PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

AGENDA

3rd Meeting, 2018 (Session 5)

Thursday 25 January 2018

The Committee will meet at 9.00 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **The 2016/17 audit of the Scottish Police Authority:** The Committee will take evidence on the Auditor General for Scotland's section 22 report from—

   Andrew Flanagan, Former Chair of the Board, John Foley, Former Chief Executive, David Hume, Current Board Member, and Dr Nicola Marchant, Current Board Member, Scottish Police Authority.

3. **The 2016/17 audit of the Scottish Police Authority:** The Committee will consider the evidence heard at agenda item 2 and take evidence from—

   Caroline Gardner, Auditor General for Scotland;

   Stephen Boyle, Assistant Director, and Mark Roberts, Senior Manager, Audit Scotland.

Terry Shevlin
Clerk to the Public Audit and Post-legislative Scrutiny Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5390
Email: papls.committee@parliament.scot
The papers for this meeting are as follows—

**Item 2**

Note by the Clerk

PRIVATE PAPER
Public Audit and Post-legislative Scrutiny Committee

3rd Meeting, 2017 (Session 5), Thursday 25 January 2018

The 2016/17 Audit of the Scottish Police Authority

Introduction

1. The Committee took evidence from the Auditor General for Scotland on her section 22 report ‘the 2016/17 Audit of the Scottish Police Authority’ (SPA) on 21 December 2017. A copy of Audit Scotland’s full Scottish Police Authority annual audit report is also available.

2. The Auditor General also prepared a section 22 report on the SPA for 2015/16 and the Committee took a substantial amount of evidence – full details of the Committee’s work can be found here. The Justice Sub-Committee on Policing also undertook scrutiny of the 2015/16 audit and its work can be found here.

Written submissions

3. The following written submissions have been provided for this meeting—
   - follow up information from Audit Scotland, Annexe A, page 2;
   - two written submissions from the Scottish Police Authority (one of which was also provided to the Justice Committee) Annexe C, pages 14-20.

Settlement agreements/ severance policy

4. At its meeting on 21 December 2017 the Committee also took oral evidence from Scottish Government officials on settlement agreements and severance policy. This included some discussion about SPA-related issues. The following correspondence has subsequently been received by the Committee—
   - Letter from the Police Investigations and Review Commissioner Annexe D, pages 21-22;
   - Letter on behalf of Phil Gormley, Chief Constable of Police Scotland Annexe E, pages 23-34;

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5 http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/103589.aspx
Dear Convener

THE 2016/17 AUDIT OF THE SCOTTISH POLICE AUTHORITY

At the Committee’s meeting on 21 December 2017, we said that we would provide the Committee with additional information relating to the 2016/17 audit of the Scottish Police Authority.

We said we would clarify:

- the distinction between redundancy and early retirement (col 16). If a post is made redundant then one of the options available is early retirement under the Scottish Police Authority’s voluntary early retirement scheme. This was the option that Mr Foley agreed with the Scottish Police Authority.

- whether the appointment of the Scottish Police Authority’s interim chief financial officer was referred to the Scottish Police Authority’s board (col 27). There was discussion about recruiting an interim chief financial officer at a Scottish Police Authority meeting on 14 January 2016 but there is no further reference to the board or individual members having any involvement in either the recruitment process or its outcome.

The Committee also asked for the internal audit annual report. This is available at [http://www.spa.police.uk/assets/126884/415820/421977/item4auditreport](http://www.spa.police.uk/assets/126884/415820/421977/item4auditreport). The Scott-Moncrieff report on ICT which was referred to in the section 22 report is available at [http://www.spa.police.uk/assets/126884/415820/415824/item6.5](http://www.spa.police.uk/assets/126884/415820/415824/item6.5).

I hope this information is helpful.

Yours sincerely

Caroline Gardner
Auditor General
FOLLOW UP TO COMMITTEE SESSION ON 21 DECEMBER 2017

Further to my letter of 12 January 2018, I am writing to provide further information on the issues raised in relation to severance payments to the SPA Chief Executive. Given comments made since sending my letter, I am also providing further details of the engagement that I have had with the Chief Constable since the events described in the letter.

In June 2017, we became aware that the SPA Board was developing proposals to change the reporting line of the Director of Forensics to be direct to the SPA Board rather than through the SPA Chief Executive. My understanding is that, as forensics represented the largest part of the directly managed staff of the SPA, the Board took the view that this represented a significant change to the Chief Executive role, which would become redundant.

In early July, SG officials asked to be kept in touch with developments on the Chief Executive’s exit arrangements. On 26 July, Scottish Government officials were given a copy of a draft business case for restructuring the CEO role. This outlined the approach and provided indicative costs, including for an exit payment to Mr Foley under the existing, approved SPA Voluntary Redundancy/Voluntary Early Retirement scheme which applies to SPA and Police Scotland staff. There was a clear view from SPA’s HR advisers that Mr Foley would be eligible for early retirement under this scheme.

Because the exit was proposed under the existing VR/VER scheme, the Scottish Government had no formal role in providing views on the specific terms of the early retirement package. Indeed, the main aim in sharing the information was to involve officials in the approval of a role description for a new interim Chief Officer position, as the Scottish Government did have a formal role in approving a salary scale for that post.
However, it was clear from the information submitted to us that SPA proposed to include an element of pay in lieu of notice (PILON). As Mr Foley’s proposed leaving date was earlier than his contracted period of notice, SPA had decided that he was eligible for PILON. In early August, SG officials queried with SPA’s HR advisers whether the period of notice could begin at the point a VER offer was made and accepted i.e. late August or thereabouts, thereby significantly reducing the PILON payment.

The Deputy Director for Police Division contacted the SPA Deputy Chair by phone on 17 August. During that call the PILON issue was discussed and the Deputy Chair stated she had received clear HR advice on this point. Their position was that they had essentially no discretion about the size of the offer given the conditions attached to it and had therefore proceeded to make an offer.

