

Mr Derek Penman QPM
HM Chief Inspector of Constabulary

Mr Terry Shevlin
Clerk to the Public Audit and Post-legislative Scrutiny Committee
Room T 3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

11 May 2017

Dear Mr Shevlin

**HMICS Thematic Inspection of the Scottish Police Authority
Terms of Reference Phase 1 - Review of Openness & Transparency**

Please find attached our Terms of Reference in relation to the above.

Can I also take this opportunity to confirm that HMICS will review the PAPLS Committee evidence session from this morning and ensure that relevant issues are included within our Review.

May I also take the opportunity to clarify my evidence in relation to a question from the Convener about a HMICS Terms of Reference from October 2014. This relates to a Continuous Improvement Review of the Scottish Police Authority's Leadership and Governance which was developed into a self-assessment exercise and improvement plan undertaken by the Authority. HMICS did not publish a report relating to this. This has been mentioned and referenced in the attached Terms of Reference for our current Review. We will assess progress against the recommendations contained within the Improvement Plan.

Yours sincerely



Derek Penman
HM Chief Inspector of Constabulary





HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

**Thematic Inspection of the
Scottish Police Authority
Phase 1 - Review of Openness and Transparency
Terms of Reference**

May 2017



HM Inspectorate of Constabulary in Scotland

HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).¹

We have a statutory duty to inquire into the arrangements made by the Chief Constable and the SPA to meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions.
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions.
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit.
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given.
- Where we make recommendations, we will follow them up and report publicly on progress.
- We will identify good practice that can be applied across Scotland.
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication.
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.²

This inspection will be undertaken by HMICS in terms of Section 74(2) of the Police and Fire Reform (Scotland) Act 2012 and laid before the Scottish Parliament in terms of Section 79(3) of the Act.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.

² HMICS, [Corporate Strategy 2014-17](#) (2014).

Our inspection

Introduction

1. HM Inspectorate of Constabulary in Scotland (HMICS) has committed to a statutory inspection of the Scottish Police Authority (SPA) as part of its Scrutiny Plan for 2017/18. On 9 December 2016, HM Chief Inspector of Constabulary wrote to the Chair of the SPA,³ advising him of the inspection and confirming that it would provide an opportunity to review the Authority's new governance arrangements and supporting protocols; as well as provide a wider review of the Authority, the work of its officers and the services it provides.
2. HMICS initially planned to conduct this inspection using a phased approach throughout 2017-18, building an extensive evidence base to support an assessment of the overall **state, effectiveness and efficiency of the Scottish Police Authority** and publishing its report in January 2018.
3. However, following the evidence given by the SPA at the Public Audit and Post-Legislative Scrutiny Committee⁴ and the Justice Sub-Committee on Policing⁵ the Cabinet Secretary for Justice has requested that HMICS bring forward an element of its inspection.⁶ This relates to issues around openness and transparency in the way SPA conducts its business, specifically in terms of the Authority's decision to hold committee meetings in private and restrict the publication of meeting papers.
4. The Public Audit and Post-Legislative Scrutiny Committee has also heard evidence from the SPA over its recent handling of the resignation of Board member Moi Ali and expressed concerns, particularly in terms of compliance with *On Board - A Guide for Members of Statutory Boards*.⁷
5. The Chief Inspector of Constabulary made comment in his Annual Report⁸ that the that the decision by the SPA to hold committee meetings in private and restrict the publication of papers seemed at odds with its commitment that it should be open and transparent and operate to the highest standards of public sector administration and management. These concerns had been previously communicated in writing to the Chair of the Authority, acknowledging that although it was ultimately a decision for the SPA to agree its own governance arrangements, these would be subject to scrutiny by HMICS as part of its planned inspection.
6. HMICS was also made aware of the circumstances surrounding Moi Ali's resignation and made a public commitment to consider any relevant concerns that were raised during its planned inspection.⁹
7. As a result of the request from the Cabinet Secretary for Justice and in response to the recent parliamentary scrutiny by the Public Audit and Post-Legislative Scrutiny Committee, HMICS has agreed to undertake a review of openness and transparency in the way the SPA conducts its business. This will include an examination of any issues leading up to and arising from the resignation of Moi Ali in respect of members' understanding and the Authority's compliance with relevant legislation, "On Board" Guidance and its own Standing Orders.

