's Alliance for England states:

Using a spit-hood [on a child] risks not only heightening their fight or flight mood but also risks subsequent psychological damage. This is compounded by the fact that children who come into contact with the police are some of the most vulnerable in society - many have experienced abuse or violence, are victims of criminal exploitation, and have Special Educational Needs (SEN) or serious mental health conditions.<sup>41</sup>

2.31 In a submission to the Committee against Torture, the Equality and Human Rights Commission identified that risk assessments associated with spit guards in England and Wales "do not take into account the specific dangers which spit hoods can represent to children".<sup>42</sup> The dangers associated with using spit guards on children has been echoed by the Children's Law Centre in NI, who have stated that a police officer using a spit guard on a child "cannot know if a child has a learning disability or suffers from asthma".<sup>43</sup>

2.32 In General Comment No 8, the UN Committee on the Rights of the Child (UNCRC) note that, where children are in conflict with the law, a use of force or restraint may be appropriate.<sup>44</sup> The UNCRC note that a "clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply".<sup>45</sup>

2.33 Considering the lack of evidence to suggest that spit guards protect against the transmission of infectious diseases, but are rather used as a form of restraint, it is the position of the Commission that there is no justification for their use on children under the age of 18. Where there is a doubt about whether someone is under 18 or not the spit and bite guards should not be used.

**2.34 The NIHRC recommends that Spit and Bite guards should not be used on any child under the age of 18.**

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<sup>41</sup> Children's Rights Alliance for England, 'Children's Rights and Policing: Spit-hoods and children's rights', accessed at [CRAE\\_POLICING-SPITHOODS\\_WIP.indd \(yjlc.uk\)](#) at 3.

<sup>42</sup> Equality and Human Rights Commission, 'Torture in the UK: Update Report: Submission to the UK Committee against Torture in response to the UK List of Issues', May 2019, at 53.

<sup>43</sup> Children's Law Centre, 'Chief Constable criticised for spit hoods roll-out in defiance of policing board', 4 March 2021, accessed at [spit and bit guards – Children's Law Centre \(childrenslawcentre.org.uk\)](#)

<sup>44</sup> CRC/C/GC/8, UN Committee on the Rights of the Child, General Comment No 8: the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para 2; and 37, inter alia), 15 May-2 June 2006, at para 15.

<sup>45</sup> Ibid.

- 2.35 **The NIHRC recommends that the PSNI develop and put in place robust safeguards to limit the possibility that a child under the age of 18 is mistaken for someone who has reached adulthood.**

### 3.0 Issues arising from the Equality Impact Assessment

- 3.1 The Commission's view is that the use of spit and bite guards beyond the original limited pandemic purposes should cease given the lack of evidence that they prevent the transmission of infectious diseases and the implications for human rights associated with using them. However, should the PSNI intend to extend the use of spit and bite guards the Commission has highlighted the following issues within the EQIA.
- 3.2 **The NIHRC recommends that, if the enhanced roll out of spit and bite guards is to continue, they should only be used as a last resort, when all other options have been exhausted. Any use of such force should be guided by the principles of proportionality and necessity.**

#### Religious or Community Background

- 3.3 The EQIA has identified that, of the 84 individuals on whom a spit guard was used between 16 March 2020 and 31 December 2020 whose religion was recorded, 40 individuals identified as Roman Catholic.<sup>46</sup> This accounts for 48% of all applications of spit guards during that recorded period, while individuals on whom a spit guard was used who identified as Protestant accounted for only 20%.<sup>47</sup>
- 3.4 In this same period, 13 individuals on whom spit guards were used identified as having no religion (16%) and 11 individuals (13%) refused to answer.<sup>48</sup> Arguably, had these individuals identified their religious background this statistic could potentially be more balanced. However, from this data there currently seems to be a significant differential impact on members of the Catholic community.
- 3.5 The EQIA has concluded that differential or adverse impacts on people from different religions "are unlikely to arise from the introduction of spit and bite guards".<sup>49</sup> In its current form, this evidence suggests that spit and bite guards have been used more frequently on members of a particular religion. The EQIA has noted that there is no anticipation of a differential impact on people with different political opinions from the introduction of spit guards.<sup>50</sup> Given the close relationship between religious

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<sup>46</sup> Police Service of Northern Ireland, 'The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment', (PSNI, 2021), at 33.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

background and political opinion in NI, there is a link between these two sets of statistics.

