



OFFICIAL REPORT
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Justice Sub-Committee on Policing

Thursday 6 December 2018

Session 5



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JUSTICE SUB-COMMITTEE ON POLICING

13th Meeting 2018, Session 5

CONVENER

*John Finnie (Highlands and Islands) (Green)

DEPUTY CONVENER

*Margaret Mitchell (Central Scotland) (Con)

COMMITTEE MEMBERS

Daniel Johnson (Edinburgh Southern) (Lab)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chief Superintendent John McKenzie (Police Scotland)

Graham O'Neill (Scottish Refugee Council)

Sergeant Graeme Stirling (Police Scotland)

CLERK TO THE COMMITTEE

Diane Barr

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 6 December 2018

[The Convener opened the meeting at 13:00]

Decision on Taking Business in Private

The Convener (John Finnie): Feasgar math, a h-uile duine, agus fàilte. Good afternoon, everyone, and welcome to the 13th meeting in 2018 of the Justice Sub-Committee on Policing. We have apologies from Daniel Johnson.

Today we will consider Police Scotland's role in the immigration process. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Have we dealt with agenda item 1?

The Convener: I beg your pardon. We have not dealt with agenda item 1, which is to decide whether to take item 3, under which the sub-committee will consider its work programme, in private. It would help if I did not strike out things in the note that is in front of me. Do members agree to take item 3 in private?

Members indicated agreement.

The Convener: I thank Stewart Stevenson for that very helpful additional convening.

Immigration (Police Scotland's Role)

13:01

The Convener: I welcome Graham O'Neill, policy officer, Scottish Refugee Council; Chief Superintendent John McKenzie, head of safer communities, specialist crime division, Police Scotland; and Sergeant Graeme Stirling, prevention and interventions, G division, Police Scotland. I thank you for your written submissions, which are always very helpful to the sub-committee. I wish that I could convey thanks to the Home Office for its written submission but, notwithstanding the fact that it has had plenty of time to respond to us, it has done us the discourtesy of not responding. That is very disappointing.

We will move to questions. I am keen to understand something from the panel, particularly Police Scotland. Will you comment on the current relationship between Police Scotland and the Home Office with regard to immigration removals and detentions? For example, what are the roles and responsibilities of each organisation?

Chief Superintendent John McKenzie (Police Scotland): The relationship between Police Scotland and the immigration service has a number of strands, which I will touch on.

If, for my ease, I refer to Home Office immigration, I am talking about Home Office immigration enforcement.

I suppose that there are six strands to our relationship within the parameters within which we work, the first of which is our information-sharing relationship. Information is shared between us and the Home Office based on an information-sharing agreement that was signed back in 2016. That is embedded in the previous data protection legislation and meets the criteria of the Data Protection Act 2018. We share information relating to criminal activity and meeting statutes.

Quite a lot of interest lies in the second component of the relationship, which relates to the enforcement activity of Home Office immigration. That relationship is quite straightforward in as much as Home Office immigration has primacy over that activity. We have a protocol under which we share information. An operational notification form is provided by the Home Office, and there are three sections in that document that require police completion. That allows Home Office immigration ultimately to make a determination on the risk relating to the activity that it intends to undertake. That might be activity that it refers to as an

administrative removal or a deportation as a result of the identification of somebody of high harm.

The Convener: Is that in respect of each individual or in respect of a location, for instance?

Chief Superintendent McKenzie: That is in respect of each individual. The form is based on the individual. However, there might be a number of individuals at the same location.

That form allows the police to undertake a community impact assessment to determine what the impact on the wider community would be. That allows us to have a wider discussion with Home Office immigration to decide on the appropriateness of the action that is being undertaken and the impact on the wider community, and it allows us to put in measures to minimise or mitigate the risk.

At that point, there is a follow-up process that allows Home Office immigration to ask for police assistance as and when required, based on risk. The general view is that the number of police interactions is minimal. The figures that I have received for greater Glasgow show that, since May this year, there have been 68 operation notification forms from the Home Office and 10 of those have resulted in police activity or assistance.

Let me be clear about what that police assistance looks like. It is not activity relating to the apprehension of individuals whom the Home Office has identified. The police activity is purely to ensure that the process is undertaken peacefully and that community reassurance is maintained. Normally, as soon as an arrest takes place, two officers will remove themselves from the area. However, there has been police involvement in 10 of the 68 cases since May.

The Convener: Before you move on, I will ask you some questions about what you have said so far. I think that a community impact assessment is an excellent idea, but it seems to require a long lead-in time, rather than being spontaneous. Who is engaged in the process and involved in the risk assessment? Are the police involved?

Chief Superintendent McKenzie: Yes, of course they are. The officer to my left—Graeme Stirling—is a bit of an expert on community impact assessments, so he may wish to comment, but I note that the police are involved, the Home Office is involved and wider partnerships will be involved if required. Depending on the circumstances and the location, there will be a partnership discussion about the community impact and the best way to mitigate any risks that have been identified.

I make it clear again that a community impact assessment may not be deemed to be required for every occasion. It will depend on risk factors that are identified through the operation notification

form. It has 12 sections, three of which we complete.

The Convener: Could you share with the committee a blank form or even a sample of a community impact assessment, suitably anonymised? That might be helpful.

Chief Superintendent McKenzie: Yes, I can certainly provide that for the committee.

The Convener: Thank you.

Chief Superintendent McKenzie: The third component is joint initiatives. The committee will have heard of operation mighty, which was in the press earlier this year. It concerned activity in Govanhill in which Police Scotland and the Home Office were involved in a joint initiative. There was a wider partnership involving Her Majesty's Revenue and Customs and other partners. That was activity to identify serious organised criminality but also to identify and support vulnerable members of the community. In actions involving human trafficking and forced labour, we are there to try to identify people and support them.