³ http://www.parliament.scot/S5_Public_Audit/HMICS_to_SPA.pdf

⁴ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103170.aspx>

⁵ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103589.aspx>

⁶ http://www.parliament.scot/S5_Public_Audit/2017_04_21_CSJ-JSC_re_HMICS_review.pdf

⁷ Scottish Government, *On Board - A Guide for Members of Statutory Boards*, March 2017

⁸ HMICS, *Annual Report 2015-16*.

⁹ The Herald, [Police Inspectorate probe into watchdog will examine resignation of SPA board member](#), February 2017.



8. This review will form part of a phased approach to the statutory inspection of the authority and will be undertaken in terms of the Section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012. A specific report will be prepared in respect of this review, highlighting our findings and any recommendations or areas for improvement that may be identified.
9. This review will complement our scheduled and more comprehensive statutory inspection of the Authority during 2017-18, including a wider assessment of leadership and governance.

Aim

10. The overall aim of this review will be **to assess the openness and transparency in the way that the Scottish Police Authority conducts its business**. It will specifically examine (i) the Authority's decision on holding meetings in private and the publication of meeting papers and also assess (ii) the Authority's compliance with relevant legislation, guidance and standing orders and the awareness and understanding of the Chair, Board members and SPA officers of these.

Background

11. The Scottish Police Authority was established on 1 April 2013. The main functions of the Authority are:
 - To maintain the Police Service;
 - To promote the policing principles;
 - To promote and support continuous improvement in the policing of Scotland
 - To keep under review the policing of Scotland, and
 - To hold the Chief constable to account for the policing of Scotland
12. The strategic vision for the SPA is 'to provide the people of Scotland with the very best police service possible and to strive for excellence in everything that we do'. This is supported by a Strategic Policing Plan,¹⁰ which sets out four strategic priorities, and an SPA Business Plan.¹¹
13. To date HMICS has not undertaken a formal statutory inspection of the SPA. It has however undertaken a *Continuous Improvement Review*¹² of Leadership and Governance within the SPA to report on how it was meeting obligations to secure best value and continuous improvement. This resulted in the development of an SPA Improvement Plan in January 2015. HMICS will consider the progress that has been made against these improvement actions as part of our scheduled and more comprehensive statutory inspection of the Authority during 2017-18.
14. A new Chair was appointed to the SPA Board in September 2015. At that point the Cabinet Secretary for Justice commissioned him to deliver a Review of Governance. This Review was published on 23 March 2016¹³ and the Scottish Government formally responded in June 2016.
15. At the request of the Chair, HMICS provided a Professional Advice Note (PAN) on options for future governance and delivery of Forensic Services in October 2016. This advice was to inform the outcome of the Governance Review and set out a preferred option for internal reorganisation to minimise the impact or cost of any change. The advice provided by HMICS was not taken up by the SPA, although it will now be included within the formal thematic inspection of Forensic Services which is due to report in early June 2017.
16. As previously highlighted, HMICS has publicly raised concerns in respect of the Governance Review, including holding Committees in private and restricting access to reports.

¹⁰ SPA, [Strategic Policing Plan](#).

¹¹ SPA, [Business Plan 2016/17](#).

¹² HMICS, [Continuous Improvement Review of Scottish Police Authority Leadership & Governance](#), October 2014

¹³ SPA, [Review of Governance in Policing - To Cabinet Secretary for Justice](#), March 2016.

User perspective

17. As set out in the Public Services Reform (Scotland) Act 2010, HMICS has a duty to demonstrate continuous improvement in user focus, involving users in the scrutiny process. In this inspection we will use available data from the SPA and the 'users' of its services. HMICS will engage directly with the key stakeholders, including police staff associations and members of the media and others who have a specific interest in the policing of Scotland and who may wish access to SPA meetings and papers. We will also engage directly with local authorities in terms of their statutory role in local scrutiny and governance.

