



# HM Inspector of Constabulary in Scotland

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HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012<sup>1</sup> 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).

We have a statutory duty to ensure that the Chief Constable and the SPA 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.

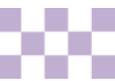
- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions.
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions.
- When 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.<sup>2</sup>

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<sup>1</sup> Chapter 11, Police and Fire Reform (Scotland) Act 2012.

<sup>2</sup> HMICS, [Corporate Strategy 2014-17](#) (2014).



# Introduction

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1. This Professional Advice Note (PAN) has been produced by HMICS as part of our established role in providing professional advice and guidance on policing in Scotland and will be provided directly to the Chair of the SPA and copied to the Chief Constable and Scottish Government Police Division for their consideration.
2. HMICS wishes to thank the Scottish Police Authority, Director of Forensic Services, Police Scotland, Professor Nick Fyffe, and other key stakeholders for their support and co-operation during the preparation of this Professional Advice Note.

## Purpose

3. The purpose of this Professional Advice Note is to provide advice on options for the governance, scrutiny and management of forensic services in Scotland. This has arisen as a result of a Review of Governance in Policing<sup>3</sup> by the SPA Chair and in particular Recommendation 11 of that review (see paragraph 16 of this report).
4. This Professional Advice Note does not constitute formal inspection and does not make formal recommendations, rather it is intended to provide professional advice on behalf of Her Majesty's Chief Inspector of Constabulary in Scotland. Although predominantly evidence-based, it encapsulates professional opinion based on extensive combined experience of policing and corporate governance. The Professional Advice Note should inform and engender further discussion with stakeholders and provide exemplars of how a revised governance model might work. In this regard the paper provides a high-level summary of options and is founded on both a legal and practical framework across three key questions:
  - Why – is there a need for a change to the current model?
  - What – are the benefits of the change?
  - How – could the process of change be delivered?
5. Where reference is made to the 'Forensic Service' we refer to the current function within the SPA. Where reference is made to 'forensic services' we refer to the general delivery of forensic-related services by any service delivery agent or body.

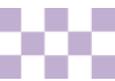
## Methodology

6. We have used the HMICS Inspection Framework<sup>4</sup> which is based on the Public Service Improvement Framework (PSIF), the European Foundation for Quality Management (EFQM) Excellence Model and Best Value Characteristics. The Framework provides a structure which is risk-based, proportionate and focused on improving the delivery of policing in Scotland. We structure our work around six themes:
  - Outcomes
  - Leadership and Governance
  - Planning and Process
  - People
  - Resources
  - Partnership

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<sup>3</sup> SPA, [Review of Governance in Policing: To Cabinet Secretary for Justice](#), March 2016.

<sup>4</sup> HMICS, [Inspection Framework](#), September 2014.



## Initial Scoping

7. Initial scoping was essential to identify areas of productive working, along with areas of risk and areas for improvement. This enabled our inspectors to focus resources, minimise the burden of our work and provide sufficient evidence to make judgments in relation to our six overarching framework themes and specific objectives.
  - We have had preliminary engagement with the Forensic Service, Police Scotland, PIRC and COPFS.
  - A single point of contact for HMICS was identified by the Forensic Service and Police Scotland to support the process and to facilitate appropriate access to people and information.
  - We benchmarked with other similar bodies and agencies in relation to the delivery of forensic services (England and Wales, Northern Ireland and elsewhere). This supported the development of an evidence-based options appraisal.
8. This stage also included desktop research, relevant academic research, previous inspection reports and meetings with interested parties.

## User Perspective

9. As set out in the Public Services Reform (Scotland) Act 2010, HMICS has a duty to demonstrate continuous improvement in user focus i.e. involving users in the scrutiny process. In this process we have used available data from the SPA and the users of its services namely Police Scotland, PIRC and COPFS. Similarly, direct engagement with key stakeholders including the Scottish Police Federation (SPF), the Association of Scottish Police Superintendents (ASPS) and Unison has been part of our approach.

## Options Appraisal

10. HMICS has adopted a standard approach to options appraisal, utilising best practice and key guidance material from a number of sources.<sup>5</sup> This methodology consists of eight standard stages of which Stages 1-5 will be undertaken by HMICS:

Stage 1: Define objectives  
Stage 2: Develop options  
Stage 3: Gather information  
Stage 4: Assess options  
Stage 5: Analyse options

and the remainder by the SPA and Scottish Government:

Stage 6: Consultation  
Stage 7: Choose preferred option  
Stage 8: Reporting

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<sup>5</sup> CIPFA 'General Guidance on options appraisal' February 2010. Accounts Commission '[Options Appraisal: Are you getting it right?](#)' March 2014. National Audit Office, '[Option Appraisal: Making informed decisions in government](#)', May 2011. HM Treasury, '[The Green Book – Appraisal and Evaluation in Central Government](#)', 2003 (revised July 2011).



## Why is there a need for change?

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11. Establishing why there is a need to change the 'status quo' is a prerequisite for the consideration of alternative options for governance of forensic services in Scotland. This has essentially been established by the Chair of the SPA indicating that the role of both the Board and the organisation itself is one of governance and not service delivery. HMICS has however undertaken a full review of the challenges and issues associated with current governance in order to fully explore the case for change.

### Context

12. Establishing the context for change is essential in identifying any risks or issues which are evident within the current governance model.

### HMICS Scrutiny Programme

13. HMICS had already committed to an inspection of forensic services in 2016/17 and intended to scrutinise the existing governance arrangements as part of that process using our statutory powers. HMICS identified an opportunity to accelerate our work to support delivery of the Governance Review, and following a request from the Chair, has developed this Professional Advice Note specifically in reference to the governance of the Forensic Service. HMICS will commence its wider review of the Forensic Service in December 2016.

