



LETTER SENT BY EMAIL ONLY

10 June 2026

FOI Ref 2026/27-013

Request

Your request for information dated 15 May 2026 is copied below.

I request all correspondence held by the SPA surrounding 'Operation Talla.'

Response

The Scottish Police Authority has considered your request under the Freedom of Information (Scotland) Act (FOISA).

Operation Talla was the UK-wide police coordination effort established in March 2020 in response to the COVID-19 pandemic.

The Authority can confirm that correspondence is held regarding Police Scotland's approach and response to the COVID-19 pandemic.

Information provided relates predominantly to the work of an Independent Advisory Group (IAG) on Police Use of Temporary Powers relating to the Coronavirus Crisis. The Group was established by the Authority and Police Scotland in 2020 and was Chaired by Lord Scott, at the time John Scott QC. The Group met for the first time in April 2020 and throughout the pandemic period, to consider in more detail evidence on Police Scotland's use of the temporary powers granted in response to the Covid-19 pandemic, with a focus on human rights and public impact.

IAG Membership included – Scottish Police Authority; Police Scotland; HMICS; NHS; Equality and Human Rights Commission; Scottish Human Rights Commission; third sector partners including Glasgow Disability Alliance and SWAN Scotland; the Crown Office and Procurator Fiscal Service; Amnesty International; NISAG (Police Scotland's National Independent Strategic Advisory Group); Amer Anwar, Lawyer and Human Rights Advocate; Professor Susan McVie, University of Edinburgh; Children and Young People's Commissioner.

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Much of the information provided has previously been published on the Authority's website, and since removed. As such, some hyperlinks within correspondence may no longer be active due to the passage of time.

Minimal information has been redacted where disclosure may enable individuals to be identified, as this is third party personal information,¹ which is exempt in terms of FOISA.

All correspondence provided with this response is listed in the [Appendix](#).

The Authority does hold Operation Talla correspondence related to our complaint handling functions. This is considered exempt in terms of FOISA. The Authority received this correspondence from third parties¹ in respect of our statutory duties. To disclose this information would be a breach of confidence.² Details contained within some correspondence could potentially identify an individual, even when anonymised. These exemptions are absolute and do not require application of the public interest test. Whilst you may have a legitimate interest in disclosure of this information, it is our view that those interests are overridden by the interests or fundamental rights and freedoms of the data subjects.

Information is also exempt if disclosure would prejudice the effective conduct of public affairs³ or prejudice a public authority's functions.⁴ The information relates to matters relevant to our complaint handling functions and should be allowed to be progressed in line with procedure.

These exemptions require application of the public interest test.

Public Interest Test

The public interest factors in favour of disclosure is that:

- This would adhere to the basic principle of being open and transparent.

The public interest factors in favour of maintaining the exemptions are:

¹ This is a notice in terms of Section 38(1)(b) of FOISA - Third party data. Disclosure would contravene the data protection principle in Article 5(1)(a) of the General Data Protection Regulation: personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

² This is a notice in terms of Section 36(2) of FOISA – actionable breach of confidence.

³ This represents a notice under Section 30(c) of FOISA - Information is exempt from disclosure where disclosure would, or would be likely to prejudice substantially the effective conduct of public affairs.

⁴ This represents a notice under Section 35(1)(g) of FOISA - Information will be exempt if disclosure would, or would be likely to, prejudice substantially the exercise by any Scottish public authority of its functions under Section 35(2).

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- Those with a direct interest in this aspect of the Authority's functions may lose confidence if the information requested were to be disclosed publicly, particularly where matters had not concluded.
- Disclosure of information provided in confidence may result in individuals being unwilling to engage in this aspect of the Authority's functions. This would prejudice substantially the ability of the Authority to discharge its duties effectively in accordance with the various legislation relevant to the handling of complaints, and therefore for the Authority to fulfil its function.
- The Authority has a statutory function to consider complaints about policing in Scotland. Its approach to complaints is underpinned by the principles of necessity, fairness, procedural openness and transparency, while respecting individual confidentiality. The [Authority's complaints policy and handling procedures](#) are therefore publicly available.
- The Authority's [Complaints and Conduct Committee](#) provides assurance that complaint handling arrangements are suitable. Public sessions of this Committee are available to watch, and agendas and papers are available on the website. Complaints performance is reported publicly to this Committee, most recently on [19 May 2026](#), see item 4.
- The public interest lies in maintaining established processes for the consideration of complaints about policing in Scotland. If a complainer is dissatisfied with the handling of their complaint, they can contact the Police Investigations and Review Commissioner (PIRC) to request that their complaint is reviewed. PIRC is an independent organisation not connected to the police or the Authority.

On balance, our conclusion is that maintaining the exemptions outweighs the public interest in disclosure.

You may be interested in content available on our website relating to [policing during the pandemic](#).

Right to Review

If you are dissatisfied with the outcome of your request, you can ask for a review within 40 working days. You must specify the reason for your dissatisfaction and submit your request by email to foi@spa.police.uk or by letter to Scottish Police Authority, 2 Clyde Gateway, French Street, Glasgow, G40 4EH.

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If you remain dissatisfied after review, you can appeal to the Scottish Information Commissioner within six months. You can apply [online](#), by email to enquiries@foi.scot or by letter to Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Commissioner's decision, you can appeal to the Court of Session, only if you think the law has not been applied correctly.

This response will be posted to our [Disclosure Log](#) after seven working days.

Yours faithfully

Scottish Police Authority

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Appendix

Date	Ref (if applicable)	Description
27 March 2020	LET 20200327 CO-024-2020	From Justice Committee to SPA
27 March 2020	LET 20200327 CO-024-2020	From SPA to Justice Committee Convener
27 March 2020	LET 20200327 CO-025-2020	From SPA to Justice sub-committee on Policing Convener
27 March 2020	LET 20200327 CO-026-2020	From SPA to COSLA
27 March 2020	LET 20200327 CO-027-2020	From SPA to LA Scrutiny Leads
2 April 2020	N/A	From National Preventative Mechanism to Cabinet Secretary for Justice
3 April 2020	LET 20200403 CO-030-2020	From HMICS to SPA
3 April 2020	LET 20200403 CO-030-2020	From SPA to HMICS
3 April 2020	LET 20200403 CO-033-2020	From Cabinet Secretary for Justice to SPA
9 April 2020	LET 20200409 CO-036-2020	From SPA to Justice sub-committee on Policing Convener
17 April 2020	LET 20200417 CO-037-2020	From SPA to Justice Committee Convener
17 April 2020	LET 20200417 CO-038-2020	From SPA to COSLA
17 April 2020	LET 20200417 CO-039-2020	From SPA to Local Authority Scrutiny Leads
23 April 2020	N/A	Open letter from SWAN Scotland to policing
23 April 2020	EML 20200423 CO-040-2020	From Liam McArthur MSP to SPA
27 April 2020	LET 20200424 CO-040-2020	From SPA to Liam McArthur MSP
1 May 2020	LET 20200501 CO-042-2020	From Justice Committee Convener to SPA
5 May 2020	LET 20200505 CO-042-2020	From SPA to Justice Committee Convener
7 May 2020	N/A	From Chair of Independent Advisory Group to member of the public
14 May 2020	LET 20200514 CO-047-2020	From Justice Committee Convener to SPA
27 May 2020	LET 20200522 CO-047-2020	From SPA to Justice Committee Convener
10 June 2020	N/A	From Police Scotland to Justice sub-committee on Policing Convener to Chair of Independent Advisory Group

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18 June 2020	N/A	From the Scottish Community Safety Network to Independent Advisory Group
6 July 2020	LET 20200706 CO-057-2020	From SPA to Liam McArthur MSP
15 July 2020	LET 20200715 CO-060-2020	From SPA to DCC Kerr
15 July 2020	LET 20200715 CO-061-2020	From SPA to Director of Safer Communities – Scottish Government. Note the enclosure referred to is as per that provided with LET 20200715 CO-060-2020.
22 July 2020	N/A	From Police Scotland to Justice sub-committee on Policing Convener
22 July 2020	N/A	From Independent Advisory Group to Chief Officer Scottish Community Safety Network
24 August 2020	N/A	From Police Scotland to Justice sub-committee on Policing Convener
30 September 2020	N/A	From Inverclyde Police & Fire Scrutiny Committee Convener to Independent Advisory Group
1 February 2021	LET 20210201 CE-016-2021	From SPA to Chair of Independent Advisory Group
12 February 2021	N/A	From Chair of Independent Advisory Group to Cabinet Secretary for Justice
23 February 2021	N/A	From Cabinet Secretary for Justice to Chair of Independent Advisory Group
22 March 2021	N/A	From Chair of Independent Advisory Group to SPA
22 March 2021	LET 20210322 CO-042-2021	From SPA to Chair of Independent Advisory Group
24 May 2021	N/A	From Chair of Independent Advisory Group to SPA
21 June 2021	N/A	From Chair of Independent Advisory Group to SPA
17 December 2021	LET 20211217 CO-149-2021	From SPA to Local Authority Police Scrutiny Conveners
5 May 2022	N/A	From Chair of Independent Advisory Group to SPA

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The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

David Crichton
Vice Chair
Scottish Police Authority

All correspondence c/o:
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh, EH99 1SP
Tel: 0131 348 5195
justicecommittee@parliament.scot

By e-mail

26 March 2020

Dear Mr Crichton,

COVID-19 and policing

The Committee fully supports the police service's efforts to continue to keep people safe during the ongoing COVID-19 emergency. Members fully appreciate that the police service and the Scottish Police Authority (SPA) are currently having to adapt and to make difficult decisions every day. We are very grateful for the essential work that is being done at this very difficult time.

The Committee recognises the need not to overburden the SPA or Police Scotland at this time. Nevertheless, the COVID-19 emergency is placing substantial challenges on the police service.

Police Scotland have received new emergency powers to protect lives and respond effectively to the COVID-19 outbreak. As the First Minister said in the Chamber on 24 March, Parliament and its members "must continue to perform their important scrutiny role at such a time."

The Policing Sub-Committee will be writing to Police Scotland to ask some key questions, and a copy of that letter will be sent to the SPA for information.

When time allows, in order not to put undue pressure on you and your staff, would you please confirm the SPA's scrutiny arrangements at this time. In particular, the arrangements to monitor Police Scotland's use of the new emergency police powers.

Please be assured that the Committee remains willing to do its bit to support the police service during this difficult period. I wish you and your staff well in these challenging times.

Best wishes,

Margaret Mitchell MSP
Convener, Justice Committee

LETTER SENT BY E-MAIL ONLY

Margaret Mitchell MSP
Convener
Justice Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

27 March 2020

CO/024/2020

Dear Margaret

Governance, Accountability and Support for Policing During COVID 19

Thank you for your correspondence of 26 March 2020.

I am writing to update you on the Scottish Police Authority's (SPA) approach to governance, accountability and support for our police service in these unprecedented times.

Issues around resources, objectives, priorities, methods, and logistics within policing are having to be addressed at a pace that simply does not allow the levels of engagement, consultation and consideration that we enjoy in more routine times.

I want to record the SPA's appreciation of the response already provided by Police Scotland – its officers and staff – and our recognition that the response required will continue to make huge demands on their resilience and adaptability. Similar challenges are also being faced by our Forensic Services teams.

As scheduled, the Authority held its Board meeting earlier this week on 25 March 2020, though by tele-conference to adhere to public health guidelines. Business was prioritised to ensure the minimum abstraction for the Chief Constable and his leadership team from their operational response duties.

Authority members were able to discuss a range of issues with the Chief Constable and his senior team relating to the current emergency – including prioritisation of business and shifting of resources to meet demands, the

availability of personal protective equipment in key areas of the service such as custody, call handling and the maintenance of the 101 and 999 service, workforce wellbeing, the implications of the additional emergency enforcement powers referenced in your correspondence, and our shared concern at the continued requirement for Police Scotland to plan ahead for the COP 26 climate change event.

We are reassured that the Chief Constable and his leadership team are already taking all necessary measures to maintain the resilience of the service, and the Authority will do everything in its power to support that.

I have agreed with the Chief Constable that the Authority will not be introducing any additional oversight or scrutiny arrangements during this period, and that any reporting for scrutiny or requests for support which fall within the Authority's remit will be channelled through our existing procedures. The Authority will remain a key touch point for the service as it grapples with what will inevitably be tough decisions ahead. The Chief Constable and I will continue to be in regular contact and will ensure that all necessary information and decisions are brought to the Authority expeditiously.

We are in exceptional times, and to reflect that the Authority has also approved amendments to its Governance Framework to establish an Exceptional Circumstances Committee to deal with any urgent business of the Board which cannot be dealt with through the normal process for an ordinary or special meeting of the Board. It will clearly be used sparingly and I will chair that Committee with three fellow Authority members if and when it is required.

Despite the current constraints, we are also maintaining our commitment to transparency and, while we are not able to provide public access or the livestreaming, the 25 March Board proceedings were recorded and the audio uploaded to our website. You can listen to the recording at the following link: <https://livestream.com/spa/glasgowmarch>

I hope that you find this correspondence useful and I commit to keeping you advised of any further significant developments.

While the Authority itself is working remotely and visiting at our office in Pacific Quay in Glasgow is suspended, our other channels of communication and contact remain open as usual.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', written over a horizontal line.

DAVID CRICHTON
Vice Chair

LETTER SENT BY E-MAIL ONLY

John Finnie MSP
Convener
Justice Sub-Committee on Policing
The Scottish Parliament
EDINBURGH
EH99 1SP

27 March 2020

CO/025/2020

Dear John

Governance, Accountability and Support for Policing During COVID-19

I refer to your correspondence of 26 March 2020 sent to the Chief Constable and copied to the Scottish Police Authority (SPA).

I am writing to update you on the Authority's approach to governance, accountability and support for our police service in these unprecedented times.

Issues around resources, objectives, priorities, methods, and logistics within policing are having to be addressed at a pace that simply does not allow the levels of engagement, consultation and consideration that we enjoy in more routine times.

I want to record the SPA's appreciation of the response already provided by Police Scotland – its officers and staff – and our recognition that the response required will continue to make huge demands on their resilience and adaptability. Similar challenges are also being faced by our Forensic Services teams.

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DAVID CRICHTON
Vice Chair

LETTER SENT BY E-MAIL ONLY

Cllr Kelly Parry
Buccleuch House
1-7 White Heart Street
Dalkeith
Midlothian
EH22 1AE

27 March 2020

CO-026-2020

Dear Kelly

Governance, Accountability and Support for Policing During COVID 19

I am writing to update you on the Authority's approach to governance, accountability and support for our police service during the COVID-19 emergency.

Issues around resources, objectives, priorities, methods, and logistics within policing are having to be addressed at a pace that simply does not allow the levels of engagement, consultation and consideration that we ensure in more routine times.

I want to record the SPA's appreciation of the response already made by Police Scotland – its officers and staff – and our recognition that the response required will continue to make huge demands on their resilience and adaptability. Similar challenges are also being faced by our Forensic Services teams. I know that local government is facing similar levels of challenge, with staff teams across the country demonstrating resilience and commitment on an unprecedented scale, as part of a collaborative national effort and response.

As scheduled, the Authority held its Board meeting earlier this week on 25 March 2020, though by tele-conference so as to adhere to public health guidelines. Business was prioritised to ensure the minimum abstraction for the Chief Constable and his leadership team from their operational response duties.

Authority members were able to discuss a range of issues with the Chief Constable and his senior team relating to the current emergency – including prioritisation of business and shifting of resources to meet demands, the availability of personal protective equipment in key areas of the service such as

custody, call handling and the maintenance of the 101 and 999 service, workforce wellbeing, the implications of the additional emergency enforcement powers, and our shared concern at the continued requirement for Police Scotland to plan ahead for the COP 26 climate change event.

We are reassured that Chief Constable and his leadership team are already taking all necessary measures to maintain the resilience of the service, and the Authority will do everything in its power to support that.

The Chief Constable and I will continue to be in regular contact and will ensure that all necessary information and decisions are brought to the Authority expeditiously.

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Despite the current constraints, we are also maintaining our commitment to transparency and, while we were not able to provide public access or livestreaming, the 25 March Board proceedings were recorded and the audio uploaded to our website. You can listen to the recording at the following link: <https://livestream.com/spa/glasgowmarch>

I have shared this information with local authority scrutiny conveners across Scotland.

Police Scotland will continue to liaise directly at local level with local authorities and health and social care partnership colleagues, to co-ordinate support for the most vulnerable and meet the shared challenge of ensuring essential services are delivered.

I am very appreciative of the support and very significant efforts of COSLA and local government in responding to the current crisis, and in working with policing and other partners to ensure that communities across Scotland are kept as safe and well as possible.

I hope that you find this correspondence useful and I will keep you advised of any further significant developments.

Yours sincerely,

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DAVID CRICHTON
Vice Chair

LETTER SENT BY E-MAIL ONLY

To: Local Authority Scrutiny Leads, Policing

27 March 2020

CO-027-2020

Dear Colleague

Governance, Accountability and Support for Policing During COVID 19

I am writing to update you on the Authority's approach to governance, accountability and support for our police service during the COVID-19 emergency.

Issues around resources, objectives, priorities, methods, and logistics within policing are having to be addressed at a pace that simply does not allow the levels of engagement, consultation and consideration that we ensure in more routine times.

I want to record the SPA's appreciation of the response already made by Police Scotland – its officers and staff – and our recognition that the response required will continue to make huge demands on their resilience and adaptability. Similar challenges are also being faced by our Forensic Services teams. I know that local government is facing similar levels of challenge, with staff teams across the country demonstrating resilience and commitment on an unprecedented scale, as part of a collaborative national effort and response.

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I am very appreciative of the support and very significant efforts of local government in responding to the current crisis, and in working with policing and other partners to ensure that communities across Scotland are kept as safe and well as possible.

I hope that you find this correspondence useful and I will keep you advised of any further significant developments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a long horizontal stroke extending to the left.

DAVID CRICHTON
Vice Chair



UK National Preventive Mechanism
c/o SHRC
Bridgeside House
99 McDonald Road
EH47 4NS
Edinburgh

Tel: 0131 397 5750

2 April 2020

Dear Humza Yousaf MSP,

We are writing on behalf of the Scottish members of the National Preventive Mechanism (NPM) about the vital importance of efforts to uphold the rights of people in detention and deprived of their liberty during the COVID-19 outbreak. We are aware from your recent announcements that you are actively considering the best measures to take to protect them.

As you may be aware, we recently wrote to Secretary of State for Justice, Robert Buckland QC MP, on these issues¹.

This letter provides a number of principles and recommendations that are directly applicable in the current emergency situation. While some of the issues raised in this letter are at the forefront of the operational planning that is currently being undertaken by the Scottish government and other public authorities, we would like to emphasise some of the steps that the government and detention authorities can take to mitigate the existing risks.

First of all, we would like to acknowledge the dedication and commitment that staff working in detention settings are demonstrating at such worrying times. We would also like to thank your officials for their efforts to support the NPM in exercising its role at this time.

Principles

1. As you may be aware, a number of international human rights and health bodies have provided guidance on States' responsibilities to uphold human rights in the context of COVID-19 and much of this relates specifically to detention and detention monitoring'. It is our view that the following principles should be applied by all relevant authorities responsible for persons deprived of their liberty:

- The Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, issued by the CPT of the Council of Europe;²
- The WHO Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention;³
- The Subcommittee for Prevention of Torture, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic;⁴ and
- The UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules")

¹ Letter from NPM Chair John Wadham to Secretary of State for Justice Robert Buckland QC MP on the COVID-19 outbreak, 30 March 2020 <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/03/NPM-letter-to-Robert-Buckland-re-COVID19-300320.docx-WEB-2.pdf>

² Council of Europe, Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, 20 March 2020 <https://rm.coe.int/16809cfa4b>

³ WHO, interim guidance, 15 March 2020, available at: http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf

⁴ Subcommittee for Prevention of Torture, Advice of the Subcommittee on Prevention of Torture to States Parties and NPM relating to the Coronavirus Pandemic, 25 March 2020, available at: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

2. People in prisons and other places of detention are both likely to be more vulnerable to infection with COVID-19 and to be more vulnerable to human rights violations. There are practical difficulties that put detainees and staff at risk, including the impossibility of social distance, particularly in overcrowded places of detention, staff and monitoring decrease and the nature of the restrictive measures imposed to stop the spread of the outbreak.