Whilst respecting that the decision was for SPA to make, the Deputy Director of Police Division emailed the SPA Deputy Chair on 23 August to highlight an expectation that the PILON element would be subject to a great deal of scrutiny. The relevant text, which forms part of a wider exchange about the terms of a draft announcement, is as follows:

The pay in lieu of notice point remains the one that looks to me like it will potentially be subject to a lot of scrutiny. Nicola will know this is a point we queried with the HR function and that we were given assurances the approach was based on clear HR analysis/advice. It will be for SPA to explain that and I would simply state a view that you would be wise to think carefully about how you express the HR advice as to why the notice period can’t start on 1 September. It may be worth thinking about what the answer would be to that specific question.

In November, I became aware of Audit Scotland’s concerns in relation to the PILON element as the draft Audit Report on the 2016-17 SPA accounts was being finalised. Whilst not questioning the principle of SPA’s approach, Audit Scotland questioned (as Scottish Government had) whether half of the PILON payment (i.e. £28,333) could have been avoided.

As a result, I wrote to the Chair of the SPA on 21 November to highlight that the concerns raised by Audit Scotland reflected those that we had brought to SPA’s attention in August, and asked for the payment to be reviewed. SPA subsequently wrote to Audit Scotland explaining their approach, and also copying that to me with a covering letter. It is clear from this letter that the SPA continued to believe that the approach it had taken could be justified.

Following the Committee’s session on 21 December, I immediately wrote to the Chair of the SPA to ask that they consider pausing any outstanding exit payments to Mr Foley to allow for further consideration of the options available. SPA subsequently confirmed that they had paused payment of the PILON element and were undertaking an assessment of options. I understand the SPA has now written to the Committee to confirm the outcome of their assessment.

I hope this meets the Committee’s request for further insight into the exchanges between Scottish Government and SPA on Mr Foley’s exit arrangements. The Committee also asked whether a settlement agreement was considered at any point. I can confirm that this was considered by SPA, but not taken forward.
More generally, I welcome the commitment of the SPA Chair to learn lessons on the issues identified by Audit Scotland. As you are aware, through the consultation on A Severance Policy for Scotland, Scottish Government is also considering how an exit payment cap, claw back or changes to severance scheme terms might apply across the wider devolved public sector. No decisions have been taken, but advice to Ministers will certainly reflect on the issues raised by the Public Audit and Post-legislative Scrutiny Committee in order to determine the right approach to severance arrangements across the wider public sector in Scotland.

Relevant correspondence between Scottish Government and the SPA on this issue is attached in the Annex.

Separately, I am aware of commentary over recent days regarding contact with the Chief Constable in November 2017 and in particular how this relates to the events I set out in my letter to the Committee of 12 January.

My letter focused on engagement between the Scottish Government and SPA around decision-making on the Chief Constable’s leave. My contact with the Chief Constable had no bearing on that issue.

I contacted the Chief Constable on 16 November to advise him of the appointment of the new Chair of the Scottish Police Authority. Shortly after this, the Chief Constable contacted me to advise that he would be in Edinburgh on 30 November and asked whether I would be available for a meeting. Arrangements were made for us to meet in St Andrew’s House that day. We agreed at the outset of the meeting that it should be an informal discussion, and as such no minute was taken. At the meeting, the Chief Constable made clear that he wished to resume his full responsibilities as soon as possible. He set out his views on the investigation of the conduct complaints, including on the progress and timescale of the PIRC investigation. I indicated that I was keen to see the investigation progress as quickly as possible, while fully recognising the independence of the PIRC.

I have had no further engagement with the Chief Constable since the meeting.

I hope the Committee finds this information helpful. I am happy to provide additional information if that would be of assistance.

Yours sincerely,

PAUL JOHNSTON
FOLLOW UP TO COMMITTEE SESSION ON 21 DECEMBER 2016

Annex - Correspondence

Director-General Education, Communities and Justice
Paul Johnston

T: 0131 244 2814
E: edec@gov.scot

Andrew Flanagan
Chair
Scottish Police Authority
1 Pacific Quay
Glasgow
G51 1DZ

By email: andrew.flanagan@spa.pnn.police.uk

21 November 2017

Dear Andrew

SEVERANCE PAYMENT TO SPA CEO

I am writing in my capacity as Principal Accountable officer for the Justice portfolio, in relation to the severance payment agreed for the current Chief Executive of SPA, John Foley. I am writing to you as I understand the Board took the decisions in relation to this matter, given that John Foley is the Accountable Officer for SPA.

I have now had sight of the draft Audit Report on the 2016-17 SPA accounts which makes critical reference to this payment.

The clear conclusion that AS have reached is that the level of severance payment that has been agreed is not justified by the circumstances. I understand that the majority of the payment relates to the terms of the existing, approved VR/VER scheme for SPA and Police Scotland staff, but that a significant discretionary element has been added for Pay in Lieu of Notice (PILON).

You may be aware that Scottish Government colleagues queried the proposed approach in relation to PILON when the restructuring which gave rise to John Foley’s early retirement was being discussed this Summer. In particular, colleagues could not understand why the period of notice could not commence at that point, thereby reducing the PILON payment. They were given assurances at the time that the approach was based on Police Scotland HR advice that no alternative approach was possible. It is now clear that Audit Scotland do not accept the explanation that has been provided, which confirms the concerns Scottish Government expressed at the time.
My understanding is that it is normal practice that the notice period starts on the date of acceptance of the VR/VER package offered, which in this case I understand to be late August. The only time that PILON should be paid in these circumstances is if: a) the employer wants the staff member to leave with immediate effect upon the date of signing up to the VR/VER package; or b) it is agreed that the individual leaves before the end of the notice period, in which case the balance of the notice period may be paid as PILON.

By way of context, I should highlight that the Public Audit and Post Legislative Scrutiny Committee is taking a close interest in severance payments made to senior officials in publicly-funded bodies. Given their interest in matters relating to SPA in the recent past, I would expect them to take a close interest in this particular severance agreement. The presence of an adverse comment from auditors would, I believe, make the position difficult, if not impossible, to defend. As Portfolio Accountable Officer, I should make clear that, as it stands, I personally would not be able to defend the decisions made in relation to this matter.

Given this position, I believe it is essential that the PILON element of the severance payment is immediately reviewed and a methodology applied that is aligned to the requirements of the SPF, in the manner which Audit Scotland would expect.

You will be aware that the Audit Report also questions the approach taken by the Scottish Police Authority to relocation payments made to a deputy chief constable. I understand that the associated tax and national insurance costs were also incurred by SPA. Given the concerns highlighted by Audit Scotland, I would find it helpful to understand what steps the SPA Board has taken to review these payments and to determine if further action is required.

