

## COVID 19 INQUIRY: MODULE 2A

### OPENING SUBMISSIONS

#### ON BEHALF OF

#### THE NATIONAL POLICE CHIEFS' COUNCIL

### **Introduction**

1. The National Police Chiefs' Council (**the NPCC**) is a national co-ordinating body representing all UK police forces. No individual police force or police officer is a Core Participant in the Inquiry, but the NPCC has provided consistent representation for policing in Modules 2, 2A, 2B and 2C.
2. In Module 2, the Inquiry heard evidence from Martin Hewitt, who was the Chair of the NPCC throughout the Covid-19 pandemic. As part of that Module, a detailed explanation of the functions and purpose of the NPCC and College of Policing was provided to the Inquiry, together with information about the national policing response to the pandemic (Operation Talla). That information remains available to the Inquiry, but it is not repeated here.
3. The Police Service of Scotland (**PSoS**) is a participating organisation within the NPCC and the two organisations worked closely together throughout the pandemic. A witness statement was produced for Module 2A, following receipt of a Rule 9 request from the Inquiry dated 22 November 2022. The statement

was provided by ACC Alan Speirs, who was responsible for leading the PSoS operational response to the Covid-19 pandemic from March 2020 onwards.<sup>1</sup>

4. Unlike in Module 2, no police witness will be called to give live evidence in the Module 2A hearings, in which the main focus will rightly be on high level government decision-making. In the Inquiry's List of Issues, the sole policing topic is the sub-issue of the enforcement of Covid-19 regulations. Acknowledging the limited scope of its involvement at the hearings, the NPCC nonetheless seeks to assist the Chair and support the work of the Inquiry in relation to this issue.

### **Policing during the pandemic**

5. As the Inquiry will be aware, Criminal justice and policing are devolved to the Scottish Government under the Scotland Act 1998. In Module 2A, therefore, the NPCC represents the interests of PSoS. The organisation first came into being on 1 April 2013, under the Police and Fire Reform (Scotland) Act 2012. PSoS polices the three geographical regions of Scotland (North, West and East). Within each region, there are a number of divisions, led by a Chief Superintendent. In total, there are 13 local policing divisions in Scotland.
6. PSoS falls within the portfolio of the Cabinet Secretary for Justice in the Scottish Government and is overseen by the Scottish Police Authority (**SPA**). The current Chief Constable of PSoS is Jo Farrell, who assumed office on 9 October 2023 following the retirement of Sir Iain Livingstone QPM.

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<sup>1</sup> Statement of Alan Speirs, INQ000357360. Since making his statement, ACC Speirs has been promoted to Temporary Deputy Chief Constable (T/DCC).

7. The PSoS response to the pandemic was rapid and began at an early stage. “Operation Talla” was first established by Police Scotland following a Scottish Government Resilience Room meeting on 29 January 2020. Recognising the urgent nature of the threat posed by Covid-19, a command structure was immediately triggered by PSoS and the first Operation Talla Gold Group meeting was held on the same day, with a follow-up meeting held within the Emergency, Events and Resilience Planning Unit on 30 January.
8. Although the name “Operation Talla” came to be adopted across police forces in different devolved nations, it was Police Scotland which first instituted the name and implemented an accompanying command structure.
9. Detailed information about the day-to-day functions of Operation Talla is contained in the statement of ACC Speirs.<sup>2</sup> While policing issues within the scope of this Module are limited to the enforcement of Covid-19 regulations, at all stages of the pandemic the roles of the NPCC and of PSoS encompassed a much broader range of work. For example, normal policing activity, including the prevention and detection of crime, had to be maintained throughout 2020 and 2021, despite the challenging conditions.
10. In order to ensure best practice through collaboration and consistency, PSoS engaged with the NPCC throughout the pandemic. The NPCC acted as a representative organisation and held a coordination role, taking responsibility for information sharing between forces and representing policing interests to the UK Government. However, the NPCC played no role in the enforcement of Covid-19 regulations in Scotland and it holds no operational directive powers in relation to PSoS or any individual PSoS officer.