The fourth component, which I am sure will be raised in the next hour, is the provision of custody facilities. Her Majesty's inspectorate of constabulary looked at custody facilities in 2014. We have primacy when the Home Office brings an individual to custody. Police Scotland has primacy and responsibility for the welfare of individuals in custody, and we will determine whether there are grounds for the person's continued detention. We are responsible for ensuring that their rights are achieved, including by providing legal support and informing a reasonable named person, as we would do for anybody else.

The Convener: In relation to that component, chief superintendent, what criteria does Police Scotland use to determine that the person is being lawfully detained?

Chief Superintendent McKenzie: Graeme Stirling may wish to comment on that later, but it will be dependent on the information that has been provided by the agency that undertook the arrest. In the area that we are discussing, that will be the Home Office immigration enforcement, but it could be the military police, HMRC or any other law enforcement agency that uses our facility. They will provide information and justification under the statute on which they undertook the arrest, and the custody officer will ultimately determine whether it was lawful under the terms of that statute.

The Convener: Have there been instances when someone has been presented at a charge bar and Police Scotland has said that it does not consider it a lawful arrest?

Chief Superintendent McKenzie: I anticipated that that question might arise today. To my knowledge, no. I cannot say that there have been no such instances in the past number of years, but, to my knowledge and according to the information that I have received, the answer is no.

I come to the fifth component of the relationship. We have embedded officers in Home Office immigration enforcement. Two of our officers are on secondment in the criminal and financial investigations teams. Likewise, two Home Office immigration officers are based at Gartcosh to support operation nexus, which deals with information sharing in relation to foreign national offenders.

The last component of the relationship is the distinction between the activity that we undertake at ports through Border Force, and Home Office immigration. I will not touch on that, because I understand that the committee is not investigating that component.

Those six strands are the main areas of the relationship between Police Scotland and Home Office immigration.

The Convener: That was very comprehensive. I have two brief questions before I ask colleagues to come in. First, you talked about primacy. That would clearly apply in determining whether an arrest was lawful and the person was going to be detained in police custody. Does Police Scotland ever have primacy in any operations that involve enforcement simply on immigration issues?

Chief Superintendent McKenzie: No.

The Convener: You talked about 68 forms, 10 of which resulted in police activity or assistance. You mentioned greater Glasgow, but are comprehensive statistics kept Scotland-wide?

Chief Superintendent McKenzie: Yes. I could get you data and I am more than happy to do so. There have been 88 requests in E division since January. However, I would have to go to each division, because the process that is adopted is that there are SPOCs—single points of contact—in each divisional intelligence unit, and it is the divisional intelligence units that undertake the checks. It may take time, but I will provide those details to the committee.

The Convener: That would be very helpful. There are quite a number of questions to get through, and I am conscious that I have taken up time. There will be specific questions on other matters, but I wonder whether Mr O'Neill wishes to comment on the generality of what we have heard.

Graham O'Neill (Scottish Refugee Council): First, I thank the committee for taking time to consider this issue. We think that there is significant public interest in shedding more light on

the relationship between, on the one hand, key devolved institutions such as Police Scotland, the Scottish Prison Service and the Crown Office and Procurator Fiscal Service and, on the other hand, the Home Office, particularly its immigration enforcement, border patrol, and visas and immigration functions. I welcome what John McKenzie said on behalf of Police Scotland. There is public interest in precisely that kind of clarity.

Is there time for me to make a few points relating to what John McKenzie said?

The Convener: Yes, of course.

Graham O'Neill: There is the public interest, and there are the reasons why we, as a refugee rights agency, have raised the issue. Aside from that, though, we have been working for a long time at the sharp end of Home Office policies in relation to asylum seekers, who are a very vulnerable population, particularly in Glasgow but to a lesser extent elsewhere in Scotland. One of the things that we have picked up is that people have very little awareness of their rights. They often have mental health issues, which can stem from or be aggravated by their insecure immigration status.

We are looking not too far into the future and, if and when the United Kingdom withdraws from the European Union, it will create more risk of insecure immigration status for a larger number of people. That is in no way a political point; it is more a statement of immigration fact.

13:15

There will be people who might not be able to satisfy the terms of the settled status scheme. We can discuss later why we have grave concerns about that, but I can say that, as a refugee rights charity that has worked in the asylum system, we see a lot of the risks of destitution and vulnerability and the immigration enforcement activities of the Home Office being visited on people who currently have secure immigration status by dint of their being in an EU member state. Because they might not have that status in future, there is a higher risk of insecure immigration status affecting a higher number of people.

Part of the wider context to this is the hostile environment that people talk about in relation to those with insecure immigration status. We see that with those who seek refugee protection; indeed, that hostile environment has been part of the asylum system for a very long time, and it comprises some things that are often not recognised. For a start, the number of actions in immigration law that are defined as crimes has grown exponentially, and that will impact on the practice of Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Prison Service.

Secondly, the use of criminal sanction regimes has grown rapidly, particularly in recent times. For example, the Immigration Act 2016 sets out a criminal sanctions regime in relation to landlords renting out properties to people who do not have secure immigration status. That regime does not affect Scotland at the moment, but it is in effect in England, and it is an example of the growth in immigration law of activities that are classed as criminal.

Another concern arising from our work relates to recent changes to data protection legislation that will remove rights of access for individuals who are subject to immigration control. As a result, they might not be able to use mechanisms such as subject access requests for information that might be important to them if they are trying to understand how statutory bodies are trying to pass on information about them so that they can intervene and prevent their removal from their country.