I am copying this letter to Nicola Marchant, Deputy Chair, David Hume as Chair of the SPA Audit Committee, and Kenneth Hogg, interim Chief Officer.

Yours sincerely,

[Signature]

PAUL JOHNSTON
Mr Paul Johnston  
Director-General, Education, Communities and Justice  
Scottish Government  
St Andrews House  
Regent Road  
Edinburgh EH1 3DG  
24 November 2017  

Our ref: AF/081/17/CW  

Dear Paul  

SCOTTISH POLICY AUTHORITY CHIEF EXECUTIVE OFFICER REDUNDANCY  

Thank you for your letter of 21 November about the agreement reached with the SPA Chief Executive in respect of his redundancy.  

Like you I am concerned about the description and conclusions about this matter contained in Audit Scotland’s draft 2016/17 Audit Report, which are also repeated in their draft Section 22 Report. My concerns, and those of the Board, arise because we do not believe that the drafts accurately represent either the process used by the SPA or the outcomes achieved, including in securing the best available value for money. I attach a letter which Nicola Marchant, Chair of SPA’s People Committee, has sent today to Audit Scotland explaining our reasons for this view. I hope this explanation also gives you the information and assurance you need in your position as Portfolio Accountable Officer.  

Following receipt of your letter we have also explored the range of alternative options available to us at this point in time, notwithstanding the fact that we believe we have already chosen and executed the best available option. All of the those options would be likely to result in increased financial cost to the public purse and risk to the organisation, arising largely from the fact that the SPA would be seeking to modify a legally binding contract with the potential consequences which flow from that.  

I would welcome your assistance in seeking a satisfactory resolution of this matter, and I am copying this letter to the recipients of yours.  

Yours sincerely  

Scottish Police Authority
24 November 2017

Dear Steven and Mark,

SCOTTISH POLICY AUTHORITY 2016/17 DRAFT AUDIT REPORT AND DRAFT SECTION 22 REPORT: SPA CHIEF EXECUTIVE REDUNDANCY

I am writing to you as Chair of the Scottish Police Authority (SPA) People Committee, and on behalf of the SPA Board. I am grateful for the opportunity to comment on matters of factual accuracy in the draft 2016/17 Draft Audit Report and in the draft 2016/17 draft Section 22 Report, and I am writing to request that the draft text about the SPA Chief Executive’s redundancy arrangements be reconsidered. If it was helpful both the SPA Chair and I would be happy to discuss the matter further with you in advance of Tuesday 28 November, when both documents are due to be presented to the Board. We believe that the description of this matter in paragraphs 19 to 21 of the draft Section 22 Report, and in paragraph 102 and elsewhere in the draft Audit Report does not accurately describe the process, judgements made or outcomes achieved in respect of this issue. In summary, the option taken by the SPA in this case was the only option available which would have met the business imperatives and deliver value for money.

When making decisions on this matter the Board took into account the relevant business imperatives and the requirements to ensure regularity and propriety of any
public expenditure in this area along with the need to secure value for money. The business imperatives were to:

- change as quickly as possible the reporting relationship between Forensic Services and the Board, responding to recommendations from a June 2017 HMICS thematic review of Forensic Services and a previous 2016 HMICS Public Advice Note;

- secure business continuity despite the consequential redundancy of the Chief Executive Officer (CEO) role by recruiting an Interim Chief Officer before the CEO left the organisation;

- ensure that the CEO as Accountable Officer remained in post long enough to complete and present to the Board the annual report and accounts, and then leave the organisation immediately thereafter to enable the Accountable Officer responsibilities to transfer to a newly appointed Interim Chief Officer.

These imperatives were discussed with stakeholders at the time, including Audit Scotland with respect to a reasonable time to change over Accountable Officer. A business case for change, including the redundancy of the CEO role, was presented to the SPA Board on 7 June, where it was supported. The proposed package circulated to the Board for their approval was in line with the Voluntary Retirement/Voluntary Early Retirement policy approved by the Scottish Government annually, and our Standard Operating Procedure specified that Pay in Lieu of Notice (PILON) could be used in exceptional circumstances.

I considered which of the options available would both achieve the business imperatives and offer value for money. Two options were available: the first where normal consultation process would be followed as per HR guidance; and the second where an accelerated consultation process would be agreed with the impacted individual. It should be noted that in such cases the impacted individual can insist on due process being followed and any deviation from agreed processes can, and has in other cases, led to grievances. In each option the first step was to advise the impacted individuals and trade unions of the content of the business case. The first date on which that process could commence was 25 July 2017. The first option would not have met the business imperatives outlined above and would have delivered poorer value than the second option followed. In the first option, notification of the individual(s) and unions on 25 July would have been followed by the standard consultation processes which would have lasted, in total, between 12.5 and 14.5 weeks. Following our normal processes would have probably have led to notice being served on the impacted individual on 27 October 2017, and the change of reporting relationship for Forensic Services would have been brought into effect on 28 October. The accounts were anticipated to be signed on 31 October, and allowing for the CEO’s 6 month contractual notice period he would either have left the organisation on 31 March 2018, or have left earlier having been paid PILON, or have remained in ongoing employment by the SPA having exercised his right to enter the pool of staff seeking redeployment and to await an equivalent role to become available. Advertisement for an Interim Chief Officer would have commenced on 27 October meaning that they were unlikely to be in post until December at the earliest.
The second option, which was the route followed, met the business imperatives and delivered better value. Following notification on 25 July 2017, an accelerated consultation process was used with the full cooperation of the impacted individual and the SPA, and the consultation process was completed in 4 weeks. This accelerated process could not have been carried out without the cooperation of the individual. A contractual exit agreement comprising Voluntary Early Retirement and PILON was agreed on 18 August 2017, which enabled an advert for an Interim Chief Officer to issue in the week commencing 28 August 2017 which resulted in the successful candidate taking up post on 13 November 2017, and in the Forensic Services reporting relationship to change on 1 September 2017. In the event the accounts were not signed on 31 October and are currently scheduled for signature on 28 November 2017. Thereafter, this option now enables the CEO to exit the organisation on 30 November 2017.

