



The Scottish Parliament
Pàrlamaid na h-Alba

Michael Matheson MSP
Cabinet Secretary for Justice
Scottish Government

By e-mail only

**Public Audit and Post-legislative
Scrutiny Committee**

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Dear Michael,

The Committee agrees with your recent statement to the Scottish Parliament that the Scottish Police Authority (SPA) must be open and transparent about the way in which it discharges its responsibilities, and learn lessons in relation to approaches it has taken in the past¹.

We are therefore writing to set out our very serious concerns about the standards of governance at the SPA, following our recent evidence sessions². In particular, we consider that the chair of the SPA board, Mr Andrew Flanagan, would appear to have behaved inappropriately on occasion and in a manner not in keeping with relevant Scottish Government guidance. We consider this to be unacceptable, particularly in relation to a public body that performs such a vital role.

Concerns about the standard of governance within the SPA are by no means new or limited to our committee. We therefore also support your recent initiative to bring forward the statutory inspection of the SPA, which will be carried out by Derek Penman, Her Majesty's Chief Inspector of Constabulary in Scotland³. In particular, it is entirely correct that you have highlighted the aspects of the inspection that relate to transparency and accountability, as this is exactly where the problems lie.

¹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10908&i=99773>

² <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/103170.aspx>

³ http://www.parliament.scot/S5_Public_Audit/2017_04_21_CSJ-JSC_re_HMICS_review.pdf

We note and welcome the views provided to us by current members of the SPA board that the organisation has made improvements and will continue to do so. Nevertheless, it is essential that the public and stakeholders be reassured that the SPA is performing to an appropriate standard. We therefore highlight a number of specific issues for you to address—

Collective responsibility

We fully understand the importance of collective responsibility for the boards of public bodies. However, it is clear from the relevant Scottish Government guidance for members of such bodies (*'On Board'*⁴) that this principle applies *after* a board has agreed a decision.

We stress this point as it is relevant to the case of Moi Ali, a former SPA board member. We are not a tribunal passing formal judgment on Ms Ali's circumstances. However, we have not seen anything in the evidence presented to us to suggest that Ms Ali did anything to breach the principles of collective responsibility. Rather, it appears to us that Mr Flanagan treated Ms Ali in an inappropriate manner, to the degree that she felt obliged to resign from the board.

We would be extremely worried if any potential members of the SPA board (or of any public board) were to be dissuaded from applying because they felt they would not be able to offer appropriate criticism and challenge. We therefore expect the Scottish Government and the SPA to take steps to ensure that the chair and all board members are fully aware of the practical implications of the On Board guidance.

Transparency

It is neither our job nor our desire to micro-manage the board of the SPA. However, some of its decisions on basic operational matters have been inexplicable and we considered that there was a clear need to challenge Mr Flanagan in order to try to provide some reassurance to the public and key stakeholders.

Information provided to the board

Mr Penman wrote to Mr Flanagan in December 2016 to comment on the recommendations contained in his governance review. Despite the fact that the letter was clearly intended to inform SPA board members ahead of an important meeting, it was not circulated by Mr Flanagan. We consider this decision to be unacceptable. The decision is even harder to understand as the letter also formally confirmed that Mr Penman intended to undertake a statutory inspection of the SPA, an announcement of supreme importance to members of the board. Mr Penman confirmed to us that he expected the letter would have been circulated to the board, and that some information contained in the letter had not previously been discussed with all board members.

We welcome the recognition by both Mr Flanagan and the Scottish Government's accountable officer, Mr Paul Johnston, that the letter should have been circulated. We consider that, in future, all board members must be provided with all information that is necessary for the effective undertaking of their duties.

