

Policing Governance and Accountability

Comments from Susan Deacon

Background

The Cabinet Secretary for Justice wrote to me on 10 November, following his appearance at the Justice Sub Committee on Policing on 5 October, to ask if I have anything to add, through written input, to his roundtable discussions with key policing leaders on governance and accountability arrangements for policing in Scotland. I am happy to provide comments and have taken this opportunity to draw together some of my thinking and reflections on these issues one year on from my resignation as SPA Chair.

I should note that the views expressed in this paper, while drawing upon my experience as SPA Chair, is informed also from experience in other public service roles and a range of work in leadership, strategy and governance across various organisations, sectors and systems over the past 30 years.

My comments go beyond the scope of the Cabinet Secretary's roundtable discussions and so I am sharing this paper both with him and with the Scottish Parliament's Justice Sub-Committee on Policing given their wider interest.

I am conscious that I have but scraped the surface of a number of complex issues and do not purport to have identified every issue, let alone provided solutions, but I hope this contribution may help to inform and stimulate discussion on these important matters.

The Journey of Police Reform

Policing is one of our largest and most important public services and Police Scotland is the second largest police force in the UK.

The move to a single police service was the most significant change in policing since 1967 and the most complex and ambitious public sector reform since devolution.

As is widely recognised, the passage of the Police and Fire Reform (Scotland) Act 2012, and its subsequent implementation, was carried out very quickly for a reform on this scale. It is testament to the efforts and commitment of the policing workforce that high standards of operational policing were maintained throughout this transition.

There is now a clear and growing body of evidence of the benefits which have accrued from the scale, strength and flexibility of a single police service. Scotland is benefitting from having a police service which is able to respond effectively to the ever changing challenges of keeping people and communities safe across the public,

private and virtual space, despite significant financial pressures and increased demands.

As all with an interest would agree, it is essential that this very significant, now national, police service has robust, transparent and effective governance and accountability arrangements, not least to maintain the vital public confidence and trust upon which policing depends.

A great many individuals and organisations across the policing system have worked hard since police reform to bring stability to the leadership of the police service; drive improvements in policing and its governance; navigate complexity and ambiguity; build collaboration and clarify roles and responsibilities within the system.

All of this work has been necessary but, in my view, is not sufficient. There is much more still to do to deliver a system of policing governance and accountability that is fit for purpose and fit for the future.

Given the scale and pace of police reform, it is not surprising that the transition to these new arrangements has been challenging and that there remain aspects of policing and its governance which still need attention. It is important to identify, acknowledge and act where further change and improvements are required.

A Need and an Opportunity for Change

The recently published report of the 'Independent Review of Complaints Handling, Investigation and Misconduct Issues in Relation to Policing' by Dame Elish Angiolini is the most thorough and authoritative independent review of any aspect of policing and its governance since police reform. It is in many ways a gamechanger which provides a platform upon which further changes and improvements can be built.

The report provides invaluable insights and analysis on many aspects of systems, culture and practice within policing. It is the product of two years' work, extends to almost 500 pages and contains 81 recommendations, many of which will require legislative and/or structural change.

Until now, there has been a presumption against revisiting the founding legislation and therefore the focus of bodies across the policing system has been to drive improvement within existing statute and structures.

This approach has not been without merit or justification. Police reform required time to 'bed in'. New organisations and relationships had to be built and the scope for change and improvement within these arrangements needed to be tested and explored.

The need to build confidence and trust in the new policing arrangements was of critical importance. Indeed, having been appointed as SPA Chair during an almost

'perfect storm' of issues and controversies, I am in no doubt that the priority was to strengthen and stabilise the leadership and governance of policing and that the public interest would not have been best served by further review of legislation or structures at that time.

But that was then and this is now. As Dame Elish said in her Review, *"Police Scotland is a young but now established national organisation with a stable leadership team. This is a good opportunity to reflect on the culture of the new service, address any long-standing issues and consider how everyone in the organisation can help to change that culture for the better."*

Both the police service and its various governance bodies are now significantly better placed to deal with further changes in statute and structures where they are needed. There is the best part of a decade's experience and learning, and a wealth of reports, research and post-legislative scrutiny to draw upon.

The time is right to take forward further improvement and change and to address issues which have emerged since the initial reforms. The recommendations of the Angiolini Review, if implemented, will require changes in statute and structures and so will provide a framework and a process upon which to build. This affords an opportunity to address weaknesses, deficiencies and ambiguities in other aspects of policing and its governance and to make changes in legislation and structures where required.

Need for a 'Whole System' Approach

The policing governance and accountability landscape is complex and others have explored this more fully than I can do here. In essence, the SPA, the PIRC, HMICS, Audit Scotland, Scottish Government and Scottish Parliament all have key responsibilities in the governance and oversight of policing, some of which are more clearly defined in statute than others. Other bodies, such as the ICO, have powers in specific areas. In addition, Police Scotland has established its own internal governance structure which is a significant 'engine room' in its own right.

