

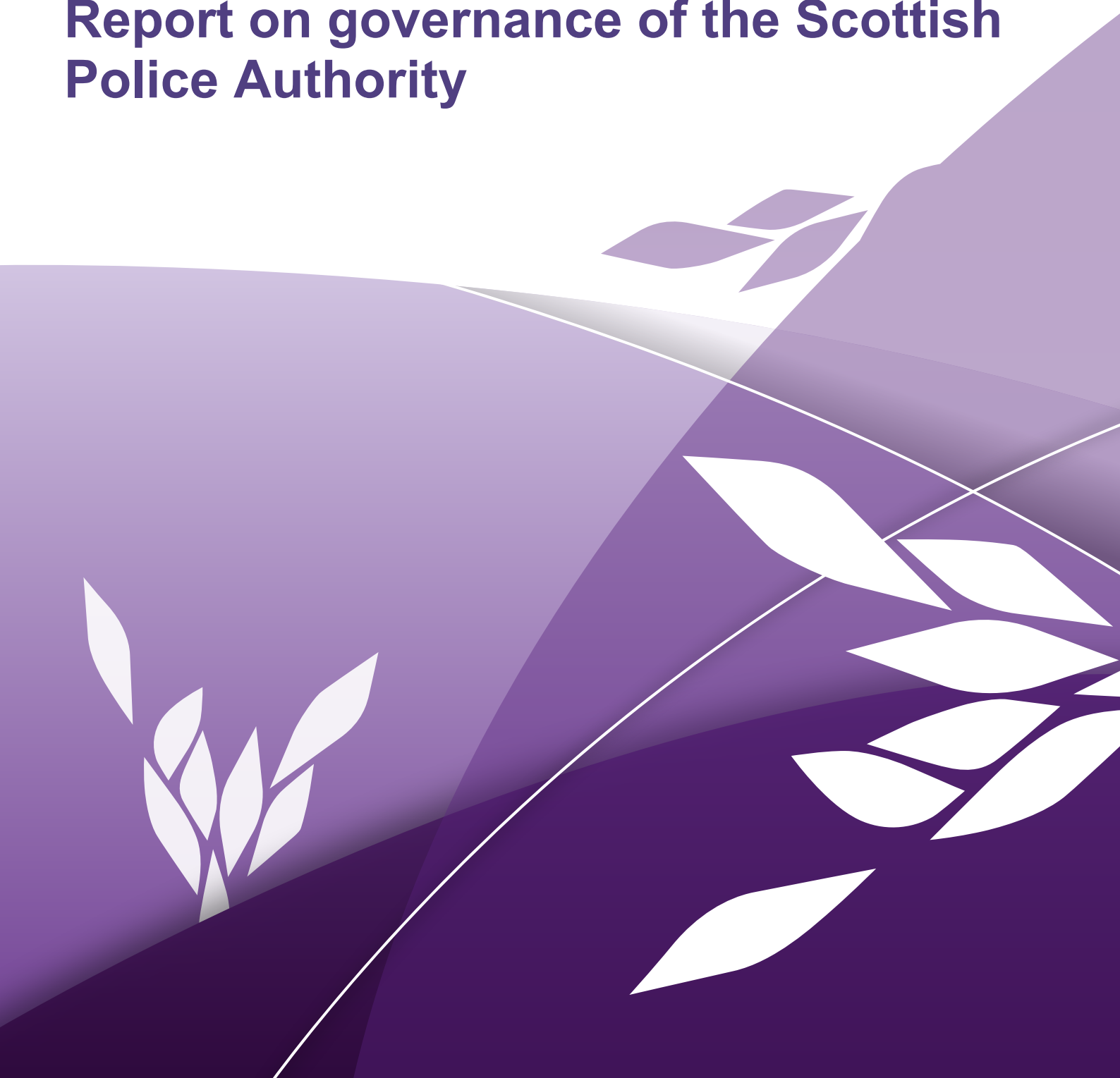


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Justice Sub-Committee on Policing Fo-chomataidh a' Cheartais air Obair a' Phoilis

Report on governance of the Scottish Police Authority



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Contents

Background	1
Introduction	2
Committee consideration	3
Conclusions	4
Annex A	5

Justice Sub-Committee on Policing

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(Scotland) Act 2012 as it relates to policing.



