



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 21 August 2014

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JUSTICE SUB-COMMITTEE ON POLICING
8th Meeting 2014, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Ind)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Graeme Pearson (South Scotland) (Lab)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roderick Campbell (North East Fife) (SNP)
Vic Emery (Scottish Police Authority)
Derek Penman (Her Majesty's Inspector of Constabulary in Scotland)
Dr Brian Plastow (Her Majesty's Inspectorate of Constabulary in Scotland)
Iain Whyte (Scottish Police Authority)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 21 August 2014

[The Convener *opened the meeting at 13:16*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning—good morning? Golly me! Let us adjust the head here.

Good afternoon and welcome to the eighth meeting in 2014 of the Justice Sub-Committee on Policing. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with broadcasting even when switched to silent. I also welcome to the meeting Roderick Campbell, who is a member of the Justice Committee.

Under agenda item 1, I invite the committee to agree to consider in private agenda item 3, which concerns our work programme. Do we agree to do so?

Members *indicated agreement.*

Armed Police

13:17

The Convener: Item 2 is an evidence-taking session on armed police. I welcome to the meeting Vic Emery, chair of the Scottish Police Authority; Iain Whyte, SPA board member; Derek Penman, Her Majesty's inspector of constabulary, who is on his second outing to the Parliament this week; and Dr Brian Plastow, lead inspector with HM inspectorate of constabulary for Scotland.

I thank our witnesses for their latest correspondence, which provides details of the SPA scrutiny inquiry and the HMICS assurance review relating to firearms deployment. Given that we have that information before us, I will go straight to questions from members.

John Finnie (Highlands and Islands) (Ind): My question is for Mr Penman, whom I thank for the helpful documentation that he has provided. I particularly like the passage about

"the wider community impact and human rights legislation"

being incorporated into the decision-making process. That is terribly important.

With regard to presumed statements—those that you have received thus far and those that you will receive—can you give us an assurance that they will be challenged, and not just because the chief says so? It is my understanding that there are many unhappy officers and a culture of unwillingness to challenge decisions for fear of being placed in charge of paper clips—which I have been advised has indeed happened to some people.

Do you plan to speak to officers other than those listed in your review? I know that some officers on operational duties are not happy that armed officers are appearing at minor incidents.

Derek Penman (Her Majesty's Inspector of Constabulary in Scotland): Part of our methodology involves identifying officers, including armed response vehicle officers. I think that we have flexibility in our programme, and I am more than happy to seek the views of officers working alongside the armed officers as well as commanders and other officers in the force. I give you an assurance that we will include that in our review.

John Finnie: Thanks. I think that, in many respects, our scrutiny of this issue might be a bit premature. It is the review that will be interesting.

Will you be able to provide the committee with a timeline of who took what decisions when? There have been varying representations about that from Police Scotland.

The Convener: What decisions you are talking about?

John Finnie: I beg your pardon, convener. It is about the staged change, if you like, from one standing authority to two and then—so we are told—to three, after which all eight forces moved overnight to the standing authority. I want to know about that timeline.

Derek Penman: In our review methodology, we undertook to look at the legacy force policies, procedures and deployment criteria for exactly that reason, that it would be helpful to paint that picture to let everyone understand what existed prior to Police Scotland and what changes took effect. In many respects, it was those changes that triggered the community interest in the issue.

The SPA has asked us to look at the notification processes that Police Scotland undertook in bringing through this policy. Again, as part of our methodology, we will look at the steps that Police Scotland took and its engagement with the SPA, and then we will report publicly on that.

John Finnie: Thank you.

The Convener: Does the SPA want to respond? You are undertaking a separate review, are you not?

John Finnie: I was concentrating on the inspectorate for the moment.

The Convener: I beg your pardon. Let me not interfere. Go on, please.

John Finnie: Thank you.

Mr Penman, you refer in the review's terms of reference to identifying

"good practice that can be applied across Scotland."

Your predecessors had a duty to ensure that all the legacy forces operated efficiently. Given that all those forces had different arrangements, the good practice that you refer to could be a reversion to some of the previous arrangements that got a clean bill of health from your predecessors.

Derek Penman: It might be helpful if at this point I explained the two stages involved. The first is the decision by which the chief constable arrived at the need for a standing authority. Effectively, that was based on whether there was sufficient threat intelligence to justify officers having immediate access to firearms. As for the second stage, that for me is very much about how, after that decision was taken, those officers were deployed across Scotland and how they carried firearms for us.

We will look at good practice in relation to the deployment of armed response officers. That will be caught up in our examination of the legacy, or

what happened previously in Scotland, but it is also important that we look beyond Scotland to elsewhere in the United Kingdom, see what has been recognised as good practice there and feed that back into our report.

John Finnie: That leads me on to two or three questions about the term "national guidance". I am not trying to embroil you in some sort of constitutional discussion, but I assume that "national guidance" means UK guidance. Am I correct?

Derek Penman: Yes. Section 55 of the Firearms Act 1968 provides the legislative framework to allow the chief constable to deploy firearms for a policing purpose. There is now also national guidance that is based on approved professional practice by the College of Policing, which, in effect, holds that doctrine. Scottish policing has, alongside other UK forces, been involved in developing that doctrine over the years, but it is recognised UK practice with regard to firearms.

John Finnie: Without rehearsing a number of documents of which I am sure you are aware, I note that your predecessor in 2009 talked about voluntary compliance. If that position has changed, will your report highlight why it has changed, who decided to make the change and what that decision was based on?

