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| Meeting | Authority Meeting |
| Date | 30 June 2021 |
| Location | Video Conference |
| Title of Paper | Impact assessment of the work of the Independent Advisory Group: Independent report jointly commissioned by the Scottish Police Authority and Police Scotland |
| Presented By | DCC Will Kerr, Local Policing. Followed by panel discussion with John Scott QC, SPA Chief Executive, Deputy Chief Constable – Local Policing and Simon Anderson, Consultant Will Kerr , DCC Local Policing |
| Recommendation to Members | For Discussion |
| Appendix Attached | Yes Appendix A - Independent Advisory Group Review Appendix B - Independent Advisory Group Review Executive Summary |

PURPOSE

The purpose of this paper is to provide the board with an overview of the independent review of the 'Independent Advisory Group: Coronavirus Powers' (IAG).

Members are invited to discuss the contents of this report.

1. BACKGROUND

- 1.1 In March 2020, in the context of the Coronavirus pandemic and the imposition of the restrictions of freedom, introduced by the UK and Scottish Governments, the Chief Constable and the SPA agreed to establish an Independent Advisory Group (IAG) to provide additional, human rights based, scrutiny of the use of the new emergency powers by Police Scotland. This was supported by the SPA, and the group was set up in April 2020.

In March 2021, the SPA and Police Scotland jointly commissioned Simon Anderson Consultancy to review the work of the IAG, specifically in terms of how the group was established and operated, the impact of the group and lessons learned from it.

The final report and an executive summary are attached to this paper, appendices A and B, respectively.

2. CONTEXT

- 2.1 In April 2020, John Scott QC Solicitor Advocate, who had experience of chairing a number of independent groups and enquiries on behalf of the Scottish Government, accepted an invitation to chair the IAG. Police Scotland and the SPA were represented in the group, with other members who were selected for their knowledge, experience and expertise.

It should be emphasised that at this time, the impact of Coronavirus was unprecedented and its impact could not have been predicted, and the policing of the associated regulations, if not properly executed, could have been regarded as draconian and would have significantly impacted on public confidence in Police Scotland.

The IAG reported regularly to the SPA, and each report submitted to the SPA Board between May 2020 and May 2021, concluded with an assurance that the IAG was satisfied that Police Scotland's use of powers was compliant with human rights principles and legal obligations.

2.2 FINDINGS OF THE REVIEW

The Review confirmed that the IAG provided significant benefits to both the public scrutiny of (via the SPA) policing at a time of unprecedented national crisis, and also the real time transparency of, and community and interest groups input into, police policy and operational decision making. It concluded the impact and added value included the following:

- **Scrutiny and assurance** – membership of the IAG was deliberately constructed to include critical voices from human rights, social justice and third sector organisations. No member reported feeling constrained in terms of the group. The Chair, John Scott QC, had a reputation for independence and advancement of a rights based agenda. His skills and approach, as Chair, were critical.
- **Benefits to Police Scotland and the SPA** - the IAG provided both organisations with added confidence that early decisions made about the direction, focus and tone of policing were consistent with human rights, and the values and principles associated with policing by consent. On behalf of Police Scotland, it reviewed specific events such as Black Live Matters and Rangers FC celebrations, and its independence was critical in supporting the SPA's own assessment and in maintaining the confidence of the public and civil society groups.
- **Broader impacts and unforeseen circumstances** – the formation of the IAG has led to the establishment of new networks and working relationships. Less predictable benefits attributable to the IAG include accelerating amendments the original emergency legislation (regarding the issuing of FPNs to those aged 16-17yrs), and facilitating the development of new funded research using Police Scotland data.

2.3 REFLECTIONS AND LESSONS LEARNED

Given this was the first group of its type, internationally, it is important that a critical eye was cast over its function to ensure lessons are learned for any future iterations, whether in Scotland, or elsewhere. The Review highlighted the need to ensure that the value and utility of this IAG, whilst a bespoke group established for a defined purpose, was embedded into the thinking and mind-set of both Police Scotland and the SPA. In particular, the critical value of a broad range of human rights based informed challenge to and, where appropriate, advocacy for policing cannot be overstated. The challenge now is to mainstream this participatory thinking.

The choice of Chair and the Secretariat (provided by the SPA) have been specifically highlighted by the Review as being critical to the success of the group. The development of positive working relationships built between members led to improved information sharing and scrutiny.

3. FINANCIAL IMPLICATIONS

3.1 There are no financial implications.

4. PERSONNEL IMPLICATIONS

4.1 There are no personnel implications.

5. LEGAL IMPLICATIONS

5.1 There are no legal implications.

6. REPUTATIONAL IMPLICATIONS

6.1 The establishment of this bespoke IAG, only a few weeks into the COVID-19 pandemic, was a significant risk for Police Scotland and the SPA, given the then uncertainties about the length of the pandemic, or the extent of the accompanying legislative restrictions on public life. As the paper highlights, the benefits of a transparent, open and fully engaged style of policing cannot be overstated.

7. SOCIAL IMPLICATIONS

7.1 There are no social implications.

8. COMMUNITY IMPACT

8.1 Despite the introduction of legislation significantly restricting on the lives of the public, there has been a 9% increase in public confidence since pre-pandemic. The IAG has played a significant role in maintaining, and indeed improving, community confidence.

9. EQUALITIES IMPLICATIONS

9.1 There are no equalities implications.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environment implications.

RECOMMENDATIONS

Members are requested to discuss the content of this report.

OFFICIAL

'The very process was the prize'

A review of the work of the
Independent Advisory Group

Simon Anderson and Jennifer Waterton

OFFICIAL

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1. Introduction

“Back in March 2020, there was a serious concern. You give draconian powers to a police service: can you maintain public consent and require those regulations to be enforced? Nobody knew the answers to that. [The Chief Constable] said ‘Let’s invite these people into a space to share this dilemma with us.’ Not to shout across the divide, but actually be in discussion with the commanders making these decisions.” SPA interviewee

In response to the extraordinary and unprecedented circumstances of the coronavirus pandemic, the UK and Scottish Governments imposed the most comprehensive restrictions on freedom of movement ever experienced by UK citizens. Applying these new regulatory powers in a way which balanced individual human rights with the safety and security of citizens presented policing with a hugely complex, sensitive and unparalleled task.

In the context of this unique set of circumstances and challenges, the Chief Constable of Police Scotland, Iain Livingstone, proposed the establishment of an Independent Advisory Group (IAG) to provide additional, human rights-based scrutiny of the use by police of the emergency powers in Scotland and to support efforts to safeguard the covenant between the public and the police during the period of the crisis. The intention was for this group to complement existing scrutiny arrangements and, specifically, to feed into the work of the Scottish Police Authority (SPA) – the primary oversight body for policing in Scotland¹ – which agreed to host and support the new group. The resulting exercise built on experience of previous independent advisory groups in policing in Scotland and elsewhere, but also had a number of unusual – if not unique – features, including the breadth of its membership, the frequency with which it subsequently met, and its access to Police Scotland data through the establishment of a bespoke group named OpTICAL.

The aim of this report is to tell the story of the work of the IAG (including the work of OpTICAL), to describe the ways it has impacted on the policing of the pandemic in Scotland, and to identify emerging lessons and learning for the future.

¹ Although the SPA has primary responsibility for such oversight, Her Majesty’s Inspectorate of Constabulary Scotland (HMICS), the Police Investigations & Review Commissioner (PIRC) and Audit Scotland (amongst others) also play an important role.

2. Background

The institutional context of policing in Scotland at the beginning of the pandemic

Since 2013, Scotland has had a single national police force – Police Scotland – which resulted from the merger of the eight existing regional forces. In terms of numbers, it is the second largest police force in the UK (after the Metropolitan Police) and the largest in terms of territorial coverage. It is held to account and supported by the Scottish Police Authority, a public body of the Scottish Government, established at the same time as the single force and comprising up to 15 members (including a Chair) appointed by Scottish Ministers through a public appointments process.

The new arrangements had a difficult start, with several changes of leadership within Police Scotland and the SPA and some well-publicised tensions in the relationship between the two organisations. In recent years, however, the benefits of the single force have been more fully realised; and there has been greater stability of leadership within Police Scotland, facilitating the development of a joint SPA/Police Scotland Strategy for Policing (2020)² (involving an explicit commitment to a rights-based approach) and a maturing relationship with the SPA.

The responsibility of the SPA to provide effective oversight and scrutiny of policing in Scotland was heightened by the introduction of the temporary powers in response to COVID. The establishment of the IAG represented one important aspect of the additional oversight activity during this period. However, it was not the only addition. The SPA also commissioned regular opinion polls to monitor public confidence in the policing approach during the pandemic, and was proactive in considering wider inputs and evidence.

What is an IAG?

The first Independent Advisory Groups in British policing were introduced by the Metropolitan Police around the turn of the millennium: an IAG for ‘visible minority groups’ was established in the run-up to the publication of the report of the Stephen Lawrence inquiry in 1999, and a Lesbian, Gay, Bisexual and Transgender Advisory Group was set up in February 2000 in the wake of the bombing of the Admiral Nelson pub in Soho. Within five years, according to one report, four-fifths of forces in England & Wales had established force-wide IAGs of some kind and, in 2011, guidance on the role, function and governance of IAGs was issued by the Association of Chief Police Officers (ACPO).^{3,4} By 2020, IAGs were

² <https://www.spa.police.uk/spa-media/aqmailw/joint-strategy-for-policing-2020-v10-spa-amendment.pdf>

³ See, Dixon B. (2020) 'Who Needs Critical Friends? Independent Advisory Groups in the Age of the Police and Crime Commissioner', *Policing*, 14(3), pp. 686–697.

⁴ <https://library.college.police.uk/docs/appref/independent-advisory-groups-iag-guidance-revised-september-2011.pdf>

a common feature of policing south of the Border, with some forces operating groups both at force-level (centred on particular groups) and within local areas.

In Scotland, the terminology of IAGs has been deployed more sparingly and in rather different ways. Although there have been some community-focused groups, in general, IAGs have been deployed at a national level to consider specific aspects of policing, often retrospectively. Perhaps the best known of these was the Independent Advisory Group on Stop and Search, which reported in 2015. Other examples have included a review of police use of biometric data and associated technologies, which reported in 2018, and the ongoing National Independent Strategic Advisory Group (NISAG), which provides independent advice on equality and diversity issues on all aspects of Police Scotland's activities.

IAGs in policing are not a single thing, then, but constituted for different purposes, across different geographies, with highly diverse memberships. Some comprise broadly-based engagement and consultation mechanisms, while others are tasked with examining or monitoring a specific aspect of policing. Some are designed as short-life or retrospective reviews, others as prospective or open-ended in character. While such groups are often established by the police themselves, on occasion they are commissioned by central government or the relevant police authority.

There was, then, little in the way of established best practice for this exercise to draw on, nor any previous set of circumstances that remotely paralleled the challenge of policing the pandemic. As such, the very use of the term 'IAG' was in some respects pragmatic – it was 'a useful lexicon' as one interviewee put it. The group that was established built on aspects of previous experience but also had bespoke and – given the urgency of the situation – necessarily improvised features. These are described more fully in Section 3.

About the review

With the arrival of the COVID-19 vaccines and the potential end of the pandemic, Police Scotland and the Scottish Police Authority jointly commissioned a review of the work of the IAG. The idea was to 'tell the story' of the IAG based on analysis of relevant documentation and interviews with key stakeholders, comprising the Chair and members of the IAG (and OptICAL) and representatives of the SPA and Police Scotland. This was not a formal evaluation and the views of wider (external) stakeholders were not sought or included. The review was conducted by two independent consultants, Simon Anderson and Jennifer Waterton, over a 6-week period in March and April 2021.

3. Overview of the work of the IAG

This section provides a brief overview of the establishment, operation and work of the group. Additional information relating to the IAG – including its membership and full Terms of Reference – is contained in the appendices.

