



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit and Post-legislative Scrutiny Committee

**Thursday 11 May 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**  
**12<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Jackie Baillie (Dumbarton) (Lab) (Acting Convener)  
Jenny Marra (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)  
\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)  
\*Monica Lennon (Central Scotland) (Lab)  
\*Alex Neil (Airdrie and Shotts) (SNP)  
\*Ross Thomson (North East Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Moi Ali (Former Board Member, Scottish Police Authority)  
Brian Barbour (Former Board Member, Scottish Police Authority)  
George Graham (Current Board Member, Scottish Police Authority)  
David Hume (Current Board Member, Scottish Police Authority)  
Derek Penman (HM Chief Inspector of Constabulary in Scotland)  
Iain Whyte (Current Board Member, Scottish Police Authority)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Public Audit and Post-legislative Scrutiny Committee

Thursday 11 May 2017

*[The Acting Convener opened the meeting at 09:01]*

### Decision on Taking Business in Private

**The Acting Convener (Jackie Baillie):** Good morning and welcome to the Public Audit and Post-legislative Scrutiny Committee's 12th meeting in 2017. I ask everybody to switch off, or at least switch to silent, their electronic devices so that devices do not interfere with the committee's proceedings.

Under agenda item 1, do we agree to take items 4 and 5 in private?

**Members** *indicated agreement.*

## Section 22 Reports

### "The 2015/16 audit of the Scottish Police Authority"

09:02

**The Acting Convener:** Under item 2, we will take further oral evidence on the Auditor General for Scotland's report "The 2015/16 audit of the Scottish Police Authority". We are focusing on the issues of governance and transparency.

I welcome to the committee Derek Penman, Her Majesty's chief inspector of constabulary in Scotland; Brian Barbour and Moi Ali, former board members of the SPA; and David Hume, George Graham and Iain Whyte, current board members of the SPA.

A number of our witnesses will make brief opening statements—I emphasise the word "brief". I will give you a 30-second warning before you get to three minutes, and then I will cut you off, because I want to preserve the time that is available to the committee to ask questions. If the witnesses can stick to that time, it will be helpful.

On that basis, I invite Derek Penman to make a statement first.

**Derek Penman (HM Chief Inspector of Constabulary in Scotland):** I thank the committee for its invitation to give evidence at the meeting and for the opportunity to support the committee's scrutiny of the Scottish Police Authority in light of the section 22 report that the Auditor General submitted.

As the committee is aware, I have committed to a statutory inspection of the Scottish Police Authority as part of my scrutiny plan for 2017-18. On 9 December 2016, I wrote to advise the SPA's chair of the inspection and to confirm that it would provide an opportunity to review the authority's new governance arrangements, as well as to provide a wider review of the authority, the work of its officers and the services that it provides.

Initially, I planned to conduct the inspection over the next eight months, when I would effectively build evidence to support an assessment of the overall state, effectiveness and efficiency of the SPA, and I intended to publish the report around January 2018. However, following the evidence that the SPA gave to this committee and the Justice Sub-Committee on Policing, the Cabinet Secretary for Justice requested that I bring forward the element of my inspection that relates to openness and transparency in how the SPA conducts its business and specifically to the authority's decision to hold committee meetings in

private and restrict the publication of meeting papers.

I am aware that this committee has heard evidence from the SPA about its handling of the resignation of board member Moi Ali and that members asked questions, particularly about compliance with “On Board: a guide for members of statutory boards”. I have been made aware of the circumstances surrounding Moi Ali’s resignation in December 2016 and I have made a public commitment to consider during my planned inspection any relevant concerns that that raised.

As a result of the request from the Cabinet Secretary for Justice, and in response to the recent parliamentary scrutiny by the committee, I have agreed to bring forward a review of openness and transparency in how the SPA conducts its business. A specific report will be prepared on that review to highlight our findings and any recommendations or other areas for improvement that are identified.

I would not ordinarily pre-empt my review or my recommendations, but it would be fair to say that it is unlikely that I will not be recommending to the chair of the Police Authority that the board and committee meetings should revert to being held in public and that papers should be circulated in advance of meetings. I thought that it might be helpful for the committee to understand that that is the likely outcome from the work that we have done so far. It may be helpful for the chair to consider that position in advance of our report being published.

The review that we are undertaking now is narrow, but it will complement our scheduled and more comprehensive statutory inspection of the authority during 2017-18, which will include a wider assessment of leadership and governance in the authority. I have drawn up the terms of reference for that review, but I have decided not to publish them until after this meeting. That provides an opportunity for us to include any relevant issues or concerns that members raise that would benefit from further examination by Her Majesty’s inspectorate of constabulary in Scotland.

I can give more detail about the approach that we are taking, but I am conscious that the committee has time constraints. I intend to publish the terms of reference later today or tomorrow.

**The Acting Convener:** Thank you, Mr Penman. Your comments are very welcome. I invite Brian Barbour to give a statement.

**Brian Barbour (Former Board Member, Scottish Police Authority):** Thank you for inviting me to give evidence. I left the SPA 18 months ago and until Moi Ali’s resignation I had made no public comment about the SPA.

Policing is enormously important and I was privileged to be part of it. Police officers and staff do an amazing job in very difficult circumstances and often at great danger to themselves. However, policing costs more than £1 billion a year and it needs and deserves strong oversight. It saddens me that the SPA has become the story because of what seems to be a desire to keep things private. Nobody and nothing appears to be able to cause ripples, but that approach just causes bigger problems later.

The SPA has been the story for months but, despite that, the board has remained silent, as it often is; it has been passive and has taken action or spoken up only when forced to do so, rather than leading the debate. Why has the board remained publicly silent on the treatment of Moi Ali, the HMICS letter, criticism from the committee, negative comment in Parliament and negative comment from the media? Parliament created the SPA when it passed the Police and Fire Reform (Scotland) Act 2012, and it authorised the SPA to hold the chief constable to account for the performance of policing. Perhaps Parliament should appoint SPA members and, in turn, the SPA should be accountable to Parliament.

Whatever the outcome, the SPA should operate in a transparent manner that is consistent with good governance as mandated in section 2 of the 2012 act. It can then go back to supporting police in the job that they do and holding the chief constable to account for how Scotland is policed.

**The Acting Convener:** Thank you, Mr Barbour. I invite George Graham to give us a statement.

**George Graham (Current Board Member, Scottish Police Authority):** Good morning. Many thanks for the opportunity to say a few words. I got the convener’s warning and I will be as brief as possible—I have rewritten the statement of an hour and a half that I had prepared.

Transparency and openness are undoubtedly a focus today, and I will give you all a sense of why we as SPA board members took the decisions that we did on public and private business. As a board, we know how important that aspect is, and we are committed to every key policing issue and every key policing decision being addressed in public at the appropriate point.

It is wrong to see this as the SPA choosing which issues to take in public and which in private—it is more complex than that. It is a question of when, and not if, an issue enters the public domain, and the question concerns not just the issue but when the debate about it enters the public domain.

The aim of the governance changes was to focus SPA committee attention on issues that matter in order to avoid open board meetings

getting bogged down in extraneous and often unnecessary detail. Our committees refocused on early discussion and engagement to add more value to the full board's subsequent public scrutiny and decision making.

The aim of taking that committee business in private was to get early visibility for the SPA on the challenges and the complexity of emerging policing issues, so that all options could be explored and tested. We knew in taking the decision that different opinions existed and that the decision would have its critics, but we took the decision with awareness of the range of views of other stakeholders, including Her Majesty's chief inspector of constabulary.

All our members acknowledged and debated potential benefits and challenges in adopting the revised approach, but we took the view that there was a balance to be struck between transparency and effective governance. In our view, this is not a black and white issue but one of judgment and balance. Central to our decision was agreement on the need for on-going review of the revised approach—we made that decision in December—to weigh benefits against any drawbacks. We committed to doing that within six months. However, a good board also needs to be responsive and accept that the public and civic voice has strengthened on the issue. I reassure the committee that we are listening and that we are ready to adapt our approach.

I thank the committee. We all look forward to contributing further today.

**The Acting Convener:** Thank you, Mr Graham. I invite Moi Ali to speak.

**Moi Ali (Former Board Member, Scottish Police Authority):** Good morning and thank you for the invitation. There is much in Andrew Flanagan's evidence to the committee to take issue with but, even if his account is to be believed, it raises fundamental corporate governance issues. He knew my views on the governance framework but told the committee that he did not expect me to voice them in public. Should a chair suppress respectful, open debate? He wrote of the value of being seen to be a united board. Where, then, can alternative views be discussed? Can that be done only in private? That seems to me not a good option.

Andrew Flanagan told the committee that dissent is okay, but his letter to me talked about how sharing public disagreement was a resigning matter. Why should members, who have accepted collective responsibility, resign? That is not what the Government's "On Board" guidance says. Do SPA members now feel constrained about expressing their views in public? Surely that is not good for governance.

The chair claims that his concern was that I did not communicate my intentions in advance. Should board members enter meetings with their minds made up and their position pre-shared? It is clear that doing so would turn board meetings into theatre and board members into actors. In my view, my removal from committees was a straightforward punishment for speaking out. The "On Board" guidance says that members must participate in committees and, equally, that the chair should lead by example. What kind of an example was removing me from committees?

A key question is whether Andrew Flanagan observed the nine principles of public life in Scotland, which include openness, honesty, leadership, respect and integrity. Was withholding Derek Penman's letter from the board an act of integrity? The "On Board" guidance states:

"It is important that nothing you do or say ... as a Board member tarnishes in any way the reputation of the ... Board."

Have Andrew Flanagan's recent actions damaged the SPA? News reports some five months after the event talked of haemorrhaging confidence in the beleaguered, embattled, control-freak chair and of a Kremlin-style, crisis-hit, secret society board. None of those are my words; in fact, some of them are the committee's words.

The chair's style shapes board culture. Did the board ask to see the HMICS letter? Did the board ask why it had not been shared? Was there any discussion of why the chair believed that I should resign? Has any board member questioned Andrew Flanagan about his evidence to this committee? The "On Board" guidance states that board members

"should not hesitate to challenge the Chair if you believe that a decision is wrong".

Did the board members therefore believe that the decisions were right?

Before board members approved the governance framework, they were aware of key stakeholders' concerns. First, they discussed Audit Scotland's report, which said that SPA board and committee papers were sometimes insufficiently transparent and issued only on the day of the meeting and that some papers that were taken in private could have been heard in public. Audit Scotland questioned whether the SPA demonstrated

"high standards of corporate governance at all times including openness and transparency in decision making."

09:15

Secondly, board members knew that the internal auditors had questioned whether the proposals complied with best practice. Thirdly, they knew

that at least one local authority had raised issues and concerns. Fourthly, colleagues knew that the Police and Fire Reform (Scotland) Act 2012, which created the SPA, says:

“The Authority must ensure that its proceedings and those of its committees and sub-committees are held in public”,

and that

“The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.”

I will summarise the position in a few points. The decision on private committees and last-minute publication of papers was contrary to statute and against the spirit of public service accountability; the board and the chief executive ignored Government guidance and stakeholders’ concerns; the chair was wrong in trying to suppress information and debate and in punishing me for taking a principled stance in public that was consistent with my well-known private view; and the board appears to have failed to challenge, given that three months after the initial decision, the board still felt no need to revise it.

Finally, the ensuing reputational damage has diminished public confidence in an important public body. Policing has to operate within the law and earn the confidence of the public, and so, too, does its oversight body.

