I am writing to you for two purposes:

1) Following your request that panel members should write if they felt that there further were matters that they wished to draw to the committee’s attention and

2) To specifically deal more completely with Mr Finnie’s question (at col 1094 of the Committee’s report) on the Bill’s proposals about the Police Appeals Tribunal.

Early appointment of the Chief Constable and Executive Team

Firstly, can I deal with an emerging priority for police reform and one which I believe is so critical to the reform agenda, that failure to address it now is likely to present a significant barrier to progress in the interim period and, indeed, to delivery of the stated aims in the mid and longer-term within the context of the Comprehensive Spending Review.

A variety of views have been expressed on the most appropriate timescales for appointing the Chief Constable and Executive Team to date. However, as a consequence of the pressing nature of reform and the risks associated with a delay in appointment of those key posts, the emerging position is one of universal agreement from within the service (and from a number of other key stakeholders) that appointment of the Chief Constable should be progressed at the earliest possible opportunity.

The current position is based largely around the perceived need for the first Chair of the new Scottish Police Authority to be appointed as a precursor to appointment of the Chief Constable. The supporting logic is twofold: firstly, it safeguards against a 'Ministerial' appointment and the conflict that is, rightly, perceived to bring; secondly, that this approach will provide a close and early working relationship between the Chair and the Chief.

Whilst laudable, the time delay inherent in this approach presents far more serious risks than has been articulated to date.

- the current approach will preclude appointment of the Chief Constable until the last months of this year, with subsequent appointment of the Executive Team being realised only weeks before the ‘go-live’ date;

- whilst the reform team are keen to commit to decisions, there is an understandable hesitance around significant matters which they believe the ‘new’ Chief Constable should determine – that will slow (and is slowing) down progress;
as a consequence of the above, it is highly unlikely that there will be a unanimously agreed and definitive implementation plan in place prior to appointment of the Chief Constable. With the subsequent delay in appointing the Executive team, there is unlikely to be sufficient time for those strategic leads to make the necessary decisions and adjustments to ensure cohesive functionality from 1st April 2013, far less adherence to the broader aims of reform;

there is a significant, real and growing appetite within the service (and, importantly, across the staff associations) to secure clarity of leadership at an early juncture.

I believe that collectively these factors present a compelling argument for the earliest possible appointment of the Chief Constable and subsequently the Executive Team.

Returning then to the arguments for the proposed senior appointments process,

Firstly there is an inevitable level of 'inheritance' that comes with police reform and in the context of this issue, it is more usual for Conveners and Chairs to fall 'heir' to 'sitting' Chief Constables than it is for them to appoint them (the forthcoming local government elections and consequential changes to police boards and authorities alone provide evidence of this).

Secondly, I do recognise the need to ensure a fair, transparent and open process of appointment and one which provides a level of protection from the potential accusations of Ministerial intervention and the enduring consequences that this may bring. In those terms, I would strongly advocate that work to determine a bespoke process which provides the necessary safeguards, but within a timescale that meets the needs of reform, is commenced as soon as possible. Indeed, I see no reason why an independent panel, supported by HMICS in an advisory capacity, could not make such an appointment and in my professional opinion the risks of delay now far outweigh the avoidable risks arising from an early appointment.

The strength of feeling on this matter is gaining such momentum, that I understand a number of parties intend to raise it with the Committee. In considering those submissions, I would strongly encourage the Justice Committee to express their position on the matter in a clear statement to the Cabinet Secretary for Justice, in the hope that an early and incisive response can be provided.

Turning then to the matter raised by Mr Finnie:

**Police Appeals Tribunal (PAT)**

Section 57 et seq of the Bill detail the changes to the PAT including the proposal to appoint three members who are either solicitors or members of the Faculty of Advocates. I mentioned in the course of my response to Mr Finnie (col 1095) that I had commissioned some work to assess how misconduct cases overall were being handled and where there were might be avoidable delays or potential wider improvements.
That work is not yet complete but I can say that in general, moves to increase further the quasi-judicial nature of misconduct cases, have the potential to increase delays to the detriment of respondent officers, the police service, public confidence and of course public expenditure.

