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Convener
Public Audit and Post-Legislative Scrutiny
Committee
Scottish Parliament
EH99 1SP

12 January 2018

Dear Convener,

CHIEF CONSTABLE LEAVE OF ABSENCE

Further to my appearance before the Committee on 21 December, I am writing to provide further information about the Scottish Government's engagement with the Scottish Police Authority in relation to the Chief Constable's leave of absence. Much of this information has already been put on record by the Cabinet Secretary for Justice in his parliamentary statement on 10 January. I will write separately to address the Committee's other queries arising from that session.

As I had been invited to the session on 21 December to give evidence on severance and settlement packages across the public sector, I trust that you will understand that I did not come furnished with detailed information on the unrelated subject of the Chief Constable's leave. I was, and remain, mindful of the risks to those directly involved in the complaints of releasing sensitive information when there are ongoing, independent investigations. I know that the Committee will be sensitive to the risks associated with scrutiny of these issues in that context. Nevertheless, given the Committee's interest, I thought it would be helpful to set out the details of the engagement between the Scottish Government and the SPA in relation to this issue.

By way of background, the Scottish Police Authority announced on 8 September that it had agreed a temporary period of absence for the Chief Constable whilst PIRC undertook its independent investigations. SPA noted its intention to keep this decision under review, on a four weekly basis. The Chief Constable made a statement to deny the allegations and signal his intention to resume his full duties when the matter had been resolved.

From the outset, Scottish Government has been clear that decisions on the Chief Constable's position are for the SPA as the body he is accountable to, and as the body which has the statutory duty to consider complaints of misconduct against senior officers. The Scottish Government interest has been to seek assurance that the SPA is taking fully informed decisions and following due process.

In his statement on 10 January, Mr Matheson explained the relationship between Scottish Ministers and SPA as a public body. He explained that public bodies operate at “arms length” from government. This means that they have a significant degree of independence within their statutory functions, but operate within a policy framework set by Ministers. There is a specific requirement in the Police and Fire Reform (Scotland) Act for the SPA to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with the principles of good governance. Public bodies are accountable to Ministers for the exercise of their functions and the way the body carries out its functions must retain the confidence of Ministers.

On 5 October, following the first 4 week review, SPA announced the period of leave was to be extended. Ahead of the 7 November Board meeting there was no engagement at either Ministerial or official level to suggest any change in circumstances. The agenda for the Board Meeting on 7 November made no reference to this issue and we had no prior knowledge that there would be a private board discussion following that meeting, as we now understand to have been the case. There was therefore nothing to suggest to us that a change to the status quo was being considered at that meeting and the onus was on the SPA to make the Scottish Government aware of any significant change in circumstances.

On 9 November, the former Chair sought a brief meeting that day with the Cabinet Secretary for Justice prior to the Chair’s appearance at a parliamentary committee. Neither the Cabinet Secretary or officials were given prior notice of the subject the Chair wished to discuss.

During a brief exchange between the former Chair and the Cabinet Secretary prior to the scheduled Committee appearance, the former Chair informed the Cabinet Secretary for Justice of the decision to invite the Chief Constable to resume his duties the following day, and his intention to announce this immediately. As the former Chair had to attend Committee, the meeting was suspended until after the committee appearance. Following the initial exchange and ahead of the substantive meeting, the Cabinet Secretary consulted officials and they were in attendance when the meeting reconvened. Although no formal minute was taken, the officials present communicated the conclusions of the meeting to relevant colleagues at the time and the actions from the meeting were for the former Chair to take forward.

At the meeting, the Cabinet Secretary for Justice sought assurance that due process had been followed and other relevant parties consulted – particularly the Police Investigations and Review Commissioner - so that she could advise whether the Chief Constable’s return at that point would impact on her ongoing investigations. This assurance was not forthcoming and the Cabinet Secretary made clear that he found it difficult to understand how such a decision had been reached without this key step having been taken.

Another key area of concern was a lack of evidence of a robust plan being in place to ensure the wellbeing of complainants and others who could be asked to play a role in the investigations. It was also clear that the that the senior command team in Police Scotland were unaware of the plan for the Chief Constable to return the following day.

The Cabinet Secretary made clear to the former Chair that he could not have confidence in a decision which had been reached without such key issues having been addressed. The former Chair therefore agreed to carry out more engagement before proceeding any further. At that stage, the Scottish Government was unaware that the Chief Executive had written to

the Chief Constable to invite him to return or that he was being consulted on the terms of a public announcement.

The SPA subsequently reviewed its approach and made a fresh decision on 10 November to continue the Chief Constable's leave.

I am conscious from the exchanges on 21 December that some Committee members assumed that the SPA's decision on 7 November was informed by a report or information from PIRC. The PIRC has now written to the Committee to clarify that this was categorically not the case. She has made clear that the investigations are ongoing and, as far as I am aware, she has not provided any summary of the evidence to SPA or expressed any opinion on whether the allegations should be referred to a misconduct hearing. The timescale for conclusion of the investigations are a matter for PIRC to determine, and the Scottish Government's position has always been that the investigations should proceed as swiftly as possible while delivering a thorough and effective investigation.

Looking forward, the Chief Constable's leave is next due for review no later than 25 January 2018. The Scottish Government welcomes the statement from the new Chair that the SPA is taking action to strengthen further its governance, advice and engagement to ensure that SPA decisions meet the high standards that should be expected.

I hope this further information is useful to the Committee in understanding the position. I would reiterate the fact that the complaints against the Chief Constable remain under active investigation by the PIRC and that we are in the middle of a formal, statutory process. I trust the Committee will factor that into its thinking on the timing and nature of any further steps it wishes to take in relation to this matter.

I am copying this letter to the current and former Chair of the SPA and the PIRC.

Yours sincerely



PAUL JOHNSTON