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Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 5 March 2015

Session 4

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
ARMED POLICE.....	2

JUSTICE SUB-COMMITTEE ON POLICING

4th Meeting 2015, 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)

*Elaine Murray (Dumfriesshire) (Lab)

*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Christian Allard (North East Scotland) (SNP)

Assistant Chief Constable Bernard Higgins (Police Scotland)

Deputy Chief Constable Iain Livingstone (Police Scotland)

Graeme Pearson (South Scotland) (Lab)

Derek Penman (Her Majesty's Inspector 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 5 March 2015

[The Convener opened the meeting at 13:15]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good afternoon. I welcome everyone to the fourth meeting in 2015 of the Justice Sub-Committee on Policing. Please switch off all mobile phones and other electronic devices completely. No apologies have been received.

We have been joined by Christian Allard and Graeme Pearson. I say to those gentlemen that I will let members of the committee ask their questions first, because it is a very specifically appointed committee, but you are welcome to ask questions if we have time.

The committee is invited to agree to consider item 3, which is on our work programme, in private. Is that agreed?

Members *indicated agreement.*

Armed Police

13:15

The Convener: Agenda item 2 is an evidence session on the latest developments in relation to armed police. The session must conclude by 2.15, because the Parliament will sit shortly after that. I welcome Iain Whyte, who is a Scottish Police Authority board member and who chaired the SPA's recent inquiry into the public impact of Police Scotland's standing firearms authority; Deputy Chief Constable Iain Livingstone, from crime and operational support; Assistant Chief Constable Bernard Higgins, from operational support; and Derek Penman, from Her Majesty's inspectorate of constabulary in Scotland, which also recently reported on the standing firearms authority. Members have copies of the reports that I have mentioned. I thank you all for coming.

As usual, we move straight to questions.

John Finnie (Highlands and Islands) (Ind): Good afternoon, panel. I have some questions for Mr Whyte.

Why was the report, "Inquiry into the public impact of Police Scotland's Firearms Standing Authority", published late?

The Convener: I am sorry—I forgot to say that there is no need to press buttons. We have a lovely gentleman who will operate the microphones. If a question is put to you directly, answer it; otherwise, if you want to come in, indicate that and I will call you.

Iain Whyte (Scottish Police Authority): Thank you, convener. I am used to other places where it is necessary to press buttons.

We were delayed slightly by a number of factors. We wanted to ensure that we had a full review of the information that had come to us. We also wanted to make sure that we could publish a report that balanced the slightly conflicting information that had come to us from different sources and put it out in a way that was appropriate and in keeping with our role, which is about ensuring that there is continuous improvement in policing in Scotland.

John Finnie: Who saw the report in advance of its being published?

Iain Whyte: A number of stakeholders saw the report to check it for factual accuracy; ACC Higgins and his staff saw it to check for factual accuracy, particularly of many of the terms that are in it. Mr Penman saw it because we had undertaken complementary work—his work was on the policing specifics of the matter, whereas

ours was much more focused on the public view of armed policing.

The Convener: Is that the complete list of people who saw the report before publication?

Iain Whyte: I think that some colleagues in our sponsor department in the Scottish Government might have seen it, too.

John Finnie: You mentioned accuracy. Was it just the simple facts of the report that were checked, or was opinion or comment provided on your conclusions?

Iain Whyte: We work in a collaborative way, so we wanted to make sure that everything that we had by way of evidence was accurate and appropriate. We came to a judgment based on that evidence. That is how we arrived at the report, which was unanimously agreed by the scrutiny panel members and has subsequently been endorsed by the SPA board. In that respect, we took account of and balanced all the evidence that we had.

The report is based on information from different sources, such as information from the public attitudes survey, written evidence or people who—like you—came along and gave evidence in person at open sessions, which are still available on the web for people to view. There was also the academic report that we commissioned. There were some factual matters that we wanted to check with other partners, which is why the report was released to them.

John Finnie: I understand that you wanted to clarify whether you had got some of the technical information exactly right, but that is not what I was asking. I was asking whether the conclusions were in any way the subject of consultation with the people about whom you were writing the report.

Iain Whyte: The conclusions and recommendations were in the report as it was circulated, but they were not for consultation. The report was circulated for consultation on factual accuracy and the conclusions are based on the group's view of the evidence that was before it.

John Finnie: The report was to have come out on 17 or 18 December. It was suggested that the delay was because Police Scotland was demanding a rewrite.

Iain Whyte: If that was the case, the demand never came to me.

John Finnie: Would you have anticipated it coming to you?

Iain Whyte: I would have thought so but, actually, we would not have considered it as such. I can tell you that we went through a few drafts for our internal review for factual accuracy and other matters, but one thing that I can be absolutely

certain about is that the conclusions and recommendations did not change.

John Finnie: Did they not change at all?

Iain Whyte: There may have been minor wording changes as we worked through the process. Bear in mind that some of the report was drafted by SPA officers and then reviewed by board members so that it was a report that we endorsed and approved. We made our own internal wording changes because of that but, as I recall, the conclusions and recommendations did not change through that process.

John Finnie: Did anyone other than your inquiry influence any of the wording in the conclusions?

Iain Whyte: Not that I am aware of.

John Finnie: You are the chair of the group. Surely you would be aware of that if it had happened.

Iain Whyte: I should be and I am not aware of it happening. That is what I am saying to you.

John Finnie: One of the ways that you would be aware of it would be if there was a discrepancy between what you understood to be your final report and what we have in front of us.

Iain Whyte: Well, yes, but as I said—

John Finnie: So are there no such discrepancies?

