



OFFICIAL REPORT
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Justice Sub-Committee on Policing

Monday 23 November 2020

Session 5



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JUSTICE SUB-COMMITTEE ON POLICING

11th Meeting 2020, Session 5

CONVENER

*John Finnie (Highlands and Islands) (Green)

DEPUTY CONVENER

*Margaret Mitchell (Central Scotland) (Con)

COMMITTEE MEMBERS

*James Kelly (Glasgow) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Susan McVie (Independent Advisory Group on Police Use of Temporary Powers Related to the Coronavirus Crisis)

John Scott QC (Independent Advisory Group on Police Use of Temporary Powers Related to the Coronavirus Crisis)

CLERK TO THE COMMITTEE

Diane Barr

LOCATION

Virtual Meeting

Scottish Parliament

Justice Sub-Committee on Policing

Monday 23 November 2020

[The Convener opened the meeting at 11:00]

Decision on Taking Business in Private

The Convener (John Finnie): Madainn mhath, a h-uile duine, agus fàilte. Good morning, everyone, and welcome to the Justice Sub-Committee on Policing. This is our 11th meeting in 2020. We have received no apologies.

Agenda item 1 is to decide whether to take item 3, which is to review the evidence that we hear today, in private. Are we all agreed on that? If any member disagrees, please indicate that to me or use the chat function. I do not see any dissent, so we will hold that item in private.

Policing During the Coronavirus Pandemic

11:01

The Convener: We now move to agenda item 2, which is on policing during the coronavirus pandemic. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. I welcome our witnesses to the meeting. John Scott QC is a solicitor advocate and chair of the independent advisory group on police use of temporary powers related to the coronavirus crisis, and Professor Susan McVie is a member of the independent advisory group. I invite Mr Scott to make some brief opening remarks.

John Scott QC (Independent Advisory Group on Police Use of Temporary Powers Related to the Coronavirus Crisis): Thank you, convener, and thank you for scheduling this meeting to allow both Professor McVie and me to attend.

The headline from our work, as will be seen from the reports that are publicly available and which the committee has, is that Police Scotland continues to have very good awareness of the human rights aspects of the emergency powers, and to pay due regard to them and to Police Scotland's values.

Police Scotland continues to recognise the additional responsibilities that come with the powers, and the need for additional transparency and scrutiny that should accompany such powers. It is important to recall that the idea for the group came from within Police Scotland and has been given good on-going support by the Scottish Police Authority, as the main scrutiny body. I mention, in particular, Eleanor Gaw of the authority, who has done fantastic work in the secretariat.

We also get good support from Police Scotland through the operation Talla information collation, assurance and liaison—OpTICAL—group, which is chaired by Assistant Chief Constable Gary Ritchie. Thanks to that group, there is a conduit for particular aspects of data or information that we want, so that we get what we need.

We reach into Police Scotland and hear from divisional commanders, too—it is not just the executive team from whom we hear—about what is happening in their areas. We heard from the north-east commander, for example, when the local lockdown was introduced in Aberdeen.

The conclusion from our work is that a lot has been asked of the public and of Police Scotland since March this year, and both have responded exceptionally well. Adherence by the public has been very good, and Police Scotland has

recognised that good-faith mistakes will have been made, especially where there have been frequent changes in regulations. Therefore, the four Es—engage, explain, encourage, enforce—approach, which has worked throughout, continues.

I have been critical of some of the media's portrayal of what has happened during the pandemic; it is easier to show people breaching regulations than it is to show millions of people adhering to them. I will mention one headline that caught my eye since our last appearance, in *The Times* on 20 August. The headline was "Coronavirus in Scotland: Police spoke with public about rules 62,000 times". That sums it up. That was about speaking with people—engaging, explaining and encouraging. Enforcement is only a very small part of it. In a public health situation, that is exactly how it should be.

The Convener: Thank you for those opening remarks, Mr Scott. That was very helpful. We have a range of questions for you and Professor McVie.

Would you care to make brief opening remarks, Professor McVie?

Professor Susan McVie (Independent Advisory Group on Police Use of Temporary Powers Related to the Coronavirus Crisis): Yes. Thank you.

Data has been at the core of the strategies of the United Kingdom Government and the devolved Governments in addressing the pandemic. In policing terms, data has tended to focus on use of fixed-penalty notices, especially in England and Wales, where no other data has been available.

In Scotland, the swift creation of the coronavirus intervention system by Police Scotland has ensured not only that we have up-to-date trends on enforcement, but that we have information on wider policing practice in relation to the first three Es: engagement, explanation and encouragement.

That has enabled the advisory group to evaluate use of enforcement in its wider context. It has been noted previously, but it is worth reiterating to the sub-committee, that the CVI system is unique. It provides an insight into use of the four Es policing approach that cannot be replicated anywhere else in the UK or, to my knowledge, internationally.

Up until 18 November this year, just shy of 88,000 interventions had been recorded by Police Scotland on the CVI system. Of those interventions, 5.8 per cent involved use of a fixed-penalty notice and 0.5 per cent involved use of arrest, so enforcement continues to represent a very small proportion of all Covid-related policing activity. That is in keeping with the human rights perspective on use of enforcement, and is in line

with Police Scotland's approach to policing by consent.

Much of our focus over the past few months has been on the initial lockdown phase. In my first data report to the SPA, I highlighted considerable differences across Scotland in use of the powers, with higher rates in the west of Scotland and lower rates in the north and the east. As we know, the disease has spread at different rates across the country, with higher rates in the west of Scotland. That hints at a localised policing response that is in proportion to the need for greater police intervention in some parts of the country, but my analysis found that, in relation to use of the four Es approach, there have been similarly low levels of enforcement across the 13 divisions. That suggests that a consistent approach that follows one national strategy is being taken, which is in line with police fairness.

