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Dear Martyn,

FOOTBALL-RELATED POLICING – GLASGOW – 6/7 MARCH 2021

As you know, the IAG was asked by the Chief Constable to consider the policing of events in Glasgow during the weekend of 6 and 7 March, in particular from the perspective of a group with significant experience and knowledge in relation to human rights. You and I also spoke ahead of the IAG meeting on 12 March when the group first discussed these matters.

At the IAG meeting on 12 March, the IAG decided to discuss matters over the course of two meetings – 12 and 19 March – in view of their significance in relation not only to football-related gatherings but also wider issues around the policing of protests, assemblies and gatherings in a pandemic. We also agreed to send you a letter after our meeting on 19 March to offer our thoughts, views and advice.

As it happens, Chief Superintendent Mark Sutherland, Divisional Commander of Greater Glasgow, was already scheduled to attend the IAG meeting on 12 March. We rescheduled another planned speaker who was due to attend on 12 March in order that we could have a fuller discussion on the policing of the football-related events in Glasgow.

Our meeting on 12 March started with a detailed presentation from Chief Superintendent Sutherland. He talked us through the Disorder Model (graded from tension through disorder, serious disorder/riot and, ultimately, unrest), the assessment of risk and threat, the use of force principles (in effect, lawfulness, necessity and proportionality), the range of policing responses available, management of risk and safely minimising harm. He outlined key considerations, such as:

- rights to assembly and freedom of expression in terms of ECHR Articles 10 and 11 of the European Convention on Human Rights
- the advantages of having the large numbers of people gathered in as few locations as possible, even if that meant apparently escorting/guiding “processions”

- the fact that, even though the large numbers of people did not comprise a single group, this was not the policing of a clash of groups with the additional complications that arise in such situations
- the fact that the large numbers of people included women and children.

We were struck by the quote from Professor Cliff Stott, Professor of Social Psychology at the University of Keele and also a member of the UK Government's Scientific Pandemic Insights Group on Behaviours (SPI-B), which was included in Chief Superintendent Sutherland's presentation:

Our research shows that heavy-handed policing can actually provoke crowd conflict.

In discussing the impact on the wider community in Glasgow, Chief Superintendent Sutherland also pointed out that the policing response did include enforcement – 28 arrests and seven fixed penalty notices, in view of damage to property and disorder. Following his presentation, Chief Superintendent Sutherland answered all questions from members of the IAG. We had a full discussion, particularly around issues of necessity and proportionality. We discussed the optics of the event and some of the media presentation. We also discussed the interplay of Articles 10 and 11 and coronavirus restrictions, noting that, even in a pandemic, blanket bans of assemblies conflict with these important rights and may be vulnerable to court challenge.

We noted that any assembly involving children requires special consideration. The Children and Young People's Commissioner Scotland (CYPCS) expects police officers during assemblies and protests to be made aware that, consistent with Police Scotland's policy under the national Youth Justice Strategy, the UNCRC protection rights apply to all under 18s. Children have specific rights, including special rights to 'freedom of association and peaceful assembly' under Article 15 of the UNCRC.

It was clear from our discussion, as it has been when we have previously spoken with Divisional Commanders, that there is a good grasp within Police Scotland of the relevant human rights law and principles. Consistent consideration and application of these principles is crucial but will not always result in the same policing approach in every situation. The specific approach taken will be informed also by a number of factors specific to the particular assemblies, protests or gatherings, for example, any intelligence about planned violence and whether there are different groups involved with greater risk of clashes.

We discussed the difference between public health policing, with which emergency powers are mainly concerned, and public order policing. We recognised the difficulties that may present to Police Scotland when the two different priorities have to be considered, with operational independence and responsibility very much in focus in assessing the best approach.

Whether in relation to protests or otherwise, the idea of policing by consent requires continuing care and attention, not least by government. Public confidence in policing is not determined by the activities of the police alone. Expectations arise from legislation and government messaging which should be as clear as possible.