Derek Penman: We can certainly take that on board and demonstrate what the legislative framework is. One step change was that, in order to deploy firearms, officers must have accredited training and that, in the force that provides the training, each of the commanders and firearms officers must be trained and accredited. That training is now done under UK guidance through the College of Policing, which effectively ties Scotland into the UK framework. However, we can certainly explain all that in our report.

John Finnie: Thank you.

I have previously asked about the tactic known as the hard stop, which was applied in the fatal shooting of Mark Duggan and on which the Independent Police Complaints Commission south of the border made recommendations. Is that the sort of background that you will consider to find out whether good practice has been applied? It has been suggested that forces in England and Wales did not immediately respond to the recommended good practice.

Derek Penman: The hard stop is one of a number of tactics that is deployed in armed policing, but to be honest, I think that consideration of it is not really within the scope of our present review. We are interested in the standing authority, the deployment of officers who have it and how they are linked into local policing

rather than all the tactics that might or might not be applied in armed policing. That is not within the scope of our review.

John Finnie: I understand that. My question was more about having regard to the consequences of applying the UK position, given the criticism that has been made of that particular tactic.

Derek Penman: I am not aware of the detail of that criticism. However, as far as the deployment of firearms is concerned, there are other checks and balances in Scotland in the form of the Police Investigations and Review Commissioner, who would be able to look at and comment on the matter. The PIRC would be involved in cases in which firearms were used, and it would probably be under the direction of the Crown Office and Procurator Fiscal Service. However, I do not see us looking at the tactics of ARV officers in our review.

John Finnie: Finally, can you assure the committee that none of your staff who will be involved in the inquiry has been involved in decisions on the standing authority?

Derek Penman: I certainly give the commitment that none of the staff involved will have been involved in any decisions in relation to the Police Scotland standing authority.

John Finnie: I am grateful for that. Thanks very much.

Graeme Pearson (South Scotland) (Lab): Good afternoon. I checked the College of Policing's authorised professional practice on its website this morning. It indicates that the doctrine has not yet been extended to Scotland and is still the subject of discussions. Is that your understanding?

Derek Penman: My understanding is that that guidance is what is practised in policing in Scotland, as the accreditation to train and to deploy has to be gained through the College of Policing.

Graeme Pearson: Do you accept that, this morning, that website said that the doctrine has not yet been extended to Scotland and is still the subject of discussions?

Derek Penman: If that is stated on the website, that may be the case.

Graeme Pearson: It is.

Derek Penman: We will work alongside the College of Policing and Deputy Chief Constable Simon Chesterman, who is the Association of Chief Police Officers lead. Obviously, we will ensure that all those areas are covered by our review.

Graeme Pearson: My point is that a lot has been said about authorised professional practice and the various correspondence as though the doctrine has been fully expanded and examined and is now almost law—if I may use that term—in internal practice, but it is still the subject of discussion.

My second point is that, in the Justice Committee meeting of 27 November 2012, your predecessor described operational independence as a “grey area”. It was also described as “fuzzy”, and it was acknowledged that clarity would be required through a process of discussion. Have you been involved in any formal discussions about operational independence? If you have, can we have copies of the minutes of those discussions so that we can see the direction in which it is going?

Derek Penman: I have not been involved in any formal discussions around operational independence. In giving evidence to the Justice Committee on Tuesday, I said that scrutiny is one of the areas that require further work and the time is now right for that. There should be a national discussion about all levels of scrutiny. It is not just the chief constable's operational autonomy that should be looked at, but the accountability to the SPA and, indeed, how scrutiny bodies such as Her Majesty's inspectorate of constabulary in Scotland link into that.

Graeme Pearson: Thanks, Mr Penman. It is a matter of regret that, in the intervening period of almost two years, such an important issue has not been the subject of discussion and examination, given what we are now debating and the concern that has been publicly expressed.

In that context, I have a question for Mr Emery. I watched the most recent SPA board meeting, at which the subject of armed response came up. I was disappointed that, almost from the outset and without any examination of the chief constable's position, there seemed to be an acknowledgement that operational independence applies in such circumstances. Other than what Mr Whyte said—he raised a number of pertinent issues about communication—the discussion thereafter seemed to be about what happens after the decision making. What is your understanding of operational independence? Do you believe that it has been applied properly in such circumstances? If so, why do you believe that?

Vic Emery (Scottish Police Authority): As you know, the Police and Fire Reform (Scotland) Act 2012 makes it clear that the chief constable has operational independence, and that is intended to be independence from any political influence.

There is a maturity in our arrangements with the police on the extent to which the SPA becomes

involved in the chief constable's decisions. Our scrutiny role is very much after the fact, and that is not really my view of governance. I have expressed that view to the committee at various times when we have met previously, and we need to move—

Graeme Pearson: Why—

The Convener: Please let Mr Emery answer.

Vic Emery: I acknowledge that we need to move to a situation in which we are consulted in advance of policy decisions being made instead of simply scrutinising those decisions after the fact. I recently responded to a letter that you wrote to me, Mr Pearson, and I expressed that view in my letter to you.

Graeme Pearson: Indeed.

13:30

The Convener: Mr Whyte, as you have been mentioned, would you like to comment?

