



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

34th Meeting, 2015 (Session 4)

Tuesday 1 December 2015

The Committee will meet at 9.45 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Interception of Communications Commissioner's Office:** The Committee will consider next steps following the Commissioner's statement of 25 November 2015.
3. **Draft Budget Scrutiny 2016-17:** The Committee will take evidence in advance of the publication of the Scottish Government's Draft Budget 2016-17 from—

DCC Neil Richardson, Designated Deputy for Chief Constable, and Janet Murray, Director of Financial Services, Police Scotland;

Andrew Flanagan, Chair, and John Foley, Chief Executive, Scottish Police Authority;

and then from—

Alasdair Hay, Chief Officer, and Sarah O'Donnell, Director of Finance and Contractual Services, Scottish Fire and Rescue Service;

Pat Watters, Chair, Scottish Fire and Rescue Service Board;

and then from—

Catherine Dyer, Crown Agent and Chief Executive, Crown Office and Procurator Fiscal Service.

4. **Work programme:** The Committee will consider its work programme.

J/S4/15/34/A

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk J/S4/15/34/1

Private paper J/S4/15/34/2 (P)

[Statement by the Interception of Communications Commissioner](#)

Agenda item 3

Paper by the clerk J/S4/15/34/3

Private paper J/S4/15/34/4 (P)

Agenda item 4

Private paper J/S4/15/34/5 (P)

Justice Committee

34th Meeting, 2015 (Session 4), Tuesday 1 December 2015

Interception of Communications Commissioner's Statement of 25 November 2015

Note by the Clerk

Purpose

1. This paper provides background information on the statement by the Interception of Communications Commissioner that Police Scotland contravened the Acquisition and Disclosure of Communications Data Code of Practice 2015 in respect of a number of applications for communications data. This information is being provided to assist the Committee in considering next steps on this issue.

Background

2. The Acquisition and Disclosure of Communications Data Code of Practice 2015¹ requires law enforcement agencies² in the UK to seek judicial authorisation when applying for communications data to identify or determine journalistic sources.³ The Interception of Communications Commissioner is responsible for keeping under review the interception of communications and the acquisition and disclosure of communications data by intelligence agencies, police forces, and other public authorities. The Commissioner reports to the Prime Minister on a half-yearly basis with respect to the carrying out of these functions.

3. In his half-yearly report⁴ to the Prime Minister published on 16 July 2015, the Commissioner stated that “since 25 March, when the revised code came into force, two police forces have acquired communications data to identify the interactions between journalists and their sources in two investigations without obtaining judicial approval”. He added that his Office was in the early stages of investigating these breaches to determine whether any individual had been adversely affected by any wilful or reckless failure by any person within a public authority.

4. On 4 August, the Commissioner's office released a statement⁵ explaining “the reason we chose to report these breaches at such an early stage of investigation was to ensure that the issue was highlighted nationally at the earliest opportunity to prevent further breaches from occurring”. It also advised that “it would be wholly inappropriate for us to name the two police forces whilst we are still in the process of investigating fully these matters”. Media reports at the time indicated that Police Scotland was one of the two forces under investigation.

5. On 31 July, the then Commissioner the Rt Hon Sir Anthony May demitted office. In response to a letter from the Convener of 24 September asking when the findings of this investigation would be published, the Head of the Commissioner's Office advised the

¹ [The Acquisition and Disclosure of Communications Data Code of Practice.](#)

² Law enforcement agencies include police forces, the National Crime Agency and Her Majesty's Revenue and Customs.

³ This change to the Code of Practice came into effect in March 2015 in response to the IOCC's recommendations in its inquiry into the use of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act to identify journalistic sources.

⁴ [IOCCO's Half-yearly report to the Prime Minister \(16 July 2015\).](#)

⁵ [IOCCO's statement on investigation into possible breaches of Code of Practice 2015 \(4 August 2015\)](#)

investigation was almost complete but that the findings could not be published until a Commissioner was appointed.⁶ The Rt Hon Sir Stanley Burnton was appointed by the Prime Minister as the Commissioner on 4 November. Sir Stanley published his findings on the investigation in a statement⁷ of 25 November—

“I concluded that there had been contraventions of the Acquisition and Disclosure of Communications Data Code of Practice 2015 in respect of five applications for communications data submitted by Police Scotland relating to one investigation. It is evident from these applications that Police Scotland sought communications data in order to determine either a journalist’s source or the communications of those suspected to have been acting as intermediaries between a journalist and a suspected source. In contravention of Paragraph 3.78 of the Code, judicial approval was not obtained to acquire this communications data.”

6. The Commissioner also stated that “I am satisfied that four individuals were adversely affected by these contraventions and that the failures identified can properly be viewed as reckless” and advised that “I have written to those individuals and have provided them with sufficient information to enable them to engage the Investigatory Powers Tribunal⁸ effectively should they wish to do so”. He went on to say that “I recognise the comprehensive review that Police Scotland conducted and wish to emphasise that Police Scotland has put in place significant measures in order to prevent any recurrence of such contraventions”.