The Convener: I am conscious that members have a number of questions to ask, Mr O'Neill. If, at the end of the meeting, you feel that we have not covered a particular issue—and I say this to Mr McKenzie and Mr Stirling, too—you can pick it up then.

The first question comes from Fulton MacGregor.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good afternoon. Is any information given to agencies working with migrant communities prior to removal? In other words, are the agencies that engage with and support those communities forewarned or given notice of a removal?

Chief Superintendent McKenzie: I expect that the answer to that question would be no, but I suggest that it is a question for Home Office immigration to answer. From a purely policing perspective, if we are talking about an operational decision that could impact on operational activity, the answer would be no.

The other question is whether information is shared after that point to ensure that support and assistance are provided. That, again, is for the Home Office to answer, but as far as Police Scotland is concerned, that would be the point of engagement, not under this statute but in relation to other activity that we take relating to an arrest.

I do not know whether Graeme Stirling has anything to add.

Sergeant Graeme Stirling (Police Scotland): The answer to your question is not to my knowledge. As Chief Superintendent McKenzie has said, it is a matter for the Home Office. As a policing division, we regularly engage with groups

supporting refugees and asylum seekers, but I have certainly had no engagement based purely on information that I had or did not have about upcoming operations. As Mr McKenzie has said, that would be an operational decision that could impact on operational activity.

Fulton MacGregor: I appreciate that the question would be best answered by the Home Office. As the convener has already said, it is disappointing that it has not responded.

You outlined the reasons why there might be circumstances in which it would not be appropriate to share information, but I imagine that there are other circumstances when it would—for example, when third sector organisations and social work departments are working with families in that position. Can you see any advantages of such an approach being widened out so that people can be prepared for what is happening?

Chief Superintendent McKenzie: I suppose that there are two components to that. From Police Scotland's point of view, Graeme Stirling and the safer communities teams across Scotland work extremely hard with partner agencies and third sector groups to ensure that there is an element of confidence in policing. We distinguish between policing activities and Home Office immigration activities to create confidence in the processes that are undertaken by our organisation.

The core component of the question was whether there are occasions when information could or should be shared with other organisations before immigration action is taken. I would take that back to a public protection analogy, whereby we would share information if we believed that there was concern and that immediate support was required at the point of police activity.

You asked whether there might be occasions when information should be shared with health and social care partnerships, for example, and I think that there could be. Does that take place? Again, I cannot answer that question. However, from the policing point of view, there are occasions when we take executive action and share information with partner agencies. We trust partner agencies with that information because we are working collectively for the benefit of individuals and wider communities.

Graham O'Neill: Thank you for the question, which was very well put. We think that a lot more can be done to maximise data-sharing opportunities around the foreseeable event of the Home Office using its powers under immigration legislation to apprehend somebody, to detain them, and, in some cases, to use Police Scotland's custodial facilities en route to a detention centre, be that Dungavel or one in another part of the UK.

When I say data-sharing opportunities, we recognise that there might be limitations on what can be shared with the third sector on those issues, but we certainly hope that some information can be shared, especially when there are pre-existing mandates in place, which there often are. The legal representative who will provide independent advice will be a pivotal person for the individual in relation to their rights. We hope that those representatives will consistently be centrally involved, but we do not think that is always the case in relation to Home Office activities that use immigration detention powers.

As John McKenzie and Graeme Stirling were saying, opportunities are needed to involve local statutory bodies such as the health and social care partnerships. One of the things that we would like to see in the coming years for the particularly vulnerable group of persons who are subject to immigration powers is a multi-agency process that involves Scottish statutory bodies and, to the extent that it is appropriate, third sector bodies. That is a very important protection factor.

Something that I wanted to mention today—which I will do now, with the convener's forbearance—is the fact that the Home Office is not very good at assessing vulnerability. Over the past two years, it has moved to what it calls the adults at risk policy, which informs whether people are put into detention or not. The Stephen Shaw review and its iteration at the UK level earlier this year confirmed that the way that the Home Office is applying its adults at risk policy is a work in progress. Ancillary to that is that the Home Office is not consistently applying what is known as the rule 35 policy in the way that it should.

The thread that goes between the policies is that people who have vulnerabilities, particularly mental health issues, should really not be put into immigration detention in the first place, but we see far too often—it is borne out by evidence from across the UK—that that is what happens. We are concerned about the Home Office making that type of life-changing and far-reaching adverse decision that affects the liberty of individuals who really should not be incarcerated at all because they have often not committed serious crimes. People in the asylum process have committed no crimes whatsoever.

As John McKenzie rightly said, the police have primacy over the care, wellbeing, health and access to rights of people who are routed through Police Scotland facilities. We think that there is an important opportunity for Police Scotland to ensure that the people in its custodial facilities who the Home Office are saying should be detained actually should have been detained in the first place. That gets to the heart of one of our

concerns. We know how the Home Office operates with issues around detention. It is not just me saying that there are concerns about that; it can be backed up by evidence that has been taken over a number of years.

Given the evidential background that the Home Office is not good at assessing vulnerability, including in relation to the use of its far-reaching detention powers, it is important that we in Scotland maximise opportunities to make sure that their use affects only the people in relation to whom their use is justified and lawful.

The Convener: Chief Superintendent McKenzie, would the same criteria apply to someone who was detained following a Home Office operation as would apply to anyone else with regard to their fitness to be detained?

