

Jenny Marra MSP
Convener
Public Audit and Post-legislative Scrutiny (PAPLS) Committee
Room T 3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

cc

Margaret Mitchell MSP
John Finnie MSP

28 March 2018

Our ref: SD/18/CW

Dear Ms Marra

The 2016-17 Audit of the Scottish Police Authority (SPA)

I write in response to the Committee's two letters of 23 February 2018 - one addressed to me as SPA Chair and the other to Dr Nicola Marchant in her capacity as then Deputy Chair - and your subsequent letter to me of 21 March 2018.

I also received correspondence from the Justice Sub-Committee on Policing on 23 February 2018, which echoed some of the concerns raised by your Committee and to which I responded on 8 March 2018. For completeness, I attach that at Annex A to this response.

All the various recent correspondence from both Parliamentary Committees has been circulated to all SPA Board members, and the following response has been agreed by the Board as a whole.

The fact that both the PAPLS Committee and Justice Sub-Committee on Policing have expressed strong concerns about the performance of the SPA Board, and have indicated a lack of confidence in members and their ability to perform their role adequately, is a matter which all Board members take extremely seriously.

We share a commitment to ensure that shortcomings in past performance and decision-making are addressed and that we work collectively, and with our executive team, to ensure that the Parliament, Scottish Government and other key stakeholders have confidence in the SPA's leadership and governance in the future.

We/

We are acutely aware of the significant body of critical comment that has built up on the past operations of the SPA from, among others, HMICS, Audit Scotland, the Parliament and several of its Committees. As Board members and public appointees, we are acting on the concerns raised and are determined to embed this learning into the programme of improvement now underway.

Through Board workshops, as well as one to one discussions between individual Board members and myself as Chair, key areas for attention and action have been identified, including:

- the Board as a whole working more effectively in the future by developing the standards of systems, practice and culture which are rightly expected of a major national public body;
- Board members making the transition, individually and collectively, to a more strategic and 'non executive' approach with a stronger public service ethos, and;
- Board members developing and demonstrating constructive challenge and decision-making in public that commands confidence and trust within policing and more widely.

The Board is also currently undergoing a significant programme of 'refresh'. We have worked at pace, supported by the Scottish Government, to progress a swift and thorough public appointments process. A great number of extremely able and committed people applied to join the Board, and I believe that is a measure of the commitment that clearly exists to developing policing in Scotland and ensuring that effective national accountability arrangements are in place.

On 23 March 2018, the Cabinet Secretary for Justice announced the appointment of seven new members to the Board – with phased start dates from immediate to later in the year. Three current members of the Board are due to come to the end of their second terms in the Autumn, bringing an opportunity for further Board refresh and, as the Committee's letter of 21 March 2018 notes, Dr Nicola Marchant has now stepped down from the SPA Board.

You asked whether other members are similarly considering their positions. I would like to give an assurance to you and your colleagues that SPA members have reflected very carefully on the views expressed by the PAPLS Committee.

As I said previously in my response to the Justice Sub-Committee on Policing, I believe it is important to acknowledge the range of work and contribution that SPA Board members have undertaken over the early years of the Authority's life. The level of commitment and input has been significant.

All Board members recognise the step change in direction and expectations that lies ahead, and all are focussed on stepping up to that challenge.

Both existing and new members will work together in the coming months to develop a revised set of Board and individual objectives, and we will publish our collective Board objectives alongside our SPA Corporate Plan. How successful the Board and I are in delivering against those objectives should then be a legitimate question for future Parliamentary scrutiny.

Your/

Your letter to me of 23 February 2018 also asked me to address a number of specific points and these are addressed at Annex B.

Your letter to Dr Marchant of 23 February 2018 also raised a number of specific questions in relation to the 2016-17 audit and these are addressed at Annex C.

I hope that this detailed response is of assistance to the Committee, and covers the issues raised across the three items correspondence received since 23 February 2018. The SPA Board is committed to engaging further with the Committee in the future as we work to build trust and confidence in the SPA and policing.

Yours sincerely

A handwritten signature in black ink that reads "Susan C. Deacon". The signature is written in a cursive style with a long horizontal stroke at the end.

