



JOINT INDEPENDENT ETHICS COMMITTEE
MEETING MINUTES

13:00hrs, 12th December 2018, Docklands Conference Room, Police HQ

1a. Attendance

Attendance:

Professor Mike McNamee (Chair)
Professor Duncan Lewis
Dr Harriet Pierpoint
Mr Mike Lewis
Jacqueline Gantley
Joga Singh
C/Supt Jon Edwards
D/C/Supt Danny Richards
Lee Jones, Chief of Staff, Office of the Police and Crime Commissioner
Supt Joanna Maal
Supt Esyr Jones
D/C/Insp Mark Kavanagh
Jacqui Trow
Sgt Claire Bradbury-Evans
Sgt Matthew Hicks
DC Sian O'Shea
Graeme Johnston - HMICFRS
Sarah Mahon (Observer)
Hannah Jenkins-Jones (Observer)
Amy Thomas

Presenting Ethical Dilemmas:

D/Supt Jason Davies

Apologies:

Nicola Williams
Ceri Channon
C/Supt Dorian Lloyd
Nia Brennan
Carol Woodward
D/Insp Huw Thomas
Sgt Sarah Nagle

2. Minutes and actions

The minutes from the previous meeting held on 12th September 2018 were agreed as an accurate record.

Action Number	Action	Owner	Status/Update
1.	An aide memoire will be published regarding on/off duty.	C/Supt Edwards	Ongoing. C/Supt Edwards has drafted the aide memoire and this will be placed on the agenda for the next meeting.
2.	Professor McNamee to raise at the National Committee collaborative work with the ambulance service. C/Supt Edwards to also raise at the All Wales JESG.	C/Supt Jon Edwards/ Professor McNamee.	Ongoing. C/Supt Edwards has contacted Patrick Rees from the Ambulance Service and is awaiting a reply.
3.	Nicola Williams agreed to undertake some investigation of what policy materials existed in other professions with regards to 'touch' and to bring this back to the Committee.	Nicola Williams	Ongoing. Professor McNamee to contact Nicola Williams.
4.	Take the ethical dilemma on the officer capturing an indecent image on his electronic pocket notebook to the National Ethics Committee for further guidance.	Professor McNamee	Ongoing. C/Supt Edwards stated that this has been forwarded onto CC Julian Williams as the National Lead and this will be discussed at the next meeting.
5.	Agenda the 'real life case study' at the next meeting in December.	Amy Thomas	Completed. Agenda item.
6.	Members to read the Automated Facial Recognition report and this will be finalised at the next meeting in December.	Members	Completed. Report forwarded to Police and Crime Commissioner.
7.	Results from police officer snap survey on ethical awareness to be provided to the next meeting in December.	Amy Thomas	Ongoing. Results from the police staff and police officer ethics survey will be pulled together in one report and provided to next meeting.
8.	Guidance regarding expressions of interest for the post of Vice Chair to be sent out. Nominations to be sent to Amy Thomas for discussion at the next meeting in December.	Professor McNamee	Completed. Agenda item.

3. Introduction & Welcome

Professor McNamee welcomed Graeme Johnston from the HMICFRS attending the meeting as part of the HMICFRS insight visits. He also welcomed D/C/Supt Danny Richards, Head of Specialist Crime attending his first meeting, Sarah Mahon and Hannah Jenkins-Jones attending the meeting as observers and D/Supt Jason Davies attending the meeting to present an ethical dilemma.

4. Ethical Dilemmas

4a. Registered Sex Offenders – Victims Views – D/Supt Jason Davies

Section 91(f) of the Sexual Offences Act 2003 provides legislative guidance on the indefinite notification requirements for registered sex offenders (RSO).

In 2012, a remedial order came into effect, which provides an RSO subject to indefinite notification requirements to apply to the police for review of the requirement to notify, and therefore come off the records management system VISOR. This review can be requested after 15 years in the case of an adult or 8 years for a child.

