



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Sub-Committee on Policing

Thursday 18 May 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 18 May 2017

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JUSTICE SUB-COMMITTEE ON POLICING
9th Meeting 2017, Session 5

CONVENER

*Mary Fee (West Scotland) (Lab)

DEPUTY CONVENER

*Margaret Mitchell (Central Scotland) (Con)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Flanagan (Scottish Police Authority)

John Foley (Scottish Police Authority)

CLERK TO THE COMMITTEE

Diane Barr

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 18 May 2017

[The Convener opened the meeting at 13:01]

Scottish Police Authority (Governance)

The Convener (Mary Fee): Good afternoon and welcome to the ninth meeting in 2017 of the Justice Sub-Committee on Policing. No apologies have been received for today's meeting.

Agenda item 1 is an evidence session on governance of the Scottish Police Authority. I welcome to the meeting Andrew Flanagan, who is the chair of the SPA, and John Foley, who is the chief executive of the SPA. I invite Mr Flanagan to make a brief opening statement.

Andrew Flanagan (Scottish Police Authority): Thank you, convener. I acknowledge that opening remarks are an exception and thank you for the courtesy.

I would have preferred it if we had been going to discuss matters of direction, sustainability and transformation in policing; the fact that we will not is, in large part, down to me and, in particular, my approach to two letters—one that I sent and one that I did not.

First, I will deal with my treatment of Moi Ali. I greatly regret the timing, tone and content of my initial letter to Ms Ali. It was a misjudgment to send a letter rather than to open up a conversation, and I bitterly regret that I was subsequently unable to allay Ms Ali's concerns so that she could continue as a board colleague.

Moi Ali was right to raise substantive concerns about transparency and perception, which she did in a manner that was entirely consistent with her role as a public board member. I was wrong, and it is important that I set the public record straight on that today. I have written to Ms Ali and offered her my full and unreserved apology.

Secondly, I turn to the letter that I did not send, which was from Her Majesty's chief inspector of constabulary and contains his views on certain aspects of governance around committees and advance circulation of papers. Having contacted the chief inspector to identify his concerns, I felt that his letter captured views that had already been expressed rather than injecting new ones. Those views had already been discussed openly with board members.

I recognise that HMICS and, indeed, Audit Scotland, are not simply stakeholders, and I have now put in place an automatic process whereby every formal communication that is sent to me by them will be circulated to all board members unless otherwise stipulated by the sender. I have also instituted a review to ensure that there will be no further such issues with any other letters not being circulated.

Further, I am keen to address any perception that the chair could be viewed as a gatekeeper for advice to the board or that a board member might feel constrained in raising an issue of concern directly with the chair. I have therefore decided that it would be useful if, as envisaged in the legislation, the SPA board were to appoint a deputy chair of the SPA at its next meeting. We have initiated a process to identify nominees, and an important consideration in that process will be the need to have a gender balance across the two chairing roles.

Thirdly, there is the underlying issue of public and private meetings. We sought to improve communications between Police Scotland and the SPA by having more discussions in private and counterbalancing that by moving all decisions to the public board meetings.

In recent months, there have been significant improvements in the information that is submitted to us, which is better presented. Relationships have also continued to improve and mature. Therefore, next week, we will be able to agree to adapt our approach.

The board and its committees will meet in public while retaining the ability to discuss some items in private when necessary. Papers will be published well in advance of meetings and circulated to everyone. As a new step, the public will get opportunities to contribute comments and questions for use in the public meetings, which will offer participation in SPA oversight, not just observation of it. We will also consider any further recommendations on improving openness that come from the HMICS inspection report that is due at the end of June.

I have considered my position as the chair, and I have reflected very seriously on the views that have been expressed by parliamentarians and other stakeholders. Having reflected on the past two years, I believe that I have got more right than wrong on strategy, on financial clarity and control, on refreshed leadership for policing and on many other aspects. I acknowledge my recent mistakes, for which you have rightly taken me to task. However, I hope also to be judged on the significant progress that has been achieved and the leadership potential that I can still offer. Policing is in a much better position than it was in, but there is a huge amount still to do. Now is not

the time for yet another change of leadership, as the next three years will be pivotal and challenging for policing in Scotland.

I have discussed the matter with my board and I have its unanimous support. I hope that I can develop a broader consensus in the coming months.

The Convener: Thank you, Mr Flanagan.

We will move to questions. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

Mr Flanagan, I appreciate your long-overdue apology to Moi Ali, to the Parliament and to the members of the SPA board. During your recent appearance at the Public Audit and Post-legislative Scrutiny Committee, when you were asked whether you had apologised for your appalling—I make no apology for using the word “appalling”—treatment of Moi Ali, you said:

“In my subsequent letter to Moi Ali, I expressed regret about the timing of my letter, which was caught up in the Christmas festive period. However, I have no regrets about making the challenge that I put to her.”—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 20 April 2017; c 17-18.]

That is a direct quotation from your appearance at the Public Audit and Post-legislative Scrutiny Committee. What has changed between then and now? Your judgment at that time was that your actions were justified and you had nothing to apologise to Moi Ali for.

Andrew Flanagan: We had a difference of opinion and I was robust in my attempt to defend my position. The Public Audit and Post-legislative Scrutiny Committee has written to the Cabinet Secretary for Justice and set out its views. I have to accept those views and accept that I was wrong. Therefore, because of my upbringing, at a human level, at a professional level and as a grown-up, I think that it is appropriate to apologise fully, and I have done that.

The Convener: There is a difference, Mr Flanagan, between accepting that you have done something wrong and believing that you have done something wrong.

Andrew Flanagan: That is a fair challenge. I reflect on the matter a lot. I have looked back on the letters and what has happened and I have a deep and sincere regret about how things unfolded. I am very sorry for it.

The Convener: In your opening statement, you said that you had the unanimous support of your board. For the record, have any board members called on you to consider your position?

Andrew Flanagan: No, they have not.

The Convener: You accept that you made a number of mistakes recently. Will you explain to the committee how you intend to ensure that those mistakes are not repeated in the future? Do you accept that the SPA has suffered reputational damage from which it might not recover?

Andrew Flanagan: I think that we can recover from it, although there has been some damage. My apology to Moi Ali is the start of a process, not the end of it. It does not draw a line under the matter.

On reputation, my behaviour has been referred to as bullying. I do not accept that accusation. I wrote a poorly worded letter in haste, which I regret deeply, but that does not amount to bullying. I have had a high-profile career over 40 years and, if I was a bully, that would have come to the fore long before now. I reject that suggestion. Nevertheless, it is important that I set the public record straight, and I have done that.