Iain Whyte (Scottish Police Authority): It might be helpful to go into the nature of the inquiry that we are carrying out. Some of the inquiry is, indeed, scrutiny of the decision making that has taken place. However, the fourth bullet point in our inquiry remit is:

“what, if any, lessons might be learned around how operational decisions with wider strategic or community impact are communicated to national and local oversight bodies and other key interests.”

We want to improve how scrutiny of the chief constable and operational decisions is undertaken. Some of that, as Vic Emery has said, is about the need for up-front scrutiny and oversight of those decisions prior to policies being implemented.

Graeme Pearson: I mentioned the comments about operational independence that were made in 2012. What discussions have you had since 2012 on operational independence and who have you discussed the issue with? Can we have access to the minutes of any of those discussions?

Vic Emery: We have not had formal, minuted discussions but there has been a growing improvement in our relationship with the police. It is a matter of persuading the police that they need to come forward and consult the board, particularly on how decisions are communicated among the community before those decisions are made. We are maturing that relationship slowly.

We need to mature that relationship because, under the 2012 act, our role can be interpreted as involving scrutiny after the fact. That is not a satisfactory situation and I think that we all acknowledge that. We are trying to move to a

position where we are involved prior to such decisions being made.

Graeme Pearson: Can you indicate when the chief constable first consulted you, as chair of the authority, on the issue of extending the use of armed police officers for routine duties?

Vic Emery: The chief constable communicated with me at the Selkirk board meeting, and a document was issued quite a long time ago. Derek Penman may know about that.

Derek Penman: A document was produced for day 1 readiness and was presented to the board. A reference to the issue was contained in that document.

Vic Emery: Yes, there was a one-line reference in that document. The document covered a number of things that were being rolled out in readiness for day 1, which, as we all know, went very successfully—in fact, most of the public did not notice a difference between the legacy forces and Police Scotland. However, it was one item among a catalogue of items that were communicated at that time.

The Convener: Can we have a date for that document, please?

Iain Whyte: My recollection is that it was produced in March or April 2013.

Graeme Pearson: If I have understood your comments correctly, that one-line reference does not amount to seeking any consent or approval of the current situation.

Vic Emery: If you read the prospectus of the review that Derek Penman and HMIC are going to carry out, plus the added review by the SPA, you will see that that is one of the questions that we want to be exposed.

Graeme Pearson: The documentation that refers to the nature of a standing authority indicates that it may be given to officers who are on specific duties where a risk is identified and demands that officers be permanently armed. In the discussions that you had in Selkirk, were you satisfied that it was necessary to require officers who are performing routine duties anywhere in Scotland to wear automatic pistols as a normal way of duty? What risk assessment was presented to you at that stage that persuaded you that that was fine?

Vic Emery: The matter was not discussed at that level of detail, as you will probably know because, as you have said, you watched the meeting.

Graeme Pearson: I did.

Vic Emery: Therefore, no risk assessment was offered to the SPA in that respect.

Graeme Pearson: Did the cabinet secretary speak to you about the controversy over armed police? The cabinet secretary seems to have been told a year ago about the arming of police. Were you told in the interim period that such a conversation had occurred?

Vic Emery: I am sorry—a conversation between whom?

Graeme Pearson: Apparently, the chief constable briefed the cabinet secretary last year.

The Convener: Where did that information come from?

Graeme Pearson: It came in a reply in the chamber. The cabinet secretary indicated that the chief constable had briefed him on the matter in his office.

The Convener: I do not want to be difficult, but can you tell us when that was said, for the benefit of the official report?

Graeme Pearson: It must have been about five weeks ago in the chamber.

The Convener: Was it during question time or a debate?

Graeme Pearson: It was during question time.

The Convener: Okay.

Graeme Pearson: When, if ever, did the cabinet secretary discuss the issue of having armed officers on routine patrol in Scotland?

Vic Emery: I have not discussed that issue with the cabinet secretary.

The Convener: Thank you. It would be helpful if you could give us a reference for that pertinent question, Graeme.

Margaret Mitchell is next, to be followed by Kevin Stewart.

Margaret Mitchell (Central Scotland) (Con): Good afternoon. The College of Policing authorised professional practice document on armed policing, which is the armed policing document for the United Kingdom, has been quoted quite a lot. It looks at the management, command and deployment of armed officers in the rest of the UK. It is very relevant for us to assess how armed officers are deployed there, and it seems that officers are armed when they are deployed in high-risk locations, when they are engaged in armed response vehicle duties or when they undertake protection duties.

Is the panel aware of whether armed officers ever turn up at incidents that could not by any stretch of the imagination fall under any of those three headings? That is the nub of the concern of the public and of this committee.

Derek Penman: Armed response vehicles are those vehicles that are available 24/7 across Scotland and the UK in which officers have access to firearms. Standing authority gives those officers the authority to have the weapons on them, as opposed to the weapons being locked in the vehicle.

The way that ARVs are deployed will vary across the country and we intend to look at whether, if the officers in question are not deployed on ARV duties, they are deployed on other duties. Our work will gather information on that, to show how the situation might vary across the country.

Margaret Mitchell: Is there a distinction between that and specific high-risk locations, which I imagine would be looked at case by case as situations arose, and protection duties?

Derek Penman: In order to give a standing authority, the chief constable must be satisfied that there is an operational requirement for it. That would be informed by what is called a strategic firearms risk assessment, which would show what the risks were and what intelligence would justify a standing authority. In the main, we will be involved in looking at how Police Scotland reviews that next month.