### Chair's Governance Review

14. Andrew Flanagan was appointed as the new Chair of the SPA Board in September 2015. At that point the Cabinet Secretary for Justice commissioned him to deliver a Review of Governance by March 2016. This Review was published on 23 March 2016. The Scottish Government formally responded to the Review in June 2016 and generally welcomed the approach to:
  - Principles of Good Governance – clarity of roles and relationships
  - Localism and Community Accountability – enhancing support to community partners and assessing effectiveness of local engagement
  - SPA structures and skills – skills, structures and procedures to deliver effectively Information Requirements and Processes – focus on performance and a review of strategic planning and reporting
  - Stakeholder Engagement/Contribution to Wider Policy Objectives – a more strategic approach to engagement, a clearly articulated role and commitment to public sector collaboration
15. The response does note that whilst willing to explore options in terms of removing the service delivery functions of the SPA and reviewing organisational structures, the Scottish Government believes that the fundamentals of the Act remain sound. It notes that any changes that require adjustments to the Act must take account of the timescales required for primary legislation and the uncertainties associated with securing a Parliamentary slot for a Bill. They encourage a focus on options for improvement within the framework of existing legislation which can be taken forward more speedily.
16. In the Review, the Chair notes that there are a number of other public bodies which have influence and powers over policing in Scotland creating a complex landscape which can lead to confusion about responsibilities, respective boundaries and demarcation lines and that some anomalies persist. The Chair provides the example of the Forensic Service which sits

within the SPA, deliberately separated from the police service in order to preserve the integrity of evidence. However, the Forensic Service does not have responsibility for the growing forensic area of ICT/Cyber evidence as this still sits within Police Scotland.

Recommendation 11 of the review states that:

*‘Consideration should be given to reorganising or removing the service delivery responsibilities of the SPA and reinforcing its purpose as a governance body. This would focus particularly on its current service delivery responsibilities for Forensic Services, Independent Custody Visiting and Complaints & Conduct’.*

17. Responsibility for this recommendation was allocated jointly to the Scottish Government and SPA and was estimated to complete by the end of September 2016 (6 months). SPA Board Members have since agreed that custody visiting and the Forensic Service should remain under the control of the SPA. Complaints handling will continue to be overseen by the SPA, but with the processing and investigation of complaints proposed to be carried out by the Police Investigations and Review Commissioner.

## Legislative Requirements

18. The Police and Fire Reform (Scotland) Act 2012 makes provision for policing and sets out the roles and functions of both the SPA and the Chief Constable of the Police Service of Scotland. Relevant elements to this Professional Advice Note include:
  - The Scottish Police Authority (SPA) maintains the Police Service, holds the Chief Constable to account for carrying out the duties set out in section 17 of the Act and providing forensic services - section 2(2).
  - The SPA and the Chief Constable have a statutory duty to secure **best value** - section 37.
  - The SPA must provide forensic services to the Police Service, the Police Investigations and Review Commissioner (PIRC) and the Lord Advocate and Procurators Fiscal - chapter 3, section 31.
19. No other specific requirements are placed on the SPA in terms of the Forensic Service itself, although other provisions in the Act will apply (e.g. Chapter 13 – ability to provide goods and services to any other public body or office-holder). This provides for some flexibility in the governance and delivery model for forensic services. **Any move to separate the Forensic Service from the SPA would require legislative change, with associated financial, resource and time constraints.**

## Current Position of the Forensic Service

20. There are a number of key opportunities, challenges and risks which currently face the Forensic Service. These include the opportunity to develop income generating activity whilst facing significant budgetary and customer demand pressures.
21. HMICS will conduct a thematic inspection of the Forensic Service between December 2016 and March 2017 which will examine the state, efficiency and effectiveness of wider operational delivery, management arrangements and internal governance. This will include a wider evaluation of the capability, capacity and legitimacy of increased income generation.



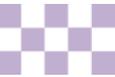
22. The Forensic Service plays a crucial role in supporting police in the investigation and detection of crime. The services include:
- Chemistry
  - DNA
  - Drug analysis
  - Scene examination
  - Specialist services
  - Fingerprints
  - Biology
  - Multimedia unit

## Forensic Governance

23. The current governance structure is shown below:

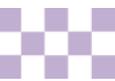


24. A Strategic Partnership Forum has been formed with the Forensic Service, Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS). This forum meets regularly under the chair of the SPA Chief Executive Officer (CEO). Updates on these meetings are currently provided to the SPA Audit and Risk Committee. Member involvement in this forum is inconsistent and there are no direct links to formal scrutiny other than through updates to the Audit and Risk Committee and limited performance reporting to the SPA Board.
25. Public scrutiny of the service is currently restricted to regular performance reports to the full SPA Board.
26. An Improvement Group is leading the work on delivering a programme of improvement work and has membership from the Forensic Service, Police Scotland and COPFS. An Operational Group and an Innovation Group support the work of the Improvement Group.
27. The Director reports to the Chief Executive Officer of the SPA and is a member of the SPA Senior Management Team (SMT). The Chief Executive Officer is accountable to the Board for the performance of the Forensic Service.



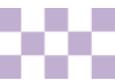
## Organisational Structure

28. The senior management structure of the service consists of a Director supported by:
  - 3 x Functional Scientific Heads (Biology, Scene Examination and Physical Sciences)
  - 1 x Head of Quality
  - 1 x Head of Business Support
29. These are supported by operational managers. The current resource allocation is 485.86 FTE (494.86 staff).
30. A Forensic Service modernisation programme began in 2010 and was completed in 2013, resulting in five distinct functions reflected in the 'new' management structure:
  - Biology and DNA
  - Physical Sciences
  - Scene Examination and Imaging
  - Business Support
  - Quality
31. The operational budget in 2014/15 was £23.81m rising to £23.95m in financial year 2015/16. The service had made £2m efficiency savings in 2012/13 and was required to make £1.3m in 2013/14.
32. This financial year (2016/17) the Forensic Service has a significant financial challenge to deliver £1.8m of efficiencies against a budget of £26.7m. The Forensic Service is forecast to have a net spend of £27.3m in 2015/16 which is an overspend against budget of £1.5m on revenue expenditure and £500k underspend on the capital budget. HMICS will consider plans for delivery of savings in our forthcoming inspection.
33. The Forensic Service currently has no ongoing established capital programme, but has an allocation of up to £600k in 2016/17. This enables current standards to be maintained and seeks to maintain scientific equipment at an acceptable level with only business critical expenditure requested from the core capital budget. This allows for bids on a project by project basis, as with all other Police Scotland and SPA functions, for capital allocation.
34. Scene Examination is delivered from seventeen satellite offices across Scotland, including four which are co-located with the laboratory based activities. There are two high volume processing centres in Glasgow and Dundee with four local satellite labs in Glasgow, Dundee, Aberdeen and Edinburgh. A firearms unit is based in Glasgow (using the National Ballistics Intelligence System NABIS) with links to the United Kingdom (UK) and the European Union (EU).
35. Drugs are dealt with in the two main high volume processing centres with an additional two FTE staff based in Aberdeen for this purpose.
36. Imaging is delivered through a two centre model based at Glasgow and Dundee and the Multi-media unit is based in Glasgow.
37. All productions are transported to stations by police personnel; however an outsourced transport provider delivers the productions to and from laboratories.