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Background

1. The Justice Sub-Committee on Policing held an evidence session on the governance of the Scottish Police Authority (SPA) on 18 May 2017.
2. It took evidence from Andrew Flanagan, Chair, and John Foley, Chief Executive of the Scottish Police Authority.
3. This was in response to the letter from the Public Audit and Post-legislative Scrutiny Committee to the Cabinet Secretary for Justice outlining its “very serious concerns about the standards of governance at the SPA”, following its recent evidence sessions.ⁱ
4. The Cabinet Secretary for Justice has asked Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) to bring forward aspects of his intended statutory inspection into the state, efficiency and effectiveness of the Scottish Police Authority scheduled for 2017/18. The Cabinet Secretary has asked HMICS focus on transparency and accountability issues.ⁱⁱ
5. Accordingly, HMICS is currently undertaking a [Thematic Inspection of the Scottish Police Authority - Phase 1 Review of Openness and Transparency](#) and is to report to the Scottish Parliament on 22 June 2017. The terms of reference are as follows:

” The overall aim of this review will be **to assess the openness and transparency in the way that the Scottish Police Authority conducts its business**. It will specifically examine:

(i) the Authority’s decision on holding meetings in private and the publication of meeting papers; and also assess

(ii) the Authority’s compliance with relevant legislation, guidance and standing orders and the awareness and understanding of the Chair, Board members and SPA officers of these.

ⁱ Letter from the Cabinet Secretary for Justice to HMICS, 20 April 2017:

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

ⁱⁱ Letter to the Cabinet Secretary for Justice, 12 May 2017: http://www.parliament.scot/S5_Public_Audit/2017_05_12_PAPLS-Cab_Sec_SPA.pdf

Introduction

6. This report outlines the views of the Justice Sub-Committee on Policing on the evidence heard at its meetings of 20 April, when representatives of Unison, the Scottish Police Federation and the Association of Scottish Police Superintendents provided evidence, and of 18 May, with the Chair and Chief Executive of the SPA.

Committee consideration

7. The 18 May evidence session focussed on the following decisions:
 - to hold committee meetings in private;
 - to not circulate to the SPA board members the letter from HMICS raising concerns about holding committee meetings in private; and
 - the Chair's letter to Moi Ali of 19 December, in response to her dissenting to meetings being held in private.
8. The Sub-Committee considered the decisions taken by the Chair and Chief Executive, the actions they took (or did not take) as a result of those decisions, and the impact on the effective governance and reputation of the SPA.
9. The Sub-Committee also considered the impact of the proposed actions to be taken going forward on the SPA's governance, transparency and reputation.

Conclusions

10. The Sub-Committee shares the very serious concerns about the standards of governance at the SPA raised by the Public Audit and Post-legislative Scrutiny Committee and thanks it for its scrutiny of the governance of the Scottish Police Authority.
11. The Sub-Committee agreed to write to the Cabinet Secretary for Justice, copied to Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), outlining its views. The letter is attached at Annexe A of this report.

Annex A

Letter from the Justice Sub-Committee on Policing to the Cabinet Secretary for Justice

Dear Michael

The Justice Sub-Committee on Policing held an evidence session on 18 May 2017 on governance of the Scottish Police Authority. This was to provide an opportunity for the Chair and Chief Executive of the SPA to address serious governance concerns raised by the Public Audit and Post-Legislative Scrutiny Committee in its recent letter to you.

The Sub-Committee also took evidence from Unison, the Scottish Police Federation (SPF) and the Association of Scottish Police Superintendents (ASPS) on 20 April, when SPA governance issues were raised.

The Sub-Committee appreciates that HMICS is currently undertaking an urgent review of the openness and transparency of the SPA and that you are to appraise the performance of the Chair of the SPA. This letter is to inform both.

Openness, transparency and accountability

The Sub-Committee agrees with your assessment that the SPA “needs to ensure that the processes and mechanisms that it has in place are open and transparent”.ⁱⁱⁱ

Many of the issues surrounding the openness, transparency and accountability of the SPA’s governance seem to have been created by the implementation of two of the recommendations in Andrew Flanagan’s [Review of Governance](#), which was published in March 2016. These were that committees should be seen as working groups (recommendation 15) and therefore that their meetings should be held in private (recommendation 16).

In his letter to Andrew Flanagan of 9 December 2016, Derek Penman cautioned that the proposal for committees to meet in private might impact negatively on the openness, transparency and legitimacy of the SPA, as well as public confidence in its governance.^{iv} Despite this, the decision was made for committees to meet in private.

In a previous evidence session, the Justice Sub-Committee on Policing heard that those representing police staff, officers and superintendents felt that this decision excluded them from participating in the decision-making process.

Craig Suttie of the ASPS told the Sub-Committee that superintendents “had concerns when the governance review came out”, whilst Calum Steele of the SPF said that holding private committee meetings “undermines the SPA’s legitimacy”.^v

ⁱⁱⁱ Scottish Parliament, Chamber Official Report, 20 April 2017: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10908&i=99773>

^{iv} Letter from HMICS to Andrew Flanagan, 9 December 2016: http://www.parliament.scot/S5_Public_Audit/HMICS_to_SPA.pdf

^v Sub-Committee meeting, Official Report, 20 April 2017: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10903&mode=pdf>

In response to questions on engagement with the unions and staff associations Mr Flanagan acknowledged that he was aware that stakeholders were unhappy, but held the view that the level of engagement was sufficient, saying that “In the committee structure that has been set up, people can come and give evidence ... the SPF and other staff associations and unions can come to those meetings”.^{vi}

The proposal that committees are to meet in public and to publish papers well in advance of meetings is a move in the right direction. This is good practice and it is difficult to comprehend why this approach was not recommended in the governance review.