Chief Superintendent McKenzie: It is exactly the same standard. The 21-question vulnerability assessment that we undertake for any person who comes through custody is the same assessment that we would use for Home Office immigration.

I go back to my earlier point. We retain primacy over the wellbeing of an individual who is within our custody environment. I am glad that Graham O'Neill distinguished between the vulnerability assessments in one agency and another. The vulnerability assessment is a robust assessment process and it is in the custody care and welfare manual.

I want to touch on the issue of access to legal recourse. When an individual is in our custody environment, the same arrest process and standard operating procedure are used, and the same Police Service of Scotland solicitor access guidance is used. In simple terms, that means that an individual who comes through our custody environment will have the same arrest rights of the accused as anybody else. They will have the right to have a solicitor informed. They will have a right to have a solicitor accessing them within the custody environment. They will have the right to have all their rights provided in a language that they understand. They can also have access to a solicitor at any time during that period.

Going back to the core point of your question: is it the same? Yes, it is.

The Convener: Thank you; that is reassuring.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Mr O'Neill, you have suggested that there is an accountability and transparency gap in relation to the Home Office immigration enforcement operations in Scotland. Without asking you to repeat everything that you have said, when you said that earlier, was that what you were referring to or is there another angle that you want to highlight?

Graham O'Neill: No. Thank you for asking the question. A lot of our concerns are about looking to the future and trying to make sure that we in Scotland protect ourselves from some of the worst extremes of the hostile environment policy. As I said during my opening remarks, we fear that more new citizens with insecure immigration status will be subject to immigration enforcement activities that they would not have been subject to in the past.

That being the case, we have to think about the safeguards that we in Scotland can put in place in relation to that. Obviously, we talked to the various inspectorates in Scotland that know the prisons and the police services, and who know about the application of the prosecution code by fiscals better than anyone else. Having looked at the legislation for each of the Scottish inspectorates in the three areas that I mentioned, we cannot see a barrier to those activities. Therefore, there is definitely potential for a thematic inspection—perhaps undertaken jointly by the three Scottish inspectorates—of how people with insecure immigration status are treated by the criminal justice organisations in Scotland. However, that is very much in relation to Home Office immigration compliance activities for those individuals. We would like the sub-committee to consider that issue further.

13:30

There are a number of offenders in Scottish prisons who are foreign nationals—it is not a high number, but they are there. We know of cases of foreign nationals who have committed serious criminal offences and are liable for deportation but who, after they have served their sentence in a Scottish prison, have then been moved to a remand unit in that prison instead of being deported. Those people are then in a limbo period. That involves the use of a lot of public funds, and the Home Office does not support Scottish bodies in that regard. That is not a sustainable arrangement, especially if there are a number of such people. However, we also know of foreign nationals who have served a sentence and have then been moved straight into immigration detention facilities, where they have also been left.

I am trying to get at the point that there is an invisible, vulnerable population here in Scotland that we do not properly understand—we do not really understand what their rights are in terms of how they are feeling or their rights to legal advice or health care and so on. That is a symptom of the deeper issue of the extent to which the inspection and regulatory community understands what it means to have insecure immigration status in Scotland.

One part of that involves foreign national offenders, but a much wider group of people have insecure immigration status and will, at some point, be subject to immigration activities. In some cases, that will rub up against Scottish criminal justice agencies. We need to get our regulatory community to think about how it can build the particular vulnerability that stems from insecure immigration status into its mainstream regulatory work.

Rona Mackay: Thank you, that is helpful. Chief Superintendent, in your answer to the convener, you spoke about the initial form that is filled in for risk assessment and so on. Who takes the final decision on that risk assessment?

Chief Superintendent McKenzie: The Home Office.

Rona Mackay: It is the Home Office—so you do your bit and the Home Office takes the final decision.

Stewart Stevenson: I really want a very brief answer to this as I do not want to go too far down this rabbit hole. Do we have access to enough interpreters with the right language skills for people for whom English might be very far from being their first language?

Chief Superintendent McKenzie: The very brief answer to that is that my assessment is yes. Police Scotland has just signed off on a new contract that deals with face-to-face and telephone interpreting services. Obviously, that is continually monitored, and that falls under my remit. So, the feedback that I have is that we have access to enough interpreters, with the caveat that the situation is continually monitored.

Margaret Mitchell (Central Scotland) (Con): I will return to the issue of the gap that you have mentioned, Mr O'Neill. You say in your submission that it can lead to a reduction in public confidence in criminal justice institutions in Scotland and to misperception. I noted that you referred in your opening remarks specifically to the need for criminal sanctions for those who let out properties. That issue has gone on for years and years—I remember that, when I was convener of the Equal Opportunities Committee, many people were being given lets in multiple-occupancy premises that were in a dreadful condition, but that the rogue landlords never really seemed to be picked up. Is that still the case—does that continue? That is not necessarily a matter for the police; it may be that we do not have the sanctions. I am interested to hear where the responsibility lies.

Graham O'Neill: In my opening remarks, I was referring to the criminal sanction regime under the Westminster Parliament's Immigration Act 2016, which created criminal sanctions for individuals—often, private landlords—who enter into a

residential tenancy agreement with people who do not have the requisite leave to remain and who should not, therefore, enter into such an agreement. There needs to be reasonable grounds for a criminal sanction to be applied, such as the landlord who let out the property having some degree of knowledge that there was something not completely correct with someone's immigration status. We are thankful that that criminal sanction regime is not enforced in Scotland, but it is used in England.