Iain Whyte: In what sense? What kind of discrepancy are you suggesting, Mr Finnie?

John Finnie: You are saying that, to your knowledge, there were no changes. I presume that, being the chair, you would know what the content was.

Iain Whyte: There were changes as we went through the drafting process. I myself made changes and suggestions, as did my colleagues on the panel. We went through a drafting process in which SPA officers also suggested changes at different points and we had feedback from other colleagues. Mr Penman in particular had some constructive feedback for us on many of the issues because our reports were complementary and he had to some extent examined some of the issues in advance. We had to ensure that the two reports did not completely conflict with each other unless there was something on which we disagreed. Actually, we did not disagree in the end. We had to check on those things.

John Finnie: You were undertaking a different report from Mr Penman.

Iain Whyte: Yes—although the conclusions of his report had, to some extent, strayed into some of the issues that were in our remit.

The Convener: The thrust is that, although there might have been technical changes in the conclusions and recommendations after they had been seen by other parties, none of them was substantive.

Iain Whyte: That is correct, convener. If anything, the conclusions and recommendations are the things that most stayed the same from early drafts. However, throughout the process the group was concerned with getting the write-up of some of the evidence and other bits—

The Convener: The narrative.

Iain Whyte: Yes—the narrative. We were concerned to get that right so that it fully supported the conclusions and recommendations. That is where the biggest changes were made through the drafting process.

The Convener: We have that on the record now. Kevin Stewart can come in.

John Finnie: But—

The Convener: I was going to let him in because of time. If you have another point to make, you can continue along that line for one more question.

John Finnie: I have several other points to make.

The Convener: Are they on the same thing?

John Finnie: Yes.

Mr Whyte's report talks about the position before 1 April 2013. What was the position regarding deployment of armed officers across Scotland before that date? It is a key date, obviously.

Iain Whyte: It is. Actually, that position was much better articulated in Mr Penman's report.

John Finnie: I am asking you, Mr Whyte.

Iain Whyte: I believe that the articulation of it in Mr Penman's report is absolutely accurate, from all the evidence that I have seen.

John Finnie: What was the position? I could spend all afternoon asking about the various versions that we have heard of when things changed, but I think that time will preclude me from doing so. What was your understanding of the position prior to 1 April 2013 on deployment of armed officers? That is key.

Iain Whyte: In the former Strathclyde Police area, the officers were deployed in a similar way, with a standing authority, and were attending what you and I would think of as more routine incidents. My recollection is that that may have been back in 2009, 2010 or 2011—something like that. There was also a standing authority for firearms officers

in armed response vehicles in the Tayside Police area. They had a different method of carriage of firearms—they carried them in covert holsters. They also attended some more routine incidents. There was in the Northern Constabulary area a change to that position shortly before 1 April 2013—perhaps that was in February or early March. In the other areas—

John Finnie: Will you talk me through that change and how it came about? There are different versions about that.

Iain Whyte: Do you mean how that change came about? My understanding is that the chief constable of Northern Constabulary made the change. There was a report to—

John Finnie: For the avoidance of doubt, who is that individual? Are you talking about George Graham?

Iain Whyte: Yes.

John Finnie: He made the change on February or March 2013.

Iain Whyte: Yes.

John Finnie: The change was not made by Mr House on some other date.

Iain Whyte: No.

John Finnie: That is your understanding.

Iain Whyte: That is my understanding, but you must bear in mind that that was prior to the Scottish Police Authority taking on oversight and governance.

John Finnie: Yes, but your report is about the genesis of the issue and you allude to the situation, which is why I absolutely understand that you—

Iain Whyte: We allude to it, but because of the complementary nature of our reports, we also relied to some extent on the information that was gathered by Mr Penman's report in order to come to our understanding of that part of the reporting.

John Finnie: Is there clarity in the public eye about who initiated the decision in the former Northern Constabulary, which is now N division, who was consulted on the matter and how the whole process ran?

Iain Whyte: No, I do not think that there is—

John Finnie: Is not the purpose of your report to highlight absolutely how that came about?

Iain Whyte: The purpose of our report was to determine what the public view was on deployment under Police Scotland and to look at how we could improve methods of informing the public around such matters in the future. The issues that we wanted to look at were the nature

and the level of public concerns over firearms deployment under the standing authority, how effectively Police Scotland had engaged—

The Convener: Yes, that is okay. I will not make you read through the report. That information is in your introduction at paragraph 2, page 2, which anyone can read.

Iain Whyte: That is correct, convener.

The Convener: I am sorry that I am curtailing John Finnie a wee bit. I will let you come back in later, but I am going to have to let in other members. We have only an hour and a quarter and I have a pile of people who want to speak.

Kevin Stewart (Aberdeen Central) (SNP): What threats do police officers face weekly that may require firearms deployment?

Deputy Chief Constable Iain Livingstone (Police Scotland): I will kick off on that, if I may. In the past year, we have seen the international terrorism threat level rise to severe. That is a significant reality. It is also important to note that the threat level against police officers has gone up. The rise has been quite unprecedented in my experience in the police service. The threat level against police officers is also at severe. Clearly, we need to build that factor into our deployment methods. We must also maintain a specialist firearms capability to protect the overwhelming majority of unarmed officers—our service is overwhelmingly unarmed.

In addition to that, we know that the threat from serious and organised crime is significant. That does not just relate to or confine itself to the central belt. This morning there has been media coverage of a significant London crime group targeting St Andrews, of all places. We have just completed operation Cambridge, on a serious organised crime group from Merseyside that had access to firearms and which was specifically targeting the north of Scotland because, by its own admission, it thought that the situation might have been a bit easier and softer up in the north than it would have been in the central belt.