- 3.6 As such, it is important to monitor and record information relating to religious background accurately to ensure that there is no differential impact on one community over another. When completing equality monitoring return forms, employers are encouraged to use the “Residuary Method” is to help determine religious background where an employee or applicant has refused to complete a monitoring questionnaire or does not identify themselves as a member of the Protestant or Roman Catholic Community.<sup>51</sup> This involves looking at additional information relating to an individual to ascertain their religious community background. In the Equality Commission NI’s Fair Employment Code of Practice, there is a list of potential information criteria, including using the individual’s surname or address.<sup>52</sup> This criteria could potentially be utilised by the PSNI in recording religious background where a spit guard has been applied to an individual.
- 3.7 **The NIHRC recommends that the PSNI continues to carefully monitor and record information around religious background to ensure that there is no differential or adverse impact based on community background.**
- 3.8 **The NIHRC recommends that, where an individual on whom a spit guard is used refuses to identify with a religion or where the religion remains unknown, the PSNI could utilise the Residuary Method to make an informed assumption as to the individual’s potential community background.**

#### Age

- 3.9 The PSNI’s policy on the use of spit and bite guards states “where officers or staff are aware that a member of the public is under 18, the presumption will be that a Spit and Bite Guard should not be used”.<sup>53</sup> The EQIA identifies that, since their introduction, spit and bite guards have been applied six times to children under 18, with two of these instances involving the same young person on the same occasion.<sup>54</sup> This represents 7% of all applications of spit guards since 2020. This is comparative with the UK national data which shows that 7.5% of all applications of spit guards occur on children under 18.<sup>55</sup>
- 3.10 The PSNI have noted through the EQIA that, on the occasions where a spit guard was applied to a child under 18, “the subjects were all at the upper

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<sup>51</sup> Equality Commission Northern Ireland, ‘A step by step guide to monitoring: Monitoring your workforce and applicants in line with fair employment regulations’, 2011, at 12.

<sup>52</sup> Equality Commission Northern Ireland, ‘Fair Employment in Northern Ireland’, at p32.

<sup>53</sup> Police Service of Northern Ireland, ‘The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment’, (PSNI, 2021) There’s no mention of Article 12 in the narrative so need to mention it, at Appendix G.

<sup>54</sup> Ibid at 37.

<sup>55</sup> Ibid, at 37.

end of the definition of a child”.<sup>56</sup> The UN CRC note in General Comment No 20 that “measures are needed to reduce adolescents’ vulnerability both as victims and perpetrators of crimes”.<sup>57</sup>

- 3.11 Article 12 UNCRC obligates States Parties to assure a child who is capable of forming their own views “the right to express those views freely in all matters affecting the child”. While the PSNI’s policy on the use of spit and bite guards acknowledges that special consideration should be given to the vulnerabilities of children, children and other relevant stakeholders should be consulted in the formulation of policies which impact them.
- 3.12 The Children’s Law Centre have identified their concern on the lack of information contained within the PSNI’s initial equality screening for spit guards which did not contain medical evidence concerning the impact of their use on children and young people and disaggregated data on the use of spit guards on children with other protected characteristics.<sup>58</sup>
- 3.13 **The NIHRC advises that, data collected on the use of spit and bite guards on children should be disaggregated by other characteristics including racial and community background, disability or mental health conditions.**
- 3.14 **Any policy governing the use of spit and bite guards on children under 18 should be produced in consultation with children and young people in line with Article 12 UNCRC.**
- 3.15 Data from the rest of the UK records the age category of 18-34 as younger persons. Nationally, 4147 of 7172 applications of spit guards were used on younger persons, accounting for 58% of all uses.<sup>59</sup>
- 3.16 PSNI data shows that spit guards were applied to 58 young persons. This accounts for 69% of all uses of spit guards since their introduction in 2020, or 76% including children.<sup>60</sup>
- 3.17 The EQIA concludes that young people are adversely impacted by the introduction of spit guards than other Section 75 groupings.<sup>61</sup>
- 3.18 **The NIHRC recommends that the PSNI create a target education campaign directed at younger people, particularly males, to outline unacceptability of spitting and biting, the dangers involved and**

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<sup>56</sup> Ibid, at 40.

<sup>57</sup> CRC/C/GC/20, Committee on the Rights of the Child, General Comment No. 20 on the implications of the rights of the child during adolescence, 6 December 2016, at para 86.

<sup>58</sup> Children’s Law Centre, ‘Chief Constable criticised for spit hoods roll-out in defiance of policing board’, 4 March 2021, accessed at [spit and bit guards – Children’s Law Centre \(childrenslawcentre.org.uk\)](https://www.childrenslawcentre.org.uk/spit-and-bit-guards)

<sup>59</sup> Police Service of Northern Ireland, ‘The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment’, (PSNI, 2021), at 37.