The other areas would have specific risk assessments done for them at the time. An area that required protective security would have a risk assessment done at the time. A separate risk assessment would also be done with airport areas.

Our review will focus on armed response vehicles and the extent to which they support other duties.

Margaret Mitchell: Does the panel accept that there is heightened concern about all this? We have a single police force and the decision on the carrying of arms has been taken by one individual, who has referred to it as an operational decision, over which he has competence and complete control. The lack of checks and balances is the issue. As we are now hearing from Vic Emery, it is highly unsatisfactory to be informed of a decision on such a high-profile and dynamic issue after the event.

In press comments, the practice that we are discussing is always referred to as a policy. To me, it looks very much like a policy; if something barks, has four legs and a waggy tail, it is a dog, and it is a little like that with this policy. Are we going to dance on semantics here, or is the panel going to look at that? I ask that particularly of Derek Penman because, in some of his comments, he seems to have accepted the policy or operational decision. Will the panel and the various reviews look into the appropriateness of the practice?

Is there a possibility that the policy could be suspended until the reviews have been completed? I would certainly welcome that, given that one armed officer performing a duty for which they should not be in possession of a gun is one armed officer too many. It will be December before the reviews have been completed and, every single day, we have armed officers in Scotland where they should not be.

The Convener: I think that buried in there are two fair questions: is it a policy or is it an operational matter; and, if it is a policy, is it going to be suspended during your review?

Derek Penman: The quotes that Margaret Mitchell referred to were given by me in response to a regional newspaper. My view at that time was that the decision on a standing authority is an operational decision for the chief constable and that, at that time, guidance had been followed. I felt that it was necessary to separate that issue from that of deployment and how officers are actually used.

As far as our review is concerned, the chief constable is required to review that decision on an annual basis, but Police Scotland has undertaken to do it on a quarterly basis. We will be involved at the next stage, to the extent that we will be able to witness the decision-making process and see the evidence that the chief constable uses to make his decision.

Margaret Mitchell: That annual review has not taken place so far, but the decision was made more than a year ago.

Derek Penman: The guidance is for an annual review to be carried out, but Police Scotland has undertaken to do that on a quarterly basis, and the next quarterly review—

Margaret Mitchell: But we have had no reviews so far.

Derek Penman: The next quarterly review will be on 16 September. I will defer to my colleague.

Dr Brian Plastow (Her Majesty's Inspectorate of Constabulary in Scotland): I can come in on that point, if it is helpful. There are probably four key research questions that we will ask during our work. The first is, was the initial standing authority that was approved by the chief constable justified by the analysis of threat, risk and harm in the Police Scotland strategic risk assessment at that time? We do not know the answer to that question yet because we have not considered the issue yet. We will consider it, though. We will also consider the firearms strategic threat and risk assessment for recurrent years, so it is a bit about looking back and a bit about looking at what is happening now.

In essence, there is a yes/no answer. The intelligence will tell us either that there was

justification or that there was not. From that, the next logical question is, if the intelligence was there, why was the decision taken to go for overt carriage of weapons, and what other options were considered? That should all be documented. We will also want to know what community impact assessment and consultation took place around that.

The last important strand is around deployment criteria. Having taken the decision to grant standing authority and go for overt carriage, what deployment criteria were put in place for officers to ameliorate some of the public concerns that have emerged?

I hope that that answers your question.

Margaret Mitchell: That is helpful. Is there any move to review the decision and suspend the policy, given the widespread concern and the fact that the review will not be reporting until December, which is a long time for those police officers to be on the street with guns when, in my view, they should not be?

Derek Penman: The chief constable will undertake the review on 16 September. He will make a decision then about whether the policy will continue. As Brian Plastow has said, we will be party to that and will be able to report. We would be looking to provide a report by 21 October. That would enable the SPA to consider it at its meeting on 29 October, along with any report from the chief constable on his decision around deployment.

Iain Whyte: It might be helpful to say that the SPA inquiry is looking at things in a slightly different way. The complementary nature of the two inquiries is quite innovative in terms of examining Scottish policing. We will be looking at what the public reaction to the issue has been and what the public concerns have been. In the media, the issue is sometimes characterised as a debate about whether there should be specialist armed policing. I think that we all agree that there have to be a small number of specialist armed officers, for reasons of threat and risk. On other occasions, the debate is characterised as being about the routine arming of all police officers, which it is not.

Margaret Mitchell's point about the tasking and deployment of those officers once they are armed will be one of the critical points that we examine, along with people's concerns about it.

13:45

Alison McInnes (North East Scotland) (LD): I will pursue the issues further. Mr Penman said that he made a statement on 30 July about the standing authority. In that, he went further by saying that using specialist officers to support

front-line officers is an efficient use of resources. Given that statement, how will you demonstrate that the assurance review is objective?

Derek Penman: In the press statement, I referred to appropriate deployment. The appropriateness comes from understanding what exactly the officers are being deployed to do. Our review will look at the guidelines and policies on the deployment of specialist officers to non-firearms-related tasks and the extent to which they support their local colleagues. I am not clear about that across the country. Once we have a picture of that, we will look at what is recognised best practice across the UK. For the report, I hope that that will give assurance on what officers are doing.

Alison McInnes: The paper on the aim of your review says:

"This review is scheduled for 16 September ... and provides an opportunity for HMICS to make an objective professional assessment that the operational decision making by Police Scotland has followed the relevant guidance and that any conclusion is supported".