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<sup>2</sup> INQ000257360 at §§14-22.

11. The NPCC played an important role in sharing guidance and briefings with forces. However, due to differences in Covid-19 regulations within Scotland, the majority of NPCC documents needed to be reviewed and adapted by PSoS before they could be disseminated to officers.

### *The Four Es Guidance*

12. The key guidance shared with PSoS by the NPCC was the 'Four Es'. Introduced on 27 March 2020, the guidance required officers to move through a four-stage approach in interactions with members of the public: Engage, Explain, Encourage, Enforce.<sup>3</sup> This was the only NPCC guidance which was not altered or adapted by PSoS, but was introduced in its original format.

13. The 'Four Es' guidance remained in place unchanged throughout the pandemic and formed the core of PSoS' approach to policing. The Chief Constable maintained both in public and within PSoS that the policing of the pandemic should be by consent and that enforcement was always the last resort.

14. The 'Four Es' guidance did not include details of how, when or at what stage or speed to move from one step to the next. Those questions, as is the case with policing generally, are for individual officers on the front line. Retaining scope for officers to make individual judgments regarding necessity and proportionality is critical to the model of policing by consent. This kind of decision-making is a standard element of training and is regularly utilised by frontline officers, for example, in relation to the use of force. Allowing officers to assess a situation and apply the guidance in a stepped approach ensures that

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<sup>3</sup> INQ000099936.

the immeasurably broad range of possible scenarios which officers may encounter can be addressed within a single framework.

15. This is particularly important in a public health context, where compliance with restrictions reduces transmission and optimises the safety of the public. The measure of success in relation to this aspect of pandemic policing was compliance rather than enforcement, as Martin Hewitt explained in his evidence during the Module 2 hearings<sup>4</sup>. The number of Fixed Penalty Notices (FPNs) issued to members of the public cannot be an appropriate metric by which to assess the efficacy of enforcement measures, as it necessarily excludes the majority of police interactions with the public, examining only the final 'E'.
16. Measured against this standard, the 'Four E's' guidance was successful. Statistics recorded by PSoS reveal that the overwhelming majority of interactions with members of the public never reached the fourth 'E'. Statistics gathered by PSoS show that approximately 88% of encounters were able to be resolved by officers using one or more of the first three 'Es' to ensure compliance and just 0.7% of all police encounters resulted in an arrest. Overall, less than 0.5% of Scotland's adult population received an FPN.
17. These statistics are known because, unlike in other nations, every engagement related to Covid-19 was logged by officers in Scotland. The data was recorded and collated using a system called the Coronavirus Intervention application (CVI). CVI is a bespoke computer program which was created by PSoS IT for the specific purpose of monitoring policing during the pandemic, in recognition of the importance of obtaining accurate, real-time statistical data. It was first implemented in April 2020.

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<sup>4</sup> Transcript of Day 21, pages 11 – 12, 28 and 30.

18. The data gathered from CVI was shared with government and published by PSoS weekly in order to ensure transparency and accountability. It was shared with Professor Susan McVie to allow external analysis of enforcement trends and was also used by PSoS to identify areas where potential breaches were concentrated in order to facilitate proportionate policing.

#### *The Independent Advisory Group*

19. In order to ensure effective oversight of the use of police powers during the pandemic, PSoS created a body called the Independent Advisory Group on the Police Use of Temporary Powers (**IAG**). This was done in recognition of the unprecedented situation of frontline police officers being asked to exercise new and evolving powers requiring judgments based on a public health rationale.

20. The IAG met regularly between April 2020 and May 2022. The purpose of the IAG, as set out in its terms of reference<sup>5</sup>, was to ensure that the use of powers by PSoS was compliant with human rights principles and legal obligations, with the values of PSoS and with the purpose of the Covid-19 regulatory framework, namely the safeguarding of public health.

21. The IAG was particularly valuable because of its high level of independence. Although the group was started by PSoS, it operated as a wholly separate body, was chaired by an independent King's Counsel and reported directly to a third-party organisation: the Scottish Police Authority (**SPA**). The reports provided to the SPA were published online and the IAG held a number of webinars to

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<sup>5</sup> AS/01 – INQ000232511, dated 27 April 2020.

share information directly with the public about the impact of policing during the pandemic.