Establishing the group

On 9 April 2020, just over two weeks after the Coronavirus Act 2020 received Royal Assent – and following extensive discussions between the Scottish Police Authority and Police Scotland – it was announced that an Independent Advisory Group (IAG) had been established ‘to provide independent scrutiny of how officers and staff are applying new legislation’.⁵ The broader rationale for the IAG was that the statutory governance and oversight arrangements for Police Scotland – provided on an ongoing and permanent basis through the SPA – required bolstering in the light of the exceptional powers to restrict the freedoms of the public given to the police under the new legislation. It was suggested that an IAG could provide a dynamic forum for discussion and advice, as well as the additional human-rights based scrutiny required for these exceptional circumstances.

John Scott QC Solicitor Advocate was invited to chair the group. A well-known and widely respected figure within policing, human rights and legal circles, he had previously chaired a number of independent groups and reviews at the behest of the Scottish Government – including those on Stop and Search (2015), the use and retention of biometric data (2018), and the policing of the miner’s strike (2020).^{6,7,8}

The purpose of the IAG, its proposed reporting arrangements, membership and administration were extensively discussed between Police Scotland and the Interim Chair of the SPA, David Crichton. It was agreed that the secretariat for the group would be provided by the SPA in order to maintain an element of independence from operational policing. In terms of accountability, it was agreed that the group would report regularly and directly to the SPA.⁹

The Cabinet Secretary for Justice in the Scottish Government welcomed the establishment of the IAG, saying that it would “ensure that the use of these important emergency powers

⁵ <https://www.spa.police.uk/news/human-rights-lawyer-to-assess-use-of-new-emergency-police-powers/>

⁶ <http://scottishpolicesupers.org/wp-content/uploads/2015/09/advisory-group-on-stop-and-search-report.pdf>

⁷ <https://www.gov.scot/publications/report-independent-advisory-group-use-biometric-data-scotland/>

⁸ <https://www.gov.scot/groups/independent-review-policing-miners-strike/>

⁹ The appointment of John Scott QC Solicitor Advocate as Chair of the IAG was also agreed with the Scottish Government’s Cabinet Secretary for Justice

by Scotland’s police officers are subject to independent review by a highly-regarded expert in human rights. This will complement the statutory scrutiny that the independent HM Chief Inspector of Constabulary for Scotland and the Scottish Police Authority are bringing to this issue.”¹⁰

The primary purpose of the group was identified as being to provide additional assurance to the public about the proportionality, necessity and fairness of any use of the new emergency powers. This was encapsulated and expanded in draft terms of reference which identified both the powers which would be considered by the group as well as those aspects of policing which would be out-of-scope for the group.¹¹

In establishing the group, it was agreed that there was a need for the group to be a manageable size, and for it to contain diverse voices, including contrarian or critical ones. (As an interviewee from Police Scotland put it: “There’s no point in having an IAG if it’s just voices that agree with you.”) It was therefore decided that a membership of around 12-15 individuals would be appropriate, with membership drawn from human rights bodies, third sector agencies and charities – especially those concerned with marginalised or disadvantaged groups, and academia, as well as from Police Scotland itself and bodies involved in the oversight of Police Scotland. Members from non police-related organisations were to be invited to participate as individuals in their own right, rather than as representatives of their organisations; however they would be expected to act as ‘conduits’ or ‘channels’ into and out of the various networks with which they and their organisation were associated. By contrast, the group also involved organisational representation from within Police Scotland, the SPA, and other parts of the criminal justice system.

Members were thus approached directly based on their own individual knowledge and expertise, with no formal process of selection, and the invitations were, at least to some degree, based on pre-existing working relationships and partnerships. In the event, all those who were contacted agreed to take part – a recognition of the fundamental importance of the issues involved. As one interviewee put it: “I don’t think that this group would have got together under any other circumstances [...] But this was so unusual, so exceptional that they all signed up.” (The implications of that ‘exceptionalism’ for future exercises is returned to in Section 5.) The full membership of the group is presented in Appendix 1.

¹⁰ <https://www.spa.police.uk/news/2020/human-rights-lawyer-to-assess-use-of-new-emergency-police-powers/>

¹¹ The powers to be considered covered the powers to: (i) take someone home or take them to be tested if they were thought to be infectious; (ii) restrict people’s rights to move around in public or be part of a gathering; and (iii) close a wide range of non-essential businesses. The powers not in-scope ensured that there was no conflict of interest between the work of the IAG and the role and function of the Lord Advocate.

Workload and work plan

The first meeting of the IAG was held on 16 April 2020, at which the draft terms of reference were discussed with the group, and a final version subsequently agreed.¹² Between 16 April and 10 July 2020, the IAG met twice a week (Monday and Friday). From 17 July 2020 onwards, meetings were held weekly (on a Friday).

The meetings in April, May and June were audio-only using secure telephone lines; from July 2020 onwards, meetings were held by video link using Microsoft (MS) Teams. Meetings lasted for between an hour and a half and three hours.

The terms of reference for the IAG were 'translated' into a programme of work which has evolved over time. The main elements of this involved: (i) identifying, developing, collating, presenting, discussing and considering a wide range of evidence sources (including both internal sources, and external expertise) which contribute to the development of understanding and insight into the use of the new emergency powers by the police; (ii) developing, publicising and promoting routes into the IAG via the wide range of professional and community networks which IAG members have access to, as well as via the public portal established by the SPA; and paying particular attention to disadvantaged and marginalised groups, and 'seldom heard' voices; and (iii) communicating with, informing, and advising a wide range of stakeholders (including the Scottish Government, third sector organisations, and the general public) about aspects of the use of the new emergency powers by the police. This last element included attendance at and participation in a range of formal and informal meetings and networks.

The work programme was underpinned by the requirement at all times to focus on the human rights implications of the use of the temporary powers.

Individual members provided input to the IAG by contributing to the discussion at meetings, by preparing and presenting written briefings from their individual and / or organisational standpoint, by facilitating access to their many and varied networks, and in some cases by initiating, conducting and reporting on data collection exercises within their own organisations and networks.

The agenda for IAG meetings involved a mix of recurring and ad hoc items in response to current events. The latter were raised by individual members, emerged from consideration of current data or were prompted by media coverage or political controversy. In one

¹² See Appendix 2 for the agreed terms of reference for the IAG

specific case, the Chief Constable asked the group to consider the policing of the celebrations by Rangers fans following the club's league title win.¹³

As noted above, the secretariat for the IAG was provided by staff from the SPA and played a critical role not only in relation to basic administrative tasks, but the management of the agenda for the group, facilitation of links to the SPA board and co-ordination of input from stakeholders and external experts.

The OpTICAL group

It was acknowledged from the outset that the IAG would require access to up-to-date information about the policing of the pandemic to support discussions about the proportionality and appropriateness of the police response.

It was known that access to Police Scotland data could prove difficult and time consuming, and that requests were often declined. To mitigate this and facilitate access in the context of COVID, a second group, named OpTICAL (Operation TALLA Information, Assurance and Liaison Group)¹⁴, was established. The group was chaired by Assistant Chief Constable Gary Ritchie and provided significant additional input to the IAG.¹⁵

The OpTICAL group met weekly from 20 April 2020 (i.e., its inception coincided with the inception of the IAG) and 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 (a wide range of sources of) information, intelligence and data.^{16,17} Membership of OpTICAL comprised a range of officials from Police Scotland and some of its oversight bodies, 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

¹³ In a statement on 9 March 2021, Chief Constable Iain Livingstone said: "I have asked Mr Scott to consider the events of the weekend at the next scheduled IAG meeting on Friday, 12 March, having regard to the fundamental human rights principles of legality, necessity and proportionality, and to consider any relevant issues for the policing of future events over the coming months."

¹⁴ Operation TALLA is the name for Police Scotland's response to COVID-19.

¹⁵ 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.

¹⁶ See Appendix 3 for the terms of reference for OpTICAL

¹⁷ The OpTICAL group also coordinated both internal and external demands for information.

pandemic started,¹⁸ 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 Scotland about the experience of policing the pandemic, based on interviews conducted by HMICS in June 2020 and April 2021.¹⁹,²⁰ The analysis and insight generated through the work of the OpTICAL group were fed straight through into the IAG.

The protocols and relationships established through OpTICAL allowed Police Scotland to adapt the information it provided to the group in response to changes in legislation and changes in the incidence and prevalence of COVID-19, and also in response to specific noteworthy or newsworthy incidents. As the group matured, Police Scotland became more proactive in identifying relevant information to present to OpTICAL. The weekly reports provided not only statistical data, but also commentary around spikes or drops in policing activity which were then interrogated and discussed further by the group.

Professor Susan McVie of the University of Edinburgh (and a member of both the IAG and OpTICAL) worked closely with Police Scotland to produce additional analysis, based on a wide range of policing data sources, to inform discussion at both groups and within the SPA Board. At the end of June 2020, she and her team produced a report which used CVI data to examine the pattern of police intervention during the time of the initial lockdown. The report included additional analysis of data on resource deployment, recorded crimes / incidents and police complaints. The analysis showed, for example, that: (i) fewer than one in ten of the police interventions during this period related to enforcement; (ii) following an initial period where there was substantial variation across different (geographic) divisions in the use of powers, over time practice converged and powers were used in a fairly consistent way across the whole of Scotland; and (iii) there was no significant change in the number of

¹⁸ 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

¹⁹ As of 20 April 2020, (i) the most recent figures from the CVI System (Monday 5 April – Sunday 11 April) shows 2,236 interventions in total, including 403 FPNs and 7 arrests; (ii) the online system has received 25,871 reports of COVID-19 breaches from members of the public; (iii) Citizen Space portal has received 102 responses (reported on 19 February 2021); and (iii) 54 policer officer and others within Scotland were interviewed in June 2020, with a further 32 interviews scheduled to be conducted commencing w/c 26 April 2021.

²⁰ 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.

official complaints received by Police Scotland during this early phase of the pandemic. Over the following months, Professor McVie updated the CVI analysis to inform the discussions at OpTICAL meetings and to support the selection of divisions and sub-divisions for in-depth police officer interviews.

Whilst intervention and enforcement information was available through the CVI database, Police Scotland also sanctioned the provision of FPN data. Significant input from both Police Scotland and university staff was required to prepare and clean these data, which were subsequently used to examine patterns in the issuing of FPNs across ethnic, age, and socio-economic groups. Professor McVie produced two detailed reports about the use of FPNs during the initial wave of the pandemic which showed that: (i) a tiny proportion of the public had received a FPN and the vast majority of people in receipt of an FPN received only one; (ii) the age and sex profile of FPN recipients was not dissimilar to that for other groups known to have had police contact; and (iii) a higher than expected proportion of FPNs were issued to people with a prior criminal history and those living in more deprived parts of Scotland. These findings were discussed extensively by both OpTICAL and the IAG.

Additional academic input and expertise was provided to OpTICAL by Dr Liz Aston, Director of the Scottish Institute for Policing Research, (who has been closely involved in a range of relevant debates in recent years, including those relating to stop and search, local policing and new technologies) and by Dr Megan O'Neill, Associate Director of SIPR.

The OpTICAL group also provided an opportunity to consider operational guidance and training documents, including Children and Young Person (CYP) and Autism Disabilities guidance, COVID National Equality and Human Rights Impact Assessment (EQHRIA), Community Impact Assessment (CIA) and CYP Impact Assessment. OpTICAL also served to provide consideration, reflection and discussion on topical matters such as the policing of protests and public assemblies through the pandemic, the use and impact of online reporting and a review of the context of the use of force. The group frequently hosted divisional commanders and policing specialists to inform and facilitate these discussions.