My second data report to the SPA looked at a bespoke data set that contained information on fixed-penalty notices. The report found some issues of concern about deprivation and the criminal-history profile of individuals who have been issued with fixed-penalty notices. It is important to recognise that the data do not necessarily reflect unfairness or disproportionality in the policing approach, but raise important questions about why certain individuals have been less likely or less willing to comply with the regulations.

We continue to use data and evidence to support the work of policing. We are doing more in-depth analysis of the individuals who have been issued with fixed-penalty notices. We are also looking at the outcomes of the fixed-penalty notices that were issued, and comparing payment of those fines with payment of non-Covid-related fines.

We are in discussion with Police Scotland about further work on the most recent second wave of the pandemic, because we have strong reason to suspect that the profile and circumstances of individuals who were issued with fixed-penalty notices in the second wave are not different from the profile and circumstances of those who were issued with them in the first wave.

The Convener: Thank you very much, Professor McVie.

Before we start the questions, I thank those who have provided written evidence to the sub-committee. As ever, that evidence is very helpful in advising our deliberations.

I remind members to indicate who their question is for, and I remind all attendees to wait a moment for their microphone to be activated before speaking.

Mr Scott, we are some way down the line from the initial lockdown, back in March. I think that you used the term “good awareness”. Will you say more about Police Scotland’s interpretation and use of the powers that it has been granted?

John Scott: Absolutely. Proportionality and necessity, which are key human rights concepts, have been explicitly mentioned in and built in to regulations. They are best implemented through use of the four Es approach. If the police spend the necessary time on engagement, explanation and encouragement, they take significant steps towards ensuring that enforcement happens only when it is necessary and proportionate. That is built into the four Es approach.

As part of our work, we hear from a wide variety of experts in various fields of policing, but we also hear from people in relation to human rights. For example, protests and assemblies were issues over the summer months. The discussions about human rights concepts feed into the work of the group, and are part of our on-going discussions, on the table and off the table, with Police Scotland. This is about more than just the oath that police constables take, which refers to human rights; it is about human rights in practice.

The Convener: Given the fluidity of events, the changing nature of the public health response and the different approaches that have been taken, how will the independent advisory group ensure that the powers that have been afforded to the police will continue to be used necessarily and proportionately?

John Scott: I suppose that it is a case of more of the same. The four Es approach, which was adopted at the outset of the pandemic and has been maintained throughout it, is even more important when there are different approaches in different areas, with some areas being under more severe restrictions than others. That is where the four Es approach is at its best. In areas where there are few restrictions, even engagement might not be a frequent occurrence; it is more likely to occur where there are restrictions in place and police resources and capacity allow a visible presence. The Justice Sub-Committee on Policing will be more aware than other committees of the fact that the return to normal levels of policing demands makes it more difficult to achieve visibility specifically around the pandemic.

It is still the case that we should use the four Es approach. What has changed, to an extent, is the emphasis. Enforcement has taken place where there have been more egregious or repeated breaches of national and local restrictions, and in situations in which people have simply refused to engage or to listen to explanation or encouragement. In some such situations—for

instance, in repeated breaches—the four Es will have been gone through rather more quickly.

The Convener: I want to ask about protests, which you touched on in your initial remarks. The Scottish Human Rights Commission has submitted evidence to the sub-committee in relation to article 11 of the European convention on human rights, on the right to freedom of peaceful assembly, given the possibility of protests on a number of issues, such as the Covid restrictions and Black Lives Matter, when article 11 might be engaged. Has the independent advisory group considered that and how Police Scotland would be expected to engage with the public?

John Scott: We have; in fact, Police Scotland was already engaging on such matters. We heard evidence from Michael Rosie, who has been doing work on some of the pre-pandemic protests and marches.

It is clearly an important issue. The police have two possibilities. On one hand there are the coronavirus restrictions, which would allow the police to say, “There aren’t going to be any protests or assemblies”, and on the other hand is the right to freedom of assembly. In our view, Police Scotland has got the balance right. Trying to prevent protest or assembly even in a time of pandemic would have been too extreme a measure—it would not have been necessary or proportionate. A great number of the events in question—the assemblies and protests—were extremely well organised and involved people wearing masks and observing social distancing.

However, not all of them were like that; for those, a slightly different approach was required. I have seen criticism of the fact that some of those protests were allowed to take place, but it was right that they were allowed to take place.

Diego Quiroz of the Scottish Human Rights Commission prepared an initial version of the paper that was submitted to the sub-committee for our group, and it has informed our work. We specifically said in an earlier report that we thought that the correct balance had been struck and that it would have been unnecessary and disproportionate not to have allowed any protests or marches to take place. We have seen problems south of the border as a result of other approaches being taken. I think that Police Scotland got it right.

The Convener: Thank you for that. Our next series of questions comes from Fulton MacGregor.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning to the panel. My first question is directed towards Professor McVie. In addition to what you said in your opening statement, can you provide the sub-committee with an overview of the research that you and your colleagues undertook in compiling the data that

featured in the recent interim reports? Will you elaborate a bit on the scope and purpose of the research?

11:15

Professor McVie: As I mentioned in my introductory statement, the research has involved two principal data sets. The coronavirus intervention system, which was put in place very quickly by Police Scotland, collects from officers information on their use of interventions. That includes information on engagement with communities, explanations and encouragements to return home, but it also includes information on use of enforcement through fixed-penalty notices and arrests. The fixed-penalty notice data that I mentioned in my introductory statement is a more bespoke data set that Police Scotland created by using all the paper tickets that police officers collected in issuing fixed-penalty notices.

The research has predominantly focused on those two data sets, although we have also looked at wider data on other police incidents that were recorded on police systems, and at data on complaints.

The main strategy in relation to data and evidence collection has been to try to identify policing practice and how it has been impacted during the course of the pandemic—there was a large impact on the incidence of crime and non-crime-related calls being made to the police during the initial lockdown phase, in particular—and to try to identify, using those data sets, whether there are particular issues of concern about the proportionality, fairness or effectiveness of policing.

We have been constrained, to a certain extent, by the data that is available, but it is considerably more than has been available in other parts of the UK. The data has been very interesting and has produced significant insights for us.