⁴ <http://www.gov.scot/Resource/0051/00514817.pdf>

Meeting in private

We understand there will be times when public bodies have to discuss matters in private. This is particularly true of the SPA on those occasions where it considers highly-sensitive policing information. However, we believe the default position for such an important body is that its committees should meet in public, a position that appears to have widespread support. Indeed, one of the stated priorities in the SPA's own draft 10-year strategy recognises the importance of openness—

“Continuously improve public confidence in policing and inspire trust by being transparent, accountable and acting with integrity, fairness and respect.”⁵

It is hard to understand why this issue has proved to be so difficult for the SPA to reconcile, although we note that its next board meeting will consider Mr Flanagan's recommendation that would allow committee chairs “the discretion to hold all or part of future SPA committees in public”⁶. We are also assured that this issue will be addressed in Mr Penman's investigation⁷- Mr Penman suggested he was likely to recommend that committee meetings be held in public.

In any event, it would be entirely unacceptable for the SPA ever to repeat the situation, as we discussed in oral evidence, where it held several private ‘members meetings’ to discuss governance then produced no public notes of those discussions. We consider that there is a clear need for a culture shift within the organisation so that there are far fewer private meetings and so that more effective procedures are established to ensure that information is recorded, stored and, where appropriate, made publicly available.

On a specific issue, we note the evidence provided by Mr Graham that one of the reasons he supported committees meeting in private is that information flows and relationships with senior police officers were not good enough. We expect action to be taken to remedy this situation.

Publicising meetings

The SPA has also struggled with the best means of publicising and circulating the papers for its future board meetings. For its latest meeting (on 22 March), papers were circulated to key stakeholders 48 hours in advance of the meeting on a strictly confidential and embargoed basis. Papers are made publicly available on the day of the meeting.

We cannot discern a clear justification as to why some people should receive preferential access to board papers, which may discuss issues of considerable public interest. The impression given by the SPA is that there are two classes of people: those who should receive privileged information and those who should not.

⁵ <http://www.spa.police.uk/assets/128635/293617/376046/386827>, page 57.

⁶ http://www.parliament.scot/S5_Public_Audit/2017_04_20_SPA-PAPLS_follow_up.pdf

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<http://www.hmics.org/sites/default/files/publications/HMICS%20Thematic%20Inspection%20of%20the%20Scottish%20Police%20Authority%20-%20Phase%201%20Review%20of%20Openness%20and%20Transparency%20-%20Terms%20of%20Reference.pdf>

We consider this to be an inappropriate distinction and consider that all papers should be made publicly available at the same time. Again, we have been reassured that this issue will be addressed in Mr Penman's investigation; he suggested that he was likely to recommend that papers be circulated in advance.

Given some of the concerns we heard in oral evidence, we would welcome clarification from you on: the extent to which the Scottish Government has prior knowledge of SPA meetings and papers; the extent to which the Scottish Government seeks to comment on or otherwise influence papers and meetings; and whether there is a formal, shared agreement between the Scottish Government and the SPA on such matters.

The role of the board

In light of the comments we have set out above, we consider that SPA board members should be far more critical in how they question or challenge some of the decisions made by the chair of the board. And, as noted, we do not expect the case of Moi Ali in any way to lead to a diminution of this vital role. Non-executive board members are contracted for no more than five days a month and we question whether this is a realistic time commitment given the volume of work they have to undertake.

Despite recent appointments, the SPA board remains male-dominated. We consider that there is a clear need to improve diversity, in all ways, on the board, which may bring about some of the cultural change we expect to see delivered.

Given our comments above about Mr Flanagan, the chair of the board, we request further information on how his appraisal is carried out by the Scottish Government's relevant accountable officer particularly the specific matters on which his performance is assessed.

Next steps

It is important that the Scottish Parliament maintains effective scrutiny of the SPA during this difficult period and that we complement rather than duplicate Mr Penman's inspection. We have therefore highlighted our key concerns to the Justice Sub-Committee on Policing, which was set up by the Parliament specifically to monitor the Act that created the SPA. The sub-committee will take evidence from both the SPA and Police Scotland on 18 May.

For your information, copies of this letter have been provided to Mr Flanagan, Mr Penman, Mr John Foley, the chief executive of the SPA, Mr Johnston, Margaret Mitchell, convener of the Justice Committee, and Ms Mary Fee, convener of the Justice Sub-Committee.

Yours sincerely

JACKIE BAILLIE MSP

Acting Convener of the Public Audit and Post-legislative Scrutiny Committee