**The Acting Convener:** I thank all the witnesses for at least attempting to keep within time.

**Monica Lennon (Central Scotland) (Lab):** Good morning to all our witnesses. My first question is for George Graham. Towards the end of your opening remarks, you described good qualities in a board, which include being responsive and listening to criticism. Have you been part of a good board?

**George Graham:** Thank you for your question. All that I can say is that since Andrew Flanagan took over in September 2015, the atmosphere on the board has been changing. We have become much more engaged and there is a clearer sense of purpose about what we are doing.

We have been addressing a particular issue that is to do with information flow and our credibility with senior police colleagues. If we are to govern the police service effectively, we have to understand what it is about. Andrew Flanagan’s governance review, which reported in spring 2016 and which made many recommendations that have been accepted and have been fairly uncontroversial, has really helped us to improve.

I joined the board in June 2015 and I think that we are unrecognisably better than we were. We

are still learning; we are still a young and immature board. We want to remain responsive.

I have great respect for Moi Ali and for her views, which she expressed pretty effectively this morning, as she did at the board, but I do not recognise her characterisation of the board. I certainly would not be part of a board that was secretive and did not want to engage with stakeholders. I was in public service for more than 32 years as a police officer and I have no axes to grind; my pure ambition and passion are for the Police Service of Scotland to be the very best that it can be.

On the decision to hold committee meetings in private—we hold all our board meetings in public, and all our decisions about everything are now vested in the board’s public meetings—I elected to support that because we do not yet have information flows right or strong enough relationships with senior police officers, albeit that they are improving. We needed clear space in which to consider complex and difficult issues.

I can see that you want to challenge a few things, but please let me make a final point. I hope that everyone recognises that, if we have the balance wrong and need to do more of our committee work in public, we will do that. I also hope that this committee, commentators and HMICS in the review that it is about to do will recognise that every board needs at least some private space in which to make decisions and freely debate complex and difficult issues, such as those that policing will face over the next 10 years, following the consultation on the 2026 strategy.

**Monica Lennon:** You mentioned your background in policing, which I am sure is valuable to the board. Do you have experience of other boards from other appointments?

**George Graham:** No. This is the first time that I have sat on a public board.

**Monica Lennon:** So you recognise that the board has not been performing well.

**George Graham:** I recognise that the perception that we have created about holding committee meetings in private has had a much bigger impact than I expected, but I am not an experienced public board member. I am a former senior police officer with a passionate ambition to help the police in Scotland to be the very best that they can be. This committee process and what we have been through up to now has been a learning process and I accept that we can still learn and improve. I suspect that, for all my time on the board, we will be learning and improving.

**Monica Lennon:** Thank you.

I move on to a question for Moi Ali. Ms Ali, I have read the letter that Andrew Flanagan sent to



you in December after you had raised two objections to part of the governance review. Do you think that that letter amounted to bullying?

**Moi Ali:** Yes, I believe that it did. A good leader, if he had any concerns, would surely speak to an individual—I think that we would all do that. It is hard to find another word to describe what a letter of that nature amounts to.

**Monica Lennon:** Do you feel quite sad about the experience? Do you feel that you have been driven out?

**Moi Ali:** Yes, I do. It has been a really horrendous experience. I am quite surprised that, five months after I received the letter, we are still talking about it. It has been a very difficult thing to live through, particularly as I have been outside all this, on my own, without access to materials. Because I was coming here today, I asked for information from the SPA—not private information, but information about meetings that I attended, information that I had previously held—and I was denied that. I have been very much pushed to the outside.

What has transpired as a result of the letter is exactly what I said would happen. I asked for a meeting with Andrew Flanagan almost immediately—on the first working day—after I received the letter, but for a variety of reasons that simply did not happen.

**Monica Lennon:** In a previous evidence session, I asked Andrew Flanagan whether he recognised that his conduct could be perceived as control freakery, and he did not accept that characterisation. In the time that I have been pursuing these questions, it has struck me that the SPA is very much a male-dominated organisation. Do you believe that he would have sent the same letter to a man?

**Moi Ali:** No, I do not think that he would. After I received it, I spoke to Iain Whyte, because he had expressed similar views to mine at the board meeting. The only difference was that he did not ask for his views to be minuted. In a way, the minuting is irrelevant because the meeting was live streamed and recorded for posterity, but he raised very similar issues. I think that his words were,

“I share many of the concerns that Moi has raised.”

He pushed on the point that I pushed on about whether the proposals conformed with best practice. I asked Iain Whyte whether he had received a similar letter and he said that he had not.

**Monica Lennon:** Given the letter and what you have just said about feeling bullied, do you think that Andrew Flanagan is fit to continue as chair of the Scottish Police Authority?

**Moi Ali:** I am afraid that I do not. He is actually not fit to continue on any public board, because he clearly does not observe public sector values. However, the Scottish Police Authority is in a different league, because an oversight body that oversees policing has to set even higher standards of corporate governance, and he has clearly not observed those standards.

**Monica Lennon:** I turn to Brian Barbour. You rightly set out in your statement that the SPA has oversight of £1 billion of public spending. Given what Moi Ali has just said, do you believe that Andrew Flanagan is fit to continue in his role?

**Brian Barbour:** I have no experience of Andrew Flanagan because he joined just after I left, but the story that Moi Ali has given here makes me question his suitability for the role.

**Monica Lennon:** Thank you.

Iain Whyte, we have just heard from Moi Ali that you raised concerns similar to those that she had, but you did not receive a letter on Christmas eve from Andrew Flanagan—or did you?

**Iain Whyte (Current Board Member, Scottish Police Authority):** I did not receive any letter from Andrew Flanagan. I suppose that the difference between what Moi Ali did and what I did—if there was one—was that Moi recorded her dissent from the board decision, and I did not do that at the meeting. I do not know why Andrew took a different approach. At that meeting I did not record my dissent because I accepted that board colleagues wished to make the decision and I accepted that I could go along with that in the round, having questioned the decision and sought assurances on it.

**Monica Lennon:** The consequences of recording dissent have been quite serious for Moi Ali. It sounds like she has been hounded out. Would that put you off recording dissent in the future?

**Iain Whyte:** No, it would not put me off recording dissent. I recorded dissent on a public board that I was a member of previously. In the past, we have had votes on the SPA board—

**Monica Lennon:** Which public board was that?

**Iain Whyte:** It was the NHS Lothian board, many years ago.

**Monica Lennon:** Did the chair write to you to give you a telling off?

**Iain Whyte:** No.

**Monica Lennon:** In that case, do you agree that Andrew Flanagan overstepped the mark by sending that letter to Moi Ali?

**Iain Whyte:** I do not know any of the background of the conversations—

**Monica Lennon:** But you are an experienced public board member.

**Iain Whyte:** I do not know any of the background of the conversations about these matters that Moi Ali and Andrew Flanagan had prior to the meeting, so I do not understand what was going on in that relationship. That would be a matter for you to question them about.

**Monica Lennon:** With respect, Mr Whyte, all the correspondence is now in the public domain and I am sure that you have followed the previous meetings of this committee very carefully—or at least, I hope that you have. All the facts are out there. Have you not been paying attention?

**Iain Whyte:** I have, but I do not know whether there are other matters outwith the correspondence. There were possibly conversations that might have had an impact on the situation.

**Monica Lennon:** What could possibly justify Andrew Flanagan's letter to Moi Ali?

**Iain Whyte:** I do not know. I did not write the letter.

**Monica Lennon:** Moi Ali said that she feels bullied because she got a letter and other people did not, and that other board members are being silent and are not prepared to stick up for her. Are you complicit in the way that Andrew Flanagan has treated Moi Ali?

**Iain Whyte:** The letters and the matter were between them. I have been told that Moi has taken the issue up elsewhere, and clearly it is coming up here. I would have thought that it was a matter for due process.

The board had made its decision and Moi chose to resign. I do not know why Moi chose to resign. I am not party to the private deliberations of others.

**Monica Lennon:** If you recall, Andrew Flanagan asked her to consider resigning because she was recording her dissent. Do you recognise that?

**Iain Whyte:** I do recognise that, but—

**Monica Lennon:** That is fine. You have made your position clear.

**Iain Whyte:** It is still a matter for the individual. I do not know how I would have felt had I been in that position, but I do not think that I would have resigned.

**Monica Lennon:** Do you have any regrets about Moi Ali's resignation or the circumstances that may have surrounded it?

**Iain Whyte:** I was not close to the circumstances surrounding it.

**Monica Lennon:** Do you recognise that the SPA's reputation is in crisis?

**Iain Whyte:** I do not believe that it is in crisis. I believe that we are an improving board and an improving organisation.

**Monica Lennon:** Do you think that the SPA has the confidence of the public and this Parliament?

**Iain Whyte:** We have to continue to improve public confidence in the organisation and we are working to do that. The publication of the draft policing 2026 strategy, the on-going public consultation on that, and our efforts to improve the working relationship with senior police officers such that we are taking forward the strategic direction of policing in Scotland are the board's purpose, and on all that we are improving. I expect to see a full strategy published soon that will make for better policing for Scotland.

**Monica Lennon:** I have no more questions for Iain Whyte.

**The Acting Convener:** George Graham wants to come in, but perhaps all three of the board members could answer this for me, given your wealth of experience in the public sector. Were you collectively talked through the principles of "On Board"? If you were, is your understanding of them that you can dissent in public and that collective responsibility only applies after a decision has been made? Given the circumstances that surround the dispute with Moi Ali, do you, as board members of the SPA, have no responsibility for ensuring that the principles of "On Board" are met?

09:30

**George Graham:** Usefully, that question leads into what I wanted to say on Monica Lennon's point. I have great respect for Moi Ali, and had great respect for her as a colleague when she was on the board—

**The Acting Convener:** Will you answer my question first, before you do that?

**George Graham:** I will, convener. I respect the position that Moi finds herself in, and her perception of it; I have no difficulty with that at all. As Iain Whyte has described, however, I also do not feel qualified to comment on the detail of what has taken place there.

I can certainly tell you that the "On Board" guidance was given to me at my induction. I have at least a basic understanding of how collective responsibility should work. I absolutely would feel able to dissent on anything; I would give my opinion. I agree with Moi in that, when I go into a

public board meeting, I am not always entirely sure of where I will eventually end up on a given issue. It may be that, during the debate, I will change my views. That during a meeting members might form a view and dissent from the general purpose is entirely the product of a sensible and functional board, in my view. I also understand that if I do dissent and I cannot live with what the board eventually decides collectively, then quite simply I have a choice to make about whether I can continue on the board.

I am slightly concerned about the picture that is being painted of Andrew Flanagan as a chairperson. In the singular situation that Moi outlines very eloquently, I can understand that perception. However, I feel duty bound to say that my experience of him as a chairperson is not that he is a control freak but that he is somebody who wants to engage with other members and to bring in other people's views and dissent. He has said to us, repeatedly, at public boards, "Please get out what your views are." I want to make sure that we have a balanced view about how Andrew Flanagan is chairing the board.

**The Acting Convener:** In fact, we have before us a letter—

**George Graham:** I understand.

**The Acting Convener:** —that indicates something quite different to what you have just told this committee. Given what you have said about the "On Board" guidance, I am interested in whether you think that that letter is appropriate. I will give you a chance to answer that and then I will bring in Mr Hume.