7. Police Scotland’s released a statement⁹ on 25 November in which it confirmed that it “did not adhere to the new guidelines covering access to communications data during a recent investigation into alleged serious breaches of information security”, adding “for the purposes of clarification, none of the applications concerned a journalist”. It also said that “the IOCCO has noted that there was no evidence of an intentional act by Police Scotland to avoid the requirements of the Code” and that “a detailed action plan was put in place as soon as the issue was highlighted by IOCCO and no further recommendations have been made to Police Scotland”.

8. Statements were also released¹⁰ by the Scottish Police Authority¹⁰ and the Cabinet Secretary for Justice¹¹ on 25 November. In its statement, the SPA said that—

“The SPA has today written to Police Scotland to seek their formal assurance that action has already been taken to ensure there is no re-occurrence of these issues. The SPA considers there are wider considerations raised by this case that would warrant further independent assurance work. That is why we have requested that HMICS carry out an in depth assurance review of the effectiveness and efficiency of Police Scotland’s counter corruption practices”.

⁶ [Letter from Head of IOCCO on publication of investigat findings \(25 September 2015\).](#)

⁷ [IOCCO’s statement on findings of investigation \(25 November 2015\).](#)

⁸ The Investigatory Powers Tribunal was established in October 2000 under the Regulation of Investigatory Powers Act 2000 and provides a right of redress for anyone who believes they have been a victim of unlawful action under RIPA or wider human rights infringements in breach of the Human Rights Act 1998. The Tribunal investigates two types of application: (1) interference complaints against a broad range of public authorities using covert techniques regulated under RIPA and (2) human rights claims. Applications relating to interference complaints against public authorities may instead be made to the ordinary courts instead of the Tribunal.

⁹ [Police Scotland statement on IOCCO’s findings \(25 November 2015\).](#)

¹⁰ [SPA statement on IOCCO’s findings \(25 November 2015\).](#)

¹¹ [Cabinet Secretary for Justice statement on IOCCO’s findings \(25 November 2015\).](#)

9. The SPA added that it hoped that the review could be progressed in order for a final report to be made available in the spring of 2016. In his statement, the Cabinet Secretary said “it is clear Police Scotland’s actions in accessing communications data have fallen short of the standards expected and I welcome today’s announcement by the SPA that they have asked HMICS to review the robustness of procedures around Police Scotland counter corruption practices”.

Next steps

10. The Committee is invited to consider what steps it wishes to take in response to the Commissioner’s recent statement.

Justice Committee

34th Meeting, 2015 (Session 4), Tuesday 1 December 2015

Draft Budget 2016-17

Note by the Clerk

Purpose

1. This paper provides background information in advance of the Committee's evidence session on 1 December on the financial planning being undertaken for the year 2016-17 by the police and fire and rescue services, and the Crown Office and Procurator Fiscal Service (COPFS), in advance of the Draft Budget 2016-17 being published.

Background

2. The Scottish Government's Draft Budget 2016-17 is expected to be published on 16 December¹ following publication of the UK Government's Spending Review on 25 November. The Committee has invited the Cabinet Secretary for Justice to give evidence on 5 January 2016 focusing on three specific areas of the Draft Budget 2016-17: the police, the fire and rescue service, and the COPFS. To inform that session, the Committee also invited Police Scotland, the Scottish Police Authority (SPA), the Scottish Fire and Rescue Service (SFRS), and the COPFS, to give evidence on 1 December on the financial planning they are undertaking in preparation for 2016-17 (as the actual budget document will not be available by that date). The witnesses were also asked to provide written evidence on the following issues in advance of these sessions:

- how their budgets for the current year have been allocated, where savings have been made, and what impact levels of spending have had on services,
- the current position with financial planning for 2016-17, including details of how they are planning they would respond to a range of budgetary allocations,
- areas where they have identified a need for additional spending or scope for savings in 2016-17,
- any potential areas of savings which have been considered but rejected, and
- any significant factors which limit their flexibility in managing relevant budgets and making savings.

3. A wider call for views was also issued. All written submissions received are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/94259.aspx>

Previous scrutiny

4. The Committee has considered the police budget as part of its budget scrutiny every year since Police Scotland was established in 2013. In its report to the Finance Committee on the last draft budget (2015-16), the Committee noted witnesses' views that identifying savings would be more challenging in 2015-16 than in previous years and that there was potential for further cost-saving measures to impact on operational effectiveness. The report also explored issues including police officer and staff configuration, backfilling, workload, de-skilling of civilian staff, devolved budgets, and VAT exemption.

¹ [Letter from Deputy First Minister to the Convener of the Finance Committee](#) (10 November 2015).

5. Last year, the Committee also examined the Scottish Courts Service budget 2015-16 and concerns were raised during evidence on the extent to which the COPFS budget might impact on the processing of cases through the courts. The Committee also noted concerns regarding the increased workload of procurators fiscal particularly in dealing with more complex sexual and domestic abuse cases.

6. The Committee's report to the Finance Committee on its scrutiny of the Draft Budget 2015-16 can be accessed at:

http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/ju15-DraftBudget.pdf

Next steps

7. The Committee will take evidence from Police Scotland, the SPA, the SFRS, and the COPFS on 1 December to inform its scrutiny of the Scottish Government's Draft Budget 2016-17. It will hear from the Cabinet Secretary for Justice on 5 January on the issues raised in evidence and report its findings to the Finance Committee thereafter.