There is a need for some items to be taken in private, and the Sub-Committee appreciates Mr Flanagan’s assurance that respectful open debate on whether items should be taken in private will be encouraged going forward.

Private committee meetings, issuing papers at the last minute, and reducing input from key stakeholders has damaged the relationship between the SPA and police staff, officers and superintendents. It has also raised questions within the police service and externally about the SPA’s accountability, transparency and legitimacy.

Although there is now a proposal for committees to meet in public, Mr Flanagan suggested that this was due to improvements in the information that is submitted by Police Scotland,^{vii} rather than being in response to the impact private meetings have had on key relationships and the SPA’s reputation. It is essential to repair both.

As part of his review, HMICS is to “engage directly with the key stakeholders, including police staff associations and members of the media and others who have a specific interest in the policing of Scotland and who may wish access to SPA meetings and papers”.^{viii}

The Sub-Committee would refer HMICS to its evidence session on 20 April with Unison, the SPF and ASPS and, in light of recent media reports, respectfully request that Mr Penman engage with COSLA during his review of openness and transparency.

Correspondence from HMICS

It is clear that Derek Penman’s letter of 9 December 2016 to the Chair, copied to the Chief Executive, was time critical. In it Mr Penman raises a number of concerns about the Corporate Governance Framework, which was to be agreed at the following week’s SPA board meeting. Whilst Mr Flanagan has now acknowledged that this correspondence should have been circulated as a matter of course, and has committed to doing so in future, the Sub-Committee explored the reasons for the 9 December letter not being circulated.

The Sub-Committee heard that there were practical issues which contributed to Mr Penman’s letter not being circulated immediately. The Chief Executive was out of the country, with the letter apparently not being brought to his attention during or after his

vi Sub-Committee meeting, Official Report, 18 May 2017, Col 17: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

vii Sub-Committee meeting, Official Report, 18 May 2017, Col 2: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

viii HMICS thematic review, page 17: <http://www.hmics.org/sites/default/files/publications/HMICS%20Thematic%20Inspection%20of%20the%20Scottish%20Police%20Authority%20-%20Ph>

leave period. The Chair received the letter “late on Friday” and was not undertaking SPA duties again prior to the board meeting the following week.

However, Mr Flanagan stated that, in his view, there had been no need to circulate Mr Penman’s letter, telling the Sub-Committee that “I felt that his letter captured views that had already been expressed rather than injecting new ones”.^{ix}

Mr Penman explained to the Public Audit and Post-legislative Scrutiny Committee on 11 May that his letter: “contained a level of detail that I would not have had the opportunity to explain in conversations on the margins with members”.^x

Despite this Mr Foley told the Sub-Committee on 18 May that “It is not the case that his [Derek Penman’s] views were not known”.^{xi}

The letter was discussed at the pre-meeting and was not circulated before, during or at any time after the SPA board meeting. Board members and key stakeholders only saw the content of the letter, or in some cases became aware it, once it appeared in media reports some months later.

At the Sub-Committee meeting of 20 April 2017 Drew Livingstone stated that Unison was particularly concerned about not being made aware of the HMICS letter until recently, saying that: “there has been a reluctance on the part of the organisation to listen to opinions that might come across as being slightly dissenting”.^{xii}

Not circulating the HMICS letter to Board Members, as Her Majesty’s Inspector would have expected, was, in the Sub-Committee’s view, a serious error of judgement.

HMICS has a statutory role to look into the ‘state, effectiveness and efficiency’ of the SPA and it should provide HMICS with “such assistance and co-operation as we may require to enable us to carry out our functions”.^{xiii}

The Sub-Committee asks that you consider whether the Chair demonstrates sufficient understanding of the relationship between the SPA and HMICS and whether, in this instance, the required level of co-operation was provided to HMICS.