## Managing Demand

38. Work has been ongoing for some time to understand the demand profile for forensic services and how the service is set up to meet this demand. Recent review work has highlighted key areas for improvement work:
  - Enhanced identification of the current and anticipated demand for the service and how demand could be managed.
  - Assessment of the Forensic Services' capacity to meet demand with regards how it undertakes capacity planning and management, including where resources are located, how they are utilised and an assessment of key business processes.
  - Assessment of delivery of services, taking into account existing performance management framework and adherence to Service Level Agreements (SLAs) and use of technology.
  - Identification of areas where the Forensic Service could potentially position itself within the competitive forensic market and generate income to support improved service delivery to its users.
  
39. As noted above, an Improvement Group has been set up by the key stakeholders and a project/delivery plan is now in place to deliver the benefits associated with the Joint National Forensic Gateway (JNFG) and how it can assist with the management of demand for forensic services.



# Options appraisal

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## Objectives

40. In setting objectives for this options appraisal, it is critical that the trigger for such an appraisal is clearly identified and that objectives are clearly defined and link to strategic objectives and outcomes.
41. The trigger point for instigating this options appraisal process has been the Chair's Governance Review. The objectives of this options appraisal are to:
  - Identify options for the governance and scrutiny model for forensic services in Scotland.
  - Reflect the views of key stakeholders and current good practice in governance.
  - Preserve the established principle of independence of forensic services to assure the integrity of evidence in the Scottish criminal justice system.
  - Consider the future sustainability of the Forensic Service.
42. These directly support the SPA's strategic commitments to provide appropriate support to Police Scotland in its delivery of services and enable the monitoring and delivery of strategies and plans.
43. The governance of forensic services must ensure that quality standards are maintained, that there is proper ethical oversight, and that a cost effective service is delivered to law enforcement and the criminal justice system, providing robust and relevant forensic evidence, and in so doing strengthens public and judicial confidence in forensic science. This governance role must also ensure greater consistency of service quality, resilience, reliable capability and economies of scale.

## Consultation

44. Key stakeholders have been identified as the SPA, the Forensic Service, Police Scotland, COPFS, SPF, ASPS, UNISON and PIRC. The challenges listed were raised by stakeholders during our initial engagement process and informed by research, documentation review and our ongoing observations of the SPA Board. A number of key themes have emerged in terms of governance challenges :

## Role of the SPA

45. The role of the SPA is clearly set out within the Act, however there has still been much debate about how this role is delivered and the relative responsibilities of the SPA and the Chief Constable. The Chair in his Governance Review identifies a tension between being a strategic governance body and the delivery of services to the body it is holding accountable for delivery. Whilst this clearly presents a challenge in terms of shared governance over both a supplier and a customer, it does allow for a single point of resolution where there are any conflicts or service issues between the two parties. **However the SPA does not provide governance over, nor represent, the other primary customers of the service and cannot direct or influence their level of demand or relative prioritisation.**
46. As previously noted, the public scrutiny of the service is currently restricted to regular performance reports to the full SPA Board. Although SPA members have attended the Strategic Partnership Forum, this has not been consistent. **HMICS views the level of current scrutiny by SPA board members as limited, although is aware that the**

## Governance Review intends to address some of these issues.

47. There is risk in the current governance model where the Board could be perceived as a supplier of services to have a vested interest in one customer i.e. Police Scotland. HMICS has not identified any evidence of this other than the potential for risk identified by stakeholders. In terms of other public bodies such as Local Government, these issues are often resolved through the creation of Trusts or an Arms-Length External Organisation (ALEO) to separate the customer and supplier roles.
48. **The service supplier role of the Director of Forensic Services is fundamentally different to those of the other Directors of the SPA, whose roles are focused on support to the scrutiny and governance role of the SPA Board and not in the delivery of services.**

## Requirement for Independence of the Forensic Service

49. Independence from policing and the rest of the criminal justice system is a principle which all stakeholders have highlighted to HMICS as key to the service provided. Evidence was cited from a number of sources of this being an established principle:
  - A 2009 National Academy of Sciences report into Forensic Science in the USA, which found that forensic services should be independent from law enforcement.
  - Legal challenges in relation to the Scottish DNA Database having highlighted the need for a consistent and proportionate approach to the retention and management of police data.
  - Case examples including Shirley McKie and the murder of Kevin Carroll 2010, were cited as having established the need for the independence of forensic science services to eliminate any perception of undue influence by policing and guarantee the reliability of evidence in court.