22. In addition, the work of the IAG fed into PSoS' institutional arrangements for lesson-learning from the Covid-19 pandemic. As described in the statement of ACC Speirs<sup>6</sup>, PSoS sought to capture and share learning through the creation of an "Organisational Learning Group" and the commissioning of reports to debrief and reflect on the experience of the pandemic, in order to inform best practice for future policing.

#### *Hidden harms and protected characteristics*

23. From a very early stage, PSoS recognised the potential for the Covid-19 pandemic to have an unequal impact upon vulnerable groups or to exacerbate existing inequalities. Throughout the pandemic, therefore, PSoS engaged with partners in government and in the charitable sector and to take into account the developing understanding of this issue in its decision-making.
24. In May 2020, PSoS tasked its department for Partnerships, Prevention and Community Wellbeing, Equality and Diversity (**PPCW E&D**) to contact different stakeholders to obtain information about communities' experiences of the pandemic in order to inform the policing response.
25. A detailed explanation of the steps taken by PSoS to understand and mitigate potential harm to those with protected characteristics is set out in the statement of ACC Speirs.<sup>7</sup>

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<sup>6</sup> INQ000257360 at §§76-83.

<sup>7</sup> INQ000257360 at §§47-56.

26. To give one illustrative example, PSoS met with partner organisations such as Deaf Action, Deaf Scotland, Deafblind Scotland and others to identify specific challenges faced by persons with hearing loss during the pandemic. At the meetings, attendees disclosed problems for those reliant on lip reading caused by the widespread use of face coverings by officers.
27. As a direct result, PSoS obtained IIR masks with clear panels and issued them to all divisions and departments as an available alternative for use as and when required. PSoS also issued collaborative guidance for British Sign Language communities, worked with partners to create accessible online material and held public webinars to seek to support the BSL community in Scotland. Relevant material taken from the meetings were retained by PPCW E&D so that the information provided by partners could continue to inform decision-making within PSoS.
28. Similar meetings were held with NGOs and representatives of other groups facing increased risk, including victims of domestic abuse, children, certain minority communities, persons with autism, persons with mental health problems etc. In relation to each meeting, action was taken and, where appropriate, co-authored guidance was disseminated in order to improve outcomes and keep vulnerable persons safe.
29. Like the work of the IAG, learning from stakeholder engagement formed part of the reflections from PSoS' Organisational Learning Group<sup>8</sup> and Organisational Scoping Report<sup>9</sup> in order to ensure that valuable institutional learning was retained following the pandemic.

## **Communication with the Scottish Government**

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<sup>8</sup> INQ000257360 at §76.

<sup>9</sup> AS/02 – INQ000232510.



30. PSoS worked closely with the Scottish Government throughout the pandemic. There were frequent virtual meetings and continuing dialogue by email and phone at a different levels of seniority and through different sub-groups, so that issues could be raised promptly and addressed.<sup>10</sup> Reflecting on the experience of working with the Scottish Government during the pandemic, the relationship was positive and constructive, with effective mechanisms for communication between partners. PSoS was not consulted by the Scottish Government on every proposed change to government guidance on enforcement or to the regulatory framework.
31. However, the interests of policing were represented by the Cabinet Secretary for Justice, who was informed and supported by his team through information-sharing channels within PSoS and the National Coordination Centre Scottish Government Liaison Officers. This arrangement generally worked well in the dynamic context of a national crisis which required frequent and fast-paced changes to the legal framework.<sup>11</sup>
32. While timeframes for responding to requests for comment on proposed changes to regulations or guidance were often very short, this tended to reflect the genuine urgency of action in the context of the pandemic. For example, when PSoS was consulted on the question of whether the minimum age for persons receiving an FPN should be raised from 16 to 18, it was given less than one day to formulate a response. The strict timing required to incorporate the change into the Lord Advocate's guidelines and prevent the issuance of further FPNs to 16 and 17 year olds meant that time was of the essence. Ultimately,

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<sup>10</sup> See INQ000257360 at §§57-59.