Wider professional input and expertise

A wide range of external advisors and experts were also invited to participate in IAG meetings. Contributors included: Scottish Government statisticians and analysts; academics with expertise in policing, policing research, behavioural science and social psychology; senior police officers involved in police improvement initiatives and other developments; and an individual who acted as a human rights advisor to the Police Service of Northern Ireland.²¹ These expert contributions played an important role in enabling IAG members to

²¹ See Appendix 4 for a list of all the external contributors to the IAG.

engage with the widest possible understanding of all the (potential) ramifications of the pandemic for policing and the use of the new emergency powers.

The group heard frequently and directly from members of the executive team within Police Scotland and Divisional Commanders from different parts of the country – often in relation to local developments or events, such as the policing of the Rangers fans in Glasgow, political protests (such as those relating to Black Lives Matter) or disturbances associated with other large public gatherings (such as those experienced on the Meadows in Edinburgh).

The group was also provided with information about the Scottish public's confidence in policing during the pandemic based on two distinct data collection exercises. First, Police Scotland used its ongoing consultation mechanism 'Your Police' to gather the public's views about policing in their local area during the period April 2020 – April 2021. The consultation included questions about the appropriateness of the police's approach to keeping people safe during the Covid-19 pandemic.²² Second, the SPA commissioned three waves of independent public opinion polling (in April, May and October 2020) to examine public confidence in policing during the pandemic and factors affecting individual's ability to comply with lockdown restrictions. The findings of these exercises prompted discussion at the IAG of, amongst other things, the ways in which barriers to compliance with restrictions could be ameliorated.

Outputs of the IAG

There have been three main types of formal output from the IAG.

First, there have been regular reports to meetings of the SPA Board. Between May 2020 and February 2021, there were seven of these, based on the discussions which had taken place at the weekly (since July 2020) IAG meetings. These reports were drafted by the Chair, and discussed at the IAG meeting immediately preceding the Board meeting, before being finalised. The reports highlight key issues and developments in relation to the Police Scotland's use of the emergency powers, and draw widely on the multiple sources of information and intelligence which have been presented to IAG. In every case to date, the reports have concluded with an assurance that the IAG is satisfied that *'use of 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*

²² The consultation exercise received a total of 36,452 responses during the relevant period.

(Scotland) 2012, and (c) the purpose of the 2020 Act and Regulations, namely safeguarding public health.'

Second, the IAG (or the Chair of the group) engaged in additional correspondence on a range of specific issues. These cover specifically: (i) advice on the wearing of face masks (letter to SPA, July 2020); (ii) commentary on quarantine and border controls (letter to the Cabinet Secretary on Justice, February 2021²³); and (iii) comment on football-related policing in Glasgow (letter to SPA, March, 2021).

Third, the SPA held has held two public webinars on the IAG's work, both chaired by Dr Liz Aston, Director of the Scottish Institute for Policing Research (SIPR). The first was held on 30 July 2020 and featured presentations on the work of the IAG; the evidence in relation to public perspectives of police practice; and children and young people's human rights during the pandemic. The second was held on 5 October 2020 and featured presentations on human rights issues during the pandemic from the Glasgow Disability Alliance, the Children and Young People's Commissioner Scotland, and the Scottish Human Rights Commission as well as a session on an overview of the data and evidence arising from the IAG. In both cases, the Convention of Scottish Local Authorities (COSLA), Community Safety Networks, and other external stakeholders were invited to submit questions to be addressed in the webinars. There were plans to hold a third public webinar in early summer of 2021.

In addition to these 'formal' IAG outputs, a range of other materials were produced by members of the group and 'off table' conversations and connections pursued with a variety of organisations and other audiences. The Chair of the group, John Scott, was extensively quoted in various media and provided oral evidence at the Scottish Parliament to the Justice Subcommittee on Policing on two occasions, in June and November 2020.²⁴ In addition, in his oral report to the SPA Board meeting in May 2020, John Scott explained that it was a meeting of IAG which 'started the conversation' about 16-17 year olds and their status as children under UNCRC which led within a few weeks to the removal of the power to issue Fixed Penalty Notices to these young people.²⁵

²³ Note that this letter was not sent from the entire membership of the IAG; those individuals who work for public sector bodies (in this case, for COPFS, PS and HMICS) were not signatories

²⁴ On the second occasion, he was accompanied by another member of the IAG, Professor Susan McVie.

²⁵ The Children and Young People's Commissioner Scotland initially highlighted an anomaly in the emergency provisions between police powers in Scotland and those relating to England, Wales and Northern Ireland at an IAG meeting.

4. Impact and added value

There is little question, then, that the IAG has been an active, visible and consistent presence within the landscape of Scottish policing throughout the pandemic. What though has been its actual impact and to what extent can it be judged to have been successful in providing independent scrutiny and support of the kind originally envisaged in its terms of reference and by its key stakeholders?

Because the IAG was just one element within a complex and fast-changing situation, it is difficult to isolate its specific or unique contribution. Moreover, at the time of writing, many of the challenges of policing the pandemic remain live. As a result, the impacts of the IAG are still playing out and indeed may continue to do so, in different ways, over the coming months and years. Finally, some of the 'added value' of the group will be found not in easily identifiable or quantifiable changes to behaviours, policies and practices but in the quality of relationships, discussion and debate. The focus here, then, is as much on the creation or enhancement of viable preconditions for - or 'pathways' to - impact as on evidence of direct or immediate change.

The scrutiny and assurance offered by the group

The effectiveness of a public assurance exercise of this kind rests on a number of factors: the real and perceived independence of the group both as individuals and as a collective; the knowledge and perspectives offered by members of the group, individually and collectively; the broader input to the group, in terms of identified issues, evidence and insight; the quality of engagement, deliberation and discussion; and the wider communication of conclusions. The ways in which each of these factors operated within the specific context of the work of the IAG is considered below.

The independence of the group

For the IAG to meet its remit, it had to offer – and be seen to offer – a genuinely independent perspective. Interestingly, the terms of reference for the IAG did not actually seek to define 'independence'. In discussions with members of the group and other stakeholders, however, this was generally understood in terms of: (i) the absence of a direct relationship with either Police Scotland or the SPA; (ii) the lack of remuneration for all individual contributions with the exception of the Chair; and (iii) the ability to act impartially or display 'independence of mind'.

In fact, two of the original members of the IAG – Will Kerr, the Deputy Chief Constable for Local Policing, and Martyn Evans, a board member of the SPA – did not meet the first of these criteria and other members (such as those representing other parts of the criminal

justice process) would probably not be viewed from the outside as wholly disinterested parties. That said, the group clearly did involve representation from a wide range of other organisations that were demonstrably separate from – and have often been critical of – policing and other aspects of criminal justice. The involvement, in particular, of individuals and organisations grounded in human rights, social justice and the third sector was distinctive – as one interviewee put it, “These are people who are not normally engaged with the SPA [...] and that’s the added value”. The Chair of the group was well-known and respected in policing circles, but also had a reputation for independence and the advancement of a rights-based agenda.

Moreover, there was no evidence that individual members of the IAG or the group as a whole felt constrained in terms of their contribution to the group (beyond occasional debate about what did and did not fall within the terms of reference) or to wider debate. For example, in written evidence to the Justice Subcommittee on Policing in February 2021, Amnesty International Scotland endorsed the conclusions of the IAG contained in the reports to the SPA but also made a series of further points, clearly delineating these as additional to and separate from the work of the group itself.²⁶

It should also be noted that the involvement of senior officers from Police Scotland – as members of the IAG or in attendance – was unanimously welcomed and seen as enabling constructive engagement and scrutiny, rather than jeopardising or inhibiting the independence of the group.

The knowledge and experience of IAG members

The members of the group brought both technical expertise and knowledge drawn from or connected to lived experience and were able to deploy that in a range of ways. For example:

- The Scottish Human Rights Commission provided the IAG with a paper highlighting key elements of a rights-based approach to policing in general but also examining the application of the new police powers in Scotland and their potential impacts in terms of human rights.
- The Glasgow Disability Alliance sought the views of individuals, community representatives and grassroots organisations about the experience of disabled people in relation to the policing of the pandemic, and provided information based on a telephone survey of 5,000 people.

²⁶ See

https://archive2021.parliament.scot/S5_JusticeSubCommitteeOnPolicing/Inquiries/Amnesty_Written_Evidence_6NOV20.pdf

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- Amnesty International raised the specific issue of the use of ‘spit hoods’ in the context of policing in Scotland, drawing on previous work the organisation had conducted in relation to policing in other parts of the UK.
- Dr Catriona Stewart of the Scottish Women’s Autism Network provided an open letter to Police Scotland setting out some concerns about how the policing of the pandemic might impact on the autistic community. This was cascaded widely to police officers in the form of a guidance note.
- The office of the Children and Young People's Commissioner Scotland provided a briefing on the impact of the emergency police powers on the human rights of children and young people in Scotland, including feedback from children and young people themselves about their experiences of policing.

It is obviously impossible to represent all of the potentially important constituencies of interest within a manageably-sized group. As already noted, the membership of the IAG was significantly more diverse than that of many other scrutiny bodies. However, two important perspectives – namely, from Scotland’s black and minority ethnic communities and those directly affected by economic inequality and deprivation – were arguably under-represented, given the disproportionate impacts that the pandemic has had on these groups. That is not to suggest that issues relating to ethnicity and deprivation went unaddressed in the work of the IAG – rather that the group did not have direct access to the same level of expertise (whether grounded in technical knowledge or lay experience) that informed its consideration of some other issues.

Wider inputs to the group

As documented in the previous chapter, the IAG was able to identify, access and consider a wide range of different inputs and evidence. There were various factors at play here.

- The rapid establishment of the CVI dataset and work to ensure that data from that and other systems could be shared (via OpTICAL) with the IAG. This meant that the group had access to a detailed, up-to-date picture of police activity across Scotland and allowed questions to be asked about issues such as the reason for spikes or variations in different types of engagement and enforcement activity.
- Members of the executive of Police Scotland and Divisional Commanders (again, from across most of the country) attended the group regularly and, by all accounts, were open and constructive in their engagement.
- Individual members of the IAG communicated with their own extensive networks (via social media and other channels) in order to identify relevant experiences and concerns and channel those back into the work of the group. The example of the GDA referred to above is relevant here.
- As described in the previous chapter, a range of additional input was sought from (and offered by) experts in academia and beyond. This was positively received both

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by members of the group and by senior officers from Police Scotland. For example, evidence given by Professor Clifford Stott of Keele University about the ways in which heavy-handed policing can amplify public order and public risks in the context of large-scale events helped to shape the response to the Black Lives Matter protests, while other research-based messages – for example, about attitudes towards police surveillance activity – was reflected in subsequent public messaging (and, in particular, the absence any reliance on drone footage of the kind used by some police forces in England to deter visitors to particular areas).

Overall, then, the group was well supplied with evidence and insights to inform its scrutiny of the policing of the pandemic. That said, there were some specific areas where one or more members of the group felt that a fuller picture would have been beneficial.

In particular, the perspective of officers ‘on the ground’ was not always fully available. Although both OpTICAL and the IAG regularly involved input at Divisional Commander level, accounts of police-public interactions were generally received second hand. Early in the pandemic, HMICS conducted a series of qualitative interviews with police officers, which members of the group found useful (and these were repeated in April 2021). In the intervening period, however, the group was limited in its ability to access these perspectives.

On a related note, some members of the group felt that the extensive quantitative analysis of engagement and enforcement activity might have been usefully complemented by additional qualitative research on the experiences of members of the public. Such accounts were not entirely absent: the Citizen Space portal provided one potential source (though was limited in terms of the volume and representativeness of responses) and the group was briefed on public opinion polls and some relevant academic research. Ultimately, however, more was known about *what* happened, where and to whom, than about *how* engagement and enforcement activity was implemented, experienced, interpreted and understood.

Finally, despite the huge effort that went into managing, analysing and interpreting the data from different sources (including the CVI system and the Scottish Courts and Tribunal Service), some important questions (that would require either additional data or additional analytical capability) went unanswered. For example, while the analysis was able to describe the extent of the disproportionate effects of police activity on some subgroups (for example, that people living in the 10% most deprived Scottish neighbourhoods were 11.2 times more likely to have received a Fixed Penalty Notice than those living in the 10% least deprived neighbourhoods), it was not able to offer a definitive explanation of this.

