

**Meeting 8 January 2021 13:00 – 15:00**

**Members attending:**

John Scott QC, Solicitor Advocate (Chair)

Bruce Adamson, CYPCS

Ephraim Borowski, Chair of the National Independent Strategic Advisory Group

Martyn Evans, SPA Board Member

Gill Imery, HM Chief Inspector of Constabulary in Scotland (HMICS)

Dr Elizabeth Kelly, Associate Carnegie UK Trust

Susan Kemp, Scottish Human Rights Commission

John Logue, Deputy Crown Agent Operational Support, COPFS

Naomi McAuliffe, Programme Director Scotland, Amnesty International

Professor Susan McVie, University of Edinburgh

Diego Quiroz, Scottish Human Rights Commission

ACC Gary Ritchie, Police Scotland

Brian Scott, Glasgow Disability Alliance

Dr Catriona Stewart, SWAN Scotland

**Apologies:**

Aamer Anwar, Solicitor and Human Rights campaigner

Tressa Burke, CEO Glasgow Disability Alliance

Maria Galli, CYPCS

DCC Will Kerr, Police Scotland

**Attending for Item 2**

Professor David Mead, University of East Anglia

**Secretariat:**

Eleanor Gaw, SPA

Fiona Miller, SPA

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### 1. Welcome and introductions

The Chair opened the meeting and welcomed Professor David Mead from the University of East Anglia, attending to discuss his paper Policing Protest in a Pandemic and related issues.

### 2. Policing Protest in a Pandemic

**David Mead, Professor of Law, University of East Anglia**

The Chair introduced Professor Mead and updated him on the recent work of the group.

Professor Mead highlighted a number of issues which he had considered. These had been based on examples from English law and experiences in England, but may be helpful to illuminate differences, similarities and shared issues.

Clarity, certainty and the accessibility of legislation were highlighted as particularly important from a human rights perspective. In England, the late publication of regulations has created challenges. There has also been some ambiguity of language, such as "reasonable excuse". This can lead to confusion as to what is and isn't allowed, potentially restricting individuals' human rights.

Without legal knowledge of what the courts would allow, for example with regard to the right of assembly, people may not understand their rights, which may be curtailed as a consequence.

Overall, it has sometimes been difficult to determine why some protests have been permitted and others haven't. There may be strong operational policing reasons why this is the case, but it can cause confusion and seem inconsistent to members of the public.

Professor Mead noted that in some areas of the UK, policing has tended to use common law to prosecute, rather than regulations specific to coronavirus. This was noted as an area of work where additional research may be beneficial.

Professor Mead also referenced some examples of misleading local police communications, especially on social media, providing incorrect information at variance with legal powers, and which in practice may restrict individual rights. The difficulty in accessing tracking for all related legislative change has added to the potential for confusion.

The Chair thanked Professor Mead for his input and agreed that there were some similar concerns in Scotland such as the late publication of emergency legislation impacting on the opportunity for scrutiny, and challenges in sourcing tracking of changes to regulations over time.

Wider discussion points included -

- The importance of the clear and serious public health message right now, which is to stay at home unless you have to go out.

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- The distinction between peaceful and lawful protest. If an individual loses the right to peaceful protest, this does not make the protest itself unlawful or impact on the rights of other protestors.
- The challenge of communication, and public access to clear information on understanding their rights.
- The commissioner for CYPSC highlighted the CRC publication [The Rights of Child Human Rights Defenders Implementation Guide](#) Many young people want to re-engage, for example on environmental issues, and the impact of restrictions on this group seems particularly significant.
- Planning future protests is extremely challenging when legislation is likely to change.
- Good practice in schools and community based engagement by Police Scotland was highlighted.
- The benefit of a national service in ensuring clarity of messaging, supporting public and officer understanding of the 4E's approach.
- The critical importance of the use of discretion, balanced against any related risks of perceived inconsistency.
- HMICS paper [Operational Responsibility of the Chief Constable](#) was circulated to members.

The Chair thanked Professor Mead for attending and contributing to the discussion.

### **3. Note of the previous meeting and matters arising.**

All matters will be covered in the agenda.

### **4. Policing over the festive season and impact of new regulations**

ACC Ritchie outlined Police Scotland actions and measures, focused on managing risk and public protection during the pandemic.

The new online public reporting facility is being well used, which over time may increase service demand. A request for a demographic break down by age of those using the online reporting tool will be submitted via OpTICAL.

**Action:** ACC Ritchie / Police Scotland

Over the festive period, activity focused on reported breaches of regulations on indoor gatherings, which increased to some extent. The new regulations may increase focus once again on policing of outdoor space, alongside the focus on indoor gatherings.

The upswing in the pandemic does impact on staffing and absence levels. Staffing resources are being used flexibly to ensure that suitable cover is always being maintained, and staff welfare and well-being is at the forefront of Police Scotland's commitment and approach.

Members were briefed on and discussed recent video coverage on social media of an incident in Aberdeen, and the Chief Constable's comments during the question and answer session at the First Ministers daily briefing.

ACC Ritchie briefed the group on the Police Scotland complaints process.

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A number of discussion points were raised including –

- The group's wider role on assurance, where ongoing complaints or criminal investigations may be underway.
- The potential for increasing polarisation of public opinion.
- Any potential impact on the public appetite for increased regulation.
- The role of values based policing, discretion and guidance on operational independence.
- The need for increasing support, to assist compliance with essential public health measures at what feels like the most critical point of the pandemic.

The group noted that its remit does not allow it to consider specific cases in which the police have taken action under the regulations, and that this case will be considered independently in the normal way by other organisations should there be a prosecution or complaint against the police. The group will consider the general implications for policing during the pandemic and make appropriate recommendations to the SPA Board.

### **5. Data Update**

Professor McVie has prepared a report based on additional CVI data up to 3 January. This will be presented to OpTICAL, ahead of sharing with the IAG.

#### **Action: S. McVie**

No additional Citizen Space entries have been recorded.

### **6. AOCB**

#### **Reporting to the SPA**

The group discussed key themes for the report to the SPA Board 22 January. The report will be finalised in the first part of the week beginning 18 January.

The IAG data report will be presented to the SPA Board meeting 24 February.

#### **Future meetings -**

22 January – Chief Superintendent Eddie Wylie, British Transport Police, attending.

29 January - Kirsty Louise Campbell and Davina Fereday, Police Scotland, attending.

#### **Mental Health Issues and young people**

Professor McVie highlighted the impact of mental health pressures during the pandemic, and access to support particularly for young people.

The need for the group to engage with young people was noted, and CYPSCS agreed to consider further options to advise and feed back to the group. This will be scheduled for discussion at a future meeting.

#### **Action: CYPSCS / Secretariat (scheduling)**

**7. Date of Next Meeting :** 15 January 2021 13:00 – 15:00

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