The pressure on policing legitimacy through incompatible demands for more *and* less enforcement, sometimes fuelled by inconsistent messaging from government, has been a recurring theme in our work. Some of the warnings of SPI-B in 2020¹ should be kept in mind:

The public assemblies and public criticisms of police decision-making are creating operational challenges and legitimacy dilemmas for the police. They are already under pressure from political leaders, mainstream and social media and the public concerning the actually highly effective graded tactical approach and facilitative tone adopted during 'lockdown' (e.g. the four 4 Es and avoidance of enforcement tactics). During the lifting of control measures, a perception has emerged among some that 'the police have gone soft and are scared of certain groups and communities'.

This poses a further problem of legitimacy. On the one hand, some members of the community call for a robust approach to the policing of public assembly (e.g. to prevent 'block parties' or 'defend statues'). In contrast, those gathering for such purposes may see their legitimate rights to freedom of association and assembly being infringed if dispersed forcefully by police. In other words, approaches and tactics which enhance perceptions of legitimacy with some communities can ironically undermine them with others, so the balance is difficult to achieve.

There are also 'self-legitimacy' issues at work among the police. On the one hand, criticisms of police 'weaknesses' may lead commanders to judge they have a responsibility to take a more assertive strategic approach. On the other hand, pressures from officers critical of a soft approach, because it is seen as a sign of weakness, increases the potential for a 'heavy handed' tactical response. As a result, there will be a political 'push' upon Chief Officers to ensure their force is seen to be robust. The Police Federation is also providing a strong 'pull' by making a case around officer safety and the need to protect officers as a priority.

The reduction in the capacity for processing prisoners in custody suites in many areas is important. If 'robust' action is going to be taken the lack of custody facilities, and officer concerns about infection (particularly in overcrowded holding cells) may reduce the motivation to arrest. As a result, when disorder occurs, police may try to disperse crowds rather than arrest culprits, thereby merely pushing the problem (and potentially the virus) to other locations.

However, in contrast, there is an explicit understanding in police operations that actions are being filmed by the public and becoming viral on social media. Police operational misconduct may then be captured and amplify sensitivities. One can add to this the media's penchant for scenes of mass gatherings, at least one of which was declared as a 'major incident', and the suggested inability of local services to cope. Hostile foreign media - most obviously RT - are apt to provide live coverage of sensitive events (e.g. protests) and to amplify grievances of any disaffected group.

¹ Public Disorder and Public Health: Contemporary Threats and Risks , SPI-B Policing and Security sub-Group, 2 July 2020

You will recall from your time on the IAG that the policing of protest in a pandemic was a subject which was discussed on a number of occasions, assisted by regular discussion with Divisional Commanders from Police Scotland and contributions from various academics specialising in the area of human rights and protest. One of these was Professor Stott. In view of discussions on 12 March, we contacted Professor Stott and he agreed to attend our meeting on 19 March to assist with our discussions. Chief Superintendent Mark Sutherland also agreed to attend once more. The Operation Talla Silver Commander, Assistant Chief Constable (Professionalism and Assurance) Alan Speirs also attended.

Our discussions were also informed by events at Clapham Common in London on 13 March. The possibility of a vigil for Sarah Everard was the subject of urgent consideration in court on 12 March in proceedings brought by the organisation Reclaim these Streets, with the Metropolitan Police departing from earlier insistence that all such gatherings were necessarily unlawful and proscribed by coronavirus legislation against gatherings. As barrister Adam Wagner, who was involved in the court challenge, said: *Protest has never been explicitly banned by Parliament, even during the lockdown. The problem is that police forces have behaved as if it is has.*

This refers to the position in parts of England and Wales. See also the report of the Joint Committee on Human Rights mentioned below.