As you are aware the NPM is primarily concerned with the prevention of ill-treatment of all people deprived of their liberty, but also with the importance of supporting staff. There are specific and intense challenges for staff working in various places of deprivation of liberty, including prevention equipment and staffing levels that could lead to increase in the use of restraint, segregation and seclusion which may compromise people's human rights.

Accordingly, we would like to recommend the following steps:

- A concerted effort should be made to reduce the detained populations to mitigate the inherent risk of maintaining people in close confinement. This is particularly important for detainees with underlying health conditions, remanded population, children, and those in other vulnerable categories as well as in areas of the detention estate that are already overcrowded. This should be facilitated where risk assessment and the impact on other services in the community deems it feasible and by expanding the use of existing instruments or executive release under emergency legislation.
- Staff availability should be supported and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty. This includes support to monitoring bodies and the NPM as an essential safeguard against ill-treatment.
- Maintain the principles of equivalence of care in relation to both physical and mental healthcare to those in detention. At a time when all health services are under significant strain, the government must ensure that those deprived of their liberty are not disadvantaged in accessing the health services that they need. This is particularly important given the extent to which detainees are likely to be held in conditions that amount to solitary confinement. In addition, the NPM are concerned that extended solitary confinement in spaces designed for one but holding two will be detrimental to both physical and mental health.
- Reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate. This is particularly important for residents of social care homes where the provision of care and imposed isolation to manage infection spread for an individual may give rise to a new or changed deprivation of liberty.
- Ensure alternative measures to facilitate contact between detainees and their families, and contact with other professionals such as advocates. Where physical visits have had to be restricted, and given the many ways in which family contact plays a crucial role for those in detention, how will the government ensure skype, adapted mobiles and any other forms of contact are available.
- Provide periodic reports to the Scottish Parliament and wider public on the human rights of this population and your progress in protecting those in detention.
- Provide clarity in relation to the timescale and process of the regular review of the Coronavirus (Scotland) Bill.

Given the rapidly changing picture across different detention settings and the severity of the measures that are being imposed, from restriction of family visits and long periods of isolation to limitations on exercise and association, the NPM members are looking into new ways of fulfilling our scrutiny functions to ensure our preventive role is maintained in these challenging times.

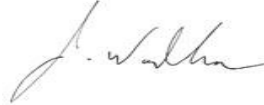
As was discussed in our recent conversation, we will be in contact to arrange a meeting with Scottish NPM members and yourself.

Lastly, due to the importance of providing reassurance to the public during these troubling times, and in particular to those who are concerned about the situation of their family members and friends in detention, the NPM will publish this letter on our website.

Yours sincerely,



Judith Robertson,
Chair of UK NPM Scottish Subgroup



John Wadham
Chair of UK NPM

On behalf of:

Care Inspectorate
Her Majesty's Inspectorate of Constabulary in Scotland
Her Majesty's Inspectorate of Prisons for Scotland
Independent Custody Visitors Scotland
Mental Welfare Commission for Scotland
Scottish Human Rights Commission



HM Inspectorate of Constabulary in Scotland **Improving Policing across Scotland**

Thursday, 02 April, 2020

Fulfilling statutory duties throughout the coronavirus outbreak

Introduction

This document outlines the approach Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) intends to adopt in providing independent scrutiny of both Police Scotland and the Scottish Police Authority (SPA) throughout the period of the COVID-19 pandemic in Scotland.

In recognition of the unprecedented demands associated with the COVID-19 pandemic, on 19 March 2020, HMICS suspended all routine inspection activity. It is intended that the thematic inspections on Training and Development and on Hate Crime will resume once normality has been restored. HMICS has also put on hold the publication of its Annual Scrutiny Plan for 2020/2021. Joint inspection work, which we carry out with the Care Inspectorate and others, had already been halted meantime.

In order to maintain the resilience of Police Scotland and to support their response to this crisis, HMICS has instigated its Business Continuity Plan and has returned our four seconded police officers back to the force until further notice.

HMICS Objectives

HMICS will seek to protect and support our staff throughout this period, safeguarding their health, safety and wellbeing, through the provision of flexible home working arrangements, regular Skype meetings with the team and one to one conversations.

HMICS will continue to fulfil its statutory duty, as outlined in the Police and Fire Reform (Scotland) Act 2012, looking into the "state, effectiveness and efficiency" of both Police Scotland and the Scottish Police Authority (SPA).

HMICS will be pragmatic and flexible in its approach, continuing to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement.

HMICS will respond to direction from Scottish Ministers to look into anything relating to Police Scotland or the SPA as they consider appropriate.

HMICS will provide professional advice and guidance on policing in Scotland.

It is assessed that focus on the following areas may be particularly important in providing assurance to the people of Scotland in the coming months:

- The manner in which Police Scotland implement the additional powers afforded to them under new legislation enacted to deal with the COVID-19 pandemic;
- Custody (fulfilling our role as part of the National Preventative Mechanism in line with OPCAT requirements);
- Call handling and the maintenance of the 101 and 999 service;
- Workforce wellbeing and the availability of personal protective equipment;
- Police Scotland's ongoing planning for the COP26 climate change event; and
- The impact of Police Scotland's response to the COVID-19 pandemic upon future levels of public trust and confidence.

HMICS will also use this time to plan and prepare for future scrutiny work and continue our transformation and workforce assurance process in respect of resource planning and readiness post-outbreak. Furthermore, as part of our scrutiny development HMICS will consider Police Scotland's response and recovery from COVID-19 with particular focus on organisational and individual learning and development.

HMICS does however recognise the unprecedented challenge the COVID-19 pandemic poses. We will seek to support Police Scotland and the SPA through this critical period, balancing our supportive approach with the fulfilment of our statutory responsibilities in a way that minimises the impact on Police Scotland and the SPA.

We will liaise regularly with Police Scotland, the SPA and the Scottish Government, and will keep the approach to scrutiny of policing in Scotland under review.

We will continue to liaise regularly with other inspectorates and agencies across the public sector throughout this period to share specific expertise or jointly examine important areas where Police Scotland works in partnership and contribute to shared outcomes. We will co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication.

We will continue to aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective evidence-led reporting about what we find. Where relevant, we will make recommendations to Police Scotland and the SPA that aim to improve policing. We will also identify good practice that can be rolled out across Scotland.

Mrs Gill Imery QPM

HM Chief Inspector of Constabulary

02 April 2020

LETTER SENT BY E-MAIL ONLY

Ms Gill Imery QPM
HM Chief Inspector of Constabulary
HMICS
St Andrew's House
EDINBURGH
EH1 3DG

3 April 2020

Ref: CO/030/2020

Dear Gill

GOVERNANCE AND INSPECTION OF POLICING DURING COVID 19

Thank you for your letter of earlier today. I had in fact planned to write to you in any case today following our very useful discussion earlier this week in which we discussed how the Authority and Inspectorate could work in an effective and complementary way to both fulfil our statutory responsibilities and, crucially, support Police Scotland to play its pivotal and unique role during the current emergency.

I note that since our discussion you have posted a statement confirming your intention in the fullness of time to inspect and report on the response of both Police Scotland and the Authority. That will be useful at the appropriate time and I am sure you agree that at the moment we have to strike the right balance between our scrutiny responsibilities and the unprecedented pressures being placed on our police service. In that respect, your confirmation of a suspension of current HMICS inspections is very welcome. I have also said publicly and in correspondence with Parliament that the Authority will not be establishing any new governance and scrutiny structures which would place additional reporting burdens on Police Scotland at this time. I am confident that our existing structures will be adequate to meet our continuing statutory responsibilities and to capture any lessons learned for continuous improvement in the service.

As you know, Police Scotland is already producing a very full Daily Bulletin on the operational aspects, implications and challenges of Operation Talla. This is proving very useful to the Authority in tracking the impact on key issues such as officer deployment and availability, health and wellbeing, call handling, incident and crime data, and community impacts. Authority staff are reviewing the data on a daily basis and will be compiling weekly reports to inform and alert Authority Members of any areas of concern. Additionally our Interim Chief

Executive is working with Police Scotland's Director of Finance to identify any funding implications as they arise. I have also encouraged the Chief Constable and his leadership team to raise directly with me any challenges or constraints which the Authority can assist in resolving.

One key area which you and I talked about and which you refer to you in your letter is the extent to which the service is exercising its additional, temporary powers and the potential implications of that for the core principle of policing by consent. The Chief Constable and his colleagues have been very clear on the importance of that principle and their determination to protect it. The Authority welcomes that commitment and will continue to support it. These new powers are a matter of great public interest and potential concern and will be a key area for the Authority and HMICS to be mindful of in the coming weeks.

During this public health emergency, we have both a need and an opportunity for the Authority and HMICS to work collaboratively and proportionately in applying our respective inspection and governance duties. Clearly we are concerned with a similar range of issues and I look forward to working with you to demonstrate how the overall scrutiny system for policing can work to best effect and, most important, provide support and maintenance to Police Scotland at such a challenging time.

I am copying this letter to the Cabinet Secretary for Justice and the Chief Constable.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Crichton', with a large, stylized flourish extending to the right.

DAVID CRICHTON
Vice Chair

Cc.
Humza Yousaf MSP, Cabinet Secretary for Justice
Iain Livingstone QPM, Chief Constable, Police Scotland.



T: 0300 244 4000
E: scottish.ministers@gov.scot

David Crichton
Vice Chair, Scottish Police Authority
By Email

15 April 2020

Dear David,

CORONAVIRUS: SPA AND HMICS REVIEW OF POLICE SCOTLAND EMERGENCY ENFORCEMENT POWERS

As you will be aware, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (“the Regulations”) put in place severe restrictions on movement and on commercial and social activity, and those restrictions are associated with unprecedented police powers of enforcement which, in practice, oblige citizens to account to the police for any activity undertaken outwith the home. The Scottish Government is firmly of the view that these extreme measures are justified by the risks to life and health currently facing Scotland but we are required to review these provisions every 21 days and will do so in a manner which respects Convention rights.

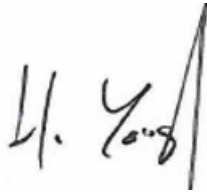
I understand that you have been discussing with HM Chief Inspector of Constabulary the importance of your respective roles in scrutinising Police Scotland’s exercise of its new powers and very much welcome your shared commitment to this. You will also be aware that the Chief Constable has commissioned John Scott QC to conduct an Independent Review of the use of emergency powers connected to the COVID-19 pandemic. I welcome the Chief Constable’s open and transparent approach to inviting this independent assessment and am pleased to hear that John Scott will be reporting his findings directly to the Scottish Police Authority.

To ensure continued public confidence in policing during this difficult time, the distinctive statutory roles of the Authority and the Inspectorate in providing the independent scrutiny of the operation and safeguards Police Scotland has put in place remain essential to provide assurance to Ministers, the Parliament and the public. Given the additional pressures on policing it is also important that any scrutiny is proportionate and complementary to minimise the impact on the service. Nonetheless, where there are opportunities for improvement in the current processes and operation, the Inspectorate and the SPA are well placed to support Police Scotland during what will undoubtedly be a learning process.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Finally, I would also welcome your observations and advice on the operation of the regulatory framework to inform our review of the Regulations, with particular consideration of Convention rights.

Thank you for taking this work forward.



HUMZA YOUSAF

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



LETTER SENT BY E-MAIL ONLY

John Finnie MSP
Convener
Justice Sub-Committee on Policing
The Scottish Parliament
EDINBURGH
EH99 1SP

17 April 2020

CO/036/2020

Dear John

**SPA OVERSIGHT OF POLICING APPROACH TO COVID-19 &
INDEPENDENT REVIEW OF POLICE SCOTLAND'S USE OF NEW POLICE
POWERS**

I wrote to you on 27 March 2020 regarding the Scottish Police Authority's approach to governance, accountability and support for policing during this COVID-19 period. I thought it would be helpful to provide you with an update on developments over the last few weeks.

The Scottish Police Authority has now published two documents setting out the Authority's approach to the oversight of policing COVID-19 in Scotland and a timeline of the formal planned governance until August 2020. We will of course keep this under review. You can access both of these documents from the SPA's website at the following links:

- [Strategic approach to the oversight of policing COVID-19 in Scotland](#)
- [A timeline of the Authority's formal planned governance until August 2020](#)

You will also be aware that an Independent Advisory Group has been set up to look at Police Scotland's use of the new emergency powers to tackle the coronavirus. The Group is being chaired by leading human rights lawyer John Scott QC Solicitor Advocate and membership has today been announced comprising an impressive cross-section of individuals and organisations. You can find out more about the Group and its membership from the Authority's website at the following link:

- [First meeting of Independent Advisory Group on Police Scotland's use of new police powers in relation to coronavirus](#)

The Group is being supported by and will report directly to the Authority as the governance and oversight body for Police Scotland. Any urgent actions identified as part of the Group's considerations will be discharged as necessary.

The first meeting of the IAG took place on Thursday 16 April 2020 and the Terms of Reference are expected to be agreed and published on the SPA's website in the coming week.

I am confident that the Group will provide the independent assessment required to support the Authority's oversight of Police Scotland's use of these unprecedented powers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a long horizontal stroke extending to the left.

DAVID CRICHTON
Vice Chair

LETTER SENT BY E-MAIL ONLY

Margaret Mitchell MSP
Convener
Justice Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

17 April 2020

CO/037/2020

Dear Margaret

**SPA OVERSIGHT OF POLICING APPROACH TO COVID-19 &
INDEPENDENT REVIEW OF POLICE SCOTLAND'S USE OF NEW POLICE
POWERS**

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Yours sincerely,

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DAVID CRICHTON
Vice Chair

LETTER SENT BY E-MAIL ONLY

Cllr Kelly Parry
Spokesperson
COSLA Community Well Being Board

17 April 2020

CO/038/2020

Dear Kelly

**SPA OVERSIGHT OF POLICING APPROACH TO COVID-19 &
INDEPENDENT REVIEW OF POLICE SCOTLAND'S USE OF NEW POLICE
POWERS**

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I am confident that the Group will provide the independent assessment required to support the Authority's oversight of Police Scotland's use of these unprecedented powers.

I hope that you find this correspondence useful and I will keep you advised of any further significant developments.

Yours sincerely,

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DAVID CRICHTON
Vice Chair

LETTER SENT BY E-MAIL ONLY

To: Local Authority Scrutiny Leads, Policing

17 April 2020

CO/039/2020

Dear Colleague

**SPA OVERSIGHT OF POLICING APPROACH TO COVID-19 &
INDEPENDENT REVIEW OF POLICE SCOTLAND'S USE OF NEW POLICE
POWERS**

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Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a large, sweeping flourish extending upwards and to the right.

DAVID CRICHTON
Vice Chair

An open letter from the autism community to all our police officers

We are very aware that you are undertaking essential work on the front-line as part of a critical community response to COVID-19 and the resulting extraordinary conditions and for that we are extremely grateful. We also recognise that in facing difficult situations daily you apply the values of Police Scotland, of integrity, fairness and respect, for which you are much appreciated.

In order to assist you with the difficult tasks you face we'd like to share some facts/observations about autism, its impact on us, our behaviours and how that can be perceived by those we come into contact with especially those in authority.

- At least 1 in 100 Scottish citizens are autistic.
- Anyone could be autistic - children, adults, parents, staff, all genders, all ethnicities, all sexualities, people with other disabilities and co-existing conditions such as Ehlers-Danlos
- Autism is not always 'visible'. In our daily interactions many of those we meet are completely unaware of the struggles we experience with social interactions, communication, sensory overload, anxiety.
- Some of what are considered classic autistic 'behaviours' - lack of eye contact, rocking or hand flapping, mutism or poor verbal communication are autistic responses to stress but easily misunderstood as something more menacing. Not doing any of these things of course, doesn't mean we are not autistic
- Some autistic 'behaviours' like looking away or down when being spoken to, help us concentrate and hear what is being said - many of us can't look at you and focus on your words at the same time
- Autistic people live with heightened 'fight or flight' response MOST OF THE TIME but especially in social situations, situations that are fluid and unpredictable and where we are being expected to do several things simultaneously, e.g. listen, respond, react. We have all experienced situations where our anxiety-led behaviours resulted in misunderstandings and challenging responses from others. Tense situations can and do escalate very quickly as you know
- Even light physical touch can be truly painful and scary for us, especially when stressed and frightened
- We like to understand 'the rules' in any given situation, we think very logically, and like to have certainty and a sense of control. Knowing what is expected of us makes life easier for us all.
- The most anxiety provoking thing for autistic people right now – on top of the general anxieties in the community - is seeing other people apparently ignoring the law and guidelines.
- The next is lack of clarity regarding exactly what activities are acceptable under the current legal guidelines
- But even when we do feel confident we understand these, some activities, like an essential car trip, can remain extremely stressful especially knowing that we could be stopped to justify the journey. In such a situation our autistic responses to the feelings of anxiety and fear are easy to misunderstand
- We don't always understand social or authority hierarchies and consequently can be outspoken at the wrong time to the wrong people. We are fiercely sensitive to anything we perceive as being 'unfair'.
- Autistic people can be right 'know it alls'. We tend to do our research, read everything, collect information and then of course we want to share all that when the opportunity arises. This can sound like 'cheek'.
- We do not tend to understand sarcasm, it confuses us and can cause distress. We respond best to clear, calm, direct communication.
- Many autistic people have support-workers or carers to help them with daily tasks and activities and are unable to do some activities alone eg shopping

PLEASE: Keep in mind that anyone you interact with may be autistic. If you stop someone in a car or approach them in the street or a public space or park and you are received in a manner that you think is a bit odd, e.g. they won't look at you, you feel their tone of voice is combative or they come across as a bit of a 'know it all', listen to their words and not just how they are saying them; autistic people will be trying very hard to find exactly the right words to tell you what they mean. They may laugh inappropriately. They may not be able to speak at all. Please avoid touching them. Use very clear specific language.

We want to keep all of our community safe and make your job as easy as possible. Thank you.

From: [REDACTED] on behalf of [McArthur L \(Liam\), MSP](#)
To: [SPA Chair Office](#)
Subject: Correspondence from Liam McArthur MSP: Public Board meetings
Date: 23 April 2020 15:58:23
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.gif](#)
[image004.jpg](#)

Dear David,

I write to raise serious concerns I have about the decision to stop the Scottish Police Authority's public Board meetings.

Every business, organisation and workplace has been required to adapt as a result of the coronavirus crisis. People across Scotland have made unprecedented effort to change how they work, to enable remote and inclusive working while maintaining social distancing. This has been accomplished to a degree of success that many would not have thought possible some months ago.

Bodies involved in processes of public scrutiny have acknowledged and understood that this job is more important than ever before. My own experience of moving to remote scrutiny within the Scottish Parliament has shown that remote and public committee sessions are possible, and essential.

Public scrutiny of the police is the very purpose of the SPA. I am therefore deeply concerned to see that the Board have decided that there is no need to live stream the meetings. At a time where police powers are being strengthened, and the relationship between the police and the public is being tested, I believe this decision cannot be justified.

I ask that you urgently reconsider this decision, and organise processes so that the next meeting to be held on the 30th of April will be conducted with full transparency. Anything less is unacceptable.

I look forward to your urgent response.

Kind regards,

Liam

Liam McArthur MSP
Liberal Democrat, Orkney

Scottish Parliament Edinburgh EH99 1SP

Tel: 0131 348 5815 Fax: 0131 348 5807

Constituency Office: 14 Palace Road, Kirkwall, Orkney KW15 1PA

Tel: 01856 876541 Fax: 01856 876162

[Liam McArthur](#) [@Liam4Orkney](#) [Liam McArthur MSP](#)

Keep informed – sign up to my weekly e-newsletter, *Holyrood Highlights* [here](#)

Lobbying



The Scottish Parliament: Making a positive difference to the lives of the people of Scotland

Pàrlamaid na h-Alba: A' toirt deagh bhuaidh air beatha sluagh na h-Alba

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The information in this email may be confidential. If you think you have received this email in error please delete it and do not share its contents.

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**SCOTTISH POLICE
AUTHORITY**

**1 Pacific Quay
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SPAChairOffice@spa.pnn.police.uk

LETTER SENT BY E-MAIL ONLY

Liam McArthur MSP
Orkney Parliamentary Office
14 Palace Road
Kirkwall
Orkney
KW15 1PA

27 April 2020

Our Ref: CO-040-2020

Dear Mr. McArthur

I refer to your e-mail correspondence received by my office on 23 April 2020 suggesting that the Scottish Police Authority has decided to stop its public Board meetings. I want to first assure you that the Authority's business has not stopped in any way during this challenging period.