There is evidence and intuitive rationale, that the early and appropriate dealing with misconduct cases is greatly increased if from the outset or as soon as is possible, objective and pragmatic discussions take place involving all parties as to the seriousness of the matter and likely outcome should the allegation be found proven. In too many cases, the absence of such calibration causes unnecessary delays and escalation to a process involving levels of legal representation inconsistent with the likely or eventual outcome.

In this regard and I hope I am now turning to the core of Mr Finnie’s question, the removal of tribunal members who have direct experience of the context of policing and the replacement of them with solicitors, is likely to be perceived by some as a further increase in the quasi-legal backdrop for misconduct cases at a time when practice elsewhere is indicating that a de-escalation is likely to be more effective for all parties.

Consistent with the above and as I raised in Appendix B of my earlier written submission, the provisions at Sections 22 and 23 of the Bill whereby officers commit for example, a criminal offence of being absent from duty, again seems wholly inconsistent with a culture of resolving issues at the lowest appropriate level.

From experience, examples of such incidences are inevitably underpinned by difficult personal circumstances reducing even further, if this were possible, the likelihood of the Crown seeking or gaining a criminal conviction for such an offence.

Perhaps the Justice Committee with its broader view of the criminal justice system has similar views on this matter.

**Police Investigations and Review Commissioner (PIRC)**

You may recall that there was some detailed questioning in relation to this key provision within the Bill. Whilst clearly the report of the committee proceedings of the 6th March represents a subset of all the written evidence that you will have received, on reviewing the text I consider it important to emphasise a few points:

1) Mr Finnie’s question leading into this subject (col 1069) highlighted in the responses it drew, the importance of not only a deep and fundamental understanding of how to deal concurrently with criminal, complaints and serious misconduct issues, but that there is an absolute requirement to have that appreciation and experience in those charged with setting up the new body that will deal with such issues.

2) Although (at col 1070) I am quite sure that Mr Todd did not mean that ‘what the bill proposes (is) to rename the current Police Complaints Commissioner for Scotland’ nevertheless he may have unintentionally perpetuated a misconception held in some quarters that this is what is proposed, ie simply a renaming of the current body. The scale and nature of these changes are such that whilst legislatively it may be
convenient to draft the Bill in terms that indicate a simple flow from one structure to the next, the constitutional and criminal investigatory changes are as fundamental as any, if indeed not most, of the Bill’s other provisions.

3) Finally and perhaps implicit in the above, I would support Professor McNeill’s call for early appointments of the new commissioner and director of investigations. Although in his response to Mr Pearson’s question on sufficiency of time (col 1072) Professor McNeill considered six months lead-in was ‘doable’, it may be that this issue of key early appointments is so crucial, that it is again a matter that the Justice Committee may wish to consider raising with the Cabinet Secretary directly.

**Parliamentary scrutiny**

Finally I wish to reinforce a few of the points raised in the exchanges about the role of Parliament and the Scottish Police Authority in holding the new service to account. I mentioned that I had published a report on this issue and for ease I have added a hyperlink to it here should you or your committee members wish to access it.


Mr Black eloquently differentiated between democratic accountability and proper governance as the Scottish Police Authority (SPA) needs to provide. Our joint work has identified the difficulties some current police board and authority members have in separating their local elected responsibilities from their governance responsibilities as members of a board or an authority. This provides an unconvincing rationale to select local members for the SPA with its increased scale of responsibility. There is also the issue of capability and capacity for this strategic role which represents a material change from the majority of current arrangements.

Put simply there is no reason why the proposed 7-11 members of the SPA cannot be recruited with the skills and experience to oversee the service. As detailed on the 6th March 2012, the new service and authority have to demonstrate how they are assessing and providing services appropriate to local and national need. Future joint work between Audit Scotland and HMICS will systematically report on this issue.

Accordingly Parliament is the entirely appropriate and logical institution within which to lodge democratic oversight. I understand fully Convener, your concerns about the capacity of your committee to take on this role. If you accept the principle however, there are options being suggested by Audit Scotland and no doubt others which merit serious consideration.

On that note I shall end this supplementary letter pausing only to offer that if in any way I can be of further assistance to you and your committee, I should be happy to do so.

Andrew Laing
HM Inspector of Constabulary
13 March 2012