

Follow up Written Submission from the Scottish Police Authority (SPA) from meeting on 21 December 2017

Further to the written evidence submitted by the SPA to both the Justice and PAPLS Committees, the following supplementary evidence relating to the annual 2016-17 audit of the SPA and the related section 22 report is submitted for the specific attention of the PAPLS Committee.

2016-17 audit

The priority for the SPA for the 2016-17 year, and the expectation placed upon the then Chief Executive and Accountable Officer, was the successful delivery of an unqualified accounts and annual report and one which was free from any modified opinion from the auditors. Notwithstanding the deficiencies in governance processes and decision-making highlighted by Audit Scotland this outcome was successfully delivered.

The reports note an encouraging improvement in the quality of accounting records and access to information. Audit Scotland also noted that the budget setting process for 2017-18 was more transparent and comprehensive, more frank in its commentary on the scale of financial challenge, and more detailed in providing information on revenue, capital and reform expenditure.

Exit Arrangements for SPA Chief Executive

The SPA operates within a public sector framework of no compulsory redundancies. That affects the range of available options when any individual member of staff is impacted by significant organisational change. In these circumstances an individual can choose to be considered for voluntary redundancy or early retirement. Alternatively they can enter a 'supernumerary pool' and carry out suitable project work, while retaining the option to leave on voluntary terms. Or they can wait until a suitable alternative role becomes available, an option which is limited in scope for individuals holding such senior positions as a Chief Executive. One role which would have been open to Mr Foley to apply for, had the SPA not explored the voluntary route, would have been that of the Interim SPA Chief Officer.

The imperatives decided by those leading the SPA's process at that time were three-fold:

- to change as quickly as possible the reporting relationship between Forensic Services and the Board, responding to recommendations from a June 2017 HMICS thematic review of Forensic Services and a previous 2016 HMICS Professional Advice Note;
- to secure business continuity despite the consequential redundancy of the Chief Executive Officer (CEO) role by recruiting an Interim Chief Officer before the CEO left the organisation; and
- to ensure that the CEO as Accountable Officer remained in post long enough to complete and present to the Board the 2016-17 annual report and accounts, and then leave the organisation immediately thereafter to enable the Accountable Officer responsibilities to transfer to a newly appointed Interim Chief Officer.

These business objectives, which were subsequently delivered effectively, provided the employment context within which the SPA considered options to achieve the objectives, including the use of payment in lieu of notice.

Review of PILON Payment to Mr John Foley

On 21 December 2017 the Committee expressed concerns about the quality of the decision-making applied by the SPA Board in mid-2017 in agreeing the terms of John Foley's exit from the SPA, and about the size of the financial payments involved. The Committee's concerns about payments reflected criticisms made in the Auditor General's Section 22 Report about the SPA's use of Payment in Lieu of Notice (PILON) and said that in doing so the SPA had incurred an additional three months' salary costs unnecessarily. In addition, Paul Johnston, the relevant Scottish Government portfolio Accountable Officer, wrote on 21 December to the recently appointed SPA Chair who had taken up post on 4 December noting his concerns and asking that the relevant payment be paused to allow a review in the light of the Committee's concerns.

Following the Committee's meeting the SPA Chair instructed that that the PILON sum of £56,666.50 due to be paid to Mr Foley the following day should if possible be withheld pending a review. The PILON payment to Mr Foley was subsequently paused, and only the agreed early retirement sum of £43,470 was paid to Mr Foley as planned on 22 December 2017. The Chair instructed the SPA's Interim Chief Officer to carry out a review of the options available to the SPA now in respect of the PILON payment. That review has now been completed.