Like all organisations, the necessary public health restrictions which came in last month with little advance notice have meant we have had to adapt to the practical challenges of how we conduct our business. The Authority is not unique, similar challenges have been experienced by other institutions, including the Scottish Parliament.

I understand that those who usually attend or tune into our meetings have not been able to watch our oversight for themselves. In order to mitigate the impact, we have increased the frequency of written updates to our stakeholders and for the public on our website. This includes correspondence sent to both the Justice Committee and the Justice Sub-Committee on Policing about how the SPA is exercising its oversight of policing during this challenging period. I have copied below links to some of the updates detailing our approach for your ease of reference:

- 17 March 2020 - [Authority business during coronavirus](#)
- 19 March 2020 - [Statement from Vice Chair on implications of COVID-19](#)
- 25 March 2020 - [Authority establishes Exceptional Circumstances Committee](#)
- 26 March 2020 - [Audio Recording of Authority meeting available](#)

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- 27 March 2020 - [Letter to Margaret Mitchell MSP, Convener of the Justice Committee](#)
- 27 March 2020 - [Letter to John Finnie MSP, Convener of the Justice Sub-Committee on policing](#)
- 9 April 2020 - [Human Rights Lawyer appointed to Chair group to assess use of new emergency police powers](#)
- 17 April 2020 - [Membership announced as Independent Advisory Group holds first meeting](#)
- 17 April 2020 - [Letter to Margaret Mitchell MSP, Convener of Justice Committee](#)
- 17 April 2020 - [Letter to John Finnie MSP, Convener of Justice Sub-Committee on policing](#)
- 23 April 2020 - [SPA oversight of policing COVID-19 continues](#)

By the end of this week, the SPA expects to have held two Authority meetings where our usual video stream has been substituted by audio recordings of the telephone conferences. The full proceedings will be posted on our website. By our next meeting in May we hope to have in place a video conferencing solution which will allow us to stream the session live so that members of the public and interested parties can continue to see and hear the Authority's ongoing scrutiny and support for policing in Scotland.

I hope this information is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a large, sweeping flourish above the name.

DAVID CRICHTON
Vice Chair

OFFICIAL



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

David Crichton
Vice Chair
Scottish Police Authority

All correspondence c/o:
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh, EH99 1SP
Tel: 0131 348 5195
justicecommittee@parliament.scot

1 May 2020

By e-mail

Dear Mr Crichton,

COVID 19 oversight

Thank you for your letter of 17 April outlining the Scottish Police Authority's (SPA) oversight of the policing approach to COVID-19 and for the details of the independent review of Police Scotland's use of new police powers.

The need for public scrutiny and oversight at this time is essential. This includes, in particular, independent scrutiny of how Police Scotland is implementing the new police powers. The Committee therefore welcomes the SPA's approach of providing proactive updates to the Committee on its oversight arrangements.

The Committee notes that the previous two SPA Board meetings, on 25 March and 30 April, have both been by teleconference. On the 25 March the SPA indicated that "For the foreseeable future, all essential business of the Authority or its committees will be conducted via video or telephone conference with participating members and senior officers dialling in from various locations. As a result, there will be no facilities for stakeholders or members of the public to attend and observe Authority or committee meetings".

Whilst Members fully appreciate there will be initial technical challenges in setting up videoconferences which can be broadcast, nonetheless we consider these necessary for the public and others to see the work of the SPA.

Would you please confirm why video conference facilities have not yet been used for SPA Board meetings? The Committee understands that future SPA Board meetings are to be streamed live by video conference, it would be helpful if you could confirm

that is the case. Would you also please confirm the number of committee meetings that have been held in public or in private during the COVID-19 pandemic?

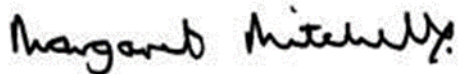
In your letter you refer to the establishment of the Independent Advisory Group set up to look at Police Scotland's use of the new emergency powers to tackle the coronavirus. The Committee understands that the Group is to report to the Chief Constable.

The Committee accepts that the Chief Constable is free to make his own arrangements and seek advice from whom he wishes. However, the role of oversight of the police in normal times and their use of the new powers during the COVID-19 public health emergency is for the SPA. Hence there is a danger of duplication and confusion between the SPA's role and that of the Independent Advisory Group. There are also potential issues about lines of accountability given this Group was set up by the Chief Constable and it reports to him, not the SPA.

Would you confirm therefore how the independent oversight that the SPA is to undertake of Police Scotland's use of the new emergency powers to tackle the coronavirus will continue and the information that will be provided to the Scottish Parliament in that regard? Also, what is your expectation of the work of the Independent Advisory Group and its reports? For example, will these be sent to the SPA, will these be publicly available etc?

A response before the next meeting of the SPA, scheduled for 20 May, would be very much appreciated.

Best wishes

A handwritten signature in black ink that reads "Margaret Mitchell". The signature is written in a cursive style.

Margaret Mitchell MSP
Convener, Justice Committee

OFFICIAL

**SCOTTISH POLICE
AUTHORITY**

1 Pacific Quay
Glasgow
G51 1DZ
Tel: 01786 896977
SPChairOffice@spa.pnn.police.uk

LETTER SENT BY E-MAIL ONLY

Margaret Mitchell MSP
Convener
Justice Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

6 May 2020

CO/042/2020

Dear Mrs Mitchell

SPA's COVID-19 Oversight

I refer to your correspondence of 1 May 2020 regarding aspects of the SPA's oversight of policing during the current COVID 19 crisis.

Further to my previous correspondence of 27 March and 17 April 2020, in which I provided details of the Authority's strategic approach to oversight and the establishment of the advisory group on the police use of temporary powers, I am happy to provide the Committee with further practical detail on both.

Independent Advisory Group

The Independent Advisory Group (IAG) is being chaired by leading human rights lawyer John Scott QC. The Group's membership comprises an impressive and diverse cross-section of civic society, who bring with them a great depth of knowledge and expertise in human rights. While the Chief Constable, in consultation with myself and the Cabinet Secretary for Justice, was central to its initiation, the IAG is independent of policing and will report directly to the Authority as the governance and oversight body for Police Scotland. Authority staff are providing the Group's secretariat.

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John Scott QC gave a verbal update to the Authority's meeting last week which can be accessed from the following link: [John Scott QC Verbal Update to SPA Meeting - 30 April](#) and he confirmed that the Group's first report will be presented to the public session of the Authority's meeting on 20 May. As with all public papers to Authority meetings, this report will be published on the SPA website in advance of the meeting itself.

Details of the Group's approach, membership and its terms of reference have already been publicly communicated and are available from dedicated pages on the Authority's website at the following link:

[Independent Advisory Group on Police Scotland's use of new police powers in relation to coronavirus](#)

As you will see from the Group's remit, it is rightly concerned with the issues associated with the use of the temporary powers and will inform, not duplicate, the Authority's governance responsibilities in this area.

SPA Governance

The Authority has governance interests in many other areas of policing affected by this crisis and these responsibilities are being carried out, as close to normal as is practical, while remaining mindful of imposing additional reporting burdens on the police service.

On 30 April 2020 the Authority convened an additional public session focused entirely on oversight of policing's response to the current emergency, with audio livestreaming made available to allow anyone in the public to listen in.

SPA Committees

Each of our scrutiny committees has added specific consideration of the Covid-19 response to their agendas. Individual reports from each of the Committees are included in the papers for Authority meetings, which are published on the SPA's website.

Livestreaming

Public health restrictions mean we have not been in a position to allow physical attendance at meetings, including the camera operators who facilitate the livestreaming of pictures and sound that the Authority has taken a lead in providing. Since lockdown began the SPA has held one full Authority meeting where our usual live video stream offering was substituted by live audio, and one where video was substituted by a full, same-day audio recording.

By our next meeting on 20 May, and supported by the common ICT advice that both the SPA and Police Scotland rely upon to operate securely, we are exploring a video conferencing solution so the public can see as well as hear the Authority's ongoing scrutiny and support for policing in Scotland. To further mitigate the impact, we have significantly increased the frequency of written updates to our stakeholders and for the public which are all accessible from the Authority's

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website. We continue to publish the agendas for committee meetings and publish papers for all public items. All of our COVID 19 specific oversight is also being captured and published on a dedicated page of the SPA website and can be accessed here: [SPA Oversight of policing COVID-19](#).

As public appointees we are fully aware of the importance of public accessibility, and are always keen to benchmark and test our approach. From the open source information we are able to access, the SPA is confident that our approach to transparency stands scrutiny with, and indeed may be in the vanguard of, what is taking place in similar public bodies across Scotland.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a large, sweeping flourish extending upwards and to the right.

DAVID CRICHTON
Vice Chair

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INDEPENDENT ADVISORY GROUP

on Police Use of Temporary Powers Relating to the Coronavirus Crisis

John Scott QC

E-mail: Covid19IndependentAdvisoryGroup@spa.pnn.police.uk

7th May 2020

Dear [REDACTED]

Independent Advisory Group on Police Use of Temporary Powers Relating to the Coronavirus Crisis

Hearing directly from members of the public and listening to the views and experiences of those impacted, is central to the work of the Independent Advisory Group. Thank you for getting in touch and sharing your views.

As Chair, I have made a clear public commitment, signed up to by all Independent Advisory Group members, to seek to involve the voices of community and grassroots representatives and any groups that may be most impacted or disadvantaged by the use of these temporary powers.

The support of members of the public and interested groups in sharing information with us and encouraging their own networks to participate is hugely helpful, and I would welcome any feedback you and your contacts can offer on people's experience of the use of these temporary powers and their impact.

You can get in touch by post or email, and a dedicated online portal will soon be available for people to share their views directly with me and other Advisory Group members.

Regular updates on the work of the group, and its terms of reference and membership are available online <http://www.spa.police.uk/performancepages/618379/>

Yours sincerely,

JOHN SCOTT QC



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

David Crichton
Vice Chair
Scottish Police Authority

All correspondence c/o:
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

By e-mail

Tel: 0131 348 5195
Textphone: 0800 092 7100
justicecommittee@parliament.scot

14 May 2020

Dear Mr Crichton,

Covid-19 oversight

I write to request information on the Scottish Police Authority's (SPA) oversight of policing during the Covid-19 pandemic. It would be appreciated if you would provide details on some specific areas to assist the Justice Committee in its scrutiny of policing at this time.

The Committee welcomes Police Scotland's decision to publish a [weekly bulletin](#) to provide Covid-19 related police data. The first bulletin contains data from 19 March to 29 April 2020 and indicates that there are currently over 1,000 'Active Covid-19 Absences' of police officers and staff. Whilst absence rates generally appear to be reducing, this high number of coronavirus related absences is a cause for concern.

Would you please provide details of the SPA's oversight of the impact of the level of absences on Police Scotland's ability to keep communities safe? This includes, in particular, any assessment undertaken of where the absences are located in Scotland (by police division) and the impact on local policing in those areas.

The bulletin also indicates that 832 Covid-19 screening tests have been arranged for police officers and staff but does not contain data on the number of tests actually carried out, which would be more appropriate. Please confirm whether the SPA receives data on the number of tests carried out and, if so, whether this data will be included in future bulletins.

The Committee welcomes confirmation from the Minister for Community Safety on 12 May "that there is no barrier to accessing testing for police officers or staff". The Minister explained to Parliament that any Police Scotland officer or member of staff who is concerned after having a Covid-19 interaction can speak to Police Scotland's human resources department and access a test, even if they are not symptomatic.

This request will be risk assessed and a decision will be made about whether testing is appropriate for that individual.

Would you please provide details of the SPA's current oversight of testing, and planned oversight of requests by police officers and staff for tests and the number of requests which are accepted or denied? Would you also confirm who is to carry out the assessment of whether a test for an individual is appropriate, the criteria to be applied, and whether the number of tests available will be a consideration.

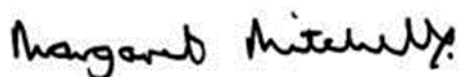
The bulletin provides helpful data on enforcement. Police Scotland has discretion in applying a range of enforcement measures available to them. Police Scotland is committed to policing by consent, adopting the approach to engage, explain, encourage and enforce.

The Committee is aware that the Scottish Police Federation (SPF) is calling for anyone using coronavirus as a weapon to be remanded in custody automatically. Would you please provide details of the SPA's oversight of Police Scotland's enforcement during Covid-19, including any scrutiny of the SPF's proposal?

Finally, the Committee would appreciate details of the SPA's oversight and assessment of the potential impact on Police Scotland of the recent easing of Covid-19 restrictions in England. In particular, policing the quarantine of people for 14 days who have travelled to Scotland by air, and policing those who travel to Scotland by any other mode of transport. What role does the SPA expect Police Scotland to play in enforcing any of these matters?

A response as soon as practically possible would be appreciated.

Best wishes

A handwritten signature in black ink that reads "Margaret Mitchell". The signature is written in a cursive, slightly slanted style.

Margaret Mitchell MSP
Convener, Justice Committee

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**SCOTTISH POLICE
AUTHORITY**

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LETTER SENT BY E-MAIL ONLY

Margaret Mitchell MSP
Convener
Justice Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

27 May 2020

CO/047/2020

Dear Mrs Mitchell

COVID-19 Oversight

I refer to your correspondence of 14 May 2020 seeking further information about the SPA's scrutiny of policing the COVID-19 pandemic.

As stated in recent updates to the Committee, the Scottish Police Authority (SPA) continues to exercise its duties in providing maintenance, oversight and scrutiny of Police Scotland during this time. Our overall approach is explained fully on our website at the following link: [Strategic approach to the oversight of policing COVID-19 in Scotland](#)

The Authority's oversight is being undertaken through formal scheduled governance meetings, including our most recent [Authority meeting of 20 May 2020](#), all of which continue as scheduled and are being enhanced by ongoing engagement and 'real time' oversight of policing.

At last week's Authority meeting, members covered a variety of issues including the services' ongoing efforts to engage, explain, encourage and enforce the restrictions applicable in Scotland. The impact on the workforce, matters of health and safety, and the implications on the police budget were also covered. Crucially, the Authority also considered:

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- The [first report of the Independent Advisory Group](#) chaired by John Scott QC considering Police Scotland's application of the new police powers
- The results of [Police Scotland's own regular survey of public confidence](#) based on feedback from members of the public who have had contact with the service informed further considerations.
- An update on the findings of recent [independent polling commissioned by the SPA of public attitudes](#) to the additional powers granted to the police service and how they are being exercised.

I am delighted to say that public confidence continues to be strong and steady and the triangulation of results of the three pieces of work is greatly reassuring in confirming a remarkable degree of consent and support for the police service at this time. This is something the Authority will continue to monitor in the weeks ahead.

COVID-19 Weekly Bulletin

Your correspondence requests further detail in relation to absence levels and the provision of testing of officers and staff in [Police Scotland's COVID-19 Bulletin: 19 March - 29 April 2020](#). Weekly bulletins are an important part of the Authority's oversight of policing COVID-19 and are informing regular update briefings by members. They are also being published on the SPA's website alongside a summary note of members' considerations of the content. Since the first briefing the following bulletins have been published:

- [COVID-19 Bulletin: 30 April - 6 May 2020](#)
- [COVID-19 Bulletin: 7 - 13 May 2020](#)

The next scheduled COVID-19 Bulletin covering the period 14 - 20 May 2020 will be published by the SPA on Thursday 28 May 2020 at the following link: [SPA Oversight of policing COVID-19](#).

Absence levels

Following the most recent updates, you will note a reported steady reduction in absence levels since Police Scotland's initial bulletin.

Absence levels across the workforce are regularly monitored by the Authority's Resources Committee. Indeed, the impact of COVID-19 on the workforce, and specifically the implications on the availability of the workforce, was the subject to detailed consideration by the Resources Committee on 23 April 2020 ahead of this first bulletin being published. Members considered the efforts being taken by Police Scotland to monitor absence levels daily and ensure service to the public is maintained throughout the COVID-19 outbreak and restrictions. Whilst sickness absence was reported as higher than normal at the time, it continues to be offset by reduced commitments in relation to operations, court, annual leave, training and time off. Additionally, incidents, crime and custodies are all reported as significantly lower than average. Where any shortage in personnel is identified, the service is redeploying officers or staff across the force from 'non-critical' roles to frontline activity. This is an issue we will continue to review on a weekly basis.

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COVID-19 Screening

The committee also seeks further information on the Authority's oversight of COVID-19 screening of the workforce. To be clear, any officers or member of staff who are symptomatic or living with someone who is **and** those who have been subject to a COVID-19 related incident, assault or near miss will automatically be referred by Police Scotland for COVID-19 testing. The numbers of tests arranged and subsequent positive results are reported through Police Scotland's Weekly COVID-19 Bulletin to the Authority.

Enforcement

Your correspondence also seeks comment on Police Scotland's approach to enforcement of the 14-day quarantine for incoming air passengers. The Chief Constable stated during the First Ministers lunchtime COVID-19 briefing on Friday 22 May that he is working with the Scottish Government to determine exactly what, if any, role the police will play. This is a matter the Authority will continue to monitor, initially at our weekly update briefings and publicly at the next Authority meeting in June.

Finally, your correspondence seeks the SPA's views on a suggestion that individuals using coronavirus as a weapon should be remanded in custody automatically. As explained by the Chief Constable, Police Scotland's approach to enforcing the new restrictions has been to engage, explain, encourage and enforce. Where enforcement has been used, it is, appropriately, for the courts to decide on the appropriate sanctions for that.

I trust this addresses the issues raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a large, sweeping flourish extending upwards and to the right.

DAVID CRICHTON
Vice Chair

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The Scottish Parliament
Pàrlamaid na h-Alba

Justice Sub-Committee on Policing

John Scott QC
Chair
The Independent Advisory Group on Police
Use of Temporary Powers related to the
Coronavirus Crisis

All correspondence c/o:
Justice Sub-Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh EH99 1SP

Tel: 0131 348 5220
justicecommittee@parliament.scot

By e-mail

10 June 2020

Dear John,

Policing during the coronavirus pandemic

Thank you for providing evidence to the Justice Sub-Committee on Policing on 9 June, on policing during the coronavirus pandemic.

During the meeting you referred to work that the Independent Advisory Group [IAG] is currently undertaking in a number of areas.

You indicated that Professor Susan McVie, Chair of Quantitative Criminology within the University of Edinburgh's School of Law, is currently collating data which will inform the priorities of the IAG going forward, and that the data is expected to be available by the end of June. Would you please provide the Sub-Committee with this information, once it is available?

You also referred to interviews with police officers that Her Majesty's Inspectorate of Constabulary in Scotland [HMICS] has been undertaking, and confirmed that a report of these findings is to be published. Would you please provide the Sub-Committee with a copy of this report, once it is available?

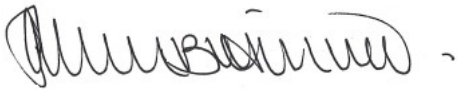
Finally, you referred to data that is being collected on the impact of coronavirus on vulnerable groups and those from Black, Asian, and minority ethnic (BAME) communities. Could you please confirm the expected timescale for completion of this work, and whether the data is to be published?

A response by 19 June would be much appreciated.

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Yours sincerely

A handwritten signature in black ink, appearing to read "John Finnie", with a small flourish at the end.

John Finnie MSP
Convener, Justice Sub-Committee on Policing

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Mansfield Traquair Centre
15 Mansfield Place
Edinburgh
EH3 6BB

0131 225 8700 / 7772

Company No: SC357649
Scottish Charity No: SC040464



SCSN hosts
Neighbourhood Watch Scotland SCIO
Scottish Charity No: SC036510

18 June 2020

Dear IAG members,

Thank you for the opportunity to feed into the work of the IAG.

At the Scottish Community Safety Network (SCSN) we've been keen to understand the impact of Covid19 on policing, justice and community safety in Scotland and have been talking with various partners about how to capture some of these. I wanted to touch base regarding some of the things we've been thinking about and whether there is an opportunity to explore some of these through the work of the IAG.