Engagement, discussion and arrival at consensus

Given the length of time that the IAG has now been in place, and the frequency (and sometimes length) of its meetings, the commitment to participation across the life of the

group is striking. Although some individuals were not able to attend regularly, and one organisation withdrew from formal membership because of the pressure of other commitments, attendance has generally been high, suggesting that most members have viewed their participation as important. Some organisations have sought to maintain a week-by-week presence even when the 'named' representative has been unavailable, or have deliberately involved two people to spread the associated workload.

Although some members wondered at different points whether the frequency of meetings could or should be reduced, even in April 2021 most were happy to keep the IAG as a relatively fixed point in their week. (The question of the extent to which this level of engagement has been facilitated by the use of remote meeting technology is returned to in the final chapter.)

Interviews with IAG members captured an almost uniformly positive view of their membership of the group, which was characterised as offering a 'safe space' for 'respectful and grown up' conversations, albeit allowing 'robust challenge'. The quality of listening within the group was often mentioned, with members saying that they themselves felt listened to, and that they had listened with interest to the contributions from others. There was also a strong endorsement of the (self-imposed) discipline within the group; no individuals dominated and everyone who wished to speak on a particular issue was given the opportunity to do so. The personal qualities, skills and experience of the Chair were felt to have been particularly important in this respect.

Overall - and over time - the group came to be characterised by a high degree of trust and cohesion. The police shared relatively sensitive material with members of OpTICAL and the IAG and saw that the confidentiality of those settings was respected. Members of the IAG came to trust that the group had been established in good faith and that there was a genuine appetite for engagement and support on the part of the police.

Members of the IAG also indicated that it had been possible to reach a consensus in relation to almost all key issues and that there were few, if any, instances of fundamental differences of opinion.

There were some differences between members of the group in terms of willingness and ability to engage with issues outside their immediate experience and expertise. Some – and especially those representing public bodies – indicated a reluctance to offer opinions in areas in which others were 'better placed' to comment. There was no indication, however, that this impacted significantly or negatively on the overall scrutiny offered by the group.

In terms of the written outputs from the IAG, members who were interviewed felt that the reports and letters from the Chair accurately represented the overall discussion and prevailing views within the group. Although such outputs were often produced quickly,

members indicated that they were given the opportunity to comment and that suggestions made were then acted upon.

As there were few signs of major conflict or disagreement within the group, it was not necessary for the Chair to highlight or distinguish between majority and minority opinions in the reports submitted to the SPA. He expressed confidence, however, that such an approach could be successfully deployed if needed (as in relation to the final report of the Independent Advisory Group on stop and search, which he also chaired).

On one occasion, a view was expressed by the Chair – for example, in a letter to the Cabinet Secretary for Justice Secretary in relation to quarantine and border controls in February 2021²⁷ – that some organisations represented on the group felt it would be inappropriate for them to endorse, given their specific role and relationship to government. As such, this was clearly stated in the letter. This allowed the statutory and other responsibilities of some IAG members to be respected while using the voice of the IAG to make an important point publicly.

Wider communication, awareness and transparency

Despite the fact that the terms of reference referred to the need to ‘reassure the public’ that the emergency powers were being used appropriately, neither the Chair nor other members of the group saw overt public messaging as a core part of their role – indeed, there was an explicit wish to avoid ‘adding noise’ to what was seen as an already confused situation.

The primary channel for dissemination of the group’s conclusions was, then, the series of written reports to the SPA and additional letters from the Chair and the media reporting of those. Public awareness of the work of the group is, therefore, likely to have been low (though may have increased over time, especially in the wake of high-profile incidents). As such, it cannot be said that the work of the IAG led to active reassurance of large swathes of the public about the policing of the pandemic.

That said, the group can be said to have met the goal of public assurance, if that term is taken to mean the provision of an assurance *in public*, in a manner which is visible, open and transparent to all interested parties. While the actual meetings of the IAG – unlike those of the SPA Board – were not literally held in public (as to do so would have compromised the scope to share sensitive material) the minutes of each meeting were made publicly available, alongside the accompanying report to the SPA and full documentation about the purpose and composition of the group. As one of the members of

²⁷ <https://www.spa.police.uk/spa-media/de1aqay3/iag-letter-to-csj-12-2-final.pdf>

the group put it, “the very process was the prize, to have this talked about publicly and openly”.

It should be noted that, as part of that process, the IAG aimed its messaging not only at the SPA and Police Scotland but – both directly and indirectly – at the Scottish Government and Scottish Parliament. This was especially so when highlighting the difficulties that resulted from the confusion between regulation and guidance, and the lack of time available for (or given to) the scrutiny of legislation.

Benefits to the police and the SPA

The preconditions for effective public assurance of the police’s overall approach to the policing of the pandemic (including independent, diverse and knowledgeable group membership; access to a wide range of supplementary inputs; a cohesive and effective group dynamic; and open and transparent methods and communication) do, then, appear to have been in place. But how did such scrutiny actually benefit the police, and what other advantages were they able to derive from the existence of the group?

Overall, the group provided the SPA and Police Scotland with added confidence that decisions taken early in the pandemic about the direction, focus and tone of policing were consistent both with human rights and with the underlying values and principles associated with policing by consent.

“We knew that the restrictions and the regulations and the guidance were likely to be confusing for the public; they were likely to be confusing for our cops. So we purposefully took a light touch policy approach to our guidance to the police officers. We didn't say, ‘Here’s really strict policy parameters as to how you will apply the regulation to the guidance’. We said, ‘The relationship and the confidence of the public is key. Our legitimacy in public eyes is key. Therefore, the only guidance and directions we’ll give you is to use your discretion and common sense, and a bit of compassion’. And we wrote that into our instructions. And we shared those instructions with the IAG and we said, so do you think we're getting this tone right?” Police Scotland interviewee

More specifically, the group provided a ‘critical friend’ or sounding board to help calibrate or firm up particular aspects of Police Scotland’s approach. For example, during the Black Lives Matter protests in the summer of 2020, members of the executive team at Police Scotland, along with key Divisional Commanders, discussed with the IAG their proposed approach to the policing of the events. From the outset, this sought to reconcile reasonable adherence to the coronavirus regulations with the right to protest. The policing of the Rangers fans was dealt with in a similar way, with opportunities both to review how this

core principle had been applied and to discuss implications for the policing of further large gatherings.

“It added real value to us in live time that we could take Rangers’ football fans, we could take the BLM protests, and we could say, look, are we getting this right in terms of our directions to our cops, in terms of the tone, the language, the style of our policing approach? Are we understanding the balance of competing legal requirements between what’s enshrined in domestic law through the Human Rights Act and these frequently changing coronavirus regulations?” Police Scotland interviewee

The fact that the Chief Constable was able to ask the IAG to consider how specific events were handled undoubtedly also helped to take some of the heat out of the immediate controversy – even if he had no guarantee that the group would ultimately publicly assure the overall approach. More generally, when policing-related controversies arose, these could immediately be discussed in a ‘safe space’ with some of the voices which might otherwise have been engaged with the same debates in much more public and adversarial ways. As one member of the group put it, the experience of the IAG had helped to “mainstream the idea of open dialogue and conversation rather than broadcast”. Again, it could not be known in advance that such dialogue would definitely lead to more constructive and consensual outcomes, but in practice that was often the result.

There were other ways in which the existence and credibility of the IAG helped to reinforce Police Scotland’s overall approach, often in the face of demands from politicians, the public or the media for more robust enforcement - for example, in relation to mask wearing in shops or in public transport, cross-border traffic or quarantine. In all of these cases, the deliberations, instincts and conclusions of the IAG helped to legitimise a light-touch, common sense approach, but also to press the case for greater consideration of new or changed legislation.

Input from specific members of the IAG also shaped Police Scotland’s approach to policing particular sections of the community – whether people with hidden disabilities or young people. In relation to the latter, for example, the CYPCS provided a briefing for officers suggesting that they initiate conversations not with the question ‘what are you doing?’ but ‘how are you doing?’. This relatively subtle shift in tone was felt by Police Scotland to be a helpful contribution not just to policing involving young people but to how their officers should interact with the public more generally.

The discussion at OpTICAL prompted both operational changes and additional evidence gathering by the police. In particular, following the discussion at OpTICAL of data on ‘dispersals using force’, additional guidance was issued to officers in relation to the definitions to be used in gathering data for the CVI system. Moreover, additional evidence

gathering was undertaken by the police in order to improve understanding of the – apparently – disproportionate effects of police activity on some subgroups.²⁸ This additional evidence gathering showed that, particularly during the first wave of the pandemic, FPNs were not actually issued to a greater extent in areas of deprivation but in areas where people travelled to - generally beauty spots and parks - in contravention of the regulations.

For the SPA, the ongoing, independent and public character of the assurance offered by the IAG was itself seen as the key benefit. While the SPA Board clearly has its own permanent scrutiny and assurance role, in the face of what was frequently described as a ‘draconian’ restriction of civil liberties, the diversity of the IAG was felt to be critical in supporting the SPA’s own assessment and in maintaining the confidence of civil society groups and the public more generally.

“What was the evidence of the impact of the IAG? Well part of it was this very respectful conversation about rights and duties, which could be had with the most senior police officers to give public assurance to the Board [...] that this balance had been properly achieved by policing. And all of that means that it had an impact, but it wasn't the active impact of stopping things happening and making them be different - it had the impact of assurance, which is what the Board required.” SPA interviewee

Broader impacts and unforeseen consequences

One of the indirect impacts of the IAG was seen in relation to the drafting of the original emergency legislation, which meant that – in contravention of the UN Convention on the Rights of the Child – 16 and 17-year-olds in Scotland could be issued with Fixed Penalty Notices if they failed to comply with restrictions around lockdown and social distancing. The IAG provided a forum for the issue to be discussed and prompted the CYPCS to work closely with Police Scotland to lobby for the legislation to be amended, which it subsequently was. As such, the group probably accelerated the change by drawing on its credibility, status and networks.

“It didn't make something happen that wouldn't otherwise have happened but I just think it would have happened perhaps a bit more slowly because, you know, the human rights commissions in Scotland shout about things a lot – and rightly shout about things a lot – but it doesn't mean that it's immediately corrected.” IAG interviewee

²⁸ As set out earlier in the report, people living in the 10% most deprived Scottish neighbourhoods were 11.2 times more likely than those in the 10% least deprived neighbourhoods to have received an FPN.

A further indirect and potentially long-lasting impact relates to the subsequent appointment of one of its members, Dr Catriona Stewart of the Scottish Women's Autism Network, to the SPA Board.

Almost all the external IAG members interviewed felt that their understanding of policing had been deepened as a result of their involvement, with implications for their future focus and activities. One interviewee, representing a public body, said that the experience had led them to consider whether there were ways to inject greater diversity into the scrutiny of their own organisation's work. Another commented on how their participation in the IAG had facilitated closer engagement with other aspects of Police Scotland's work.

The development of effective and trusted data sharing arrangements between Police Scotland and one of the academic partners allowed a successful bid to the Economic and Social Research Council for a programme of work to further examine policing data related to the pandemic.

Overall, then, the IAG has created a legacy of individual and organisational relationships and wider benefits that will clearly outlast the immediate crisis itself. Those relationships and benefits have, of course, helped to secure the ongoing commitment and involvement of the various members of the group – an important outcome in its own right – but could, over time, also have implications for perceptions of independence. This is an issue returned to in Section 5.