<sup>11</sup> See INQ000257360 at §§60-62.

PSoS was able to respond within the allotted time, recommending that the minimum age for receipt of FPNs should be raised.<sup>12</sup>

### **Matters of procedural fairness**

33. On 18 December 2023, the NPCC received disclosure of the evidence proposal and statement of Professor Susan McVie. Professor McVie is an academic specialising in quantitative criminology at the University of Edinburgh, who was a member of the IAG and was responsible for drafting a series of reports at the request of the NPCC/PSoS providing statistical analysis of FPNs issued in England and Wales and in Scotland.
34. She has not been instructed as an independent expert in this Inquiry, but has been asked to speak to matters within her personal knowledge during the pandemic, arising from her attendance at IAG meetings and her statistical analysis of the use of FPNs by police in Scotland.
35. The statement of Professor McVie raises three important concerns related to procedural fairness.
36. First, the statement quotes the specific questions which were put to the witness in her Rule 9 request, some of which plainly relate directly to the experience of policing, but they were not put to the NPCC in its own Rule 9 request for Module 2A or at any time thereafter. This is particularly concerning where the witness has been invited to give evidence which is critical of policing and to make suggestions for its improvement. In the absence of any police witness in the Module 2A hearings, the Inquiry will be left without evidence regarding

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<sup>12</sup> INQ000257360 at §§44-45.

the appropriateness of the framework used, the rationale for decisions made, the factors which were taken into consideration or the feasibility of proposed alternatives.

37. The position of the NPCC was and remains that police witnesses (such as Martin Hewitt) are the appropriate persons to give evidence regarding policing matters. Evidence from external witnesses who had no direct involvement in police decision-making processes or experience of front-line policing is unlikely to be helpful or authoritative.
38. Second, although Professor McVie's statement was produced for Module 2A, it includes new evidence which relates specifically to Module 2, i.e. to enforcement in England and Wales.
39. Evidence regarding, *inter alia*, the extent to which inequalities were considered by the government in Westminster when deciding whether to utilise FPNs as an enforcement mechanism, what alternative mechanisms were considered by those decision-makers and whether sanctions were required at all are matters which were not raised in Module 2 or put to the relevant witnesses (such as Dame Priti Patel, Matt Hancock and Martin Hewitt).
40. This is particularly important because, in a number of respects, the Professor accepts that her conclusions and/or proposed alternatives are not supported by evidence or extant academic research.<sup>13</sup> For the Inquiry to make findings on this basis would risk substantial injustice to the affected Core Participants.

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<sup>13</sup> Statement of Susan McVie at §8.5 and §29.2.

41. Third, the questions put to Professor McVie in her Rule 9 request and her ensuing evidence serve to highlight a notable difference in the scope of the Inquiry regarding policing matters between Module 2 and Module 2A.
42. The issue of the enforcement of the Covid Regulations featured only briefly in the Module 2 hearings, in which the focus was, correctly, on high-level governmental decision-making. In Module 2, when an experienced senior police witness (and Chair of the NPCC throughout the pandemic) was present and able to address the reports of Professor McVie regarding the police issuance of FPN notices, his evidence was constrained by the Chair on the grounds of scope.<sup>14</sup> It would be unjust for the same issues to be explored in detail in Module 2A, when no police witness will be called to address them.

## **Conclusion**

43. The challenges of the Covid-19 pandemic demanded exceptional dedication and perseverance from policing. Senior officers worked around the clock to respond to the crisis, maintain critical levels of policing service and adapt to evolving legislation. Those police officers working on the front line put their lives at risk every day to keep the public safe.
44. Recognising the potential impact of a global pandemic, PSoS took the lead in implementing an operational response to Covid-19 as early as January 2020. Throughout the pandemic, PSoS produced of its own initiative creative mechanisms for data collection and analysis, independent oversight of policing powers, lesson-learning processes, and engagement with stakeholders

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<sup>14</sup> Transcript of Day 21, page 78.

representing those most at risk from inequalities or harms exacerbated by the pandemic.