The current surveys from Police Scotland and Scottish Police Authority (SPA) currently focus on confidence in Police Scotland and whether people feel the police are doing a good job. This is important, but we know that the compliance and confidence in policing at this time and in relation to the emergency legislation is only part of the picture and would urge the IAG alongside Police Scotland and the SPA to consider the wider impacts of the legislation on community safety and how the shift in policing activity may be impacting community safety and Police officers.

Firstly, we would be interested to understand how the focus on the Covid policing activity is impacting upon the normal policing that communities experience and how officers feel their 'day job' has been impacted as there will be lasting implications as restrictions are eased and into the future.

Secondly we would be keen to understand is what impact the regulations and enforcement of these have had on people's sense of safety both in and out of the home and whether people have any concerns about safety during the phases outlined in the First Minister's route map.

Finally, we've been giving some consideration to the impact the lack of normal policing (and other safer communities' provision) and reduction in preventative work might be having; as well as the newly vulnerable or at risk groups the pandemic is creating alongside the people we already know about becoming less visible. This will be a key area of focus for police and other community safety partners as restrictions begin to be eased.

The Chief Constable has three things that he'd like Police Scotland to be judged on post-Covid re the Police contribution to the effort:

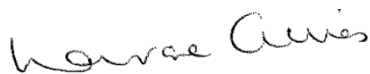
- If PS have contributed to lower mortality rate in Scotland by policing the social distancing and supported shielding etc.
- If PS manage to retain or enhance trust of the public in PS, despite the additional powers they've been given
- If PS have been able to look after their own workforce and the wider families

We think a useful addition to this list was whether / how PS have been able to keep communities safe and undertake prevention work that keeps people safe that isn't related to Covid. The legislation was put in place to help Police focus on the day job – Covid is the focus, but I know the organisation and officers appreciate there are non-Covid policing activities that are really important too day and the legislation was put in place to allow a focus on this too.

These points are not just relevant to the IAG. We have shared these reflections with Police Scotland's Safer communities department too as they play a key part of the assurance process around the Covid policing strategy.

Please do not hesitate to get in touch if we can provide any more information regarding the above points.

Yours sincerely,

A handwritten signature in cursive script that reads "Lorraine Gillies".

Lorraine Gillies
Chief Officer

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**SCOTTISH POLICE
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**1 Pacific Quay
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LETTER SENT BY E-MAIL ONLY

Liam McArthur MSP
Orkney Parliamentary Office
14 Palace Road
Kirkwall
Orkney
KW15 1PA

6 July 2020

Our Ref: CO/057/2020

Dear Mr. McArthur

SPA Oversight of policing COVID-19

You wrote in April enquiring about the oversight of policing during the coronavirus pandemic and I responded on 27 April 2020. I thought it was appropriate to provide you with an update on the Authority's work over the period and to highlight the Authority's assessment of Police Scotland's response to policing during the lockdown period.

I stated publicly in March that the Authority would continue to exercise its scrutiny responsibilities proportionately, using its existing governance framework without imposing additional reporting requirements on either Police Scotland or Forensics Services, both of which we recognised would be facing enormous challenges. I also committed to continuing with our planned cycle of business as far as practicable and with the same high level of transparency demonstrated over the past two years. I believe those commitments have been met. The Authority has met as scheduled with the audio of public sessions of our meetings being recorded and uploaded to our website, and now streamed live. Our governance committees have also continued to meet as planned, and are also now being live streamed. This level of continued business and transparency stands comparison with any other public body and is testimony to the hard work and commitment of Members and staff during such a challenging time.

In addition to formal governance meetings, members have been kept up to date with emerging issues through regular briefings and statistical bulletins from Police Scotland. The information provided to these briefings and a summary of the topics covered by members are also posted on our website.

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The work of the Independent Advisory Group established to review Police Scotland's use of the new temporary police powers and chaired by Mr. John Scott QC is also reporting publicly to the Authority and informing our oversight of the service. The Authority has provided the secretariat for Mr. Scott's group.

Importantly, the Authority has also sought the public's views, commissioning two rounds of independent polling to capture and measure public attitudes to the policing of the lockdown period.

A dedicated section of our website details our approach to and relevant scrutiny of policing during COVID-19 which is accessible from the following link: [SPA oversight of policing COVID-19](#).

The Authority has made significant efforts to adopt a comprehensive and meticulous approach to its support and oversight of Police Scotland during the lockdown period, and has done so while honouring the commitment I made at the start of the emergency to avoid making additional and disproportionate demands on the service.

Last week, I reported in detail at our public Board meeting on the Authority's scrutiny of policing during the immediate lockdown period, and concluded that on the whole, Police Scotland's approach has been outstanding thanks to the commitment, adaptability and sensitivity of its officers and staff. I have enclosed a copy of my report for your information.

As I set out in my paper, the COVID-19 emergency is not over. The gradual unlocking of the restrictions brings new challenges for policing as regulations and advice change, whilst the financial and operational challenges already there before the emergency remain. However, I am committed to ensuring that the support and oversight role of the Authority will continue adapting to suit these changing circumstances.

I hope this information is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', written over a horizontal line.

DAVID CRICHTON
Vice Chair

Enc:

30 June 2020: Vice Chair Report - Authority oversight and opinion on policing of COVID-19 lockdown.

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Tel: 01786 896978

LETTER SENT VIA EMAIL ONLY

Will Kerr
Deputy Chief Constable
Local Policing
Police Scotland
Kincardine
FK10 4BE

15 July 2020

Ref: CO/060/2020

Dear Will

**The Health Protection (Coronavirus) (Restrictions) (Scotland)
Amendment (No.7) Regulations 2020**

I write enclosing correspondence received from John Scott QC, on behalf of the Independent Advisory Group (IAG) considering Police Scotland's use of temporary powers relating to coronavirus, and in relation to the 2020 regulations detailed above.

Due to a potential impact on policing regulation 6B of this legislation (the wearing of face coverings in shops), the IAG have offered some observations which may assist in informing the approach to the new restrictions.

I have copied the correspondence to Joe Griffin, Director of Safer Communities, however I would also seek your views on any matters relevant to Police Scotland which you may wish to raise for the Authority, or the Scottish Government's consideration.

I look forward to hearing from you.

Yours sincerely,



DAVID CRICHTON
Vice Chair

Enc. Correspondence: 13 July 2020 - John Scott QC, Chair of the Independent Advisory Group on Police Scotland's use of temporary powers relating to the coronavirus crisis.

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INDEPENDENT ADVISORY GROUP

on Police Use of Temporary Powers Relating to the Coronavirus Crisis

E-mail: Covid19IndependentAdvisoryGroup@spa.pnn.police.uk

David Crichton,
Vice Chair
Scottish Police Authority
1 Pacific Quay,
Glasgow,
G51 1DZ

13 July 2020

Dear David,

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020

I refer to the above regulations which were published on Thursday 9 July, laid before the Scottish Parliament the same day at 3.30 pm and came into force on Friday 10 July.

As a group, we thought it appropriate to write to you regarding experience of the policing of the pandemic to date and how lessons from this may assist in informing the approach to the new restrictions, in particular the wearing of face coverings in shops (regulation 6B). We also think that the new regulations may impact on policing due to an increase in reports from shops or the public about people suspected to be in breach of the new regulations.

It might be that related discussions with the Scottish Government and others would be useful, if they have not already taken place.

The frontline of today's new restrictions will be "shops" meaning buildings, rooms or other indoor establishments used for the retail sale or hire of goods or services (regulation 6B(4)). Those dealing with the public on the frontline are likely, in the first instance, to be shop staff, including security staff.

COVID 19 IAG, c/o Scottish Police Authority, 1 Pacific Quay, Glasgow G51 1DZ

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E-mail: Covid19IndependentAdvisoryGroup@spa.pnn.police.uk

It is crucial that those on the frontline have an awareness of the many good reasons why someone may not be wearing a face covering. The Scottish Government website offers some examples:

You may also have a reasonable excuse not to wear a face covering if, for example:

- *you have a health condition or you are disabled and a face covering would be inappropriate because it would cause difficulty, pain or severe distress or anxiety or because you cannot apply a covering and wear it in the proper manner safely and consistently. Individual discretion should be applied in considering the use of face coverings for other children including, for example, children with breathing difficulties and disabled children who would struggle to wear a face covering*
- *you need to eat or drink*
- *you are taking medication*
- *you are communicating with someone else who relies on lip reading*
- *a relevant person, such as a police officer, asks you to remove your face covering*

The list is illustrative, not exhaustive, and the amended regulations themselves offer a longer list of examples of reasonable excuses – see regulation 8(5A):

In relation to the wearing of a face covering, a reasonable excuse includes—

(a) to seek medical assistance,

(b) to provide care or assistance to a vulnerable person, including to provide emergency assistance,

(c) to avoid injury, illness or to escape a risk of harm,

(d) where the person cannot put on, wear or remove a face covering—

(i) because of any physical or mental illness or impairment or disability (within the meaning of section 6 of the Equality Act 2010),

(ii) without severe distress,

(e) to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise),

E-mail: Covid19IndependentAdvisoryGroup@spa.pnn.police.uk

(f) to eat or drink where reasonably necessary,

(g) to take medication,

(h) to remove a face covering temporarily to comply with a request by a relevant person or another person acting in the course of their duties, and for the purposes of this subparagraph "relevant person" has the meaning given by regulation 7(12).

While face coverings need not be masks, masks remain the most obvious example. It should be recognised that standard face masks are designed for the average adult male face. This means that women, people of smaller build, children and young people will generally find it harder to find masks that fit comfortably. People might remove them because they are uncomfortable or they keep falling off. Getting properly fitting masks can be expensive.

It may be helpful to disseminate to shops guidance on how to deal with members of the public in line with the approach taken thus far by Police Scotland in relation to all restrictions, namely the 4 E's approach – engage, explain, encourage and enforce. Obviously the fourth E – enforcement – is not available to shop staff. In any event, it is used only sparingly by officers of Police Scotland. The majority of encounters with the public when there are questions around compliance with, for example, restrictions on gatherings, are resolved by way of the first E - engagement.

It may be that some of the material disseminated to police officers could be adapted to assist shop staff, with guidance that, where necessary, they should engage with the public in a friendly manner even if it appears that an individual is failing to comply with the regulations. This is so for a number of reasons.

Firstly, some of the reasons that people may have for not wearing face coverings, sufficient to amount to a reasonable excuse, will relate to hidden disabilities or the like. Demanding to know such reasons in public places, often with other people around, would be inappropriate as it may be intrusive and intimidating. It should be noted that such issues may also be relevant to shop staff. We heard recently of an autistic person who was due to return to work in a shop and was worried, because she feels unable to wear a mask, about the reaction of her employer and other members of the public. Being challenged, or the fear of being challenged, may also be intimidating for some people.

Secondly, as we have been moving largely towards easing of restrictions and the media continues to report on the differentiated easing in other parts of the UK, there remains a great deal of uncertainty on the part of the public as to which restrictions apply now. Honest mistakes are easy to make.

Thirdly, it is to be hoped that the new restrictions do not start to reverse the recent move away from police officers as the first response to issues around adherence to the remaining public health restrictions. As you know, “normal” policing demands have been returning to normal levels and the capacity of Police Scotland to attend shops throughout the country to ask people to put on face coverings is simply not there.

Fourthly, if the police are called to attend a shop because of a possible breach of regulation 6B, it is almost certain that, in most cases, they will continue to use the 4 E’s approach. This will mean, of course, starting by engaging with the individual, checking if they are ok, explaining the law if necessary and encouraging the person to wear a face covering if that is possible and appropriate for that individual. Only as a last resort, perhaps if coupled with other criminal behaviour like breach of the peace, would enforcement be used.

It may be that the Scottish Government and other relevant bodies have already made necessary preparations along the lines we have suggested. We hope so, although the speed with which the regulations have been brought into force may not have allowed time for this.

In conclusion, in addition to maintaining the strong and clear message about compliance with public health restrictions being for the good of all, it might be helpful to ensure that there is wider awareness – on the part of the public as well as shop staff - of the many good but hidden reasons why someone may be unable to wear a face covering. Perhaps signs should be posted around shops to point out that such reasons exist and people should start by assuming the best, rather than the worst, of others. Having clear signage in shops, highlighting the need for the use of face coverings *if possible*, might allow staff to check on the public’s awareness in a more sensitive manner than more direct and intrusive inquiry.

Yours sincerely

John Scott

John Scott QC Solicitor Advocate

COVID 19 IAG, c/o Scottish Police Authority, 1 Pacific Quay, Glasgow G51 1DZ

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INDEPENDENT ADVISORY GROUP

on Police Use of Temporary Powers Relating to the Coronavirus Crisis

E-mail: Covid19IndependentAdvisoryGroup@spa.pnn.police.uk

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1 Pacific Quay
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LETTER SENT VIA EMAIL ONLY

Joe Griffin
Director of Safer Communities
Scottish Government
St Andrews House
EDINBURGH

15 July 2020

Ref: CO/061/2020

Dear Joe

**The Health Protection (Coronavirus) (Restrictions) (Scotland)
Amendment (No.7) Regulations 2020**

I write enclosing correspondence received from John Scott QC, on behalf of the Independent Advisory Group (IAG) considering Police Scotland's use of temporary powers relating to coronavirus, and in relation to the 2020 regulations detailed above.

The IAG have offered some observations which may assist in informing the approach to the new restrictions, particularly in relation to regulation 6B (the wearing of face coverings in shops). I am therefore sharing this insight with you with a view to the information being disseminated further as appropriate and with relevant interests.

I would welcome any feedback that the SPA can share with the IAG on how the advice from the Group was considered by the Scottish Government and other partner organisations.

I have also written to DCC Will Kerr inviting Police Scotland's views on any of the matters raised for either the Authority, or the Scottish Government's consideration. I will of course share anything further in due course.

I look forward to hearing from you.

Yours sincerely,



DAVID CRICHTON
Vice Chair

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Enc. Correspondence: 13 July 2020 - John Scott QC, Chair of the Independent Advisory Group on Police Scotland's use of temporary powers relating to the coronavirus crisis.

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INDEPENDENT ADVISORY GROUP
on Police Use of Temporary Powers Relating to the Coronavirus Crisis

To: Lorraine Gillies,
Chief Officer
Scottish Community Safety Network
22nd July 2020
Letter sent by email: lorraine.gillies@scsn.org.uk

Dear Lorraine,

Online Seminar 30th July 2020 10 am – 12 pm: call for public and stakeholder questions on Police Use of the Temporary Powers Relating to the Coronavirus Crisis

I am getting in touch on behalf of the Independent Advisory Group on Police Scotland's Use of Temporary Powers relating to the Coronavirus Crisis (IAG).

As you will be aware, the IAG was established in April 2020 to provide human rights based scrutiny of Police Scotland's use of the new emergency powers intended to respond to the coronavirus outbreak. The Advisory Group is chaired by John Scott QC Solicitor Advocate, and members include representatives from Police Scotland, the Scottish Police Authority, policing and justice partners, human rights scrutiny bodies, and third sector organisations.

There is a joint online seminar for the IAG and Scottish Police Authority on Thursday 30th July 10:00 – 12:00. This will include an opportunity for participants to consider and respond to questions submitted by members of the public and interested stakeholders.

The event will be chaired by Dr Liz Aston, Director of the Scottish Institute for Policing, and will focus on the range of issues which have emerged around policing during this period, including some of the priorities raised with the IAG by members of the public, police and partners. It will be available online, live or recorded, on this link: <https://livestream.com/spa/iagwebinar>

I would like to invite you to submit any questions for consideration on the day; and to ask for your assistance in reaching out across your own professional and community networks, to encourage those with an interest in or experience of policing of the pandemic, to send in any questions they may have for the group.

Questions should be submitted by noon, Wednesday 29th July, and can be submitted by email to -

COVID19IndependentAdvisoryGroup@spa.pnn.police.uk

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Or in writing to -

COVID-19 IAG
c/o Scottish Police Authority
1 Pacific Quay
Glasgow G51 1DZ

You can also send any questions directly to me.

Understanding and listening to the views and experiences of those impacted by use of the powers is central to the work of the IAG, and the Group is committed to seeking to involve the voices of community and grassroots representatives and any groups that may be most impacted or disadvantaged by the use of these temporary powers.

The Independent Advisory Group also offers a public portal for anyone wishing to provide views, perspectives, or feedback on their own experience of policing of the pandemic in Scotland. This is available until 1st September 2020, at <https://covid19iag.citizenspace.com/>

If you have any queries or would like to contact me informally for more information, please get in touch.

Yours sincerely,

Eleanor Gaw

Secretariat: Independent Advisory Group on Police Use of Temporary Powers
Relating to the Coronavirus Crisis

COVID19IndependentAdvisoryGroup@spa.pnn.police.uk

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Our Ref: PPCW 97.20
Date: 22/07/2020

John Finnie MSP
Convener
Justice Sub Committee on Policing
Scottish Parliament
EDINBURGH
EH99 1SP



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Dear John

LETTER TO THE CONVENOR FROM AMNESTY INTERNATIONAL REGARDING SPIT HOODS AND BITE GUARDS

I am writing in response to your email of 7 July 2020 in respect of the above letter.

I would like to begin by emphasising that I fully recognise my responsibilities to support and protect the Health & Safety of the officers and staff of Police Scotland. I thank you for your continued support to Police Scotland in this area during these very challenging times.

Police Scotland have responded to Amnesty International regarding their concerns about spit hoods on two occasions during the pandemic.

I have a duty of care to my officers and staff to provide them with suitable and sufficient PPE and protective devices to counter the myriad of hazards presented on a daily basis to our employees. Unfortunately one of those hazards is the act of being spat upon, which I am sure you will agree is abhorrent, anti-social and can carry health risks. Police Scotland officers do not routinely use spit hoods, but can do so if the circumstances merit it. Any force used by officers and staff, including the use of spit hoods, must fall within Police Scotland's criteria of use of force (PLANE – Proportionate, Legal, Accountable, Necessary and Ethical). It is the personal responsibility of individual officers and staff to justify any force they may have used. I can confirm that this standard has not changed during the pandemic. I wish to give the subcommittee absolute reassurance that spit hoods are only used in the circumstances where someone has either actively spat on a member of staff or bitten a member of staff or is attempting to do so. Few complaints have been received regarding the use of spit hoods since the inception of Police Scotland and the use of spit hoods has not significantly increased during the pandemic.

Police Scotland has undertaken police-specific risk assessments in relation to COVID-19 and from that developed our COVID-19 Operational Guidance. This Operational Guidance and our PPE use is continuously reviewed by our Health and Safety and Command leads. I can advise that Police Scotland does not refer to the use of spit hoods as items of COVID-19 related PPE and their use does not feature at all in our COVID-19 related Operational Guidance. It is not recommended, nor even inferred, that spit hoods can be used as additional protection against COVID-19.

The additional risks in respect of use of force/resisting arrest and other non-compliant scenarios is referenced in our Risk Assessment. Numerous mitigation measures are recommended and put in place including: the use of physical distancing where possible, the triaging of incidents for a proportionate and appropriate response, the appropriate use of approved PPE, information on hygiene measures and decontamination procedures, and access to testing for those potentially exposed.

The use of spit hoods by officers is not specifically referenced in our COVID-19 Operational Guidance section under non-compliant scenarios, however future consideration will be given to include this. Recommendations regarding the use of PAVA on individuals suspected or confirmed as having COVID-19 are included, particularly around the requirements for aftercare. Direction surrounding the deployment of TASER is in line with normal operational guidance on its use and considered as a tactical option to give officers space and time to approach and safely detain subjects.

Amnesty International states that the spit hoods may pose an increased risk to those individuals who may have compromised respiratory systems as a result of COVID-19 infection or that their use increases the risk of transmission. I can advise that spit hoods are subject to a separate Risk Assessment which in turn has informed the guidance on their use and the training given to officers as part of their normal Operational Safety Training programme.

The spit hood is a personal issue, single-use breathable mesh hood that covers the face and head of any subject who presents a significant risk to officers and staff in relation to spitting or biting. The hood is supplied in a sealed plastic packet and comes in one size designed to fit most people. The hood is neutral in colour and is made of nylon mesh, with a plastic reinforced panel at the front. When worn, it allows the subject to see and breathe almost normally. The hood material does not react with the chemicals within irritant spray.