People often talk about "crimmigration"—the combination of criminal and immigration law. That can have an invidious effect on individuals who are subject to that law, and it can also have an invidious effect on people, such as landlords, who are expected to act as de facto immigration officers. At the end of the day, they are landlords and are just trying to do their job by letting out their property properly. I used the example of the criminal sanction regime to illustrate the deeper point that immigration law is becoming increasingly complex and that there has been a real growth in criminal sanctions. That creates significant effects on individuals who are subject to that regime.

The people on the refugee protection spectrum with whom we work have, to an extent, been at the sharp end of some of the hostile environment measures over the past 15 years. We fear that a much greater number of people will be affected as a result of EU withdrawal. I am not making a political point; I am stating the facts about immigration: a person whose immigration status is currently secure will not have their status automatically secured if we withdraw from the EU. That means that people would have to satisfy the requirements of the UK Government's settled status regime. If they could not do so, they would have an insecure immigration status and could be subject to immigration enforcement activities. We fear that that could particularly affect individuals in Scotland who are from the north to the south of central Europe. It could affect people who are concentrated in particular sectors in which there is less labour market regulation and lower pay, and those people will not be able to easily satisfy the requirements for settled status.

We are trying not to look too far into the future, but we are saying that there is a problem. In Scotland, there will be a growth in the number of people who will have insecure immigration status, and a growth in the number of people who will not be able to satisfy the settled status regime. Therefore, the Home Office, through its immigration enforcement activities, will be dealing with those individuals.

Margaret Mitchell: Given that we do not really know where Brexit is going, you are right to

highlight those issues. I take your point about it not being the job of landlords to police the system. However, the question that I asked originally was a pertinent and vexing one. Rogue landlords have been taking dreadful advantage of people who are vulnerable, unsure of their status and living in dreadful conditions. Has that situation improved? If it has not, how do we address it? I note that the Scottish Refugee Council has called for a "wider inquiry" into the relationship between the Scottish criminal justice sector and the Home Office. Many of these issues are reserved, but it seems to me that the particular aspect about landlords is devolved and that we could do something about it here and now.

Graham O'Neill: People who have an insecure immigration status are extremely vulnerable—it is precisely their insecure immigration status that makes them vulnerable. At the extreme end of the spectrum, their vulnerability can be, and is, used by traffickers and organised criminals to control people's movements, to control what they do and to control their living conditions. In a previous life, I was involved in work on human trafficking in Scotland. We worked very closely with the police on that, and the Scottish Refugee Council continues to work closely with the police. We continually make the point—

Margaret Mitchell: But, on the rogue landlord point specifically, we know that it is rife.

Graham O'Neill: If we have landlords who are not abiding by standards—who are referred to as rogue landlords—they need to be subject to the various powers that are available. One obvious thing would be if local authorities could make sure that the people who are acting in those ways could no longer act in those ways.

There could be a role, particularly at the extreme end of the spectrum, for Police Scotland to be involved in terms of indicators of trafficking and exploitation. It comes back to the point that Mr MacGregor made in a different context, about how, in Scotland, we need to take control as much as we possibly can through our statutory bodies working together and we need to bring Home Office immigration enforcement around the table to get multi-agency decision making—shared decision making around—

Margaret Mitchell: Can I stop you there? That particular aspect is devolved so we can do something about it now. Has Police Scotland come across this to any large extent? Is it something that you are dealing with quite frequently?

Chief Superintendent McKenzie: Graeme Stirling may want to talk about that from the point of view of Glasgow.

Sergeant Stirling: I am aware that it exists. I am not aware of any specific instances. That does not mean that it has not happened; it just does not sit within my area of business. The engagement that I have is directly with asylum seekers, refugees, and groups that assist those people. However, I hear anecdotally about that kind of thing—

Margaret Mitchell: Yes, because it is precisely these people who are sometimes brought here on false pretences and then when they get here, the accommodation and so on is really inhumane. I would hope that we would all welcome a review of that.

If I understood you correctly, chief superintendent, you carry out community impact assessments and assess at the end of the process whether you think there has been an impact on the community and then you take action. Am I right in my understanding that that is what you said about one of the six strands?

Chief Superintendent McKenzie: A community impact assessment can probably be seen as a bit of a living document in as much as you try to make a determination of the impact that an action will have on the community prior to it taking place. You then monitor whether that action has had an impact on the community after it has taken place. It is a bit of a living document that goes from pre to post the activity, if that answers your question.

Margaret Mitchell: Yes.

Chief Superintendent McKenzie: On your earlier point—I will keep this brief—the very subject matter that you raised was raised by Christina McKelvie at the Equalities and Human Rights Committee last year. A response was provided by Police Scotland on that very subject, not specifically about the landlord issue but about the issue of vulnerable people.

When there are vulnerable people, no matter where they are from, people will exploit that vulnerability, which leads to issues such as the ones that you have highlighted in relation to landlords. There is evidence in relation to the exploitation of individuals from vulnerable backgrounds, including asylum-seeking communities.

Margaret Mitchell: It is five years since I have been the convener of the Equal Opportunities Committee, as it was called then, and it was a big issue at that time, so it might be something that you need to look into more.

Liam McArthur (Orkney Islands) (LD): Chief superintendent, you have offered some reassurances on the assessment that is made of vulnerability. Police Scotland has provided figures suggesting that, in 2017-18, more than 530 people

were detained in police custody under UK immigration legislation powers. Can you describe the impact of those numbers on police custody in general? A significant majority of people were detained for a period of 24 hours, but there were a number of cases where that exceeded 48 hours. It would be helpful to understand the timeframes that we are talking about, the impact on the custody suites and, indeed, whether you believe that a custody suite is an appropriate setting for those individuals in any event.