The review provides the opportunity for the human rights of the RSO to be taken into consideration if they meet certain requirements, it also reduces the demand for offender managers affording them the capacity to more effectively manage the current risk, as opposed to what may be determined a historic risk.

The guidance outlines a number of requirements of the offender manager, which include - but are not limited to - the RSO's current risk assessment, seriousness of the index offence, period of time since that offence took place, good conduct, and their age at the time of the offence in comparison to that of the victim. It also outlines the necessity to consult responsible bodies involved with the RSO.

The process requires a review from the offender manager and ratification of an officer of the rank of Detective Inspector. If supported the matter is forwarded to the officer with delegated authority from a Chief Officer usually the Detective Superintendent, Public Protection who will make the final decision. The decision maker can refuse the discharge of notification meaning the offender must continue to notify for a further period of eight years before reapplying, or they can be discharged. If refused the RSO may appeal to the court by way of escalation.

There are clear and obvious issues for consideration in respect of the victim's views of the discharge, which the Chief Officer Delegate must consider. Section 91D(i) provides for any submission from the victim of the offence to be taken into consideration by the decision maker at point of review. The guidance recognises that victims may have moved on with their lives and be traumatised by the police intervention to seek their views, but also that some victims may wish to have their voice heard. It is this element that poses the most troubling ethical concerns.

The guidance outlines that each decision should be undertaken on a case-by-case basis and that the decision maker may consider the victims views, not that they are required to do so. This dilemma has raised much debate between the Decision Maker and offender managers across the force and whilst each is assessed on a case by case basis the difference of opinion as to whether the victim should be contacted remains a constant topic of debate.

Of note is that the 2012 legislation change requires the prosecuting services to establish the victims' views at the point of conviction and retain it on record for future reference in such cases. However, this requirement only came into effect in 2013, therefore meaning there will be another decade before the benefits of this process can be realised by the Chief Officer Delegate.

The critical questions addressed to the Committee were:

1. In cases where the review requirements are met in full but for the victim consultation element, should the police seek to contact the victim and obtain their views on the RSO's application or not?
2. The panel should balance up the question of the victims' ongoing welfare, the fact they may have chosen to rebuild their lives and may not want a reminder of the past. It should also be noted that many victims wish to have a voice in such matters.

The discussion of this issue was separated into two parts. The first concerned the general position, which was followed by a specific case.

Key general points arising in the discussion were as follows:

- What are the Offender Manager(s) basing their recommendation on (what level of knowledge do they have of the particular circumstances of the victims life and wishes) and what kind of proxy authority do

they have? D/Supt Jason Davies stated that the guidance states that the victim's right to be informed is to be based on a case-by-case basis.

- The Committee asked how victims might be contacted. D/Supt Davies stated that they would be contacted face to face with care and compassion and that they would not be informed by email or letter correspondence.
- The Committee asked whether seeking authorisation or consent to inform victims is a one-off event or if the victim is asked whether they want to be kept informed. It was noted that their opinion on this could change over time and it was queried whether we should give victims another opportunity some years down the line. It was confirmed that this was a one-off decision and concerns were raised regarding the fact that their opinion could change over a number of decades. It was also noted that at the time of the event, the victim could have been a child (at a time when they could not legally decide such a thing, and which might be inappropriate for them to be asked in ethical terms) and that they should be given this choice again when they are an adult. It was noted, however, that this would need further policy consideration.
- It was noted that some research on domestic violence victims has suggested that it is therapeutic for victims to be able to talk about an event even if at that time they do not want to talk about it. The research also noted that it is unusual for victims to take offence at not being asked their opinion. D/Supt Davies stated that it is the view of staff members that they do not want to traumatise the victim unnecessarily.
- The Committee asked whether there is any communication between the police and the victim after the case has closed. D/Supt Davies stated that the force would normally disengage at the point of conviction. He also noted that after charging Witness Care may also be involved.
- D/C/Supt Richards stated that there is a balance to be achieved between the force being victim-centric whilst also ensuring that we are not compromising the privacy of the victim. Victims of sexual abuse often disengage because they are sensitive about their families etc finding out.
- It was noted that other agencies might still have contact with the victim, and a query raised as to whether the force could utilise such information etc provided the General Data Protection Regulations permit this.
- Some members noted that there is a danger of "flashbacks" in the broad spectrum of post-traumatic stress disorder scenarios and that there is the need to look across a range of trauma events regarding the effect of engagement. Further consideration should be given to the relevant research evidence here.
- Members asked whether, at the first stage of the event, does an individual officer carry this burden or is it a team decision. D/Supt Davies stated that predominantly the Offender Manager would manage the case in consultation with the Detective Inspector. It will ultimately then go to the Detective Superintendent.
- It was noted that there is always the possibility that informing the victim could be an unwelcome event that brings harm to the victim. It was acknowledged that, policing has evolved over time and improvements have been made to a more victim-centred process and that victims can now be offered a care package with counselling that they may not have been offered before.