The Spit Hood Risk Assessment and Operational Safety Training states that:

- Officers and staff should take cognisance of any medical or mental health issues which may affect the subject.
- Where such conditions are known or suspected to exist, officers must confirm that the requirement to wear the hood over-rides any additional risk posed to the wellbeing of the subject.
- The spit hood will not be used on anyone that is vomiting or having difficulty breathing.
- The subject must remain under constant supervision at all times whilst the spit hood is worn and if at any time it is suspected that the subjects health is being adversely affected by the spit hood or that the subject has lost consciousness then the spit hood must immediately be removed and normal First Aid protocols observed.

To summarise the Police Scotland position:

- a) Spit hoods are only used when someone has already taken the conscious decision to spit on or to try to bite a member of staff. They are therefore a vital part of protection for staff carrying out their lawful duties.
- b) Our COVID-19 Risk Assessments and Operational Guidance does not reference spit hoods for use as PPE for use with COVID-19 scenarios. If the above circumstances at point 'a' are present, a spit hood may be used if it is proportionate, legal, accountable, necessary and ethical to do so as a protection against assault by spitting or biting, but not used solely as a protection against COVID-19.
- c) Consideration will be given to referencing spit hoods in the Operational Guidance section on non-compliant scenarios.
- d) Police Scotland provides clear guidance to staff on their use as part of our Operational Safety Training Programme (Module 12). This guidance must be adhered to at all times and is fully congruent with our COVID-19 related Operational Guidance
- e) Spit hoods are of a mesh construction so do not interfere with breathing.
- f) They are single use and are then disposed of hygienically as clinical waste.
- g) Spitting *may* increase the risk of virus transmission to our staff if the member of staff is not wearing full PPE. Testing procedures must be considered for the member of staff in these circumstances.
- h) Since its inception in 2013, Police Scotland has only received 8 complaints in relation to the use of spit hoods. Whilst all complaints are taken seriously, this does not indicate large scale use or problems with spit hoods.
- i) Whilst the use of spit hoods increased in April this year when compared with 2019 figures, it decreased in May under similar comparison. This indicates that that overall use hasn't significantly increased during the pandemic. This will be kept under review.

I trust this answers your queries and provides you with reassurance around this matter.

Yours sincerely



Gary Ritchie
Assistant Chief Constable

Monday 24th August 2020

Your Ref: 122.0720

Our Ref: 97.20

John Finnie MSP
Convener, Justice Sub Committee on
Policing
Scottish Parliament
EH99 1SP



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Dear John

LETTER TO THE CONVENER FROM AMNESTY INTERNATIONAL REGARDING SPIT HOODS AND BITE GUARDS

I am writing in response to your email of 4 August 2020 in respect of the above letter response on the 22 July 2020.

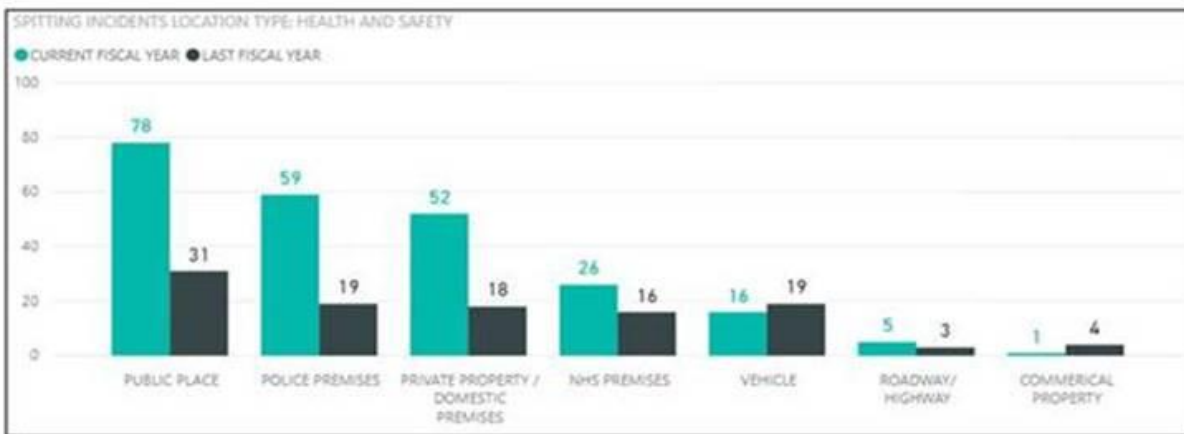
Police Scotland's use of spit hoods increased overall in Quarter 1 (Q1) 2020 compared with Q1 2019, with increases in April and May 2020, and a slight decrease in June 2020. Spit hood use for July 2020 is at a level similar to July 2019. The below table provides a monthly breakdown between April - July detailing the number of times spit hood have been used by officers in 2019 and 2020.

Police Scotland's use of Spit Hoods		
	2019	2020
April	60	87
May	52	90
June	83	76
July	56	54
TOTAL	251	307

For context, in Q1 2020 spitting incidents against police officers and staff increased by 115% overall compared with Q1 2019 which is detailed in the table below. This increase in spitting incidents in Q1 2020 may account for the increased use of spit hoods during Q1 2020.

SPITTING INCIDENTS: HEALTH AND SAFETY					
Month Abbr	2020/21	2019/20	DIFF	% CHANGE	-
Apr	82	33	49	148.5%	▲
May	81	30	51	170.0%	▲
Jun	74	47	27	57.4%	▲
Total	237	110	127	115.5%	▲

The below graph provides a yearly comparison of spitting incidents against police officers and staff by location.



I trust this answers your queries and provides you with reassurance around this matter.

Yours sincerely

Gary Ritchie
Assistant Chief Constable

Councillor Tommy McVey
Ward 7 – Inverclyde South
Municipal Buildings
Greenock
PA15 1LX

To whom it may concern:
Independent Advisory Group on Police use of
Temporary Powers relating to the Coronavirus
Crisis

Direct Line: 01475 712917
Email: tommy.mcvey@inverclyde.gov.uk
Our Ref: TMC/
Your Ref:
Date 30th September 2020

Dear Independent Advisory Group

INDEPENDENT ADVISORY GROUP ON POLICE USE OF TEMPORARY POWERS RELATING TO THE CORONAVIRUS CRISIS

I write to you as Convenor and on behalf of the Inverclyde Council Local Police & Fire Scrutiny Committee. At our recent meeting of the Local Police & Fire Scrutiny Committee we were provided with an update by both the Divisional Commander and Local Commander of policing activity in Inverclyde and consequently note the following.

Within an Inverclyde context, Police Scotland (KC Sub Division) presented a paper noting statistical information under the heading of 'Violence, Disorder and Antisocial Behaviour'. The paper noted a 75.8% increase in the 'number of calls regarding disorder' between April and June 2020 compared to April and June 2019. We understand that a volume of these calls would have been regarding the Coronavirus Crisis and therefore to an extent an addition to the temporary powers. Could clarity be given on the extent of which an increase in calls regarding disorder is directly contributable the temporary powers related to Coronavirus Crisis.

The Committee also expressed its concerns over assaults on Police Scotland officers particularly being spat at or coughed on by people claiming to have COVID-19. Committee were advised that three incidents were recorded in Inverclyde in addition to incidents when missiles were thrown at officers exercising their duties. The Committee fully supports the Chief Constable's 'No part of the job' commitment.

Finally the relationship between Inverclyde Council and Police Scotland is a positive one, members note the continuing good work particularly so during the previous six months.

On behalf of the Committee I hope that the foregoing is of use to the Independent Advisory Group and look forward to a final report in order that Inverclyde Council can consider its implications in the role of local scrutiny.

Yours sincerely,

Councillor Tommy McVey
Inverclyde Police & Fire Scrutiny Committee Convenor

OFFICIAL

**SCOTTISH POLICE
AUTHORITY**

1 Pacific Quay
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Tel: 01786 896978

LETTER SENT BY E-MAIL ONLY

Mr John Scott QC
Chair - Independent Advisory Group
Police Scotland's use of new temporary police powers to tackle coronavirus

1 February 2021

CE/016/2021

Dear John

**AUTHORITY REPRESENTATION ON INDEPENDENT ADVISORY GROUP
(IAG)**

Further to the appointment of Martyn Evans as Chair of the Scottish Police Authority, I am writing to confirm that the Authority's representative on the Independent Advisory Group from 1 February 2021, will be Barry Sillers, Deputy Chief Executive (Strategy and Performance).

Members oversight of the IAG's work will continue through reporting to our full Authority meetings. The Chair will, as has been the approach to date, maintain regular contact with you as necessary.

The work of the IAG continues to play an important role informing the Authority's oversight of policing during this pandemic. Members remain very grateful for the work you and the members are doing in this regard.

If you have any queries, please do get in touch.

Yours sincerely



LYNN BROWN OBE
Interim Chief Executive

OFFICIAL

Humza Yousaf
Cabinet Secretary for Justice
Scottish Government

12 February 2021

Dear Cabinet Secretary,

QUARANTINE AND BORDER CONTROLS

From time to time during our work in the Independent Advisory Group on Police use of emergency powers (“the IAG”), matters have arisen that require more urgent attention than is possible through our usual reporting procedures to the Scottish Police Authority at Board meetings. These might be dealt with by way of discussions at our weekly IAG meetings or even telephone calls in between meetings. Part of the intention of the IAG, as you will recall, in addition to offering additional human rights-focussed scrutiny, was to allow “real-time” advice and challenge.

On one occasion, on 13 July 2020, I wrote to David Crichton as acting Chair of the SPA Board to express our thoughts and concerns about an amendment to the main regulations that required the wearing of face coverings in certain situations other than where there was a reasonable excuse. We highlighted matters that had come to our attention in our work, for example, the position of those with hidden disabilities who may be unable to wear face coverings. Our plea was for the Police Scotland approach of the 4 Es to be considered by shop staff and others when dealing with the enforcement of the new restriction.

On this occasion, my letter concerns the proposed new regulations on quarantine and associated matters as regards international travel. Recognising the statutory responsibilities of the SPA and, in view of the urgency of the matter, we have decided to write direct to you on this occasion. Martyn Evans of the Board and DCC Will Kerr have been copied into the letter.

At the outset, I should clarify that this letter, while on IAG headed paper, is not sent on behalf of all IAG members. As you will appreciate, there are some group members whose other duties and responsibilities mean that they cannot comment directly on government policy. While all members of the IAG have been able to contribute to discussions on the subject-matter, the letter is sent

only on behalf of those who are able to do so. Specifically, John Logue of COPFS, DCC Will Kerr, and Barry Sillers, Deputy Chief Executive of the SPA, although members of the IAG, are not included in the group for the purposes of this letter.

We recognise, of course, that international travel is a source of concern for importation of various strains of coronavirus, perhaps especially new variants. It appears that that importation was at least partly responsible for an increase in cases after significant progress in reducing numbers last summer in Scotland. Clearly, it is an area that demands government attention and additional restrictions may well be considered necessary.

Nonetheless, as a group we have several concerns.

Once again, while the general plan has been announced by the UK and Scottish Governments, the relevant regulations (UK and Scottish) have not been published (I am writing this at 1524 hours on 12 February). No doubt, considerable work is required between the governments of the Four Nations on an issue like this which, apart from other complexities, may cross aspects of the distinction between reserved and devolved powers and needs proper co-ordination. Equally, there may be, as seems to be the case here, different approaches taken by the different governments. Where the issue concerned is international travel, it is most unfortunate if this co-ordination fails to produce a wholly coherent approach across the whole of the United Kingdom. That gives rise to issues that may create additional and, perhaps, unnecessary problems.

We have commented repeatedly as a group on the human rights and other implications of failing to publish the detail of important legislative changes until just before they come into force. We are unconvinced that late publication of significant legislative changes without adequate (or any) scrutiny, has in fact always been necessary. It is unfair on the public and the police, and is likely to result in good faith errors on the part of both. For a matter as important as this, there should also be as much Parliamentary and other scrutiny as possible. This scrutiny should take place before enactment. If the situation is truly so urgent that it cannot happen beforehand, it should nonetheless occur shortly afterwards. Human rights and other impact assessments have been another casualty of “urgency” but should not be considered optional extras. We would welcome sight of all impact assessments for the new regulations, in particular equalities, children’s rights and human rights.

Meaningful Parliamentary scrutiny is essential for the introduction of significant measures which may impact on the right of individuals to be free from unlawful detention. No doubt thought has been given to the implications of articles 5 and 8 of ECHR and articles 3, 16 and 37 of the UNCRC for the planned legislation, with access to the courts another minimum safeguard. This will all require proper communications, funding and signposting to ensure the practical and effective realisation of rights.

In particular, in the policing context, we want to raise the question of the Border between Scotland and England. The position in Scotland throughout, as clearly articulated by the Chief Constable, has been that there would be no routine roadblocks or vehicle stops solely on the basis of attempting to stop travel which is not allowed in terms of the regulations. Travel regulation breaches have been picked up with resultant warnings and fixed penalty notices as required, but only where the unlawful travel has come to the attention of the police while performing other duties or, occasionally, in flagrant cases that came to their attention. An increase in mobile patrols, with greater visibility as a deterrent, has been implemented but the overall policing approach has remained consistent.

The IAG welcomed and supported this approach which was proportionate as well realistic in terms of the reach of existing police powers and resources. The question of the Border or ground crossing between Scotland and England has come up before and the policing position on this has also been clear – there will be no border checks. Until this week, there seemed to be no great demand for revisiting the issue, although that may have been because discussions between the Scottish and UK Government were continuing on the issue of quarantine.

In any event, the issue has come back and we wanted to express our additional concerns as regards potential implications for Police Scotland.

We will return to this in more detail in our report to the SPA Board for its meeting on 24 February and will therefore only address our concerns briefly.

There may be a serious question around the proportionality of any steps to “close (or control) the Border”.

Travel across the Border would have to remain possible.

There would have to be exceptions for certain individuals – for example, freight drivers, other key workers, those with caring responsibilities, and those whose essential medical treatment was across the Border.

Additional care will be required if the (eventually) published regulations differ between Scotland and England, as presently seems likely. If England and Wales introduce additional legal requirements for those arriving from only some countries, a policy that appears to defy the logic of the measure, whereas Scotland imposes blanket requirements for all countries, an individual might arrive in England entirely lawfully and yet, on travelling to Scotland, with no other activity beyond that journey, might commit a crime here if they fail to proceed directly to a quarantine hotel. Such an individual may live in Scotland and be travelling, lawfully up to the Border, with the intention of quarantining at home. Children aged 16 and 17 are treated differently in law in the different jurisdictions. Such discrepancies in regulations would allow for good faith misunderstandings even with the clearest of public messaging.

Are police officers or others to be located at all train and bus stations in Scotland? Is the plan for there to be roadblocks?

What powers is it suggested that officers of Police Scotland would use to stop travellers and drivers? Are new powers planned to accompany such a change? It would certainly seem inappropriate to try to use existing powers under Road Traffic legislation when legislators had no such circumstances in mind when passing the relevant Acts. At least if a new power was suggested in draft legislation that had been seen in advance and debated by the Scottish Parliament, such radical steps would be seen to have greater legitimacy.

As things stand, we are concerned that policing the Border and all inward travel to Scotland is a practical impossibility. We have previously referred to the need to recognise “compliance realism”. It seems to us that this may be another example.

Roadblocks are sometimes suggested as potentially popular measures with the public. Experience elsewhere suggests, however, that the delays and inconvenience created by roadblocks, often for key workers and those lawfully entitled to be travelling, quickly reduces their appeal.

Border controls and travel checks at bus and train stations, especially if delegated to Police Scotland, would see an increase in the cry of “police state” which is unjustified here and, in fairness, less common in Scotland than even in England.

We should say that brief consideration of the International Health Regulations 2005 suggests that there are requirements around quarantine and ground crossings which must inform the approach of the United Kingdom and Scottish

Governments. In particular, we are not convinced that the two governments have done enough in terms of joint agreements and arrangements. Certainly, there is no evidence yet of such agreements and arrangements,

It appears that, in terms of the 2005 Regulations, suitable medical arrangements should be in place for airports, ports and ground crossings. Has any thought been given to this? It might be that NHS personnel would be required in addition to police officers or other officials.

What planning and assessment has been undertaken of the impact on:

- children
- families
- those with disabilities (including hidden disabilities)
- those who may suffer from PTSD
- those from a minority ethnic background (who may require to travel more frequently and, in some cases, may not have English as a first language)

What communications have been put in place, in particular in England for those intending to travel on to Scotland?

If quarantine hotels are to be used, what are the arrangements for enforcement? Are security staff to be given powers? We would be concerned about such powers for untrained (or even trained) civilians but, without such provisions, we foresee the prospect of significant policing demand every time there are flashpoints.

(One point which is not strictly a policing matter, relates to whether consideration has been given to the restrictions in the 2005 Regulations on charging travellers for health measures, including quarantine.)

In conclusion, in Scotland the approach to policing has been notable for its consistency and respect for human rights. The 4Es allow for engagement with the public which provides the space for good faith errors. Enforcement is used, but only where necessary. Flagrant or repeated breaches can see acceleration through the 4Es or even direct moves to enforcement. All of this has been commended by the IAG and others. This has no doubt contributed to the impressive levels of public confidence which highlight the significance of the principle of policing by consent. Public confidence in policing and government in Scotland have appeared higher than elsewhere in the UK. We are concerned that, for the sake of what may be a policy lacking in proper coherence and clear

proportionality, it may be damaged. That confidence is more than merely nice to have. It has been essential in underpinning the central public health messages and encouraging remarkable levels of public adherence to unprecedented restrictions.

Yours sincerely

John Scott

John Scott QC Solicitor Advocate

T: 0300 244 4000
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John Scott QC Solicitor Advocate

Independent Advisory Group
on Police use of temporary powers relating to the
Coronavirus crisis

By email

23 February 2021

Dear John,

RE: QUARANTINE AND BORDER CONTROLS

Thank you for your letter of 12 February I appreciate members of the IAG taking the time to set out such thoughtful reflections on this important issue.

First of all let me say that I continue to be appreciative of the professional, measured response that Police Scotland has taken in response to the Coronavirus Pandemic and the unprecedented, but unfortunately necessary restrictions to the lives of the people of Scotland that the Scottish Government has introduced to suppress the virus and save lives. Police Scotland has been at the forefront of encouraging people to do the right thing and keep people safe.

Whilst the Scottish Government's responsibility is for developing the public health policy, we respect the Chief Constable's independence when it comes to operational implementation. My officials have worked closely with Police Scotland over the past year as the policy has developed. The ever-changing nature of virus transmission has often made it necessary to develop and implement mitigation measures at short notice and I am grateful to Police Scotland for their ongoing support and flexibility in developing a workable operational approach to enforcement.

From Monday 15 February all travellers arriving on flights from outside the Common Travel Area as well as passengers arriving from Dublin who have been in, or passed through, a red-listed country associated with the South Africa and Brazilian variants within the preceding 10 days may only enter Scotland at Aberdeen, Edinburgh and Glasgow airport (or any military airfield or port) and will be required to quarantine in a pre-booked and pre-paid managed isolation facility (quarantine hotel) for ten days, with limited exemptions. Officials have worked over the weekend with Police Scotland, Border Force, British Transport Police, the hotel, security and transport service providers and have also been in contact with the airlines and airports.

These Regulations have been made urgently in light of a risk presented by imported infections. It is important that those travelling to and from Scotland in relation to affected countries have as much clarity as is possible regarding their position so that they can make appropriate arrangements if required. Guidance for travellers has been published on both the SG and UKG webpages and a passenger information note has been produced which hotels will distribute to passengers on arrival. Security staff have powers to direct passengers through the airport to transfer to quarantine hotels but will not be given enforcement powers. Police Scotland can issue FPNs for those in breach of the regulations but it is anticipated that the numbers will be small.

As with our previous approaches to mitigating virus transmission, the Scottish Government sought to work on a Four Nations basis where possible regards the border measures. However, the Scottish Government does not feel that the UKG approach goes far enough and the Cabinet Secretary for Transport, Infrastructure & Connectivity wrote to Michael Gove last week asking that the UK Regulations be drafted in such a way to require all international travellers arriving in England, whose final destination is Scotland, to quarantine in a managed isolation facility at their point of arrival, in the same way that travellers from red listed countries will be required to do. Whilst he has yet to receive a reply I understand the Secretary of State for Health and Social Care has made clear he is willing to discuss this with Scottish Ministers.