**George Graham:** I do not feel particularly well qualified to comment on the letter, having seen it. I hope that if I had dissented in public, any chairperson, or indeed any of my colleagues on the board, would have challenged me verbally and said, "Listen, what is going on? Let us have a discussion about that." That is how I like to do business and how I have experienced business before—though not necessarily with Andrew Flanagan. I cannot say a great deal about the letter, but I respect Moi's position on it and I understand why she feels the way that she does.

**David Hume (Current Board Member, Scottish Police Authority):** With regard to the events that we are talking about, and the "On Board" guidance, I say that I fully understand the "On Board" guidance and I received a copy of it when it was published. My interpretation of "On Board" is the same as the one that you outlined, convener.

I regret very much that Moi Ali left the board; she was a very useful and active member and the quality of her contributions was very good.

With regard to the questions about the role of the board around those events, I was aware that, quite rightly, Moi had raised her concerns formally, through agreed processes. There are perhaps issues on that that could be teased out.

Questions have also been raised on the interpretation of the "On Board" guidance that resulted in the process that took place in January and February of this year and that was outside the SPA. Like Iain Whyte, because I knew that that process was under way, I felt that that would bring resolution to the matter, which I think was the aim that Moi had at the time.

**The Acting Convener:** Thank you. I will bring in Ross Thomson.

**Ross Thomson (North East Scotland) (Con):** My first question is to the other board members. In his evidence, Mr Barbour said that the board had been "passive", only

"speaking up when forced to do so"

and that, in relation to current media coverage, it

"has remained silent".

Has anyone asked you not to comment on any of the media coverage surrounding the work of the committee and the resignation of Moi Ali? If that is not the case, why have you remained silent?

**Iain Whyte:** We work collectively as a board. We come to decisions, and we then support those decisions—as in the "On Board" guidance. At that point, it is not for us individually to make public comments on things, although we may be asked to represent the board in making public comments on the views of the board. Therefore, were I approached by a journalist or others for public comment, I would refer that first to our press office, which would arrange for an appropriate corporate view to be given. That is standard for public boards of the type that the SPA is.

**George Graham:** In response to your first question, no one has asked me not to comment—if that double negative works. I have not been asked not to say anything.

I do not feel particularly qualified to comment in a public arena on a matter that took place between two members of the board—the chair and Moi Ali. In fact, I think that I would do more damage if I tried to. That is why I have not done so.

**David Hume:** Nobody has instructed me or guided me in making comments or otherwise.

I revert to the point that I made previously. Moi Ali is here and I do not want to speak for her, but my impression was that she took advice on what she should do to resolve her concerns about the letter. She followed that advice to the letter, I think,

and that process was on-going. At the end of the process, she decided to resign.

I do not feel that I should be setting in train a parallel process to investigate the matter. If there are issues about how the matter was dealt with, they need to be dealt with, but Moi fully followed the advice that she was given, as far as I understand. That process went through, and she took her decision at the end of the process. That was exactly the right thing to do up to that point.

I say again: I feel that it is a matter of huge regret that Moi decided to resign from the board.

**Ross Thomson:** I have heard board members express the thought that they are unqualified to comment on the letter. Moi Ali has said in her evidence this morning that the letter was “straightforward punishment for speaking out.”

It is clear from this morning’s evidence that there may have been a culture of bullying, particularly in this instance. With that going on, were board members not inhibited in expressing a different opinion or view, challenging openly or recording dissent? Has none of what happened deterred any member from speaking openly?

**David Hume:** I should indicate to the committee that I have previously dissented on two occasions, and I had my dissent recorded. That was on the same issue of governance, in June 2015. I can give you my absolute assurance that I feel in no way inhibited. I have been in the public service for 35 years. At this stage in my career I have no intention of being pushed around on matters that I feel are wrong or inappropriate. As the chair of the audit committee, I think it is vital that I uphold those standards.

**Ross Thomson:** That dissent was minuted. Is that correct?

**David Hume:** It was minuted. I have a copy here if you—

**Ross Thomson:** Did you receive a letter from the board chair about your dissent being minuted?

**David Hume:** No, I did not.

**The Acting Convener:** I note for the record that, in the paperwork supplied to us by the Scottish Police Authority, I cannot find evidence of you dissenting. I am not suggesting that you are telling us anything that is untrue. I am simply observing that in paperwork supplied to us I cannot find a note of your dissent.

**David Hume:** I give you my reassurance that I would never mislead or make false claims to the committee. I have, somewhere in this pile, a copy of the minute from June 2015 and I can share that with the committee.

**The Acting Convener:** That would be helpful. Thank you.

**Ross Thomson:** My question is for George Graham and Iain Whyte. Do you think that this issue has had an impact on your ability to challenge?

**George Graham:** Throughout my policing career, I have experienced some challenging places where I have felt inhibited for a number of reasons. I certainly do not feel that way on the board. In fact, all that I would say about our experience on the board is that colleagues round the table encourage us to share our views and help us to understand why we think a certain way. My experience, during the nearly two years that I have been on the board, has been pretty productive and positive, because people want to hear our views. I share David Hume’s genuine regret that Moi Ali is not with us any more, because she added a strong element of challenge and different thinking, which I really appreciated. I do not think that it will be perfect—no human endeavour is—but I would like to think that the board tries to encourage different views wherever possible. That is the only value that we can add, and I certainly do not feel inhibited by recent events from saying what I think.

**Iain Whyte:** I have similar views to my two colleagues. In fact, I have had recent conversations with the chair and other colleagues about how we can ensure that we show our challenge openly in public sessions, because their nature is that they can become a little stilted at times. We often end up asking questions of Police Scotland officers who are there. We probably need a bit more debate about what we, as a board, feel about the evidence that they give us and about the information that we assess, before we come to a decision. We have been encouraged by the chair and by discussions among ourselves to do more of that. I do not feel inhibited. In fact, if anything, we are looking to be more open about decisions, as we move forward.

**Ross Thomson:** I have a question for Moi Ali. We need people with experience on boards. Given your experience, do you think that what has happened has the potential to dissuade talented people whom we need from taking up roles on boards such as the SPA’s?

**Moi Ali:** I think that it does have that potential. That question raises a couple of issues. We have heard previously that dissent has been expressed. I can confirm that David Hume’s account is correct. Both David Hume and Brian Barbour went further than I did; they did not just ask for their dissent to be noted, but voted against a proposal. They went further than I did and received no letter. I just wanted to clarify that.

What has happened does have an effect. I have been doing a great deal of work in my own time recently on improving diversity on boards. I am from a minority ethnic background and have been doing a lot of work with minority ethnic women, because Nicola Sturgeon's commitment to 50:50 should not just be about gender but about ethnicity as well. I have been working to promote that, but recently I have found it difficult to advise people to join boards because, although I am an experienced board member and have sat on a large number of public boards for nearly 20 years, my recent experience has been so surprising and traumatic that it is not something that I would immediately recommend. I am sorry, but I have lost the thread of your question.

I just want to clarify one point. Ross Thomson said that I had talked about a "culture of bullying". I do not think that there is a culture of bullying in the SPA. In response to Monica Lennon's question about whether I felt bullied, the answer is yes, because my treatment was different to treatment of other people. You can come up with your own conclusions as to why that was, but it was very much focused on me, and other colleagues have not had the same experience in the same situation. It would certainly make me think twice. I would always express dissent, because I take being a board member seriously, but I would feel anxious about doing it, and that is not how board members should feel.

09:45

**Ross Thomson:** Mr Graham, I have heard you say that you are unqualified to talk about the contents of the letter. Given that board members have said that they are confident in recording their dissent and challenges, could the situation have been handled more appropriately? What would be the most appropriate way for the board chair to handle such an issue?

**George Graham:** I do not know the detail of the conversations that took place. Quite rightly, Andrew Flanagan and Moi Ali kept the process fairly confidential. I have had no sight of documentation other than that which has been provided to everybody now.

My earnest wish about all of this would be that if I was to dissent in such a way and I was to receive a letter like that, there would be a face-to-face conversation and discussion about it. If Moi Ali had come to me, I would have earnestly tried to persuade her to stay with us on the board and not to resign, but I do not know the detail and I cannot speak for how she feels. She does that eloquently enough and I understand why she feels that way. If a similar situation was to arise, my approach would be to confront it head on, sit down and talk it

through, but I do not know what happened in that particular instance.

**Ross Thomson:** Convener, I will take guidance from you. I have listened to that answer and to what was said in terms of challenge around the chair not being fit to continue. You might recall that, at our previous meeting, we took evidence from Andrew Flanagan. I asked him for his thoughts on his position and he said that he was happy and fit to continue. I asked the same of Paul Johnston, who agreed. In fact, Paul Johnston said that responsibility for regular on-going performance reviews falls to him, but that he would not conduct a review in public. I understand that we cannot have such reviews in public, but there must be a framework or guidelines that we could ask the board to make public and available to the committee. That might be helpful.

**The Acting Convener:** We can certainly consider that but, as you know, the Justice Sub-Committee on Policing is doing work on that in the next week. It might be for it, rather than this committee, to pick that matter up.

Do you have any more questions, Mr Thomson?

**Ross Thomson:** I have one final question for Mr Penman about his inspection, which will specifically consider leadership and governance. He asked if there was anything else that we thought might be of benefit. Will you be looking specifically at the treatment of Moi Ali and the understanding of the "On Board" guidance as part of that?

**Derek Penman:** Absolutely. Our terms of reference say that we intend to do that.

The letter raises two issues. The first is, as the convener has highlighted, about that shared understanding of the "On Board" guidance—the concept of collective responsibility, dissent, and the chair's role in encouraging debate. We will look at those areas. There might be issues around interpretation of cabinet responsibility—when things that happen in private are played out in a united way—as opposed to collective responsibility and the "On Board" guidance, which clearly allow for that.

To do all that, we will work with Audit Scotland and look at the induction that board members have received. We also intend to interview the chair, all members and some senior officers of the SPA to check their understanding and application of the "On Board" guidance so that we can offer judgment on that in our report. As has been mentioned in today's evidence, we will also look at the level of consistency across decisions that have been taken recently.

The second issue for me is the chair's authority to take action with members and from where that

authority is drawn. The “On Board” guidance is that that authority comes from legislation or the SPA’s standing orders. We have asked for its standing orders so that we can understand what proper processes are to be followed when the chair is, in effect, in dispute with a member, and how that should be played out. Again, we will offer a judgment of and commentary on that in our report.

**Ross Thomson:** Thank you.

**The Acting Convener:** That is helpful. Mr Hume wants to make a short contribution.

**David Hume:** Thank you, convener. Derek Penman has just covered the ground that I was going to cover. The “On Board” guidance is quite quiet, if not silent, on dispute resolution. It is to be welcomed that the HMICS review will extend into that area and, I hope, promote clarity.

The other area that there is uncertainty about is the escalation of dispute resolution, so comment from HMICS on how the formal process of resolution is carried out and to what effect would also be helpful.

**The Acting Convener:** Is it fair to say that if the judgment was wrong in the first instance, no amount of dispute resolution would get you through that?

**David Hume:** No, that would not be a fair summary in every case. I understand your point, and I would not demur totally from it, but it is not a general rule.

There is obviously an initial issue that gives rise to a dispute, but how we deal with that once it has happened is critical, as it was in the case that we are discussing. When I saw the draft terms of reference from HMICS, I welcomed that addition to its remit.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Good morning, everybody. I am a relatively new member of the committee, but I served on a predecessor committee a number of years ago, and I think that colleagues are covering pretty well the historical journey that we have made to get to this point.

