I note that your Committee is currently seeking written evidence with regard to the impact the lack of an Executive in Northern Ireland is having on communities, public services and businesses. As Chair of the Northern Ireland Policing Board (The Board) I thought it appropriate to write to you to provide views on the impact the current democratic deficit is having on the operation of the Board and policing in Northern Ireland in general.

The Board was established in 2001 as a result of the recommendations contained in the report of the Independent Commission on Policing for Northern Ireland, entitled A New Beginning: Policing in Northern Ireland, known as the Patten Report. The Policing reforms in Northern Ireland placed significant importance on ensuring accountability and transparency in policing oversight, with an emphasis on embedding a human rights culture and a police service which is representative of the community it serves.

The Board consists of nineteen members, of whom ten are elected Northern Ireland Assembly members, and nine independent members appointed by the Minister of Justice who are representative of the community as a whole. Before looking at the particular functions of the Board, it is worth considering the context and purpose behind the Police (Northern Ireland) Act 2000 which was to implement the Patten Reforms for the future of policing in Northern Ireland. One of the aims was to produce a police service capable of both attracting and sustaining support from all parts of the community in Northern Ireland. The Board was established to ensure the effectiveness and efficiency of the PSNI and is responsible for independent oversight of policing and holding the PSNI to account through the Chief Constable. This includes monitoring the performance of the police in complying with the Human Rights Act 1998, carrying out the Policing Plan and ensuring that officers carry out their general duties. In addition the Board must keep itself informed as to the trends and patterns on a range of issues including complaints made by members of the public against the police, crimes committed in Northern Ireland, the recruitment of the police and police support staff, and the extent to which the membership of the police and police support staff is representative of the community.

As you will be aware as a result of the political impasse in Northern Ireland, the Board is not currently legally constituted. Parts II & III of Schedule 1 of the Police (Northern Ireland) Act 2000 outline the arrangement for membership of the Board. However it only envisages a situation where the government in Northern Ireland is
either fully operational or suspended, as previously occurred between October 2002 to May 2007 when members were appointed by the Secretary of State. The Board is therefore in legislative limbo due to the fact that there is neither a devolved government nor direct rule, and legal advice has stated clearly that we cannot progress a number of key strategic work areas in the absence of a fully constituted Board. As a result it seems evident that primary legislation or a legislative amendment is required which would allow the Secretary of State in the present circumstances, or should similar conditions be replicated in the future, to appoint members from political parties to the Board to allow us to fulfil our statutory functions. The previous Board had given initial consideration to the need for a wider review of the legislation for the Board and this was a position also echoed by the Northern Ireland Comptroller and Auditor General in his report on continuous improvement arrangements in policing 2015-16.

The absence of elected MLAs on the Board is having a significant impact on the operation of the organisation in terms of undertaking and delivering on its legislative responsibilities. When the Chief Constable provided an oral briefing to your committee on 25 October 2017 he made his view clear that “policing is more effective when there is a functioning local Executive and the attendant accountability and infrastructure around it. Accountability is one of the most obvious challenges that the current political situation has created. Accountability through a fully functioning Northern Ireland Policing Board is critical to confidence in policing”. Without elected MLAs on the Board, the principle of democratic accountability is undermined. While the Board continues to receive and analyse reports from PSNI with regard to their performance against various measures and indicators in the Northern Ireland Policing Plan 2017/18, the absence of a fully constituted Board means there is no appropriate mechanism to hold PSNI accountable for their performance. Therefore where PSNI performance has been inadequate the Board cannot work collaboratively with PSNI to put steps in place to ensure an improved approach. Likewise where PSNI have delivered an excellent service the Board cannot advocate on their behalf in the communities that it serves.

Furthermore, without a fully constituted Board, we will not be able to develop, consult on, and implement a Northern Ireland Policing Plan for 2018/19 as the legislation does not provide delegated authority to officials to make decisions in relation to the Board’s statutory functions, only to assist the Board in carrying out those functions. Ultimately only when the Board has been fully constituted is it legally empowered to carry out its functions.

As a consequence the lack of a Northern Ireland Policing Plan 2018/19 will cause PSNI uncertainty as to the expectation of the Board and the community as a whole as to the service expected of it. This is particularly true with respect of holding PSNI to account for the service provided to vulnerable groups, such as victims of hate crime or domestic abuse, or those with complex mental health needs. These are key
challenges facing the PSNI at a time of growing demands along with additional pressure on their budget, requiring the legitimacy and advocacy of the Board to seek a more collaborative approach with other public sector and voluntary organisations to ensure the best level of service for the community.

Advocating for PSNI and ensuring the best level of service to the whole community is an absolutely vital role for the Board and it is one that we cannot fully undertake in the current absence of elected members. Key conversations and negotiations with respect to the establishment of bodies to deal with the legacy of the Troubles are taking place which will have a potentially huge impact on community confidence in policing, with the Board likely to have some form of oversight and accountability of the proposed Historical Investigations Unit. The Chief Constable is facing significant resource pressures from meeting statutory legal requirements in respect of legacy cases. The failure to establish bodies to deal with the legacy of the troubles is having a detrimental impact on the ability of policing to deal with present day demand, but also in terms of public confidence in the service overall.

Likewise Brexit is likely to have a considerable impact on PSNI’s ability to keep people safe if access to the European Arrest Warrant, the Schengen Information System (SIS II), the European Criminal Records Information System (ECRIS) and membership of agencies such as Europol and Eurojust are not maintained or replicated. Without a fully constituted Board we are unable to advocate our position on either of these key issues facing policing in Northern Ireland.

Another cornerstone of the policing architecture in Northern Ireland is transparency, that the community is kept informed, and can ask questions about what the police are doing in order to better engender confidence and active cooperation with PSNI. By virtue of paragraph 19 to Schedule 1 of the Police (Northern Ireland) Act 2000, the Board must hold at least eight public meetings each year for the purpose of receiving and considering a report on policing from the Chief Constable. In the absence of a fully constituted Board there has not been a public meeting of the Board since December 2016.

At the last private meeting of the Board in February 2017, the then Board approved a limited programme of work (as a temporary measure) that could be progressed by the Independent Members in the absence of a fully constituted Board. This included a series of public seminars, engaging with the community and a range of partner agencies and key stakeholders on a range of policing issues such as Child Sexual Exploitation, Cybercrime and Hate Crime. Independent Members of the Board have also continued to meet with the Chief Constable and his Senior Executive Team. The fact that the Chief Constable has agreed to do so voluntarily is testament to the value he places on the accountability arrangements in Northern Ireland. However this is no substitute for full public meetings of the Board, and the scrutiny role of the Board Committees where PSNI is held to account for its performance, decisions and
decision making. As the Chief Constable made clear when he presented evidence to your committee, public meetings of the Board also provide a key platform for him to provide additional context and explanation on a range of policing issues, particularly where PSNI have been challenged on their response to contemporary policing issues, or in a historical context.

There are also a number of other key strategic issues which, without a fully constituted Board, we cannot address and may potentially have a significant impact on the effectiveness and efficiency of the PSNI. By virtue of section 35 of the Police (Northern Ireland) Act 2000 the Board shall, subject to the approval of the Minister of Justice, appoint the Chief Constable and other senior officers. The Board has the power to call upon any senior officer to retire in the interests of efficiency or effectiveness with the approval of the Minister of Justice. PSNI currently have one vacancy for an Assistant Chief Constable and without a fully constituted Board, this competition has been unable to commence.

I trust that this information will be of assistance to your Committee and if you require anything further do not hesitate to contact me.

21 December 2017