

Meeting 21 May 2021 13:00

Members attending:

John Scott QC, Solicitor Advocate (Chair)
Bruce Adamson, Children and Young People's Commissioner Scotland
Ephraim Borowski, Chair of the National Independent Strategic Advisory Group
Gill Imery, HM Chief Inspector of Constabulary in Scotland (HMICS)
Dr Elizabeth Kelly, Associate Carnegie UK Trust
John Logue, Deputy Crown Agent Operational Support, COPFS
Naomi McAuliffe, Programme Director Scotland, Amnesty International
Professor Susan McVie, University of Edinburgh
Diego Quiroz, Scottish Human Rights Commission
ACC Gary Ritchie, Police Scotland
Brian Scott, Glasgow Disability Alliance
Barry Sillers, Deputy Chief Executive, Strategy and Performance, SPA
Chief Superintendent Mark Sutherland

Apologies:

Aamer Anwar, Solicitor and Human Rights campaigner
Tressa Burke, CEO Glasgow Disability Alliance
Maria Galli, Children and Young People's Commissioner Scotland
Chief Superintendent Linda Jones
Deputy Chief Constable Will Kerr, Police Scotland

Also in Attendance:

Adam Wagner, Human Rights Barrister

Secretariat:

Deborah Christie, SPA
Eleanor Gaw, SPA

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1. Welcome and introductions

The Chair welcomed attendees. Apologies were noted as above.

2. Note of the previous meeting and matters arising

The group noted the minute of the meeting held on the 14th May 2021.

3. Human rights and policing of the pandemic. Discussion with Adam Wagner, Human Rights Barrister

The Group welcomed Adam Wagner to the meeting. Mr Wagner provided a summary of some of the impacts on policing in England and Wales during the pandemic, in which he had been involved from a Human Rights Law point of view.

A number of specific areas were further explored. These included the challenges of respecting the right to protest whilst observing the temporary coronavirus regulations; matters of public safety; and barriers to challenging decisions and protesting, including the significant cost implications for individuals or groups.

Overall, policies in Scotland and in England and Wales had been almost identical but with slightly stricter timelines in Scotland where regulation had tended to come in earlier and be lifted slightly later.

Adam referenced the glut of coronavirus related legislation, with Hansard referencing 434 coronavirus related statutory instruments laid before parliament, and shared a table illustrating the Covid-19 lockdown regulations. He outlined the process by which emergency legislation had been passed, with new powers put in place without prior parliamentary debate or opportunity for scrutiny or amendment, and, in some instances, no time for policing to fully understand the new duties before they were in force.

He highlighted 3 issues of particular concern.

- a) The use in England of FPNs to enforce new coronavirus regulations. The Joint Committee on Human Rights has twice called for all FPNs to be reviewed. He indicated that FPNs were designed for use in very different circumstances (for example parking enforcement). He considered that rapidly changing regulation, and confusion between guidance and regulation, may have contributed to a high number of cases failing in England when they get to court.
- b) Getting a case to court early enough to effectively challenge a decision on the basis of human rights has been extremely difficult, and a new process may be required to facilitate this more quickly. This is especially relevant for cases linked to quarantine regulations.
- c) The impact on the right to protest. There has been no specific law or regulation banning outdoor protest, but that has been the effective impact of the health regulations, with protest in effect treated as banned unless there is a specific decision by police to allow it. He referenced the impact of this on Black Lives Matter and the Reclaim the Streets movement.

It was suggested that the devolution settlement may have given a more positive human rights framework for public bodies in Scotland. Group members considered that Police Scotland had evidenced that it took cognisance of human rights and Articles 10/11 in operational decision making during the policing of

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the pandemic. This approach appears to have been less common across police services in England.

Mr Wagner considered that there may be a future requirement to consider a new joint approach across human rights, public health and social rights in the wake of the pandemic.

John Scott thanked Adam for taking the time to attend the IAG and for his valuable insights, and referred group members to Adam's "Better Human" podcast.

4. Policing of public gatherings - Chief Superintendent Mark Sutherland

Chief Superintendent Sutherland provided attendees with an overview of the operational decision making by him and his colleagues in response to the spontaneous protest in Kenmure Street, Pollokshields.

CS Sutherland informed the group that cognisance was taken of the Covid regulations when making operational decisions, but the situation was of a complex nature and taking all elements into account, public safety and Articles 9, 10 and 11 were considered to outweigh other regulations.

CS Sutherland advised that, while the hope had been to resolve the incident locally and by negotiation, this was not possible. The group considered a summary of the Gold Commander's decision making rationale, noting his view that heavy handed policing could have increased already rising crowd tensions and led to disorder and violence. A number of political and high profile individuals had been vocal during the events. Officers engaged community leaders to assist in communicating with the crowd and encourage their dispersal, in particular once the decision had been taken to release the detainees. CS Sutherland emphasised that these operational policing decisions were informed by public order training and experience and were in line with service core values.

In respect of the football related incidents at Ibrox Stadium and various locations in Glasgow city centre, policing plans had been put in place in advance of the day. As the behaviour of the crowd significantly deteriorated in the early evening, the situation was no longer tolerable and a decision was made to bring the George Square gathering to an end. The update covered the crowd demographic, crowd behaviour, public communications and the different tipping points for the actions taken by Police Scotland.

Attendees considered the pre-event communications that had been arranged. These had been more detailed than was the case for previous similar events and had sought to acknowledge the cultural implications of the celebrations.

In response to specific questions regarding Kenmure Street, CS Sutherland explained that Health and Safety had been a very significant consideration. The crowd had grown quickly and there was a real risk of crushing. There were also concerns for the health and well-being of the individuals held in the van for a lengthy period of time as the protest continued.

Any additional officers requested to attend were sent to the rendezvous point of a local police office, often arriving separately in cars or vans from across the city, and as a consequence there was a high number of police vehicles in the area and fewer officers than the number of vehicles would suggest. CS Sutherland refuted any suggestion that the incident was overly resourced. It

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was confirmed that, at no time, was a containment tactic employed for the crowd.

John Scott thanked CS Sutherland for his attendance and for providing a clear explanation of the decisions taken.

5. Data Update

OpTICAL Update/Citizen Space

The group considered an update from Susan McVie on a number of pieces of work that she is progressing on SCTS and COPFS data, which will in due course be reported to the IAG. This will be included with the report to the SPA in June.

It was confirmed that there had been no activity via the Citizen Space platform.

It was noted that the latest data report had been uploaded to Egress with no significant change noted from the previous report.

6. Reporting to the Scottish Police Authority – John Scott

John Scott updated the group that he planned to draft a letter from the IAG to the SPA Board, and this would be shared for comment before being submitted in advance of the Authority meeting on the 26th May 2021.

7. AOCB

Dr Susan Charman from Portsmouth University along with a number of her colleagues and a representative from Hampshire Constabulary will attend the meeting on the 28 May.

Date of next meeting

Friday 28 May 2021 – 13:00 – 15:00