From Monday, all travellers from non-red listed countries who arrive in Scotland via other points of entry in the Common Travel Area and all those who are exempt from the requirement to go to a quarantine hotel, will be required to quarantine at their designated residence for ten days. For some in exempt categories, they will be permitted to leave their home quarantine only for purposes associated with their work. All direct and indirect arrivals will be required to take tests on day 2 and day 8.

Work is in hand to extend the managed isolation requirement to those arriving in the rest of the Common Travel Area from non-red listed countries whose final destination is Scotland. Our focus is on engaging with the UK Government to support a comprehensive approach to international travel controls in line with the expert advice from SAGE. In the meantime, to mitigate the risk to public health, officials are engaging with Public Health Scotland regarding follow up activity specifically targeted to those passengers.

You highlight concern over any steps the Scottish Government may take to control or close Scottish ground borders and whether they are plans to give Police Scotland additional powers to enforce border controls. Clearly, the policy intention is to use the approach of managed isolation as far as possible to support this comprehensive approach to international travel and it is recognised that the different approach taken in England and Scotland presents a challenge. The Scottish Government is however seeking to address this challenge without introducing systemic border controls.

I agree that there should be space afforded for Parliamentary scrutiny and that the impact of any new regulations on all sections of Scottish society should be measured. The Scottish Government will look to have the Regulations approved by a resolution of the Parliament as soon as possible. The Regulations require the Scottish Ministers to keep the necessity for these measures under regular review, they will be reviewed every 28 days and Parliament kept updated. An Equality Impact Assessment is being prepared (along with other Impact Assessments) and will be published as soon as possible.

You ask about consideration of the charging provisions in the International Health Regulations 2005. It is not considered that the measures put in place for managed isolation and mandatory testing are incompatible with the 2005 Regulations. You also ask about health measures at the border. I can confirm that suitable medical arrangements will be in place for airports, ports and ground crossings as is normal practice.

I hope that this addresses the points raised in your letter. I would be very happy to discuss this with you.

A handwritten signature in black ink, appearing to read 'H. Yousaf', with a long vertical stroke extending downwards from the end of the signature.

HUMZA YOUSAF

Martyn Evans
Chair
Scottish Police Authority
1 Pacific Quay
Glasgow
G51 1DZ

22 March 2021

Dear Martyn,

FOOTBALL-RELATED POLICING – GLASGOW – 6/7 MARCH 2021

As you know, the IAG was asked by the Chief Constable to consider the policing of events in Glasgow during the weekend of 6 and 7 March, in particular from the perspective of a group with significant experience and knowledge in relation to human rights. You and I also spoke ahead of the IAG meeting on 12 March when the group first discussed these matters.

At the IAG meeting on 12 March, the IAG decided to discuss matters over the course of two meetings – 12 and 19 March – in view of their significance in relation not only to football-related gatherings but also wider issues around the policing of protests, assemblies and gatherings in a pandemic. We also agreed to send you a letter after our meeting on 19 March to offer our thoughts, views and advice.

As it happens, Chief Superintendent Mark Sutherland, Divisional Commander of Greater Glasgow, was already scheduled to attend the IAG meeting on 12 March. We rescheduled another planned speaker who was due to attend on 12 March in order that we could have a fuller discussion on the policing of the football-related events in Glasgow.

Our meeting on 12 March started with a detailed presentation from Chief Superintendent Sutherland. He talked us through the Disorder Model (graded from tension through disorder, serious disorder/riot and, ultimately, unrest), the assessment of risk and threat, the use of force principles (in effect, lawfulness, necessity and proportionality), the range of policing responses available, management of risk and safely minimising harm. He outlined key considerations, such as:

- rights to assembly and freedom of expression in terms of ECHR Articles 10 and 11 of the European Convention on Human Rights
- the advantages of having the large numbers of people gathered in as few locations as possible, even if that meant apparently escorting/guiding “processions”

- the fact that, even though the large numbers of people did not comprise a single group, this was not the policing of a clash of groups with the additional complications that arise in such situations
- the fact that the large numbers of people included women and children.

We were struck by the quote from Professor Cliff Stott, Professor of Social Psychology at the University of Keele and also a member of the UK Government's Scientific Pandemic Insights Group on Behaviours (SPI-B), which was included in Chief Superintendent Sutherland's presentation:

Our research shows that heavy-handed policing can actually provoke crowd conflict.

In discussing the impact on the wider community in Glasgow, Chief Superintendent Sutherland also pointed out that the policing response did include enforcement – 28 arrests and seven fixed penalty notices, in view of damage to property and disorder. Following his presentation, Chief Superintendent Sutherland answered all questions from members of the IAG. We had a full discussion, particularly around issues of necessity and proportionality. We discussed the optics of the event and some of the media presentation. We also discussed the interplay of Articles 10 and 11 and coronavirus restrictions, noting that, even in a pandemic, blanket bans of assemblies conflict with these important rights and may be vulnerable to court challenge.

We noted that any assembly involving children requires special consideration. The Children and Young People's Commissioner Scotland (CYPCS) expects police officers during assemblies and protests to be made aware that, consistent with Police Scotland's policy under the national Youth Justice Strategy, the UNCRC protection rights apply to all under 18s. Children have specific rights, including special rights to 'freedom of association and peaceful assembly' under Article 15 of the UNCRC.

It was clear from our discussion, as it has been when we have previously spoken with Divisional Commanders, that there is a good grasp within Police Scotland of the relevant human rights law and principles. Consistent consideration and application of these principles is crucial but will not always result in the same policing approach in every situation. The specific approach taken will be informed also by a number of factors specific to the particular assemblies, protests or gatherings, for example, any intelligence about planned violence and whether there are different groups involved with greater risk of clashes.

We discussed the difference between public health policing, with which emergency powers are mainly concerned, and public order policing. We recognised the difficulties that may present to Police Scotland when the two different priorities have to be considered, with operational independence and responsibility very much in focus in assessing the best approach.

Whether in relation to protests or otherwise, the idea of policing by consent requires continuing care and attention, not least by government. Public confidence in policing is not determined by the activities of the police alone. Expectations arise from legislation and government messaging which should be as clear as possible.

The pressure on policing legitimacy through incompatible demands for more *and* less enforcement, sometimes fuelled by inconsistent messaging from government, has been a recurring theme in our work. Some of the warnings of SPI-B in 2020¹ should be kept in mind:

The public assemblies and public criticisms of police decision-making are creating operational challenges and legitimacy dilemmas for the police. They are already under pressure from political leaders, mainstream and social media and the public concerning the actually highly effective graded tactical approach and facilitative tone adopted during 'lockdown' (e.g. the four 4 Es and avoidance of enforcement tactics). During the lifting of control measures, a perception has emerged among some that 'the police have gone soft and are scared of certain groups and communities'.

This poses a further problem of legitimacy. On the one hand, some members of the community call for a robust approach to the policing of public assembly (e.g. to prevent 'block parties' or 'defend statues'). In contrast, those gathering for such purposes may see their legitimate rights to freedom of association and assembly being infringed if dispersed forcefully by police. In other words, approaches and tactics which enhance perceptions of legitimacy with some communities can ironically undermine them with others, so the balance is difficult to achieve.

There are also 'self-legitimacy' issues at work among the police. On the one hand, criticisms of police 'weaknesses' may lead commanders to judge they have a responsibility to take a more assertive strategic approach. On the other hand, pressures from officers critical of a soft approach, because it is seen as a sign of weakness, increases the potential for a 'heavy handed' tactical response. As a result, there will be a political 'push' upon Chief Officers to ensure their force is seen to be robust. The Police Federation is also providing a strong 'pull' by making a case around officer safety and the need to protect officers as a priority.

The reduction in the capacity for processing prisoners in custody suites in many areas is important. If 'robust' action is going to be taken the lack of custody facilities, and officer concerns about infection (particularly in overcrowded holding cells) may reduce the motivation to arrest. As a result, when disorder occurs, police may try to disperse crowds rather than arrest culprits, thereby merely pushing the problem (and potentially the virus) to other locations.

However, in contrast, there is an explicit understanding in police operations that actions are being filmed by the public and becoming viral on social media. Police operational misconduct may then be captured and amplify sensitivities. One can add to this the media's penchant for scenes of mass gatherings, at least one of which was declared as a 'major incident', and the suggested inability of local services to cope. Hostile foreign media - most obviously RT - are apt to provide live coverage of sensitive events (e.g. protests) and to amplify grievances of any disaffected group.

¹ Public Disorder and Public Health: Contemporary Threats and Risks , SPI-B Policing and Security sub-Group, 2 July 2020

You will recall from your time on the IAG that the policing of protest in a pandemic was a subject which was discussed on a number of occasions, assisted by regular discussion with Divisional Commanders from Police Scotland and contributions from various academics specialising in the area of human rights and protest. One of these was Professor Stott. In view of discussions on 12 March, we contacted Professor Stott and he agreed to attend our meeting on 19 March to assist with our discussions. Chief Superintendent Mark Sutherland also agreed to attend once more. The Operation Talla Silver Commander, Assistant Chief Constable (Professionalism and Assurance) Alan Speirs also attended.

Our discussions were also informed by events at Clapham Common in London on 13 March. The possibility of a vigil for Sarah Everard was the subject of urgent consideration in court on 12 March in proceedings brought by the organisation Reclaim these Streets, with the Metropolitan Police departing from earlier insistence that all such gatherings were necessarily unlawful and proscribed by coronavirus legislation against gatherings. As barrister Adam Wagner, who was involved in the court challenge, said: *Protest has never been explicitly banned by Parliament, even during the lockdown. The problem is that police forces have behaved as if it is has.*

This refers to the position in parts of England and Wales. See also the report of the Joint Committee on Human Rights mentioned below.

The official vigil was, however, cancelled, apparently following continuing threats to issue £10,000 fines to the organisers. Prioritising the coronavirus restrictions over facilitation of peaceful assembly in this way may have unintended and unhelpful consequences, for example, hampering efforts by officers in England and Wales to engage with those who wish to organise peaceful gatherings by reducing lines of communication. The policing of the gathering which proceeded, despite cancellation of the official vigil, has been the subject of much discussion – at Westminster and in the media. It is also to be considered in reviews, including a review by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service in England and Wales (“HMICFRS”). Without wishing to prejudge the outcome of any such reviews, and mindful of the need to understand the full context, there has been general acknowledgement that aspects of the policing of that gathering by the Metropolitan Police were badly handled, resulting in scenes described even by the Home Secretary as “upsetting”. Given the background and circumstances of the vigil for Sarah Everard, and the outpouring of grief and concern around the safety of women, some of the pictures of arrests at the gathering were troubling. Many media reports - and much social media discussion - of the policing of these events contrasted it with the policing of the crowds of Rangers Football Club supporters. Even some who had condemned the seemingly “light-touch” policing in Glasgow revised their opinions when they saw the implementation of more forceful policing in London.

Events in London occurred as proposed changes in the law around protest were introduced by the UK Government in the controversial Police, Crime, Sentencing and

Courts Bill 2021². This Bill seeks to introduce restrictions on rights of peaceful assembly and protest. Human rights groups, politicians and others have challenged the proposals, with even the Association of Police and Crime Commissioners suggesting³ that there are adequate powers already in existence. Some have expressed concerns that the proposed changes would potentially put the police or Government in the position of being able to restrict or stop gatherings based on their popularity with the public or government. Part of the context in England and Wales is also the recent HMICFRS report, *Getting the balance right? An inspection of how effectively the police deal with protests*⁴. This report includes contributions from Police Scotland which emphasise the significant differences in this area of law and policing in Scotland. Thankfully, the proposed changes in the law around protests affect mainly England and Wales and neither the Scottish Government nor Police Scotland are suggesting such restrictions on rights of peaceful assembly and protest.

To bring relevant evidence further up to date, on Friday 19 March, the Joint Committee on Human Rights of the UK Parliament published a report, *The Government response to covid-19: freedom of assembly and the right to protest*⁵, which highlighted a number of issues, including some of the current complexities around the policing of protests and assemblies during the pandemic.

The Report Summary states:

Throughout the pandemic the law has used regulations to impose restrictions, to a lesser or greater extent, on gatherings. Frequent changes in the law have made it hard for the public to be sure of the legality of protest, as has the fact that the regulations have generally been silent on protest.

During lockdown periods, restrictions on gathering have been severe and have been coupled with restrictions on leaving the home. While leaving the home has always been permitted where there is 'reasonable excuse', the same does not obviously apply to the prohibition on gatherings. This has understandably resulted in some believing protest to be completely prohibited. However, a defence of 'reasonable excuse' has been available in respect of the offence of breaching lockdown requirements. Under the HRA this defence must be read compatibly with Articles 10 and 11 and the right to peaceful protest, which means that the regulations have never completely prohibited protests. This position is legally complex and hard for both the police and the public to follow, something that has not been helped by unclear communications from Government. Further uncertainty arises from the absence of guidance on when protest will constitute a 'reasonable excuse' for gathering during lockdown. This leaves too much subjective

² <https://bills.parliament.uk/bills/2839>

³ <https://www.independent.co.uk/news/uk/home-news/policing-bill-vote-protest-police-b1817855.html>

⁴ <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/>

⁵ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/publications/>

interpretation and discretion to the police.

The law must be amended to make clear that peaceful protest is not prohibited during lockdown. Under the national three tier system, the regulations covering Tiers 1 to 3 have expressly stated that protest is an exception to the prohibition on gatherings, but only where a risk assessment has been conducted and all reasonable steps taken to minimise the risk of covid-19 being transferred. This model could equally apply to Tier 4.

Specifically, there is acknowledgement of the difficulties created for the police by the confused and changing state of the coronavirus restrictions:

66. Ambiguous or confusing law poses a challenge to those tasked with enforcing the law as well as those seeking to abide by it. The police should not be required to enforce laws that are unclear, as this could lead to interferences with human rights that do not have a proper basis in law.

Some of the criticisms in the report are specific to England and Wales but some are relevant also to Scotland. Recognising that the Scottish Government has a much healthier attitude towards human rights than the UK Government, and that Article 2 ECHR can be seen to underpin many of the coronavirus restrictions, nonetheless, more can and should be done by the Scottish Government to clarify the position with assemblies and protests, especially as we move towards further easing of restrictions.

We have reminded ourselves of some of the key findings and recommendations of an earlier HMICFRS report, *Adapting to Protest – Nurturing the British Model of Policing* (2009)⁶:

⁶ file:///Users/johnscott/Desktop/POLICE%20SCOTLAND%20REVIEW/adapting-to-protest-nurturing-the-british-model-of-policing-20091125%20(1).pdf

The original British policing model attributed to Sir Robert Peel is designed to be adaptable to ensure the safety of the public and the preservation of the peace within a tolerant, plural society. It places a high value on tolerance and winning the consent of the public. Neither value should be underestimated. HMIC's review confirms the resilience of the original British policing model, with its approachable, impartial, accountable style of policing based on minimal force. Research in this country and overseas suggests that if nurtured, this policing model is well matched to deal with modern crowd dynamics. It is a model that is worth celebrating.

At the majority of everyday public events, this policing model is deployed successfully across the United Kingdom. But at a small number of more highly charged events, such as large scale protests, its core values are being tested and are in danger of being undermined. The police service is very much on display during these events and police conduct is subject to intense levels of exposure and scrutiny. The British model is easily eroded by premature displays of formidable public order protective uniform and equipment. Health and safety justifications cannot be allowed to overwhelm the careful exercise of police discretion and the measured escalation in the resort to the use of force.

In our discussions, there was recognition that communications are a key aspect of the policing of large gatherings. It is important that the public understands the general policing approach to be adopted. This was mentioned in the HMICFRS report in 2009:

A no surprises communication philosophy with protesters, the wider public and the media. Protesters and the public should be made aware of likely police action in order to make informed choices and decisions.

Communications should allow policing decisions to be explained to the greatest extent possible. This will be important not only in advance of known gatherings but also in retrospect if there is any review. Clear and effective communications are important to assist in explaining the different policing approach taken in different situations which might otherwise be portrayed as inconsistencies, especially as comparisons with other events are a central part of many political, media and other narratives around the policing of assemblies.

In passing, it is worth saying that clear communications and a consistent approach, together with detailed preparations and extensive engagement with the two clubs and fan base no doubt played a part in yesterday's Celtic/Rangers game passing off with no significant disorder or large gatherings.

As the SPI-B paper in July 2020 said in one of its recommendations for mitigating some of the risks in the policing of assemblies:

5. Ensure that policing is seen to be impartial (explain why police are intervening or not) and wherever possible proactive. For example, some force areas have been using social media to identify rave organisers, negotiate or make pre-emptive arrests. Their experience is that this has been easier to manage than trying to disperse large crowds after raves have already begun.

The recently adopted **United Nations Human Rights Committee’s General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly**⁷ summarises some relevant principles that may assist:

1. The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others...

6. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.

*7. In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or **celebrate the outcome of a sporting event**. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.*

⁷ <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed...

22. States must leave it to the participants to determine freely the purpose or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral, and must not be based on the identity of the participants or their relationship with the authorities. Moreover, while the time, place and manner of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.

23. The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.

80. Only law enforcement officials trained in the policing of assemblies, including on the relevant human rights standards, should be deployed for that purpose. Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children and persons with disabilities, when participating in peaceful assemblies.

The emphasis on peaceful assembly is obvious but the General Comment also reminds us of a number of important considerations, including the need for care in ensuring that peaceful assemblies and gatherings are facilitated even if the relevant cause or purpose is unpopular and causes disruption.

With the necessary emphasis on peaceful assembly, we should acknowledge the disturbing scenes in Bristol last night. As with the Clapham Common events, we are mindful of the need to understand the full context before drawing conclusions. These events will no doubt be explored as a matter of urgency.

They may highlight some of the policing challenges when largely peaceful assembly is disrupted by violence and significant damage to property.

We are of the view that the overall approach to the policing of these events in Glasgow on 6 and 7 March 2021 was informed by, and consistent with, relevant human rights principles and considerations, in particular, lawfulness, necessity and proportionality.

Yours sincerely

John Scott

John Scott QC Solicitor Advocate

OFFICIAL

**SCOTTISH POLICE
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LETTER SENT BY E-MAIL ONLY

John Scott QC
Solicitor Advocate
Chair - Independent Advisory Group on police use of temporary powers related
to the Coronavirus Crisis

22 March 2021

Ref: CO/042/2021

Dear John


FOOTBALL-RELATED POLICING – GLASGOW – 6/7 MARCH 2021

Thank you for your letter of 22 March 2021, outlining the Independent Advisory Group's consideration of the policing of football related gatherings in Glasgow two weeks ago.

I am very appreciative of the thoughtful consideration you and the group members have given to the wider context for the policing of these gatherings, and assurances offered on the policing approach to these particular events.

Your letter has been circulated to Authority Members ahead of the Authority meeting on 24 March 2021, when the matter will be discussed further with the Chief Constable.

Yours sincerely



MARTYN EVANS
SPA Chair

OFFICIAL

Martyn Evans
Chair
Scottish Police Authority
1 Pacific Quay
Glasgow
G51 1DZ

24 May 2021

Dear Martyn,

THE POLICING OF PROTEST AND ASSEMBLY IN A PANDEMIC

This letter is to update the Board in relation to recent IAG discussions around the still-topical issue of the policing of assembly and protest in a pandemic.

You and I spoke between the IAG meetings on 14 and 21 May when the group again discussed this issue in detail, discussion having been prompted by events in Glasgow this month. I agreed to submit this letter in time for the SPA Board meeting on 26 May.

Our last detailed report was submitted for the Board meeting in February, although, following discussion with you, we also sent a letter to the Cabinet Secretary for Justice on 22 March in relation to football-related events in Glasgow on 6 and 7 March. As with our reports to the Board, that letter has been published on the SPA website¹. Obviously we continue to liaise with the Authority through discussions in between meetings and SPA attendance at IAG and OpTICAL meetings. The Authority's continuing support of the work of the IAG through our ever-impressive secretariat also ensures that you remain sighted on all aspects of our work.

In view of the importance and continued topicality of issues around the policing of assembly and protest in a pandemic, the IAG decided, as we had in March

¹ <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/iag-public-reports/>

following a request from the Chief Constable, to discuss matters over the course of two meetings – 14 and 21 May. Also as in March, we agreed to send you a letter after our meetings to offer our thoughts, views and advice.

EVENTS IN KENMURE STREET AND GEORGE SQUARE, GLASGOW

On 14 May, we heard in detail from IAG member, solicitor Aamer Anwar, who himself played a part in events in Kenmure Street on 13 May at the request of local elected members. Aamer offered his experience and views of those events and assisted us with discussion, with input also from ACC Gary Ritchie.

