



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 25 of 2020

Ref: CS/LS

18 May 2020

Dear Colleague

Police Service of Scotland – Health and Safety Executive

I refer to the above and write to advise you that the Scottish Police Federation (SPF) has had to take the extraordinary step of reporting the Police Service of Scotland (PSoS) to the Health and Safety Executive (HSE).

On the 30th April 2020, the SPF formally served a Health and Safety Improvement Notice on the PSoS in respect of its advice to officers surrounding breath test procedures during the COVID19 pandemic. It is our understanding this is the first occasion any police federation in any part of the UK has taken such a course of action and signifies the importance of the matter at hand for the SPF. The PSoS failed to respond to that notice and as such we have been compelled to take the step detailed above. We wait to see what, if anything, the HSE does in response.

It is deeply regrettable that in the immediate 7 days after the improvement notice was served there was absolutely no engagement from the PSoS in respect of seeking to resolve the issues. Instead, the PSoS wrote to the SPF in terms which bore no resemblance to reality of the events, and singularly failed to address the issue at hand.

On the 8th May the SPF again wrote to the PSoS detailing a comprehensive chronology of events and offered the PSoS a further 3 days to respond to the notice.

It is regrettable that once again the PSoS made absolutely no attempt in that timeframe to engage with the SPF on this issue and once again replied advising that they would not be changing their position. No attempt at dialogue was made by the PSoS. In one final attempt to save the requirement to formally notify the HSE, the SPF offered a few days grace for the service to engage.

A meeting with the PSoS on the 15th May failed to satisfy any of our concerns over the safety risks to members. Further scientific reports and citations were offered by the SPF, but these were dismissed without proper examination. Instead the force representatives defaulted to repeatedly stating that they believed their position was defensible. We consider this to be a regrettable approach to significant health and safety concerns. As a consequence, we now find ourselves with no practical alternative but to formally report the PSoS to the HSE.

I wish to be clear that in the round, the relationship with the PSoS is professional and productive. However, on this, and an increasing but small number of other issues related to the health, safety and welfare of police officers, we have encountered a dogged unwillingness to either listen to, engage with, or work towards resolving legitimate concerns expressed and raised on behalf of police officers.

We cannot forget that the world is in the midst of a public health emergency that is attributed to the loss of over 3,400 lives in Scotland alone to date. It remains regrettable that given the choice between erring on the side of safety (and caution) that the PSoS has elected to pursue an alternative path.

At the heart of this particular issue is the safety of whether asking any member of the public to empty their lungs in the immediate proximity of a police officer, through a narrow tube, which accelerates expelled breath is a safe procedure to be performed at all, or if performed what PPE is required.

We are clear that that the operational guidance issued by the PSoS on this matter creates unnecessary risk for officers and that safer alternatives and procedures are available. We reminded the PSoS as recently as the 15th May that their reason for not following safer alternatives do not respect hierarchical risk management processes. We are also clear that alternative approaches in no way hinder the ability of the police to respond to and detect those who drink and drive, or introduce greater risk to the system of work.

COVID19 is known to be transmitted through respiratory droplets and it is known that in the majority of cases the carrier may present no, or mild symptoms. The SPF, advised by our Panel of Experts, and a wealth of published scientific materials is firmly of the view the PSoS operational guidance in respect of breath test procedures neither reflects best risk management practices, or properly mitigates risk to officers. Colleagues will know from their own experiences that suspects often take several attempts to generate enough lung capacity and technique to be able to successfully comply.

Where alcohol is suspected, we would encourage colleagues to consider using their powers under section 4 of the Road Traffic Act 1988 ahead of those under Section 5.

In terms of station procedures and the evidential sample, we ask colleagues to note that our advice is that there are even greater risks associated with the evidential breath sample than with the roadside breath test. The confined and controlled environment in which intoximeter machines are located creates additional risks when suspects are emptying their lungs (on what can be several occasions to lawfully adhere to the requirement). We would encourage a move to urine samples as a safer alternative.

Personal Protective Equipment is the last line of defence against any hazard. Therefore, if these alternative safer options to secure evidence are not achievable then it is recommended that while performing any breath test, officers should wear as a minimum FFP3 face mask, goggles and gloves and thereafter follow uniform decontamination processes.

Whilst there is a wealth of literature and scientific opinion on PPE and infection risks, the SPF would draw your attention to just a few. We consider these more than support our concerns.

Our Expert Panel advised that Surgical IIR masks are primarily aimed "to protect others from the wearer" where social distancing cannot be achieved. This position has been further endorsed by the Confederation of British Surgery (CBSGB) who published the results of specific tests on the efficacy of surgical masks as protection from COVID19 on the 4th May.

The study for CBSGB was conducted by Dr James Douglas, a GP for 40 years and has multiple peer reviewed publications in occupational health and aerosol generating procedures in industry, and Councillor Niall McLean who is a PPE expert with a background in Nuclear Biological and Chemical Warfare Training from the British Military and 20 years' experience of PPE training in the geotechnical industry.

The CBSGB stated;

"the standard level of protection being advocated by Public Health England (PHE) ... is woefully inadequate"

Dr James Douglas stated;

"We have concluded that the type IIR mask will allow the patients exhaled air to enter the respiratory system (of the healthcare worker) when in close proximity."

On the 15th May the British Medical Journal published a withering editorial which amongst other things highlighted;

On 19 March, the status of COVID-19 was downgraded from level 4, the highest threat level, to level 3 by the four nations group on high consequence infectious diseases and the Advisory Committee on Dangerous Pathogens. This enabled the required standard of personal protective equipment to be lowered for staff in hospitals and to nurse patients in non-infectious disease settings.

It is important to note that downgrading was communicated in a publication from Public Health England (PHE), but that Scotland was part of the four nations group that was part of the decision making.

It is also important to note that the PSoS is relying heavily on advice it has received from Health Protection Scotland (HPS). HPS has consistently cited PHE as a source in its own literature.


The PSoS's own risk assessment records that;

"HPS wished to downgrade our PPE in a number of ways but the main issue was where they wished officers and staff to wear Fluid Repellent Surgical Masks (FRSM) rather than FFP3 masks."

The SPF would remind officers that the police service encourages and promotes dynamic risk assessment. The PSoS has stated that it will not criticise any officer who acts in accordance with their own assessment of risk.

We would encourage officers to consider all of the above when determining the risks they believe they are presented with at all times, and especially so when facing suspects who may be drink driving.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', with a horizontal line drawn through the middle of the signature.

Calum Steele
General Secretary