5. Conclusions and lessons for the future

It is now a commonplace to refer to the unprecedented nature of the coronavirus crisis and its associated challenges. The IAG itself was, in many respects, a unique response to a unique set of circumstances – not least, because the pandemic became an issue around which diverse stakeholders were able and willing to mobilise quickly and to work together to find common ground. Other policing challenges may prove more intractable and potentially divisive. That said, there are also likely to be various aspects of the IAG’s experience with lessons and implications for the policing of future crises and, indeed, policing more generally. With that in mind, this final section seeks to draw out some high-level themes and implications.

Overall purpose, roles and terms of reference

The terms of reference for the IAG were pulled together relatively quickly, early in the pandemic. Although the group did discuss and endorse these at an early meeting, they were not reviewed at any subsequent point. With that in mind – and as the group heads into what is likely to be the final phase of its work – some reflection may now be appropriate.

In important respects, the terms of reference did exactly what they needed to do. In particular, they allowed the group to get up and running quickly, and precious time was not taken up by repeated cycles of discussion and revision. It is also clear that, at key points in the process, they helped to delineate what should and should not be considered to lie within the scope of the group’s enquiry.

In retrospect, however, the overall purpose of the group could perhaps have been more clearly articulated within this document. The landscape of policing contains multiple bodies with subtly different, if sometimes overlapping, roles. In this context, the distinction between concepts such as oversight, scrutiny, assurance and consultation matters but is not always clear – especially (but not necessarily only) to those on the outside. The IAG was created to provide independent public assurance of the use of the emergency powers, specifically to inform the oversight and scrutiny function of the SPA, but also to provide confidence to the Scottish Parliament, the Scottish Government, civil society and the wider public that the powers were being used appropriately. A fuller explanation of what independent public assurance actually involves, how it would be done and how it relates to other aspects of scrutiny might usefully have prefaced the detail of the group’s remit²⁹ and helped to ensure greater consistency of understanding across different members.

²⁹ The role profile and terms of reference of the National Independent Strategic Advisory Group (NISAG) provide a useful point of comparison here.

The terms of reference did refer to the fact that the IAG was established in order to 'reassure the public' that the powers were being used appropriately. This phrasing was, in hindsight, potentially unhelpful. It could be taken to imply that the group should have had a very visible public presence and a proactive communications strategy in its own right, and might even be read as signalling a more cynical exercise in quieting potential discontent.

A further issue that might usefully be clarified is the nature of the relationship between the Chair and the group. One view was that the Chair was, in effect, an independent reviewer and that the role of the group was to provide advice and support to him in that role. However, even though the reports to the SPA Board and other correspondence from the Chair had a strongly 'authored' tone, the Chair himself and other members of the group saw such outputs as being owned by the group as a whole (except where specifically stated otherwise).

Policing is, by its nature, an action-oriented environment. In this context – and in the face of an urgent global crisis – the detail of the terms of reference and accompanying documentation may seem relatively unimportant. However, just as issues of clarity, tone and messaging have been critical to the policing of the pandemic itself, the language used to describe the arrangements for its scrutiny also matters. In defining future exercises of this kind, then, there may be value in establishing, if not a rigid template, then a basic set of issues to be covered and consistent definitions of core concepts.

Which voices?

The IAG was established during the difficult early days of the pandemic, and at considerable pace. Given that, Police Scotland, the SPA and the chair of the group are to be commended for drawing together a diverse range of perspectives, expertise and experience. There is clearly a limit to the extent to which a group of 12-15 people can fully represent Scotland as a whole. That said, some sections of the community hit especially hard by the pandemic were arguably under-represented. There was, for example, no representation from an organisation with a specific remit for deprivation and economic inequality, and limited input from Scotland's black and minority ethnic communities.

For future exercises of this kind, then, a number of related questions are worth considering. For example, what does it mean to represent diverse interests? How are decisions made about which specific interests and organisations come to be represented on the group? What scope is there for membership to be reviewed – and if necessary refreshed – during the life of the group, and how might this impact on cohesion and effectiveness? There may not be obvious answers here, but reflecting on such questions would have value in itself.

The role of the Chair and secretariat

One of the critical factors in the successful operation and achievements of the group was the choice of its Chair. John Scott was held in very high regard by those on all sides, for his professional knowledge and experience, his links across diverse groups and individuals, and his interpersonal skills. As one interviewee put it: “He brings a moral authority because of his history, and he brings technical authority because of his profession, but he does it in a very human way that that is pretty critical to this”. Members of the group noted that he had a longstanding interest in topics core to the deliberations of the group, read widely around the subject and reached out to people doing related work in other jurisdictions.

However, this undoubted strength of the IAG also carries potential risks. For example, had John Scott been unwilling or unable to chair the group, would there have been other, similarly qualified and competent candidates?

The lessons here are, then, two-fold: first, the choice of chair is critically important (and needs to be well articulated and understood); and secondly, there is a need to identify and develop the pool of potential candidates for future roles.

It should also be emphasised that the SPA itself provided a highly responsive and effective secretariat function, without which – as the Chair fully acknowledged – the group would have been unable to function with anything like the pace and intensity that it did.

‘If you weren't using Teams, it wouldn't work’: the benefits (and limitations) of meeting remotely

The fact that the IAG was forced to convene remotely – initially via secure telephone lines and subsequently via online videoconferencing – had undoubted (if perhaps unexpected) benefits. Perhaps most importantly, it allowed a group of busy people to meet frequently and consistently across the course of the pandemic. As more than one member of the group pointed out, it would simply not have been possible to fit a weekly face-to-face meeting (‘in a room in Edinburgh or Glasgow’) into already packed schedules and, consequently, would have been much more difficult to build the same level of group cohesion. The virtual character of the meeting also meant, of course, that it was possible to hear perspectives from across Scotland – such as input from operational commanders in the North East and Scottish Borders.

There was also some evidence that the use of Teams – with members of the group generally logging in from their own homes – gave the group an informality which strengthened relationships and reinforced a sense of connection and shared endeavour. As one group member put it, “we got to know one another’s children and one another’s pets”. Of course, the fact that the group never actually met in person was regretted by some, and others

noted that certain voices and perspectives would never be reached as effectively through remote as face-to-face channels. Overall, however, it is clear that the benefits of meeting virtually outweighed the disadvantages and that there is a strong case for continuing to use 'hybrid' if not digital-only channels for future exercises of this kind.

Lived experience, expertise and evidence: acknowledging different forms of knowledge in the scrutiny of policing

It was noted earlier that, while the label of 'Independent Advisory Group' is now widely applied within policing, it is often used to describe rather different things. In local policing, for example, it often signals an attempt to consult with or engage particular sections of the community – and, in particular, to understand how policing is understood and experienced on the ground. Some of the national IAGs, by contrast, have had a more technical or expert character – drawing on legal, scientific or broader professional knowledge in order to scrutinise, assure or advise on particular issues (such as the use of biometric data or stop and search).

This particular group included elements of both community or 'lived' experience and technical expertise (in particular, in human rights), but also added a third, through a consistent engagement with evidence – in the form of statistical updates and analyses, first person accounts of operational policing and input from external experts in relation to developments and insights from elsewhere.

In practice, the elements of lived/community experience, technical expertise and evidence may be blurred – for example, a representative of a disability rights organisation may have technical expertise in relation to issues of human rights as they affect disability, be in a position to channel views and experiences from their networks and connections (or offer first-hand comment), and be able to provide or link to relevant external evidence. However, in subsequent exercises of this kind, it may be helpful to identify these different forms of knowledge explicitly; to acknowledge the extent to which each is a necessary (if not sufficient) component of scrutiny; and to link them to statements of purpose and terms of reference.

The pace, level and limits of the support and scrutiny offered by the IAG

One of the stated aspirations for the IAG was that it should provide 'real-time' engagement with and support for operational policing. In retrospect, that terminology may have been slightly misleading. From the outset, it was recognised that 'live' operations are entirely a matter for the police on the ground.

However, by the standards of most scrutiny mechanisms, the IAG was unusual in terms of the pace, intensity and focus of its activity. Between mid-April 2020 and the end of April 2021, it met more than 60 times. At each meeting, it received up-to-date information about key developments and trends and its agenda was able to flex to accommodate issues as they arose. Moreover, there was scope not only to preview or review the overall approach to significant events (such as the Black Lives Matter protests) but also to anticipate likely trends and challenges as the crisis evolved. As such, the group was much better placed to provide dynamic input than a 'traditional' IAG – meeting less frequently or with a retrospective remit – might have been.

The question of pace links to a further consideration: namely, at what level should the public assurance of the group actually operate? Some members of the group were keen to distinguish between high-level or general assurances about the appropriateness, proportionality and legality of the police's approach, and definitive conclusions or judgements about the policing of specific cases or events. In relation to individual cases, the reasoning and risks are clear: the IAG could not infringe prosecutorial decision-making. But there was also occasional concern that the group could not expect to have access to the level of information needed to draw detailed or definitive conclusions about how a specific incident or event had been handled.³⁰ As such, ongoing caution is warranted around any suggestion that particular instances are 'referred to' a group such as the IAG, in case its relatively high-level scrutiny is mistaken for a process of detailed inspection, approval or validation. At the very least, the basis of or limits to such consideration should always be made clear.

The balance between independence/scrutiny and engagement/support

The IAG served two distinct but related functions: on the one hand, providing independent scrutiny and assurance of the way that the pandemic was being policed and, on the other, offering constructive criticism and support to Police Scotland to help them to deploy the emergency powers in ways that were appropriate, proportionate and legitimate.

In many respects, these two roles are reinforcing of each other. Through clear-eyed, impartial scrutiny of Police Scotland's approach – based on a combination of technical expertise, lived experience and broader evidence – the IAG was able to help Police Scotland to spot potential pitfalls and identify solutions. In other words, effective scrutiny led directly to meaningful engagement and support. But the opposite is also likely to have been true:

³⁰ It is notable, for example, that the inspection of the policing of the Sarah Everard vigil in London by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) involved the examination of body-worn video, officers' statements and a wide range of other material. In other words, it involved work at a level of detail that would have been impossible for the IAG to accommodate.

that the development of close, supportive relationships led to improved information sharing and, ultimately, to better scrutiny.

There is, however, also a potential tension here, acknowledged by various members of the IAG itself: namely, that the closeness of the working relationships within the group (and OpTICAL) might ultimately undermine – or be seen as undermining – the independence of the external members. The fact that several of the individuals involved (including the Chair) have sat on similar groups potentially amplifies this risk.

It should be possible to mitigate such risk in relation to any future exercise by ensuring transparency not only in relation to the workings and conclusions of the group but how it is constituted – and by recruiting, as in relation to the current IAG, individuals known for their independence as well as expertise. Ultimately, however, the quality and impartiality of the analysis offered by such a group will always represent the most effective defence against any suggestion that it has been ‘captured’ or co-opted by the organisations it is intended to scrutinise.

Trust, confidence and safe spaces

The above discussion highlights the importance of close working relationships within a group of this sort (alongside some of the risks). Underpinning such relationships are notions of trust and confidence. These flowed in various directions. Arguably, Police Scotland displayed considerable confidence in its own strategy and trust in its workforce in asking for the IAG to be established in the first place, as there was no guarantee that its actions would ultimately be viewed favourably. Police Scotland and the SPA placed considerable trust in the Chair and in the group itself; and the group members clearly came to trust one another in various important respects – for example, to maintain confidentiality when necessary, to listen different perspectives and experiences, and to respect differences of opinion.

In all settings, trust and confidence can be slow to build but quick to dissipate. It is notable that, over the course of more than a year, the sense of a ‘safe space’ for discussion and challenge was maintained and no significant crises were evident. The fact that the confidentiality of the group was not at any point breached was particularly important in this regard. Again, however, this suggests a need to consider the potential resilience of such a group if and when crises do occur.