The landscape is cluttered and confusing. Duplication and gaps exist and there is a veritable industry of papers, reports and process which, I would argue, do not always add value or drive improvement in policing but do consume valuable time and resource, all of which has to be paid for from the public purse.

Scottish Government has a Police Division of around 50 people who also generate many demands for information and reporting from both Police Scotland and governance bodies, in particular the SPA, often displacing attention and resource away from improvement and delivery.

In the years since reform, there has been no shortage of discussion, and often critical comment, about these arrangements - including various reports and scrutiny

by a number of Parliamentary Committees. This has often focused disproportionately on the SPA, which is but one part of a wider system. So too has there been a preoccupation with individuals, rather than systems and structures.

Caroline Gardner, then Auditor General for Scotland, said in January 2020 that *“It is now time for a review of the way in which the system of governance and accountability as a whole is operating.”*

Almost a year on, such a review has not been forthcoming. True, there have been strenuous efforts made by Government and within the policing system to do work in this space – the Cabinet Secretary’s roundtable discussions; Bob Black’s review of the role and time commitment of the SPA Chair and Members; a revised SPA Governance and Accountability Framework and a raft of new plans and developments within the SPA itself – to name but some.

But this is a piecemeal approach and appears to be predicated on making relatively limited adjustments *within* the existing statute and structures (the Cabinet Secretary at one point used the word ‘tweaks’). Such an approach is far removed from a rigorous, structured, robust and transparent review of the operation of the system as a whole.

The Angiolini Report recommends changes to the role and responsibilities of the SPA and the PIRC, some of which may have implications for other organisations such as HMICS and other aspects of the governance system. The need to think ‘in the round’ will therefore be paramount.

It is vital that a rigorous whole system approach is taken to developing and improving the governance and accountability of policing. This should be open and transparent, bring in fresh views and perspectives, and reach beyond the views and vested interests of the Government and the ‘policing family’. External advice, input and scrutiny would add enormous value to the process and help build confidence in its outcomes.

Politics and Policing

The relationship between politics and policing is challenging in every jurisdiction and every country has its own distinctive approach.

Here in Scotland, the need to maintain an appropriate separation between politics and policing was an area of broad agreement during the debate on police reform.

The policy memorandum for the 2012 Act stated that *“the Scottish Government was keen to establish a more transparent, arms length relationship with the Scottish Ministers which, especially in the case of policing, ensured a clear separation”* and that *“The establishment of the Scottish Police Authority provides a clear separation between the Scottish Ministers and the service. In particular, it ensures that the Chief*

Constable is free from undue influence in making decisions about the investigation of crime.”

I note that the recently revised ‘SPA Governance and Accountability Framework’ now states clearly that this separation was one of the reasons the Authority was established and appears to place less emphasis than before on the Authority’s role in contributing to the Scottish Government’s policies and priorities.

I would strongly suggest, however, that the principle and practice of this ‘arms length’ relationship needs to be explored and developed further.

The realities of the day to day relationships between both the Authority and Government, and the Police Service and Government merit examination. In my experience, the close and multiple channels of communication which have become the norm are, at best, inefficient and confusing and, at worst, compromise the separation that was intended.

I would suggest that consideration be given to developing further guidance and protocols on how these relationships be managed and that greater transparency, recording and reporting of these various interactions be put in place.

There is also a fundamental question regarding the SPA appointments process and a question as to whether a body appointed solely by Government can ever fully achieve the arms length relationship that was intended or indeed the ‘independence’ that is often claimed to exist. In the words of one opposition Justice spokesperson during a Parliamentary debate *“There is a perception that the SPA is an extension of the Scottish Government and whether or not that is accurate, it is unhealthy.”*

This is an issue I wrestled with during my time as Chair and concluded towards the end of my tenure that these issues of perception, and indeed the actuality of the relationship, were an impediment to the Authority operating effectively and as intended. In my view it is time to consider how the SPA might be ‘decoupled’ from Government to a far greater degree.

There is scope to consider further how the Chair and Members are appointed and how and to whom they report. As I said when I gave evidence to the PAPLS Committee in February 2020, I had reached the conclusion that the Authority, as currently constructed, has a ‘democratic deficit’. In other words, irrespective of the background, capability or strength of character of the Chair and Members, the current arrangements make it very difficult to establish the SPA, both in practice and perception, as being ‘independent’ of Government.

I would suggest that, in tandem with consideration of Dame Elish’s proposals to make the PIRC accountable to Parliament, consideration be given to the relationship – both in structure and process – between the SPA and both the Scottish Government and the Scottish Parliament.