This independence was also cited during the police reform process :

- As part of the development of the 2012 Act, a rationale was set out that any move away from the centralised SPSA model established in 2007 would not be desirable. *“The separation required between forensic services and operational policing is already in place and any move away from this would be considered a retrograde step”.*<sup>6</sup>
  - ‘Since 2007 there has been a ‘crime scene to court’ Forensic Service which has been part of – and accountable to – the Scottish Police Services Authority (SPSA) and has been independent from police forces. The independence of the Forensic Service from the police is being maintained through police reform. The Police and Fire Reform Bill Memorandum explained that *“in order to maintain public confidence in the criminal justice system, a new structure will reflect the need to maintain a ‘sterile corridor’ between police investigations and forensic investigations”.*<sup>7</sup>
50. The SPA website states that *‘One of the central tenets of the Police and Fire Reform (Scotland) Act is that Forensic Services are not under the direction and control of the Chief Constable. Instead these services are managed and delivered as part of the Scottish Police Authority - ensuring a suitable degree of independence and impartiality while also supporting the strong crime scene to court partnership that Forensic Services has with both operational*

<sup>6</sup> Scottish Government internal email

<sup>7</sup> ‘Governance and Management Arrangements of the Forensic Service – Transfer of the Forensic Service’, Project Board paper - December 2012

51. However HMICS notes that police forces in England and Wales, and many other countries, at the present time still undertake forensic services themselves e.g. crime scene investigation, search and recovery, fingerprints, image processing and the control of submissions for analysis and interpretation to Forensic Service Providers (including private sector services e.g. DNA profiling, toxicology and drug analysis).

## **Accountability and Transparency**

52. Most recently, public reporting has been confined to a regular update on Forensic Service performance as part of the SPA Chief Executive Officer's report to the SPA Board at each of their meetings. However in June 2016 it was noted that the Forensic Service will be reported on a standalone basis by the Director of Forensic Services in the future.
53. As stated above, this has for the most part been subject to limited scrutiny. **There is currently no dedicated public forum for the consideration of forensic services, although a multi-agency Strategic Partnership Forum meets regularly.** Although the Director of Forensic Services attends Board meetings to answer any questions, it is still the SPA Chief Executive Officer who is accountable for the performance of the Forensic Service.
54. The report which is currently produced has developed over time and continues to change in its content. It now includes summary narratives on service initiatives, and high level quarterly performance statistics with year on year comparison and some explanatory analysis. Inclusion on full Board agendas often limits the time devoted to this topic and the limited information supplied, constrains the level and quality of scrutiny applied.
55. Governance arrangements have grown organically over a number of years in England and Wales. This has included the introduction of independent oversight through the roles of the Forensic Science Regulator, Biometrics Commissioner, and Surveillance Camera Commissioner.
56. The creation of new governance arrangements for forensic science has included the Forensic Policy Group (FPG), an overarching board which is chaired by the Home Office. This group includes representation from policing and other criminal justice partners who meet to identify and manage the progression of forensic service provision within England and Wales, overseeing delivery of strategy commitments. **Although representatives from the Forensic Service in Scotland attend meetings of the Forensic Science Advisory Council and other groups, there is no requirement to implement the decisions of these groups.**
57. There is no equivalent of the Forensic Science Regulator in Scotland, although she collaborates with the authorities in Scotland and Northern Ireland, which have expressed their willingness to be partners in the setting of quality standards that will be adopted within their justice systems. Scotland has signed up to adopting all Regulator recommendations with the exception of those that may impact on our different legal system. **There is however no statutory requirement to implement the scientific standards put in place by the Regulator or for her to enforce these standards. This presents a risk of non-compliance and potentially limits the scrutiny of services.**
58. The Biometrics Commissioner and Surveillance Camera Commissioner do have some UK-wide powers (for reserved matters of UK national security), however their role is limited in Scotland. The HMICS Audit and Assurance Review of the use of the Facial Search functionality within the UK Police National Database (PND) by Police Scotland<sup>8</sup> reported a number of issues relevant to forensic governance. **HMICS recommended that Scottish**

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<sup>8</sup> HMICS, [Audit and Assurance Review of the use of the Facial Search functionality within the UK Police National Database \(PND\) by Police Scotland](#), January 2016.

**Government should work with Police Scotland, the SPA, COPFS and other interested parties to consider the establishment of an independent Scottish Commissioner to address the issues of ethical and independent oversight of biometrics records and databases held in Scotland, with sufficient flexibility to embrace future technologies and relevant codes of practice.**

59. HMICS acknowledges that discussion has taken place at the Strategic Partnership Forum to address the issues of ethical and independent oversight. However, **HMICS maintains the view that current internal governance arrangements do not amount to the independent oversight of the management of DNA or fingerprints in Scotland as called for in the 2008 Fraser report.**<sup>9</sup> We identified a need for improved legislation and better independent oversight around the police use of biometrics in Scotland.

## **Legislative Change**

60. Section 31 of the Police and Fire Reform (Scotland) Act provides that the SPA “must provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and procurators fiscal.” This is a mandatory provision: it imposes a duty upon the SPA to provide the services in question. The only way in which such a duty can be removed is by way of an amendment to section 31 of the Act.
61. Options such as using Section 14 of the Public Services Reform (Scotland) Act 2010 (which allows Ministers to make any provision which they consider would improve the exercise of public functions, having regard to (a) efficiency (b) effectiveness and (c) economy) are also under consideration by the SPA.
62. Section 4 of the Police and Fire Reform (Scotland) Act allows for altering the way in which the SPA discharges its obligation under section 31. Section 4 provides that the SPA may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions. The SPA would however, still remain accountable for the provision of the service.
63. In its response to the Governance Review, the Scottish Government states that whilst willing to explore options in terms of reorganising or removing delivery functions of the SPA, the fundamentals of the Act remain sound. In particular, it highlights that any changes which require adjustments to the Act need to take account of timescales required and uncertainties in securing a Parliamentary slot for a Bill. They encourage SPA to consider options for improvement which could be taken forward more speedily. **This could therefore provide the possibly of a short to medium term solution, to address existing weaknesses in the governance of forensic services and allow these to be evaluated before considering the need for a more fundamental change which would require new legislation.**

## **Ongoing Investment - Research & Development Capacity**

64. Having a technical scientific strategy in place for the development of forensic science is essential. The development of such a strategy has recently commenced in Scotland with the creation of an Innovation Group focusing on research and development. This should identify funding requirements for the future.
65. The Home Office Forensic Science Strategy for England and Wales was published in March 2016 which focuses on a new national approach which will harness the efforts of police forces, national infrastructure, regulators and the private sector in making forensic science more effective in the future. This Strategy does not apply to Scotland.
66. **A Forensic Science strategy for Scotland requires ongoing investment in research,**

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<sup>9</sup> Scottish Government, [Acquisition and Retention of DNA and Fingerprint data in Scotland](#), 2005.