The threats against police officers and our communities are real, and we think that we have built a proportionate response to those threats with our dedicated ARV policy. A tiny minority of police officers are in those units. They are there to protect and to ensure that the vast and overwhelming majority of our officers are unarmed and remain unarmed. However, we need that capability to counter threats such as I have just outlined.

13:30

Kevin Stewart: DCC Livingstone mentioned St Andrews. Funnily enough, I have the press report

in front of me. Six folk, including a 16-year-old boy, were arrested. I think that some members of the public would find it quite hard to believe that such things happen in small places such as St Andrews, but could such incidents happen anywhere in the country?

Deputy Chief Constable Livingstone: That is exactly the point. A very atypical scenario arose, but it is critical that, wherever such situations arise, we have the capability and capacity to respond to them.

Mr Finnie asked about the position prior to 1 April 2013. In many ways, that gets to the essence of where we were. It was a mixed position—a mixed bag. At that time, some areas of Scotland had no ARV capability and some areas had mixed capability between roads policing and armed officers, so somebody who was standing at the side of a road accident could be involved with weaponry. When we looked at Scotland as a whole, we needed to ensure that everybody had equal access and the same level of protection. That was done in a proportionate manner against the threat as we assessed it. Since that date, the threat has increased, of course. The threat is real and it extends beyond the traditional central belt area.

Kevin Stewart: There was the change in October 2014. The chief constable announced that firearms officers who were attached to armed response vehicles would be deployed only to firearms incidents or where there was a threat to life. From what you are saying, officers may be deployed throughout the country, sometimes in rural areas. What other things can they undertake in the course of their duties while they are patrolling in an armed response vehicle?

Assistant Chief Constable Bernard Higgins (Police Scotland): You are quite correct, Mr Stewart. In October, we advised that armed response vehicles would deal with firearms operations and any other threat-to-life incidents of which they had been made aware. For example, there have been a number of suicide interventions in which firearms officers have been the first responders, and there have been a number of critical medical situations in which firearms officers who had enhanced first-aid skills and carried defibrillator equipment were deployed and literally saved people's lives.

Although firearms officers are not tasked and deployed by area control rooms, we ask them to use their professional judgment in respect of any other instances that they may come across during their tour of duty. They are still police officers, and if they see a crime being committed in front of them, I expect them, as any member of the public would expect, to deal with that crime. There have been a number of occasions when they have

caught people committing house break-ins and similar crimes.

Kevin Stewart: So, those officers have to rely on their professional judgment before they respond to such things. Is there a reticence to do some of those things now that there has been such a furore over armed police being found at certain places?

Assistant Chief Constable Higgins: No, I do not believe that there is. Firearms officers receive significant training and they undergo significant annual refresher training in which they have to demonstrate significant levels of situational judgment. That is tested in a training environment to some degree. It could be said that they are tested and trained for their particular specialism to a higher degree than any other officers. When they are out on the streets of Scotland, they apply the same principles of their decision-making model to what they see in front of them as they would to a firearms operation to which they have been dispatched.

Kevin Stewart: Is there any way that processes can be put in place so that the officers can be called on for general duties without firearms being on display? That is obviously of concern to some members of the public.

Assistant Chief Constable Higgins: Certainly. That goes into the two areas that are currently under consideration as a result of Mr Penman's report and Mr Whyte's report: the firearms mode of carriage, which is currently overt; and the duties that the officers can engage in when they are not employed on firearms duties. A report on that has now been provided to me and, in line with the agreed protocols, it will be considered by Police Scotland before further engagement with the SPA and other stakeholders. There are opportunities for us to explore both the areas that you asked about.

Kevin Stewart: Just for the record, how many officers are trained to deal with firearms at this moment and how many front-line firearms officers are currently deployed by Police Scotland?

Assistant Chief Constable Higgins: I will give you the absolutely accurate figures. The total number of authorised firearms officers, which includes dedicated and non-dedicated officers, is 538. That is broken down further. This morning, we had 268 full-time armed response vehicle officers. In addition, we have 48 training instructors, who are also qualified firearms officers, as well as a number of more specialist firearms officers, who are also full-time firearms officers but who are not routinely deployed on ARV duties.

The Convener: I have a couple of points. Has the figure gone up or down in the past year?

Assistant Chief Constable Higgins: The figure can vary literally on a daily basis. Being a firearms officer is voluntary. Officers sometimes decide after a number of years that they have paid their dues and want to do something else, so they will remove themselves from firearms duties and transfer to other areas. Others retire from the police service. A week ago, we had 274 armed response vehicle officers but, because of a number of issues, the figure has reduced to 268. On 30 March, there will be an internal transfer process, which will result in the figure rising. The baseline figure is roughly 275. That is where we sit for armed response vehicle officers.

The Convener: I have a quick supplementary, as other members want to get in. What is the timescale for the report that you will circulate internally and then to the SPA?

Assistant Chief Constable Higgins: It will go internally to Mr Livingstone's gold group on 11 March. Subject to discussions at the gold group, it will then be presented to the senior leadership board on 18 March. Thereafter, again subject to the board's discussions, I believe that it will notionally be provided to the meeting of the Police Authority at the end of March.

The Convener: Obviously, the committee would be interested in seeing that report, because we have a role in scrutinising not just Police Scotland but the SPA.

Deputy Chief Constable Livingstone: Bernie Higgins is absolutely right about where we will take the report by the end of the month. Thereafter, it will be a test of how we have changed on engagement, visibility and transparency on the issue. The challenge to us is that the standing authority was introduced and people were not aware of that. Mr Finnie has made that point clear.