The operation of the SPA board

The [On Board](#) guidance states that “The Chair has an important role to play in ensuring that all Board members are enabled and encouraged to contribute to Board discussions”. Building and maintaining effective working relationships with SPA board members is an essential role of the Chair.

ix Sub-Committee meeting, Official Report, 18 May 2017, col 1: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

x Public Audit and Post-Legislative Scrutiny Committee meeting, Official Report, 11 May 2017, col 40: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10935&mode=pdf>

xi Sub-Committee meeting, Official Report, 18 May 2017, col 19: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

xii Sub-Committee meeting, Official Report, 20 April 2017: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10903&mode=pdf>

xiii HMICS thematic review, page 1: <http://www.hmics.org/sites/default/files/publications/HMICS%20Thematic%20Inspection%20of%20the%20Scottish%20Police%20Authority%20-%20Phase%201.pdf>

The Sub-Committee considered whether the Chair's response to Moi Ali's dissension at the board meeting in December, his interpretation of the On Board guidance and his communication style, enables and encourages members to contribute fully at SPA board meetings.

Treatment of Moi Ali

The Sub-Committee agrees with Mr Flanagan's view that the tone, content and timing of his letter to Moi Ali in December was a misjudgement on his part and that the manner in which she raised concerns about transparency and perception at the SPA board meeting in December were consistent with her role as a Board member.

This issue has been on-going for almost 6 months and has been deeply damaging to the reputation of the SPA. It is therefore regrettable that Mr Flanagan did not come to this view initially, or before now, and that he did not seek to resolve this matter in person with Moi Ali before she felt it necessary to resign.

Mr Flanagan wrote to Moi Ali on two separate occasions, almost two months apart, but it seems that he did not find an opportunity to speak directly to Moi Ali to seek to resolve the issue and to repair the relationship.

The Sub-Committee notes that Mr Flanagan wrote a personal letter of apology to Ms Ali but that it was only written two days before the Sub-Committee's evidence session and emailed on the day of the session.^{xiv}

Dissent

Mr Flanagan told the Sub-Committee that "The fundamental issue at the board meeting was that her [Moi Ali's] decision to dissent was a surprise to me—that was the main frustration".^{xv}

It remains Mr Flanagan's view that he should be made aware before a board meeting if a member is likely to dissent in public, so that he was "prepared for that when the board meeting took place".^{xvi}

This expectation is out of step with what is required of board members in the On Board guidance. Whilst this approach might be desirable for a Chair it does not enable the SPA board members to form a view at board meetings and could inhibit them from dissenting from a decision if they had not previously informed the Chair that they intended to do so. It has led to criticism that decisions are made before SPA board meetings and then 'played out' in public. There is an important distinction between a united board and an effective board. It is not always one and the same.

Relationship with SPA board members

xiv Sub-Committee meeting, Official Report, 18 May 2017, col 5: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

xv Sub-Committee meeting, Official Report, 18 May 2017, cols 8-9: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

xvi Sub-Committee meeting, Official Report, 18 May 2017, col 21: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

The Sub-Committee heard that other SPA board members had only recently commented on the Chair's treatment of Moi Ali, describing it to him as "a bit hasty and a bit heavy handed".^{xvii}

The three SPA board members^{xviii} who gave evidence to the Public Audit and Post-legislative Scrutiny Committee on 11 May, have only recently committed to asking the Chair why the HMICS letter was not circulated. They confirmed in evidence that they had not done so before now, despite the letter being in the public domain for a number of weeks.

It appears that on both these issues, despite having concerns about the Chair's actions, significantly, SPA board members were reticent about speaking directly to Mr Flanagan.

Mr Flanagan told the Sub-Committee that the SPA board is to appoint a Deputy Chair. He indicated that one of the advantages of this appointment was that this person could meet with members of the Board who might feel constrained in raising an issue of concern directly with the Chair.

The Sub-Committee would be deeply concerned if Board members felt constrained in speaking to the Chair and, if that were the case, would expect the Chair to rectify that position as a matter of urgency.

Going forward

The Justice Sub-Committee on Policing agrees with the Public Audit and Post-legislative Scrutiny Committee's assessment that it is essential that the public and stakeholders be reassured that the SPA is performing to an appropriate standard.

Unfortunately Mr Flanagan's repeated use of the phrase "I have to accept" did not reassure the Sub-Committee that he has a real belief and understanding that the actions that he took in relation to Moi Ali and in not circulating the HMICS letter, and repeatedly defended, were wrong.

There will be many difficult decisions for the SPA board to take going forward. It is essential that as many of these as possible are taken in public and informed by stakeholders. Openness, inclusiveness and transparency will strengthen the decision-making process and the accountability of the SPA. Given the evidence that it has heard, the Sub-Committee does not have confidence that the current chair is the best person to lead the Board.

HMICS is currently undertaking a review of the openness and transparency of the SPA. The Sub-Committee asks HMICS to consider the evidence it has taken and the contents of this report as part of that review. Mr Flanagan has committed to write to the Sub-Committee with a response to HMICS' review at the earliest opportunity.

^{xvii} Sub-Committee meeting, Official Report, 18 May 2017, col 21: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10957&mode=pdf>

^{xviii} David Hume, George Graham and Iain Whyte.