Secondly, a case study was provided to the Committee as below:

- The offender and victim were in a relationship, as teenagers.
- Suspecting the victim to have been unfaithful, the offender drove her to a secluded location where he threatened to kill her, before subjecting her to vaginal and anal rape.
- The suspect was convicted and sentenced to eight years imprisonment, he is subject to indefinite notification requirements and placed on the sex offender register.
- The victim has since remarried and has three children, they reside in the same community as the offender.
- 15 years after the index offence was committed the offender applies to come off the sex offender register.
- Should the victim be given the opportunity to make representations and have her voice heard?

Key points from the Committee were:

- Is the officer in a position of authority that they are a proxy for the victim? It was thought there intervention was more likely to be an act of unjustified (strong) paternalism.
- There should be a presumptive or default position of respect for the autonomy of the victim, that it was their right to be informed, even though the potential for harm cannot be ignored. The right to know is

supported by the criteria for the policy itself. The fourth criterion explicitly states that the “Chief of Police must have due regard to any evidence of the victim”.

- Nevertheless, clauses /paragraphs 12 and 13 of the policy were also relevant and to be considered alongside the right to know:

Paragraph 12:

“We recognise that there are practical difficulties associated with locating existing victims, which will be further complicated by the length of time which will have elapsed since conviction and sentencing. In some cases, this could be 30 years or more. In addition, it is important to remember that many victims will have chosen to rebuild their lives and may not want a reminder of the past. That is why the decision to consult with a victim should be taken by the police, on a case by case basis”.

Paragraph 13.

“To reduce these practical difficulties, victims that arose following the changes coming into force will be given the opportunity to register their interest in providing any submission or evidence with the police. Following sentencing of the offender, victims will be informed of their ability to provide a submission in the event of a review being sought; where they choose to do so they will register their interest and provide police with their contact details through the Victim Contact Scheme”.

- The balancing of these concerns gave rise to substantial discussion.
- There was no evidence to support the view in this case that it would be wrong to contact the victim?
- Given the proximity of the offender and the victim, it was felt problematic that offender might “bump into” victim in the locality and she learn of his being taken off the Register without receiving notification of the situation from the police. It was noted that the police may not always be the best route to communicate with the victim and it may be better to go through a third party organisation e.g. victim support or a Doctor if the victim is already in contact with that organisation (data protection issues notwithstanding).
- The first point of contact was noted as being very important. In this particular case, however, the Committee agreed that the victim’s right to know was clear and overriding. The Committee noted the need for caution, given that the victim had a family of three children from an ex-partner and that she is now in a new relationship. It was noted that she might find out from the circle of friends she is involved with.
- It was also noted that the victim had come through police services three times in the last fifteen years for minor offences. The police were therefore aware that the victim did not appear to have any mental health issues.
- It was noted that the police have independent advocates who work with the Sexual Assault Referral Centres. These advocates are partners who work together and will support the victim throughout the process. They are the conduit and support even though they are independent. These are relevantly new but might be best placed now to give support to the individual.
- It was noted that the advocate would have to advise the victim in person and as a police service we could support this.
- In compliance with the General Data Protection Regulations, it was noted that it would be inappropriate to search or investigate details about the victim or their life, as they are a victim not an offender.
- It is pivotal that the force need to be aware that this could lead to more harm than good.
- As the process rolls out, the process needs to be monitored so we learn lessons from the same.