On 21 May, Chief Superintendent Mark Sutherland, Divisional Commander of Greater Glasgow, attended the IAG meeting once more to discuss the same events in Kenmure Street as well as what happened in Glasgow during the weekend of 15/16 May in relation to celebrations, vandalism and violence by supporters of Rangers Football Club.

Much of what was discussed with Chief Superintendent Sutherland at the IAG in March was relevant to discussions on 21 May. Chief Superintendent Sutherland confirmed that the pandemic and related regulations were considered, albeit, as matters developed, other considerations were prioritised. He reminded us of the Disorder Model, the assessment of risk and threat, the use of force principles (in effect, lawfulness, necessity and proportionality), the range of policing responses available, management of risk and safely minimising harm.

We discussed the similarities and differences between the events in Kenmure Street and George Square.

The former was spontaneous, with public safety (including all occupants and personnel in the immediate vicinity of the Immigration Enforcement van) the main priority. Chief Superintendent Sutherland did not say this but it appeared to the IAG that, even recognising that immigration enforcement is a reserved matter, the way the situation developed suggests a lack of appropriate planning and communication by the Home Office which served to exacerbate the situation.

Events at George Square on 15 May were similar to those in March, at least for a while. While the gathering of Rangers supporters on 15 May was allowed to continue for several hours, despite relatively low-level disturbance and

nuisance, when the behaviour of the crowd degenerated into significant aggression and violence, the policing response escalated.

There was enforcement on 15 May – 28 arrests were made and more are likely², although steps were taken to try to ensure that the crowd had the opportunity to disperse before more forceful action was taken.

COMMUNICATIONS

In all of our discussions, the importance of early and clear communications has been emphasised. It is also a key aspect of the policing of large gatherings. It is important that the public understands the general policing approach to be adopted. In our letter in March, we quoted from a report in 2009³:

A no surprises communication philosophy with protesters, the wider public and the media. Protesters and the public should be made aware of likely police action in order to make informed choices and decisions.

We went on to say:

Communications should allow policing decisions to be explained to the greatest extent possible. This will be important not only in advance of known gatherings but also afterwards. Clear and effective communications are important to assist in explaining the different policing approach taken in different situations which might otherwise be portrayed as inconsistencies, especially as comparisons with other events are a central part of many political, media and other narratives around the policing of assemblies.

There is recognition within Police Scotland of the power of media portrayal of police activity, and the scope for this to give misleading impressions. In relation to the extent of police presence in and near Kenmure Street on 13 May, photographs of numerous police vehicles may have given a misleading impression of the extent of officer numbers. Coronavirus considerations resulted in fewer officers in attendance than the number of vehicles would suggest.

² <https://www.scotland.police.uk/what-s-happening/news/2021/may/police-scotland-establishes-dedicated-team-and-online-portal-to-investigate-george-square-incidents/>

³ HMICFRS, *Adapting to Protest – Nurturing the British Model of Policing* (2009)

Some officers attended alone in vehicles that could accommodate several personnel. This might usefully have been the subject of communication to correct some media discussion and public concern.

We note the communications from Police Scotland before, during and after the events we have been discussing, for example, the statements regarding events at George Square on 15 May⁴. These appear to us to have been consistent with the philosophy of no surprises. Subsequent media appearances have also assisted in explaining the policing approach to the public. This allowed the public to see that difference is not the same as inconsistency. Not all have taken the same lesson from these events.

AFTERMATH – ANALYSIS AND COMPARISON

In the aftermath of both events, members of the public have expressed a range of views on the apparent tolerance of gatherings in Glasgow contrary to coronavirus regulations. Some have suggested that neither event should have been allowed to develop into a large gathering. That is to ignore the right of peaceful assembly which, especially outdoors, should be given considerable weight, even in a pandemic.

Some have compared the two events (many have mentioned earlier events as well in inevitable albeit often incomplete comparison) and suggested that Rangers supporters were treated differently than the Kenmure Street protestors. They are right but really only at a point when public order considerations required action to prevent serious injury and damage to property. In fact, serious injury was suffered by police officers and others on 15 May. That alone should be sufficient to distinguish the two events and explain the policing approach, despite attempts by some to indulge in “*whataboutery*”, including some politicians, who should know better.

⁴ <https://www.scotland.police.uk/what-s-happening/news/2021/may/police-scotland-statement-on-events-at-ibrox-stadium-and-george-square-glasgow/>; <https://www.scotland.police.uk/what-s-happening/news/2021/may/police-scotland-statement-regarding-george-square-glasgow/>; <https://www.scotland.police.uk/what-s-happening/news/2021/may/statement-from-chief-superintendent-mark-sutherland/>; <https://www.scotland.police.uk/what-s-happening/news/2021/may/statement-from-assistant-chief-constable-gary-ritchie-on-incidents-in-glasgow-on-saturday-15-may/>; <https://www.scotland.police.uk/what-s-happening/news/2021/may/police-scotland-establishes-dedicated-team-and-online-portal-to-investigate-george-square-incidents/>

Subsequent discussion of both events in the media, including new media, highlights some of the challenges for policing. Immigration (and associated enforcement) is a reserved matter. It is clear that there are differences of view as between the UK and Scottish Governments on how enforcement should be carried out and whether immigration should remain a reserved matter. Such differences of political opinion can create problems for Police Scotland. Operational independence and accountability cut across the reserved/devolved distinction but we have seen how policing decisions can be represented as demonstrating political or other sympathies. In turn, this may affect public confidence. Clear and accurate communications on police activity are not the exclusive responsibility of Police Scotland.

The policing approach to assemblies and protest cannot and should not be determined by public support or abhorrence for a particular group or cause, nor by how their decisions will be portrayed in the media. While there may have been little overlap between the participants in the two events, policing decisions are not driven by popularity. The similarities and differences in approach to the policing of both events have been explained to us in detail and the explanations make sense as well as demonstrating due regard to the relevant human rights considerations. The prioritisation of other policing considerations, in particular the physical safety of the public, over rigid enforcement of coronavirus restrictions made sense in the circumstances facing Police Scotland on both occasions.

HUMAN RIGHTS CONSIDERATIONS AND OPERATIONAL INDEPENDENCE

The same key considerations remained of significance in both events in Glasgow:

- rights to assembly and freedom of expression in terms of ECHR Articles 10 and 11 of the European Convention on Human Rights (BOTH)
- the fact that, even though the large numbers of people did not comprise a single group, this was not the policing of a clash of groups with the additional complications that arise in such situations (BOTH) – albeit events later on 15 May involved violence between what appeared to be groups of Rangers supporters
- the advantages of having the large numbers of people gathered in as few locations as possible (RANGERS)

- the fact that some of the people gathered in Kenmure Street and in and around George Square included women and children (BOTH)
- children (under the age of 18) have additional rights to freedoms of expression; thought, conscience and religion; privacy; association and peaceful protest, and protection from harm, in terms of UNCRC Articles 13, 14, 15, 16 and 19 of the United Nations Convention on the Rights of the Child. (BOTH).

At our meeting, Chief Superintendent Sutherland answered all questions from members of the IAG. We discussed the interplay of Articles 10 and 11 and coronavirus restrictions, noting that, even in a pandemic, blanket bans of assemblies conflict with these important rights and may be vulnerable to court challenge. We also discussed the rights of general members of the public to go about their lawful business, albeit noting that assembly and protest will generally involve at least some inconvenience.

Chief Superintendent Sutherland provided a full and clear explanation of his thinking on the relevant days, emphasising the operational independence of policing even when there is political interest but also acknowledging, indeed welcoming, the operational accountability that must accompany such independence.

His contribution reinforced our view that there is a good grasp within Police Scotland of relevant human rights law and principles. As we said in March, consistent consideration and application of these principles is crucial but will not always result in the same policing approach in every situation. The specific approach taken has to be informed also by a number of factors specific to the particular assemblies, protests or gatherings.

Key to understanding the right to freedom of assembly, and the policing response, is that the right relates to *peaceful* assembly and protest.

We quote again from the recently adopted **United Nations Human Rights Committee's General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly**⁵ which summarises some relevant principles:

⁵ <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

6. *Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.*

7. *In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or **celebrate the outcome of a sporting event**. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.*

8. *The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed...*

23. *The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.*

The emphasis on peaceful assembly is obvious but the General Comment also reminds us of a number of important considerations, including the need for care in ensuring that peaceful assemblies and gatherings are facilitated – an important positive obligation on the State – even if the relevant cause or purpose is unpopular and causes disruption.

In our letter of March, we mentioned the recent report of the Joint Committee on Human Rights of the UK Parliament - *The Government response to covid-19: freedom of assembly and the right to protest*⁶. We pointed out that, while many of the criticisms in that report are specific to England and Wales, some are relevant also to Scotland. We suggested that more should be done by the Scottish Government to clarify the legal position with assemblies and protests, especially as we moved towards further easing of restrictions. This has been addressed in part in guidance published by the Scottish Government on 17 May - *Coronavirus (COVID-19): guidance on marches and parades*⁷. This seeks to clarify the position with marches and parades, bringing it more in line with procedures before the pandemic. The underpinning regulations have also been amended⁸.

Some of the communications and regulatory hints used to suggest that protest and assembly were banned due to the pandemic went too far. As a fundamental human right, the right to assembly/protest cannot be removed or eroded by implication in secondary legislation.

It is important to make this area of law as clear as possible, not least with COP 26 fast approaching in Glasgow, and to make sure that the relevant rights are as well understood and enjoyed as any legitimate restrictions.

CONCLUSION

Some political and media portrayal of events in Glasgow this month has used the differences in policing approaches to the different events to suggest bias on the part of police Scotland. Our work confirms us in our view that bias played no part in operational decisions. Public confidence and police legitimacy can nonetheless be impacted by such portrayals.

We are of the view that the overall approach to the policing of these events in Glasgow in May 2021 was informed by, and consistent with, relevant human rights principles and considerations, in particular, lawfulness, necessity and

⁶ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/publications/>

⁷ <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-marches-and-parades/>

⁸ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 23) Regulations 2021

proportionality. Different outcomes in the different events do not undermine that conclusion.

The best protection – both for the integrity of the rule of law, and for the protection of rights of every citizen in Scotland – lies in the operational independence of policing, and its ability to rise above media and political noise and make decisions based on the law and public safety. That operational independence may be an important point of constancy in a period of increasingly unsettled constitutional politics.

WORK OF THE IAG

As restrictions continue to be removed in large parts of the country – 17 May saw the latest regulatory easing, albeit with Glasgow remaining in Level 3 and additional domestic travel restrictions introduced⁹ – we have been discussing a winding-down of the work of the IAG following the submission of the additional data reports and associated analysis and advice. We are aware that transitions between different levels of restrictions can create issues for policing and that some measures, for example, quarantine (hotel and at home) may continue for longer than those which affect the general population. Accordingly, we will continue to liaise with you to determine the best time for us to end our exceptional human rights based addition to the ongoing statutory oversight of Police Scotland by the SPA.

I had hoped that we would be in a position to submit a more detailed report for the May Board meeting, to include more of Professor McVie's analysis of additional data but we have agreed at the IAG and OpTICAL Group that more time is needed to analyse, consider and discuss the data, to continue to cross-refer it to data from the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service, and to explore additional areas of context for the data.

⁹ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 24) Regulations 2021

Meantime, Police Scotland continue to publish relevant data on a weekly basis¹⁰ as well as feeding data into the IAG on a weekly basis through reports discussed in the first instance at OpTICAL. The weekly reports to OpTICAL and the IAG continue to assist in providing assurance on questions of proportionality and prompt important discussions when there are changes in numbers over time. These reports allow us to track police interventions, for example, confirming the low number of forced entries and, despite increased activity at times, a relatively low and stable number of fixed penalty notices. This allows us to supplement SPA oversight on an ongoing basis, offering one aspect of the triangulation of sources of assurance mentioned at previous Board meetings.

Having regard to the data and other evidence and sources mentioned in previous reports, it remains our view that use of emergency powers by Police Scotland in general remains compliant - both in application and spirit – with:

- (a) human rights principles and legal obligations, including those set out in the Human Rights Act 1998 and the Scotland Act 1998
- (b) the values of Police Scotland – integrity, fairness and respect - and its 'safety and wellbeing' remit as laid out in the Police and Fire Reform Act (Scotland) 2012, and
- (c) the purpose of the 2020 Act and Regulations, namely safeguarding public health.

This continues to satisfy the primary role of the IAG in the Terms of Reference¹¹.

Yours sincerely

John Scott

¹⁰ <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

¹¹ <https://www.spa.police.uk/spa-media/5gXHinni/tor-final-27-4-20.pdf>

John Scott QC Solicitor Advocate

To the Board of the Scottish Police Authority

For the Meeting of 30 June 2021

Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis (“IAG”)

This letter is to update the Board of the Scottish Police Authority (“SPA”) with a summary of the ongoing work of the IAG and an outline of our next report to the Board for its meeting on 25 August.

Our last detailed report was submitted for the Board meeting in February, although, following discussions with the Chair, we also sent letters on 22 March and 24 May in relation to the policing of particular large gatherings in Glasgow. These letters were included in the Chair’s Update to the Board for the Board meetings on 24 March and 26 May. As with our reports to the Board, both letters have been published on the SPA website along with all weekly meeting notes up to 26 May¹.

Our work has continued, with meetings being held on a weekly basis. Liaison with the Authority is maintained through discussions with the Chair of the Board in between meetings as well as SPA attendance at IAG and weekly OpTICAL meetings. The secretariat’s key role in supporting our work also ensures that the Authority remains sighted on all aspects of our work in providing additional human-rights focussed assurance to complement the main oversight role of the Authority.

It had been planned to include final reports this month arising from further data analysis by Professor McVie, some of the analysis being new and some updating earlier work which has been reported to the Board. Some of this work is dependent on new data being provided by Police Scotland (which requires to be checked, “cleaned” and, as far as possible, contextualised before analysis) while other reports would benefit from an updated review of available evidence before submission to the Board. In discussion with you last week, I suggested that it might be best to wait until all of Professor McVie’s work was completed and submit it in a series of appendices to the Board, hopefully in time for

¹ <https://www.spa.police.uk/strategy-performance/independent-advisory-group-coronavirus-powers/iag-public-reports/>

consideration at the next meeting on 25 August. Our report for that meeting is, therefore, likely to be substantial.

Recognising that the agenda for Board meetings is never likely to be quiet, it may be that the Board could again look at arranging a final stand-alone event similar to the webinars hosted by the Authority last year and chaired by Dr Liz Aston, Director of the Scottish Institute for Policing Research. That might be a good way to sign off on the work of the IAG which, considering the continuing significant reduction in pandemic-related policing and increase in “normal” policing demands, appears to be reaching its end.

Consequently, this letter will be a briefer account of recent and ongoing work, albeit concluding, as usual, with the IAG’s assessment of policing activity when viewed in relation to our Terms of Reference.

Data Reports

To assist in terms of what to expect in our next report, Professor McVie has finalised or is finalising the following reports:

- Charges reported to the COPFS under the Coronavirus Legislation: March 2020 - April 2021 Report (with thanks to COPFS for assistance in this report)
- Scottish Courts and Tribunal Service (“SCTS”) Data on Police Fixed Penalty Notices Offered During the Pandemic Report (with thanks to SCTS for assistance in this report)
- Report on the payment outcomes of Fixed Penalty Notices issued during the first lockdown using data linkage (with thanks to Police Scotland and SCTS for allowing data to be linked at the individual level)
- Report on the profile and spatial distribution of Fixed Penalty Notices issued between March 2020 and March 2021 (with thanks to Police Scotland for ongoing assistance in this report)

While the COPFS and SCTS reports take us beyond our Terms of Reference, it was agreed by all members of the IAG, and by Deputy Crown Agent John Logue, that they both provide useful additional assurance around Police Scotland’s use of the emergency powers and the wider impact on the justice system, especially to the extent that it has been possible to compare the outcomes of Covid and non-Covid

related offences that were dealt with, and reported to COPFS, by Police Scotland.

Public portal

The Authority established an online portal to offer members of the public an additional means of sharing their experience and views on the use by Police Scotland of emergency coronavirus powers.

The portal went live on 1 June 2020 and was closed on 14 June 2021. By the time it closed, we had received 115 responses. Although the portal is now closed, members of the public can still contact us to share their experience and views by email.

Police Scotland Interviews

As the Board will be aware, in June 2020, HMICS carried out interviews with officers and staff of Police Scotland to give us their perspective on the use of the emergency powers. This provided useful additional insight into some of the issues experienced by Police Scotland in the early stages of lockdown. A report on these interviews was included with our report to the Board for the meeting on 30 June 2020.

The IAG always intended to seek views in a similar manner at a later stage in the pandemic. HMICS once again agreed to carry out officer and staff interviews. We are grateful to IAG member, Gill Imery, for arranging to have this work carried out and to Police Scotland for facilitating the interviews.

A total of 32 interviews were conducted between 26 April and 6 May 2021. We will offer comment on the interviews in our next report alongside consideration of insights from data analysis and other sources.

Some of the insights in the recent interviews offer views which go beyond our Terms of Reference, for example, into areas around wellbeing. Accordingly, HMICS will publish the report on the interviews separately on 30 June, ahead of more detailed consideration in the next IAG report.

Compliance, Enforcement and Data: Exercise of the Powers – including the issuing of Fixed Penalty Notices

Enforcement represents only a small percentage and amount of overall police activity, even in relation specifically to the pandemic. In recent weeks, enforcement has continued to drop even more. As previously, and despite impressions to the contrary from media or other portrayals, public adherence continues to remain high even though it is reported to have decreased.

The UCL Covid-19 Social Study² continues to provide a useful indication of UK-wide public attitudes and reported adherence or non-adherence, based as it is on responses from a panel study of over 70,000 respondents.

The latest report³, dated 21 May 2021, included the following conclusion:

- Despite low levels of complete rule understanding, majority compliance with guidelines remains high, with 91.0% of people in our study saying they are mostly following the rules. Complete and majority compliance have, however, decreased since the easing of the latest lockdown restrictions, with complete compliance showing larger decreases over the past few months. Demographic differences in majority compliance remain minimal, with the exception that a lower proportion of young adults saying they are mostly following the rules.

For Scotland, there is also the ongoing polling of public attitudes reported by the Scottish Government⁴ which is broadly consistent with some of the findings of the UCL study.

Police Scotland continue to publish enforcement data⁵ on a weekly basis which is drawn from the CVI system⁶. This demonstrates continuing

² <https://www.covidsocialstudy.org/>

³ https://b6bdcb03-332c-4ff9-8b9d-28f9c957493a.filesusr.com/ugd/3d9db5_e381fd8742d247bdb6f5ab8eda4b9cc5.pdf

⁴ <https://www.gov.scot/publications/public-attitudes-coronavirus-march-update/pages/7/>

⁵ <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

⁶ In response to the introduction of The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and Coronavirus Act 2020, Police Scotland developed a 'Coronavirus Interventions' (CVI) recording system. This system allowed Police Scotland to begin gathering data in relation to the public co-operation levels with the new legislation. This system relies on Police Officers manually updating the system with the co-operation level they experienced when they encounter an individual in contravention of the new legislation. The CVI System was introduced on 06/04/2020, and as result, data is only available at a sub-divisional level from this date onwards.

awareness on the part of Police Scotland of the need for transparency. For ease of reference, the relevant table published with data up to the end of the week ending 23 June is included here:

The below totals are **indicative only**. Caveat on first sheet must be read. Actual figures may be higher. Please see corresponding COVID 19 Weekly Bulletin for total enforcement action as per Police Scotland Crime Management Systems.

Totals (All figures represent No. of Individuals)						
Division	Dispersed when informed	Dispersed but only when instructed	Removed from Place or Premises	Issued an FPN	Arrested	Issued FPN under Travel Regulations
A	3462	1259	217	427	44	14
D	3901	948	219	672	33	50
N	5210	1327	70	429	39	94
C	6474	1700	238	821	80	53
E	13371	5452	1365	2333	84	49
J	4578	1173	199	453	31	89
P	6284	1110	291	808	103	36
G	25013	8363	1076	5778	210	131
L	7875	1673	91	1001	45	141
K	5034	1689	137	1293	65	81
Q	5106	1902	344	2006	113	75
U	6167	2462	453	710	67	59
V	2101	635	74	220	55	67
Total	94576	29693	4774	16951	969	939
Total number of FPNs issued over the last 7 days - 27						
Total number of Arrests over the last 7 days - 1						
*Please note - the FPNs issued under Travel regulations are also included within the total 'Issued an FPN' and should not be considered as 'in addition to' these.						