The official vigil was, however, cancelled, apparently following continuing threats to issue £10,000 fines to the organisers. Prioritising the coronavirus restrictions over facilitation of peaceful assembly in this way may have unintended and unhelpful consequences, for example, hampering efforts by officers in England and Wales to engage with those who wish to organise peaceful gatherings by reducing lines of communication. The policing of the gathering which proceeded, despite cancellation of the official vigil, has been the subject of much discussion – at Westminster and in the media. It is also to be considered in reviews, including a review by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service in England and Wales (“HMICFRS”). Without wishing to prejudge the outcome of any such reviews, and mindful of the need to understand the full context, there has been general acknowledgement that aspects of the policing of that gathering by the Metropolitan Police were badly handled, resulting in scenes described even by the Home Secretary as “upsetting”. Given the background and circumstances of the vigil for Sarah Everard, and the outpouring of grief and concern around the safety of women, some of the pictures of arrests at the gathering were troubling. Many media reports - and much social media discussion - of the policing of these events contrasted it with the policing of the crowds of Rangers Football Club supporters. Even some who had condemned the seemingly “light-touch” policing in Glasgow revised their opinions when they saw the implementation of more forceful policing in London.

Events in London occurred as proposed changes in the law around protest were introduced by the UK Government in the controversial Police, Crime, Sentencing and

Courts Bill 2021². This Bill seeks to introduce restrictions on rights of peaceful assembly and protest. Human rights groups, politicians and others have challenged the proposals, with even the Association of Police and Crime Commissioners suggesting³ that there are adequate powers already in existence. Some have expressed concerns that the proposed changes would potentially put the police or Government in the position of being able to restrict or stop gatherings based on their popularity with the public or government. Part of the context in England and Wales is also the recent HMICFRS report, *Getting the balance right? An inspection of how effectively the police deal with protests*⁴. This report includes contributions from Police Scotland which emphasise the significant differences in this area of law and policing in Scotland. Thankfully, the proposed changes in the law around protests affect mainly England and Wales and neither the Scottish Government nor Police Scotland are suggesting such restrictions on rights of peaceful assembly and protest.

To bring relevant evidence further up to date, on Friday 19 March, the Joint Committee on Human Rights of the UK Parliament published a report, *The Government response to covid-19: freedom of assembly and the right to protest*⁵, which highlighted a number of issues, including some of the current complexities around the policing of protests and assemblies during the pandemic.

The Report Summary states:

Throughout the pandemic the law has used regulations to impose restrictions, to a lesser or greater extent, on gatherings. Frequent changes in the law have made it hard for the public to be sure of the legality of protest, as has the fact that the regulations have generally been silent on protest.

During lockdown periods, restrictions on gathering have been severe and have been coupled with restrictions on leaving the home. While leaving the home has always been permitted where there is 'reasonable excuse', the same does not obviously apply to the prohibition on gatherings. This has understandably resulted in some believing protest to be completely prohibited. However, a defence of 'reasonable excuse' has been available in respect of the offence of breaching lockdown requirements. Under the HRA this defence must be read compatibly with Articles 10 and 11 and the right to peaceful protest, which means that the regulations have never completely prohibited protests. This position is legally complex and hard for both the police and the public to follow, something that has not been helped by unclear communications from Government. Further uncertainty arises from the absence of guidance on when protest will constitute a 'reasonable excuse' for gathering during lockdown. This leaves too much subjective

² <https://bills.parliament.uk/bills/2839>

³ <https://www.independent.co.uk/news/uk/home-news/policing-bill-vote-protest-police-b1817855.html>

⁴ <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/>

⁵ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/publications/>

interpretation and discretion to the police.

The law must be amended to make clear that peaceful protest is not prohibited during lockdown. Under the national three tier system, the regulations covering Tiers 1 to 3 have expressly stated that protest is an exception to the prohibition on gatherings, but only where a risk assessment has been conducted and all reasonable steps taken to minimise the risk of covid-19 being transferred. This model could equally apply to Tier 4.

Specifically, there is acknowledgement of the difficulties created for the police by the confused and changing state of the coronavirus restrictions:

66. Ambiguous or confusing law poses a challenge to those tasked with enforcing the law as well as those seeking to abide by it. The police should not be required to enforce laws that are unclear, as this could lead to interferences with human rights that do not have a proper basis in law.

Some of the criticisms in the report are specific to England and Wales but some are relevant also to Scotland. Recognising that the Scottish Government has a much healthier attitude towards human rights than the UK Government, and that Article 2 ECHR can be seen to underpin many of the coronavirus restrictions, nonetheless, more can and should be done by the Scottish Government to clarify the position with assemblies and protests, especially as we move towards further easing of restrictions.