I am happy to say more about specific aspects of the research, if you would like me to do so.

Fulton MacGregor: That is okay for now. I understand that colleagues have questions on that. I will move on to John Scott.

Please excuse my voice this morning; I have to cough.

I want to ask about the travel restrictions that the First Minister introduced last week, which have become law. What plans does the independent advisory group have to monitor how the travel restriction regulations are to be implemented by Police Scotland and how the number of people travelling from high-prevalence areas to low-prevalence areas is to be monitored? Do you see any issues for Police Scotland resulting from the

travel restrictions being moved from guidance to legislation?

John Scott: We have had discussions about travel restrictions for some time. As you said, they became part of the regulations—as opposed to being guidance—on Friday last week. A big part of our discussions has been about the ideas of enforcement realism and adherence realism.

The reality now, as opposed to the reality at the height of lockdown back in April and May, is that significant numbers of people are entitled, quite legitimately, to be out and about on the road, whether for work, care or other essential purposes.

One difference between what is happening now and what happened in the earlier stages of lockdown is that the courts are staying open. I am due to attend Glasgow High Court tomorrow; I live in Edinburgh, and will travel through to Glasgow. Perhaps more significant is that when members of the jury receive their citations, they are expected to travel out to a cinema at Braehead, which is the remote jury centre. That was not happening previously. Far more people are legitimately entitled to be out and about, which makes policing of that simply impossible.

That is an example of something that is unworkable, other than when, if someone comes to the attention of the police for some other reason, it might be possible that a breach of the travel regulations would come into play. There might also be egregious examples such as minibuses from a particular football club being found in an entirely different part of the country. That might allow officers to intervene.

However, the police have not been given more officers or more resources. They are also being affected now more than at the earlier stages of lockdown by officer absence, and they do not have more police patrol vehicles.

We have heard about the situation in Melbourne, where a roadblock was put around the city. Some public polling suggests that roadblocks are popular among a significant minority of the population, but the chaos that was caused by that roadblock—which brings me on to your question about implications for Police Scotland—was considerable because of the number of people, even at the height of lockdown there, who were entitled to be out and about for essential purposes or emergency purposes. All the people who were entitled to be out, including emergency vehicles, were caught in queues of traffic waiting to get to the roadblock, so it caused absolute bedlam.

For people who think that roadblocks are a good idea, it would be useful to study the Melbourne example, because one of the implications that it had for policing there was a dent in public

confidence. There were people who thought, “We need a roadblock,” but as soon as it happened it caused chaos, and people asked why the police were doing it. It is probably an example of, “Be careful what you wish for.”

I understand that there is a message in the travel regulations, but there is an issue about enforceability. The police approach is, entirely appropriately, going to be a reactive one. It will not involve proactive policing using roadblocks and stopping people on the M8 or anything like that. That would be counterproductive. It might dent public confidence, and the reality is that the police would, a lot of the time, simply be delaying people who were legitimately entitled to be out on the road. That has been part of our discussions.

In terms of monitoring, fixed-penalty notices issued for breaches of the travel regulations will form part of our weekly data update from Police Scotland through the OpTICAL group. If there have been any issued since last Friday, I expect that we will hear about that this Thursday.

Fulton MacGregor: So, in summary, do you think that the travel regulations coming into law are not that useful in general—apart from the message that they send, as you said, which is very important—but that, for specific examples, they might well be useful for policing? Obviously, we will need to see how that goes. You gave the example of football supporters travelling on a bus. If the police are made aware of specific breaches at that level, the regulations will be useful.

John Scott: It is really only in such situations that the legislation will be able to operate. If there was a road traffic accident and it turned out, after checking people’s details, that someone from Aberdeen was in Glasgow, for example, questions might be asked. I expect that a significant number of people will be legitimately entitled to be in their vehicles and on the road. Therefore, until we can come up with a device to tell us who is legitimately on the road and who is not—advanced though some technology is, we are not there yet—the travel regulations will not be workable for the majority of the time.

The Convener: James Kelly will ask the next set of questions.

James Kelly (Glasgow) (Lab): My first question is for Professor McVie. With regard to the reports that you provide, were you surprised by some of the outcomes? For example, in your initial remarks, you noted that there had been 88,000 interventions but that only a small number of those had involved the issuing of a fixed-penalty notice or an arrest—about 5 per cent and less than 1 per cent respectively. Did that outcome surprise you in any way?

Professor McVie: [*Inaudible.*]—proportionate use of enforcement are not a surprise, given the consistent messaging from the chief constable on the use of the four Es strategy.

It is worth noting that, in the initial two or three weeks after the introduction of the police powers, there was quite a lot of variation across the country in the use of enforcement. It was being used proportionately more in some places than it was in others, but that was in the period before the four Es approach had filtered through into standard policing practice. From the early stages after those initial two or three weeks, there has been a fairly consistent level of enforcement, which has been at somewhere between 4 and 8 per cent of all interventions over the entire period.

That is not necessarily surprising, given the strong emphasis on using enforcement only on occasions when there is a flagrant breach of the coronavirus regulations. It is very difficult to say how surprising that might be, because there is absolutely nothing to compare it with. There are no other systems that measure the wider extent of all policing activity compared with that in Scotland. However, I think that a consistent approach has definitely been taken.

James Kelly: That is helpful.

Mr Scott, we now have a single police force that operates in all parts of the country, and we have a tier system in which different sets of restrictions are in place in different local authorities, some of whose borders are in close proximity. Does the fact that the police have to operate with the different restrictions in different areas present any challenges or concerns?

John Scott: That certainly produces challenges, especially when changes are introduced with very little notice. Very often, the regulations are published only the day before they come into force. The travel regulations were published last Friday at some time between 1 and 2 o’clock and came into force at 6 o’clock. I think that we have come across only one example of the regulations being published the day after they came into force. That obviously makes it very difficult to ensure that the regulations have been properly digested and understood by the police—although I appreciate that the police will have early sight of draft versions—and then disseminated at local level.