On the HMICS letter, I have instituted a new procedure whereby letters will automatically be circulated to the board. As I outlined in my opening statement, I have also initiated a thorough review going back to when I started at the SPA to determine whether there have been any other instances in which letters should have been copied to the board but have not been. As I said in my opening statement, as we move forward, such things will happen automatically without me being seen as a gatekeeper.

One of the important points in my statement is the idea of creating a deputy chair. When I look back on the situation, I genuinely think to myself that, had I had a deputy chair with whom I could have discussed the matter and reflected on what the issues were, the letter to Moi Ali might not have been sent. A deputy chair could provide a sounding board to me. That is an important factor. In other organisations, a deputy chair is also a conduit for board members' views. If people were unhappy with me or had concerns about anything, they could address them to the deputy chair. I would hope that they would address them directly to me, but it is important to have a deputy chair.

I think that we can rectify the things that I have got wrong. On the issue of openness and transparency, I have talked about changing back to public committees the SPA committees that meet in private—they were previously public committees—and I have talked about earlier circulation of papers to everyone, including the public, not just to key stakeholders.

I have rectified those things, and I hope that we will be able to repair any reputational issues. As I said in my opening statement, if you look at where policing is now compared with where it was 18 months or so ago, when I joined the SPA, you can

see that there have been significant improvements.

The Convener: Okay. Just for completeness, before I bring in other committee members, can you tell us when you wrote your letter to Moi Ali to apologise?

Andrew Flanagan: I wrote it on Tuesday.

The Convener: On Tuesday this week—two days ago.

Andrew Flanagan: Yes.

The Convener: So she will not have responded yet. She might not even have got the letter.

Andrew Flanagan: In anticipation of problems with delays, I asked this morning that it be emailed to her as well. The letter is in the post, but it has also been emailed to her to ensure that she gets it.

The Convener: Are your appearance at the committee today and your letter of apology to Moi Ali connected?

Andrew Flanagan: No. The Public Audit and Post-legislative Scrutiny Committee's letter to the cabinet secretary, which was issued last Friday, made me reflect on where we are. I have put my version of events to that committee, it has listened to Moi Ali's version of events and its conclusion is that she was right. I have to accept that, and a natural consequence of that is that I had to apologise to her in writing.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I, too, have had a 40-year career, Mr Flanagan—that was up to December 2010. Indeed, it was a 41-year career at that stage, and I was the Minister for Transport, Infrastructure and Climate Change. Like you, I would claim that there was more right than wrong in what I had done—in my case, as a transport minister over nearly four years. Ultimately, however, I made one mistake and it was clear that there was no one's door it could be laid at but mine. I took the view, which the First Minister accepted, that it was not necessarily about the individual; it was about the danger of that mistake contaminating the future debate around the portfolio that I held as a minister.

Notwithstanding your many qualities and your contrition for the mistakes that you have made, is there not a similar danger here? Do the mistakes that you have made in your current position carry with them the significant danger of contaminating and lying over the future work of the board? In the light of that, should you give further consideration to the appropriate arrangements of the board?

Andrew Flanagan: No. I have considered that deeply. It is an uncomfortable place to be in, given the public calls for resignation, but I have tried to look very carefully and as objectively as I can at

the situation that we find ourselves in and where we are on the trajectory of trying to put Police Scotland and the SPA on a sounder footing. I did that quite methodically. I looked at where policing was in 2015 and at where it is now. If I may, I will go through some of the themes.

13:15

Stewart Stevenson: Forgive me, Mr Flanagan. I do not in any sense seek to undermine your achievements in office or the substantial progress that has been made in establishing Police Scotland—I respect all of that. My fundamental point is quite different. It is not about your past or future capabilities, because I accept what you have said about those. It is the simple point that, when a mistake is made, it is sometimes possible to remove that mistake from future conduct in the area for which you are responsible only by removing yourself and enabling a new office-holder with a clean sheet to take over.

It is not necessarily about doing anything beyond or different from what has been proposed; it is simply about removing the person who carries the responsibility for the mistakes that were made. You have properly acknowledged that that is you, which I welcome. The biggest people will always put the interests of the organisation of which they are a part above their personal considerations if they are part of the decision making. I simply invite you to take the position that I took in 2010.

Andrew Flanagan: I have considered the matter carefully. Policing is in a much better position than it was in, and we are at a pivotal moment. We are about to sign off the first strategy for policing that the organisation has had in its four years of existence, and we have already had a change of leadership in Police Scotland and the SPA. It would be more damaging to the organisation and the future of policing to create a further hiatus with my departure.

Liam McArthur (Orkney Islands) (LD): Stewart Stevenson made fair points. I, too, welcome the contrition that you showed in your opening remarks, Mr Flanagan. You said that you had the “unanimous support” of the board. Did you ask the board, “On balance, do you endorse my decision to stay on, given all the issues that I have weighed up?” or did you ask, “Do you believe that my position remains tenable and do you want me to stay”? Those two questions are very different, particularly given some of the concerns that were expressed about the way in which the board has operated to date.

Andrew Flanagan: I did not ask the board questions in those terms. I discussed with board members the issue of the calls for my resignation and asked whether they would be happy to

continue with me as their chair. They accept that I have got things wrong and they would prefer that that had not happened. However, they are happy with the changes that I proposed and which I hope to implement next week. In that context, on balance, they are happy for me to continue as their chair.

Liam McArthur: Concerns were expressed that other board members were not necessarily comfortable about speaking up and about the extent to which they agreed with the approach that you were taking. During those discussions did it emerge that there was a greater level of disquiet about what had happened and the way in which you had handled it, albeit that the board reached the same conclusion as you appear to have reached on your personal position?

Andrew Flanagan: Prior to the PAPLS Committee's letter coming out, we discussed how the events of last December unfolded. On support for the changes that were being made in respect of the private committees and the publication of letters, as part a wider series of changes around governance, the board members were all content to endorse those. They are still supportive of that but, in light of where we are now, they are willing to move back to the previous arrangements. Therefore they are content with the substance of the process. They told me that I was a bit hasty and a bit heavy handed in the letter that I wrote to Moi Ali. I would expect them to say that to me frankly, and some of them have done so.

One of the things that has been a challenge is the fact that, in some way, I have been characterised as a dominant force on the board and the members have been characterised as not being as forthright as they might be. I do not recognise that characterisation of the board, on which there are some very strong individuals. You need only look at their backgrounds, their experience and what they have done. They have operated in a number of roles in public life at very senior levels, and they are not shy about coming forward when they think that something is wrong.

