Justice Committee

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012

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Introduction

This submission focuses on the creation of Police Scotland and whether it has enhanced accountability within Scottish policing. The Scottish Government Policy Memorandum accompanying the 2012 Act explicitly states that “existing weaknesses in national accountability will be addressed; and local accountability will be enhanced through greater engagement at local authority level”. Thus I will refer to the consequences of the creation of Police Scotland (Question 1) and relate that to some institutional issues with regard to accountability.

There has been a policy failure on the central question of accountability for policing and this is directly linked to institutional failures. The serious problems that have bedevilled the service since its inception 5 years ago are not due to bad or rogue personnel appointments but represent a more fundamental problem of design. Further I would argue that there is a need for some institutional reform to rebalance power within policing in particular at a more local level.

The centralisation of power since 2013 has caused such an imbalance in Scottish policing that it almost imploded at a managerial level. It has also caused a degree of inappropriate governmental intervention in policing. This has implications for the general public and broader policing powers – I will use the example of deploying armed police and the extension of the use of tasers to explore this.

Police Scotland plays a vital role in our society. To facilitate that role they are given significant powers. The institutional means we have to hold those powers to account are vital. I am of the view that accountability needs to be rebalanced within those institutions.

Ending of Localism

The creation of Police Scotland in 2013 ended the traditional “tri-partite” model of policing by consent. The three points of regional police boards made up of councillors, the Scottish Government and the senior management of the Police Service personified by the Chief Constable was reduced to two. Whilst we now have a powerful Chief Constable and the Scottish Government remains the operation of local accountability structures established since 2013 has been diverse and erratic.

Research by Edinburgh University highlights that the new local structures (known collectively as local scrutiny committees) vary widely. This contrasts with the institutional stability that was required in the eight force model. Their work showed

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1 Paragraph 37, Police and Fire Reform (Scotland) Bill Policy Memorandum
2 Seen with the commencement of the Criminal Justice (Scotland) Act 2016 in January 2018.
that four different models are utilised\(^3\). This inconsistency was actually envisaged by the legislation. The 2012 Act gives responsibility for "adequate arrangements" for local policing to the Chief Constable. They would appoint local commanders who would facilitate "involvement" in setting "priorities and objectives" for the locale.\(^4\) Through the creation of local police plans the local authorities feed into the Scottish wide plan.

During the parliamentary process this variable structure was promoted as a positive. The Justice Minister put it thus "Local authorities are entitled to make decisions about how best to deliver local scrutiny and accountability".\(^5\) Supporters of the Bill echoed this: "I am glad that the committee decided not to recommend a uniform method of local accountability".\(^6\)

The problem with this mixed bag approach for local areas regarding scrutiny is that police powers are consistent across the country. Moreover with a national police force initiatives flow from the centre thus the local scrutiny committees with their different structures face a "structural disconnect"\(^7\) with both Police Scotland and the central regulatory body the Scottish Police Authority (SPA). Local councils are not consulted on national police initiatives and local commanders find it difficult to respond to questions on these policies. The deployment of armed police on routine duties is a good example of this phenomenon which will be explored later.

Pre-2013 joint police committees were dismissed by some as providing a "fig-leaf" of accountability. Due to a lack of resources and knowledge they just acted as a rubber stamp with no real understanding of their role.\(^8\) However now local authorities do not even get the chance to be a rubber stamp and policing has become something remote and removed from them. This has exacerbated the innate centralising tendencies of creating a national police force. It is also a truth that the only directly democratic input into the eight force policing model was the elected councillor.

Local accountability has not been "enhanced" by varying the institutional form that councils can adopt to scrutinise policing. Indeed the inconsistency of this has significantly reduced accountability and not led to "greater engagement". There needs to be a re-orientation to creating a consistent local structure for holding police forces to account.

**Centralising Accountability**

The potential weakening of local structures holding police to account for their behaviour is one of the reasons that made a national Scottish police force a fringe idea until very recently. It was not until the 2011 Scottish Elections that the Labour and Conservative Parties backed the idea – the Scottish Government later followed

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4. Police and Fire Reform (Scotland) Act 2012 ss. 44-47
5. Roseanna Cunningham, Scottish Parliament Stage 1 Debate 10\(^\text{th}\) May 2012.
although the SNP manifesto of 2011 was more equivocal: “In order to maintain the increased visible police presence we will reduce the number of police forces in Scotland”.9

The structures of local accountability were replaced by a national unelected body (the Scottish Police Authority) that was designed to deal with “existing weaknesses” at a national level.