**development and technology. At the present time, no capital programme has been established to fund such investment in Scotland as this is dependent on having an established strategy.** The level of capital available to the SPA and Police Scotland has reduced (£28.1m in 15/16 and £16.2m in 16/17 – with additional £17.8m in dedicated reform funding) and is likely to remain limited, with high levels of competing demand in terms of investment in ICT and estates.

67. Although capital receipts can be retained by the SPA (as part of a 5 year agreement with Scottish Government) and the SPA can in theory borrow additional capital with some restrictions, there are limitations on the amounts which can be generated.
68. The Forensic Service has consistently overspent on revenue budget since 2013/14, which is currently offset against the rest of SPA spend. There is therefore an ongoing pressure to deliver services more efficiently whilst meeting customer demand. The profile of demand is subject to ongoing monitoring, with some more traditional areas declining and other areas such as drugs and sexual crime increasing.
69. There is therefore limited current capacity to increase revenue streams for the Forensic Service, although services are provided to other agencies, most often on a reciprocal basis. Although this capacity could be increased, and allow for capital funded from current revenue to be used, it is unlikely to meet the level of capital requirement and, at a time when existing demand is not being met, the provision of such services may not be viewed as core business.
70. Whilst Police Scotland cannot provide services above the cost of provision, legislation does allow SPA to generate additional 'profit' income.<sup>10</sup>
71. It is noted there is the intention to commission further research<sup>11</sup> to identify the contribution and value of forensic science to the Criminal Justice System in England and Wales in light of changing crime types and digital technology. This may present the opportunity to develop a business case for further investment.
72. Similarly having the Forensic Service as part of a larger body allows for budget flexibility, ring-fencing and a degree of subsidy application, but this can also expose the service to shared budgetary pressures. The longer term sustainability of forensic services in Scotland, retaining what is perceived to be sector leading practice in many areas, must therefore be considered in terms of any future governance models and their ability to maintain investment.
73. **There is a need to develop a strategy with a costed programme for implementation potentially supported by additional income generation. This needs to be underpinned by realistic capital allocation and robust management and governance which allows separation/protection from the wider SPA role, functions and budget.**

## Forensic Computing

74. The Chair in his Governance Review provides the example of the Forensic Service which sits within the SPA, deliberately separated from the police service in order to preserve the integrity of evidence. However, the Forensic Service does not currently provide forensic support for ICT/Cyber/e-Crime evidence as this function remains within Police Scotland.
75. This seems at odds with the principle of independence (see above) and highlights the basic absence of an agreed definition of 'forensic services' in terms of section 31 of the Act. Police Scotland has internal protocols, procedures and processes in place to provide assurance of this independence from criminal investigations (including separate line management, and

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<sup>10</sup> Scottish Police Authority (Provision of Goods and Services) Order 2013. Schedule 1 of that Order makes specific reference to forensics.

<sup>11</sup> Home Office Forensic Science Strategy March 2016 - Paragraph 46.



case management system to prioritise work), however they are not subject to the same inspection and assurance regime as that of the Forensic Service or any external governance arrangements. It is significant that the provision of e-Crime forensics will be required to be accredited in England and Wales by 2017/18.

76. Operating within a robust quality framework provides an assurance of the legitimacy of the evidence being submitted. Complying with international standards, such as ISO 17025,<sup>12</sup> provides a framework that assesses competence, quality and effectiveness in meeting customer requirements. Accreditation to these standards by an independent body demonstrates that the processes within which evidence has been obtained and analysed have been independently assessed to ensure appropriate validation of the methods used and competency of the staff who conduct the analysis. Police Scotland, as part of their Cyber Crime Strategy, will be reviewing the requirement for ISO 17025 and identifying potential costs as part of its delivery plan. HMICS currently has no evidence to suggest concerns regarding the quality of evidence or operational independence of the current Police Scotland model.
77. Digital forensics is a growing and dynamic area but it is still possible to apply the same standards as for other forensic science disciplines to achieve accreditation. The rapid pace of technological change and usage mean that new methods are required in order to extract information. However, the use of an overarching quality management system is still essential to ensure the validity of the methods and the competence of the staff. The experience of the Forensic Service to date suggests it may be the natural home for digital forensics.
78. The financial challenges which are faced by Police Scotland may also pose a risk to the effective delivery of such services, both on a day to day basis and in terms of current and future revenue and capital investment – essential to maintaining a state of the art capability which keeps up with the rate of technological change as well as wider social and criminal use of technology (see above).
79. **Although the issue of forensic computing has been raised by stakeholders, it does not fundamentally affect the governance options to be considered for the Forensic Service.** The effectiveness of governance to balance demand, assure standards and understand costs will be considered further in the forthcoming HMICS Inspections of Forensics, forensic healthcare provision and Cybercrime later in 2016.

## Forensic Medical Services

80. The provision of forensic medical services has also been interpreted as part of 'forensic services' under Section 31 of the Act. In 2014, the **delivery** of forensic medical services transferred from Police Scotland to NHS Boards, but remains a **function and responsibility** of the Scottish Police Authority under the Act. This is made clear in the National Memorandum of Understanding between the Police Service of Scotland and all Geographic NHS Boards in Scotland for the Provision of Healthcare and Forensic Medical Services for those in the Care of Police Service of Scotland (implemented 1 April 2014).
81. A separate piece of work is currently being undertaken by HMICS to provide a strategic overview of the forensic medical services provided to adult and child victims of sexual crime. The review will be used to give a high level assessment of services in terms their current delivery against national policies and standards, and to highlight strategic issues for further consideration by key stakeholders. One of those strategic issues is likely to relate to the extent of SPA governance over the ongoing provision of forensic medical services, and as such will be relevant to considerations of future governance models.