Susan Deacon CBE
Chair, Scottish Police Authority

Annex A – SPA Response of 8 March 2018 to Justice Sub Committee on Policing



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Mr John Finnie MSP
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8 March 2018

Our ref: SD/CW

Dear John

Scottish Police Authority Board

Thank you for your letter of 23 February regarding the recruitment of new SPA Board members and the Sub-Committee's wider concerns regarding the performance of current Board members. I should stress that both the recruitment process and other measures to review and improve Board performance are 'work in progress', however I welcome this opportunity to provide an early update to the Committee. As I indicated to the Justice Committee when I appeared before them on 23rd January, I will keep the Committee, and the Sub-Committee, updated as further as this work progresses. Since I was appointed as SPA Chair on 4 December 2017, I have made the recruitment of new SPA Board members a priority. An open and regulated appointments process was put in place with an initial public 'trail' in December and a formal launch in January. This attracted a large number of high quality applications which have since been shortlisted. Interviews are taking place this week and I would anticipate that appointments will be announced, subject to Ministerial approval, later this month. Thereafter, it is anticipated that new Members will take up post on a phased basis from April onwards. I would like to take this opportunity to acknowledge the support of the public appointments and sponsor teams within the Scottish Government and the Office of the Commissioner for Ethical Standards in Public Life in Scotland in moving quickly to expedite a robust recruitment process for these important appointments.

With regard to current Board members, I believe it is important to acknowledge the range of work and contribution that SPA Board members have undertaken over the early years of the Authority's life. The level of commitment and input has been significant. Going forward, however, there is a need to transition into a more strategic and 'non executive' role with a stronger public service ethos and to ensure that SPA Board members, and the organisation as a whole, commands the confidence and trust of the public, Police Scotland, Scottish Government, the Scottish Parliament and other key stakeholders.

I note the wider concerns about Board performance expressed by the Sub-Committee and the Public Audit and Post-Legislative Scrutiny Committee and am now taking forward a series of 1:1 discussions with Board members as a pre-cursor to a formal performance

review process. The latter is an annual requirement for me as Chair and was last completed by my predecessor in the Summer/Autumn of 2017, however I intend to bring forward this year's performance review process to the Spring of 2018.

In addition to a focus on individual performance, it is essential that the Board works effectively as a collective with a shared sense of vision, values and purpose, and also works effectively with the executives of both Police Scotland and the SPA. I have therefore set in train a number of measures to develop the Board as a whole, including several strategic Board workshops which will, going forward, be integrated with a programme of induction activities for new Board members. This work is taking place in tandem with work to develop the capacity and capability of the SPA executive team. At last week's SPA Board meeting, the Interim Chief Officer and I provided complementary update reports on SPA improvement work from our respective positions, and I attach links to these below for the Sub Committee's information.

- SPA Chair's Update:
<http://www.spa.police.uk/assets/126884/441011/441165/445320/445624>
- SPA Interim Chief Officer Update:
<http://www.spa.police.uk/assets/126884/441011/441165/445320/445332>

Finally, I note the Sub-Committee's continuing interest in the SPA's ability to fulfil its statutory role as an arms-length public body operating as an important 'buffer' between government and policing and your request for my views regarding the fact that several members of the SPA's Senior Management Team have either previously worked for, or are temporarily seconded from, the Scottish Government. I do not believe this in any way compromises the SPA's ability to carry out our functions. Indeed, I think it is important to recognise that these staff are professionals who fully understand their duties and responsibilities while working for the SPA. Given the SPA is a major national public body it is to be expected that we will from time to time recruit staff who have worked for the Scottish Government and who bring with them valuable and relevant skills and experience. Furthermore, as I said at the Justice Committee, I welcome the fact that the Cabinet Secretary has indicated his commitment to work in partnership with the SPA to support us in a period of intense improvement work and believe that drawing upon the skills and experience of relevant Scottish Government officials, including through secondments, is a vitally important way of so doing.

I trust this response is helpful and would be pleased to provide further updates in due course. As I said to the Justice Committee, I believe that the most effective way to keep public bodies at arm's length is to have bodies that are led effectively and which function effectively and I am determined to continue to make progress in this regard so that the SPA can play its full part in scrutinising, monitoring and supporting the development of policing in Scotland both now and in the future.