4b. Real Life Case Study

A real life case study was presented by C/Supt Jon Edwards which was from Greater Manchester Police. The case study involved Greater Manchester Police allowing a 13-year-old to visit the home of a known paedophile for two hours due to an undercover operation. The surveillance team were asked for the authority to intervene, however, this was refused by supervisors. An Independent Office of Police Complaints investigation was carried out and this was referred back to that force for a formal misconduct hearing.

Professor McNamee considered whether the Independent Ethics Committee could intervene during a live operation in an instance such as this. It was noted that an *ad hoc* rapid response meeting could in principle be arranged with a smaller amount of members as per the terms of reference of the IEC. Nevertheless, in an

instance such as this, an operational decision would have had to be made so swiftly that it would be impossible to invoke this procedure.

Key points from the Committee were:

- First and foremost, the Committee do not know the full facts of this case and so could not arrive at particularly clearly evaluations or conclusions.
- It was noted that it is often the case in covert operations that senior investigating officers may have more information to work with in order to arrive at a judicious decision, than the observer 'on the ground' does.
- The Independent Office of Police Complaints did not criticise the senior officers for the way they ran the operation. Rather, they criticised that the procedure was not properly logged. In the investigators' opinion, the actions arose out of the fact that the planning of the job were not risk assessed properly in advance.
- Nevertheless, the police had a duty of care to the 13-year-old boy, irrespective of the seriousness of the ongoing surveillance situation.
- In every surveillance operation, the decision maker should in any risk analysis undertaken specify any potential 'tipping point(s)' i.e. at what point(s) the police may intervene.
- What is the time window in which a decision would have to be made? What are the magnitudes of harm? The magnitudes of harm from a police officer taking a particular route should be assessed and the rationale recorded.
- It was noted that the Committee had time to review this case. However, they could review this case with hindsight, which is something that the senior officers could not do at the time. The Committee wished to state that this real-life case study was not to be used to apportion blame.

5. Updates from Ethics Meetings

Professor McNamee stated that he and Inspector Scott Lloyd had attended the recent NPCC Professional Standards and Ethics national conference at Stratford upon Avon, on 26-7th November 2018.

A presentation was given at the meeting by Professor McNamee and Inspector Lloyd on the ethics of Automated Facial Recognition, to which he had also added how ethics committees deliberate over cases. The talk was well received by the audience, and good feedback had been given. Letters of thanks had been received from CC Julian Williams, National Ethics Lead, and CC Martin Jelly, the conference host.

One issue that arose after the presentation concerned the processes by which (eg) counter corruption officers might monitor force work mobile phones. It had been suggested that this might be an issue for the IEC to consider, though there would need to be further investigation in the first instance regarding current policy and any legal considerations regarding consent as well as any other data protection issues. Supt Jones stated that such steps would only be carried out for a criminal investigation (where applicable police powers apply) and not a misconduct investigation. This item may be considered at a future IEC meeting.

6. Position of Vice Chair

Professor McNamee stated that the deadline for expressions of interest for the role of Vice Chair for the Committee was 5th October 2018. There was one expression of interest received from Mr Mike Lewis. Mr Lewis was appointed to the role of Vice Chair by a majority vote for a period of three years.

Professor McNamee stated that he was now in his third year as Chair and that the Terms of Business would be checked to see if the role of Chair needed to be voted in for another three years.

Action: Amy Thomas to check Terms of Business and link in with Nia Brennan regarding the term of appointment for the Chair of the Committee.