There appears to be very good co-operation between divisional commanders and their local authorities, so there is co-ordination, but things happening quickly perhaps allows scope for confusion. Individual constables might not have quite got to grips with particular changes, and members of the public can—entirely

understandably and in good faith—still be a bit confused about the restrictions that apply.

That is where we go back to the four Es approach. When people might be in breach of the regulations, there is not a starting presumption that they are doing it deliberately. The starting presumption, in effect, is that they might be doing it inadvertently. It might be an example of someone acting in good faith, or it might be a mistake. Engagement allows that to be flushed out, and explanation and encouragement can be provided for people who might need a wee bit more of a prompt. There has been an increase in the number of voices that are saying that there should not be any restrictions at all, so it might be that some breaches of the regulations are now more wilful.

11:30

At a local level, when we spoke to the divisional commander in the north-east, who had just come into post, it struck us that he had a clear understanding of what the particular restrictions were in Aberdeen and Aberdeenshire. We noticed that the messaging in that area went wider than the regulations. The regulations were pretty much aimed at premises rather than individuals in the earlier lockdown. However, what happened was that people did what they thought was the right thing, and they complied with the guidance.

A lot of the time—probably most of the time—that is what people are doing. There might be confusion about what is law and what is guidance, but people are trying to stick to the guidance, as far as possible. That makes the job of policing easier and it means that, in those situations in which there is a possibility of confusion because of differences—big or small—in proximate geographical areas, the situation is usually dealt with by way of explanation, and people are allowed to go about their business and go home without a fixed-penalty notice for having gone from where they stay to a town that is subject to different regulations.

James Kelly: Thank you. Clarity and early communication of the content of the regulations to those who are going to enforce them, as well as to the public, is key.

The Convener: Liam McArthur will ask the next questions. Liam, it would be good if you could pause after your first question so that I can bring in Margaret Mitchell to ask a question at that point, following which I will come back to you for your subsequent questions.

Liam McArthur (Orkney Islands) (LD): You have thrown me a bit of a curve ball, convener, because what John Scott was talking about just then was a neater segue to the questions that I

was going to ask him. Were you hoping that I was going to ask Professor McVie a question?

The Convener: No. Please continue. Margaret Mitchell wanted to come in on the back of the question that you were scheduled to ask first. If you are going to ask the other two questions later, that will be fine.

Liam McArthur: I will probably ask the questions in reverse order, because of the issues that have just been raised. I hope that that will provide a better segue for Margaret Mitchell.

John Scott, you talked about the truncated timeframes between the details of regulations being published and their coming into force. Often, statements in Parliament or to the media about the direction of travel make the public aware of what is going to happen, and information is then sought about the more granular detail. Have any concerns been flagged up about the time lag between the public becoming aware of the changes and the changes coming into effect?

I am aware that Police Scotland has talked about the fact that some complaints that are made about contraventions are born of pre-existing neighbourhood disputes and so on, and that, where there is a policy of engagement, education and encouragement, rather than enforcement, that leads to a lack of public confidence among those who very much want to see the book thrown at people who have been complained against.

John Scott: I am not convinced that, at this stage of the pandemic, having statements in Parliament or statements by the First Minister at press briefings being followed by the detail of the regulations a few days later is a good enough way of working. I appreciate that some issues can arise so quickly that urgent action is required. I take my hat off to those who draft the legislation, because my understanding is that, sometimes, they are drafting something within 24 hours of the point at which it is due to come into force. That explains why mistakes are made.

Before all this happened, I did not know about correction slips—members will all be aware of them, of course. However, on the [legislation.gov.uk](https://www.legislation.gov.uk) website, which I visit almost daily now in order to find—often without success—regulations that I know are just about to come into force, I see a large number of correction slips because of simple errors that have been made in regulations. That sort of thing can happen very easily.

Public polling suggests that, in Scotland, there is a better understanding of the rules and that there is more confidence in the messaging. In England, various things have happened that have—this is the nature of fiascos—caused all sorts of problems. However, it still strikes me that the

current way of doing things is not good enough. We do not need to be in emergency mode all the time.

The tier system was a way of addressing that. It means that there is a not entirely unlimited range of contingencies. It is a case of, “If this happens, we’ll go this way, but if that happens, we’ll go that way.” From the point of view of policing, it is important to know what the regulations are, and the regulations are changing, sometimes right up until the last minute. When it comes to fixed-penalty notices, although enforcement is way down the line as the last of the four Es after engagement, explanation and encouragement, and there is probably a gap between the third and the fourth Es, Police Scotland needs to understand what is in the regulations and what is in the guidance. Until the police see the regulations and that information has been understood, disseminated and put into guidance, it is difficult for officers to use it.

I have said before, including at the committee previously, that there are better ways to do that. For example, having drafts of regulations available, even a few days in advance, would be better than seeing them just before they come into force, which is not a good way of doing it. There is a respectable argument that something is not properly the law if a person cannot, with the assistance of a lawyer, find out what it is, and there have been plenty of times over the past few months when I have been trying to find that out and have not been able to do so. We have not been getting it as badly wrong as in England, but we do not need to be in emergency mode all the time.

On the point about whether the four Es approach is denting public confidence, because people want to see enforcement, there is an element of that. There is a significant minority, although it has probably grown over the past few months, who want to see more enforcement—by which, of course, they mean more enforcement against other people, not themselves. As Professor Reicher has said, everyone has their own wee exceptions carved out; the issue is not so much about the massive transgressions but the fact that there are a lot of smaller ones. Therefore, people want to see more enforcement against others, but in the majority of cases, satisfying those people is not a good enough reason to go straight to the fourth E of enforcement, because that can be driven by longer-standing disputes.

Public confidence is important, but pandering to those who want to see more enforcement is a risky path to take, as is pandering to those who want to see no enforcement. On balance, Police Scotland gets it right.