<sup>60</sup> Ibid, at 37.

<sup>61</sup> Ibid, at 46.

## **legal ramifications alongside the PSNI's policy on the use of Spit and Bite guards.**

### Gender

- 3.19 The EQIA has identified that, in 2020, 77 uses of spit guards were on males, representing 92% of all uses.<sup>62</sup> Throughout the UK, 5522 of 7172 instances where a spit guard was applied involved males, accounting for 77% of all uses, compared to 1580 incidents (22%) involving females.<sup>63</sup>
- 3.20 The EQIA has therefore concluded that the enhanced use of spit and bite guards will differentially or adversely impact on men more than women.

### People with Disabilities

- 3.21 The EQIA states that 68 out of 84 spit and bite guards applied in 2020 were used on persons who reported having a disability or where police noted a disability.<sup>64</sup> This accounts for 81% of all uses of spit and bite guards in 2020. The EQIA further identifies that 81 out of 84 applications of spit and bite guards were used on persons where alcohol or drugs were noted as a factor.
- 3.22 Across the rest of the UK, there were 7172 applications of spit and bite guards and 1724 of those applications were used on a person with a disability, accounting for 27% of all applications. Instances where spit hoods have been applied to people with disabilities in Northern Ireland are at a considerably higher level than across the rest of the UK.. The PSNI have identified that the introduction of spit and bite guards will have a differential or adverse impact on people with disabilities.
- 3.23 Spit guards are a form of mechanical restraint. People with disabilities are often subjected to a disproportionate use of restraint in certain settings.<sup>65</sup> The Committee on the Rights of Persons with Disabilities (UN CRPD) has noted that, in educational settings, "Persons with disabilities ... can be disproportionately affected by violence and abuse, including physical and humiliating punishments".<sup>66</sup>

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<sup>62</sup> Ibid, at 36

<sup>63</sup> Ibid, at 36

<sup>64</sup> Ibid, at 37.

<sup>65</sup> Melanie Abbott and Helen Clifton, "Inhumane" use of restraint on disabled patients', BBC News, 10 November 2020, accessed at ['Inhuman' use of restraint on disabled patients - BBC News](#)

<sup>66</sup> CRPD/C/GC/4, UN CRPD Committee, 'General Comment No. 4 on the Right to Inclusive Education', 25 November 2016, at para 51.



- 3.24 In its concluding observations on the United Kingdom, UN CRPD noted concerns on the continued use of “physical, mechanical and chemical restraint” on persons with disabilities in prisons and youth justice settings.<sup>67</sup> The UN CRPD Committee recommended the State adopt measures to “eradicate the use of restraint for reasons related to disability within all settings”.<sup>68</sup>
- 3.25 The PSNI policy on the use of spit and bite guards has identified that “If you [the officer or staff member] are aware that the subject has mental health or another debilitating condition, which the use of a Spit and Bite Guard could exacerbate, the presumption will be that a spit and bite guard should not be used”.<sup>69</sup> However, given the extremely high statistics on the use of spit and bite guards on persons with disabilities, it is difficult to ascertain how this policy is being applied.
- 3.26 The NIHRC has previously raised concerns with the PSNI about the use of spit and bite guards on persons with communication difficulties. For example, if a person is deaf and relies upon lip reading, placing a spit guard over their head will obstruct their ability to understand a situation or to hear and follow instructions. The EQIA notes that training has been amended to include reference to subjects with hearing difficulties. However, the policy on the use of spit guards only requires officers to “be aware that there may be situations where communication barriers exist between the officer and the subject” in relation to persons with hearing difficulties, it does not effectively address how an officer is to deal with communication barriers.<sup>70</sup>
- 3.27 The NIHRC also raised the issue of potential damage to hearing aids as a result of the application of a spit and bite guard. The PSNI’s policy on the use of spit and bite guards does not address this issue.
- 3.28 **The NIHRC recommends that data on the use of spit and bite guards in relation to disability is disaggregated into different types of disability.**

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<sup>67</sup> CRPD/C/GBR/CO/1, UN Committee on Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 3 October 2017, at para 36.

<sup>68</sup> Ibid, at para 37.

<sup>69</sup> Police Service of Northern Ireland, ‘The Use of Spit and Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment’, (PSNI, 2021), at appendix G.

<sup>70</sup> Ibid.

3.29 **The NIHRC recommends that disability rights groups are engaged in the formation of policy in relation to the application of spit and bite guards on persons with disabilities.**

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