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<sup>12</sup> UKAS, [Accreditation Standards](#).



## Competing Demand

82. There are three statutory customers of the Forensic Service in Scotland, although limited services are provided to other agencies. COPFS and Police Scotland are the predominant users, followed by PIRC. The recent review of forensic services has identified clear issues with the management of demand and the effectiveness of the national Joint Forensic Gateway established to better manage and prioritise demand.
83. Demand management is therefore one of the key issues impacting on the effectiveness and efficiency of the service going forward, and is the focus of ongoing improvement work. Any model of governance should be considered in terms of its ability to manage customer demand.
84. Ideally, governance should be exerted by either a decision-making body with no connection to any customers of the services (a supplier-only role) or have all customers represented on such a body (a partnership governance model). **However, ensuring that demand, performance and costs are clearly understood and scrutinised effectively within the current governance model should provide a sound basis for moving forward.**

## Ethics

85. There are a number of significant ethical and human rights interest areas around the collection and retention of DNA and other human forensic samples and the related information storage on national databases. It is essential that any adopted governance model recognises the need to represent these interests or take cognisance in their scrutiny and assurance role. An effective governance model can facilitate proper oversight.
86. Stakeholders viewed that any new governance model should consider either embedding these skills in the oversight body or creating an independent Ethics and Human Rights Group (potentially shared with wider policing or criminal justice bodies).
87. As previously noted, HMICS has already considered similar issues in its Audit and Assurance Review of the use of the Facial Search functionality within the UK Police National Database (PND) by Police Scotland.<sup>13</sup> **This included a recommendation that Police Scotland and the Scottish Police Authority should consult with Scottish Government and other stakeholders on the potential development of a statutory Code of Practice for the use of biometric data in Scotland. Such a code of practice could address ethical issues and be enhanced through strengthened governance and scrutiny of compliance.**

## Research and Benchmarking

88. HMICS has undertaken its own internet-based research and the Scottish Institute for Policing Research (SIPR) has used its international network to secure information on different approaches to the governance and delivery of forensic services on our behalf.
89. HMICS has considered forensics governance models elsewhere including England and Wales, Northern Ireland, Eire, Netherlands, Sweden and Estonia. Comparison was limited by the varying criminal justice and legislative systems in place and that there are no identical models to that currently in place in Scotland.
90. This research has resulted in a number of different models being identified:
  - **Operated solely by local police force** – the function as a whole is operated by the

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<sup>13</sup> HMICS, [Audit and Assurance Review of the use of the Facial Search functionality within the UK Police National Database \(PND\) by Police Scotland](#), January 2016.

local police force with the Head reporting to a senior officer and subject to internal governance and reporting as part of policing arrangements to local commissioner, committee/board or central justice department.

- **Part of a police ‘authority’** – a department within an established police authority/board/commissioner model, led by a Director.
- **A separate public body** – body (state agency, bureau, part of central security/intelligence/crime agency, and an office of department/ministry of justice) not part of policing with a Chief Executive Officer or Chief Operating Officer/Chief Scientific Officer model, either accountable to a commissioner, committee/board or central justice department.
- **Privatise or Outsource** – the service has either been exposed to the market to source a single or multiple framework supplier(s) or an independent private company formed with profit making capability to provide services to policing.
- **Academic Institution** – partnership delivery model with one or more academic institutions to form a research institute (often extended beyond forensics to criminology etc.). This allows for grant and profit generation as well as investment in longer term research and development.

91. Many of the models identified are hybrids of the above, but the predominant models are those of a separate public body in a central government Justice department or Ministry, a department of the police force or an academic research institute.

## Criteria for Evaluation

92. Identification of criteria for evaluation has been directly informed by the critical success factors identified during our consultation and research processes and from examination of a range of information provided by the SPA and SIPR.
93. Best value guidance suggests grouping of criteria into Acceptability, Feasibility and Suitability to ensure that all aspects of governance and delivery are considered and balanced.

BV Area	Criteria	Assessment basis
Acceptability	1. To SPA Board/Chair	Stakeholder views on whether option meets expectations and operational requirements, has clear benefits and secures confidence
	2. To Scottish Government	
	3. To Police Scotland	
	4. To COPFS	
	5. To PIRC	
	6. Wider Public	
Feasibility	7. Costs of any change minimised	Is the cost of implementation of this option prohibitive or outweigh benefits?
	8. Timescale of delivery of change	Is the timescale of implementation of this option realistic?
	9. Capacity to deliver change	Do the organisations and staff involved have the capacity to manage the change?
Suitability	10. Independence principle	Does the option preserve or enhance the established principle of independence?
	11. Running cost impact	Does the option increase costs or improve efficiency?
	12. Principles of good governance	How well does the option meet the established principles of good governance?



## Options

94. Guidance dictates that a 'no change' option should always be considered and that a 'long leet' of options should be initially considered to ensure that the full range of 'best value' approaches are identified including more radical and creative options. This list of options can be refined in the final appraisal using the criteria set out above.
95. The seven options considered herein are therefore:
- **1. No change** – the SPA remains as the body delivering forensic services, exercising its public governance via the SPA Board. Internal governance is subject to review as part of the overall Governance Review recommendations. The Director continues to report to the Chief Executive Officer.
  - **2. Internal reorganisation** – the SPA remains as the body delivering forensic services, exercising its public governance via the SPA Board. Internal governance is subject to review as part of the overall Governance Review recommendations. A new post of 'Head of Forensic Service of Scotland' is created (or other appropriate title) and is accountable directly to the Chair and Board – on the same basis as the Chief Executive Officer and Chief Constable. This should be in addition to the appointment of a Chief Scientific Officer to maintain compliance with scientific standards and lead strategy, research and development.
  - **3. Return to Police Scotland** – return the function as a whole to Police Scotland with the Director reporting to a Deputy Chief Constable and subject to internal governance and reporting as part of Police Scotland arrangements to the SPA Board.
  - **4. Create a Non-Departmental Public Body (NDPB)** – create a new statutory public body 'Forensics Scotland' with a Chief Executive Officer or Chief Operating Officer/Chief Scientific Officer model, either accountable to a new Board or to the SPA Board.
  - **5. Privatised or Outsource** – Expose the service to the market and conduct an international procurement exercise to source a single or multiple framework supplier(s). Staff to TUPE<sup>14</sup> to the new organisation(s).
  - **6. Academic Institution** – Develop partnership delivery model with one or more academic institutions.
  - **7. Joint UK-wide arrangements** – Join the new arrangements being made for the provision of services in England and Wales. The Home Office Forensic Science Strategy<sup>15</sup> published in March 2016 proposes a national approach to forensic science delivery to ensure greater consistency and provide expanded capability and economies of scale.
96. It is noted that other hybrid options of the above can form viable models e.g. NDPB with outsourced elements.