In carrying out his review the Interim Chief Officer took independent legal advice, as well as legal advice from within the SPA and HR advice. His conclusions were as follows. The financial aspects of John Foley's exit from the SPA are set out in a contractual agreement between him and the SPA, and Mr Foley has a contractual entitlement to be paid the PILON sum agreed. The current position is that the SPA has no option in law but to honour its contract with Mr Foley and that any attempt to reduce the contractual obligation to pay would fail. In addition it is likely that if the SPA were to continue to withhold part or all of the PILON sum any subsequent legal challenge could result in the SPA being required to pay also legal costs arising from the action as well as the original full sum agreed. These costs could represent a significant additional proportion of the sum questioned by Audit Scotland (three months' salary costs equate to approximately £28,333).

Given the current position and having reviewed the options available now, the Chair has agreed that paying the sum agreed is the correct course of action and avoids further financial risks to the SPA. The Interim Chief Officer has now instructed the sum to be paid to Mr Foley.

Interim SPA Chief Officer Remuneration

At the 21 December 2017 PAPLS hearing reference was made to suggestions that the SPA's Interim Chief Officer, Kenneth Hogg, is paid £120,000 per year and therefore at the same level as the former Chief Executive. This is incorrect. As Interim Chief Officer, Mr Hogg is carrying out a significantly different role to the previous CEO role, the role has been evaluated as such, and he is receiving an annual salary of £107,500.

Public Audit and Post Legislative Scrutiny Committee

Written Submission from the Scottish Police Authority (SPA) for meeting on 25 January 2018

About the SPA

The SPA was established in 2013 under the Police and Fire Reform (Scotland) Act 2012 with the main functions of the Authority being:

- 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.

The SPA therefore has a key role in planning the strategic direction for policing in Scotland and ensuring that there is effective scrutiny and oversight of Police Scotland so as to ensure public accountability, confidence and trust.

The scale and scope of that role is considerable. The SPA has oversight of both local and specialist policing, for an annual budget of around £1 billion, and a workforce of more than 22,000 police officers and staff. The Authority is supported by a team of staff based in Glasgow, and also has statutory responsibility for the delivery of Forensic Services, independent custody visiting, and the handling of complaints about senior officers.

The SPA is also responsible for ensuring that policing delivers the strategic direction set out in the Strategic Police Priorities. Set by Scottish Ministers, these priorities form the foundation for the planning system for police services and set out communities' collective expectations for policing. The current Strategic Police Priorities are localism, inclusion, prevention, response, collaborative working, accountability and adaptability.

Future Strategy for Policing in Scotland

The SPA has a responsibility to maintain and improve policing in Scotland and so ensure that the police service is equipped to meet changing needs, expectations and demands both now and in the future. The SPA has therefore worked collaboratively with Police Scotland to establish a long-term strategy for the development of policing in Scotland through to 2026, including how the service will achieve financial sustainability.

With the emphasis now shifting towards oversight of Police Scotland's implementation of that strategy, the role of the SPA will be to monitor and to help drive this ambitious programme of change with a final Implementation Plan due for consideration by the SPA Board in March 2018.

Development and Improvement

The SPA is continuing to develop and there has been extensive critical examination of its operations and effectiveness to date. In particular, a number of significant concerns have been raised about the leadership, governance and decision making processes of the SPA. These include the findings of Parliamentary Committees; inspection reports by HMICS (notably the Review of Openness and Transparency published in June 2017); reports on financial management from Audit Scotland; and audit of SPA complaints handling by the PIRC. Concerns have also been expressed in Parliament, and

more widely, that the SPA needs to do more to build confidence and trust in its role as the body overseeing policing in Scotland.

The Cabinet Secretary for Justice has also made clear that he expects to see significant improvement in these areas. The review which he commissioned to identify the ways in which the SPA Board can be better supported to deliver its statutory functions will report shortly. This work has been led by SPA Deputy Chair Nicola Marchant and Comhairle nan Eilean Siar Chief Executive Malcolm Burr who have undertaken an extensive programme of engagement with key stakeholders. Their findings and observations will play an important part in informing the changes and developments within the SPA which are now underway.