Because of the one month extension in signing the accounts Option 2 will cost approximately £6,500 more than Option 1. The cost would otherwise have been equivalent. But critically Option 1 would not have met the business imperatives as described. Option 2 both meets these imperatives and delivers better value for money overall.

I hope that this helps to clarify the position and am happy to provide further detail if that would be helpful.

I am copying this letter to the Auditor General.

Yours sincerely

Nicola Marchant
Chair of SPA People Committee
A letter sent by email

Susan Deacon
Chair
Scottish Police Authority
1 Pacific Quay
Glasgow
G51 1DZ

21 December 2017

Dear Susan,

At the Public Audit and Post-Legislative Scrutiny Committee this morning, a number of significant concerns were expressed about payments associated with the exit of the former Chief Executive of the Authority, John Foley. These follow on from issues raised by Audit Scotland in their Section 22 report on the SPA Annual report and Accounts for 2016-17. You will also be aware that I have previously expressed concerns about elements of the package in my role as Accountable Officer for the Justice Portfolio.

While decisions on this matter are for SPA to make, given the scale of the concerns that are being raised, I believe it is essential that SPA reviews whether any payments that have not yet been made in relation to the exit package should be paused to allow for further examination of the points raised by Parliament and Audit Scotland. This would also allow for further reflection on the options available.

I would be grateful for early confirmation of the action you have taken in response to this letter.

I am copying this letter to Kenneth Hogg, Interim Chief Officer.

Yours sincerely,

PAUL JOHNSTON

St Andrew’s House, Regent Road, Edinburgh  EH1 3DG
www.gov.scot
Mr Paul Johnston  
Director-General Education, Communities and Justice  
Scottish Government  
St Andrew’s House  
Regent Road  
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22 December 2017  

Our ref: SD/022/17/CW  

Dear Paul  

Thank you for your letter of 21 December about proposed payments associated with the exit of the former Chief Executive of the Scottish Police Authority, John Foley, and concerns about these payments expressed yesterday by the Parliament’s Public Audit and Post-Legislative Scrutiny Committee.  

The Committee’s concerns reflected comments made by the Auditor General on the use of payments in lieu of contractual notice in this case. A payment of £56,666.50 in lieu of notice was due to be paid to Mr Foley today, along with an early retirement payment of £43,470. Yesterday I instructed the payment in lieu of notice to be paused to enable a review of this payment in the light of the Committee’s concerns and to reflect further on the options available. I have received confirmation that the payment was not made, as requested. I will consider further this matter before reaching a decision on how to proceed.  

Yours sincerely  

Chair,  
Scottish Police Authority
Written Submission from the Scottish Police Authority – follow up from 21 December meeting

Further to the written evidence submitted by the SPA to both the Justice and PAPLS Committees [Clerk’s note: this is the second part of the SPA written submission – see below], the following supplementary evidence relating to the annual 2016-17 audit of the SPA and the related section 22 report is submitted for the specific attention of the PAPLS Committee.

2016-17 audit

The priority for the SPA for the 2016-17 year, and the expectation placed upon the then Chief Executive and Accountable Officer, was the successful delivery of an unqualified accounts and annual report and one which was free from any modified opinion from the auditors. Notwithstanding the deficiencies in governance processes and decision-making highlighted by Audit Scotland this outcome was successfully delivered.

The reports note an encouraging improvement in the quality of accounting records and access to information. Audit Scotland also noted that the budget setting process for 2017-18 was more transparent and comprehensive, more frank in its commentary on the scale of financial challenge, and more detailed in providing information on revenue, capital and reform expenditure.

Exit Arrangements for SPA Chief Executive

The SPA operates within a public sector framework of no compulsory redundancies. That affects the range of available options when any individual member of staff is impacted by significant organisational change. In these circumstances an individual can choose to be considered for voluntary redundancy or early retirement. Alternatively they can enter a ‘supernumerary pool’ and carry out suitable project work, while retaining the option to leave on voluntary terms. Or they can wait until a suitable alternative role becomes available, an option which is limited in scope for individuals holding such senior positions as a Chief Executive. One role which would have been open to Mr Foley to apply for, had the SPA not explored the voluntary route, would have been that of the Interim SPA Chief Officer.

The imperatives decided by those leading the SPA’s process at that time were three-fold:

• to change as quickly as possible the reporting relationship between Forensic Services and the Board, responding to recommendations from a
June 2017 HMICS thematic review of Forensic Services and a previous 2016 HMICS Professional Advice Note;

- to secure business continuity despite the consequential redundancy of the Chief Executive Officer (CEO) role by recruiting an Interim Chief Officer before the CEO left the organisation; and
- to ensure that the CEO as Accountable Officer remained in post long enough to complete and present to the Board the 2016-17 annual report and accounts, and then leave the organisation immediately thereafter to enable the Accountable Officer responsibilities to transfer to a newly appointed Interim Chief Officer.

These business objectives, which were subsequently delivered effectively, provided the employment context within which the SPA considered options to achieve the objectives, including the use of payment in lieu of notice.

**Review of PILON Payment to Mr John Foley**

On 21 December 2017 the Committee expressed concerns about the quality of the decision-making applied by the SPA Board in mid-2017 in agreeing the terms of John Foley’s exit from the SPA, and about the size of the financial payments involved. The Committee’s concerns about payments reflected criticisms made in the Auditor General’s Section 22 Report about the SPA’s use of Payment in Lieu of Notice (PILON) and said that in doing so the SPA had incurred an additional three months’ salary costs unnecessarily. In addition, Paul Johnston, the relevant Scottish Government portfolio Accountable Officer, wrote on 21 December to the recently appointed SPA Chair who had taken up post on 4 December noting his concerns and asking that the relevant payment be paused to allow a review in the light of the Committee’s concerns.

Following the Committee’s meeting the SPA Chair instructed that that the PILON sum of £56,666.50 due to be paid to Mr Foley the following day should if possible be withheld pending a review. The PILON payment to Mr Foley was subsequently paused, and only the agreed early retirement sum of £43,470 was paid to Mr Foley as planned on 22 December 2017. The Chair instructed the SPA’s Interim Chief Officer to carry out a review of the options available to the SPA now in respect of the PILON payment. That review has now been completed.