The current position, which we adopted in October last year, is that we deploy only when there are threats to life, for firearms jobs or for spontaneous incidents that require intervention and which the officers come upon, and that we have overt carriage. Those are the two issues—deployment and carriage. If we are going to change the position, we will ensure that we engage. Clearly, the members of the sub-committee, both in that role and in their parliamentary role of representing their communities, have to be part of that. The work that Bernie Higgins has commissioned will be a test for us of how we engage in a way that is better than we did previously. We accept the criticism of that.

Kevin Stewart: For clarification, could DCC Livingstone tell us what the gold group is that he heads up?

John Finnie: We are pushed for time, convener. I think that we are going down cul-de-sacs.

The Convener: There is no collective chair here.

Kevin Stewart: I do not know what the gold group is.

The Convener: Is the answer short, DCC Livingstone?

Deputy Chief Constable Livingstone: Yes. It is a strategic overview group that I lead that has everybody in Police Scotland on it to manage the two reports. We have an action plan that has been commissioned. Gold group meets regularly and has a level of grip and authority over the firearms work in Police Scotland, recognising the level of interest. It has an internal governance structure that has a degree of discipline attached to it.

Margaret Mitchell (Central Scotland) (Con): Communication is the key theme in the SPA report, and it is also highlighted in the HMICS report. On the specific issue of the deployment of armed police, it is clear that communication was not sufficient and was lacking in context. As a result of the reports, and particularly in terms of the oversight body, which I do not think is covered in Police Scotland's two-pronged strategy on external and internal communication, how is the communication issue going to be resolved so that there is meaningful communication not after the fact but before anything is decided?

Iain Whyte: I would say that probably the key thing that we brought out in the SPA report was that communication should be strengthened and improved. That is all part of ensuring that policing works with the consent of the public in Scotland.

Earlier, Mr Finnie asked me about public knowledge about some of this. Even after the media and public interest last year, our opinion survey found—

Margaret Mitchell: Can I stop you there? That is not what I asked about.

The Convener: Members should not be too anxious about time. You all have 10 minutes each.

Margaret Mitchell: I was not asking about public communication—I see that there is a strategy to cover that and that there are community impact assessments and so on. However, key and germane to this matter is the role of the SPA as the oversight body and communication with Police Scotland. How is that going to be improved?

Iain Whyte: I will stick to that issue. Part of what we recommended was that there should be a new agreement between the Police Authority and Police Scotland about how we would hear in

advance about issues in which there was significant public interest, with Police Scotland bringing those issues openly to the Police Authority so that we could assist with ensuring that the public was aware of them and could have their say on them. Accordingly, we have concluded a joint agreement between the Police Authority and Police Scotland, which I believe that you will have seen. It was agreed jointly at our recent board meeting, and the chief constable supported and endorsed it at that meeting. We now have to implement that agreement and ensure that that work is taken forward.

As part of that, Police Scotland also introduced a communications and engagement strategy. That backs up the work—

Margaret Mitchell: I think that I referred to that. That was the two-pronged strategy that deals with external and internal communication. My focus is specifically on the SPA. Can you give me some examples of how communication is going to work? In the context of a single police force, it is absolutely fundamental that there is an effective oversight body and I really want some reassurance about how it is tackling the issue of communication.

Iain Whyte: That is being tackled through the joint agreement on police policy engagement, which came to our February board meeting—

Margaret Mitchell: Specifics?

Iain Whyte: The specifics are that the chief constable has agreed jointly with us that, where there is any issue that we foresee will have any kind of significant public interest, he will bring that to the board as a matter of course, prior to any implementation of policy change.

Margaret Mitchell: However, as Mr Emery confirmed in relation to stop and search, that has happened after the event every single time. What checks and balances are in place to ensure that that will not continue?

Iain Whyte: The agreement has only just taken place. The monitoring of the situation is a test for the future.

In fact, there are a couple of obvious tests for the future. The first is the one that the deputy chief constable just described: if any further changes to firearms deployment policy were made, we would fully expect that Police Scotland would bring them to the SPA and would engage with us on them and then, through discussion with us, engage further with the public. Similarly, a good example that we highlighted in our report was the fact that there might be a proposal at some point for body-worn cameras to be issued to police officers throughout Scotland. We would fully expect that, if there were such a policy change, the chief constable would

bring that to the board as a matter for prior engagement so that matters around that could be addressed and raised publicly in order to gain public support and to ensure that the policy had no unfavourable impacts.

13:45

Derek Penman (Her Majesty's Inspector of Constabulary in Scotland): We identified that very point in one of our recommendations as a key issue in relation to bringing things forward. Our recommendation was to ask the SPA and Police Scotland to develop that agreement.

Margaret Mitchell asked about checks and balances. I think that we at HMICS will have a role now that there is clarity on what the SPA and Police Scotland say they intend to do around that early engagement. I will certainly be checking that the agreement is complied with now that we have some clarity, and I would look to report publicly should they fall short.

Margaret Mitchell: I cannot say that I am altogether—

The Convener: Is “optimistic” the word that you are looking for, Margaret?

Margaret Mitchell: Or “reassured”.

Can I ask another question? Key to the whole thing was the chief constable's insistence—until a very late stage—that this was an operational matter, not a policy matter. Clearly, it was a policy matter. In the summary of findings in the SPA report, paragraph 39 states that a definition of “operational” should not be too rigid and adds that we need

“to establish clear working protocols”.

What exactly does that gobbledegook mean? What will stop the whole “This is operation, not policy—oops, really it was policy” situation from happening again?