Liam McArthur: That is helpful. On that last point, I am interested in your observation that a growing minority of people are resisting or challenging the existence of any restrictions; they certainly oppose the extent of the restrictions that have been put in place.

The powers that we are talking about are emergency powers, and you have highlighted concerns about our being in emergency mode. For as long as the emergency powers are there, there will be a temptation to use them. We have passed into law provisions on the travel restrictions that Police Scotland has made it abundantly clear that it does not intend to enforce proactively. That raises questions about whether maintaining the emergency powers in law is a good thing. Police Scotland has made it clear that it was not necessarily seeking those powers. Is there enough of a challenge function to ensure that the powers will remain in place only for as long as and to the extent that they are absolutely needed?

John Scott: The review mechanisms that are in place will keep us right, together with the recently increasing appetite of the Parliament and its committees for saying, “Wait a minute—why, and for how long?”

In general terms, most of the restrictions that are introduced are reviewed by the Government every three weeks. At the moment, we are looking at restrictions that we think are likely to be in place, to some extent, until the spring. I suppose that the test of that will be to see whether some restrictions are removed after the three-weekly reviews. I am not absolutely sure that that has been happening a lot so far. There might even be a role for reactive policing of the travel regulations, if it would prevent some people from going out who would otherwise do so when they should not.

An increasing band of people, which includes some very respectable voices, say that there should be no restrictions. Unfortunately, they have been joined by extreme libertarians who say that Governments should not be doing anything at all and we should all just fend for ourselves. That is not a position that the Government could possibly take.

The police, the Government and the Parliament therefore find themselves in a tricky position between those who say, “More” and “Send them all to jail”, and others who say, “Abandon all those regulations and just let us do what we think is sensible.” A collective response is required to such a situation. Policing is caught between those two stances. It should focus on the four Es approach, which will keep it right, although it will not necessarily keep everyone else happy. However, I think that the police are doing what they should, having regard to the human rights principles and Police Scotland’s values.

Liam McArthur: I have a brief question for Professor McVie. Earlier, John Scott touched on the challenges that a regionalised approach presents. In your data sets, are you seeing lockdown fatigue leading to larger numbers of enforcements being required, even if those are seen to have been proportionate and to have happened after the other three Es had been worked through? Could you shed any light on those sets of numbers?

Professor McVie: It is very difficult to tell how much fatigue there is, because we do not have good underlying population data about behaviour. At a general level, we know that the vast majority of people are complying with the regulations either all or most of the time. However, we also know that, for one reason or another, many people have found it difficult to comply with all the regulations.

There is anecdotal evidence that tolerance of the regulations is waning a bit. We see that in the context of population behaviour, in that there has perhaps been a bit more flexing of the rules in certain places, which is why we are also seeing increases in the spread of the disease in those areas more than in others. We also see it among police officers, in that there might have been an increase in the use of fixed-penalty notices as a result of their feeling increasingly strained at having to tell the same people the same thing over and over again. It is difficult to put any kind of number on that. I would say that there is anecdotal evidence, but not much more beyond that.

What we do see in the data, though, is that patterns of the use of enforcement continue to follow a trend whereby they are used only at peak times: they spike at particular times, such as around weekends or particular football fixtures. Enforcement is certainly not being used indiscriminately. The continued use of the four Es approach means that, even where there is a lack of tolerance in certain communities, the police are still adopting a measured approach that involves enforcement being used only when it is absolutely necessary.

The Convener: Thank you for that.

11:45

Margaret Mitchell (Central Scotland) (Con): My first questions are for Professor McVie. In your opening remarks, you referred to Police Scotland's coronavirus intervention system as being "unique". In its evidence, Police Scotland referred to the data on engagement and enforcement and stated that the system provides

"a ... more nuanced view of policing activity as well as providing context around the amount of enforcement activity undertaken."

Is that a fair assessment, or were there constrictions on the amount and depth of the research that you were tasked with carrying out? For example, as the regulations expanded the use of fixed-penalty notices, was the data that was provided on their use broken down by type of crime? That is of particular interest to me, because Lanarkshire had the highest level of FPNs and was the only division to show an increase in complaints.

Professor McVie: The information that was provided to me on fixed-penalty notice tickets did not give me any information on the nature of the incidents. To my knowledge, that type of information is not recorded on the paper ticket, although Police Scotland probably holds further information that was not provided. Therefore, I am not able to answer questions about incident types—I have only information on whether incidents occurred indoors or outdoors. There was other information on where incidents took place, but not in relation to the circumstances in which tickets were issued.

We have to bear in mind that the information that Police Scotland provided to us through the OpTICAL group was subject to resource constraints. The database was created from scratch by officers, who put a lot of resource and time into that. In the course of our deliberations—especially as time has gone on—we have had to be careful at times about the amount of information that we ask officers to provide because, to a degree, things have gone back to business as usual, so the level of resource for data provision is lower.

Margaret Mitchell: It would be rather worrying if we were not able to establish exactly what type of offences were covered, because new and more serious offences can now be dealt with under fixed-penalty notices.

I have a more specific question in relation to coronavirus intervention database system reporting and providing context. Police Scotland's stats record that contact child sexual abuse during lockdown decreased by 24.5 per cent in comparison with the same period last year. That is at a time when children who are the victims of family-related sexual abuse are locked up with their abusers, and when the overwhelming consensus from support organisations, the NSPCC and Interpol is that child sexual abuse has increased during the pandemic, not just online, but in contact situations. Therefore, those stats are dangerously misleading. What evaluation were you able to make of the stats and their context? More generally, is it now time to review how Police Scotland records incidents of child sexual abuse, given the very low percentage of that abuse that is reported directly to the police?

Professor McVie: Let me tease that out. The coronavirus intervention system was not used to collect that type of information; it was used purely to collect information on Covid-related interventions. Information on child sexual abuse will have been recorded through Police Scotland's standard call and incident system. I say that just to disentangle the two things.