In carrying out his review the Interim Chief Officer took independent legal advice, as well as legal advice from within the SPA and HR advice. His conclusions were as follows. The financial aspects of John Foley’s exit from the SPA are set out in a contractual agreement between him and the SPA, and Mr Foley has a contractual entitlement to be paid the PILON sum agreed. The current position is that the SPA has no option in law but to honour its contract with Mr Foley and that any attempt to reduce the contractual obligation to pay would fail. In addition it is likely that if the
SPA were to continue to withhold part or all of the PILON sum any subsequent legal challenge could result in the SPA being required to pay also legal costs arising from the action as well as the original full sum agreed. These costs could represent a significant additional proportion of the sum questioned by Audit Scotland (three months’ salary costs equate to approximately £28,333).

Given the current position and having reviewed the options available now, the Chair has agreed that paying the sum agreed is the correct course of action and avoids further financial risks to the SPA. The Interim Chief Officer has now instructed the sum to be paid to Mr Foley.

**Interim SPA Chief Officer Remuneration**

At the 21 December 2017 PAPLS hearing reference was made to suggestions that the SPA’s Interim Chief Officer, Kenneth Hogg, is paid £120,000 per year and therefore at the same level as the former Chief Executive. This is incorrect. As Interim Chief Officer, Mr Hogg is carrying out a significantly different role to the previous CEO role, the role has been evaluated as such, and he is receiving an annual salary of £107,500.

**Additional Written Submission from the Scottish Police Authority (also issued to Justice Committee)**

**About the SPA**

The SPA was established in 2013 under the Police and Fire Reform (Scotland) Act 2012 with the main functions of the Authority being:

- to maintain the police service;
- to promote the policing principles;
- to promote and support continuous improvement in the policing of Scotland;
- to keep under review the policing of Scotland; and
- to hold the Chief Constable to account for the policing of Scotland.

The SPA therefore has a key role in planning the strategic direction for policing in Scotland and ensuring that there is effective scrutiny and oversight of Police Scotland so as to ensure public accountability, confidence and trust.

The scale and scope of that role is considerable. The SPA has oversight of both local and specialist policing, for an annual budget of around £1 billion, and a workforce of more than 22,000 police officers and staff. The Authority is supported by a team of staff based in Glasgow, and also has statutory responsibility for the delivery of Forensic Services, independent custody visiting, and the handling of complaints about senior officers.
The SPA is also responsible for ensuring that policing delivers the strategic direction set out in the Strategic Police Priorities. Set by Scottish Ministers, these priorities form the foundation for the planning system for police services and set out communities’ collective expectations for policing. The current Strategic Police Priorities are localism, inclusion, prevention, response, collaborative working, accountability and adaptability.

**Future Strategy for Policing in Scotland**

The SPA has a responsibility to maintain and improve policing in Scotland and so ensure that the police service is equipped to meet changing needs, expectations and demands both now and in the future. The SPA has therefore worked collaboratively with Police Scotland to establish a long-term strategy for the development of policing in Scotland through to 2026, including how the service will achieve financial sustainability.

With the emphasis now shifting towards oversight of Police Scotland’s implementation of that strategy, the role of the SPA will be to monitor and to help drive this ambitious programme of change with a final Implementation Plan due for consideration by the SPA Board in March 2018.

**Development and Improvement**

The SPA is continuing to develop and there has been extensive critical examination of its operations and effectiveness to date. In particular, a number of significant concerns have been raised about the leadership, governance and decision making processes of the SPA. These include the findings of Parliamentary Committees; inspection reports by HMICS (notably the Review of Openness and Transparency published in June 2017); reports on financial management from Audit Scotland; and audit of SPA complaints handling by the PIRC. Concerns have also been expressed in Parliament, and more widely, that the SPA needs to do more to build confidence and trust in its role as the body overseeing policing in Scotland.

The Cabinet Secretary for Justice has also made clear that he expects to see significant improvement in these areas. The review which he commissioned to identify the ways in which the SPA Board can be better supported to deliver its statutory functions will report shortly. This work has been led by SPA Deputy Chair Nicola Marchant and Comhairle nan Eilean Siar Chief Executive Malcolm Burr who have undertaken an extensive programme of engagement with key stakeholders. Their findings and observations will play an important part in informing the changes and developments within the SPA which are now underway.
To drive forward the pace of change and improvement, there have been key changes in the leadership of the SPA. A new Interim Chief Officer took up post on 13 November 2017 and the new Chair of the SPA took up her post on 4 December 2017. Since taking up their respective roles the Interim Chief Officer and Chair have given careful consideration to identifying the priority areas for improvement and development within the SPA. They have engaged widely with key stakeholders and with the leadership of Police Scotland both to inform thinking and strengthen relationships, and have placed a significant emphasis in working to build capacity and capability within the organisation and to foster a collaborative approach to improvement and change.

The new Chair has set out a number of guiding principles for the development and improvement of the SPA going forward:

- simplification, transparency, and clarity around the SPA's governance processes;
- a more collaborative approach, where the SPA reaches out to engage more actively with interested individuals and bodies on policing issues and works more closely with key stakeholders;
- enshrining a strong public service ethos throughout the SPA and its decision-making;
- robust decision making underpinned by effective process and enhanced professional advice;
- building trust and relationships within policing and beyond;
- ensuring the SPA Board’s structure, practices and behaviours are more strategic and that Board members are more non-executive in their work and contributions;
- continuous and accelerated improvement to reflect the scope of the challenges the SPA faces, with Board and staff working at pace to make rapid, visible change.

The SPA has acknowledged the need for improvement in its decision-making processes, and the new leadership team has moved quickly to begin to deliver change and improvement:

- the previous practice of holding public meetings and closed meetings has been replaced and from now on there will simply be meetings of the SPA Board with consideration of items of private business as necessary, in line with established practice by other public bodies;
- the Board is being strengthened and developed. Five new members are currently being recruited and work is in progress to review performance and to provide greater training and development for Board members, in particular with regard to the roles, duties and responsibilities of a public authority;
- a dedicated Complaints and Conduct Committee has been re-established to bring focus to the often complex issues that surround senior officer complaints. It has already met, underpinned by improved support, process and enhanced professional advice.