Yours sincerely



Susan Deacon CBE
Chair, Scottish Police Authority

Annex B – Additional Response to Points Raised in PAPLS Letter to Ms Deacon of 23 February 2018

Review of Governance documents

A comprehensive review of the SPA's corporate governance documents, policies and processes is under way as part of wider efforts to improve corporate governance. This work is essential to ensure that the systems and processes in place are robust, fit for purpose and do not create unnecessary duplication or complexity – both between executive and non-executives within the SPA and between SPA and Police Scotland.

The following documents are in the process of being reviewed and, where necessary, updated:

- Financial Regulations
- Police Scotland Scheme of Financial Delegation
- SPA Scheme of Delegation (financial aspects)
- SPA Budget monitoring and month end guidelines
- Forensic service Budget monitoring & month end guidelines
- Financial Protocol
- Governance and Accountability Framework
- Monitoring arrangements for the Reform and Change funding
- Relocation policies (officers and staff)

Review of former CEO decisions

As Chair, I have already stated in evidence to Parliament that I had concerns about the way in which some previous SPA decisions have been taken, at both a Board and senior executive level. As a priority we have already taken significant steps around strengthening process, procedure and practice in the handling of complaints and conduct issues, and a number of important decisions have been taken through that work that I believe are of the standard that should be expected of the SPA.

In terms of past financial decisions, following consultation between the chair of the SPA audit and risk committee and the then Chair, an investigation by SPA's internal auditors was commissioned in May 2017 into a number of allegations of potential inappropriate use of funds. A draft report from Scott Moncrieff (the Authority's internal audit service providers) was considered initially at the January meeting of the Audit and Risk Committee, and presented in full at the March 2018 meeting alongside the management action plan. The report makes a number of recommendations for improvement, which have been accepted. While that report contains information about third parties that would preclude its publication, we will ensure that a report on its key findings and recommendations is published and we will ensure that the Committee is provided with a copy of that in due course.

Relocation expenses paid to the Deputy Chief Constable

As you will be aware from previous correspondence, following the concerns expressed by the Committee about the quality of decision-making applied by the SPA in relation to John Foley's exit from the SPA, the Interim Chief Officer of the SPA was instructed to withhold an outstanding payment in lieu of notice (PILON) to Mr Foley pending a review of the options. The situation in relation to the Deputy Chief Constable differs in a material way from that situation in that all payments have already been made.

Through both the letter of appointment that DCC Fitzpatrick received in 2012, and subsequent written HR correspondence to her, there is an evidence base to support her entitlement to make such a claim for expenses. While the Board fully acknowledge and agree with the conclusions and recommendations of Audit Scotland in relation to limiting the scale of any similar future payments, we do not believe there is a case for the SPA to pursue any further action in relation to payments already made without placing the SPA at further risk. As a Board, we feel it is also important through this response to state for

the record our view that the officer concerned has acted with integrity and good faith in her exchanges with the SPA on this matter.

SPA Member training and development

In addition to a focus on individual performance, it is essential that the Board works effectively as a collective with a shared sense of vision, values and purpose, and also works effectively with the executives of both Police Scotland and the SPA. We have therefore set in train a number of measures to develop the Board as a whole, including several Strategic Board workshops which have already taken place. Going forward these will be integrated with a programme of activities involving both new Board members and existing members.

SPA executive review

Following publication on 2 March 2018 of the review of the SPA Executive conducted by Nicola Marchant and Malcolm Burr, work is now being taken forward by the Interim Chief Officer to build new capacity and capability within the SPA's executive team. That work will include developing and consulting on a new structure for the organisation which will better support the delivery of SPA's core functions. It is anticipated that an initial draft target operating model will be developed by end-April 2018, and the Interim Chief Officer has already advised the Board that additional capacity and capabilities will be required to support the Authority in effectively carrying out its wide range of responsibilities.

Annex C – Additional Response to Points Raised in PAPLS Letter to Dr Marchant of 23 February 2018

Response to Audit Scotland concerns about value for money

The Auditor General's 2016-17 annual audit report has been fully accepted by the Board of the SPA and all actions and recommendations contained within it are being addressed by SPA and Police Scotland. The SPA Audit and Risk committee became aware of the findings and opinions of Audit Scotland on 22 November, and the full Board at its meeting of 28 November 2017. The overarching purpose of the SPA's audit and risk committee is to seek evidence and provide assurance to the Board that appropriate levels of internal control are in place, and it does so by examining the findings of both internal and external audits.