As a new member, I am interested in focusing on what is happening in the here and now. I want to get some sense of reassurance from everyone round the table about the quality of current scrutiny arrangements. Mr Penman, do you think that there are in place correct, proper and thorough scrutiny arrangements, at present? Do the board members think that the SPA is currently doing a good—or better—job of holding Police Scotland to account? That is the key question on which the public will want to receive reassurance just now, and following Mr Penman’s review.

**Derek Penman:** The larger review will look in great detail at leadership, governance and other aspects of the authority. That will allow us effectively to provide a judgment in that regard.

I am conscious that the SPA chair acknowledged in his evidence to the committee that there is still room for improvement, and I share that view. However, I also share Mr Graham’s view that there have been some improvements in the board. The chair has published the results of his review, and there is much to be commended in it with regard to protocols and governance around how the board meets.

The chair has also improved relationships with Police Scotland significantly, which has manifested itself in the joint work to produce the 2026 strategy. There are positive signs in that regard, and new members have been recruited. However, it is clear that the SPA must have the confidence of the public, and reassurance must be provided quite quickly. We hope that our review will be able to do that.

**George Graham:** I will say something about the Police and Fire Reform (Scotland) Act 2012 and the responsibilities that it places on the Scottish Police Authority. We often focus on the notion of scrutiny and holding to account, which is a very important part of what the SPA does, but it is not everything. I keep reminding anyone who is willing to listen that our responsibility is not only first and foremost

“to maintain the Police Service”

in Scotland, but to champion and

“promote ... policing principles”

across Scotland—in other words, to support and encourage as well as to challenge. The vast majority of scrutiny, and the challenging and supporting, can be done in public, but an awful lot of the relationships that are required to do that effectively in public need to be formed in private.

To go back to what I said at the outset, there needs to be a balance. We have perhaps tilted the balance in favour of the developing relationships and not enough towards the perception of how the SPA is performing its duty. We may need—in fact, I am pretty sure that we need—to redress that balance and do more of our challenging, scrutinising and supporting in public.

However, we are better at getting under the skin, not only in our 2026 strategy but in some of our work on the performance framework, in order to gain a clear understanding of what police performance really is, rather than just looking at crime figures, and to gain a better understanding of how localism should work and how police can respond to, and engage with, their local

communities. We need to demonstrate how the new command-and-control processes will work, now that we are moving from eight control rooms across Scotland to three, along with a national inquiry unit. We also need to demonstrate over the next few years how all that knits together and properly serves the public. We do that best by understanding how the police service works and then properly providing scrutiny and encouragement in public.

**Willie Coffey:** Mr Hume, do you want to add anything?

**David Hume:** I do. Scrutiny is critical. As George Graham highlighted, the 2012 act says that we are there to support policing, and scrutiny is a key part of what we do.

The remarks that I want to make will refer to the pre-existing situation—before December. It is my view that the previous committee system was not working efficiently or effectively. I had criticised it from a number of perspectives so I welcomed the governance review.

As I come from a local authority background, I thought that the chair's proposals were interesting because they mirrored the changes that the McIntosh review brought in in the early 2000s, in a local authority context; local authority committees were done away with and replaced in most of Scotland with an executive scrutiny model. My interest was in whether that would improve scrutiny and reduce the waste and the ineffectiveness of the very expensive committee system that was in place. The selling point for me at that stage was the agreement that we would have a six-month review period. I wanted to place myself in a position to carry out the review after six months. I knew at that stage that HMICS was going to conduct a review and I felt that the proposals represented something that we should look at as a way of potentially improving scrutiny and increasing effectiveness. I thought that we should carry out a thorough review on the basis of the evidence that we collected.

On that, through a discussion that I had with Moi Ali, we negotiated for an internal audit review to be carried out in the second quarter of the year. We knew that HMICS intended to carry out a review in the late summer or early autumn of the year. We were beginning to build up an appreciation of Audit Scotland's interest in governance and transparency. It seemed to me at that stage that, given that the system was not working and that we needed to improve the effectiveness of our scrutiny, the review could look at and collect evidence to ensure that we could set a standard against a known standard for good governance, openness and transparency. That was the pathway that I thought we were embarked on in December. With the reviews, I am convinced that

we will get through to that stage, with the assistance of the external agencies.

**Willie Coffey:** Quite a lot of the issues that Moi Ali and Brian Barbour raised do not need to wait for a review to be addressed. Which of the issues that they have raised over the past weeks and months have been addressed and dealt with by the board, and what improvements have been made to the current arrangements? I would hate to think that we are just sitting waiting for the review to solve everything. Sometimes issues are to do with interpersonal relationships, which can be improved by working together and by discussing and resolving problems, so we do not need to wait for a formal review.

**David Hume:** It was not my intention to say that everything should be put on hold until the reviews. I was talking about the new form of governance, which I felt required that some evidence be pulled together and the issues scrutinised within a relatively short period.

I agree with comments that people at this end of the table have made about continuing improvements over the past year in how the board is operating, scrutinising, and being responsible for our budget. On oversight of the budget, which is more than £1 billion, we are in a much better position now than we were, in terms of our having a proper cost base and understanding of that budget. On the board, there is much greater understanding of—and unanimity about—the challenge of the transformation that is facing policing. That has been happening month by month over the past year or so.

**Willie Coffey:** I ask Mr Whyte to come in on that point. This will be my last question. Let us suppose that another issue arose along the same lines that Moi Ali raised and that you guys were still on the board. What relationships are in place to prevent such circumstances from arising again?

I guess that we will never be able to repair the damage that Moi Ali and Brian Barbour may feel has been done but, if something such as this happened again in the current board set-up, how would you deal with it? I am trying to get a sense of whether it could happen again and whether arrangements are in place to deal with the situation better.

10:00

**Iain Whyte:** My difficulty with that question is that the situation was very unusual compared with our normal discussions. I know that the committee has had dialogue with the chief executive about the nature of our members meetings. They allow a lot of discursive space to be available to us, and a lot of that has been used to enable us to come to an agreement with Police Scotland and others on

the approach that we will take in how we challenge and bring matters forward. Including Police Scotland in more private discussions at appropriate times allowed us to get it to a place where it is providing us with appropriate information and where there is a shared understanding of the information that we need to do our job and how that can be taken forward.

Through the development of the 2026 strategy and our development of a longer-term financial plan to bring the SPA and Police Scotland back into balance, we have created a much better understanding of such things. That will show up in some public papers, in which we hope that you will start to see much better business cases for change put forward and an agreed approach whereby we encourage Police Scotland to work with us and get the public to come forward with what they need from policing, to work to the police priorities and to set an agreed agenda. We will be holding Police Scotland to account for delivering that. You mentioned holding Police Scotland to account; we will hold it to account for the delivery of an agreed strategy and the performance that sits behind that.

**Willie Coffey:** Thank you. I will give other colleagues a chance to ask questions.

**The Acting Convener:** I will raise something with David Hume. My understanding of the McIntosh model is that committees in local government were replaced by the executive scrutiny model. Is it not the case that committees continue in the SPA but hold their meetings in private now?

**David Hume:** That is a good point, and it is true. The situation is analogous in that, although my experience of local government was that the committees—with the exception of those that dealt with education and aspects of regulation—were removed, working groups continued so that policy options could be explored, and those groups conducted their meetings in private, not in public.

**The Acting Convener:** Sure, but you will understand my concern that the SPA's committees, as described previously, remain, albeit that they may have been restructured and called something else.

**David Hume:** No. With respect, convener, I think that the analogy still holds.

**The Acting Convener:** I am not so sure.

**Iain Whyte:** Perhaps I can help my colleague Mr Hume. The critical thing that reassured me when we made the decision—which we should review—was that we agreed that any decisions would be made at full board meetings, in public and with the oversight of webcasting.

**The Acting Convener:** I will ask you about the reassurance that you received. I understand that the chief executive reviewed whether your processes were transparent and how you compared with other bodies. He reported back to the board that you were among the best. Do you believe that to be true now? Did you believe him at the time, given your experience of the public sector?

**Iain Whyte:** I asked him in public for his view, and I was given a reassurance. I believe that his view was correct in that as many of our decisions as possible are taken in public.

**The Acting Convener:** So your reassurance was heavily caveated. In what way were you the best?

**Iain Whyte:** We have talked this morning about whether there has been challenge, and I have challenged in a number of places. That seems to have been sometimes minuted and sometimes not. I have challenged through the governance review some of the assertions about what went on and about what was conducted in public or in private.

**The Acting Convener:** The minutes suggest that the chief executive expressed the view to the board that you were among the best. That might not have been the view of all of you but, if that is the case, it is not recorded. I let that rest there.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Mr Barbour, it is some time since you left the board, but you were there during a fairly critical period when the board was set up. Is that correct?

**Brian Barbour:** That is correct.

**Colin Beattie:** You were there during the first year or so. During that time, did committees meet in private?

**Brian Barbour:** As a principle during that time, committees met in public, but there were also private sessions. As chair of the audit committee, I encouraged the default position that things should be taken in public unless there was a good reason for them to be in private. I was somewhat surprised at the governance review, because David Hume—as you know, he publicly dissented on a vote at a meeting that we attended—was also a proponent of the default position being that everything should be taken in public unless there was a documented rationale for it being in private.

**Colin Beattie:** You have made a couple of assertions that are of great concern. One is about political intervention and the other is about items disappearing from agendas. This committee works on the basis of evidence. Do you have evidence of that happening?



**Brian Barbour:** On interference, I will go back to the early days of setting up Police Scotland. At a meeting in the Beardmore hotel, the chief constable and the SPA agreed on the allocation and division of responsibilities. That agreement, which was made in a private session between the SPA and Police Scotland, was put in writing, but it was subsequently unwound because of Government intervention. When I refer to the Government, I mean political/Government officials, but I hope that colleagues here will confirm that what we decided was changed within a number of months.

Your second point was about items disappearing from agendas. I recollect that, in about December 2014, we were asked to share draft agendas with the Government, as against just sharing proposed agendas when they had been finalised.

**Colin Beattie:** During the first year or so, there was a considerable range of issues in the SPA and Police Scotland. Would you have expected the Government to become involved in that?

**Brian Barbour:** I would expect the Government, as a key stakeholder, to want things to work to the best. I would not have expected intervention that almost gave direction, but without that direction having to be put before Parliament.

**Colin Beattie:** Do the other board members have any evidence on those things?

**George Graham:** I thank Colin Beattie for the question. I declare an interest in the example that Brian Barbour gave, as I was at HMICS when those challenges took place. That could have been described as Government interference or HMICS interference or in a number of ways. The reality was that it was similar to what is happening now, with HMICS taking a position on things and making recommendations.

As HM chief inspector of constabulary, I certainly had a different view about governance responsibilities and I made that fairly clear in the early days of Police Scotland and the SPA. That caused discussions, debates and a change of track. Most of that is well documented and understood as part of the history of the SPA's development. That could be described as interference if you like, but I do not see it as that. I see it as legitimate stakeholders, including me in HMICS at that time, making known a view about how governance should and could work. That was about the proper division of responsibilities between the Government, the SPA and Police Scotland—who had responsibility for what. That is now documented in the terms of governance.

**Colin Beattie:** Do any other board members have evidence of items disappearing from agendas?

**David Hume:** I have no evidence of that and, if I had been aware of such interference, I certainly would not have accepted it. Particularly in the early days, the SPA had a complex process of negotiation with the range of stakeholders, which was to be expected.