13:45

Chief Superintendent McKenzie: You are referring to information that was produced as a result of a freedom of information request and which was made public by the media in August 2018. You are absolutely right: the response to the FOI request says that 537 individuals were held in custody and provides a breakdown by station across Scotland. It then says that 384 individuals were held for up to 24 hours, which could be from one hour to 24 hours; 126 were held for between 25 and 48 hours; and 27 were held for more than 48 hours.

Do I believe that such numbers have a significant impact on the custody division? Any additional numbers will have an impact—of course they will—but Home Office immigration faces a financial liability for using Police Scotland facilities, and the longer that someone is in those facilities, the larger that liability is. When we look at the breakdown of the numbers across Scotland, we see an impact, but my assessment of whether it is significant is no.

You ask whether those facilities are appropriate for individuals to be detained in. HMICS raised concerns back in 2014 about the length of time for which people were being detained, and a process was put in place to ensure that individuals were kept in for the minimum length of time. The outliers seem to be the 27 individuals who were held for more than 48 hours. However, there is a robust process involving the force custody manager—I will not go into that now, because it would take up time, but I will provide that information in writing, if the committee so pleases.

A police custody facility is only a temporary place in which to hold someone safely to allow the process of justice to take place. Ideally, that person should be in and out as quickly as possible. There might be a multitude of reasons for individuals being kept for 48 hours—logistics, distance and so on—but my position is that the use of a police custody facility should be kept to the minimum, as far as the timeframe is concerned.

As he was a custody sergeant many moons ago, Graeme Stirling might have a different view.

Sergeant Stirling: No—I agree entirely with Mr McKenzie. You could say that it is the responsibility of the custody sergeant to ensure that the criteria that the chief superintendent has outlined are adhered to. This was a number of years ago now, but as a custody sergeant, I was quite robust in saying, “This person will be here for the minimum amount of time required.” Let me put it this way: I would make sure that I kept on top of things as far as that person was concerned.

Chief Superintendent McKenzie: If the sub-committee asked any police officer whether the custody division’s decision making on keeping people in custody was robust, the answer would be yes. It is professional and robust, and I am confident that force custody officers do everything that they possibly can to ensure that such stays are for the minimum amount of time possible. They will escalate things if they have to—there is a continuous review process over a 24-hour period—but any police officer would take the same position as that outlined by Graeme Stirling. Robustness is key when it comes to keeping people in custody.

Liam McArthur: That was helpful. I will be interested to hear Mr O’Neill’s views in a second.

You mentioned the HMICS report in 2014, which flagged up concerns and emphasised the need to minimise the amount of time for which people were being detained in this way. The figures released under the FOI request relate only to 2017-18, and there was a suggestion that it would be too costly compile figures from previous years. What is your impression of the trend since 2014 in the numbers being detained in police custody and the duration of that detention?

Chief Superintendent McKenzie: My assessment is that the length of the detention period is decreasing. Like you, I do not have the figures for previous years in front of me to be able to determine that; I tried to obtain that information before I came to the sub-committee, because I sensed that the question would be raised.

My assessment is that the length of the detention period is decreasing, but I can state categorically that, since HMICS made its recommendation in 2014, a robust process of monitoring, escalation and review has been put in place. That in itself gives me confidence that people are being kept in police custody for the minimum amount of time possible. As for the figures that are mentioned in the response to the FOI request, I think that I, too, would be challenged to provide them.

Liam McArthur: I appreciate that. In fact, it would be highly suspicious if you were able to

produce figures that had not been produced under FOI. That would open up a whole new line of inquiry. However, your comments on the trend are interesting.

On specific categories of detainees, what assessment is made of the appropriateness of detention in custody when a family and children are involved? What process does the custody sergeant go through in those circumstances?

Chief Superintendent McKenzie: On children in custody, we can look back to the Kilbrandon report from the 1960s and the fact that we do not, as a country, criminalise children or keep them in custody. Children will not be kept in custody. That is the position that Police Scotland has taken.

Liam McArthur: How would custody sergeants assess the situation if there were children who would be affected by their parent’s detention in custody? I presume that that would be seen as a material factor in considering whether detention would be appropriate.

Chief Superintendent McKenzie: Would that be a material factor in considering whether it was lawful to retain that person in custody? I go back to the primacy point. Primacy sits with Home Office immigration. We are presented with individuals in custody, and determinations are made on the basis of an assessment of risk and vulnerability, whether it is lawful to retain them and wider factors such as the impact on their family—I hope that that is a factor for Home Office immigration when it determines how it will deal with an individual. However, in the cold process of a custody environment, I do not think that it would be a great factor in determining what happens to an individual. Graeme Stirling might want to comment on that from a custody sergeant’s perspective. Home Office immigration enforcement would have to consider those points, as would Police Scotland if we were arresting a parent for a criminal act or another statutory reason.

Liam McArthur: Are you saying that, essentially, Home Office immigration, rather than Police Scotland, would make the assessment?

Chief Superintendent McKenzie: Yes.

Liam McArthur: Mr O’Neill, do you have any observations about trends and about what happens to individuals, particularly if they have a family?

Graham O’Neill: Yes. Thank you for that question, which is pertinent for the following reasons.

The honest answer is that none of us in this room knows whether there is a trend, because there is no proactive public monitoring of the data. I know that that sounds like a criticism, but it is not;

it is more of an example. People are detained under powers in the immigration legislation and are put into Police Scotland's custodial facilities in transit. As John McKenzie and Graeme Stirling have rightly said, Police Scotland has primacy over health and wellbeing in that window.