The IAG receives weekly updates from Police Scotland of data on house gatherings (including entries using reasonable force), and breaches of regulations covering quarantine restrictions. In addition, with the new online system for reporting, we receive an update on the number of reports made that way. This, and other information, comes to the IAG through Police Scotland's OpTICAL group⁷, chaired by ACC Gary Ritchie. This group supports our work and offers an additional opportunity for discussion as we explore explanations and context for some of the data. It has been attended on a weekly basis by IAG members Ephraim Borowski, Professor Susan McVie and John Scott. Dr Liz Aston is also a member.

⁷ For more information about OpTICAL, see our second interim report – <https://www.spa.police.uk/spa-media/5erhkjeb/rep-b-20200629-item-5-iag-report.pdf>
page 20

In addition to updated totals, the weekly update includes examples with narrative in the various categories involving the use of emergency powers, for example, gatherings, quarantine, forced entries.

Taken together, this gives us a good picture of policing activity up to and including enforcement. It assists in providing assurance on questions of proportionality and has prompted questions and discussions at OpTICAL and the IAG when there have been changes in numbers over time.

These reports allow us to track police interventions, for example, confirming the consistently low number of forced entries and, despite increased activity at times, a relatively low and stable number of fixed penalty notices. This has allowed us to supplement SPA oversight on an ongoing basis, offering one aspect of the triangulation of sources of assurance mentioned at previous Board meetings.

These reports continue to be supplemented with input to the IAG from Divisional Commanders.

Online reporting for Covid-19 breaches

In December 2020, Police Scotland established a facility to allow online reporting - <https://www.scotland.police.uk/secureforms/covid19/>

From 18 December to 20 June, the system recorded 30,487 reports with 306 in the week to 20 June (an increase on the previous week's total of 265 but with figures remaining consistently much lower than in previous months).

Impact on children and young people

Work on the impact on children and young people is continuing which involves the office of the Children and Young People's Commissioner Scotland ("CYPCS"). An update on this work from IAG member Maria Galli of the CYPCS should be ready for inclusion in our report for the August Board meeting.

Quarantine regulations and self-isolation

We recognise, of course, that international travel is a source of concern for importation of various strains of coronavirus, especially new variants. It has been suggested that importation was at least partly responsible for an increase in cases after significant progress in reducing numbers last summer in Scotland. Clearly, it is an area that demands government attention and restrictions may well continue to be considered necessary, even if other restrictions continue to be eased significantly.

As we have said repeatedly, along with other requirements for self-isolation, support rather than enforcement is key, and is certainly more important and effective than enforcement alone.

Travel Regulations

One recent regulatory change in this area attracted attention, publicity and controversy. This was the restriction⁸ on travelling between Scotland and the areas of Manchester and Salford City Councils. The regulation was made, and laid before the Scottish Parliament, on 17 June, although it was not announced until the First Minister's press conference on 18 June. The relevant restriction came into force with effect from 21 June. While recognising the need on occasion for speedy action, it is another example of poor communications.

As with previous travel restrictions, these new restrictions are not policed pro-actively by way of roadblocks, checkpoints or random stops.

Other Reports

In passing, it is worth drawing attention to two recent reports which address issues that have been raised in some of our reports, namely scrutiny of legislation and the right to assembly and protest:

1. The House of Lords Select Committee on the Constitution report, COVID-19 and Parliament⁹, dated 13 May 2021, addresses the UK Parliament's response to the pandemic and its impact on scrutiny.
2. The Joint Committee on Human Rights at Westminster report, Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)¹⁰, dated 16 June 2021, addresses issues around the right to peaceful protest. It deals with the Bill which has been introduced at Westminster and therefore is not relevant to Scotland. What is significant, however, and worth highlighting is the recognition in the report of the importance of the right to peaceful protest, especially at a time when it is under pressure from certain quarters, pressure that has been exacerbated by the pandemic. To quote the summary:

⁸ The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 28) Regulations 2021

⁹ <https://committees.parliament.uk/publications/5799/documents/66400/default/>

¹⁰ <https://publications.parliament.uk/pa/jt5802/jtselect/jtrights/331/33102.htm>

The current rhetoric around protest tends to downplay the importance of the right to peaceful protest and treat it as an inconvenience in conflict with the public interest. To help address this, we propose the introduction of express statutory protection for the right to protest, setting out the obligation on public authorities to refrain from interfering unlawfully with the right but also the duty to facilitate protest.

The Work of the IAG

We have agreed to maintain weekly meetings until the end of July to allow us to consider papers on outstanding issues and data analysis for submission ahead of the August meeting of the Board. We will arrange a meeting or meetings in August to sign off on the report and appendices. It may be that a small number of further meetings thereafter would be useful to allow time for a degree of retrospection and final thoughts.

We will liaise with you to determine the best time and manner of ending our exceptional human rights based addition to the ongoing statutory oversight of Police Scotland by the SPA.

Conclusion

Having regard to the evidence mentioned in this report as well as other evidence and sources mentioned in previous reports, it remains our view that use of emergency powers by Police Scotland in general remains compliant - both in application and spirit – with:

- (a) human rights principles and legal obligations, including those set out in the Human Rights Act 1998 and the Scotland Act 1998
- (b) the values of Police Scotland – integrity, fairness and respect - and its 'safety and wellbeing' remit as laid out in the Police and Fire Reform Act (Scotland) 2012, and
- (c) the purpose of the 2020 Act and Regulations, namely safeguarding public health.

This continues to satisfy the primary role of the IAG in the Terms of Reference¹¹.

¹¹ <https://www.spa.police.uk/spa-media/5gxhinni/tor-final-27-4-20.pdf>

Yours sincerely

John Scott

John Scott QC Solicitor Advocate

OFFICIAL

**SCOTTISH POLICE
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LETTER SENT BY E-MAIL ONLY

TO: LOCAL AUTHORITY POLICE SCRUTINY CONVENER

17 December 2021

CO/149/2021

Dear Police Scrutiny Convener

UPDATE FROM THE SCOTTISH POLICE AUTHORITY

Following my last update of 28 September, and my recent attendance at the COSLA Police Scrutiny Conveners Forum on 2 December, I wanted to write ahead of the festive break to provide an update on some policing issues.

Policing of COP26

I was very pleased to hear such positive feedback from Conveners about Police Scotland's approach to policing COP26. It is the Authority's view that the policing of COP26 was a significant success and Police Scotland delivered a safe and secure operation, while also ensuring people's rights to peaceful protest were upheld. I have congratulated the Chief Constable and every officer and member of staff who contributed to the conference and business as usual activity in the run up to, during and after the conference.

The Authority commissioned independent polling through the ScotPulse Public Opinion Survey to gain a better understanding and insight into the public's views of the policing of the conference. The polling targeted those living in the Greater Glasgow area. We have just received the results, which we will publish on the Authority's website next week. The first indications are of a high level of support for the policing approach taken by Police Scotland to both safety of the delegates and facilitating peaceful protest. This independent evidence adds to our initial assessment and Police Scotland's own data and reporting to us.

Call Handling Response Times

Police Scotland's call handling approach and performance continues to be closely monitored by the Authority. I understand Conveners' continued interest in this important area of policing. The most recent update on service delivery was reported and discussed at the Authority's Policing Performance Committee on 9 December. Conveners can read that update in full from the [Authority's website](#).

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Police Scotland reported on a number of measures implemented to improve call handling. Unfortunately, the new variant of Covid will present significant challenges for police call answering times over the coming weeks. Staff absences are increasing and demand is remaining high. [Police Scotland is communicating these challenges to the public](#). This is a shared challenge for other emergency and public services. Police call handling will therefore pick up even more demand. Police Scotland will prioritise 999 calls and maintain the very good 'immediate' 999 response times. The Service is working to mitigate the anticipated lengthening wait times for 101 calls as much as possible and the Authority will continue to monitor this.

Review of Local Police Plans

DCC Kerr and I reported to the COSLA Police Scrutiny Conveners Forum on Thursday 2 December that we expect to finalise the tripartite review of local police plans with COSLA in the New Year. I want to record my thanks to everyone who took the time to feed back their views and inform this important piece of work. The best practice and learning identified will play an important role in informing the next scheduled Local Policing Plan development cycle, which will begin in the Spring of 2022.

Dedicated SPA Local Authority Engagement Plan

A significant commitment of the Authority's [local authority engagement plan](#) is to offer regional meetings with Police Scotland's participation to local authority scrutiny partners. Dates for these meetings have now been identified and are listed below for your awareness:

- North Division - Thursday 3 February between 9.30 - 12 noon
- East Division - Tuesday 8 March between 1.30 - 4.00 pm
- West Division - Wednesday 16 March between 1.30pm - 4 pm

Officials from the Authority will be in touch with more information and calendar invitations shortly, together with a call for any agenda items you would like to suggest. I look forward to engaging with you further at these meetings.

I hope you have found this update helpful. Should you have any feedback, please do not hesitate to get in touch with my office.

I hope you have a safe and enjoyable festive break.

Yours sincerely



MARTYN EVANS
Chair

OFFICIAL

Copy to: Cllr Alison Evison, President, COSLA
Cllr Graham Houston, Vice Chair, COSLA
Cllr Kelly Parry, Community Wellbeing Spokesperson
Sally Loudon, Chief Executive Officer, COSLA
DCC Will Kerr, Police Scotland, Local Policing

Mr Martyn Evans
Chair
Scottish Police Authority
Pacific Quay
Glasgow
G51 1DZ

5 May 2022

Dear Martyn,

Independent Advisory Group - Operation Talla

As you know, I had been considering how best to complete the work of the IAG. I had wondered about arranging a final meeting or meetings of the Group and then submitting a final report.

Unfortunately, in terms of timing at least, I will be unable to arrange any such meetings or to submit any final report as I am to become a Senator of the College of Justice and will take up this full-time role very soon. The public announcement of my appointment was made on 4 May 2022 and my installation will take place on 12 May 2022.

On reflection, the work of the Group needs little further commentary. As you know, we reported frequently to the Board throughout the life of the Group and our minutes were published at regular intervals. I also attended Board meetings, as did Professor McVie. The Board also arranged two public webinars at which we were able to discuss our work.

Nonetheless, I thought it important to submit a final letter offering some reflections on what we did.

I regret that it will not be possible in the time available to reconvene the Group although it is my intention to circulate this letter for the information of my colleagues. I realise that there may be some further events at which our work can be discussed and know that my colleagues on the IAG will be able to assist with these.

BACKGROUND

As you know, the main statutory purpose of policing in Scotland is to improve the safety and well-being of persons, localities and communities in Scotland. The role of Police Scotland during the pandemic has highlighted the centrality of this statutory purpose which is much wider than some traditional views of the role of policing.

Even as recently as Christmas and New Year, we were in a situation of considerable uncertainty about the pandemic and the extent and duration of further restrictions on all of our lives. As I write this letter, all legal restrictions have been removed, albeit there remains some residual guidance about consideration for others and the use of masks.

Latterly, with the limited exception of some regulations which applied mainly to work and other premises, restrictions had been the subject only of guidance, not legal requirement. It may be that if, in the event of a future pandemic or similar public health emergency, additional restrictions are thought necessary and guidance proves insufficient, the Scottish Government may consider the use of regulations. This would involve questions of enforcement by Police Scotland. Given what we learned in earlier stages of the pandemic about policing of, and during, a pandemic, I thought that it might be useful to distil a brief reminder for the assistance of the Board and others to address that eventuality, in addition to offering a degree of reflection on our work.

Especially in the early stages of the first lockdown, the police and public were learning together in truly unprecedented circumstances – learning quickly about important issues around public health and the need to modify or even transform our behaviour to protect everyone; adjusting to major changes in our daily lives at work and at home. In that telescoped period of adjustment, there was considerable scope for good faith mistakes on the part of police and public. The use of the 4 Es¹ left space for such mistakes, with enforcement used only after engagement, explanation and encouragement had been used in most situations. The 4 Es remained a core part of the approach of Police Scotland throughout the pandemic. The IAG consider it essential that the 4 Es should remain at the heart of the policing of any new restrictions which are introduced by way of regulations in the event of any similar crisis.

“THE RULES” - GUIDANCE vs REGULATIONS

¹ Engage, explain, encourage, enforce.

With later developments in the pandemic, especially the Omicron variant, most of what Government asked of the public was done by way of guidance, rather than regulations.

We commented previously on the often unhelpful blurring of the distinction between guidance and regulations. Where there is any difference between them, it will usually be because the guidance goes further than what is prescribed as a matter of law. Whether intentionally or not, some public messaging in this area over the last two years has conflated the two, with reference to “the rules” sometimes meaning one or the other or even both.

Policing relates primarily to those areas of activity which the Government has chosen to regulate, even if Government asks the public to adhere to guidance as well.

We point out simply that, if it is intended that the police should play a specific role in any future pandemic, it would be better if there was no blurring of the lines between guidance and regulations. There may be expectations on the part of the public about what the police are able to do and when they can intervene. Unless incorporated in regulations with specific duties on the public and powers for the police, there is scope for confusion and even friction. It is fairer to the police and public to ensure that matters are made as clear as possible. Public confidence in policing should not be compromised by matters outwith their remit and powers.

REGULATIONS - SCRUTINY AND NOTICE

A recurrent theme of our work related to the introduction of new restrictions in regulations which were published only just before (and, in one instance, after) they came into force. We recognised, of course, that actual and perceived emergencies might require urgent legislative measures which could not be published or scrutinised in the usual manner. We expressed some concern, however, that even retrospective scrutiny sometimes appeared inadequate. As the pandemic progressed, while some situations of urgency might have required urgent action, the arguments for late publication and lack of scrutiny diminished.

There are jurisprudential arguments about whether law that is not sufficiently accessible is truly law at all. Our concerns, however, have also related to practical considerations as well as essential safeguards against poorly drafted law or even mistakes (for example, initially failing to exclude under 18s in Scotland from the reach of fixed penalty notices).

After all, how are the police and public supposed to proceed with any certainty when significant changes are introduced without adequate notice?

Time should be made for adequate scrutiny - beforehand if at all possible and, failing that, as soon after introduction as is practicable. Inadequate scrutiny leads to errors and bad law. Impact assessments are also important. These too should be completed before any action is taken where possible but certainly afterwards. They too have been given insufficient attention over the last two years.

Time should also be allowed for dissemination and training.

Without such basic safeguards, the increased scope for good faith errors by the police and public is obvious.

Given that the range of legislative options is not entirely unlimited, where a future public health crisis was anticipated, it might be that a suite of measures could be debated and scrutinised in advance which could then function as a drop-down list of restrictions to be introduced as and when required in the event of a future emergency. This would allow for a degree of pre-scrutiny to be followed after implementation by more thorough scrutiny in light of implementation.

POLICE DISCRETION – COMMON SENSE, COURTESY AND THE 4 “Es”

We repeatedly emphasised the central importance of operational independence and discretion on the part of Police Scotland.

There were situations where the police might have acted in different ways, for example, in the approach to protests and assemblies where, often, the right to freedom of assembly was prioritised, rightly in our view, over the strict application of emergency Coronavirus regulations. It is right that the police should continue to have the space in which to consider a range of responses. Specific police action should never be dictated by Government direction or opinion polls.

Our engagement with divisional commanders offered assurance about the depth of essential human rights awareness when making critical policing decisions, for example, around assembly and protest.

Early in the pandemic, the Chief Constable summarised the policing approach when he suggested that it was a combination of courtesy, compassion and common sense. This was articulated more fully in the 4 Es approach mentioned

above. Our detailed work on the data supplied to the IAG by Police Scotland confirmed that enforcement represented only a small percentage of policing activity related to the pandemic, with most of it covered by the first three Es. This assisted us in our ongoing assessment that the policing of the pandemic was proportionate, through appropriate use of discretion.

DATA - OPTICAL AND CVI SYSTEM

It was fortunate for our work that Police Scotland had the foresight to put in place special arrangements for recording, sharing and disseminating data. This provided us a significant source of the most up-to-date evidence to assist in our assessments regarding proportionality.

The establishment of the OpTICAL group (Operation TALLA Information, Assurance and Liaison Group), was crucial to our work. OpTICAL was chaired by Assistant Chief Constable Gary Ritchie and provided significant additional input to the IAG.² It provided a conduit for the flow of information from Police Scotland to the IAG. It served to support Divisional Commanders in their operational approach by providing analysis and strategic oversight of information, intelligence and data.³ Membership of OpTICAL comprised a range of officials from Police Scotland, the Authority, HMICS, two academics, and the Chair of IAG. In all, four members of OpTICAL were also members of the IAG - an arrangement which enabled effective liaison between the two groups.

The data sources available to – and analysed by – OpTICAL were wide-ranging, and included: (i) the Coronavirus Intervention (CVI) system which was set up immediately the pandemic started,⁴ and which records all pandemic-related policing activity, from low-level dispersal through to enforcement using Fixed Penalty Notices (FPN) and arrests. It includes information about numbers and types of illegal house gatherings, breaches of coronavirus travel restrictions, and quarantine referrals following foreign travel; (ii) a detailed spreadsheet containing details of all FPN issued by Police Scotland and key demographic characteristics of the individuals to whom fines were issued; (iii) a bespoke online reporting system introduced by Police Scotland on 18 December 2020 to enable members of the public to report alleged breaches of COVID-19 legislation; and (iv) information about the views of police officers within Police

² The group arranged for a Data Protection Impact Assessment to be conducted, and put in place Information Sharing Protocols to ensure that all legal requirements for handling this sensitive data were fully met.

³ The OpTICAL group also coordinated both internal and external demands for information.

⁴ Police Scotland had learned from its previous work on Stop and Search that measuring and recording information about all interactions (including low-level interactions) between the public and the police was vital for monitoring and scrutiny of police activity

Scotland about the experience of policing the pandemic, based on interviews conducted by HMICS in June 2020 and April 2021.⁵The analysis and insight generated through the work of the OpTICAL group were fed straight through into the IAG.

At OpTICAL and in the IAG, we were, of course, very lucky to have the additional assistance of Professor Susan McVie whose reports on data analysis added real weight and value to the work of the IAG.

ENFORCEMENT vs SUPPORT

Another theme in our work, echoed in statements by the First Minister, the Chief Constable and others, is the need to support people to enable adherence to significant restrictions as opposed to merely using enforcement against those who breach regulations. We know that the pandemic hit hardest many of those living in poverty or otherwise struggling with the effects of inequality. Money spent in increased support is often likely to be more effective than any attempt to enforce the way through the rest of a future pandemic.

The role of Police Scotland, in line with its statutory purpose, in improving the safety and well-being of persons, localities and communities in Scotland allows this softer but critical focus which is not centred on enforcement.

CONCLUSION

In our work, we were able to engage with individuals and all key organisations involved in policing in Scotland. Trusted relationships were developed, even where challenging conversations took place when necessary. Our work as a whole reflects a confidence and maturity in policing in Scotland, as does the fact that the idea for the IAG came from within policing.

It was a privilege for me to be asked to chair this Group and to work with my impressive colleagues. All of them contributed to our discussions and reflections. I am grateful to them all.

I must also record my appreciation for the outstanding support and other contributions of the Authority in supplying us with our wonderful secretariat. Fiona Miller, Jennifer Blackwood and John McCroskie all contributed significantly to our work. I wish to make special mention of Eleanor Gaw with

⁵ A public portal was also set up by SPA on Citizen Space in June 2020. This enabled members of the public to provide feedback on their views and experiences of the policing of the pandemic. This information was fed directly into the IAG but was also available for consideration by OpTICAL.

whom I worked closely to make sure that the IAG worked effectively. Eleanor's contribution was a key factor in the success and smooth running of the Group. The Authority's support also included a free exchange of ideas and information and providing the Citizen Space facility which supplied in-depth views and sharing of experience from members of the public.

Beyond these few additional pages, I am happy that the work of the IAG is fully recorded in the reports, letters and minutes which are still available on the Authority's website.

Yours sincerely,

John Scott

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Chair, Independent Advisory Group on Police use of Temporary Powers
Relating to the Coronavirus Crisis