Should that not say "whether the operational decision making followed guidance"? It rather sounds as if you have made an assumption at this stage.

Derek Penman: That is absolutely not the case. Perhaps that is a drafting issue. As I have said, the word "assurance" is not to be read as "reassurance". Our aim is to provide MSPs and the authority with assurance.

The quarterly review on 16 September is only one part of our review, which will look at whether the intelligence and the threat justify the chief constable's having a standing authority. That will be judged against whatever guidance exists. We will be privy to the information that the chief looks at and we will be in a position to say whether the decision is reasonable in the circumstances.

We have undertaken to go beyond that. It is one thing to have the standing authority because people need immediate access to firearms; that is a separate issue. The next question is about the extent to which those people can be used for other things. That is the nub of all this and is probably what is causing the greatest concern among communities. We will focus on that.

Alison McInnes: That is particularly welcome.

I will ask Mr Emery about operational independence, which is at the heart of the difficulties. If the chief constable asserts that a matter—any matter—is operational, do you feel obliged to accept that?

Vic Emery: We make recommendations and ask the chief constable questions. Normally, we see such things after the fact. We have been through that today. The 2012 act says specifically

that the chief constable is accountable to the SPA for the operational decisions that he makes. Under the act, we can ask him to give due consideration to our views.

Alison McInnes: You are responsible for ensuring that the chief constable adheres to the policing principles, which would allow you to investigate things in advance. That would allow you to ask the chief constable to explain what he is thinking of doing about something and to look into almost any policy matter, given that the policing principles are at the core of all that. Perhaps the board needs to be a little more proactive in identifying areas of challenge in the future.

Few of us think that the industrial scale of stop and search and the distinct policy change on armed policing are purely and simply operational matters. We absolutely need to understand better what we mean by operational independence.

I understand that there is no statutory definition of operational independence. People tend to rely on a judgment by Lord Denning, who said:

"No Minister of the Crown can tell him"—

the chief constable—

"that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so."

However, there is a long way between that and hiding behind operational independence on policy changes. Would there be benefit in developing written guidance—after much consultation with civic society and the police—about how we proceed?

Vic Emery: We want to do a piece of work that asks what operational decisions we do and do not need to be involved in. As I said, the relationship is a developing and a maturing one. The chief constable has already made operational decisions. For example, the decision on firearms was rolled out more than a year ago.

Alison McInnes: Yes, but do you not wish that, instead of the earlier arguments that we had, there had been a greater focus on that particular issue?

Vic Emery: As I said, we need to be involved in why the decisions are being made and to scrutinise what is happening in advance, rather than post-event. The 2012 act can be interpreted—it is being interpreted this way—to mean that that happens after the event.

The Convener: I am glad that you raised the point about having advance involvement with certain operational decisions that may be coming down the pipeline in a difficult area, irrespective of whether they become operational or policy matters. From a different point of view, I would be

very concerned if the SPA and HMIC interfered too much in operational decisions, because you would then be tying the chief constable's hands.

From my point of view, and I accept what my colleagues are saying, the balance is sometimes difficult to maintain. However, I am pleased to hear that, for very sensitive issues—committee members have mentioned some of them—it would be prudent for the SPA to be involved with the chief constable to discuss the matter in advance and with the public at large. Do you concur?

Vic Emery: You are making exactly the right distinction between the two. The SPA is concerned where we foresee that there might be public alarm or disquiet as a result of a decision. We do not want to be involved in all operational decisions—indeed, we are not qualified for that.

Derek Penman: As I said on Tuesday to the Justice Committee, an issue that would benefit from further discussion across Scotland is what the scrutiny levels are around policing 16 months into the new system.

Although there is a doctrine of constabulary independence, the Police and Reform (Scotland) Act 2012 is absolutely clear: under section 2(1)(e), the authority can

“hold the chief constable to account for the policing of Scotland”,

while, under section 17(1),

“The chief constable is responsible, and must account to the Authority, for the policing of Scotland”.

The checks and balances are there.

HMIC has a view, because I am not fettered in any way about what I can look at. I can also feed in—in terms of public opinion—what we see as a risk. I can then look at and inspect those issues, provide public reports and give opportunities to the authority and other agencies, including the PIRC, to provide scrutiny publicly. There is a framework that allows for the effective governance of policing. There is something to be said, 16 months in, for working through how all that fits together.

Kevin Stewart (Aberdeen Central) (SNP): First, I want to thank you for the two separate inquiries that you intend to carry out to address the public's concerns. Mr Whyte said that the two reviews are innovative and I am glad to hear that that is the case. In some regards, the approach is much different from what went on before when we had eight police boards. That shows that the level of scrutiny has increased dramatically.

I am concerned about the myths that have built up during the debate. I hope that you will be able to bust some of them during the review. I hope that you will look into those matters and be able to

reassure the public that we are not moving to an armed police service.

Will you look at past scenarios? In many cases, arms were locked in vehicles, which often caused access difficulties. Will your inquiry look at what happened not only in the past, when just three authorities used armed policing, but at what is happening all over Scotland?

Derek Penman: As I said in response to Mr Finnie's question, part of it is to try to—not try, because we will—examine the legacy arrangements prior to the establishment of Police Scotland.

It is helpful to explain the differences, because the approach varied across the country: some forces overtly had standing authority and others had dual-role armed response vehicles and road policing, with the guns contained in a locked cabinet. The latter officers still had access to firearms, but not immediate access, so that when they were out doing their duty they would not be picked up by members of the public.