The role of data

The fact that Police Scotland was willing to work closely with external experts in sharing and interpreting data during the crisis had a number of important benefits. First, as seen in Chapter 4, the analyses carried out by Professor McVie and colleagues generated some specific insights which led to changes in the guidance given to officers. Secondly, the very

existence of regular and up-to-date quantitative reporting created opportunities for discussion and deliberation across the membership of OpTICAL and the IAG itself. Third, the joint work around data showed how the police can work constructively with external stakeholders while also enhancing internal capacity and experience in using data in strategic and analytical (rather than descriptive) ways. Finally, the opening up of the datasets related to the policing of the pandemic had considerable symbolic value, and undoubtedly helped to build the relationships of trust and confidence described above. While this all took place against an extraordinary backdrop, there are potentially lessons for the wider (and more mundane) uses of data in policing more generally.

The absence of 'stress testing'

The relative absence of disagreement and crisis within the IAG links to a further point. At the beginning of the coronavirus crisis, there was a real and widespread concern that policing and the enforcement of the emergency powers might become a dominant - if not the central - theme in public and political debate in Scotland, with serious and longstanding implications for police-public relations. In the event, that has not happened. In large part, the public has demonstrated understanding of the need for the regulations, willingness to comply and high levels of ongoing support for the police. That may well reflect the proportionate, discretionary and rights-based approach that the police have taken and which the IAG has helped to scrutinise and support. In that sense, the absence of a serious 'stress test' of the group may simply be a reflection of its own success: in short, it has helped to confirm and reinforce a direction of travel on the part of Police Scotland around which politicians, civil society and the wider public were able broadly to coalesce.

It cannot be assumed that such a moment will not arise in the future – for example, if the pandemic were to take a new and more divisive turn or if there were to be a specific event or controversy involving coronavirus-related enforcement activity (or its absence). If that were to happen, any 'gaps' in understanding of the purpose and accountability of the group might prove problematic. In relation to this particular group, there are good reasons for thinking that such challenges – and any significant differences of opinion among its members – would still be handled effectively and appropriately. In relation to future IAGs, however, the general principle should perhaps be that these are always constructed with worst-case scenarios in mind.

The future of the IAG

As the pandemic enters a new and potentially less acute stage, there are obvious questions about what should happen to the IAG. It was generally felt that, even if the frequency of meetings were to be reduced, there is likely to remain a role for the group throughout the next phase. Indeed, in some respects, it was felt that this might prove more challenging in

that levels of compliance with the remaining restrictions may reduce and heightened tensions emerge between different sections of the community.

In the longer-term, however, it is doubtful whether a collaboration of this intensity could be sustained. While the direct costs associated with the exercise to date would no doubt pale against the expenditure on policing in the course of the pandemic as a whole, they might prove more difficult to justify during the gradual return to ‘policing as usual’. Perhaps more importantly, members of the group might be unwilling or unable to sustain the same level of commitment and involvement once the immediate urgency of the crisis fades, normal working routines resume and other issues start to vie for greater attention.

Regardless of the eventual end point for the IAG, there was an appetite among members of the group for an ‘exit plan’ of some kind, perhaps involving a final report and an explicit handover of some of the issues for which it has had a responsibility to assure.

Potential lessons for the scrutiny of policing and criminal justice in Scotland

While the circumstances of the IAG were clearly unique – and its specific form and function would be difficult to replicate – it nevertheless offers an opportunity for reflection on the role that similar mechanisms might play in the ongoing relationship between the public, Police Scotland and the SPA.

The SPA itself has a clearly defined scrutiny role and, as part of that, needs to be able to draw on a wide range of perspectives and experiences. In practice, the extent to which it can access such diversity solely through its own membership and structures may be limited – indeed a Board of up to 15 publicly appointed members cannot and does not seek to be representative of all sectors of society.

The IAG offers one concrete and successful example of how the SPA can augment its Board, subcommittee and existing consultation arrangements through access to a wider range of expertise, experience and evidence.

In particular, it is not clear that specific rights-based scrutiny of the kind offered by the IAG is currently provided by any of the other fora which bring independent voices into Scottish policing. In some other jurisdictions (such as Northern Ireland), the technical aspects of this have been addressed through the appointment of expert advisers. Other mechanisms in Scotland, such as NISAG (through the equalities agenda), do speak to such issues indirectly. However, there might be scope to build on the IAG’s particular combination of human rights expertise, ‘lived experience’ and evidence – either in relation to policing in general or in relation to specific issues.

There may be lessons for other criminal justice organisations here, too. As one member of the group pointed out, the world of policing is not alone in potentially benefitting from this type of additional, diverse and independent rights-based scrutiny.

There may be lessons for other organisations here, too. As one member of the group pointed out, the world of policing is not alone in potentially benefitting from this type of additional, diverse and independent rights-based scrutiny.

An enabling context

There has been considerable international interest in the ‘Scottish model’ – both in relation to the policing of the pandemic in general and in relation to its scrutiny. With that in mind, it should be emphasised that the creation, operation and effectiveness of the IAG cannot be wholly abstracted from its specific socio-political and institutional context. Various existing features of policing and the wider environment in Scotland are relevant here.

The first is the explicit and maturing commitment to rights-based policing articulated by the leadership of Police Scotland. It is now common to hear the Chief Constable and other senior officers refer to the importance of viewing policing as ‘human rights in action’ – a public commitment that is far from widespread in policing more generally and might have been inconceivable in the not-so-distant past in Scotland. The Scottish Government, of course, has also taken a more positive and proactive stance than the UK parliament on human rights. While the reality of human rights in policing and in Scotland more generally may still lag behind some of the rhetoric, there is no doubt that the very notion of establishing a group to provide rights-based scrutiny of the use of the emergency powers was grounded in – and enabled by – this emerging consensus.

The ability to have such conversations at a national level has, of course, only been possible because of the creation of a single national force in 2013. While the full benefits of the merger may have taken some time to be realised, the advantages in relation to the policing of the pandemic were almost immediately clear, including the scope for greater consistency of engagement and messaging across the country as a whole. Although there was some evidence of local variation, it was possible for this to be identified and discussed, and for action to be taken where appropriate, because of the existence of the national force *and* the national remit of the IAG.

Policing in Scotland also benefited, with hindsight, from the difficulties it experienced some years ago in relation to stop and search. The subsequent review, also chaired by John Scott, helped to strengthen relationships between Police Scotland and external organisations and experts. It gave the organisation experience in capturing and sharing information about low-level encounters between the public and the police, which helped shape the rapid

development and implementation of the CVI system, and in governance arrangements allowing the resulting data to be shared.

Two other developments are also worth noting. The first was the establishment (in 2006) of the Scottish Institute for Policing Research - a strategic collaboration between 14 of Scotland's universities, Police Scotland and the SPA. In the period since, this has played an important role in helping to build the case for evidence-based policing in Scotland and in promoting a culture of sustained, routine interactions between Police Scotland and a range of external stakeholders. Secondly, in addition to the independent advisory group on stop and search, several other groups have been established in relation to aspects of policing in Scotland in recent years, providing not only valuable experience but also creating a range of relationships that could be activated at short notice at the beginning of the pandemic. The fact that John Scott had been directly involved in several of those – and was held in high regard by both the police and external stakeholders – meant that he was especially well placed to secure the involvement of a range of different actors.

In short, while the IAG may have received interest and attention from other jurisdictions, it is not necessarily a model that could be simply transplanted to another context. Its establishment, operation and impacts have all drawn on – and subsequently contributed to – an emerging culture of government and institutional attention to human rights, evidence-based policing and routine engagement and collaboration across key stakeholder groups. As such, neither its successes nor its limitations can be wholly attributed to the work of the group itself, important – and, in some respects, ground breaking – though this has been.

Final thoughts

Police Scotland faced an unenviable challenge at the start of the coronavirus crisis in having to balance the requirements of public health and public order policing – and to do so in a way that maintained public confidence and was appropriate, proportionate and consistent with human rights. The organisation responded by giving a clear message to its officers that the active enforcement of the emergency powers should be considered a last resort and that approaches based on engagement, explanation and encouragement should be deployed wherever possible. In doing so, it also gave a tacit signal that there was no single, 'correct' response to the policing of specific situations or events.

Officers have, therefore, been given broad parameters and principles – rather than a rigid playbook – within which to deploy common sense, experience and discretion. The IAG has helped to do the same for Police Scotland as a whole. While unable to scrutinise in detail all aspects of the policing of the pandemic (or, indeed, of wider policing *in* the pandemic), the group has played an important role in developing and legitimising the overarching policing

approach in Scotland and in calibrating and improving, over time, the way in which that has been operationalised.

It has done so in ways that have been broadly and demonstrably inclusive, collaborative, constructive and transparent and, as such, has contributed to a potential virtuous circle of improving relationships, scrutiny and support within Scottish policing.

There are, however, no grounds for complacency. The IAG has benefited from an unusually high degree of consensus about the nature of the collective challenge and the broad principles that should underpin the response to it. It cannot be assumed that the same degree of consensus – within the group itself, wider civil society or the general public – will be sustained throughout the remaining phases of the pandemic, nor in the face of different or more divisive policing dilemmas.

The work of the IAG has, of course, been constrained in all sorts of ways – by the resources available to it, the fast-moving nature of its work, and the limitations on its access to different kinds of expertise, evidence and experience. Nonetheless, within these constraints, the IAG was able to draw on an impressive array of inputs – both from the membership itself and further afield – and allowed an important and different conversation to take place. While clearly not the answer to all of the complex challenges facing policing, this IAG ‘model’ has potentially wide-ranging benefits, both in the specific and unique circumstances of the pandemic and for policing more generally.

Appendix 1 Membership of the Independent Advisory Group (IAG)

- John Scott QC Solicitor Advocate, Chair of the Independent Advisory Group (Chair)
- Diego Quiroz, Scottish Human Rights Commission (SHRC)
- Professor Susan McVie OBE FRSE, Chair of Quantitative Criminology within the University of Edinburgh's School of Law
- Alastair Pringle, Executive Director at the Equality and Human Rights Commission (EHRC)
- Ephraim Borowski MBE, Chair of Police Scotland's National Independent Strategic Advisory Group (NISAG)
- Naomi McAuliffe, Programme Director Scotland, Amnesty International
- Bruce Adamson, Children and Young People's Commissioner Scotland
- John T Logue, Deputy Crown Agent Operational Support, COPFS
- DCC Will Kerr, Police Scotland
- Gill Imery QPM, HM Chief Inspector of Constabulary in Scotland (HMICS)
- Tressa Burke, Glasgow Disability Alliance
- Aamer Anwar, Solicitor and Human Rights Campaigner
- Dr Elizabeth Kelly, Associate Carnegie UK Trust
- Barry Sillers, Deputy Chief Executive - Strategy and Performance, SPA

Notes:

- (1) Martyn Evans, SPA, was a member of the group up until February 2021 when he became the Authority Chair.
- (2) Catriona Stewart SWAN Scotland was a member of the Group up until April 2021 when she joined the SPA Board.
- (3) The Equality and Human Rights Commission (EHRC) stood down from formal membership of the IAG on 25 June 2020. However, Alastair Pringle and Martin Hayward continue to support the Group in an advisory capacity as needed.

Appendix 2 Terms of Reference for the IAG

Mindful of the extraordinary nature of the powers conferred on the police by the Coronavirus Act 2020 and the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations, Police Scotland and the Scottish Police Authority agreed that it was appropriate to establish an Independent Advisory Group in order to reassure the public that the temporary powers of enforcement were being used appropriately, and only as a last resort.

The Terms of Reference for the Group are:

1. To ensure that use of powers by Police Scotland is 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.
2. The powers which will be considered by the Group include the powers:
 - (a) relating to potentially infectious persons under section 51 of the Coronavirus Act 2020 and schedule 21 to the Act;
 - (b) to issue directions relating to events, gatherings and premises under section 52 of the Coronavirus Act 2020 and schedule 22 to the Act; and
 - (c) to enforce requirements to close premises and businesses and restrictions on movement and gatherings, all under Part 4 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.
3. The following are not within the scope of this review:
 - (a) the terms of the Lord Advocate's guidelines on the investigation and prosecution of crime, including liberation from custody and the reporting of offences;
 - (b) compliance by police officers with the Lord Advocate's guidelines on the investigation and prosecution of crime, including liberation from custody and the reporting of offences; and

(c) any specific case in which the police have taken action in respect of criminal offences under the Act and regulations.