Iain Whyte: We shied away in our report from defining operational independence because, like a number of members of the sub-committee who have sat on the Justice Committee for some time, we felt that that would be unhelpful to future scrutiny. The trouble is that if you define it too closely, you leave a number of things in the remit of the chief constable without any other scrutiny around them. We wanted a very open definition because some matters will require scrutiny after the fact as well, although there will be operational imperatives for the chief constable to take action.

We are also very clear that our joint agreement—the chief constable fully supports this too; he said so publicly at our board meeting—commits us to having prior engagement on issues that we want to take forward. In the focus on that,

we want clear working protocols, and we believe that we have them in place. The protocols are backed up by Police Scotland's communication and engagement strategy, which, as you have heard, Mr Penman will look at; he will also look at what we do on that.

However, we also wish to put in place a monitoring process to check how Police Scotland is implementing that strategy. We will monitor regularly over the coming months and years. We want to see evidence that the work highlighted in the strategy—the actions and the implementation—is being taken forward. Of course, time is what will test that in practice.

There is always the possibility of something arising that Police Scotland does not see as being of immediate public interest. There are mindset changes that are already taking place in Police Scotland because of the firearms carriage issue. Under the previous method of introduction in Strathclyde, the policy was introduced without any particular public engagement. There was an expectation that that method would flow through to the rest of Scotland and that it would not be an issue of concern. Clearly, it was very much an issue of public concern in different parts of Scotland and we would wish to prevent something like that from happening again without proper scrutiny. We at the SPA have learnt from that experience, and I believe that Police Scotland has too.

Elaine Murray (Dumfriesshire) (Lab): Before I get on to more general issues, can I just confirm something in Assistant Chief Constable Higgins's answer to Mr Stewart's question about what has happened since the decision on the deployment of armed officers on routine patrols was reversed? In the situation that Mr Higgins suggested where an armed officer attended something such as a break-in because it happened to be occurring near him, is it not the case now that the firearms would remain locked in the ARV rather than being carried about?

Assistant Chief Constable Higgins: No, that is not correct. The officer would be carrying their sidearm and their Taser.

Elaine Murray: Is that different? Was that not the case prior to the decision being reversed?

Assistant Chief Constable Higgins: No.

Elaine Murray: Was it always the case that the officers carried their sidearms?

Assistant Chief Constable Higgins: Yes. From 1 April 2013, every ARV officer in Police Scotland has carried a sidearm and a Taser.

Elaine Murray: What happened prior to that?

Assistant Chief Constable Higgins: Prior to that, it was dependent on the legacy force, and some retained them.

Deputy Chief Constable Livingstone: And some did not have any ARV officers at all.

Elaine Murray: I know that we did not have any ARV officers in Dumfries and Galloway.

Some of the recommendations in both reports have fairly general implications that are about not just the deployment of armed police but democratic accountability, which is important. They are dressed up in management speak, such as “comprehensive stakeholder management process”, and

“mechanisms to capture local authority perspectives”.

I rather wonder what the latter means in reality. In addition, last week’s joint agreement refers to Police Scotland

“entering engagement with communities and their democratic representatives on policies of significant public interest.”

A lot of local authorities had no idea what was happening and were not consulted on the deployment of armed police—or on the closure of control rooms and so on. What is actually going to be different in the way in which communities and democratically elected representatives will be consulted about major policy changes? How is consultation going to change?

Deputy Chief Constable Livingstone: We accept your observations on our failure to engage and consult. However, the context that I would paint is that the creation of Police Scotland was done in a very short timeframe in terms of both the policing model and the governance model. We are absolutely committed to doing more engagement with the local scrutiny panels and existing engagement models. The local divisional commanders and the local area commanders are the individuals who know their communities and the diverse needs of those communities. With national issues and challenges such as firearms, terrorism, online child abuse, cybercrime or whatever, we need to make sure that we are communicating with local boards and local communities.

This is a period of genuine commitment and reflection by Police Scotland. We need to ensure that we are engaging across Scotland and using the existing networks. The local commanders and police officers know their own communities, and we need to make sure that what we judge to be the optimum balance between localism and access to specialist support in atypical cases when it is needed is the right one.

We are committed to learning from the existing networks and making sure that we use them. We

probably did not use them, although they were there and had been established over many years. Police Scotland consists of the service that was there prior to day 1, because it is based on the men and women who, as you all know, were policing communities prior to then. We need to make sure that we use the existing routes, which were already there. We did not do that when we made the change concerning firearms, but we have learned from that.

Elaine Murray: If a major policy change was under consideration, what would happen? Would it go to the SPA first and then to the local communities? What process would be undergone to ensure that communities were properly consulted?

Deputy Chief Constable Livingstone: I will give a brief example of how we will test that. Bernie Higgins has a piece of work in front of him just now about the mode of carriage of firearms and a possible change to deployment in line with the recommendation from HMI. That will come through our internal structure, and then it will go to the SPA and beyond that to the local level and to members of the sub-committee, individually and collectively. We will utilise that firearms issue to see how the good intention in the management language in the reports, which you commented on, will look in reality when we come to speak to you about modes of carriage and other issues.

Elaine Murray: I am not just concerned about you coming to the sub-committee. I am thinking more about what happens in Dumfries and Galloway, the Highlands and other parts of Scotland where there were different legacy forces with different practices. What discussion and communication will there be in those areas?

Deputy Chief Constable Livingstone: Local commanders will go to local scrutiny panels, existing networks, the third sector, voluntary groups and community planning partnerships. All the fundamental networks existed prior to Police Scotland and we need to make sure that we maximise communication with them, and that will be done.