Liam McArthur: However, it appears that, in the case of Moi Ali's treatment, they were reticent for whatever reason. In explaining the rationale for the establishment of a new deputy chair post, you suggested that it would give board members an option with regard to whom they might approach on a given issue. That seems to suggest that, notwithstanding what you have said about the character of those on the board, there was some reticence.

Andrew Flanagan: That was about the handling of the matter, not about the issues of the governance changes themselves or the board meeting back in December, when that happened. The board members understood that, and many of

them were as surprised as I was when Moi Ali dissented at the meeting, because that had not been our understanding going into the meeting. What they had reticence about was how I handled the matter afterwards—as I said, I was hasty and overly heavy handed.

John Finnie (Highlands and Islands) (Green): Good afternoon. I want to follow up the issue that Stewart Stevenson raised. It is a question of judgment. The Public Audit and Post-legislative Scrutiny Committee heard from Moi Ali. I will read an extract from the *Official Report*.

"Andrew Flanagan told the committee that dissent is okay, but his letter to me talked about how sharing public disagreement was a resigning matter."—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 11 May 2017; c 5.]

Is that accurate? Why would you consider that a resignation matter when something much more profound than that, which has brought into question the effectiveness of the organisation that you chair, is not a resignation matter?

Andrew Flanagan: I think that dissenting in public in that way is a very serious issue that a board member needs to consider very carefully before they do it.

John Finnie: Is it a resignation issue?

Andrew Flanagan: I did not ask her to resign, and I clarified my remarks in my second letter to her, which was sent to her early in the new year. I told her that, in many cases, when people disagree with the board, they will come to that conclusion themselves. That is what I said in my first letter—it was a matter for Moi Ali herself, not for me as the chair. Dissenting in public is a fundamental right of a board member.

John Finnie: You did not suggest to her that it was a resignation issue.

Andrew Flanagan: No. I said that it was a matter for her. If the issue is so big that the board member cannot live with the decision that the board is making, it becomes a matter for the individual board member to decide whether they want to continue and support that decision or whether they consider it a resigning issue. That is what I said in my original letter to her.

John Finnie: Is it, therefore, your position that your hasty and overly heavy handed—or whatever phrase you used—action is not one that would cause you to reflect?

Andrew Flanagan: Before Moi Ali decided to resign, I sent her a second letter in which I explained the position more carefully and thoroughly. I explained that dissenting in public was not an issue that I felt was a resigning matter—in fact, I think that it is the right of every board member, as I have said. The fundamental

issue at the board meeting was that her decision to dissent was a surprise to me—that was the main frustration. As the chair of a large organisation, I try to manage things so that there is open dialogue and communication between board members, so that that kind of surprise does not arise.

John Finnie: Was it a failure on your part that you found it a surprise?

Andrew Flanagan: One has to reflect on both parties in considering how it happened. In a dialogue between members, with other members present, I would have expected that to have been understood, as I said. The decision to dissent is not a decision that should be taken lightly. Therefore, I would have expected everybody around the table to have understood that that was her position.

John Finnie: What would constitute a resignation issue, Mr Flanagan?

Andrew Flanagan: I do not know. Clearly, any answer would be speculative. Many people have had to resign over issues such as major faults in computer programmes, for example, or having accepted gifts. Such things would be an issue.

John Finnie: However, as a senior and important public figure, your judgment is all important.

Andrew Flanagan: I think that judgment is important, and we make judgments all the time. If people had to resign every time they got something wrong, they would not learn from their mistakes and gain the benefit of reflecting on those things in order to become a better individual and a better leader. If the performance standard is that a person cannot make any error of judgment, that is a very high standard for us all to aspire to.

John Finnie: I agree with you. However, you would also acknowledge that there must come a tipping point if the individual becomes the story and, therefore, a distraction from the core function—the important public function—of scrutinising a vital public service.

Andrew Flanagan: Yes. However, as I said in my opening statement, you must consider my mistake in the round, taking into account what I have achieved.

John Finnie: Convener, I have other questions, but I presume that you want to bring in other members.

The Convener: Yes, but I have a question to ask before I bring in Rona Mackay. One of the tasks that you were given was improving the governance—the openness and the accountability—of the SPA. Is that correct?

Andrew Flanagan: That is right. When I was appointed, I was asked to chair the governance review.

The Convener: That was intended to improve openness and accountability. It seems to me—if you think that this is not correct, you can correct me—that one way to improve openness and accountability would be to hold meetings in public and allow dissent. If you are promoting healthy discussion and disagreement, what is wrong with dissenting in public? I genuinely do not understand why you have an issue with someone dissenting in public at a meeting when one of your tasks was to improve the openness and accountability of the board that you chair.

Andrew Flanagan: The governance review produced some 30 recommendations, 28 of which were uncontroversial and have both substantially improved local engagement, which was the primary driver of the review, and meant that we have been able to increase the number of scheduled board meetings that we have in public. Those board meetings are live streamed.

The challenge for me was that the committees were getting bogged down in extraneous detail, the flow of information from Police Scotland to the committees was inadequate and there was a reticence about supplying simpler papers that were clearer about the issues, which would let the committees get involved in the thinking at an earlier stage rather than when a final decision had been made by Police Scotland.

The concept of taking the committee meetings in private was intended to create a little more safe space, as it were, for discussions between the authority and Police Scotland. However, I was unhappy about the committees having the power to make decisions, because it would have been wrong if decisions had been made in private. Therefore, another recommendation in the governance review was that all the committees' decision-making powers should be removed and that decisions should be taken at the public board meetings. Now, all decisions are made in public.

As I said, I have no issue with anyone dissenting, as I made clear in my second letter to Moi Ali.

The Convener: Your letter to Moi Ali that is dated 19 December says:

"On a professional level, in my experience, individual Board members who wish to share public disagreement would normally consider resigning due to their view of the seriousness of the issue".

Andrew Flanagan: That is consistent with "On Board", which says that at some point that issue has to be considered. If the disagreement is so substantial that a board member wants to take that step, they are perfectly within their rights to do so,

but they will need to consider whether they can live with that decision on an on-going basis.

13:30

Rona Mackay (Strathkelvin and Bearsden) (SNP): Your opening statement represents a complete turnaround in the ethos of your stewardship as chair of the SPA. How do you expect the public to have confidence that you will carry out everything that you have said you will? Why has it taken 18 months for you to have that conversion in the way in which you operate?