Methodology & Timescales

18. We will use the HMICS Inspection Framework¹⁴ which is based on the Public Service Improvement Framework (PSIF), the European Foundation for Quality Management (EFQM) Excellence Model and Best Value Characteristics. The Inspection Framework will provide a structure to our inspection, which will be risk-based, proportionate and focussed on improving the delivery of policing in Scotland. We will primarily structure this focussed inspection around *Leadership and Governance*.
19. The inspection will be delivered as a single stage and will include the following elements:
20. Review of the development of the Chair's Governance Review and subsequent SPA Governance Framework. This will be restricted to an examination of how the SPA came to its decision around the meeting structures, privacy and the distribution of papers, its compliance with legislation, the extent of external consultation, feedback from stakeholders, evidence of Board member involvement and the formal governance processes for approval. It will also examine any benchmarking conducted by the SPA to inform its decision as well as considering how effectively the authority engages with its stakeholders outside of formal governance meetings in support of its statutory function.
21. Stakeholder engagement to gather and assess the views of those with an interest in the policing of Scotland and who may wish access to SPA meetings and papers.
22. Review of evidence provided to the Scottish Parliament in relation to openness and transparency in the way that the SPA conducts its business. This will include evidence provided to the Public Audit and Post-Legislative Scrutiny Committee, Justice Committee and the sub-committee on Policing. The purpose of this will be to identify relevant issues or concerns that have been raised by members of the Scottish Parliament and used to inform our inspection.
23. Review of media reporting in relation to openness and transparency in the way that the SPA conducts its business. The purpose of this will be to identify relevant stakeholders and capture issues or concerns that have been raised to inform our inspection.
24. Review of the SPA handling of the issues leading up to and arising from the resignation of Moi Ali as a Board member. This will be used as a "case study" to assess compliance with legislation, "On Board" guidance and the SPA Standing Orders. This will be restricted to a review of the available documentation and other evidence gathered in support of the inspection. This review is NOT an investigation into the specific circumstances and is not intended to address any complaint or grievance.
25. Assessment of the Chair, Board members and SPA officers' awareness and understanding of their specific roles and obligations. This will include an examination of the induction processes for Board members and involve interviews with the Chair, Board members and selected SPA officers. It will also include observations at private and public meetings to assess the conduct of meetings.

¹⁴ HMICS, [Inspection Framework](#), September 2014.



26. HMICS has made every effort to expedite this inspection and support the Cabinet Secretary's request for a report to be submitted within one month. However, given the time needed for planning, preparation, stakeholder engagement, fieldwork, analysis, report writing, factual accuracy checking and publication, we have reassessed our planning assumptions and are now committed to submit our report to the Scottish Parliament on **22 June 2017**.
27. Our report will be published in terms of Section 79 of the Police and Fire Reform (Scotland) Act 2012 and laid before the Scottish Parliament. A copy of the report will be provided to the Scottish Police Authority, the Chief Constable, PIRC and the Cabinet Secretary for Justice. A copy will also be made publicly available on the HMICS website.

Audit Scotland

28. HMICS has a statutory duty under Section 85 of the Police and Fire Reform (Scotland) Act 2012 to co-operate and co-ordinate activity with Audit Scotland. This includes sharing information about the SPA and Police Scotland and preventing any unnecessary duplication in relation to any inspections. HMICS and Audit Scotland have also agreed a Memorandum of Understanding¹⁵ which sets out how we will discharge this duty and work together. Given the statutory interest of Audit Scotland in the governance and accountability of the Scottish Police Authority, it has been agreed that it will support HMICS on this inspection. HMICS will also work with Audit Scotland to ensure alignment with planned External Audit work regarding governance standards and its previous report on the Role of Boards.¹⁶
29. This will not be a joint inspection and the report, any findings and recommendations will be determined by HMICS. However, the evidence gathered from this inspection and any analysis will be made available to Audit Scotland to inform their own scrutiny of the SPA.

Further Information

30. For further information about the inspection of the Scottish Police Authority please contact Tina Yule, Lead Inspector - Christina.Yule@gov.scot

Derek Penman QPM
HM Chief Inspector of Constabulary in Scotland
May 2017

¹⁵ HMICS and Audit Scotland, [Memorandum of understanding](#), September 2014.

¹⁶ Audit Scotland, [The role of boards](#), September 2010.



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About Her Majesty's Inspectorate of Constabulary in Scotland

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

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