Part of our work will be to provide a narrative of how the approach varied across the country so that people understand what the differences are.

Kevin Stewart: Mr Emery, do you want to comment on that?

Vic Emery: No, I absolutely agree with Derek Penman. That will form part of the review. The SPA's part of that is the public concerns and how local communities are affected by similar decisions. That is how the two reviews complement each other.

Kevin Stewart: Will you also consider the standing authorities that were in place in Strathclyde and Tayside previously—there is a debate about Northern Constabulary—to determine how those decisions were taken and what the checks and balances were at that point?

Derek Penman: We are looking more to state the facts about what existed at the time. For example, in Strathclyde, there was a standing authority with ARVs; in other parts of the country, there would have been something different. It is for us to state what the operational deployment was around ARVs, standing authority and the mode of carriage. It was not our intention to go back and examine the governance of those previous decisions with previous police boards, but we felt that there was value in looking at what the position was on operational firearms prior to the establishment of Police Scotland.

Kevin Stewart: Does the SPA intend to go back to previous decisions?

Iain Whyte: It is not for us to review previous decisions at this stage. Part of what we wanted to

consider was what the picture was around the country. That is the nature of the complementary work that we are doing. We set out a set of issues that we wished to consider and then became aware that Mr Penman's review would consider a number of them, so we allocated the tasks to the best scrutiny body to do that work: if it is about an operational or specialist policing role, HMIC will consider that and, if it is about interaction with the public, gathering the public view and then taking it into account, the SPA will do that.

Kevin Stewart: I am grateful for that because one of the other myths that is growing is that there is a lack of scrutiny. Having served on a police board for 13 years myself, I think that the scrutiny set-up now is much greater than it was then, so I am glad that you intend to consider that too.

The thorny question of operational independence has existed for a long time. As the convener suggested, it would be difficult to come up with a definition. Does some of what is going on in your reviews open up communication to ensure that future decisions that are taken are related and communicated to you and to the public so that we do not get into a situation where certain things become a bit of a myth?

Vic Emery: I share your view again. This is not the first item on which we have had communication issues, which has led the public to a wrong conclusion. It has all been down to communication. We need to communicate better with the local authorities and the people who live in the areas that will be affected by the decisions that are made. There needs to be a more mature dialogue between the SPA, HMIC and the police with regard to some proposed decisions or changes of direction.

Kevin Stewart: Mr Penman has seen me challenging chief constables before, but it is absolutely right that we ensure that there is no political interference in certain matters.

On communication with you, Mr Emery, and the knowledge exchange with the SPA, do SPA members have security clearance to get certain information?

14:00

Vic Emery: Yes, they do. In fact, I am what is known as DV-ed, or deep vetted, so I can look at—

The Convener: I hope that that was not painful.

Vic Emery: Actually, it was. Anyone who has been through a DV process knows how painful it can be because they go into every aspect of your life.

The Convener: Are we DV-ed as well?

Kevin Stewart: I do not think that we should have that debate, to be honest.

Is it just you, Mr Emery, or is it all members of the board?

Vic Emery: Other members of the board are security vetted but I am deep vetted so that I can look at some of the covert stuff and some of the high-threat risk analysis that gets done.

Kevin Stewart: Thank you. That has been extremely useful.

The Convener: I have managed to find the quotation. I think that I am being fair in reading it out. In response to a question from Alison McInnes on 20 May this year, the cabinet secretary said:

"I was aware that, as we ran into the establishment of Police Scotland, three forces were already operating the procedure that is now the standard procedure in Scotland. Officers in those forces numbered over half of the establishment in Scotland. I repeat for Ms McInnes's benefit that those forces were Strathclyde Police, Tayside Police and Northern Constabulary. I was aware that, as at 1 April, the chief constable was going to ensure that we had a similar regime operating across all Scotland."—[*Official Report*, 20 May 2014; c 31153.]

That is now on the record. I say to members that if they are going to refer to something like that, it would be helpful if they would provide the column number so that the official report can find it.

I move on to Roddy Campbell because he has not been in yet.

Roderick Campbell (North East Fife) (SNP): Good afternoon, gentlemen. I want to move away from a general discussion about operational independence and probe a bit further into Dr Plastow's comments on methodology and the assessment of whether Police Scotland's conclusion was supported by available intelligence about a prevailing threat or risk. Will you put a bit of flesh on how you are going to go about such an assessment?

Dr Plastow: Yes. I will take possession of the relevant documents on Monday afternoon. That has been agreed with Police Scotland. We will review the content of those documents because, as I said, the intelligence information will either be there or it will not.

Roderick Campbell: Okay. Anyone else?

Derek Penman: We are conscious that, in addition to the strategic threat assessment, which is a guidance document, the chief constable would also take cognisance of views and representations. We, too, are interested in what those are and the extent to which they are considered as part of the decision.

The Convener: I am trying to move on because we have to finish by 2.30. Is it a short question, Graeme?

Graeme Pearson: It is just a couple that relate to each other. They should not take overly long.

The Convener: Good.

Graeme Pearson: Governance means holding someone to account and knowing the way forward. On policing by consent, consent can be offered only when people are aware of the policies and have agreed with the content of those policies. My earlier questions indicated that I am very dissatisfied with the nature of governance thus far; in that respect, I am some distance from Kevin Stewart and a few of his earlier comments.