In the absence of a uniform structure of accountability and scrutiny at local level there has been an overloading at the centre. Alongside the SPA there is the Scottish Government, the Police and Investigations Review Commission (PIRC)10 and Her Majesty’s Inspectorate of Constabulary (HMIC). In law (including the 2012 Act) each of these authorities has distinct power, however in reality when problems have arisen they all seem to tread on each other’s toes.

Partially this stems from members of the SPA not being aware of what their role is vis a vis Police Scotland. Ironically the criticism that was levelled at the local authorities’ joint police board11 in the legacy forces has been elevated to national level. Research from Dr Ali Malik12 illustrated that members of the SPA lacked confidence to raise issues of concern for example on the industrial level use of stop and search in the early years of Police Scotland and as discussed below the deployment of armed police for routine issues.

Moreover tied to the personal issues that members of the SPA may have had institutionally they did not have access to all information and Police Scotland was slow to provide it13 compounding the personal limitations members may have felt. Inevitably this means the organisation was reactive and could not develop its own consistent approach to holding the police to account.

This means that most of the SPA’s interventions on significant issues were ex post facto – the widespread use of stop and search under the first Chief Constable of Police Scotland was causing concern from 2013 onwards – the SPA report which endorsed this “appropriate” use of stop and search was produced in May 2014.14 The government intervened by appointing an advisory group chaired by John Scott Q.C. that reported in August 201515 and the law on stop and search was amended in 2016.16

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9 SNP Manifesto, 2011 Scottish Parliament Election Manifesto
10 Whose powers were extended by ss60-67 of the 2012 Act
11 See note 8.
13 See note 12.
14 Scottish Police Authority (2014) Scrutiny Review: Police Scotland’s Stop and Search Policy and Practice
16 Criminal Justice (Scotland) Act 2016 although not enforced until January 2018.
Further the deployment of armed police in routine patrols was in place from April 2013 – following outcry the SPA did not report on the issue until January 2015. These interventions after the fact from an authority unsure of its role are symptomatic of a fundamental failing of accountable policing. These initiatives by Police Scotland were just announced - the authorities had to run to catch up with them afterwards. There was no initial discussions with regulatory bodies putting forward these proposals – they were \textit{fait accompli}. Not the actions of an accountable police force.

These problems at the centre have caused other authorities to become involved – most inappropriately in the context of the Scottish Government. In fact the Secretary of State for Justice used the failings of the SPA to justify intervening on the internal disciplinary processes for the senior management of Police Scotland and preventing the return to work of the Chief Constable in November 2017. Such interventions on policing should not be within the remit of central government – hence the past use of the tripartite structure to keep government at arm’s length. The absence of meaningful structures of accountability particularly at local level have exacerbated the close relationship between government and police.

**Case Study: Deployment of Armed Police and Taser trained officers**

One real world example that illustrates the impact blurred lines of accountability can have not only on policing but broader Scottish society are recent developments on armed police. On 14\textsuperscript{th} December 2017 it was announced to the press\textsuperscript{19} that Police Scotland was going to increase taser trained officers by 500 (a significant amount) and expand the deployment of armed forces for routine call-outs.

This was made at a time when there was no Chief Constable in place\textsuperscript{20} but more significantly it was made a week before the SPA Public Board Meeting on 19\textsuperscript{th} December 2017. This carries on the method of Police Scotland presenting “done deals” to the authorities. Indeed although these changes were presented to the Board both documents on the issues were only for “noting”\textsuperscript{21} by the Board. Thus there was no place for meaningful input from the Board prior to its introduction.

The significance of these changes cannot simply be put down to an operational decision of the police. The normalisation of armed police on Scottish streets and the potential increased use of tasers may be a good or a bad thing. However it cannot be simply for the police to decide – this requires consultation with broader society. The current institutional structures do not allow for this neither with the new national authority the SPA nor using the mixture of structures that exist locally.\textsuperscript{22}