These changes mark the beginning of an ongoing process of accelerated improvement. Further work is underway to develop the structure, processes and practices required to ensure good governance across the SPA's activities and this work is being supported by HMICS.

The new Chair has signalled her determination to develop the key role of the SPA as the public body which oversees and scrutinises Police Scotland in a way that supports and challenges their work in the wider public interest.

Developing the appropriate trust and relationships; clarifying roles and responsibilities and establishing effective communications, process and practice in key interfaces - with Police Scotland, Scottish Government, the Scottish Parliament, HMICS, Audit Scotland, PIRC and other stakeholders - is of fundamental importance.

Complaints and Conduct Issues

The SPA has a statutory responsibility to deal with complaints and misconduct allegations regarding senior officers of Police Scotland. This is an important function and it is incumbent upon the SPA, as with other bodies with a role in the complaints and investigations process, to act in accordance with the appropriate legal and regulatory frameworks and to have due regard to a range of often complex and sensitive issues.

Significant current cases, including allegations relating to the Chief Constable, are a matter of public record and are being considered through due process. The SPA, given its statutory functions in complaints handling and its responsibilities as an employer, will not comment further on this or other live cases. Where and when it is deemed appropriate and lawful, and in the public interest, decisions and developments will be formally announced.

The SPA recognises that the public, Parliament, the Scottish Government and many other stakeholders have an interest in these matters and have a legitimate expectation that such decisions will be carefully considered and underpinned by sound process. The Chair of the SPA has set out her commitment to work to ensure that the SPA's decision making processes are robust. She has also signalled a desire going forward to work with others involved in the area of complaints and conduct to bring about improvements to the existing system, including to ensure that
the confidentiality of complainants, and those complained about, can be best protected in the future.

Conclusion

It is vital that the SPA works to build confidence and trust. This is a prerequisite to delivering its statutory functions and to providing effective scrutiny, support and oversight of Police Scotland. Improvements in leadership, governance and management are key and this will be an area of significant effort and change in the year ahead.

Policing is one of our nation’s most important public services. Going forward, it is vital that the SPA, and all those with a role and an interest in shaping the future of policing of Scotland, stay focussed on the overarching objective which is to ensure that the people of Scotland have a police service which is fit for purpose and fit for the future.
Ms Jackie Baillie  
Acting Convener  
Public Audit and Post Legislative Scrutiny Committee  
Scottish Parliament  
Holyrood  
Edinburgh  

4 January 2018  

Dear Convener  

Public Audit and Post-legislative Scrutiny Committee  

I refer to the Committee Hearing held on 21 December 2017 and consider that to ensure that there is no ambiguity about the circumstances surrounding my engagement (or rather the lack of it) in the process surrounding the Chief Constable’s absence from duty, I would be obliged if the following facts are presented to the Committee.

- There was no consultation by the SPA with me in advance of the Chief Constable announcing that he had agreed with the SPA that he would take a period of special leave.
- There was no consultation by the SPA with me between the date of the Chief Constable going on special leave and the departure of the former SPA Chair, Mr Flanagan.
- I was not consulted in advance of Mr Flanagan approaching the Cabinet Secretary with the proposal for the Chief Constable to return to his duties.
- The first time that my input was sought was on 4 December 2017, when the new Chief Officer of the SPA sought my views on the potential impact on my investigations of the Chief Constable returning to work before the investigations were concluded.
- Had my views been sought at the outset of these investigations, I confirm that I had real and significant concerns that the PIRC investigations may have been prejudiced, if the Chief Constable had not been suspended. My concerns mainly arose from the fact that a large number of the witnesses were police staff from the federated ranks and civilian staff who worked within the Executive...
offices at Police Scotland’s Headquarters, Tulliallan and therefore in the immediate vicinity of the Chief Constable’s office. Due to the position of power and influence attaching to the Chief Constable’s post, there was a significant concern that those witnesses would not feel free to speak up if the Chief Constable remained in post.

The Chief Constable’s period of leave in England has enabled my investigation to complete interviews of the more junior members of staff, who perhaps had the greatest fear or repercussions and provided them with a safe space to be interviewed without any immediate fears.

- I was not advised of the SPA’s meeting on 7 November nor the outcome of that meeting. Had I been consulted in advance of the meeting, I could have confirmed that the investigations had progressed to a stage where most, if not all junior staff had been interviewed. The interviews which remained outstanding at that time and currently, are those with a number of senior staff, where the threat of repercussions and damage to career and future promotion prospects is much less than those staff in more junior positions.

- I advised the new Chief Officer of the SPA on 11 December 2017, that as things currently stand, there would be no prejudice to the PIRC investigations if the Chief Constable was not suspended. I further advised the Chief Officer that I would let him know if that situation changed.

I trust the above information clarifies my position in this matter.

Yours sincerely

Kate Frame
Commissioner
22 December 2017

Dear Ms Baillie

CHIEF CONSTABLE PHIL GORMLEY QPM
POLICE SCOTLAND
PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

I am writing to you as Acting Convenor of the Public Audit and Post-legislative Scrutiny Committee. I represent the Chief Constable of Police Scotland, Phil Gormley. I am instructed by him in relation to complaints made by three members of Police Scotland staff which are currently being investigated by the Police Investigations and Review Commissioner (PIRC). As you know, my client is currently on special leave of absence, as agreed with the Scottish Police Authority (SPA). While not the purpose of this letter, I wish to start by saying that the complaints against my client are entirely denied. The complaints are vexatious, opportunistic and are being strenuously defended on his behalf.

The reason for writing to you is following the reports of the evidence before the Public Audit and Post-legislative Scrutiny Committee on 21 December 2017. In particular, the reports of evidence provided to your Committee by Paul Johnston, Director General (Education, Communities and Justice) required my client to instruct me to respond on his behalf, for the first time publicly, in relation to his position in this matter. Until this point, my client has maintained a dignified public silence, despite the misrepresentation of his position in the media and my client’s very serious concerns over the significant delays and proportionality of the investigation being undertaken by the PIRC since these allegations first arose back in June 2017.

I am instructed to attach a letter received by my client from the SPA dated 8 November 2017. You will note that the requirement for him to return to full duties had the ’unanimous backing of the Board
of the Scottish Police Authority”. I am also instructed to attach the exchange of emails dated 9 November 2017 with the SPA Director of Communications & Relationships, setting out the agreed media release to accompany my client’s planned return to full duties on 10 November 2017.