While much of the work of SPA's Audit and Risk Committee is to look back, it also uses the findings of audit to inform the development of internal audit requirements for the forthcoming year. A link to the 2018-19 SPA internal audit plan is attached below, and as you will see a significant portion of that Plan is devoted to elements of financial control across policing.

<http://www.spa.police.uk/assets/126884/415820/441176/446314/item6>

Remuneration reporting in accounts

With regard to the payment of relocation expenses, and its handling by the former SPA Chief Executive and Police Scotland's Chief Financial Officer, Audit Scotland notes in its annual audit report that 'Board members were not advised of these payments at a Board or Committee meeting' and further that 'the payment was...not identified by finance staff for inclusion in the remuneration report within the unaudited annual report and accounts, which were considered by the Audit and Risk Committee on 25 July 2017.

Recommendations for improvement have been made by internal auditors, and actions are being implemented by SPA and Police Scotland management. Progress on the delivery of these will be reported to, and monitored by, the Audit and Risk Committee at each of its meetings.

Former CEO Exit Arrangements

The SPA has already provided evidence to the Committee on the objectives and employment context within which the then Board took its decisions in relation to Mr Foley. As you are aware, Dr Nicola Marchant led the work within the then Board in relation to Mr Foley's exit, and since the Committee's correspondence of 23 February she has taken the decision to step down from the Board of SPA. In advance of her departure she provided responses on the two aspects of the CEO exit that the Committee sought further information upon, and these are included below. Contributions from Dr Marchant are marked in italics.

Unnecessary three months of payments to Mr Foley

"The alternative option referred to by Audit Scotland that could have resulted in a saving of 3 months' salary would have required notice to be served to Mr Foley on the 18th August. He would then have worked 2 months of his 6 month notice until the approval and submission of the annual report and accounts which at that time were due to be approved at Board meeting on 31st Oct. However due to delays this did not occur until Board meeting on 28th November 2017.

Therefore in order for the unnecessary payment of 3 months' salary, consultation would have still have had to end on 18th August and the accounts would have had to be approved on 31st October 2018.

However, it was my view that in order to fulfil our obligation to conduct meaningful consultation further meetings with Mr Foley and HR would have been required which could have resulted in a delayed serving of notice by at least 2-4 weeks (our process requires impacted individual to be given 1 weeks' notice of a meeting and then 1 week to consider any proposal). This would have meant that notice would have been issued around mid-September with Mr Foley working 1 months' notice and 5 months PILON assuming accounts were approved 31st October.

More importantly the announcement of Mr Foleys decision to leave by VER could not have taken place on 24th August and the advertising and recruitment of an Interim Chief Officer could have been impacted which could have led to the non-delivery of business objectives. This led to the decision, supported by the then Board, to serve notice on the day of approval of the accounts and PILON."

Transition of accountable officer responsibilities

"With reference to the 21 December 2017 meeting where Audit Scotland stated that they had made representations to the Board but the Board 'did not stop and think about what was happening', I would like to note that these representations were made via a teleconference between myself and Stephen Boyle on 13th October 2017. At this time the SPA had already entered into a contractual agreement (18th August 2017) with Mr Foley regarding VER and PILON. This view was subsequently reinforced by the review carried out by the Interim Chief Officer in December 2017. Neither the Board nor any of the Committees considered dismissing Mr Foley."

FOI and Legal advice

In the specific case raised regarding Ms Ali, the SPA must be conscious of its obligations and responsibilities in terms of the handling data of third parties when dealing with such requests. In ultimately reaching an agreement to the disclosure of appropriate information to Ms Ali, we understand that both the officers of a third party and the officers of SPA had cause to seek their own legal advice. While board members will seek assurance on the Authority's overall performance and handling of this work, the requirement for legal advice in a specific case is a decision taken by the Interim Chief Officer (and in a past case such as the one highlighted by the then Chief Executive Officer).

Yours sincerely



Chair,
Scottish Police Authority