

<b>Meeting</b>	<b>SPA Authority Meeting</b>
<b>Date</b>	<b>26 May 2022</b>
<b>Location</b>	<b>Video-conference</b>
<b>Title of Paper</b>	<b>SPA Chair's Report</b>
<b>Presented By</b>	<b>Martyn Evans</b>
<b>Recommendation to Members</b>	<b>For approval</b>
<b>Appendix Attached:</b>	<b>YES</b> <b>Appendix A: Committee Membership</b> <b>Appendix B: Letter from Chair of IAG: Police Use of Temporary Powers relating to the Coronavirus Crisis</b>

**Purpose**

To update Authority Members on activities carried out by the Chair since the March 2022 Authority meeting.

To recommend for members approval changes to our committee membership.

## **Membership of committees and groups**

Following detailed discussions with all members, I am recommending for approval changes to our committee membership and groups. The revised membership is attached at Appendix A.

The Authority's members bring an impressive diversity of skills and experience to the Board and its Committees. These changes seek to broaden Board members experience of different aspects of oversight, transfer skills and insights to different committees and strengthen our overall resilience.

A series of transition and induction arrangements for members to support the changes are already underway. Subject to members' approval, these changes take effect from Monday 13 June.

I am delighted that Jane Ryder has agreed to remain as the Authority's Vice Chair. Jane will continue to provide support to me and take a non-executive lead on aspects of our corporate governance, Independent Custody Visiting Scheme and our role as 'employer'.

Tom Halpin has also agreed to take on some additional non-executive responsibilities on cross-jurisdictional engagement within the UK; international learning across policing and oversight, and policing policy.

## **Criminal Justice Committee**

I attended the Criminal Justice Committee's roundtable on mental health in policing on 18 May. The Authority along with Police Scotland, HMICS, staff associations and others [submitted evidence to the committee](#) in advance of the session. During the session, we covered the impact of mental health and vulnerability on policing demand as well as the impact on the wellbeing of our workforce. This was a welcome opportunity for a discussion with key stakeholders about the need for a focused whole system response to this issue. There is no doubt that it is right and proper that the police respond to calls for assistance from anyone in distress. There was a general acceptance that the challenge is in directing individuals to the more appropriate professional services that can best meet their needs. Further pragmatic and collaborative discussion on this growing demand will be essential and require partners from across the wider system to contribute in the period ahead.

## **Confidence and Deprivation Steering Group**

The Authority is working with Police Scotland, the Poverty Alliance and stakeholders on a long term project which aims to develop a deeper understanding of the link between lower levels of confidence in policing in

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areas of deprivation. At a recent meeting, the group discussed the geographical areas in which the work will be progressed and the approach being taken to participative action research. The project will work in a number of small geographical communities to understand, and where possible, take action through small tests of change, to overcome barriers to participation and involvement which may improve experience and perception of, and confidence in, policing.

### HMICS

Craig Naylor took up post as Her Majesty's Chief Inspector of Constabulary in Scotland (HMICS) in March. I have met with him on a number of occasions now to discuss a range of issues including his [2022-2025 Scrutiny Plan](#) and current assurance review/thematic inspections. I am also grateful to the Chief Inspector for his recent input to our Audit, Risk and Assurance Committee on 4 May which the Committee Chair has referenced in her report at the next item.

### Independent Advisory Group: Coronavirus powers

As we emerge from the pandemic, the work of the Independent Advisory Group set up to review Police Scotland's use of temporary powers relating to the Coronavirus crisis has come to an end.

I have received a closing letter from Chair of the IAG John Scott, now Lord Scott since his appointment earlier this month as senator to the College of Justice. I attach this at Appendix A.

I would like to offer the Authority's sincere congratulations to John on his appointment. I would also reinforce our gratitude to him and to all the members of the Advisory group who gave of their time, effort and expertise to ensure that the Authority and the public could be properly assured on policing's response to the Covid-19 pandemic.