A number of alternative models exist elsewhere, some of which were given brief consideration during consideration of the 2012 Act, others have been considered in various reports and academic research since then. A range of models also exist in the Scottish public sector landscape which 'go with the grain' of our politics and governance and which merit consideration. Examples include the Commissioner for Ethical Standards in Public Life and the Standards Commission; and the Scottish Commission for Public Audit and the Auditor General/Audit Scotland.

In any case, as a minimum, I would strongly suggest there is a need for greater involvement of the Scottish Parliament in the appointment of the SPA Chair and Members. One option which has been suggested is that the Chair be a joint appointment of Parliament and Government. Other approaches include, as I suggested at a meeting of the Justice Committee in 2019, a Parliamentary confirmation hearing for the Chair.

I am aware that the appointment of a new Chair and members is currently underway and indeed it may be that some of these measures are being put in place. If not, I would respectfully suggest they be considered.

The relationship between policing and politics will never be perfect but it can be better codified and managed. The role of the SPA as a 'buffer' is important but needs articulated, executed and asserted more effectively. There needs to be a greater distance from Government at many levels if the intent of the statute is to be realised and there is merit in considering how a stronger, more strategic relationship between policing (both the service and the various governing bodies) and the Scottish Parliament could be established - including the appointment of the SPA Chair and Members. Open and mature reflection on these issues, guided by what is in the best interests of our police service and the public it serves, is needed.

The SPA's relationships with Police Scotland

The SPA has a range of relationships with Police Scotland and with other policing governance bodies. Issues of systems, practice and culture all combine to make this a challenging terrain. There is a complexity within the system which can be difficult to navigate and which does not lend itself to transparency and clear lines of accountability.

Over recent years, a great deal of work has gone in to making these relationships work more effectively and I know that that continues to be the case. But these relationships are complex and multi-layered and there is a constant challenge to maintain the right proximity between the various organisations, both at an organisational and individual level. Dame Elish's observations regarding familiarity are worthy of reflection. It is not good for bodies within the policing system to be in conflict, but neither is it good from them to be too cosy.

The fact that the SPA has both an advocacy and scrutiny role of policing raises issues too. It is not unusual for governance bodies to combine both roles but, in my experience, there are aspects of policing culture which make this particularly challenging.

The SPA and Police Scotland are, in some ways, 'joined at the hip'. For example, the degree of reliance which the SPA has on police support and resource, including the operation of its corporate support functions. SPA staff are classified as police staff, IT systems are shared and financial decision making is intertwined. Accountabilities are blurred and it should be noted that this goes well beyond the issue of the Accountable Officer function which has been the subject of some considerable attention.

Again, if the SPA is to be, and to be seen to be, a strong independent police authority there would be merit in examining these complex interrelationships and identifying ways in which the SPA could be less dependent upon and separate from the police service.

Effective and Proportionate Scrutiny

Effective scrutiny of our public services and those who lead them is integral to our democratic process and is an essential element of driving improvement. Having proportionate and effective scrutiny in place, at the right time and conducted in the right way, can be instrumental in improving performance, enhancing accountability and building public confidence and trust.

I have often heard it said, not least by the Cabinet Secretary for Justice and the Chief Constable, that Police Scotland is one of the most scrutinised services there is. In terms of quantum that may well be correct. But, put simply, more scrutiny does not mean better scrutiny. Indeed the opposite can be true.

Multiple layers of reporting, audit and inspection, as well as becoming an expensive and time consuming industry in itself, can create a cacophony and fog which impedes rather than enhances the public's understanding and line of sight to an issue or service. Alongside that, and despite the fact that so many scrutiny bodies exist, additional groups and inquiries are frequently established, often by the Chief Constable or the Scottish Government.

I am aware, and indeed was party to, a range of efforts to improve many aspects of the scrutiny process and to establish greater coordination and cooperation between scrutiny bodies, including the Parliament and local authorities. But, like other issues I have mentioned in this paper, this is an area which I think would benefit from a more systematic and transparent piece of work involving external input and spanning the range of organisations involved.

Policing, perhaps more than any other public service must be, and be seen to be, scrutinised effectively. Effective and proportionate scrutiny is key. So too does there need to be a clearer shared understanding of where the Chief Constable's operational independence begins and ends, albeit that this is far from an exact science. System wide improvements could go a long way to enhancing the accountability of policing and reducing duplication and inefficiency in reporting demands.

Conclusion

Policing governance and accountability is a complex terrain and is a challenge for every country. Scotland has come a long way in developing its police service and many lessons have been learned. I remain of the view that there are fundamental flaws in many aspects of the current arrangements for governance and accountability and believe it is important and that these are addressed rigorously and transparently. Our police service and the communities they serve deserve no less.

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