4. To seek and take account of the views of police officers and members of the public in relation to the scope, clarity and use of the powers during the crisis period.

5. To pay particular attention to any use of powers involving children, young people, or persons within disadvantaged communities including those with protected characteristics under the Equality Act 2010, to ensure that they are fully reflective of Police Scotland's duties.

6. To report to the Scottish Police Authority, as regularly and within structures as agreed to be appropriate, on Police Scotland's use of these powers, and associated public communication and community engagement.

7. To assess, and highlight as appropriate, any gap in powers between the role of Police Scotland in responding to the pandemic and the statutory framework in which they operate.

8. To assess and comment on Police Scotland's process for managing and updating their Community Impact Assessment, Equality and Human Rights Impact Assessment and Child Rights and Wellbeing Impact Assessment in the context of the Coronavirus Crisis.

Appendix 3 Terms of Reference for Operation TALLA Information Coordination, Assurance and Liaison Group (OpTICAL)

1. Monitor ongoing engagement processes under Operation TALLA to support operational policing which will remain the responsibility of Local Policing Commanders;
2. Maintain oversight of data gathering, processing and sharing to inform operational approaches, support engagement and provide transparency around police use of powers;
3. Retain, on behalf of the GOLD Commander, responsibility for review of Community Impact Assessment, providing assurance that emerging threats are correctly identified and mitigating action taken;
4. Maintain oversight of EqHRIA process to ensure that policy and practice considerations are appropriately addressed through effective assessment and mitigation;
5. Task and Coordinate activities of Information Cell, Assurance Unit and Community Engagement and Reassurance Cell ensuring that internal and external demands are appropriately prioritised;
6. As appropriate, convene NISAG to provide strategic advice relating to Operation TALLA;
7. Manage single information line from the service to external partners, including SIPR, for Operation TALLA related matters and maintain strategic oversight of all reports produced;
8. Provide single liaison function with IAG, facilitating access to other business areas where appropriate while retaining overview of requests and tasking.

Appendix 4 External contributors to the IAG

1 May 2020 & 2 October 2020:

Professor Steve Reicher, Professor of Social Psychology at the University of St Andrews, Policing and the Pandemic.

4 May 2020 & 9 October 2020:

Professor Ben Bradford, Professor of Global City Policing at the Department of Security and Crime Science, UCL, Policing and the Pandemic

15 May 2020 & 19 February 2021:

Dr Peter Neyroud, Lecturer in Evidence-based Policing, Institute of Criminology University of Cambridge

22 May 2020:

Dr Megan O'Neill, SIPR and University of Dundee

29 May 2020:

Fran Warren and Francesca Gualco, Scottish Government Justice Analytical Services

1 June 2020:

Professor Roger Halliday, Chief Statistician, Scottish Government

15 June 2020 and 5 Feb 2021:

Dr Liz Aston, Director of the Scottish Institute for Policing Research (SIPR)

10 July 2020 & 19 March 2021:

Cliff Stott, Professor of Social Psychology, Keele University, Policing of Protests and the Pandemic

7 August 2020:

Kirsty-Louise Campbell Police Scotland Head of Strategy and Innovation, and Davina Fereday, Police Scotland Research and Insight Manager attended. They presented and discussed findings from the "Your Police" and User Experience surveys including Covid-19 response and public confidence measures.

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21 August 2020:

Dr. Michael Rosie, Senior Lecturer in Sociology, Programme Co Director Nationalism Studies, University of Edinburgh, attending for a discussion on policing of protests and the pandemic

30 October 2020:

Joe Griffin, Director of Safer Communities, Scottish Government

4 December 2020:

SPA Strategy & Research Lead Martin Smith attended to brief members on the findings of the SPA Public Opinion Survey 3rd Wave.

SPA Public Opinion Survey 3rd Wave

11 December 2020:

Denis Hamill, Police Scotland Chief Data Officer, and Calum Dundas, Police Scotland – presented to the group on Data Standards at Police Scotland

8 January 2021:

Professor David Mead, University of East Anglia, attended to discuss Policing Protest in a Pandemic.

5 February 2021

Dr Liz Aston, Napier University and Director of SIPR, attended to advise on OpTICAL self-evaluation, and potential for IAG self-evaluation.

12 February 2021

Chief Superintendent Wylie, Scotland Commander, British Transport Police

19 February 2021

Dr Peter Neyroud. A Comparative Study of Police Organizational Changes During the COVID-19 Pandemic, Dr Peter Neyroud, University of Cambridge

26 February 2021

Professor Sarah Armstrong and Professor Michele Burman, University of Glasgow.

Left Out and Locked Down - <https://scotlandinlockdown.co.uk/project-report/>

5 March 2021

Katrina Caldwell, Anna Saunders and Lisa Magnani.

Scottish Government Justice Analytical Services, “The Scottish Victimisation Telephone Survey 2020”

12 March 2021

Local policing perspectives –

Chief Superintendent Sean Scott (Edinburgh)

Chief Superintendent Mark Sutherland (Greater Glasgow)

Chief Superintendent Conrad Trickett (Highlands and Islands)

19 March 2021 –

Update from Police Scotland and group discussion on the policing of public gatherings, including contributions from

- Professor Cliff Stott, Professor of Social Psychology, University of Keele
- Chief Superintendent Mark Sutherland (Divisional Commander, Greater Glasgow)
- ACC Alan Speirs, Professionalism and Assurance (Police Scotland)

19 March 2021

Planning for policing the easing of lockdown, and the 3 Nations experience

ACC Alan Speirs, Police Scotland, Professionalism and Assurance & Superintendent Joyce Greenhorn, Police Scotland

26 March 2021

John Wadham, Human Rights Advisor, Northern Ireland Police Board. Discussion on policing of the pandemic, and the experience in Northern Ireland.

16 April 2021

Police Scotland’s approach to understanding and enhancing public confidence during the pandemic, key findings and next steps

- ACC John Hawkins

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- Kirsty Louise Campbell, Police Scotland Head of Strategy and Innovation
- Davina Fereday, Police Scotland Research and Insight Manager

30 April 2021

Eleanor Hourigan, Counsel for UK Parliament Joint Committee on Human Rights.

Discussion on Covid and Human Rights impacts.

21 May 2021

Adam Wagner, Human Rights Lawyer. Human rights and policing of the pandemic.

Discussion on policing of public gatherings. Chief Superintendent Mark Sutherland, Greater Glasgow Division, attended for this item.

Scheduled discussions

28 May 2021

Scheduled attendance by representatives from University of Portsmouth on partnership project with Hampshire Constabulary focusing on police culture–

Input led by Dr Sarah Charman, Reader in Criminology, University of Portsmouth

Attendees from University of Portsmouth include -

Aram Ghaennaghami; Camille Ilet; Robert Inkpen; Geoff Newiss; Paul Smith; Stephanie Bennett;

Lynne Davies is attending from Hampshire Constabulary

4 June 2021

Martin Smith, SPA Strategy and Insight Lead, and Amanda Coulthard SPA Head of Strategy and Performance, will attend and report on findings from the 4 waves of the SPA public opinion survey, including any evidence of regional variation.

Additional Contributions from Police Scotland

Regular input from DCC Kerr; ACC Ritchie; CS Davie Duncan and CS Linda Jones

The group has also had discussions with

DCC Graham, Op Talla Gold Commander;

ACC Bernard Higgins; ACC John Hawkins; ACC Alan Speirs

Divisional Commanders: The group has had a range of discussions with and contributions from Divisional Commanders throughout, including -

CS Sean Scott (Edinburgh); CS Mark Sutherland (Greater Glasgow Division); CS Conrad Trickett (Highlands and Islands); CS George Macdonald (North East); CS Alan Murray (Renfrewshire and Inverclyde); CS Faroque Hussain (Ayrshire); CS Alan Gibson (Forth Valley).

Police Scotland Chief Data Officer Denis Hamill and Calum Dundas, Police Scotland. As listed above, presented to the group and discussed Data Standards at Police Scotland.

Introduction

In March 2020, in response to the extraordinary and unprecedented circumstances of the coronavirus pandemic, the UK and Scottish Governments imposed the most comprehensive restrictions on freedom of movement ever experienced by UK citizens. In Scotland, as elsewhere, the introduction of these new regulatory powers presented policing with a hugely complex, sensitive and unparalleled task.

This review describes an initiative – the Independent Advisory Group (IAG) – developed at pace by Police Scotland and its governing body, the Scottish Police Authority, to provide additional human rights-based scrutiny of the use by police of these new emergency powers. The review also reflects on the impacts and added value of what was done, and draws out the lessons learned.

The review was conducted by independent consultants over a 6-week period in March and April 2021 and is based on documentary evidence, observation of meetings and interviews with members of the IAG and other key – internal – stakeholders.

Background

Since 2013, Scotland has had a single national police force – Police Scotland – which resulted from the merger of the eight existing regional forces. Police Scotland is both held to account and supported by the Scottish Police Authority (SPA), a public body of the Scottish Government. The SPA was established at the same time as the single force and comprises up to 15 members (including a Chair) appointed by Scottish Ministers through a public appointments process.

In recent years, the leadership of Police Scotland has articulated an explicit and comprehensive commitment to a rights-based approach to policing. When the emergency powers were introduced, therefore, the Chief Constable proposed to the SPA that a new group should be established to complement and enhance existing scrutiny arrangements. The intention for this new group was that it should provide a dynamic forum for discussion and advice and – crucially – specific human rights-based scrutiny of the police's use of the powers.

Following extensive discussions between Police Scotland and the SPA, the 'Independent Advisory Group: Coronavirus Powers' (or IAG for short) was established – at great speed – in April 2020. Whilst other Independent Advisory Groups had previously been used in Scotland (for example to consider the issue of stop and search, and the use of biometric data and associated technologies), there was little by way of directly relevant best practice for this new group to draw on.

Establishing the Independent Advisory Group

John Scott QC Solicitor Advocate accepted an invitation to chair the group. A well-known and respected figure within policing, human rights and legal circles, he had previously chaired a number of independent groups and reviews at the behest of the Scottish Government.

There was no formal process of selection for 'external' members – rather, individuals were approached directly based on their own individual knowledge and expertise. These individuals were drawn from human rights bodies, third sector agencies and charities – especially those concerned with marginalised or disadvantaged groups – and academia. In addition, there was organisational representation from Police Scotland, SPA and other parts of the criminal justice system. In total, there were around 12-15 members.

The SPA provided the secretariat for the IAG.

The work of the Independent Advisory Group

The IAG met twice a week during the period April 2020 – July 2020, and once a week thereafter. For the first three months the meetings were audio-only, with video conferencing introduced from July. Meetings lasted for between an hour and a half and three hours.

Terms of reference for the group were agreed, and 'translated' into a work programme which evolved over time but focused on: identifying, developing, collating, presenting and discussing a wide range of relevant evidence sources (including both internal sources, and external expertise); developing, publicising and promoting routes into the IAG – paying particular attention to disadvantaged groups, and 'seldom heard' voices; and communicating with, informing, and advising a wide range of stakeholders (including the Scottish Government, third sector organisations, and the general public) about aspects of the use of the new emergency powers.

A wide range of external advisors and experts were invited to participate in specific IAG meetings including: Scottish Government statisticians and analysts; academics with expertise in policing, policing research, behavioural science and social psychology; senior police officers involved in police improvement initiatives and other developments; and an individual who acted as a human rights advisor to the Police Service of Northern Ireland. The group also heard frequently and directly from members of the executive team within Police Scotland and Divisional Commanders from different parts of the country and was provided with updates about the Scottish public's confidence in policing during the pandemic.