There has been a decline in reporting of child sexual abuse. If my recollection serves me correctly, there was no significant decline in domestic violence over the initial period. Of course, the data that the police collect is contingent on reporting, so if things have not been reported to the police, they will not have been recorded.

I think that there are significant issues with the extent to which domestic violence has been concealed during the lockdown period as a result of perpetrators and their victims being situated together for longer periods of time, as you mentioned. However, it is very difficult for the police to deal with that if such things are not reported to them. It requires a much better and more integrated partnership approach, which I am aware that the police have with their partner organisations.

I am not sure how much more I can say in response to your question, because the matter was outwith the scope of the advisory group. Our remit was to look specifically at use of the temporary powers, rather than looking at wider policing issues in relation to what has happened on child sexual abuse or other types of crime. It is not something that the advisory group has focused on, so I feel a little ill-equipped to answer your question.

Margaret Mitchell: I appreciate that, but I think that the issue urgently needs to be looked at, because the fact is that the police have reported that child sexual abuse has decreased, which is counterintuitive given the information that we have had from every other reliable source. That needs to be addressed.

Convener, I am happy to leave my question for Mr Scott until the end, if that is helpful.

The Convener: Okay, Margaret. I got that message. We will come back to you later.

Fulton MacGregor has a supplementary question.

Fulton MacGregor: I ask this question on the back of Margaret Mitchell's question. I support her as a colleague on the cross-party group on adult survivors of childhood sexual abuse. She shared some of the statistics that she has just mentioned with the cross-party group, and I think that she made the case very well that organisations that

work in the area are very concerned. I heard Professor McVie's answer and I know that the matter is outwith the scope and remit of the advisory group, but is there anything else that can be done?

We understand that reporting of such offences might have been different during the lockdown and that contact between children and possible perpetrators might have been different if they are not in the same household. However, given what we know about this type of abuse and the fact that it can happen within the household, can any recommendations be made on reporting and, for example, further linking up with social work or education services? Obviously, those services have also had their issues during the pandemic.

Can Susan McVie make any comment on that? How can we capture more of these very serious offences and alleviate the concerns that some of the stakeholders have about the figures? Do you have anything to add to your answer to Margaret Mitchell?

Professor McVie: I know that the justice board is actively discussing data linkage in both research terms and operational terms. In theory, greater data linkage across organisations that capture information on child sexual abuse should enable that wider partnership approach, which will potentially allow more cases to be reported to Police Scotland. All that I can say based on my knowledge is that there is on-going work in the area of data linkage.

The Convener: Thank you, Professor McVie. I do not think that there is any criticism of your work on that. The acquisition of data is a very important issue that we can perhaps pick up when the committee meets in private. We are a wee bit behind schedule.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Professor McVie, in your opening statement, you spoke about your concern in relation to data collection in deprived areas. Police Scotland has said that, during the initial phase of lockdown, enforcement primarily involved people living in the poorest parts of Scotland, but that,

"on balance, it must be highlighted that the dataset is based on the recipient's home address, and not at the locus where they were issued"

with the fixed-penalty notice. Is that a fair comment?

Professor McVie: Yes, that is absolutely true: the data reflected where the individual lived, rather than the area in which the fixed-penalty notice was issued. There were some reports by police officers, particularly during the early phases of lockdown, that much of the response focused on some of the more deprived areas, where there was an expectation that there might be greater

problems with compliance with the regulations. However, I am not able to attach a deprivation locus to where the incidents occurred.

Rona Mackay: Thank you. To follow up on what Fulton MacGregor and Margaret Mitchell have said, are you satisfied that Police Scotland's data collection processes are robust enough? Are there areas where improvements could be made in identifying vulnerable individuals or those with protected characteristics? Has enough emphasis been put on that aspect of data collection?

Professor McVie: Do you mean specifically in relation to coronavirus, or are you talking more generally?

Rona Mackay: I mean in relation to coronavirus.

Professor McVie: The data that is collected through the coronavirus intervention system was not 100 per cent accurate. We know that there were particular reasons for that, including pressure on officers to complete data input after their shift. Over time, the data has become more accurate because more of the data is being collected using mobile devices, rather than manually. The data collected from the fixed-penalty notice data was fairly robust, which we can tell by comparing it to court data.

I am not aware that police systems collect data on all protected characteristics, but the police publish data on age, sex and ethnicity. That data is good for certain aspects of the data that is collected by Police Scotland but maybe not for others. As the committee may be aware, there are on-going issues with some of the police data systems, which continue to rely on systems inherited from the eight legacy forces. There is a piece of work in Police Scotland to improve data collection and ensure that it conforms to all general data protection regulation and other requirements, particularly those that relate to collecting information on protected characteristics.

In the course of our work, we found that there were some issues in getting access to the level of information that was requested by some members of the advisory group. For example, there was a desire to get more detailed information on children and young people coming to the attention of the police during the pandemic. There have also been issues in the past in getting access to protected characteristic data. However, that is often related to data systems, rather than the actual data that is held.

The fixed-penalty notice data that the police collect is very good in relation protected characteristics. There are wider issues around arrest data, where we have not been able to access the level of information required. That is primarily because of resource issues and issues

that relate to the way in which arrest data is held across different systems.

12:00

Rona Mackay: Thank you. That is helpful. I have a brief question for John Scott that relates to his answers to my colleagues' questions about the complexities when it comes to the balance between legislation and guidance. Do you think that the Government has got that balance right? Is the legislation there to send out a message to the public about how seriously the Government and the police take the issue?

John Scott: I think that the Government has got that right. It is important not to have everything in regulations. The Government has shown some legislative restraint in allowing space for people to do the right thing without the sanction of criminal penalty. That also allows more space for the first three Es as well. If something is in guidance, of course it will never reach the fourth E and be the subject of enforcement. However, when people have spoken to police officers, and officers have spoken to them, it has sometimes been because there is a state of confusion. The police have become a resource, unfortunately—but that is what has happened—for people who do not know what the regulations are. They phone up the police to find out what the situation is in a particular area.