\textsuperscript{17}Scottish Police Authority (2015) Scrutiny Review: Inquiry into the public impact of Police Scotland’s Firearm Standing Authority \\
\textsuperscript{18}Michael Matheson MSP, Parliamentary Statement on the Chief Constable’s leave of absence 10\textsuperscript{th} January 2018 \\
\textsuperscript{19}For example BBC News http://www.bbc.co.uk/news/uk-scotland-glasgow-west-42351458 \\
\textsuperscript{20}Phil Gormley was on special leave at this time \\
\textsuperscript{21}Police Officer Safety – Use of Conducted Energy Device (CED) (Taser) and Armed Deployment Model papers presented to SPA Board. http://www.spa.police.uk/assets/126884/441011/441094/434534/item6.3.1 and http://www.spa.police.uk/assets/126884/441011/441094/434534/item6.3.2 \\
\textsuperscript{22}See note 3.
The acting Chief Constable Iain Livingstone prior to the December announcement downplayed the issue around armed policing and stated the concerns of the issue were part of the “constant political debate and discussion” around Police Scotland and he wished a return to the “apolitical public service”. Indeed he argued that “core policing in its essence is unpolitical”.\footnote{Interview with Acting Chief Constable Iain Livingstone Scotland on Sunday 3\textsuperscript{rd} December 2017.} These views ignore the broad societal impact of these “operational” issues which institutionally under the current arrangements cannot be challenged once introduced.\footnote{Another more recent example is the use of “cyber kiosks” to download materials from electronic device. Evidence was taken on this by Justice Sub-Committee on Policing on 10\textsuperscript{th} May 2018.} That exacerbates the political “noise” around the issue as there is frustration at the absence of institutional accountability.

A recent example of the local difficulties can be seen in Glasgow. On 9\textsuperscript{th} May 2018 it was announced that all city councillors were written to by Police Scotland informing them of the extended use of its armed officers.\footnote{Catriona Stewart “Policing changes mean more armed cops will be on Glasgow’s streets” Evening Times 9\textsuperscript{th} May 2018.} Elected representatives of the biggest city in Scotland had no input into this decision with all the visible implications that it has. A more localised form of accountability could be involved in the decision making process over whether or not to use armed officers in this way. In the past with budgetary oversight local policing committees could have challenged the use of funds for controversial expenditure.\footnote{In England in the 1980s with a slightly different tripartite localised model Police Authorities came into conflict with their Chief Constables on issues like this notably James Anderton with Greater Manchester Police over the use of armed officers.}  

\textbf{Rebalancing Accountability: How?}  

It is my contention that the myriad of problems that have beset Police Scotland is fundamentally due to institutional structure. Whoever becomes Chief Constable this will still be the case. This is due to an absence of accountability at a local level and a crowding of institutions at a central level which has made lines of accountability fuzzy nationally.

England and Wales have attempted to deal with some of the innate tensions in policing which we are witnessing in Scotland with the introduction of democratically elected Police and Crime Commissioners alongside regional forces.\footnote{This solution was also mooted for the 8 Scottish police forces by the Scottish Conservatives in the early 2000s – see Scottish Parliament Debate 5\textsuperscript{th} February 2004.} This is far from a complete solution\footnote{For example in April 2018 the Hampshire Police and Crime Commissioner faced a vote of no confidence by Police officers over budget cuts. http://www.bbc.co.uk/news/uk-england-hampshire-43753775} but it at least recognises the need for clear lines of accountability and the role of democracy within policing.

The absence of direct democracy as well as a consistent local model of accountability in Scottish Policing is striking. One solution could be that the Chair of the SPA is directly elected by the people or indirectly elected by the Scottish Parliament rather than being appointed by the Scottish Government. In a sense...
acting as a Scottish Police Commissioner. This would give that individual authority in dealing with Police Scotland and critically they could be involved in the earliest stages at discussions on controversial issues like stop and search and deploying armed officers.

The difficulty with this is that it would mean more centralisation in a very crowded field. The same would be true of giving more powers to the Scottish Parliament Committee overseeing the police. This also raises constitutional issues of national politicians “controlling” police as has been recently seen with the Scottish Government’s inappropriate interventions.

The rebalancing of accountability away from the centre requires a consistent model across local authorities which does not exist at the moment. Perhaps this could be combined with some democratic input by creating local convenors of Police Committees – either directly elected or indirectly elected by local authorities. There are currently 3 Police Regional Command Centres in Scotland (North, West and East) – it would be feasible that new structures of local accountability could be built around these. These new committees would be representative of local stakeholders that could be involved in developing initiatives. The nature of the relationship of these structures with the centre specifically the senior management of Police Scotland and the SPA would require to be defined but this is currently an issue anyway with the variable approach of local scrutiny that currently exists.29

There are issues of creating consistent local structures of accountability in a national police force – where would power lie? Would national initiatives of policing be possible? However without considering some radical institutional reform the problems faced by Police Scotland in its first five years will just keep on repeating. There is a need for rebalancing away from the centre. In that way the laudable policy aims stated in 2012 of “enhanced” local accountability and correcting “existing weaknesses in national accountability”30 can be delivered.

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29 See Note 3.
30 See Note 1.