To drive forward the pace of change and improvement, there have been key changes in the leadership of the SPA. A new Interim Chief Officer took up post on 13 November 2017 and the new Chair of the SPA took up her post on 4 December 2017. Since taking up their respective roles the Interim Chief Officer and Chair have given careful consideration to identifying the priority areas for improvement and development within the SPA. They have engaged widely with key stakeholders and with the leadership of Police Scotland both to inform thinking and strengthen relationships, and have placed a significant emphasis in working to build capacity and capability within the organisation and to foster a collaborative approach to improvement and change.

The new Chair has set out a number of guiding principles for the development and improvement of the SPA going forward:

- simplification, transparency, and clarity around the SPA's governance processes;
- a more collaborative approach, where the SPA reaches out to engage more actively with interested individuals and bodies on policing issues and works more closely with key stakeholders;
- enshrining a strong public service ethos throughout the SPA and its decision-making;
- robust decision making underpinned by effective process and enhanced professional advice;
- building trust and relationships within policing and beyond;
- ensuring the SPA Board's structure, practices and behaviours are more strategic and that Board members are more non-executive in their work and contributions;
- continuous and accelerated improvement to reflect the scope of the challenges the SPA faces, with Board and staff working at pace to make rapid, visible change.

The SPA has acknowledged the need for improvement in its decision-making processes, and the new leadership team has moved quickly to begin to deliver change and improvement:

- the previous practice of holding public meetings and closed meetings has been replaced and from now on there will simply be meetings of the SPA Board with consideration of items of private business as necessary, in line with established practice by other public bodies;
- the Board is being strengthened and developed. Five new members are currently being recruited and work is in progress to review performance and to provide greater training and

development for Board members, in particular with regard to the roles, duties and responsibilities of a public authority;

- a dedicated Complaints and Conduct Committee has been re-established to bring focus to the often complex issues that surround senior officer complaints. It has already met, underpinned by improved support, process and enhanced professional advice.

These changes mark the beginning of an ongoing process of accelerated improvement. Further work is underway to develop the structure, processes and practices required to ensure good governance across the SPA's activities and this work is being supported by HMICS.

The new Chair has signalled her determination to develop the key role of the SPA as the public body which oversees and scrutinises Police Scotland in a way that supports and challenges their work in the wider public interest.

Developing the appropriate trust and relationships; clarifying roles and responsibilities and establishing effective communications, process and practice in key interfaces - with Police Scotland, Scottish Government, the Scottish Parliament, HMICS, Audit Scotland, PIRC and other stakeholders - is of fundamental importance.

Complaints and Conduct Issues

The SPA has a statutory responsibility to deal with complaints and misconduct allegations regarding senior officers of Police Scotland. This is an important function and it is incumbent upon the SPA, as with other bodies with a role in the complaints and investigations process, to act in accordance with the appropriate legal and regulatory frameworks and to have due regard to a range of often complex and sensitive issues.

Significant current cases, including allegations relating to the Chief Constable, are a matter of public record and are being considered through due process. The SPA, given its statutory functions in complaints handling and its responsibilities as an employer, will not comment further on this or other live cases. Where and when it is deemed appropriate and lawful, and in the public interest, decisions and developments will be formally announced.

The SPA recognises that the public, Parliament, the Scottish Government and many other stakeholders have an interest in these matters and have a legitimate expectation that such decisions will be carefully considered and underpinned by sound process. The Chair of the SPA has set out her commitment to work to ensure that the SPA's decision making processes are robust. She has also signalled a desire going forward to work with others involved in the area of complaints and conduct to bring about improvements to the existing system, including to ensure that the confidentiality of complainants, and those complained about, can be best protected in the future.

Conclusion

It is vital that the SPA works to build confidence and trust. This is a prerequisite to delivering its statutory functions and to providing effective scrutiny, support and oversight of Police Scotland. Improvements in leadership, governance and management are key and this will be an area of significant effort and change in the year ahead.

Policing is one of our nation's most important public services. Going forward, it is vital that the SPA, and all those with a role and an interest in shaping the future of policing of Scotland, stay focussed

on the overarching objective which is to ensure that the people of Scotland have a police service which is fit for purpose and fit for the future.