In addition to the assurance offered by the IAG's regular and detailed reports over the last two years, Lord Scott has highlighted some key considerations for the future, should we find ourselves facing this type of emergency in the future.

To mark the end of this period, the Authority will host a webinar on 4 August on the policing of Covid-19, and lessons learned for the future with key contributions from Police Scotland, partners and academia.

### Violence against women and girls (VAWG) Seminar

Police Scotland reported to the Authority in January about its intention to develop a VAWG strategy setting out how it will contribute to tackling this

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crime in all its forms. To inform the strategy, the Authority and COSLA will co-host a seminar with key stakeholders. Michelle Miller, Chair of the Policing Performance Committee will co-host the seminar on behalf of the Authority on Tuesday 28 June at Tulliallan Castle. The agenda has been well developed with Police Scotland and COSLA, and work is currently ongoing on the invitation list to ensure that the right mix of stakeholders are invited. Police Scotland's strategy will be reported to an Authority meeting later this year.

### **Association of Police and Crime Commissioners (APCC) – AGM**

The Authority joined the APCC as an Associate member on 1 April 2022. The APCC is a national body which represents Police and Crime Commissioners and Combined Police Authorities in England and Wales. It provides policy support on policing issues, legislation and governance; shares best practice and promotes collaboration; and facilitates leadership and policy events.

I was invited to attend and contribute to the APCC's Annual General Meeting in London in late April. This was well attended by Police and Crime Commissioners from across England and Wales. I was asked to speak about policing and governance in Scotland which was well received and I look forward to further engagement on governance and support for policing in the year ahead.

### **Police Foundation Seminar**

I attended the final 'Policing in the 21<sup>st</sup> Century' Seminar organised by the Police Foundation, SIPR and the CGI Scotland in Glasgow at the end of April. Six seminars were organised in Scotland to inform the [strategic review](#) conducted in England and Wales by Sir Michael Barber. This final session focused on the recommendations and next steps from the review.

### **RECOMMENDATION**

To update Members on activities carried out by the Chair since the March 2022 Authority meeting.

To seek Members approval for changes to committee membership as outlined at Appendix A.

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**Appendix A - Recommended Membership to Committee and Groups**

<b>Audit, Risk and Assurance Committee</b>  Mary Pitcaithly – Chair Paul Edie Katharina Kasper Grant Macrae Catriona Stewart	<b>Complaints and Conduct Committee</b>  Alasdair Hay – Chair Grant Macrae Catriona Stewart Fiona McQueen Paul Edie
<b>Exceptional Circumstances Committee</b>  Martyn Evans – Chair Jane Ryder Tom Halpin Mary Pitcaithly	<b>Forensic Services Committee</b>  Paul Edie – Chair Katharina Kasper Caroline Stuart Fiona McQueen Jane Ryder
<b>Legal Committee</b>  Jane Ryder – Chair Caroline Stuart Catriona Stewart Grant Macrae Michelle Miller	<b>People Committee</b>  Fiona McQueen – Chair Alasdair Hay Michelle Miller Paul Edie Tom Halpin
<b>Policing Performance Committee</b>  Michelle Miller – Chair Katharina Kasper Alasdair Hay Mary Pitcaithly Tom Halpin	<b>Resources Committee</b>  Grant Macrae – Chair Katharina Kasper Alasdair Hay Catriona Stewart Caroline Stuart
<b>Police Negotiating Board</b>  Jane Ryder Fiona McQueen Caroline Stuart	<b>COP26 Oversight Group</b>  Tom Halpin - Chair Jane Ryder Michelle Miller
<b>Scottish Railways Policing Committee</b>  Tom Halpin Mary Pitcaithly	

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 Es<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> The OpTICAL group also coordinated both internal and external demands for information.

<sup>4</sup> 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.<sup>5</sup>The 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

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<sup>5</sup> 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*

John Scott QC, Solicitor Advocate  
Chair, Independent Advisory Group on Police use of Temporary Powers  
Relating to the Coronavirus Crisis