Iain Whyte: Where that communication has not already started or has not fully concluded, the SPA will look to Police Scotland to evidence the work that it has done, bring us the results of the consultations that it has had and add in the policing view, so that we can take fully into account all the views as we assess the policy information that Police Scotland brings to us.

The SPA is also engaging with local authorities in particular. We have done that on an on-going basis since the SPA started, but we are bringing to bear our partnership with the Convention of Scottish Local Authorities, and we will have

another meeting of partners in scrutiny at the end of the month at which we will again set out some of the expectations so that people are aware of the protocols and engagement methods that we have in place and know how they can bring issues to us should they be unhappy with the relationship at the local level. However, I hope that Police Scotland can solve some of those local relationships through divisional commanders, too.

Elaine Murray: Yes, but what—

The Convener: Let DCC Livingstone come in first.

Deputy Chief Constable Livingstone: Thanks, convener. If it will assist, I will give another example from an area that sits within my responsibility. We are changing work around our risk and concern hubs. That is to do with identifying vulnerable children and adults. There are different processes across the country, which impact on adult protection committees, child protection committees and community planning partnerships.

The Convener: I like other people to understand what you are talking about—I like to understand things, too. What is a risk and concern hub? I know that you use the term every day, but we are back to managementspeak. What do you mean in real, ordinary working terms?

Deputy Chief Constable Livingstone: That term is used as a title to try to say exactly what it is, so—

The Convener: But it does not. What does it say?

Deputy Chief Constable Livingstone: I beg your pardon. There could be children at risk. A police officer might go into a house for another reason, but they could identify that there are vulnerable children present. How do we ensure that we capture that and engage with partners? There are increasingly adults at risk, as well, where there—

John Finnie: We are off at a tangent again. That is not purpose of the meeting.

The Convener: No. A question on engagement with the community was being answered. That is where we got into this.

Deputy Chief Constable Livingstone: I was trying to use that as an example. In brief, there will be a significant change in respect of creating standardisation and improvement in practice in how the police deal with those issues of concern, which are also issues of risk. That will have a big impact on local authorities, health boards and others. Before we make that change, we will ensure that we are engaging, and we are doing

that through the local network. I hoped to use that example to try to give the committee reassurance.

Elaine Murray: There is something that I do not really understand. You referred to all the channels that already existed. Those channels were not lost because Police Scotland was formed. I know that Police Scotland was formed very quickly, but given that those channels existed in the legacy forces, why were they not used?

Deputy Chief Constable Livingstone: That is a good question, a fair challenge and a criticism that we accept. We need to ensure that we reactivate and use them. We did not do that. I accept that that is a fair criticism of how we went about this particular change.

The Convener: Does this lead back to the chief constable? You used the words “we accept”, but it seems that there was a huge change and that there was—and still is—a hand at the tiller that was perhaps instrumental. I suspect that you, in your position, cannot really answer that question, but I put it to you.

Deputy Chief Constable Livingstone: The change that was introduced with regard to the standing firearms authority—

The Convener: I am talking about the whole shebang.

Deputy Chief Constable Livingstone: Yes, but that particular change was one of many issues that we were faced with as we went from the appointment of the chief constable in October to going live on 1 April. The chief constable relies fundamentally on advice from people such as me and Bernie Higgins. We did not realise the level of sensitivity that that change would have over many other changes. Mr Finnie was the first to raise the issue. We should have recognised that it would have a significant impact, and we should have explained it more. However, it was one of numerous changes that we were making and trying to judge.

The chief constable heads up the organisation, but he relies fundamentally on all of us as a collective to support, inform and advise him. He is ultimately responsible, but he works with the absolutely committed support of those in his senior team, such as Bernie Higgins and me.

Alison McInnes (North East Scotland) (LD): Mr Whyte, on 1 October 2014, Police Scotland said that ARV officers would no longer be deployed to routine incidents. You may understand my desire for certainty on the matter, given previous assurances from Police Scotland. Are you sure that that is the case?

14:00

Iain Whyte: I do not personally go out and check exactly what those officers are doing, but I have seen Mr Higgins's internal reports to Mr Penman on the result of the recommendations from his inquiry. Moreover, Mr Emery, the SPA chair, now attends and is part of the scrutiny group that looks at the quarterly review of the deployment issue and oversees the matter. If your question is about how we can know what is happening out there every single day with every single police officer, I am sure that those police officers would say that their duties as police constables include using their judgment about what they do on a day-to-day basis. The issue, therefore, is more about reviewing individual practice, which is an operational policing matter. However, if we were to hear of things happening that were not in line with policy, we would ask the chief constable and others to account to the authority for that.

Alison McInnes: Well—

The Convener: I think that ACC Higgins wants to come in on the same point.

Alison McInnes: I would like to finish my questions to Mr Whyte first, convener.

What you have said is again a reactive response to a problem. I am trying to ascertain what the SPA has done about this high-profile issue and, given that you have produced a thorough report on it, what you are now doing to assure yourself that Police Scotland's own assurances are being fulfilled.

Iain Whyte: A number of things have assured and will assure us that what we have asked for is happening. First, we were pleased that, when we published our report, ACC Higgins immediately gave a positive response to it, even though some of its findings were uncomfortable for Police Scotland. We have also asked Police Scotland through the chief constable to report to our board meeting in March on its longer-term reaction to our recommendations.

With regard to day-to-day practice, we would review matters by methods that I am sure you all use. There is whistle-blowing, for example, and the public can contact the media, which I think is how this particular issue emerged in the first place. The fact is that we are a small organisation overseeing a very large organisation, and we have to rely on a mixture of approaches. Mr Penman's office and work will also help in auditing day-to-day practice and in finding out how our recommendations are being carried forward at an operational level by Police Scotland.