The firearms policy has been in place for more than a year and there is a requirement for an annual review of the policy. Do we have that review document? Has HMIC had access to it?

My second question is on a comment that Derek Penman made. You said that, in your view, the chief constable made an operational decision. How do you make up your mind at this stage that it was an operational decision to maintain those officers on armed patrol when we do not have any paper that justifies the situation?

First, then, where is the annual review that is required as part of the arrangements? Can we see it? When was it published? Secondly, now that you are engaged in a review, will you roll back your view? You would be better to wait for the outcome of the review before you make up your mind about whether the decision was an operational one.

Derek Penman: As I said, the guidance requires an annual review of that decision. I have not personally had sight of the annual review documentation. We have not asked for it. I assume that a review would have been done a year into the service. The next review, which is scheduled for September, is the one that we will be involved in and look at the evidence for.

Graeme Pearson: Does the SPA have the annual review? Has the board seen it?

Vic Emery: The annual review is now a quarterly review.

Graeme Pearson: The document demands an annual review. That is the principle that is applied to the standing authority. Fifteen months into the process, have you seen the annual review?

Vic Emery: The SPA does not do that review—the police do it internally. I have not seen a document as a result of that review.

Graeme Pearson: So, in that regard, the requirement has not been fulfilled.

Vic Emery: We do not know whether it has been. The police have said that they do a three-monthly review.

Graeme Pearson: As a board, you would have to ask the chief constable for the annual review, the period for which should have dated from April last year.

Iain Whyte: We would, although we have some assurance in that the police are accredited by the College of Policing and, as part of that accreditation, they will be required to undertake an annual review and, I understand, report that to the College of Policing.

Graeme Pearson: I am sorry, convener. Perhaps it is me—I know that I can be a bit garbled on occasions.

The Convener: I am glad that you said that before I did.

Graeme Pearson: Indeed.

When a standing authority begins, it is agreed that there will be an annual review. That is part of the process and principles that apply. In April last year, Police Scotland began the standing authority, and part of that was to have an annual review at the end of a 12-month period—presumably, that is what “annual” means. I would expect the board to have asked in April this year to see the police’s annual review so that it would know where we were with the policy, but that has not happened.

Iain Whyte: Maybe Mr Penman can help with this, but my understanding is that Police Scotland undertook to do an annual review internally. The issue about an annual review was not reported to the SPA when the brief information that you highlighted and which we discussed in Selkirk was given to us. There was not a lot of detail about annual reviews or anything at that time.

Derek Penman: I am sorry to make this point again, but the guidance requires the chief constable to review the decision annually. My understanding is that Police Scotland does it every quarter rather than annually, so a number of reviews should have been undertaken in the period. The next one is scheduled for September, which is the one whose content we will see.

The Convener: I accept that Graeme Pearson has a point, but I am going to move on. We are hearing about quarterly and annual reviews and so on. Do you want to explain further, Mr Penman?

Derek Penman: Perhaps I could add one point of clarification in relation to Mr Pearson’s point that I have pre-empted the review in saying that the decision is operational. My point is that the decision to deploy firearms under a standing authority is rightly one for the chief constable

under section 55 of the Firearms Act 1968 and in line with College of Policing guidance. Compliance with that guidance makes it a decision for the chief constable. To clarify, I see it as an operational decision for the chief constable because, legislatively and within the guidance, it is appropriate for the chief constable to take that decision. That is my point. To my mind, the chief constable is accountable for the decision, which is a different matter. When I say that it is rightly a decision for the chief constable, that is based on statute and guidance.

Graeme Pearson: I am grateful for that clarity.

The Convener: I will read the *Official Report* of the meeting later, because my head is birlin a bit with annuals, quarterlies and so on.

Three members want to ask questions. I ask them to put their questions now, and then we will get them answered in a oner, because we have to move on at 2.15 at the latest.

John Finnie: I have two brief questions, convener.

The Convener: Och! Just say it is one question in two parts, and that sounds better.

John Finnie: Whatever—I thought that our job was to scrutinise.

The Convener: It is, but we have to finish by 2.30.

John Finnie: Okay. It is for Mr Penman, and it relates to the very pertinent point that Mr Stewart made about myths.

There is a myth that needs to be dispelled. I have raised the issue and the response that I got from ACC Higgins was that part of the rationale for the change is that it could take up to 20 minutes for an officer to arm themselves. If it takes an individual 20 minutes to move a firearm from the boot of a vehicle and put it on, they should not, in my opinion, be in charge of a firearm or a motor vehicle. Perhaps you could look at that.

Mr Penman, one area of your report that could become very pertinent—to which the term “similar regime”, which the convener read out, alludes—is the phrase “equal access to specialist support and national capacity”. As you will know, treating people equally does not mean treating them the same. What is required in Govan might be different from what is required in Golspie, and the same applies to Leith and Lerwick. To what extent does that understanding impact on geographic deployment? If there is a rationale for deploying in the greater Inverness area, why would those individuals find themselves outwith that area? The issue is the extent to which the principle of the change to the single force impacts on the operational deployment of police.

The Convener: I hope that the witnesses have taken a note of that question.

Alison McInnes: I have a question on the standing authority. The policy change to a standing authority does not just mean that the officers are carrying their guns overtly and their holsters on their hips, does it? It also means that those individual officers decide when to deploy the guns and when to fire them. Is that correct?