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It was acknowledged from the outset that the IAG would require access to up-to-date information about the policing of the pandemic to support discussions about the proportionality and appropriateness of the police response. It was known that access to Police Scotland data could prove difficult and time consuming, and that requests were often declined. To mitigate this a second group – named OpTICAL (Operation TALLA Information, Assurance and Liaison Group)¹ – was established to put in place formal information sharing protocols on access to police data.

Membership of OpTICAL comprised a range of officials from Police Scotland and some of its oversight bodies (including the SPA itself), two academic criminologists, and the Chair of the IAG.

OpTICAL supported Divisional Commanders in their operational approach by providing analysis and strategic oversight of a wide range of sources of information, intelligence and data. The data sources available to – and analysed by – OpTICAL included: the Coronavirus Intervention (CVI) system which was set up immediately the pandemic started, and which records all pandemic-related policing activity, from low-level dispersal through to enforcement using Fixed Penalty Notices (FPN) and arrests; information about the demographic characteristics of individuals to whom fines were issued; a bespoke online reporting system which enabled members of the public to report alleged breaches of COVID-19 legislation; and information about the views of police officers within Police Scotland about the experience of policing the pandemic, based on interviews conducted in June 2020 and April 2021.

The OpTICAL group provided an opportunity to consider operational guidance and training documents, including Children and Young Person (CYP) and Autism Disabilities guidance, COVID National Equality and Human Rights Impact Assessment, Community Impact Assessment and CYP Impact Assessment. OpTICAL also provided reflection and discussion on topical matters such as the policing of protests and public assemblies, the use and impact of online reporting and a review of the context of the use of force. The group frequently hosted divisional commanders and policing specialists to inform these discussions.

The analysis and insight generated through the work of OpTICAL were relayed directly and regularly to the IAG.

The main types of formal output from the IAG comprised: regular reports to the SPA Board; additional correspondence on issues such as face masks, quarantine and border controls and football-related policing; and two public webinars. A range of other materials was produced by members of the group and ‘off table’ conversations and connections pursued with a variety of organisations and other audiences. The

¹ Operation TALLA is the name for Police Scotland’s response to COVID-19.

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Chair of the group was extensively quoted in various media and provided oral evidence at the Scottish Parliament to the Justice Subcommittee on Policing on two occasions.

Each of the reports to the SPA Board between May 2020 and May 2021 concluded with an assurance that the IAG was satisfied that the use of powers by Police Scotland was compliant with human rights principles and legal obligations, the values of Police Scotland, and the purpose of the 2020 Act and Regulations, namely safeguarding public health.

Impact and added value

The IAG was just one element within a fast-changing and complex situation, and isolating its specific contribution is therefore challenging. However, it is clear that the IAG did provide additional scrutiny and assurance of the kind envisaged, as well as wider benefits to the police and the SPA. In addition, there were broader impacts and unforeseen consequences arising from the establishment of the group.

The scrutiny and assurance offered by the group

The effectiveness of a public assurance exercise of this kind rests on a number of factors: the real and perceived independence of the group both as individuals and as a collective; the knowledge and perspectives offered by members of the group, individually and collectively; the broader input to the group, in terms of identified issues, evidence and insight; the quality of engagement, deliberation and discussion; and the wider communication of conclusions. Each of these elements played out in a positive, constructive way and each was vital to developing the 'pathways to impact' which the IAG sought to create.

Membership of the IAG was deliberately constructed to include critical voices from organisations grounded in human rights, social justice and the third sector. The Chair of the group had a reputation for independence and the advancement of a rights-based agenda. In interviews, none of the membership reported feeling constrained in terms of the discussion. Moreover, the involvement of senior police officers on the group was unanimously welcomed and seen as enabling dialogue, engagement and scrutiny, rather than jeopardising or inhibiting the group's independence.

Members brought to the group both technical expertise and knowledge drawn from, or connected to, lived experience. They also provided briefing material, and in some cases initiated additional data collection exercises within their own organisations.

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The IAG work programme described above provides a flavour of the wide range of different inputs and evidence which was available to the group. An array of sources was identified, marshalled, presented and discussed at the group.

Interviews with IAG members captured an almost uniformly positive view of their membership of the group, which was characterised as offering a 'safe space' for 'respectful and grown up' conversations, allowing for 'robust challenge'. Attendance – given the seniority of the membership and the pressing nature of their other commitments – was consistently high, and indicates a high degree of confidence in the worthwhile nature of the exercise, and the quality of the discussion.

Whilst public awareness of the IAG was likely to have been low – and indeed neither the Chair nor the memberships saw overt public messaging as a core part of their role – the minutes of meetings, and the regular reports to SPA were made publicly available within a very short timeframe. Transparency – rather than wide public awareness – was therefore achieved.

Benefits to the police and the SPA

Overall, the group provided the SPA and Police Scotland with added confidence that decisions taken early in the pandemic about the direction, focus and tone of policing were consistent both with human rights and with the underlying values and principles associated with policing by consent. The deliberations, instincts and conclusions of the IAG helped to legitimise a proportionate, common sense approach.

More specifically, the group provided a 'critical friend' or sounding board to help calibrate or firm up particular aspects of Police Scotland's approach. For example, during the Black Lives Matter protests in the summer of 2020, members of the Executive Team at Police Scotland, along with key Divisional Commanders, discussed with the IAG their proposed approach to the policing of the events. From the outset, this sought to reconcile reasonable adherence to the coronavirus regulations with the right to protest.

The fact that the Chief Constable was able to ask the IAG to consider how specific events were handled undoubtedly also helped to take some of the heat out of any immediate controversy – even if there was no guarantee that the group would ultimately be able to publicly assure the overall approach. More generally, when policing-related controversies arose, these could immediately be discussed in a 'safe space' with some of the voices which might otherwise have been engaged in the same debates in more public and adversarial ways.

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For the SPA, the ongoing, independent and public character of the assurance offered by the IAG was itself seen as the key benefit. While the SPA Board clearly has its own permanent scrutiny and assurance role, in the face of what was frequently described as a 'draconian' and unprecedented restriction of civil liberties, the independence of the IAG was felt to be critical in supporting the SPA's own assessment and in maintaining the confidence of civil society groups and the public more generally.

Broader impacts and unforeseen consequences

In addition to its formal responsibilities and terms of reference, the IAG – and the array of new networks and conversations which it opened up – also prompted a range of less predictable developments. Examples of these include: accelerating an amendment to the original emergency legislation as it impacted on the use of FPNs for 16 and 17-year-olds in Scotland; prompting one of its members to apply to join the SPA Board; encouraging the adoption of some of the ideas of the IAG into other organisations; and facilitating the development of a new funded research programme using Police Scotland data.

Reflections and lessons for the future

The IAG was developed at pace, in an unprecedented set of circumstances. This review has provided the opportunity to reflect on what was done and to draw out any lessons for the future. The main elements to highlight are as follows:

The **terms of reference**, developed rapidly at the outset, were in many ways 'fit for purpose'. They allowed the group to get up and running quickly, and helped to delineate the scope of the group's enquiry. However, in retrospect, the overall purpose of the group could have been more clearly articulated. In particular, fuller explanation of what independent public assurance actually involves, how it would be done and how it relates to other aspects of scrutiny might usefully have prefaced the detail of the group's remit and helped to ensure greater consistency of understanding across different members.

Police Scotland, the SPA and the chair of the group should be commended for drawing together a **diverse range of perspectives, expertise and experience**. There is clearly a limit to the extent to which a group of 12-15 people can fully represent Scotland as a whole. That said, some sections of the community hit especially hard by the pandemic were arguably under-represented. There was, for example, no representation from an organisation with a specific remit for deprivation and economic inequality, and limited input from Scotland's black and minority ethnic communities. Future exercises might therefore explicitly ask 'What does it mean to represent diverse interests?' 'Which specific interests and organisations should be represented?' 'What scope is there for membership to be refreshed or reviewed?'

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The **choice of Chair was critical to the success** of the group. John Scott was held in high regard by those on all sides, for his professional knowledge and experience, his links across diverse groups and individuals, and his interpersonal skills. There is a need to **identify and develop the pool of potential candidates** for future roles.

The **secretariat function was critical to the success** of the group. In the case of the IAG, the secretariat function provided by the SPA was highly responsive and effective, and allowed the group to work at pace and with intensity.

While there were some drawbacks, there were also **substantial benefits to meeting remotely**. This allowed a group of senior and busy people from across the whole of Scotland to meet frequently and a level of informality which was thought to be positive. Any future exercises should explicitly consider the case for digital-only or 'hybrid' approaches.

There are **different forms of knowledge involved in the scrutiny of policing**, and recognising these explicitly may be helpful. The IAG included elements of three distinct types of (sometimes overlapping) knowledge namely: community or 'lived' experience; technical expertise (especially in human rights); and wide-ranging engagement with evidence in the form of statistical updates and analyses, first person accounts of operational policing and input from external experts in relation to developments and insights from elsewhere.

There are **limits to the kind of scrutiny and assurance** that the IAG can offer. Clearly, the IAG could not infringe prosecutorial decision-making in relation to individual cases. More broadly, the group could not expect to influence 'real-time' decision-making or to have access to the level of information needed to draw detailed or definitive conclusions about how a specific incident or event had been handled. As such, ongoing caution is warranted around any suggestion that particular instances are 'referred to' a group such as the IAG, in case its relatively high-level scrutiny is mistaken for a process of detailed inspection, approval or validation. At the very least, the basis of or limits to such consideration should always be made clear.

The **development of close, supportive relationships led to improved information sharing and, ultimately, to better scrutiny**. However, there is a potential tension here: namely, that the closeness of the working relationships within the group (and OpTICAL) might ultimately undermine – or be seen as undermining – the independence of the external members. It should be possible to mitigate such risk in relation to any future exercise by ensuring transparency not only in relation to the workings and conclusions of the group but how it is constituted – and by recruiting, as in relation to the current IAG, individuals known for their independence as well as expertise.

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Police Scotland **displayed considerable confidence** in its own strategy and trust in its workforce in asking for the IAG to be established in the first place, as there was no guarantee that its actions would ultimately be viewed favourably. **Police Scotland and the SPA placed considerable trust in the Chair and in the group itself**; and the group members clearly came to trust one another in various important respects – for example, to maintain confidentiality when necessary, to listen different perspectives and experiences, and to respect differences of opinion. Over the course of more than a year, no significant crises were evident and no major ‘stress test’ of the group occurred. However, it cannot be assumed that this will continue in the future. The group should therefore consider how it would respond if and when crises do occur.

A collaboration of this intensity **cannot be sustained indefinitely**. Given the current situation in relation to the pandemic, and the likelihood of entering a less acute stage, members thought that an **exit plan** should be developed for the group, perhaps involving a final report and an explicit handover of some of the issues for which it has had responsibility.

In conclusion

The IAG was an innovative, important and in many ways ground breaking initiative. Its work has, of course, been constrained in all sorts of ways – by the resources available to it, the fast-moving nature of its work, and the limitations on its access to different kinds of expertise, evidence and experience. Nonetheless, within these constraints, the IAG was able to draw on an impressive array of inputs – both from the membership itself and further afield – and allowed an important and different conversation to take place. While clearly not the answer to all of the complex challenges facing policing, this IAG ‘model’ has potentially wide-ranging benefits, both in the specific and unique circumstances of the pandemic and for policing more generally.

However, it should be emphasised that while the IAG may have received interest and attention from other jurisdictions and may offer ideas for new methods of joint working to provide additional human-rights focused scrutiny, it is not necessarily a model that could be simply transplanted to another context. Its establishment, operation and impacts have all drawn on – and subsequently contributed to – an emerging culture within Scotland of government and institutional attention to human rights, evidence-based policing and routine engagement and collaboration across key stakeholder groups. As such, neither its successes nor its limitations can be wholly attributed to the work of the group itself.

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