Alison McInnes: I want to ask Police Scotland about the same issue.

The Convener: I think that ACC Higgins wanted to come in on the matter.

Alison McInnes: In response to Mr Stewart, ACC Higgins said that armed officers are not tasked or deployed by area control rooms but that, if they see a crime committed in front of them, they will do something. On how many occasions since October have such officers been deployed on what would be fairly routine duties?

Assistant Chief Constable Higgins: Since October, there have been five occasions on which police armed response vehicles have been dispatched to calls that did not fit the absolute criterion that the incident must involve firearms. That said, I believe that in three of the five incidents there was a threat to life, because they involved the activation of a personal attack alarm by a domestic abuse victim. An alarm had previously been put in place by the police, the person activated it, and the control room decided to send armed response vehicles to deal with what, in my own view, was a threat to life. Of the other two incidents, one involved police being called to investigate reports of a disturbance and finding, when they arrived, that there was no one there. In the other, local officers required assistance to eject a number of people from a public house as a result of a disturbance.

Interestingly, the five incidents happened on the same day and were dealt with by the same area control room; essentially, we are talking about the same people. It is not that an incident has been happening once a week since October; we are talking about a specific period of time, and we have particularly addressed the individuals involved. Since then, there has been no recurrence.

On the wider governance, every day one of my senior armed police officers—a chief inspector or a superintendent—will review all activity undertaken by the armed response vehicle crews to satisfy themselves that those crews have deployed in line with their parameters. In addition, area control room supervisors, inspectors and other staff are briefed on the deployment criteria. Furthermore, the firearm officers know what their personal responsibility is. Therefore, were a control room to dispatch them to a call that the officers did not believe met the criteria of being a firearms operation or a threat to life, they will challenge that decision and not attend.

Alison McInnes: That deals with deployment by the area control rooms. You indicated that, understandably, the officers were acting on their own accord when they were out and about. How many housebreakings or other non-life-threatening events did they take it upon themselves to intervene in?

Assistant Chief Constable Higgins: I have some papers here. I just need to find the particular section.

Alison McInnes: In the gap, I might turn to—

Assistant Chief Constable Higgins: I have found the information. Since 1 October, armed response officers have involved themselves in 1,644 incidents in which they have engaged members of the public. That includes charging people for dangerous driving, drink driving and other suchlike offences. On the number of times they have assisted divisional officers or come across to assist when there has not been a police report at the end of the incident—for example, they may turned up to assist with a missing person search—I do not have those stats to hand.

Alison McInnes: That is quite a different story. The assurances that we have had that armed police officers are not out dealing with routine issues are given the lie by the figures. There have been 1,644 incidents where police officers carrying arms interacted with citizens in non-life threatening situations.

Assistant Chief Constable Higgins: To put that into context, in year 1 of Police Scotland the figure was more than 30,000. Therefore, we can demonstrate that there has been a huge reduction in the number of such interactions.

Alison McInnes: This is yet another example of us not being given the full facts. Police Scotland gave us an assurance that that was not happening but, whether or not it is on a reduced scale, it clearly is happening.

Assistant Chief Constable Higgins: With respect, from October 2014, Police Scotland's consistent message is that the armed response vehicle crews will deal with firearm operations and threats to life, and that officers will use professional judgment over anything else that they come across. On 1,644 occasions, they have come across incidents in which their professional judgment has determined that they should take action. We have not hidden that fact.

Alison McInnes: Mr Penman, a key finding of your report is that

"The overt carriage of the side arm and Taser by ARV officers ... is the best and safest method of carriage ... More broadly, we consider that overt carriage for ARV duties promotes openness and transparency with the public."

Why then, ACC Higgins, are you considering the covert carriage of firearms? Why are you taking the time to go through that?

The Convener: Alison, you first mentioned Mr Penman. Mr Penman, do you want to comment?

Derek Penman: That was based on technical aspects to do with where on people a gun is

carried and whether it is covert when they get it out. In terms of best practice and in consultation with Police Scotland, we felt that overt carriage was the safest and best way of carrying a weapon.

The transparency issue for me is that, once firearms are being carried and people are aware of that, I would have a concern about public confidence and understanding of the extent to which officers are armed were we then to move to covert carriage.

Alison McInnes: I agree with and understand that, but why then, ACC Higgins, are you considering a report to—

Assistant Chief Constable Higgins: Mr Penman and the Scottish Police Authority's reports make it quite clear that the conspicuous nature of the firearm has caused public concern in some areas. Therefore, we have been asked to review our mode of carriage.

However, to simply carry out a review of overt carriage without considering alternatives would not be in the spirit of what Mr Livingstone has articulated about what Police Scotland wants to achieve in the future.

Alison McInnes: Certainly in all the concerns that communities have raised with me, they have been concerned not about the firearms being visible but about them being deployed. People would not want firearms to be hidden away so that they did not know that they were being carried; that does not solve the problem at all.

I have one final question for Mr Whyte—I know that we are short for time. Mr Penman's report revealed that 8,000 stop and searches had been carried out by armed officers in the time that they were deployed in that way. Has the SPA done any further impact assessment on that finding?

Iain Whyte: Not on that particular finding, but we have undertaken the public attitudes survey. I think that it is the first time that any such survey has been done on the issue. The survey shows that, although there are people who are concerned about the carriage of firearms by some police officers, a slight majority are in favour of that happening. Probably quite critically, there was a view among people in Scotland that, should they need a police officer to attend an incident, they would want the nearest police officer to attend, whether or not that police officer was carrying a firearm for other reasons.