If that is correct, will Mr Penman, in his review, consider whether the risk that is posed—or that the chief constable sees—justifies the removal of the supervisory oversight of a senior officer? As I understand it, a senior officer would in the past have had to agree on each individual occasion that the guns could be used. That authority has now been devolved directly to the individual officer carrying the gun. Is that right?

The Convener: Thank you—that is a clear question.

Kevin Stewart: My question is in a similar vein. I have a quote here, which states:

“I think that my officers have the right to be protected and also have a duty to protect the public.”

That was Graeme Pearson some years ago, saying that he wanted his officers to carry firearms.

With regard to the standing authority, Alison McInnes made the point that officers should sometimes have the right to use a Taser or a firearm without getting supervisory authority.

Are you going to look at incidents that have happened of late, including one recent incident in Edinburgh in which firearms officers had to use a Taser very quickly after an officer had been stabbed in the street?

Graeme Pearson: Convener—

The Convener: I know that there is a bit of a debate between you two, but we will take the questions first.

The first question is about equal access to specialist support and why that support should be the same throughout a geographical area when it might not be suitable. I think that that is what John Finnie is talking about.

The second question is on standing authority. We understand that officers had to phone a superior officer before they could make use of a firearm. Are you going to look into the fact that that has changed?

Sorry—I have forgotten what Kevin Stewart’s question was.

Kevin Stewart: I want the review to look at incidents such as the one that recently took place

in Edinburgh to consider how any changes to the rulings would affect similar circumstances.

The Convener: Can someone take those questions, please?

Derek Penman: John Finnie raises a valid point about geographic impact. Previously the eight forces would have had an individual threat assessment; we now have a national threat assessment. I suppose you are asking how that plays out across the geography of Scotland. That is one of the areas that we are interested in looking at.

An officer may still have a need, if indeed that need is justified, to have immediate access, but there might be issues around the deployment. Those are separate issues, as I mentioned, but we will look into them as part of our review.

There was a question about the standing authority. What happened previously was that the firearms would be secured in a vehicle and there would be a call to a firearms incident. A commander—usually the control room inspector—would authorise the officers to deploy and use the firearms. The incident then became a firearms operation and was subject to a level of command.

That would still happen in the vast majority of incidents. The standing authority covers something that would happen so spontaneously that the officer would have immediate access to firearms when they were relying on a very limited set of tactics to deal with an incident happening there and then. Officers are highly trained to deal with such scenarios. As Alison McInnes said, the decision on whether to use the weapons is with the individual officer.

Standing authority has not passed everything across to officers to say, “You are now authorised—go and deal with a firearms incident.” If a firearms incident happened, it would still, in the main, be commanded by an inspector in the control room. If it then grew, other firearms commanders would be attached to it. The standing authority is very limited for a narrow set of circumstances in which officers may be required to bring firearms to deal with a situation with which they are presented.

14:15

The Convener: Just to clarify, the firearms are not locked in the car anymore—that has gone—but, in certain instances, the officers have to call in and say, “I think I require to use this.” In those instances, they have the firearm with them but they have to get authority to use it. In other instances, using their judgment, they can just use it.

Derek Penman: That would be in extremis, to be fair.

The Convener: Yes, I hear you. That is what you are telling me.

Derek Penman: In effect, what would happen is that, if a call came in that required the officers to be armed, they would be armed already—they have the weapon with them—but the incident would still be commanded, as it would have been before. There would be a command and control situation from a control room. In some situations, there would be a bronze commander and another person who would be involved in commanding the firearms operation.

It is a matter of the officers having immediate access to the firearm if required. The only time that they would use a firearm without going through the chain of command would be if something presented in front of them that required it.

Alison McInnes: Will you consider whether the carrying of the arms is exacerbating the possibility of such a situation arising?

Derek Penman: Probably. That would lead me into dealing with Mr Stewart’s point. We can consider all the armed deployments.

The Convener: That includes Tasers as well.

Derek Penman: Yes. Every armed deployment is reported to the PIRC, who would review it on its merits as well. As part of the firearms threat and risk assessment, the chief constable would also consider the deployments across the previous period to see the extent to which firearms had been used, because that would inform the threat assessment.

An element of that issue is built into the review process within policing, but we will consider it as well to determine how the weapons have been deployed, if they have been deployed at all.

The Convener: I have not worked out when your reviews will be concluded. Do you have a date for that?

Dr Plastow: We will try to report by 21 October.

The Convener: And the SPA?

Iain Whyte: Certainly by 17 December, when we hold a board meeting. We may have an interim report in October, but part of our report will be influenced by Mr Penman’s report, so there will be considerations around that.

The Convener: Will that interim report be published?

Iain Whyte: It will be an update to the board at a meeting.

The Convener: Okay, so it will be a public document.

Iain Whyte: Yes.

The Convener: I know that the time that we have is frustrating, but we cannot sit when the Parliament is sitting. I thank you very—

Graeme Pearson: Can I make just that one point about what Kevin Stewart said?

The Convener: No. I do not want to have a little spat.

Graeme Pearson: It is one brief sentence.

The Convener: No.

Graeme Pearson: He keeps bringing it up. It is not fair.

The Convener: No, I am sorry. You can take it up with Kevin. It has nothing to do with the witnesses.

I thank the witnesses very much for their evidence and conclude the item. We now move into private.

14:18

Meeting continued in private until 14:23.

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