Andrew Flanagan: I am not sure that it is a conversion on my part. I was asked to do the governance review and I put that into the public domain in March 2016. I set out clearly what the recommendations were. Because of the election at that time, it was some weeks before the Scottish Government said that the recommendations had been accepted, and then we set about implementing them.

During that period, there was a significant change in the relationship between the SPA and Police Scotland; it became much more open. It is a proper relationship that is robust when it needs to be, but it was developing and the information flows were improving all the time. When I look at the situation now, the idea of having committees in private is no longer necessary. That is the view and I think that we can move on from that.

In that sense, I do not think that there is a change. We are in a situation that has been moving forward; dialogue between us and Police Scotland is much improved, so we can move on and go back to the previous situation.

Rona Mackay: What worries me is that your natural instinct was to be non-transparent, to hold things in private and to carry on in that manner until a tipping point was reached. That is why I think that the public might be worried.

Andrew Flanagan: If the issue about committees being in private was taken in isolation, that view could be taken. However, that would sit inconsistently with the idea of having more public meetings, the idea of having papers that are simpler and clearer and which consider the options so that people can understand them more easily, and the idea that all decision making should be removed from the committees and carried out by the full board in public sessions that are live streamed. I am not sure that I accept the characterisation that arises from looking at the issue in isolation, which is that I like to do things in secret. I do not, and I am happy and content to do things in a public setting.

Liam McArthur: To follow up Rona Mackay's line of questioning, I accept what you said about

your default position, but you referred to the difficult relationship between Police Scotland and the SPA at the time and to the need to provide a safe space for discussion to take place. I think that all of us accept that certain discussions need to happen in private, but—notwithstanding the improved relationship that there may be—there is no suggestion that Police Scotland is in any way out of the woods yet on the difficult decisions that lie ahead. My concern, which arises from what you have just said, is that there will be a reversal into holding more discussions in private whenever they are difficult. In areas of dissension, when it is not clear cut what the right approach is and when such tensions may arise, more visibility is needed.

Andrew Flanagan: There are always concerns, and there are always issues about the appropriate time to make things public. I see a kind of spectrum. One should assume that things will always become public at some point, and the question is when the right time is along the spectrum to put them into the public domain.

The concern that I had when I started was that the SPA was finding out about things at the 11th hour—the very last minute—that had already, in effect, been decided in Police Scotland. For our governance role, we need to be engaged earlier so that we can be more proactive in relation to the earlier thinking and not be presented with a fait accompli.

An attempt was made to create an environment in which Police Scotland would feel more comfortable about sharing information earlier. It was not about decisions being made at that stage, as is evidenced by the fact that the committees have no decision-making powers. The issue was then how to follow up the process to the point of the public board meeting, so that people could hear what thinking there had been, what the options were and what the correct decision that needed to be made was.

Liam McArthur: In a sense, the trigger should not be the difficulty or the extent to which there might be dissent and disagreement in the committee or the board. That does not strike me as a terribly sensible principle, because all that will happen is that, at some point down the line when further difficult decisions have to be taken, there will be a reversal to a situation that we have all agreed was not helpful or healthy.

Andrew Flanagan: There is reliance on the people on both sides to make sure that that does not happen. We have developed a strong and robust relationship and have built up trust with Police Scotland to the point that it has sufficient confidence and respect to feel that it can work effectively with us. We are in a much better place now than we were in when the recommendations were written.

Margaret Mitchell (Central Scotland) (Con):

Thank you for the advance copy of your opening statement. It is fair to say that it expresses contrition about the initial letter that you wrote to Moi Ali and about how you dealt with the letter that Derek Penman sent you. Thereafter, there are various things that I presume that you wrote to give the committee some comfort that you are now on top of this or to explain that there were good reasons for what you did. Is that the case?

Andrew Flanagan: Not really. I have already said to the Public Audit and Post-legislative Scrutiny Committee that, in hindsight, I wish that the letter from Mr Penman had been circulated to the board. I make no attempt to defend that position. I have accepted the conclusions—

Margaret Mitchell: I am puzzled. Are you contrite that you did not circulate that letter to the board?

Andrew Flanagan: I am.

Margaret Mitchell: That is what I said in my initial comment.

Andrew Flanagan: I am sorry that it was not circulated. I looked at the letter and thought that the issues that Mr Penman had raised had already been discussed.

To go back to the sequence of events, we had a members meeting at which a number of—

Margaret Mitchell: Can I stop you there? I read that letter carefully, too. It was from HM chief inspector of constabulary. I was rather puzzled and somewhat alarmed that your opening statement said:

“I recognise”—

it is like a light-bulb moment—

“that HMICS, and indeed Audit Scotland, are not simply stakeholders.”

Mr Flanagan, you are the chair of the SPA, yet it has taken you 18 months to realise that.

Andrew Flanagan: I realised that from the outset; I am not saying that there was a moment of recognition. I am saying that the letter that came in should have been circulated as a matter of course. It was not, but I have now instituted a procedure to ensure that that will be the case in the future.

Margaret Mitchell: The difficulty that we have is that the letter was from HM chief inspector of constabulary. Any reasonable person would have expected it to be shared with the board.

I will move on to another aspect that concerns the letter. It would be good to receive some clarification about whether Mr Foley—who has been sitting quietly but who features considerably

in a lot of the events that happened—saw the letter from Mr Penman.

John Foley (Scottish Police Authority): When I gave evidence to the PAPLS Committee a few weeks ago, I said that I did not recall seeing the letter when it was issued. I advised that committee that I might have seen a copy of it and it might have been sent to me by email, but I did not recall it. I also said that I did not see the original letter, which was presented on the day and was addressed to Andrew Flanagan. That was my position.

Subsequent to that meeting, that committee had a meeting at which it was suggested that the letter had, indeed, been sent to me. I checked my email inbox to verify that and found that it had. As far as I recall, I did not see it at the time. I was out of the country when it was sent and I cannot access emails when I am out of the country because, for security reasons, we are not allowed to take our police devices abroad.

I have a process in my office whereby such letters are taken out of the email folder and put into an electronic file that is called the mail file. I have established that that was not done, and that was down to human error. It was a staff error and I do not criticise my staff for human errors. That is completely my responsibility.

Subsequent to that, last week, I checked my diary for the week after I returned from being abroad. I had a full week of meetings that week and would have had little time to deal with administrative matters.

That is what happened. It is an unusual circumstance and it is the first time that I can recall such a letter not finding its way into the mail file.

Margaret Mitchell: We can all miss emails.