From the Government's point of view, it is not always in the interests of the messaging to say that this is regulation and that is guidance. The Government wants everyone to comply with the guidance, but it has got the balance right by leaving a gap that means that someone is not immediately liable to the penalties of the criminal law as soon as they step outside the guidance. That is as it should be, because it is about public health policing and public health legislation; it is not about public order. We have commented on that legislative restraint, and it is welcome.

The Convener: Our next questions are from Shona Robison.

Shona Robison (Dundee City East) (SNP): Good morning, everyone. I want to touch on the need for a central statement of mission and values that recognises the need to protect and respect the human rights of all, regardless of their personal characteristics or status. That relates to article 14.

My question is for Professor McVie. Does Police Scotland have a central statement of mission and values? Does it provide data on the use of restraint to allow the IAG to analyse whether instances of restraint being used have increased or not? The data that the Justice Sub-Committee has received on the use of spit hoods indicates

that the use of restraint has increased. Do you think that that is a cause of concern?

Professor McVie: [*Inaudible.*] I am not sure about the use of restraint. That information was provided as part of a submission to either this committee or other committees. The issue has been discussed in the advisory group. We are aware that the use of spit hoods, for example, has increased during the pandemic at certain points, but not extensively. We are not seeing hundreds and hundreds of people being subjected to spit hoods. However when we have asked for the information, Police Scotland has provided it.

Shona Robison: Thank you for that. I have a brief question for John Scott on something that we have touched on already. The imposition of restrictions might have had a significant impact on those who have additional or particular needs—for example, individuals with learning difficulties or those who are victims of domestic abuse. First, have you been able to assess how Police Scotland has tailored its approach to deal with individuals in those circumstances? We have touched on those who have suffered domestic abuse, but perhaps you could refer to those with learning difficulties. Secondly, is there scope for further research in this area?

John Scott: On the point about spit hoods, it appeared from the data that there had been an increase in the number of incidents of spitting. No doubt, the increased use of spit hoods is related to that. Our colleague on the group, Naomi McAuliffe from Amnesty International, is taking a particular interest in that subject—as her organisation generally has—in relation to the Police Service of Northern Ireland.

As far as those with learning disabilities or autism are concerned, Tressa Burke from the Glasgow Disability Alliance and Catriona Stewart from the Scottish Women's Autism Network are on our group, and their assistance to the group has been tremendous. They have reached out, through their networks, for general support and communication and to hear what concerns their members have.

The Glasgow Disability Alliance, in particular, should be commended. At a time when digital exclusion is a real and serious issue, it made more than 5,000 phone calls to members of its network, but very little of the feedback that it got to its general questions related to policing.

In the early stages of the lockdown, some issues were raised in the media and with us about people with hidden disabilities who were being asked to move on when they were sitting down in a park, for example. That illustrated some of the teething problems that arose as the public and the

police got to terms with what was and was not allowed.

Things are much better now. We are now hearing from Catriona Stewart, Tressa Burke and their networks that their friends and colleagues are not really mentioning policing at all. People are far more concerned about the other demands of life during restrictions. They are concerned about health, work and benefits. However, there were some issues around the wearing of masks, and some individuals were not able to wear a mask. We sent a letter to the relevant authority, for onward transmission to the Government, as a reminder that there were people who would not be able to wear one and in an effort to discourage an atmosphere of pointing the finger when instances of that happened.

As for the possibility of further research, one of the overall themes that struck us was that the support that is needed by more vulnerable members of society has not always been there when it should have been. Much of what we see involves people who are not able to comply with the restrictions because of their particular circumstances. Isolating is a good example. Some people face a choice between isolating because they are supposed to—perhaps because they are quarantining—and going to work. If they do not go to work, they have no money; such choices make things very difficult for some people to comply with the restrictions. I think that more could be done.

There may be an impact in the reduced reporting of child sex abuse. Some of the networks and groups have been affected. As Ms Mitchell said, individuals will sometimes not go to the police but they will go to their local group, network or church, and those have all been affected by the restrictions. Underreporting and lack of support are being caused, in part, by the effects on the ability of key community groups to listen to their people and to report to the authority concerned, or to the local authority, the particular support that is needed.

I imagine that, if Tressa Burke were here, she would agree that more research is needed, in case the virus does not go away entirely or in case it comes back. Frankly, even if it is not going to come back and we completely deal with Covid-19, there are groups in society who need more support and effort—groups who suffer with their health and in all sorts of other respects, including through general deprivation. There is certainly a case for further research on how to support people in general—and perhaps in particular, given our focus—through an event such as the present pandemic.

The Convener: Before we go to Margaret Mitchell for the final question, I will direct a question to Mr Scott. First, I refer members to my

entry in the register of members' interests as a long-standing member of Amnesty International.

Mr Scott, the issue of spit hoods has been mentioned a couple of times. I do not know whether you have seen the written submission from Amnesty. It highlights Police Scotland's reference to the "disparate sources or systems" that are used in respect of data. Nevertheless, would you anticipate that information on the numbers in relation to spit hoods would be routinely gathered and that Police Scotland would not use the exemption that Amnesty has highlighted? As Amnesty points out, Police Scotland has said:

"Please be aware that these statistics were gathered recently for the purpose of a Parliamentary Question as the research would otherwise have attracted a Section 12 (excessive cost) exemption in terms of the Freedom of Information (Scotland) Act".

Can you comment on that?

I do not know whether you feel able to comment on whether there should be any on-going risk analysis with regard to the use of spit hoods. Officers obviously need to be protected from the vile practice of spitting, but I fear that, if we keep putting bags over people's heads, it is only a matter of time before we have a tragedy. Can you comment on the information and the cost, and on whether there should be an on-going assessment?

John Scott: I would have thought that that information and data should be kept on an on-going basis. Although there has been an increase in the numbers, they are not so great as to rule out information gathering for reasons relating to the demand on resources.