Despite the clear and unanimous decision of the SPA Board, my client’s return was postponed on the afternoon of 9 November 2017. My client was travelling back to Scotland in order to resume his duties when he was contacted by the former Chair of the SPA, Andrew Flanagan, and told not to continue the journey. My client was told that this followed a meeting between Andrew Flanagan and the Cabinet Secretary for Justice earlier the same afternoon.

We have subsequently written both to the SPA (letter dated 14 November 2017) and the Cabinet Secretary for Justice (letter dated 28 November 2017) seeking clarification for the basis of the apparent intervention by the Cabinet Secretary for Justice and the failure of the SPA to implement its clear and unanimous decision taken on 7 November 2017 and communicated as a decision to my client by letter dated 8 November 2017. Neither the SPA or the Cabinet Secretary for Justice have responded to my correspondence.

The publicly reported assertion by the Director General that the Scottish Government’s involvement was to require that “due process” is followed accordingly needs further examination given the circumstances described above. My client is happy to assist the Committee within the bounds of the process that he finds himself in.

I am copying this letter to the Convener of the Justice Committee as she may also wish to be aware of this matter.

Yours sincerely
8 November 2017

Dear Phil

Further to your discussions with the Chair, I am writing to confirm that the Board have considered your leave arrangements in light of your confirmation that you have completed your preparations in relation to the complaints referred to PIRC and that you are fit and available for work.

The Board has decided to, therefore, rescind your leave period and this letter is to provide the 14 day notice required under our agreement. However, we believe it would be beneficial if you return to duty as soon as practicable. I understand you have indicated to the Chair a willingness to return on Friday 10 November 2017.

I would like to take this opportunity to advise you that your return to full duties has the unanimous backing of the Board of the Scottish Police Authority.

I would be grateful if you could advise by return of your intention, or otherwise, to resume your full duties as Chief Constable on Friday 10 November 2017.

Yours sincerely

JOHN FOLEY
Chief Executive Officer
Thank you David. I don’t have any issues with those suggested changes and will advise that onwards to Nicola (and Andrew when out of Committee) and then confirm.

My guidance was that timing would be later this afternoon but I suspect that Andrew will want to update directly once he has this commitment out of way.

John McCroskie
Director of Communications and Relationships
Scottish Police Authority / Úighdarras Poilis na h-Alba
1 Pacific Quay
Glasgow
G51 1DZ

Thanks John – that’s great. I’ve sent this on to Phil and we just have a few suggested changes, highlighted in the revised text, which I hope is not controversial:-

Leadership Update from Scottish Police Authority – Chief Constable to Return to Duties

The Scottish Police Authority (SPA) has today confirmed that the Chief Constable of Police Scotland, Phil Gormley QPM, will return to his full duties and responsibilities from tomorrow (Friday 10 November).

The SPA agreed on 8 September to a request from the Chief Constable to take a temporary leave of absence to allow him the time and space to focus on his personal preparation to address the content of allegations against him. SPA announced a further extension of that period of leave on 5 October.

Mr Gormley has now confirmed to the Chair of the SPA, Andrew Flanagan, that he has had sufficient time to prepare himself for the conduct allegations made against him at this time, and that he is ready and fit to return to work.
Having previously agreed that a period of leave was an appropriate measure to address the investigative and welfare issues for all parties involved, the Board of the SPA has agreed decided that it is now in the interests of the service, the public, and best value that the Chief Constable takes up his duties as quickly as practicable. Mr Gormley welcomes the Board’s decision and looks forward to resuming full operational duties.

The Authority has also taken the necessary steps with Police Scotland to ensure suitable arrangements are put in place to support the welfare of all involved parties until the alleged conduct issues are concluded.

The SPA and Chief Constable wishes to put on record their gratitude to the whole of Police Scotland’s leadership team for the additional responsibilities they have shared over the past two months, and in particular wishes to thank and acknowledge DCC Designate Iain Livingstone for the reassurance, stability and direction he has given to officers, staff and partners in the Chief Constable’s absence over this interim period.

Please do let me know once approve and when the announcement is to be made just so that I can give Phil the heads up.

Kind regards

David Morgan
Partner
Burness Paull LLP

FROM: McCroskie, John
Sent: 09 November 2017 13:18
To: David Morgan
Subject: RE: Text discussed [NOT PROTECTIVELY MARKED]

NOT PROTECTIVELY MARKED

Many thanks and sorry for delay in first attempt not getting through to you. Andrew is now in the Parliamentary Committee until 2pm after which he is hoping and intending to make key further calls before this can be announced. If the CC has any comments I can discuss them with Nicola Marchant between now and then.

John McCroskie
Director of Communications and Relationships
Scottish Police Authority / Ùghdarras Poilis na h-Alba

1 Pacific Quay
Glasgow
G51 1DZ

Website / Làrach-lín: www.spa.police.uk
Twitter: @ScotPolAuth
Thanks John – safely received. I’ll take Phil’s instructions and get back to you ASAP.

Kind regards

David Morgan
Partner
Burness Paull LLP

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Leadership Update from Scottish Police Authority – Chief Constable to Return to Duties

The Scottish Police Authority (SPA) has today confirmed that the Chief Constable of Police Scotland, Phil Gormley QPM, will return to his full duties and responsibilities from tomorrow (Friday 10 November).

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Mr Gormley has now confirmed to the Chair of the SPA, Andrew Flanagan, that he has had sufficient time to prepare himself for the conduct allegations made against him at this time, and that he is ready and fit to return to work.

Having previously agreed that a period of leave was an appropriate measure to address the investigative and welfare issues for all parties involved, the Board of the SPA has agreed that it is now in the interests of the service, the public, and best value that he take up his duties as quickly as practicable.
The Authority has also taken the necessary steps with Police Scotland to ensure suitable arrangements are put in place to support the welfare of all involved parties until the conduct issues are concluded.

The SPA wishes to put on record its gratitude to the whole of Police Scotland’s leadership team for the additional responsibilities they have shared over the past two months, and in particular wishes to thank and acknowledge DCC Designate Iain Livingstone for the reassurance, stability and direction he has given to officers, staff and partners over this interim period.