Mr Flanagan, was the letter never discussed with your chief executive?

Andrew Flanagan: Yes. To go back to the series of events, on 5 December, we had a members meeting. A number of the members at that meeting had spoken with Mr Penman and understood that he had concerns about the changes to governance. We discussed those fully at that meeting and one of the members—George Graham, who is a former chief inspector—said that he would have a further conversation with Mr Penman.

Margaret Mitchell: I am more interested in your relationship. We are considering the governance of the SPA and, right now, it does not look too hot. Did you take the opportunity to discuss the letter with Mr Foley individually? He is the chief executive.

You have said that it might help if you had a deputy chair—hey, we could even have gender balance. A deputy chair would have been someone for you to talk to about the matter. I put it to you that Moi Ali would have made an excellent deputy chair, because she seems to have picked up everything that was fundamentally wrong. However, from your initial letter and your reaction to her, I do not altogether have confidence that her concerns would have been greeted with the kind of panacea that you think will now sort the arrangements that you have put in place. In other words, had your deputy chair been Moi Ali, your initial reaction would have been just as volatile to her voicing what everyone now recognises as legitimate concerns that we want a conscientious board member to raise.

Andrew Flanagan: Your first question was whether Mr Foley was aware of the letter and whether I discussed it with him. As I was explaining, we had a discussion at the members meeting on 5 December and, if I recall correctly, Mr Foley was at that meeting. George Graham suggested that he would talk to Derek Penman.

By Friday 9 December, I had received no communication from Mr Penman, and I emailed him that afternoon to say that I understood that he had concerns, which had been raised with a number of members, and to ask whether we could meet to discuss them. I received by return the letter of which you have seen a copy. However, that was late on Friday and, in the first few days of the following week, I was not working on SPA business—I work for other organisations as well.

The first time that I was back in the office was the day of the board meeting. In the pre-meeting discussion that I had with the board, I raised Derek Penman's letter. My view was that, as he asked in the letter, I should inform the board members of its contents. I did that. They were consistent with the concerns that had been raised with board members previously. In the event, the letter did not get copied because we were then into the board meeting itself.

Margaret Mitchell: So it never occurred to either of you formally to issue the letter at that point, although it had come from HMICS, to which you are accountable and which has an oversight role, which you say you fully realised was the case from the moment at which you were appointed.

13:45

Andrew Flanagan: As I said, the letter was discussed in detail and its contents were consistent with conversations that individual board members had had with Mr Penman previously. The letter asked me to ensure that the board was

informed of his views and I complied with that. The board members were informed of his views.

Margaret Mitchell: Moi Ali has also made it clear that her views were well known in the board, so it is reasonable to say that, when she met such intransigence from you, she was left with no choice but to go public, because her views were not being considered. She was also of the view that the chief executive ignored Government guidance and stakeholders' concerns.

Andrew Flanagan: I am not clear about the reference to the chief executive.

Margaret Mitchell: I will give you it exactly. When she gave evidence, Moi Ali said:

"I will summarise the position in a few points. The decision on private committees and last-minute publication of papers"—

that was another issue—

"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".—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 11 May 2017; c 7.]

How have you addressed the challenge about the chief executive ignoring Government guidance and stakeholders' concerns?

Andrew Flanagan: To date, I have not addressed it. I will let Mr Foley speak for himself.

John Foley: I was made well aware of Moi Ali's views and have said publicly at the PAPLS Committee and in other public fora that we had a reference group for the governance review. Moi Ali and others were part of that reference group and I state again categorically that she consistently made her concerns known over the period. She continued to do so in discussions as a board member. Some of that is clear in some of the information that I sent to the PAPLS Committee last week.

Moi Ali's views were known. She made them known to me until her resignation. Because I had offered to assist her in any way that I could with her concerns, she came to speak to me the day before she resigned to advise me that she was taking that course.

Margaret Mitchell: What did you think that you could do? Moi Ali's concerns were clear. The issues should not have been discussed in private.

John Foley: To answer your point, Moi Ali had come to see me privately and we had spoken on the telephone about the letters that you have in front of you. In an effort to resolve the situation for her, I suggested that she seek a meeting with the chair to see whether the differences could be

smoothed over and a compromise position could be reached. I said that, if she still felt dissatisfied after that process, she should come back to me and I would look to mediate effectively and form a solution.

Margaret Mitchell: Mr Foley, that sounds to me as if you were saying that there was a slight difference of opinion with two members not agreeing, and were totally ignoring the serious substance of her concerns. She kept voicing the concern that the meetings should not be held in private and that the board should be transparent and accountable.

Mr Flanagan, you have now said that you were always on the back foot, so the private meetings were an opportunity to have frank discussions. Anyone who has looked at the issues that have come up during Police Scotland's short life knows that the vast majority of them have come from the Scottish Police Federation, which you ignored and banned totally from board meetings. You have no consultation with the SPF or with the other unions—the people who were in a position to alert you to the kind of things about which the SPA had been continually on the back foot.

Andrew Flanagan: There is frequent engagement with the SPF. In the committee structure that has been set up, people can come and give evidence, as we are doing today; the SPF and other staff associations and unions can come to those meetings—in fact, that has happened. There is always a route for that engagement to take place.

Margaret Mitchell: Were you aware that the SPF was unhappy that it had not been sufficiently consulted?

Andrew Flanagan: Yes, because there are ongoing discussions with all the organisation's stakeholders. The view was that we should try things out and keep them under constant review. When we agreed the changes to governance, we said that we would try them for six months and then review them, taking into account the views of stakeholders as well as the evidence that—

Margaret Mitchell: But do you recognise that a lot of the issues have come from the SPF? Your argument that you were having meetings with Police Scotland to try to get it up to speed is therefore fundamentally flawed.

Andrew Flanagan: I do not agree with the characterisation that it is fundamentally flawed. A number of avenues existed for dialogue with all the stakeholders. I have met the SPF on several occasions, and regular meetings were set up. The SPF has been able to participate in the committee meetings and has done so since December.

Margaret Mitchell: You may have confidence in what you have done so far, Mr Foley and Mr Flanagan, but you have not filled me with confidence today.

The Convener: Before I bring in Ben Macpherson, I have a question for Mr Foley. I return to the issue of Mr Penman's letter. On 20 April, you appeared at the Public Audit and Post-legislative Scrutiny Committee and were asked several times whether you had seen the letter. You said that you might have seen it but that you did not recall. It was suggested that it was a very important letter and that you had either seen it before the board meeting or you had not. Your response to that suggestion was:

"I am telling you that I do not recall seeing it. I recall having conversations with Mr Penman around that time and him expressing his views to me clearly. Having seen the letter and read it in recent days, I find that it is in accord with a conversation that I had at the time, in which Mr Penman expressed his views."—[*Official Report, Public Audit and Sub-legislative Scrutiny Committee*, 20 April 2017; c 6.]