Alison McInnes: Thank you—I know that time is tight so I will stop there.

The Convener: John Finnie—a very short question, please.

John Finnie: Mr Whyte, I will explain what the public expect me to do here. It is to understand

how the situation came about of police officers in Scotland being deployed in villages and at fêtes and charity events and so on with firearms. My neighbours are coming across officers standing in supermarket queues with firearms. Understanding how that happened was the purpose of many of the questions and I assure you that we could be here all afternoon while you answer the other ones—

The Convener: No, we will not.

John Finnie: I understand that we will not.

I would like to comment briefly on your summary of findings. Paragraphs 27 and 28 in your report talk about the information that the SPA was provided with, which was not of sufficient depth to base a decision on. Similarly, to use parlance from the criminal justice sector, none of you has your stories straight, because there are a lot of different versions of who did what and where and lots of different versions—

The Convener: Bear in mind that this was supposed to be a short question—can you ask your question?

John Finnie: It is a very short question. Given all those different versions, what reassurance can you give us that there will not be a repetition of this kind of situation? You say that the issue is of considerable importance, but clearly Mr House did not think that it was of enough importance to highlight it and have an open discussion about it. The changes were slipped through with mealy-mouthed explanations that no one could possibly interpret would lead to the routine deployment of armed officers to non-firearms incidents, so what reassurance can you give us, please?

Iain Whyte: The deputy chief constable has already explained that matters have moved on considerably from that period back in late 2012 to early 2013. We also have the joint agreement that we have put in place as of our last board meeting. I am particularly reassured by Police Scotland's views on that joint agreement and the fact that it buys into that agreement—

John Finnie: Can I just make one very brief point? Your report mentions community impact assessments. Nowhere in any of the answers about how things were going to change was there any use of the term “community impact assessment”, which is specifically mentioned in your report.

Iain Whyte: In any of the answers that we have given today, do you mean?

John Finnie: Yes.

Iain Whyte: We fully expect community impact assessments to be undertaken. We have made that recommendation and we expect Police

Scotland to come forward with that information. As it does, we will be interrogating that information and asking Police Scotland to show us the output so that we can scrutinise it.

The Convener: We have just a couple of minutes left. I will let Graeme Pearson and Christian Allard in with their questions so that, even if we do not have time to get them answered, we will have them on the record.

First, I will say that what comes across to the committee is that Police Scotland—although things may have changed, and probably have, because of the stushie—was pretty cavalier and dismissive of the SPA, and the SPA does not seem to have known what it ought to have been doing in terms of scrutiny and accountability. That is the way that I see it from the early days. When everything came out about stop and search and armed police, it was nothing to do with the SPA; it came out because of the press, members of the public and members of Parliament.

What we are looking for now is an SPA that is much more robust and a Police Scotland that is much more communicative not just with the SPA and the Parliament but with the public. We await the delivery of that and we certainly hope that it is going to happen. I am looking at the SPA today and I have to say—this is not directed at you personally, Mr Whyte—that I do not think that it did its job in ensuring that Police Scotland communicated as it should. It was put to the side as Police Scotland staff collectively just blasted on.

I think that a fair representation of the committee's view is that the SPA was not on the ball and did not insist that when big decisions arose, such as on the firearms issue, it was in the game at the beginning. I am not asking Mr Whyte to respond to that; I am just making that point on behalf of the committee.

I will let Christian Allard and Graeme Pearson ask their questions. Although we might not have time for them to be answered, if we get them on the record, we can get answers to them later.

14:15

Christian Allard (North East Scotland) (SNP):

I want to explore a bit more the position of the armed officers. If we cannot find a solution to the current problem concerning those officers, will they remain idle in the police station until they are called on? Will that have repercussions for the recruitment of further police officers?

Graeme Pearson (South Scotland) (Lab):

First, I would like Iain Whyte to confirm in his response that I gave evidence to him and his colleague that was very much in the same tenor of

frustration as the convener has expressed. Secondly, paragraph 38 of the SPA report states:

“A clear accountability framework exists”.

I think that we accept that Iain Whyte is probably the expert on accountability as far as this situation is concerned. With that hat on, he has spoken about recommendations and consultation. My question is this: does the chief constable have the authority to make in future, without the prior endorsement of the Scottish Police Authority, the kind of changes in policy that were made previously without that endorsement?

The Convener: Right. I think that Alison McInnes has a question as well.

Alison McInnes: No. It is really a query for you, convener. I have a number of other questions that I want to ask but I know that we cannot do them justice in the time left. I would like the sub-committee to reconvene with this panel to explore the issues further.

The Convener: If members have further questions, we will send them in writing and await written responses to them. However, that does not mean that we will not have another meeting on the issues. We can reconvene and have the answers to members' questions in front of us, if members so wish.

Alison McInnes: We would not be finishing this meeting now unless we were constrained by time. If this was a normal committee meeting, we would carry on if we had more questions.

The Convener: Correct.

Alison McInnes: I therefore think that we should carry on taking oral evidence.

The Convener: All I am saying is that, to give you the opportunity to ask your questions—let us discuss in private after the public meeting the manner of doing that that is most effective for the sub-committee, which I know is always trapped by the fact that members have to be in the chamber at 2.30.

Alison McInnes: Okay.

The Convener: I thank the panel members for their evidence so far. As you will know, there is still a great deal of discontent in the committee—we are making sure that we are guarding the guardians, if I can put it in that way.

14:18

Meeting continued in private until 14:21.

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