In any such relationship in public administration, there are lines that are not crossed—if they are, action can be taken to raise concerns. I have no evidence of what has been suggested and no recollection of anybody raising serious concerns.

**Colin Beattie:** I continue on the issue of governance. I understand that you are due to complete the SPA's governance review in June.

**David Hume:** Erm—yes.

**Colin Beattie:** How will that fit in with Mr Penman's inspection?

**David Hume:** You might have noted that I hesitated before I said yes. We will undertake a review in that period, but it will go beyond that period as we develop it and as the other reviews become clear. When I knew that HMICS was going to carry out a review, we had already committed to a six-month review period. My experience and good audit practice suggest that, when an organisation faces a serious audit, it is essential for that organisation to carry out its own audit of where it is strong and weak and to develop an improvement plan, which the audit team can develop as it sees fit. That was and still is my hope and intention. There will be a report at our June board meeting; we will carry out our review and collect evidence up to that period, but the work will go into the autumn at least.

The convener asked where we sit alongside other bodies. I want to get to a standard where we can benchmark ourselves against an international standard of good governance that has been articulated. We will do that in consultation with HMICS and Audit Scotland.

**Colin Beattie:** I ask Mr Penman about his inspection. If you are dissatisfied with aspects, you bring the problems out in your report. What powers do you have to enforce your recommendations?

**Derek Penman:** Our powers under statute allow me to do anything that I consider necessary and expedient. I have a high-level power to go in to seek information. I have the power to make recommendations to the chief constable and to the chair of the Police Authority and, under statute, they have an obligation to have regard to my recommendations. I cannot direct them to follow recommendations but, if I consider that not following them would have an impact on efficiency or effectiveness, I can report to the cabinet

secretary or Scottish ministers, who can direct the authority.

**Colin Beattie:** What do the other witnesses think about those powers? Are they sufficient to ensure that the SPA comes out of this a better and stronger organisation?

**George Graham:** As you would expect me to say, we would be foolhardy to ignore the recommendations of an HMICS inspection. Given the thoroughness and professionalism with which those inspections are done, I would be surprised if we got to a position where we had to be directed by anyone. We would recognise the sense in the review and recommendations. Other board members might wish to express a view, but I would certainly want to fulfil the recommendations.

**Colin Beattie:** I think that Moi Ali has a view.

**Moi Ali:** I want to respond to the comment about it being foolhardy to ignore HMICS recommendations. I believe that HM chief inspector of constabulary wrote to the board before the decision on committee meetings was taken; we were aware of his concerns—albeit that we did not know that he had written—but they were ignored. I am not entirely sure that the two points follow. I know that there is a difference between a formal recommendation and a strong expression of feeling, advice or however you want to term it. We are in the situation that we are in only because the views of HMICS and other stakeholders were ignored. That was foolhardy.

10:15

**Colin Beattie:** Mr Penman, you will be aware of the letter that you sent to the chair. Would you have expected that to be seen by the board?

**Derek Penman:** I think that I made explicit in the letter that it was written solely for the purpose of making members aware of my concerns ahead of the decision that they would make on the Thursday. I think that I wrote on the Friday, and I had an expectation that it would be shared by members and they would be aware of it.

**Colin Beattie:** However, members of the board did not receive it.

**George Graham:** No, but it is fair to say that I meet HMICS on a fairly regular basis and I was fully aware of the chief inspector's concerns—I would not say that they were recommendations; I repeat that it would be foolhardy to ignore a recommendation following a thorough review by HMICS, but we are talking about a very different proposition. A number of stakeholders have different views, and we try to find a balance. I make that distinction. I was fully aware of Mr Penman's views on the holding of meetings in public and private.

I hope—I might be proved wrong—that, following the thorough review, there will be some recognition that the board and the authority should still have the capacity to have at least some meetings in private, because I still hold the view that it is important that we have that capacity.

**Colin Beattie:** Were Mr Whyte and Mr Hume similarly aware of Mr Penman's concerns, despite not having seen the letter?

**Iain Whyte:** Yes.

**David Hume:** Yes. Let me say, absolutely, that I went into the meeting fully aware of the concerns of HMICS. I had the benefit of George Graham informing the meeting of the concerns, and Moi Ali similarly informed the meeting. I also had the benefit of a conversation with HMICS about these matters.

Were we foolhardy? No. We would have been foolhardy if we had made a decision in December to move permanently to a new arrangement, and I would not have supported such a move, because that was the basis of my previous dissent. I felt that giving ourselves a six-month review allowed us to address some of the issues that were absolutely clamant at the time and gave us the chance to collect evidence. At that stage, I felt that the discussion about the pluses and minuses of a new governance system was being based on opinion and I wanted to collect evidence, so that we would have a proper basis for making the decision, to address some of the issues that we had.

**Colin Beattie:** Are you saying that your review resulted from the inspector's concerns?

**David Hume:** No, I would not say that, but it was not dissociated from them. It was part of the agreement in December on moving forward that there would be a six-month review and, as I said, we were aware of the concerns that HMICS had expressed. We were also aware at that time that HMICS would carry out a full review.

**Colin Beattie:** Does Moi Ali want to comment?

**Moi Ali:** Yes. I just want to clarify that, although board members were aware of HMICS's concerns, they were not aware as a result of either the chair or the chief executive informing the board. It is important to note that. They were aware because a number of us—I think that it was the four of us who are here today, which is interesting—came across Derek Penman in various meetings, and Derek shared his views with us, which we then raised with the board, as I think that you will see from the minutes. Nowhere did the chair or the chief executive share the concerns of HMICS with the board. I would expect the chief executive to advise the board and the chair to lead the board,

but the information did not come from either of those two.

On the point about having an evidence base before changing things, the board should have had an evidence base before it decided to move from public to private meetings. The evidence base was not there. If it is important to have an evidence base, that must apply equally to the decision in the December meeting.

**Alex Neil (Airdrie and Shotts) (SNP):** Mr Barbour, in your submission you said that, in relation to the selection of a new chief constable, you had written:

“My real worry is that interested parties identify a preferred candidate and try to influence the selection criteria accordingly.”

Will you be more specific about that?

**Brian Barbour:** It was a general fear of mine, and I was sharing my thoughts. That memo was written to the chair, who I had not yet met, on the day that I left the SPA. It was my thoughts on moving forward, including things that were good about the board and things that needed to be changed. In the memo I expressed concern that we had had regular intervention. It was a legitimate worry of mine that people might have been wanting to fit the criteria to the person, rather than the board being absolutely clear about the criteria for the right chief constable, and then going through the interview process to see who matched the criteria.

**Alex Neil:** Were the people you were referring to members of the board?

**Brian Barbour:** No, the people I was referring to were external influences outwith the board.

**Alex Neil:** So who are you talking about?

**Brian Barbour:** I am talking about people in Government, by which I mean both the political side and the official side.

**Alex Neil:** Were you talking about the civil service?

**Brian Barbour:** I was talking about the civil service and, potentially, the cabinet secretary, if he had expressed an interest. However, I was not privy to that kind of discussion.

**Alex Neil:** Do you have any evidence of that?

**Brian Barbour:** No, which is why I was expressing it as a worry. I was not saying that I had evidence to say that it was happening; I was being open with the chair and saying that it was a concern of mine.

**Alex Neil:** To be fair, in your submission you should have made it clear that you did not have any evidence and that it was just a feeling.

**Brian Barbour:** My submission has a verbatim extract from my email to the chair. It said “My real worry”, not “I have seen evidence”. I was very specific.

**Alex Neil:** However, worries that are publicly expressed should be evidence backed.

**Brian Barbour:** Indeed.

**Alex Neil:** Moi Ali, this morning you said that you had sought information for this meeting from the SPA that is publicly available, and you were refused that. What information was it, who refused it and why?

**Moi Ali:** To clarify, the information was not publicly available, but it was readily available to the SPA. In other words, it would not have been onerous for the SPA to produce it.

**Alex Neil:** But it was not marked “Private and confidential”.

**Moi Ali:** I do not know. It was information relating to private meetings, but they were meetings that I attended, so I was not asking for information that I would not have. I will give you examples: I wanted the October, November and December audit committee minutes. I also wanted the minutes of the members meetings—you have received extracts of them, but I wanted the full minutes. I wanted earlier drafts, because one had changed significantly. I had two earlier drafts, and they are very different from the one that you have.

I wanted those documents to get the complete picture. The reason that I was given for being refused them was that it was important to have a level playing field and for everybody to have the same information. I said that I understood that and was perfectly happy for everybody to have the same information.

In fact, my concern was that there was not a level playing field. My colleagues here have that information. I used to have it, because I had an SPA BlackBerry and iPad, and the information was on them. Because I no longer have them, I no longer have the information, yet my colleagues here have it. The argument about a level playing field was being used to deny me that information.

I was then told that, if my colleagues asked for it, I would be given it, but they would not ask for it because they have it. It was a catch-22 situation. As late as 6 o'clock last night, I received a further email saying that some of the information would be made available to me under a subject access request, which I have had to make, but obviously the SPA has 40 days in which to comply with that, so it is of no use to me for today's meeting.

**Alex Neil:** The level playing field reason suggests that the SPA saw this as a bit of a bun fight between you and the other board members.

**Moi Ali:** I think that it feels that I am on the outside and therefore no longer have the same rights as my former colleagues have to information that I previously held. Regardless of whether you want to call that a bun fight or whatever, I am at a disadvantage. I have this one sheet of paper, and my colleagues have files of information.

**Alex Neil:** Who refused your request?

**Moi Ali:** The chief executive refused it.

**Alex Neil:** The chief executive refused it.

**Moi Ali:** I went via the Scottish Government, because when I asked for information on a previous occasion it was shredded after I made the request. On this occasion I went via Paul Johnston.

**Alex Neil:** Just stop there. Tell me about that. You made an earlier request for information—

**Moi Ali:** It was not to do with this committee, but on the only other occasion when I asked the SPA for information, the chief executive wrote to me—I am happy to produce the email—saying that the information had been securely disposed of.

**Alex Neil:** After you had made the request.

**Moi Ali:** After I had made the request.

**Alex Neil:** What was that information?

**Moi Ali:** I stress that this relates to the previous chair but the same chief executive. I had asked for information when the chair had said that I was a one-trick diversity pony.

**Alex Neil:** Was it the previous chairman who said that?

**Moi Ali:** Yes, it was the previous chair. He told me that it was not him saying that, but HMICS. When I said that I did not believe that that was the case or that HMICS would use that terminology and that I wanted to see the information, I was told that I could not have it. Therefore, I made a formal request.

**Alex Neil:** Was it written information?

**Moi Ali:** Yes—he had been reading from a piece of paper.

**Alex Neil:** Was it a minute of a meeting or something like that?

**Moi Ali:** It was part of the appraisal process. He read that phrase from a document. On three occasions, I asked for that information but was told that I could not have it. When I made a formal request, the chief executive wrote to me to say that the information had been securely disposed of.

**Alex Neil:** Who was the author of that disgusting statement?

**Moi Ali:** The previous chair. That was part of a whole process that has been dealt with, so I am not—

**Alex Neil:** How was it dealt with?

**Moi Ali:** I was not the only person with concerns—other board members had concerns, and the Scottish Government addressed the issue.