John McCroskie
Director of Communications and Relationships
Scottish Police Authority / Ùghdarras Poilis na h-Alba

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Dear Andrew

CHIEF CONSTABLE PHIL GORMLEY QPM

I refer to the events of late last week, following the unanimous decision of the SPA Board that my client should return to full operational duties on Friday 10 November 2017. My client is grateful for the SPA Board’s show of confidence in him, as indicated by the letter from the SPA Chief Executive dated 8 November 2017.

My client was pleased with the decision of the Board but concerned that his return was delayed following intervention by the Cabinet Secretary for Justice. I have advised my client that any intervention by the Scottish Ministers to reverse the Board’s decision is ultra vires and unlawful. This decision is solely a matter for the SPA, as the statutory body tasked with the operational deployment of my client as Chief Constable (and, for that matter, the procedures under the Conduct Regulations for Senior Officers).

I have also advised my client that the PIRC have no role in determining his status or operational deployment and should confine themselves to progressing their investigations which have already taken an inexplicable length of time.

Aberdeen Edinburgh Glasgow
I can confirm that my client remains ready and willing to return to full operational duties as decided by the Board (and agreed by him) and he is at your disposal to cooperate entirely with matters under investigation.

As you know, I agreed the terms of a press release with John McCroskie on the afternoon of Thursday 9 November 2017 regarding the review of special leave and my client’s anticipated return to work. I understand that both the Scottish Sun and the Scottish Daily Mail newspapers contacted the National Police Chiefs Council yesterday, enquiring as to the status of my client’s redeployment proposal. I appreciate that you are continuing discussions at your end with a view to implementing the Board’s decision, as communicated by letter dated 8 November 2017.

In the meantime, I must reserve my client’s legal rights to challenge any failure to implement the Board’s decision by way of application for judicial review should this be necessary. Any delay in doing so must not be treated as acquiescence on my client’s part.

Kind regards.

Yours sincerely
HIGHLY CONFIDENTIAL
Michael Matheson
Cabinet Secretary for Justice
The Scottish Parliament
EDINBURGH
EH99 1SP

BY E-MAIL ONLY:
CabinetSecretaryforJustice@scotland.gsi.gov.uk

28 November 2017

Dear Mr Matheson

CHIEF CONSTABLE PHIL GORMLEY QPM
POLICE SCOTLAND

I act for Chief Constable Phil Gormley and I am instructed by him in relation to matters being handled by the Scottish Police Authority ("SPA") pursuant to the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (the "Regulations").

While the decisions made under the Regulations and, indeed, the operational deployment of senior police officers is a matter for the SPA and not the Scottish Government, I appreciate that you have an interest in the governance and leadership of Police Scotland as Cabinet Secretary for Justice. This has, of course, been in sharp focus with revelations over the weekend in relation to the suspension of ACC Higgins.

On behalf of Chief Constable Gormley, we thought that it was important to ensure that you are fully sighted on the decisions taken by the SPA Board in relation to my client earlier this month. I attach a copy letter which my client received from the Chief Executive of the SPA dated 8 November 2017, together with my response to the Chair of the SPA on the same date. I also attach copy exchange of e-mails between my firm and the Director of Communications & Relationships at the SPA dated 9 November 2017, agreeing the terms of a press release which was due to be issued by the SPA that afternoon.

As you will see, it was clearly notified to my client that the terms of his agreed "special leave" had been reviewed by the full SPA Board at their meeting on 7 November 2017 and that its unanimous
decision was that the special leave arrangements should be rescinded and my client should resume his full operational duties as Chief Constable. My client was also advised that there was no basis on which to suspend him and it was agreed that he would return to work on Friday 10 November 2017.

This unanimous decision of the SPA Board is a matter of record and, despite recent press reports, it was not a unilateral decision of the current Chair, Andrew Flanagan.

My client was therefore surprised to have been informed late on the afternoon of 9 November that, following your apparent intervention, he should not report back to work, despite the Board’s unanimous decision and the clear terms of the letter dated 8 November 2017. I understand that the suggestion was that the views of the Scottish Government ought to have been sought by the SPA, along with those of the PIRC.

I have advised my client that there is no lawful basis for Scottish Government’s intervention or interference with the lawful decision of the SPA, as the sole statutory body tasked with the operational deployment of the Chief Constable. I appreciate that this resonates with the media reports over the weekend of your stance in relation to the ACC Higgins matter, namely that these are indeed matters for the SPA and PIRC.

In my client’s case, as independent investigator, PIRC has no decision-making remit or authority in relation to the deployment of my client as Chief Constable. I therefore also thought that it was important for you to be sighted on our latest correspondence with the PIRC in relation to their handling of the investigation into the complaints against my client. As you will see from our attached copy letter to the PIRC dated 20 November 2017, we are concerned about the lack of speed, equity and proportionality of the approach being taken to investigating these complaints. My client denies the allegations entirely and the potential damage to his reputation (and, for that matter, that of policing in Scotland) caused by this protracted process is readily apparent.

There was a concluded agreement by the SPA with my client in relation to his return to work from special leave and its terms are clear. Three weeks have since passed and my client remains at the disposal of the SPA, ready and willing to return to full operational duties from his special leave of absence to provide leadership to Police Scotland at this time. Under the terms of his special leave, my client can in any event give 14 days’ notice of return to work. However, he would prefer to do so consensually, in implementation of the decision of the SPA Board.

I have naturally advised my client in relation to the vires of any intervention in the SPA decision making and his legal rights are of course reserved. I have also written separately to the SPA to encourage them to implement their original unanimous decision without further delay. Given your legitimate interest in the SPA’s decisions and my client’s substantive role as Chief Constable in
driving forward its leadership agenda, I hope that you will appreciate why I have reached out to you on his behalf at his time.

Yours sincerely

David Morgan
Partner

Enc.

1. Letter from SPA dated 8 November 2017
2. Letter from Burness Paull to SPA dated 9 November 2017
3. E-mail exchanges between Burness Paull and SPA dated 9 November 2017
4. Letter from Burness Paull to PIRC dated 20 November 2017

cc. Andrew Flanagan, Chair, SPA
Nicola Marchant, Deputy Chair, SPA
Kenneth Hogg, SPA
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