Clearly, you had discussions with Mr Penman, the chief inspector of constabulary, who raised his concerns with you.

John Foley: Yes.

The Convener: I presume that that was immediately prior to a board meeting or in the week before a board meeting.

John Foley: It was over a longer period. Mr Penman and I are in regular contact, and I had known his views for a while.

The Convener: Mr Penman raised quite grave concerns with you. After those conversations with him, did you think that it was incumbent on you to share his views with Mr Flanagan?

John Foley: Yes, I did—and with other board members.

The Convener: You shared those views.

John Foley: Yes. Absolutely.

The Convener: You had a series of conversations with the chief inspector, who expressed serious concerns about the board, and he followed those up in a letter, but you do not recall seeing it. Would you not watch for that coming in?

John Foley: I think that my earlier explanation perhaps satisfies that question.

The Convener: No; actually, it does not.

John Foley: Well, I gave you an honest explanation. I do not recall seeing the letter at the time, and I have given the reasons why I believe that I did not see the letter at the time. I was aware

of Derek Penman's views and I had passed them on.

The Convener: The chief inspector raised serious and grave concerns. Did he, at any point, tell you that he was going to follow that up with a letter?

John Foley: I do not recall discussing the letter with Mr Penman, but I know that he was having conversations with other board members as well. It is not the case that his views were not known; he rightly made his views known to me and to others.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Mr Flanagan, I have a number of questions that are based on your opening statement. Like others, I welcome the new presumption that meetings will be in public and the fact that papers will be published in advance and that you are initiating steps for public participation. However, like others, I am sceptical, given what has happened previously. I will ask my questions in that light.

You say that the board and its committees will indeed meet in public, with the ability to hold some items in private—if there is the need, which will not be, by any means, the norm, as it has been in the past. Can you detail any procedural changes that you will undertake to make to ensure that there are proper checks and balances? For example, will decisions to meet in private be made in public?

Andrew Flanagan: I am happy to meet that specific request. Changes to our processes are going on. There is much more examination of requests to put items on an agenda for private rather than public discussion. I am very resistant to things going into closed meetings. In fact, the length of closed meetings has reduced considerably over the past 12 months, because I am insisting on fewer and fewer items being discussed in closed meetings.

Let me give an example. We had a request in relation to the sale of a property in Chambers Street in Edinburgh. When bids were solicited, there was a condition of confidentiality, and the request came through for the decision to be made in private session. I refused that request, because any sale of a property ultimately becomes a matter of public record in the land register. I insisted on going back to get a release from the confidentiality agreement, and the decision was put through a public board meeting. That is one example of procedures having changed, and we are pushing more and more into open public meetings.

Ben Macpherson: So are you giving an assurance that, in the words of Moi Ali, “respectful, open debate” on whether items can be held in private will be encouraged?

Andrew Flanagan: Yes, I can give that undertaking. I think that that happened in the past. We are on a journey and are making sure that as much as possible can be discussed and debated in public.

The Convener: I have a supplementary specifically on that point, Mr Flanagan. I am a bit confused, and I wonder if you could clarify the position. Was it under your leadership of the board that meetings were held in private? Who took the decision that those meetings would be held in private?

Andrew Flanagan: The only change that took place under my leadership was the proposal that committees—which in the governance review I likened to working groups, rather than committees—meet in private. That recommendation was made public in my governance review in March last year, so it was out in the public domain, and it was subsequently accepted by the Scottish Government. We moved to holding those meetings in private only in December last year, so very few meetings have actually happened under the new arrangements.

Everything else—other than the move to shift as much as possible into the public meetings, which is what I was explaining to Mr Macpherson—has been an on-going process since I started.

The Convener: It was under your leadership that meetings were moved into private, but you are saying today that you do not think that they should be held in private. That is why I am confused.

Andrew Flanagan: As I said in my earlier comments, the governance review was written in March last year. I think that we have moved to a situation where our relationship with Police Scotland is much better, so I do not think that holding meetings in private is now necessary.

The Convener: Can you give a commitment today that, unless it is absolutely necessary to have a private meeting because something of a particularly sensitive nature is to be discussed, every single meeting of the board will be held in public?

14:00

Andrew Flanagan: Yes. As I explained in response to Mr Macpherson's questions, we have been on a process of pushing more and more into the public meetings. We will have next week's board meeting discussion in public, and the committee meetings should move to being in public, as they were before. As I said in my opening statement, there will be an opportunity for not just public observation of those meetings but public participation through people putting questions to us.

The Convener: And the board members will be able to dissent publicly at board meetings.

Andrew Flanagan: Yes.

The Convener: Without giving prior notice.

Andrew Flanagan: If something happens in the course of a meeting, that is of course their right. It is their right anyway and I have to accept that—it is specified in “On Board”. My experience is that dissent happens from time to time. I also think that any board member—as chair, I have this responsibility, too—needs to work as hard as they can to come to a consensus on any decision. If we cannot reach consensus and somebody has to dissent in public, that is perfectly okay. However, through that consensual approach, we should be able to understand that a member is likely to dissent in public, so I would be prepared for that when the board meeting took place.

The Convener: Surely dissension is part of healthy discussion.

Andrew Flanagan: Agreed.

Ben Macpherson: I also welcome the assurance in your opening statement that you will consider any further recommendations on improving openness that come from the HMICS inspection that is due at the end of June. Do you have any indication of when you will receive those recommendations?

Andrew Flanagan: From the terms of reference that Mr Penman published, I understand that he is proposing to issue his report on 22 June.

John Foley: I can confirm that.

Andrew Flanagan: We would usually get a copy of such a report a week or two beforehand to check for factual accuracy.

Ben Macpherson: I am mindful that the parliamentary summer recess begins in July. Can you undertake today to write to the sub-committee at the earliest possible opportunity following your receipt of those recommendations with your response to them so that we can consider that before the summer recess?

Andrew Flanagan: I can make that commitment. My previous experience was not in policing so, until 18 months ago, I was not used to how chief inspectors operate. One difference with, say, audit reports is that with an audit report, you are usually able to put your management response into the report, with both published together. The process that chief inspectors of constabulary undertake seems more sequential, in that they publish their recommendations and then we respond to them. However, I note the point about the dates and the parliamentary recess. Given that we will have a copy of the report in advance to check for factual accuracy, I undertake

to try to issue our response to the chief inspector's recommendations as close to that date as possible.