**Alex Neil:** How did the Government address it?

**The Acting Convener:** The chair is no longer the chair.

**Moi Ali:** That is right—thank you.

**Alex Neil:** Yes, but it was not over that issue that they are no longer the chair, was it?

**Moi Ali:** That was part of—

**Alex Neil:** It is quite serious for a chief executive of a public body to preside over such a situation. First of all, the original phraseology is clearly totally unacceptable. If you are saying that the chief executive had the information destroyed after—

**Moi Ali:** Sorry to interrupt, but I want to clarify that he did not destroy the information; rather, he wrote to me informing me that it had been destroyed. When I asked about who did that and when and why that had happened, I did not receive that information. I do not think that the chief executive destroyed the information. My point is that I had previously tried to get information that was important to me. Following that incident, I now knew what could happen to such information. I am happy to produce the email that said that the information had been disposed of.

**Alex Neil:** To be clear, are you saying that the information was destroyed after you have made the request?

**Moi Ali:** Yes, that is correct.

**Alex Neil:** I think that we need to get much more information on that situation, convener, because it is totally unacceptable. Even though it is a historical event, the same chief executive is in post, and if he is prepared to do that there is something serious in the organisation—

**Moi Ali:** I confirm that, to the best of my knowledge, he did not shred the information.

**Alex Neil:** He did not do it; nevertheless, he is the accountable officer.

**Moi Ali:** Yes.

**Alex Neil:** Clearly, that should not have happened. The chief executive refused you the information for today's meeting.

**Moi Ali:** Yes, that is correct. I wrote to him via the Scottish Government, because it was aware of the previous issue. I spoke to Paul Johnston following the meeting here. He was aware of what had happened previously. Given what had happened before, I told him that I did not have confidence that I would be given the information that I needed. He told me that that was fine and I could make the request through him. Therefore, I wrote to him setting out the information that I required. He then made the request. Days went by and I did not receive the information. I was asking for straightforward information. I chased it up and was told that the chief executive was about to leave the office and that he would not be in on the following Monday. I said that it was urgent, because I was going to be working in London and that I needed the information to prepare. A lot of emails went to and fro.

The Scottish Government was involved—officials spoke to me and to the chief executive. They were supportive and helpful, but they were unable to secure the information that I needed. All that I have is the information that is in the public domain on this committee's website. I do not have any of the information that I had asked for.

**Alex Neil:** What are the three non-executive directors going to do about this? The situation is clearly unacceptable.

**George Graham:** First, I reassure members and Moi Ali that I do not feel like I am in a bun fight with her. She is a former colleague and I very much respect her position—

**Alex Neil:** Clearly, the chief executive thinks that.

**George Graham:** I do not feel like I am in a bun fight. However, I do not feel that I have a host of information. I have my opening statement and that is it. Yesterday, the clerk to this committee put out a note saying, "No more information, please," as there was so much coming in, so I suspect—

10:30

**Alex Neil:** Mr Graham, will you answer the question? What are you going to do about the refusal to give Moi Ali the information and about the fact that it appears that, in the previous incident, although the chief executive did not get rid of the paperwork himself, somebody in the organisation clearly did so after a request was made? That is very serious for an organisation that you have been telling us all morning is running well and is full of improvement, with everything being above board, open and transparent. It is anything but.

**George Graham:** I think that you made a number of assertions there that I have not made. I

do not think that everything is running well and that everything is above board. I know that we can improve and get better, so please—

**Alex Neil:** What are you going to do about this?

**George Graham:** If you would let me answer, please, that would be helpful.

In relation to the information that Moi Ali asked for yesterday, all that I can do is research why the situation happened in the way that it did and see whether we can put that right. I do not know why that information was refused as I do not know enough about it, but I undertake to look into that and see.

On the historical issue that Moi Ali has raised, again, I do not know anything about that, but if she wishes to raise it again, we will of course explore it and make sure that that kind of thing does not happen. The historical situation that has been described does not reflect the way that we in the SPA would like our officials to deal with such information requests.

**Alex Neil:** Clearly, however, that appears to be happening. Obviously, you have to find out the other side of the story before you decide what you want to do about it, but I need a guarantee from the three non-executives that such things will not be allowed to happen with no investigation and no appropriate action, because it clearly breaches every rule and principle in the book on openness and transparency.

**George Graham:** I can certainly reassure you that we will explore the situation.

**Iain Whyte:** We will happily go back to the chief executive and question why that information has not been—

**Alex Neil:** Will you come back to us and tell us what is happening?

**Iain Whyte:** Yes, and I am sure that we can ask the chief executive to provide you with full details.

**Alex Neil:** Absolutely. I think that we should bring him back to the committee, actually.

**Iain Whyte:** My understanding is that the previous incident that Moi Ali mentioned was subject to a complaints process and that there was an outcome. I do not know whether she is content with that, but she understands the outcome. The matter was dealt with through a historical process.

**The Acting Convener:** I will address a comment that Mr Graham made, because I think that it is important to do so. The committee requested full minutes but we were provided with extracts. If the chief executive and his staff can take the time to extract information, they can surely take the time to provide information to others. We put a time bar on information because

it is disrespectful to committee members to provide at the 11th hour bundles more information that is not urgent.

**George Graham:** I understand that.

**The Acting Convener:** Okay. Thank you.

**Alex Neil:** Just to add to that, convener, I ask that we get a copy of all the information that Moi Ali asked for and was refused.

I have a further question for the non-executive directors. I think that both Mr Whyte and Mr Hume have confirmed that they dissented on certain issues at the board meeting, as did Moi Ali, but that did not appear in the minutes.

**David Hume:** Can I clarify that? My dissent was in relation to a previous discussion about governance that took place in June 2015, and I said that at the time. I have the minute from that meeting in front of me. There were two decisions. With regard to the first decision, Brian Barbour and I are recorded as dissenting—

**Alex Neil:** So it is in that minute.

**David Hume:** —and with regard to the second decision, I am shown as dissenting. I have that here.

**Alex Neil:** Right. That has not been—

**Iain Whyte:** I clarify that I indicated that I had raised a number of questions at different points but that I did not record dissent to the decisions that were made.

**The Acting Convener:** We have not received any of that information. I do not doubt the veracity of what you are telling us, but the SPA chief executive has chosen not to provide us with that information. That is the only conclusion that I can draw.

Mr Penman, you wanted to come in, and then I will go back to Alex Neil.

**Derek Penman:** I assure you that we will request and review all the minutes—unredacted, and not extracts from them. Clearly, whether they are released publicly will be a matter for you, but we will do that. We will also include the comments that have been made today in terms of historical issues and consistency.

**The Acting Convener:** That is very helpful.

**Alex Neil:** That would be very helpful indeed. Clearly, the request was not a formal freedom of information request, but it appeared to be a reasonable request that should have been fulfilled. The behaviour in that regard is part of the problem with the culture of the organisation: it appears to be one of secrecy and non-co-operation with people, which is not acceptable.

**Iain Whyte:** I do not know the details of why the chief executive has put forward certain parts of minutes and not others. All that I can tell you is that some of the minutes that Moi Ali requested were from private meetings and some were from the members meetings. Among the issues that were discussed, there might be sensitive matters relating to security issues that could not be released publicly and there might also be financial and commercial discussions in there that would obviously be exempt from FOI because it would be to the detriment of the public service were they released. It may be something to do with that, but I do not know. However, I ask that the committee handle any information sensitively for those reasons.

**Alex Neil:** You can make a robust request and get in first before any excuses are made. As a non-executive director, your role is to challenge and be robust.

**Iain Whyte:** Absolutely.

**Alex Neil:** But it seems that you may have made your mind up already.

**Iain Whyte:** No. I am conscious that some of the things in those meetings may be appropriately heard in private even under FOI legislation.

**The Acting Convener:** I hear what you are saying but, with all due respect, we are referring to extracts that deal only with governance and nothing else. We have requested minutes and, had there been a request to redact certain things that were sensitive, I am sure that the committee would have looked at that and considered it, as appropriate. However, there is nothing like that in those minutes. The fact that your dissent and Mr Hume's dissent are not recorded is actually not helpful to the committee's considerations and I hope that you will take that back to the SPA.

**Iain Whyte:** I will clarify this yet again. I have said it twice now. The dissent that Mr Hume was talking about was recorded in a public meeting back in June 2015. I did not record dissent at any point. I have said that twice and I would like to clarify that.

**The Acting Convener:** Okay.

**Alex Neil:** We will make sure that that is in our minutes.

**The Acting Convener:** Carry on, Mr Neil.

**Alex Neil:** I want to focus on the role of the non-executive directors, having been a non-executive director of a number of companies myself, which are obviously operating in the public sector. I will start with the letter from Derek Penman to the chair prior to the December board meeting. Despite the explicit request in the letter to the chair, which Mr Penman confirmed this morning

was the case, that the letter be circulated to the board for the December meeting, not only was it not circulated, the chief executive was not even informed by the chair at the time of the existence of the letter, let alone of its contents. I ask you three: when did you find out about the letter and when did you get to read it? Have you read it?

**David Hume:** Yes. I have it in front of me.

**Alex Neil:** When did you get it?

**David Hume:** I cannot recall.

**Alex Neil:** Here is the collective amnesia again.

**David Hume:** No, it is not that.

**Alex Neil:** Amnesia must be contagious in the SPA.

**David Hume:** No, that is not the case.

**Alex Neil:** So, roughly when did you get the letter?

**David Hume:** In recent times.

**Alex Neil:** How recent? Was it last week or last month? Did you get it in December or January?

**David Hume:** I do not date stamp material that I get, but I think that I got the letter within the past month. However, as I said earlier, we had a full discussion of HMICS's view.

**Alex Neil:** I have heard all that, and my question is not about that. Can Mr Graham and Mr Whyte tell me when they got a copy of the letter and whether they have read it?

**George Graham:** Yes, I have now read the letter, the full detail of which was apparent to me about two or three weeks ago.

**Iain Whyte:** It is exactly the same for me. I have a copy of it with me, but I had not seen it until the issue arose at this committee.

**Alex Neil:** My next question is the obvious one. You are non-executive directors. Part of your function is to make sure that the board is above board and transparent. That is all in your remit and in the nine principles that were referred to earlier. When did you ask the chair why you had not received a copy of the letter from the inspector, who had specifically requested that you all get a copy before the December meeting? When did you take the chair to task for not circulating that letter?

**David Hume:** Before we answer that, I want to bring us back to the HMICS letter. As I have just confirmed with the chief inspector, who is sitting next to me, the letter says:

"I accept that it will properly be a matter for the Board to approve the Corporate Governance Framework and my comments are intended solely to inform members ahead of their decision next week."

**Alex Neil:** Absolutely.

**David Hume:** I think that, on the basis of conversations that I had had with Derek Penman, and conversations with both Moi Ali and George Graham, I went into that meeting fully aware of the views of HMICS.

**Alex Neil:** But that is not the point, Mr Hume. The point is that the chief inspector asked the chair to circulate the letter to every board member, which should have been done. If I had been a non-executive director and had found out much later that I had not received that letter but got it only by accident because the chair got a roasting at this committee, I would have been on to the chair to demand that future letters like that, in which there is clearly interest and there is a request for it to be circulated to the board, would be circulated.

**David Hume:** Indeed. Absolutely.

**Alex Neil:** If you are not prepared to do that, you are not fit to be a non-executive director. You are there to hold the chair, among others, to account.

