

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 May<sup>1</sup>.

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

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<sup>1</sup> <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 Study<sup>2</sup> 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 report<sup>3</sup>, 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 Government<sup>4</sup> which is broadly consistent with some of the findings of the UCL study.

Police Scotland continue to publish enforcement data<sup>5</sup> on a weekly basis which is drawn from the CVI system<sup>6</sup>. This demonstrates continuing

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<sup>2</sup> <https://www.covidsocialstudy.org/>

<sup>3</sup> [https://b6bdcb03-332c-4ff9-8b9d-28f9c957493a.filesusr.com/ugd/3d9db5\\_e381fd8742d247bdb6f5ab8eda4b9cc5.pdf](https://b6bdcb03-332c-4ff9-8b9d-28f9c957493a.filesusr.com/ugd/3d9db5_e381fd8742d247bdb6f5ab8eda4b9cc5.pdf)

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

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

<sup>6</sup> 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
<b>Total</b>	<b>94576</b>	<b>29693</b>	<b>4774</b>	<b>16951</b>	<b>969</b>	<b>939</b>
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 group<sup>7</sup>, 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.

<sup>7</sup> 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>  
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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 restriction<sup>8</sup> 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 Parliament<sup>9</sup>, 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)<sup>10</sup>, 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:

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

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

<sup>10</sup> <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 Reference<sup>11</sup>.

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

Yours sincerely

*John Scott*

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