## Appraisal

97. HMICS has considered each of the seven options against the criteria and can summarise our evaluation as follows:
- **1. No change**

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<sup>14</sup> Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014". The TUPE rules apply to organisations of all sizes and protect employees' rights when the organisation or service they work for transfers to a new employer.

<sup>15</sup> Home Office, [Forensic Science Strategy: A national approach to forensic science delivery in the criminal justice system](#), March 2016.

98. This option will minimise any impact or cost of change, but does not address any of the issues identified in paragraphs 45-87 above and therefore is likely to have a low acceptability rating amongst stakeholders. These issues include ongoing pressures on budget and demand, capacity to generate income and capital investment, and clarity of the role of the SPA as a service delivery agent or governance body remains unclear.

## ■ 2. Internal reorganisation

99. This option will minimise the impact or cost of any change, and has the ability to address many of the issues identified in paragraphs 45-87 above and therefore is likely to have a high acceptability rating amongst stakeholders. It would not require legislative change. The creation of the post of Head of Forensic Service of Scotland to report directly to the Chair and Board on a similar basis to that of the Chief Constable and the SPA Chief Executive Officer provides improved clarity on the status of the Forensic Service as having 'operational independence' on a par with Police Scotland. The appointment of a Chief Scientific Officer to maintain compliance with scientific standards and lead strategy, research and development provides the required capacity to develop these areas. The separation of business management from technical leadership is evidenced in a number of the models reviewed and HMICS professional opinion is that this provides an added layer of assurance and expertise.
100. HMICS does not believe that reporting directly to the SPA Chair or Board would compromise the role of the Accountable Officer, as defined in terms of section 15(3) of the Public Finance and Accountability (Scotland) Act 2000. Currently the Chief Constable reports directly to the Chair and Board and this does not affect the role of the Accountable Officer. HMICS views that 'operational independence' need not conflict with financial accountability requirements.
101. With the development of forensic strategy, the establishment of a business case for longer term investment programme can be established through use of existing capital-raising powers. Similarly successful delivery of the improvement process can address demand issues. This may allow for enhanced capacity for revenue generation mitigating budget pressures.
102. The Governance Review will also address committee structures and delegation levels which could further improve scrutiny, accountability, transparency and customer focus. However, there would be value in establishing a Forensic Service Sub-Committee of the full SPA Board dedicated to the scrutiny and support of the Forensic Service and providing opportunity to manage the customer relationships with COPFS, Police Scotland and PIRC. As is currently the case, the Forensic Service would continue to be supported by Police Scotland in terms of HR, Finance, Estates, ICT support with governance provided within its current or revised sub-committee structure, thus allowing for improved scrutiny of the provision of these support services by Police Scotland.

## ■ 3. Return to Police Scotland

103. This option will have limited impact or cost of change on the Forensic Service as a change of reporting line for the Director is the primary requirement. However legislative change would be required which imposes resource requirements on the Scottish Government and will be subject to the Parliamentary process delaying its implementation. As previously cited, this option was considered during the development of the 2012 Act and considered to be a retrograde step potentially compromising independence and therefore is likely to have a very low acceptability rating amongst stakeholders.
104. Current budget pressures on Police Scotland would also expose the Forensic Service to higher risk in terms of identifying efficiency savings. Police Scotland is also constrained to a cost recovery position by legislation, limiting the ability to generate additional forensic income.

105. A potential benefit would be the opportunity to combine the existing Forensic Service with the digital service currently provided by Police Scotland.

■ **4. Create a Non-Departmental Public Body (NDPB)**

106. This option will have a much higher impact and cost of change, and will require legislative change which imposes resource requirements on the Scottish Government and will be subject to the Parliamentary process delaying its implementation. The employment status of all staff will change (becoming employees of the NDPB as opposed to employees of the SPA) and provision of support services (currently provided by the SPA and Police Scotland) may change or require to be re-negotiated. If these services were to be undertaken by the new NDPB there would be a cost saving to Police Scotland, but this may not equate to the potentially higher cost to create the same service within a new NDPB.

107. A stand-alone body, sponsored by a government department, will have an enhanced 'independent' status. Importantly it will still require a 'board' or clear reporting relationship as a service provider and arrangements for HR, Finance, Estates, ICT support. It will also have its' own budget, both limiting the shared budgetary pressures of a parent organisation but also constraining the ability to access much larger subsidising bodies. Capital borrowing is likely to face the same constraints as the current model.

108. This model has been operating successfully in Northern Ireland for some time and is the preferred model of a number of stakeholders. However, whilst enhancing the perception of 'independence' it does not address the other issues identified in paragraphs 45-87 above and therefore is likely to have a lower acceptability rating amongst stakeholders.

■ **5. Privatise or Outsource**

109. This option will have a much higher impact and cost of change, and may require legislative change which imposes resource requirements on the Scottish Government and will be subject to the Parliamentary process delaying its implementation. Similarly the procurement will require exposure to full EU process, necessitating significant resource in terms of procurement expertise, specification of services, evaluation of tenders and ongoing contract and supplier management. Evidence from England and Wales confirms that this process has proved to be very costly. The employment status of staff retained will change requiring a TUPE process to the successful bidder(s).

110. The option requires a mature understanding of current and future demand and costs of service delivery to inform the procurement process.