We have reminded ourselves of some of the key findings and recommendations of an earlier HMICFRS report, *Adapting to Protest – Nurturing the British Model of Policing* (2009)⁶:

⁶ file:///Users/johnscott/Desktop/POLICE%20SCOTLAND%20REVIEW/adapting-to-protest-nurturing-the-british-model-of-policing-20091125%20(1).pdf

The original British policing model attributed to Sir Robert Peel is designed to be adaptable to ensure the safety of the public and the preservation of the peace within a tolerant, plural society. It places a high value on tolerance and winning the consent of the public. Neither value should be underestimated. HMIC's review confirms the resilience of the original British policing model, with its approachable, impartial, accountable style of policing based on minimal force. Research in this country and overseas suggests that if nurtured, this policing model is well matched to deal with modern crowd dynamics. It is a model that is worth celebrating.

At the majority of everyday public events, this policing model is deployed successfully across the United Kingdom. But at a small number of more highly charged events, such as large scale protests, its core values are being tested and are in danger of being undermined. The police service is very much on display during these events and police conduct is subject to intense levels of exposure and scrutiny. The British model is easily eroded by premature displays of formidable public order protective uniform and equipment. Health and safety justifications cannot be allowed to overwhelm the careful exercise of police discretion and the measured escalation in the resort to the use of force.

In our discussions, there was recognition that communications are a key aspect of the policing of large gatherings. It is important that the public understands the general policing approach to be adopted. This was mentioned in the HMICFRS report in 2009:

A no surprises communication philosophy with protesters, the wider public and the media. Protesters and the public should be made aware of likely police action in order to make informed choices and decisions.

Communications should allow policing decisions to be explained to the greatest extent possible. This will be important not only in advance of known gatherings but also in retrospect if there is any review. Clear and effective communications are important to assist in explaining the different policing approach taken in different situations which might otherwise be portrayed as inconsistencies, especially as comparisons with other events are a central part of many political, media and other narratives around the policing of assemblies.

In passing, it is worth saying that clear communications and a consistent approach, together with detailed preparations and extensive engagement with the two clubs and fan base no doubt played a part in yesterday's Celtic/Rangers game passing off with no significant disorder or large gatherings.

As the SPI-B paper in July 2020 said in one of its recommendations for mitigating some of the risks in the policing of assemblies:

5. Ensure that policing is seen to be impartial (explain why police are intervening or not) and wherever possible proactive. For example, some force areas have been using social media to identify rave organisers, negotiate or make pre-emptive arrests. Their experience is that this has been easier to manage than trying to disperse large crowds after raves have already begun.

The recently adopted **United Nations Human Rights Committee’s General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly**⁷ summarises some relevant principles that may assist:

1. The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others...

6. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.

*7. In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or **celebrate the outcome of a sporting event**. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.*

⁷ <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed...

22. States must leave it to the participants to determine freely the purpose or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral, and must not be based on the identity of the participants or their relationship with the authorities. Moreover, while the time, place and manner of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.

23. The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.

80. Only law enforcement officials trained in the policing of assemblies, including on the relevant human rights standards, should be deployed for that purpose. Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children and persons with disabilities, when participating in peaceful assemblies.

The emphasis on peaceful assembly is obvious but the General Comment also reminds us of a number of important considerations, including the need for care in ensuring that peaceful assemblies and gatherings are facilitated even if the relevant cause or purpose is unpopular and causes disruption.

With the necessary emphasis on peaceful assembly, we should acknowledge the disturbing scenes in Bristol last night. As with the Clapham Common events, we are mindful of the need to understand the full context before drawing conclusions. These events will no doubt be explored as a matter of urgency.

They may highlight some of the policing challenges when largely peaceful assembly is disrupted by violence and significant damage to property.

We are of the view that the overall approach to the policing of these events in Glasgow on 6 and 7 March 2021 was informed by, and consistent with, relevant human rights principles and considerations, in particular, lawfulness, necessity and proportionality.

Yours sincerely

John Scott

John Scott QC Solicitor Advocate