Ben Macpherson: I am grateful for that response.

You referred in your opening statement to appointing a deputy chair—again, that is welcome—and you said that gender balance will be considered in that process. Looking at gender balance more holistically, do you think that more work needs to be done to try to achieve better gender balance in the organisation?

Andrew Flanagan: I think that that is true of the SPA board and of policing in general. There is an on-going challenge for many public boards in achieving gender balance. I make the point for the record that I do not appoint SPA board members—that is a matter for the Cabinet Secretary for Justice. I participate in the process, but I do not chair the panel that appoints board members. Although I have some influence in that process, I do not have sufficient influence to affect it in any way.

It is important to recognise that we have moved to a more skills-and-experience-based selection process for board members. Due to the scale, complexity and size of the SPA, we need people who have operated in that kind of organisation before. The recent appointments of new board members that we have made reflect that with regard to the new members' skills, background and experience. Of our 10 members, seven were appointed in the past two years on that basis.

We are looking at ways in which we can expand our reach. The last time round, we used a number of networks to try to reach out in terms of diversity and ethnicity. However, due to the scale of the organisation, we are fishing in a relatively limited pool and, when it is an issue of gender or ethnicity, people are very much in demand, if I may put it that way, and they are selective about which boards they go on.

John Finnie: I have a series of questions to ask, but an interesting point came up when Ms Mitchell asked about Mr Penman's letter and the flurry of activity around that time. Mr Flanagan, you said that you returned to work on the day of the board meeting. I understand that you have other duties, but is there no pre-meeting?

Andrew Flanagan: There is, but only on the morning of the meeting. It is quite short—it is used just to update the board on anything that has happened since the papers were issued, which is why Mr Penman's letter was on the list for us to discuss. The pre-meeting is also used to try to organise the meeting so that questions are not duplicated and so on. A previous report from Mr Penman was critical of the length of board

meetings and we try to manage the timings a little more effectively than used to happen.

John Finnie: I have no issue with the concept of pre-meetings. I am trying to understand whether it is an efficient operation overall if you returned to work on the day of a board meeting at the time of the flurry of activity about the HMICS letter.

Andrew Flanagan: I think that it is efficient. The papers are worked on during the previous week so I am aware of what is in them. To date, I have found no particular issue with having other activities the day or two before an SPA board meeting.

John Finnie: I have some questions about the issues of openness and transparency, and relationships. Some of my colleagues have raised those issues because, as parliamentarians, we are very keen that the Parliament building is seen as a public building and that the public have access to the deliberations that take place here. There is very little that takes place in private discussion.

What is your relationship with the Convention of Scottish Local Authorities scrutiny board? Concerns have been expressed in the public domain today that the late submission and the extent of papers are often tactics that are used to frustrate open and transparent discussion and deliberations. Can you comment on that, please?

Andrew Flanagan: That is one of the topics that will go to the board next week. I noted the comments in the press this morning. We have discussions with COSLA and the individual local authority scrutiny committees so a lot of dialogue goes on in that regard. COSLA has suggested the seven-day approach because it is consistent with how local authorities operate. Our view is that we would like members to have at least received the papers before they go to COSLA but, as we are dependent on getting the papers from Police Scotland, we are not entirely in control of the timing, which we are trying to improve.

I would not want papers to be issued so far in advance of a board meeting that things change between a paper coming out and it being considered at the meeting. We are working with relatively compressed timetables. We issued the papers for the past couple of meetings 48 hours in advance. The feedback was that, generally speaking, people were content with that but that if we could do better, we should. That is what we will look to do.

John Foley: I attended the COSLA police scrutiny conveners forum earlier this year—in January or February—and it is fair to say that I got a rough time about our committees meeting in private. I made a point of meeting with the then chair of the forum. The local elections were coming up, so we knew that the people on the

forum would change, but we discussed the idea that we would go further and, in future, take the work plan to the forum.

The idea is for me to have a regular meeting with the chair of the forum and some of the conveners to consider what is coming in the year, which would give the COSLA forum an opportunity to inform and shape papers. We saw that as a positive development, regardless of the situation with committees meeting in private, which will be reversed. I thought that it was a good thing to do.

John Finnie: That sounds good and reassuring.

On openness and transparency, you will know, Mr Flanagan, that papers are published for this meeting and you will be sighted on those, including the letter from the acting convener of the Public Audit and Post-legislative Scrutiny Committee to the Cabinet Secretary for Justice. Will you comment on your relationship with the cabinet secretary as a result of that letter?

Andrew Flanagan: I have not met the cabinet secretary formally since the letter was published on Friday. I have had a telephone conversation with him, in which we talked about other related matters. He noted the letter and the fact that he would have to respond to it in public. I accept that. However, we have not gone into the detail of the letter as yet.

The Convener: Before John Finnie comes back in, I remind members and our witnesses that we are rapidly running out of time. I would appreciate it if members and witnesses could keep their questions and answers as short as possible.

John Finnie: Yes, indeed.

It is a strongly worded letter and it is extremely critical of you, Mr Flanagan, and practices in the SPA. There is an interesting section that is headed “Collective responsibility”. The COSLA forum and the scrutiny committees are part of a process of which you are a significant part. Do you really believe that, if your board members see the letter, they will have confidence in you?

Andrew Flanagan: My board members have seen that letter and the conversations that I related to you earlier about their support for me were after they had seen it.

John Finnie: Right. How was that letter circulated?

Andrew Flanagan: The letter specifically requested that it be circulated, so that was actioned immediately we received it, as it would have been anyway. As Mr Foley touched on, there is a standard procedure that, in the case of Mr Penman’s letter, broke down. Normally, letters of that kind would be circulated to board members as a matter of course.

John Finnie: Does the authority have a grievance procedure for dealing with complaints against officials or you?

Andrew Flanagan: Not a formal one. That is one of the reasons why a deputy chair would be an important role.

John Finnie: Your suggestion at this stage of creating a deputy chair, and your comments about gender, might be viewed as patronising and as a belated response. What do you think of that view?

Andrew Flanagan: I do not agree with it. There is a recommendation that all public bodies have a 50:50 gender balance on boards by 2020.

John Finnie: Yes, I am very supportive of that.

Andrew Flanagan: I was only acknowledging that that is a good thing to do. It is not a patronising suggestion. If the chair was female, it would be a good idea for the deputy chair to be male to try to get that 50:50 split not just on the board in total but in the chairing roles.