7. Governance

Professor McNamee stated that at the National Ethics meeting, it was discussed that some of the other forces Ethics Committees have co-chairs made up of an independent member and a South Wales Police serving officer. The Committee had originally stated that this meeting would be independently chaired for legitimacy and not jointly chaired. He asked members their views on whether it may be useful to have a vice chair who is a serving

officer or staff member and whether the Committee should have a Vice Chair whose powers are not the same as the independent vice chair but that they have a standing commitment to the Committee.

Members noted that it is important this this Committee has a link with the Internal Ethics Group and the South Wales Police member, whether a Vice Chair or other serving member should take up the role of chairing this internal group. It was noted that there was a clear mandate from the Terms of Business that there should be a route for feedback and communication between the two SWP groups.

Some members were of the opinion that there needed to be a senior police officer who carries out this role, however, that this officer should not be have an office of Vice Chair. Members also noted that this person should not be in the role due to their rank and that they should have an interest in ethics.

Professor Duncan Lewis stated that the NHS in England had staff who were raising issues of an ethical nature and that there are many NHS Trusts who have appointed staff to deal with these issues who are not doctors.

Members were of the consensus that the situation should remain as it currently stands in the role currently undertaken by C/Supt Jon Edwards.

Lee Jones stated that the Police and Crime Commissioner's perspective was that SWP wished to maintain the momentum of the hard work and achievements already made by the Committee and that it was important that the nature of any conduit role was captured appropriately. He stated that there are currently discussions and a review of governance procedures and meetings being undertaken on a force-wide basis. This was to be discussed at a Silver Board being held on 13th December 2018.

Action: Lee Jones to update the Committee of the governance discussions from the Silver Board on 13th December 2018 and thereafter as these impact upon the work of the Committee.

Professor McNamee stated that a Task and Finish Group could be set up to ensure recommendations are implemented from this meeting and to review the governance of the Committee. This meeting will be held toward the end of February 2019.

Action: Amy Thomas to send out an email asking for nominations to sit on the Task and Finish Group to be held mid-February 2019.

9. Any Other Business

Professor McNamee congratulated Chief Superintendent Jon Edwards for his success in passing his PNAC assessment and to wish him luck in the forthcoming Strategic Command Course.

10. Date and Time of Next Meeting

27th March 2019 at 13:00hrs in the Dyffryn Gardens Conference room in Police HQ.

Action: Amy Thomas to send out meeting invite to attendees for the next meeting.

Action Number	Action	Owner	Status/Update
1.	An aide memoire has been drafted regarding on/off duty and will be placed on the agenda for the next meeting.	C/Supt Edwards	Carried Forward to March 2019 meeting.
2.	Professor McNamee to raise at the National Committee collaborative work with the ambulance service. C/Supt Edwards to also raise at the All Wales JESG.	C/Supt Jon Edwards/ Professor McNamee.	Carried Forward to March 2019 meeting.
3.	Nicola Williams agreed to undertake some investigation of what policy materials existed in other professions with regards to 'touch' and to bring this back to the Committee. <i>Professor McNamee to contact Nicola Williams.</i>	Nicola Williams/ Professor Mike McNamee	Carried Forward to March 2019 meeting
4.	Take the ethical dilemma on the officer capturing an indecent image on his electronic	Professor McNamee	Carried Forward to March 2019 meeting

Action Number	Action	Owner	Status/Update
	pocket notebook to the National Ethics Committee for further guidance.		
5.	Results from the police staff and police officer ethics survey will be pulled together in one report and provided to next meeting.	Amy Thomas	New Action
6.	Check Terms of Business and link in with Nia Brennan regarding the term of appointment for the Chair of the Committee.	Amy Thomas	New Action
7.	Inform the Committee of any relevant governance discussions taking place at the Silver Board on 13 th December 2018 and thereafter as these impact upon the terms of business of the Committee.	Lee Jones	New Action
8.	Send out an email asking for nominations to sit on the Task and Finish Group to be held mid-February 2019.	Amy Thomas	New Action
9.	Arrange next meeting for March 2019.	Amy Thomas	New Action