**David Hume:** We are quite aware of that. The letter—

**Alex Neil:** You do not seem to be. You are making excuses for him.

**David Hume:** No.

**Alex Neil:** Why have you not complained to the chair that the letter was not circulated, as requested by the inspector? One of the things that were announced in the letter was the new review and inspection by the inspector.

**David Hume:** Indeed.

**Alex Neil:** You did not actually know that, formally.

**David Hume:** I did.

**Alex Neil:** No—you did not, formally.

**David Hume:** Well, he told me.

**Alex Neil:** No—he did not tell you formally; it has to go to the board. If that is the level of scrutiny that you are exercising as a non-executive director, I find it wholly inadequate. You are supposed to hold the chair to account. If the chair has not circulated a letter from the inspector, who has specifically asked that the board see it, irrespective of whether you already knew the information, perhaps not every other board member knew all of it. The point is that, if the inspector wanted it to be circulated, surely it should have been circulated. Surely, as a former inspector, Mr Graham, you would have expected that to happen.

**George Graham:** Yes. You have made a number of assertions. There is a fair bit of relationship informality that definitely happens but, with hindsight—and I am sure that the chair will have reflected on this since the committee meeting with him a fortnight or so ago that you described—I certainly would have appreciated seeing the detail of that letter.

**Alex Neil:** Have you now made it clear to the chair that you do not expect a repeat of that in future?

**George Graham:** I have not had that conversation.

**Alex Neil:** Is it not time that you did?

**George Graham:** It may well be.

**Alex Neil:** Are you going to?

**George Graham:** I think that the most important—

**Alex Neil:** Are you going to?

**George Graham:** You can keep asking me that question—

**Alex Neil:** Well, are you going to?

**George Graham:** —but I would like to give you a full answer, Mr Neil.

**Alex Neil:** Yes or no—are you going to tell the chair that you do not want it to happen again?

**George Graham:** I have great respect for how the chair is managing business. I certainly do not want a whole host of issues to come up. I would have a discussion with him in which I say that it would have been useful to see a letter that specifically says that it should be sent to the board. So my answer is yes.

**Alex Neil:** Mr Whyte?

**Iain Whyte:** Which bit would you like me to answer?

**Alex Neil:** Have you complained to the chair that the letter was not circulated as requested?

**Iain Whyte:** No—I have not complained to the chair.

**Alex Neil:** Why not?

**Iain Whyte:** Like others here, I was fully aware of the views of HMICS, so, in a sense, they had already been factored into the decision making that we had.

**Alex Neil:** Poor.

**Derek Penman:** If I may add to that, although I had conversations with all the members of the board and they would have been clear on my intention and my views, the letter, which I think

extends to three pages, went into some nuance and detail around that.

**Alex Neil:** Exactly.

**Derek Penman:** There were things in there that I know that I would not have discussed with members. Without wanting to be objectionable about it, the letter contained a level of detail that I would not have had the opportunity to explain in conversations on the margins with members.

My other point is to clarify our position and to correct the evidence. When I sent the letter to the SPA, which was on 9 December, it was copied to the chief executive.

**Alex Neil:** He told this committee that he had not seen it.

**Derek Penman:** I am offering to correct that evidence, in terms of our recollection of the—

**Alex Neil:** Having heard what the chief inspector has just said, are you now prepared to go to the chair and say that this is totally unacceptable?

10:45

**George Graham:** I have always been prepared to have that discussion. The chair himself will reflect on exactly the information that he discussed with you a fortnight or so ago.

**Alex Neil:** You are not leaving us with a lot of confidence that you are doing the proper job of a non-executive director, I have to say.

**George Graham:** Can I just come back on that? It is wonderful that you can make such assertions, but there are an awful lot of really good things that we do as a body.

**Alex Neil:** I have no doubt.

**George Graham:** The focus on one singular point of failure, if you want to call it that—the failure to circulate a letter, which was a deliberate judgment on someone's behalf—and then to describe the board as inadequate is a poor characterisation of what we are doing. I certainly feel quite passionate about policing. I am in this for only one purpose—to help the Police Service of Scotland deliver the very best it can for communities—so to come in here and hear you assert that, because of one particular issue, we are inadequate as a board is unfair.

**Alex Neil:** Just a minute. You are being paid as a non-executive director. You are getting paid by the public as a non-executive director, and—

**George Graham:** I am quite simply—

**Alex Neil:** Let me finish. You are not doing the job.



**George Graham:** I am simply disagreeing—

**The Acting Convener:** Mr Graham—

**George Graham:** I am quite simply disagreeing with your assertion, and I am entitled to do that.

**The Acting Convener:** We are not going to get very far collectively this morning if we shout at one another, and if you talk over me again, Mr Graham, your microphone will be cut off. Equally, I would say to members that there are passions round the table, but let us try to lower the temperature. Nevertheless, we will still be seeking answers and we will be robust in our scrutiny, and nothing will stop the committee doing that.

**Alex Neil:** I just want to make the point that it is not a one-off. Ever since the board was set up, there have been problems, time after time after time. What the chief inspector has just said must be taken very seriously by every member of the board. I absolutely appreciate Mr Graham's former service and the fact that he is committed to the future of the police service, and he has a good track record of serving the nation and the police. However, in your new role as a non-executive director, Mr Graham, part of your function is to ensure that the board is operating efficiently and transparently, holding the chair, the chief constable and others to account, and the point that I am making is that, on the fundamental issue of governance and the governance review, that has not happened. In that respect—and my comments are solely in that respect—the non-executive members of the board have not fulfilled their function with the robustness that is needed. They must be able to say to the chair, "Don't do that again."

I am not asking for the chair's resignation, or for anyone's resignation, because we all have to learn lessons. As you said yourself, Mr Graham, you are new to the role of non-executive director. We are paying non-executive directors to hold people to account. On this occasion it is clear, especially in light of the chief inspector's comments, that that did not happen. Your job now is to ensure that there is no repeat of that, and that in future people are held to account. That is the point that I am making. I am not trying in any way to deride your service or anyone else's service. Like you, I want to see an efficient Scottish Police Authority holding people to account, and that includes internal account. You have heard this morning about people being denied information, and you have heard loads of other stories as well. As everybody agrees, there is clearly still a lot more to do to get the Scottish Police Authority into the position that it needs to be in to gain the confidence of the Parliament and of the Scottish people.

**George Graham:** Thank you, Mr Neil, for those comments. I respect your position on the issue

and I accept it. As you point out, and as I accept myself, I am still very much learning in my endeavours. There are a number of tangible examples of areas where we have engaged in effective scrutiny, so I would not like the committee to have the impression, just because of that one single issue, that that is how we behaved at all times. Finally, I want to say that a number of staff in the SPA, who have been through a fairly turbulent three or four years, work incredibly hard to support us as non-executive directors. They do an awful lot of good work and sometimes the stories that are published affect how they feel about their work. That is not the fault of the committee, because I respect the fact that it is your job to scrutinise what we do. I just want to put on the record my appreciation for how they support us, and I emphasise that we are still learning.

**Alex Neil:** I think that we would endorse that appreciation.

I fully understand that there have been some details and issues between the chair of the SPA and Moi Ali that you, as a non-executive director, could not get involved in but, given the damage to the perception of the SPA that was done by the way in which Moi Ali's departure from the board was forced—not just handled but forced—I would have thought, without necessarily taking sides, that there was a legitimate case for the non-executive directors, with their remit, to raise at the board meeting the question of how that had been handled. Irrespective of who was right and who was wrong, there is no doubt that, over a period of months, that has done significant damage to the perception and the reputation of the Scottish Police Authority. I am trying to be positive. You need to be more robust in such situations, raise such things with the chair, and get them sorted before they become a public relations disaster for the Scottish Police Authority, which what we are talking about has been.

**Liam Kerr (North East Scotland) (Con):** A few matters arise from the questioning. Mr Penman, were you surprised when you learned that the letter of 9 December had not gone to the rest of the board?

**Derek Penman:** I did not chase up to see whether it had been distributed. I think that there was an assumption that it would be. It would be fair to say that I was surprised, because my expectation was that it would be distributed. I caveat that by saying that it was advice; there was not a recommendation. I put forward my views and I explicitly recognised in the letter that it was a matter for the board to approve. However, I had the expectation at least that members would be aware of my views and the nuances to make an informed decision at the board meeting.

**Liam Kerr:** Mr Graham, I think that I am right to say that you used to do Mr Penman's job. When you found out that that letter had been tabled in the terms that it had been, were you surprised that it had not been passed on to you?

**George Graham:** Yes. I would have expected that letter to be circulated to us.

**Liam Kerr:** Did you raise that surprise and that expectation with Mr Flanagan or anyone else?

**George Graham:** I have not raised it directly, but it has been discussed. Mr Flanagan gave evidence to the committee not so long ago—I think that it was a fortnight ago—to the effect that his judgment was that we knew what the content of the letter was. That was a reasonable judgment. As other members have said, I was certainly well aware of Mr Penman's views on holding meetings in private or in public. That is the explanation, and I have accepted it, although you might not find it acceptable.

**Liam Kerr:** I find it neither acceptable nor unacceptable; I am just curious. You say that you were surprised, or you expected to receive the letter and did not do so. I go back to Mr Neil's point. If I were in your shoes, I would have expressed strong views. It sounds as if you are saying that that conversation has not happened.

**George Graham:** No, it has not happened. I may be wrong on this, and you may have a different view. The discussion and debate was not just on 15 December; we have discussed governance for some time. I went into the discussion and debate and the decision on 15 December to approve the governance review, which included meetings of committees in private, with the belief that I had a full understanding of various stakeholders' views, including those of HMICS.

**Liam Kerr:** I put the same question to Mr Whyte and Mr Hume. Having now seen that letter, are you surprised that it was not provided to you? I accept that you say that you knew about its contents or its tone but, with hindsight, are you surprised that it was not passed on to you?

**David Hume:** I think that it should have been passed on, and I do not think that anybody would dispute that. I did not see the matter as a one-off intervention from HMICS in the debate. My decision to support the way forward in December was entirely contingent on the fact that we were going to review it. At that stage, I had a reasonably clear idea in my mind of how I would review what we were doing and I looked forward to a fairly regular interaction with HMICS as the approach developed.

With regard to the points that Mr Neil raised, from the earliest point that I have been involved in

the governance discussion, I have taken the view that we need to extend our remit beyond committee meetings and papers to look at things such as access to information and how we deal with stakeholders, service users and the public. We need to draw a much wider spectrum and that is still my hope and intention. When we come back in the autumn with that review carried out, it will go beyond committee meetings and will extend into issues to do with how we deal with information and correspondence. It will extend into issues such as the release of information to Moi Ali, which we talked about 10 minutes ago, and—

**Liam Kerr:** Okay. Can I come in? We have very little time and I want to make a wider point—I say that with all due respect.

The remaining board members must have a concern that other significant information may be being withheld. Two out of three of you—Mr Whyte might have had the same view—expressed surprise that the letter had been withheld. If something such as that can be withheld, do you have a concern that other documents and significant information are being withheld?

**Iain Whyte:** Surprise is perhaps a strong word. I would have expected the letter to have been circulated. That it was not perhaps reflects the fact that we had discussion on governance issues for a year and a bit and that the issues that were raised in the letter were part of that discussion. We were aware that HMICS had a view on various aspects, and that was reflected in the discussion that we had at members meetings and at the public meeting on 15 December.