John Finnie: Will your acknowledged treatment of Ms Ali have a negative impact on the potential to recruit females to the board?

Andrew Flanagan: A number of ladies are already on the board. Two of them are chairs of committees. This is an issue that I—

John Finnie: I am talking about recruiting new members.

Andrew Flanagan: We have a new member who is female. She has been involved in the discussions about the matter and does not think that it would have had any impact on her application.

John Finnie: Do you think that it could potentially have a negative impact?

Andrew Flanagan: No, I do not.

14:15

John Finnie: You do not think that that in any way presents as complacent, notwithstanding your changed position. You do not think that you are complacent about the issue at all.

Andrew Flanagan: I do not think that I am complacent. The public appointments process is thorough and robust and it makes us work hard on the issues. Last time round, as I said, we used a number of networks to try to reach out to people, and that was effective. We had a number of female candidates in the previous round of applications.

John Finnie: I will conclude with a comment, which is a direct lift from the letter:

"In particular, we consider that the chair of the SPA board, Mr Andrew Flanagan, would appear to have behaved inappropriately on occasion and in a manner not in keeping with relevant Scottish Government guidance. We consider this to be unacceptable, particularly in relation to a public body that performs such a vital role."

Do you agree with that?

Andrew Flanagan: The "on occasion" has to relate to the matters that we have been discussing. The letter goes on to say that the matter should be taken up in my annual review, and I expect that to be done by the cabinet secretary in due course.

John Finnie: Thank you.

The Convener: Liam McArthur has a supplementary question, but I will bring in Margaret Mitchell first as she has a substantive question.

Margaret Mitchell: My question is about the frequency of board meetings. Mr Flanagan, there has been some criticism of the SPA holding only eight board meetings per year. Is there a move to have more?

Andrew Flanagan: We changed the number from six to eight, but that is a minimum number. We have as many as are necessary for the business that is coming through. I think that there were more than eight in the first year or two, but—

Margaret Mitchell: Do you have a proposal to have 10 meetings a year, or even monthly meetings?

Andrew Flanagan: I would be prepared to consider that. We have asked David Hume to take on a further governance review during the summer—it will be a fresh look compared with my governance review. We will also have the recommendations from HMICS, given its current work.

Margaret Mitchell: Do you recognise the concern that has been expressed about there being only eight meetings per year, which means that a considerable time can elapse between meetings?

Andrew Flanagan: That is an issue. As I said, if more are required for business purposes, we will institute them. If we look at other public bodies in Scotland, we can see that eight is already quite a lot. You are right about the spacing of meetings, and I think that we need to think about that. As I said, however, eight is the standing minimum that is required, and that is an increase from the previous six. If we need 10 or 12, we—

Margaret Mitchell: I merely put it to you that you want to be on top of things and not on the back foot, and having more board meetings more regularly would perhaps allow that.

Andrew Flanagan: That is a good suggestion. I will certainly take it up with David Hume, who is going to conduct the review.

Margaret Mitchell: Finally, can I ask you about the comments by Brian Barbour, who went public as soon as Moi Ali did? He shared his concerns about how the SPA had operated. In particular, he thought that SPA members should be appointed by the Parliament and that the SPA should perhaps report and be accountable not just to this committee but directly to the Parliament.

I must admit that I am concerned that seven of your new members have been there for two years but only one was prepared to speak out about governance. Will you comment on his suggestion?

Andrew Flanagan: First, I should say that I have never worked with Mr Barbour—

Margaret Mitchell: I understand that, but will you comment on his suggestion?

Andrew Flanagan: —so I do not know what happened before.

Margaret Mitchell: I understand that, too.

Andrew Flanagan: I read the comments that he made both to the press and to the PAPLS Committee. I did not recognise what he said about interference from Government or the like. That has certainly not happened in my time at the SPA.

On appointments to the board, I note that we follow the normal public appointments process. If the Parliament deems that it wants more say in that, that is—

Margaret Mitchell: I think the main point is that, at present, the public appointments process is used, and then the cabinet secretary makes the final decision. If a board member feels that the Government is interfering, but their appointment is in the gift of the cabinet secretary, there could be a perception of a conflict of interest. Perhaps it would help to avoid any perception of that, as well as being more open and transparent, if the Parliament had the final say.

Andrew Flanagan: That is a matter for Parliament rather than for me, but I have no concerns about that happening, whether it is a formal part of the process or there is some sort of pre-scrutiny through the committee's structure. Other models work in other Parliaments, and those could be considered.

Liam McArthur: Mr Flanagan, in your statement, you expressed a full and unreserved personal apology to Moi Ali, and you have also expressed regret and contrition about other events at the back end of last year.

John Finnie has already mentioned the press report in *The Herald* about the meeting with the

COSLA forum. Somebody who was at the meeting is quoted as saying about Mr Foley that

“Ultimately, in a telling comment, he implied papers were not issued any earlier because of concern about leaks to the media. You can imagine the reaction of disbelief in the room.”

Would it be appropriate, Mr Foley, for you to apologise to the COSLA forum, or have you already issued such an apology?

John Foley: My participation in the meeting was welcomed, even though the conversation was difficult. The comment that you refer to was set in a wider context, which involved me advising the COSLA forum that one of the reasons—it was only one reason—for papers not being issued seven days in advance was that it had proved difficult in the past.

When papers were late, there was a perception that things were being held back, which is not a good position to be in. It also resulted in a lot of the authority's business being played out in the media before the members had a chance to discuss matters. It was not so much about leaks; it was in the context of seven-day publishing. I think that we should publish earlier than we do at present, and I know that Mr Flanagan thinks likewise, although it would be a challenge to do seven-day publication.

As I mentioned earlier, I will be going along to COSLA regularly because it is important to strike up a dialogue. We will take the COSLA conveners' views fully on board. I spoke to the chair of the forum and offered to meet regularly to look at the forward work plan so that the conveners have an opportunity for influence and dialogue well in advance of papers being produced. I think that that is a good way forward, and the idea was very well received.

The Convener: Thank you. As there are no further questions from members, I thank Mr Flanagan and Mr Foley for coming along to give us their evidence.

The next meeting of the sub-committee will be on Thursday 1 June, when we had intended to hold an evidence session on Durham Constabulary's counter-corruption report. However, Police Scotland has informed us that the report will not be in the public domain prior to that date, so we will now hold an evidence session on either i6 or the 2015-16 audit of the SPA.

Meeting closed at 14:23.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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