111. This option was adopted widely in England and Wales, with a high degree of hybrid models developing where forces opted to undertake some elements in-house and outsource others. There have been significant issues with these models and recent moves to consolidate in-house services across forces.

112. Acceptability of this option is likely to be low given the experience in England and Wales, the profit-making basis of an outsourced model and the need to constantly ensure that independence, quality and value for money are maintained.

■ **6. Academic Institution**

113. This option will have a much higher impact and cost of change, and will require legislative change which imposes resource requirements on the Scottish Government and will be subject to the Parliamentary process delaying its implementation. Costs of reaccreditation from UKAS may also be incurred should laboratories also be transferred.

114. This is a model widely adopted across Europe, both as a stand-alone delivery model but also



as a hybrid sitting alongside more traditional police or NDPB based delivery in order to provide a dedicated research and development or specialist capability. Academic Institutions also have the benefit of attracting grant-based and private sector capital funding, although are also subject to similar public sector revenue pressures.

115. Benchmarking has demonstrated that this model is highly successful, but more as a hybrid than a stand-alone option.
116. The Forensic Service already has strong academic relationships and there is scope under Option 2 to strengthen this further and explore the implications of a longer term partnership model.

#### ■ 7. Joint UK-wide arrangements

117. This option will have a much higher impact and cost of change, and is likely to require legislative change which imposes resource requirements on the Scottish Government and will be subject to the Parliamentary process delaying its implementation.
118. The challenges identified previously include longer term sustainability, compliance with the Forensics Regulator and independence of forensics from policing, all of which this model could potentially deliver in the future. The Forensic Service is an acknowledged leader in many fields and has the potential to retain its role, focusing on specialisms whilst sharing the capacity of wider organisation.
119. However Police Scotland, COPFS and PIRC would then become one of many customers to a unified service and be subject to a much wider set of competing demands. Scottish law differs from English criminal law and this may require different working arrangements which could be costly and potentially inefficient to implement. Similarly, the revised model in England and Wales has yet to be fully implemented and its effectiveness assessed.
120. Whilst the acceptability of a 'shared service' efficiency-based model has in the past been the basis for the incorporation of forensic services into the Scottish Police Services Agency (SPSA) in 2007, its acceptability in the context of a UK-wide solution may not be politically acceptable.

### **Cost/Benefits Analysis**

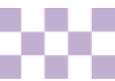
121. HMICS acknowledges that it has proved challenging to articulate a potential scale of cost or full cost/benefit analysis for the options identified and suggests that any further development of a more detailed options appraisal or business case for change should undertake further detailed work in this area. However, two elements of cost were considered as part of the options appraisal process i.e. the costs of implementation and the ultimate cost impact on running costs and investment of the new model.
122. There are limited implementation costs of options 1, 2 and 3, as the service can essentially remain or relocate 'as is', with no change to employer, location, systems, support mechanisms. Option 4, 5, 6 and 7 however could have significant costs in terms of managing the change.
123. HMICS professional opinion is that options 1, 2 and 4 (NDPB) are unlikely to change or improve the ongoing financial position. Similarly option 3 (Return to Police Scotland) is likely to further compromise the current financial position. HMICS considers that options 5 and 6 are the most likely to positively change the profile of running costs and investment. At such a relatively early stage of implementation of new arrangements in England and Wales, HMICS cannot project the impact on costs of a combined service, although economies of scale may result.



## What are the benefits of change?

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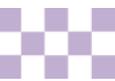
124. HMICS has undertaken a full review of the challenges and issues associated with current governance in order to fully explore the case for change. We have also undertaken an independent options appraisal based on the evidence available.
125. We have established that a number of risks and issues exist which can be influenced by the governance model in place. These include:
  - Clarity between the governance role and that of a supplier of services.
  - Maintaining independence of forensic services from policing and other 'customers'.
  - Ensuring a consistent quality assurance across all areas of forensics in Scotland and compliance with relevant standards.
  - Sustaining ongoing investment programme and research and development focus.
  - Managing the balance of customer demand on the Forensic Service.
126. The benefits of change are therefore directly related to the further mitigation of these risks.
127. Given that the suggested option is essentially a refinement of the existing model, the level of change is being minimised, which is perhaps appropriate at a time of financial constraint and ongoing independent evaluation of the benefits of police reform.
128. However, as previously noted, HMICS plans further scrutiny work in the area of Forensics, forensic healthcare and Cyber Crime and will also be assessing progress on the implementation of the Governance Review. This will allow for further evaluation of the effectiveness of governance and delivery in these areas.



## How to deliver the change?

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129. Having a robust business case for change is essential to support sound decision-making, accountability and transparency. Such a business case may include elements of or reference to this professional advice and the options appraisal process. It should also include a recommendation on the SPA's selected option(s) and their implementation.
130. Implementation of any option should be considered on a short, medium and longer term basis. HMICS suggests that a plan for implementation of option 2 is developed subject to further consultation with stakeholders and the SPA Board. The development of a full business case for longer term investment should be considered in line with any technical strategy which emerges.
131. Implementation must be a managed and planned process in order to ensure that benefits are delivered. This should include any transition arrangements, communication and engagement with key stakeholders and in particular with staff. Monitoring of any financial or performance impacts should also be considered.



## Conclusions

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132. **On the basis of the options appraisal and analysis, HMICS professional advice is that, subject to the next stages of options appraisal as set out in paragraph 10, option number two, namely Internal Reorganisation, be considered for detailed consultation and analysis. In terms of ease of implementation, this option provides an immediate mitigation to the majority of risks and issues raised above.**
133. The SPA also has the opportunity, through further improvement work and the implementation of the Governance Review to more fully address the wider issues we have raised including ethics and capital and income generation.
134. HMICS will further examine the delivery of forensic services in Scotland as part of our forthcoming inspection work between December 2016 and March 2017.

### Contact details

This Professional Advice Note has been prepared by Tina Yule, Lead Inspector, supported by Katie Chisholm and Jo Drapper, under the sponsorship of Gill Imery, Assistant Inspector of Constabulary.

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