As far as the practice itself is concerned, I saw Amnesty's evidence to the committee, and Naomi McAuliffe mentioned it at the IAG.

Risk assessment is still being done. I recall seeing correspondence from Police Scotland to Amnesty on the issue, which said that spit hoods were not being issued specifically in relation to the pandemic. A risk assessment was done in general terms; I rather suspect that it related more to what appears, unfortunately, to be an increase in the number of spitting incidents. Some who come into contact with the police do whatever they can to make life difficult for officers, and, unfortunately, incidents of spitting—I think that the Scottish Police Federation spoke to the committee about the issue and submitted written evidence on it—have increased.

I share the concerns about the use of spit hoods but, equally I share concerns about officers' safety when they are on the front line of the pandemic. Very often, an individual may spit in their face and say, "I've got coronavirus," and officers will have serious concerns and worries arising from that.

Margaret Mitchell: Recent press reports have shown that Police Scotland has had to deal with some serious infractions of the regulations—for example, house parties and illegal raves. Is restriction fatigue a real concern for Police Scotland in that it challenges the feasibility of police engagement before enforcement?

What assessment have you made of what appears to be a disconnect—at the very least—between the chief constable and the SPF regarding the extent to which the health, safety and wellbeing of front-line police officers and their families is being adequately protected in the policing of indoor events during the pandemic?

John Scott: As far as parties and gatherings are concerned, it is worth mentioning that Police Scotland publishes weekly data on gatherings that are dispersed on direction, gatherings that are dispersed without direction, fixed-penalty notices and arrests.

Unfortunately, it was not widely known that that data was available. The BBC put in a freedom of information request, and several weeks—or maybe even months—after the data had been published, it put out a story that said "There have been 3,000 parties," or whatever. In fact, the number had increased over time, and that increase could have been observed by looking at the weekly publication of the data. It might have given a misleading impression, and it was a good example of the misuse of freedom of information requests. Perhaps the first thing to do in that situation is to look at the website to see whether the information is there, because Police Scotland is being open about the data.

12:15

Inevitably, there is going to be a degree of fatigue, although I note what we, the Government and Police Scotland have heard from Professor Stephen Reicher about the possibility that that could be overstated. More of an issue now is the increasing number of people who are saying, "We're not going to put up with it anymore," or "Whatever the regulations say, I'm having Christmas the way I would normally have it." There are certainly challenges there. Police Scotland will absolutely be able to deal with those, but the four Es approach is important. Of course, flagrant, egregious or repeated breaches of the regulations might see an acceleration through the four Es.

On the point about the chief constable and the SPF, I have seen the correspondence and heard some of the evidence, but the issue is hard for me to judge. In June, as part of our work, Gill Imery, Her Majesty's chief inspector of constabulary in Scotland, interviewed Police Scotland officers and other Police Scotland staff. The findings featured

in our report at the end-of-June meeting of the SPA board. The interview asked particular questions but, if other issues had come up, we would have noted them. I do not think that particular concerns about, for example, personal protective equipment were mentioned.

I have spoken to Calum Steele at the SPF about the issue, so I am aware of the SPF's concerns, but I have also heard what the chief constable has to say about the matter. It is not something that we have been considering or that has, other than in passing, crossed our radar. Therefore, it is not something that I am able to comment on.

Margaret Mitchell: I ask about it merely because it was one of the chief constable's three overriding priorities with regard to dealing with a pandemic. I would have thought that, therefore, it would have attracted the IAG's attention and that we could have got a definitive answer on it.

I have a question for you as the chair of the independent advisory group. We have received child sexual abuse contact statistics that show a 24.5 per cent decrease in child sexual abuse. That information was given to the committee after our evidence-taking session on 27 August, at which we asked for details of the steps that are being taken to identify those vulnerable people. The figures have come out under the heading of the impact of lockdown on criminality, but they are extremely misleading and dangerous, because you could reach the conclusion from them that lockdown has protected those vulnerable young people. What are your views on that? What can be done in relation to that, because it is a serious matter that concerns legislation that is, at heart, supposed to protect public health.

John Scott: As Professor McVie said, the issue is outwith our terms of reference, which concern the exercise of emergency powers. However, my impression, which is based on a variety of sources, is that those figures are misleading. I do not imagine at all that there has been such a significant reduction in those serious crimes. If anything, I would have thought that there is a risk that there has been an increase in them.

I return to what I said earlier. We know that it can be difficult for people to report those crimes, particularly in the context of coercive control in abusive relationships, and especially in situations where someone is locked in with their abuser. I suspect that it is likely that a lot of those incidents have not been reported anywhere and that we will hear about at least some of them when things change. I have seen Police Scotland and the Government making significant efforts to encourage people to report such crimes, but, to an extent, that does not take account of the reality of just how difficult it is to do that.

Some individuals who feel that they cannot go to the police to report such incidents officially might feel that they could share the information with friends, community groups or people in their church. However, a lot of those groups and networks have been prevented from working as usual because of lockdown restrictions, so they either have not been there or have been focused on other things.

I do not have any solutions for that. I suppose that I am simply echoing the concerns that you have expressed about the problem and, in particular, the masking of the problem by data that I agree does not give us the true picture.

Margaret Mitchell: At the very least, we can expect Police Scotland not to release information that could add to the problem, and we should expect it to think about ways in which it can reflect the problem's actual extent. However, that is perhaps something for the future.

The Convener: That completes our questions and concludes this evidence-taking session. I am sorry that we have overrun a bit, but it has been extremely interesting and helpful for the committee to get a wide-ranging understanding of the work that is being done, for which we are grateful. I thank Professor McVie and Mr Scott for providing evidence today.

That concludes the public part of our meeting. The next meeting of our sub-committee will be on Monday 7 December, when we will take evidence from Dame Elish Angiolini on the report of the independent review of police complaints handling, investigations and misconduct issues. In the meantime, any follow-up scrutiny issues will be dealt with through correspondence, which, as usual, we will publish on our website.

12:22

Meeting continued in private until 12:41.

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