I suppose that I would characterise it as perhaps a one-off error of judgment—a mistake—by the chair. Perhaps he misread the situation—that it should have been passed on. I do not see that as a deliberate attempt to prevent board members from knowing stakeholders' views, because we had already had a long discussion of stakeholders' views.

**Derek Penman:** As I have said, the terms of reference will follow today's meeting, but one of the things that we will be looking at specifically is the process by which the authority came to a decision about holding meetings in private. That will include the legal advice that it received on the legislation that exists and the stakeholder engagement feedback that it received. We will have a look to see what advice was taken and what members were sighted on in making that decision. We will comment publicly on that.

**Moi Ali:** My concern is that there seemed to be a very informal arrangement for sharing HMICS's concerns. It was quite legitimate and perfectly appropriate for Derek Penman to raise them with us individually, but there is a role for the chair and

the chief executive in formally sharing those concerns with the board. Ordinarily, I had very little contact with Derek. I only had contact with him because I happened to be sitting on a group that he was on and we had conversations on the fringes. I will not speak for him, but he wrote a formal letter to inform all board members, including people who have not had the contact that those around this table have had—that goes for a number of board members, who do not ordinarily have such contact, just as I would not ordinarily have had it.

The purpose of a formal letter is to formally notify the board of a position. The failure to share that is a concern because, as I have said, the representation of Derek Penman's views to the board came not from the chair or the chief executive but from those of us who happened to have had a conversation with him on the fringes of meetings. That is not an acceptable position. The chair and the chief executive must take the lead in sharing formal advice with the board.

**Liam Kerr:** Going back to the point that Mr Neil raised, during your terms—this is for Ms Ali and current members—do you feel that you were or are being given sufficient information to carry out your responsibilities? Might there be a suggestion that, in incidents such as we are talking about, information is withheld such that you are hindered in your ability sufficiently to hold the chair to account?

11:00

**Moi Ali:** Obviously, we cannot say whether that happened, because if it did we were not aware of it. Clearly, in this instance, it did. My concern about the issue is that the review of governance was the chair's review of governance; the formal advice that came from HMICS questioned just two areas, but they were the two areas in which we were doing things significantly differently from how we had been doing them previously. I think that there was an incentive not to share that letter, because it questioned those two areas—the two areas on which I spoke out.

I do not think that I had concerns before that point, because I assumed that anything that came to the board would be shared with us. However, when I look back with the benefit of hindsight, I wonder whether other information for the whole board was not shared with us. I am not saying that that happened, because I do not know, but there is now a question in my mind that was not there previously.

**Liam Kerr:** How do you respond to that, Mr Whyte? Are you being given the tools that you need to carry out your responsibilities?

**Iain Whyte:** I believe that we are, in large part, and where we are not it is often in relation to day-to-day or business-case decisions, and with many of those we are challenging Police Scotland to give us further information, to enable us to make appropriate decisions.

In relation to information about governance or something that is going out to a much wider stakeholder group, non-executive members have to rely to some extent on the day-to-day work of officers who gather information and present it to us. That seems to happen; views from other bodies seem to be collated. That has certainly happened on working groups that I have been involved in. For instance, for our scrutiny inquiry into police carriage of firearms, a lot of information was gathered from wider stakeholders and presented to us in a way that enabled us to collate and understand it, so that we could go forward and make decisions.

I am not aware that anything is being held back from us. If that were regularly happening, I imagine that people on the outside would be complaining about it, because they would think that our decisions were not being made with knowledge of the information that they were providing. I have seen no evidence that that is the case.

**Liam Kerr:** I see that Mr Graham wants to comment—please be very brief, if possible.

**George Graham:** I am not known for brevity but I will do my best. This is not about the specific issue to do with the HMICS letter; it is a much more general point. Two years ago, when I became a member of the board, it was challenging to absorb some of the data. Police Scotland provided reports that were almost volumes, largely because we asked for more and more information, and we were drowning—for want of a better word—in data. There is a real skill in figuring out and making the judgment on what the issue is. An awful lot of our staff, and, I guess, the chair and other members, make such judgments on a daily basis. We will not always get that right. However, overload is sometimes a big problem.

I accept that there is a perception in that regard, but I certainly do not have concerns at the moment that anything is withheld. If I ask for something, I normally get it—usually, I get much more than I need.

**Liam Kerr:** Do you want to add anything, Mr Hume?

**David Hume:** I just want to comment on how we take things forward. Brian Barbour mentioned my belief that decisions should be taken in public unless there are explicit reasons why they should be taken in private. My experience of the kind of issue that we are dealing with here suggests that

we need to look at how the organisation is structured and the culture within it. That is an issue that will be considered as I take forward the broader review of openness and transparency in the coming months. I am convinced that when we report in autumn, as HMICS will do, you will see a strong statement about how information is handled and made available.

**Liam Kerr:** I have a quick final question. Mr Barbour, earlier you were asked about some of the statements that you have made about Scottish Government interference, if I can put it that way. There seemed to be a difference between your assertions and those of the current board members. Did you raise any of those assertions in your resignation letter?

**Brian Barbour:** I did not raise them in my resignation letter; I raised them in my email to the chair, which was a sort of hello-and-goodbye letter. It said that I was conscious that we had not met but that these were my thoughts and that I would be happy to have a meeting to discuss things. What I then expected to happen was that, following that meeting, which took place, the chair, having listened to my views, would then have some dialogue in the introductory meetings with other board members and make a decision about whether my views were representative of a view that was held more widely or were simply my views, which nobody else would substantiate. However, I do not know what happened after that point.

**Liam Kerr:** I will ask you a blunt question. Why have you waited 18 months to blow the lid on this?

**Brian Barbour:** In my introductory statement I said that I had been silent for 18 months. It was only after I saw the treatment of Moi Ali that I thought that the whole issue had bubbled up and that it was appropriate to say that I had concerns. Further, at a previous meeting of the committee, the chair made a comment about the meeting that I had had with him, so I wrote to the committee to correct what might have been a misleading impression of that meeting.

**Derek Penman:** On Brian Barbour's email, I would like to offer the committee some reassurance around the appointment of the chief constable. I gave advice on the selection process, and I have no concerns about the integrity of that process in terms of how it was run or the criteria that were used. Again, for the record and for the reassurance of members, I say that the selection panel, which included some people who are with me at the table today, also included an independent chief executive from a local authority. It is helpful to say, for the record, that there were no issues. The selection criteria were the standard criteria for chief officer appointments. The only potential exception was the part about the person

not having previously been a chief constable. However, when you move to a situation in which there is only one chief constable, you have to be flexible with regard to allowing other people in the organisation to come through.

**The Acting Convener:** I want to quickly wrap up the discussion and touch on a couple of issues. I have before me the letter that we have been discussing, and I hear what everybody says about their awareness of the issues that Mr Penman raised. Were any of the non-executive directors aware of the fact that he was going to conduct an inspection before he sent the letter on 9 December?

**David Hume:** I was, because he told me.

**The Acting Convener:** Was anybody else on the board aware of it? Was it discussed prior to the letter being sent?

**David Hume:** It was discussed at a meeting of the board, and I think that George Graham and Moi Ali made contributions at meetings about discussions that they had had with HMICS.

**The Acting Convener:** Was that prior to the letter of 9 December?

**Moi Ali:** I would like to clarify in my own words what I said—I think that what I said is minuted, too. I said that my understanding was that HMICS had not yet formed a view about inspection. That shows that I did not know.

**The Acting Convener:** If a letter contained information about the forthcoming inspection, as this one did, would you genuinely have expected that to be circulated to the board? I see that everyone is nodding.

**Iain Whyte:** I would have thought that it would be better to be told. I am not aware of the date, but I am aware of the chief executive informing us at a members meeting that HMICS intended to carry out an inspection.

**Moi Ali:** That was after it had appeared in the press. It appeared in the press, and then we were informed.

**The Acting Convener:** Thank you. I think that the relevant point is that a letter of such importance should have been circulated to the board, and that has been accepted, which is helpful.

I want to ask a further question, because I am slightly confused. You have board meetings, committee meetings and members meetings, and I also see reference to committee chairs meetings. Have I missed out any meetings?

**Alex Neil:** Pre-meetings.

**The Acting Convener:** Do they have pre-meetings, too? My goodness.

**Moi Ali:** There are board pre-meetings, which are private; private board meetings, which are, obviously, private; public board meetings, which are, obviously, public; members meetings, which are private; and so on. It is easier to say that the only public meetings are public board meetings; all the other meetings are private.

**The Acting Convener:** In percentage terms, would 25 per cent of meetings be in public, or am I being overgenerous?

**David Hume:** Twenty-five per cent of what?

**The Acting Convener:** Of all meetings. You seem to meet regularly in different committees and, with the exception of occasional board meetings, the rest of the meetings are in private. Is that a fair reflection?

**George Graham:** Yes. As non-executive members, we are contracted to work no more than five days a month. There are eight public board meetings. We consider them to be very important. To use language that I used to use, they are almost a “duty parade”; they are must-attends. I attend one or two other meetings a month, and those are all private.

**The Acting Convener:** Based on information that we have been given, there were at least 14 private members meetings at which governance was discussed. Does that make any sense, given the topic under discussion?

**David Hume:** I do not think that there was a structure of 14 different meetings. There have been meetings, obviously, to discuss the terms of the governance review and moving it forward to the board. The significant aspect is that all decisions are taken in public, unless there is a reason why they must be taken in private session.

**The Acting Convener:** The problem is that most people would like to know how thinking evolves. For none of those meetings to be minuted or published is unhelpful.

**David Hume:** That is a very good point. A source document that I will look at as I deliberate on how we run our meetings is the Local Government (Access to Information) Act 1985. That provides a good structure for how meetings should be run and, significantly, it places a requirement on local authorities—this addresses your point, convener—to publish and report on all the background information that led to a decision.

During the review period, I expect that, unless there is good reason not to, I will reflect on the benefits that can be imported from that legislation into our structure. Local authorities are unique, in the sense that a piece of legislation stipulates how

their meetings should be conducted, when their papers should be circulated and the information that should be presented. I am not aware of any standard note or piece of legislation pertaining to public boards in that regard. I will look at whether we can take the structure of the 1985 act and apply it to how we run our business, so that there is clarity not just at the point of decision making, but around the trail that leads up to that decision.

**The Acting Convener:** You would perhaps look to review, at least, whether papers are sent to stakeholders in advance, before they are published on the website.

**David Hume:** Yes.

**The Acting Convener:** Everything would be included.

**David Hume:** Yes.

**The Acting Convener:** That is helpful to know.

I have one final tidying-up question. We understand that, in 2014, HMICS published the terms of reference for its first review of the Scottish Police Authority. Although we have looked, we cannot find the final report. Was one produced? I do not know whether to put my question to Mr Graham or to Mr Penman.

**Derek Penman:** I am not sure where that information comes from. Our current review is the first review, and today we will publish our terms of reference for it. Perhaps there has been a misprint, or perhaps it is a reference to something else that we have done. For example, it might relate to our forensic science inspection.

**The Acting Convener:** We will check back, but we understood that the terms of reference were published previously.

This morning's session has been very robust. I thank all the witnesses for their attendance and for providing information to the committee.

I advise the committee and those in the public gallery that I will not take item 3—the section 22 reports on colleges—today. We will defer consideration of those reports until next week's meeting, purely because we have run out of time and the committee requires time in private session to consider the evidence that we have heard today.

11:14

*Meeting continued in private until 11:39.*



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