We think that we need to have a clearer set of standards—the standard operating procedure for such situations plus something that recognises the distinctive vulnerabilities of people with insecure immigration status. There are often higher levels of trauma in that population. Because of their insecure immigration status, they need access to immigration law advice; they also need an interpreter so that they can understand everything that is happening around them—that point was touched on earlier. It must be remembered that this is a particularly stressful point in their lives. We think that we need both the standing operating procedure plus something that recognises the distinctive vulnerabilities that come from the fact that the person has insecure immigration status.

There needs to be proactive and regular monitoring that goes underneath the numbers and gets into the stuff that has rightly been mentioned, so that we ask about the demographics and profile of the people who are subject to the process.

I go back to what I said earlier. In our view, and we can see this in evidence, the Home Office is not good at assessing vulnerability, so we are very sceptical of Home Office immigration and detention decisions. We therefore see Police Scotland's involvement as a real opportunity in the Scottish context to make sure that the Home Office gets vulnerability right and does not detain people whom it should not detain, which we know happens.

Earlier this year, an individual who has significant learning difficulties and the mental age of a child was detained in Police Scotland facilities. That should not have happened, but we think that it happened because of the way that these things often happen. The Home Office makes a decision on immigration detention and is looking for somewhere to put the person en route to a detention centre—either Dungavel or somewhere else in the UK. The individual's needs are not considered in critical, consistent questioning about whether they should be in detention in the first place. Often, the answer would be that they should not be in detention.

Liam McArthur: I am sorry to interrupt you, but Chief Superintendent McKenzie described what I think was a 21-phase assessment of vulnerability. The example that you have just cited suggests that that assessment did not work. Irrespective of whether the original failures in the assessment process were made by Home Office immigration, I presume that there was a subsequent failure of

Police Scotland's triaging and assessment of vulnerability, such that it did not pick up the concerns that you identified.

Graham O'Neill: It is important to be really honest and straightforward. Nobody is going to get everything perfect all the time. We completely recognise that Police Scotland works on the front line with people who are in extremely stressful situations—in some cases, situations that we cannot even imagine. What we are saying is that we can do better in taking a multi-agency approach in Scotland in relation to certain activities that the Home Office undertakes. We are spending a bit of time on one such activity—I think very helpfully—which is the use of police custodial facilities for people who have been detained under immigration powers.

We suggest that the sub-committee considers the recommendation that it should look at Police Scotland's key standard operating procedures and ask which ones we can add the insecure immigration status dimension to, recognising the distinctive vulnerabilities that exist for people in that situation.

We know that that will not work all the time but, if we are honest, we do not know what is actually happening. Is legal representation being given every time? Are mental health assessments being done and are the vulnerability indicators being used every time? We are not confident that the Home Office does those things, which means that we are not confident about the information that the Home Office passes to Police Scotland. Because of that, we suggest that it is important to be sceptical of the information that the Home Office passes on—in this case, to Police Scotland.

We are partners with Police Scotland in a range of community engagement work and so on, and that partnership approach is very much in place with the issue that we are discussing.

The Convener: Fulton MacGregor has a supplementary question. I will then let Liam McArthur back in.

Fulton MacGregor: I am conscious of the time, so I will make it quite brief. Liam McArthur's line of questioning was about the hypothetical situation in which people with caring responsibilities are detained. I think that that goes back to my earlier question about the need for a bit more joined-up working. I know that the area is the Home Office's responsibility, but it is pretty crucial. If the police can let statutory and third sector organisations know that something has happened, even confidentially, those organisations will be able to start preparing for such situations. I would like a brief response on that, if possible.

Chief Superintendent McKenzie: I agree that it goes back to your original point. Where there is a

legal framework and a reason to share information—in the example that has been given, that would relate to child welfare concerns where a parent with wider caring responsibilities was to be removed—there would of course be an expectation that that discussion would take place. That would be Police Scotland's position if we were undertaking such an operation.

I am conscious of the time, but I want to make two further minor points, First, I have no knowledge of the case that Graham O'Neill referred to. I am more than happy to go away and have a look at that case. It has not come across my radar in my research.

Secondly, section 12.8 of Police Scotland's arrest process standard operating procedure references individuals who are arrested in relation to immigration or wider statutory offences. The expectations and rights of individuals who come through our doors under immigration legislation are embedded in that SOP.

14:00

Liam McArthur: I return to the Home Office policy presumption in favour of temporary admission or release, rather than detention. What discretion does Police Scotland have to determine an alternative to detention, and can you say anything about what alternatives would be put in place? Is electronic monitoring involved or are bail provisions applied?

Chief Superintendent McKenzie: I go back to some of my original points. Home Office immigration enforcement has primacy. We have a window, in terms of our responsibility for the individual, but the terms of liberation are for Home Office immigration enforcement to deal with and answer.

Liam McArthur: Are any decisions around release for the Home Office, rather than Police Scotland?

Chief Superintendent McKenzie: The conditions under which someone is released—whether they are released with leave to stay or retained and then moved to a detention centre—are a decision for Home Office immigration enforcement.

Graham O'Neill: That is, again, a really pertinent point. The Home Office is looking at pilots around alternatives to detention, which we welcome. That is partly because there has, rightly, been so much criticism of how detention has been used as part of the immigration system. That is very costly for the Home Office and, as we know, many people are held in detention for a time and subsequently released, which makes it clear that

there was never a purpose to their being in detention.

That is recognised and acknowledged and, thankfully, the Home Office now seems to be saying that it needs to think about community-based alternatives to detention. There is a pilot starting at Yarl's Wood detention centre in relation to women who would have been detained there. The pilot is with an organisation in Newcastle. The Minister of State for Immigration shared some public information about that with the Joint Committee on Human Rights at Westminster today. The pilot is happening in conjunction with the United Nations High Commissioner for Refugees, through its UK representative.

We think that there is some value in piloting alternatives to detention here in Scotland, as well. We very much encourage Police Scotland to be a partner in that, particularly given that we know that Police Scotland custodial facilities are used by the Home Office. Police Scotland would have opportunities, as John McKenzie rightly said, and probably a mindset, to bring a sceptical and critical attitude to the quality of the Home Office assessments that lead to the decision to detain someone in the first place. We would very much encourage a Scottish partnership in relation to a pilot of alternatives to detention.

Liam McArthur: You talked about costly options. The proposal presumably needs to be weighed against the cost of the current approach. Do you have any sense as to whether we are talking about additional costs or whether, over time, there will be a reduced cost as compared with the detention approach?

Graham O'Neill: I do not have exact figures, but I will confidently say that the detention approach is unbelievably more expensive than a community-based approach.

Rona Mackay: Can the chief superintendent and sergeant tell us briefly what work has been done to engage with migrant and ethnic communities to develop their understanding of how you protect and engage with them?

Sergeant Stirling: I work in the safer communities department in greater Glasgow police division. Our remit is to do exactly as you said: to engage with asylum seekers and refugees, and the groups and organisations that support them. The main focus of our work is to break down the barriers and build trust between Police Scotland and such people and organisations. We are conscious of their attitudes towards authority figures based on their experiences in their countries of origin.

We engage with probably all of the organisations in Glasgow that represent and work

with asylum seekers. I can give you a couple of specific examples, if that would be useful?

Rona Mackay: Can you say how that works in practice? Do you organise meetings?

Sergeant Stirling: We attend organised events and we go along to meetings that have been set up by groups or committees or such like. My experience is that asylum seekers, refugees and groups want the police to go and support them, listen to them and understand their experiences. That is really important for me as a police officer because it informs the work that I do thereafter. Part of my job is to cascade that information to other officers so that they have a better understanding of the situation that those people find themselves in and the experiences that they went through before they came here—that is important.

Rona Mackay: Thank you. I have just one other quick question. You indicate that the number of employment applications from ethnic minority communities has increased. Can you say how that has been translated into police numbers and give us an indication of figures?

Chief Superintendent McKenzie: I think that you are referring to the reference to positive action in our submission. About 12 months ago, I sat in this room and talked about the positive action approach as an important component of ensuring that Police Scotland has a workforce that represents the communities that we serve. We have been working tremendously hard to achieve that. I highlighted last year that we are probably talking about a 10-year plus journey, and over the past year just under 10 per cent—it is 9.4 per cent if my memory of our submission serves me right—of new recruits coming through Tulliallan were from black and minority ethnic communities. However, that is just the start of the journey. It is not just about the recruitment component; the retention component, and advancement and lateral development in the organisation, are also significantly important to ensure that we have representation throughout the whole organisation—at every rank and in every department in Police Scotland. As I said, that will be at least a 10-year journey, but we are beginning to get there.

Rona Mackay: Is it moving as quickly as you would have liked?

Chief Superintendent McKenzie: I think that it is, in as much as I recognise that there is not an easy solution. This is about the work that Graeme Stirling and the team do in building confidence in communities and ensuring that a career in the police service is one that individuals from BME communities want to pursue. The aim of that is never to have a very quick burst; it is about a

sustained approach over 10 years to ensure that we get the candidates in and that we retain them.

It is really interesting that when you speak to officers across Scotland from BME communities you learn that they have formed their own network and are very positive towards the organisation. I think that we will come back here in 10 years' time and provide a success story of Police Scotland that will be the envy of policing across the UK.

The Convener: That is certainly very positive news, chief superintendent.

You referred to a charging regime that will bill the Home Office for the use of the facilities. As you are going to provide us with some information, perhaps you could look at what information could be gleaned from that regime, such as numbers and duration, and provide that, too.

We are due to finish at 10 past 2. As it was you, Mr O'Neill, who raised those concerns, do you have a final brief comment? We found the evidence helpful and will discuss it at the conclusion of the meeting, but do you have a final brief point?

Graham O'Neill: We welcome our close working with Police Scotland, especially in Glasgow. It is serious about building confidence with communities; indeed, I work a lot with Graeme Stirling on an operational basis. The police are incredibly helpful.

As we said in our written submission, part of our motivation for raising the issue is that we really do not want to see all that hard-earned work, which takes years to carry out, undermined as a result of Home Office activities being misperceived as Police Scotland activities. That is critical in maintaining and safeguarding Police Scotland's fundamental aim of having the confidence of the community. If it does not have that confidence, especially the confidence of vulnerable communities, it will not be able to get the information or intelligence that will allow it to do its job of protecting people.

As I said at the start of the meeting, we are looking at there being a much wider group of people with insecure immigration status, who will be at risk of destitution and, potentially, Home Office immigration enforcement activities. If I was carrying out a risk assessment on this for Police Scotland and other criminal justice bodies, I would be seeing those risks and thinking, "What impact will that have on us and our core business of protecting the public, which is based on our having the confidence of the community?" That is why we think that the issue is serious and why we are trying to look forward in that respect. We are very grateful to the committee for taking the time to look at this matter.

The Convener: Thank you, Mr O'Neill, Chief Superintendent McKenzie and Sergeant Stirling. Your written evidence and what we have heard have been very helpful; I know that the chief superintendent will provide us with further information.

That concludes the public part of the meeting.

14:11

Meeting continued in private until 14:30.

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