



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Sub-Committee on Policing

**Thursday 22 June 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Thursday 22 June 2017**

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**JUSTICE SUB-COMMITTEE ON POLICING**  
**13<sup>th</sup> 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:**

Gill Imery (HM Inspectorate of Constabulary in Scotland)

Derek Penman (HM Chief Inspector of Constabulary in Scotland)

**CLERK TO THE COMMITTEE**

Diane Barr

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Justice Sub-Committee on Policing

Thursday 22 June 2017

*[The Convener opened the meeting at 12:59]*

### HM Inspectorate of Constabulary in Scotland (Review of Scottish Police Authority)

**The Convener (Mary Fee):** Good afternoon and welcome to the 13th meeting of the Justice Sub-Committee on Policing in 2017. Apologies have been received from Liam McArthur.

Agenda item 1 is an evidence session on Her Majesty's inspectorate of constabulary in Scotland's review of the Scottish Police Authority. I welcome to the meeting Derek Penman, Her Majesty's chief inspector of constabulary in Scotland, and Gill Imery, the assistant inspector of constabulary in Scotland.

Mr Penman helpfully provided the sub-committee and others with an embargoed copy of the HMICS report prior to its publication. Being provided an advance copy is a privilege that helps us with our work as committee members, and it is much appreciated. I was, therefore, greatly disappointed that the contents of the report appeared in the media before it was laid in Parliament.

I invite Mr Penman to make a short opening statement to the committee.

**Derek Penman (HM Chief Inspector of Constabulary in Scotland):** Convener, I thank you for your comments on the embargoed report. In speaking about our report, I want to differentiate between a confidential document that was leaked and one that was embargoed and was, in effect, a public document. The only reason that we embargo documents is to support the convention of not publicising a report before it is laid in Parliament. That is done to allow key stakeholders to respond to the report; it is definitely not intended to restrict a report's contents or its publication.

This time, we took a different approach in that, whereas we had produced 30-plus reports previously that did not have an issue with embargo, I was keen that a number of external stakeholders should be able to see the report prior to its publication. I was also keen to make sure that we could facilitate parliamentary scrutiny by the committee.

It is a disappointment that the embargo was breached, more because of the impact on others than because of the impact on us. It meant that people were forced to comment yesterday when they had been expecting to comment today. I intend to write to everybody who received an embargoed copy to request that they consider their document-handling arrangements and provide assurances over future arrangements to inform my decisions going forward.

Moving on, I thank the committee for its invitation to provide evidence on the inspection report on the openness and transparency of the Scottish Police Authority. I also acknowledge and thank the committee and the Public Audit and Post-legislative Scrutiny Committee for their scrutiny of the matter. We have followed the evidence sessions closely and, in conducting our inspections, we have taken cognisance of the issues that have been raised by members.

As members will be aware, I initially planned a major inspection of the Scottish Police Authority during 2017, but we received a request from the Cabinet Secretary for Justice on 20 April to bring forward elements on transparency and accountability.

I thank Audit Scotland for supporting HMICS in our inspection work. It has worked with my team and has accompanied us for our fieldwork and interviews with board members and others. That approach is consistent with our statutory duty to co-operate and share information.

My report was laid before Parliament yesterday and copies have been provided to members in advance of this evidence session. Although the report contains a number of key findings, my overall summary is that there is a need for the SPA to genuinely engage with its stakeholders and listen to the views of those with an interest in the policing of Scotland. I have previously commented that effective scrutiny of policing is essential for maintaining both legitimacy and public confidence. The scrutiny of policing must not only be effective but be seen to be effective.

Although there have been positive improvements under the current SPA chair, the recent parliamentary scrutiny and media concerns over openness and transparency have, in my opinion, weakened confidence in the SPA and detracted from its ability to perform its statutory function. Although I recognise and fully support the need for board members to have private space and to receive confidential briefings in support of their role, I firmly believe that the formal scrutiny of policing in Scotland should be conducted in public.

My report welcomes the recent decision by the SPA to revert to holding its committee meetings in public and publishing papers in advance, but it

concludes that there is a need for it to listen to the views of stakeholders to maintain public confidence and that, on this occasion, the SPA failed to do so until it was pressed by parliamentary committees. The SPA must recognise the legitimate interests of the Parliament, local authorities, staff associations, the press and the wider public in the scrutiny of policing.

The report also looks at the issues arising from the recent resignation of board member Moi Ali and acknowledges that she acted fully in accordance with the guidance in "On Board: A Guide for Members of Statutory Boards". The report highlights that the chair has accepted that he did not deal with Moi Ali appropriately and that he has since made a public apology.

I have also identified weakness in the current executive structures. I welcome the recent announcement by the Cabinet Secretary for Justice that there will be a review of how the SPA board can be better supported to deliver its statutory functions.

As I said, the report acknowledges positive signs of improvement in the SPA board operations over the past 18 months. The relationship between the SPA and Police Scotland has improved significantly and the shared development of the policing 2026 strategy has been a major milestone. However, in my opinion, the effective implementation of the strategy will be critical in building a modern and sustainable police service, and that will require effective governance and the genuine engagement of stakeholders.

Other developments including improved financial reporting, investment in change management, governance of police call handling and implementation of board and committee work plans are all evidence of good progress, as we identify in the report. There is a genuine commitment from the chair and all members to support policing and drive improvement, and I recognise that staff at all levels in the authority are working hard and doing their best to support policing.

It is also important to acknowledge that there have been significant improvements under the single service. The recent response by Police Scotland to the increase in the threat level to critical is an example of that. The speed of response and level of co-ordination would simply not have been possible under the legacy force arrangements.

However, there is a real risk that the continuing focus on the SPA and its weakness in governance will limit opportunities to highlight and, indeed, publicly scrutinise positive developments in policing. That not only has the potential to impact

negatively on confidence in the SPA but could have an impact more widely on the public's confidence in Police Scotland.

I firmly believe that there is a need to look to the future, to galvanise around the improvements that we have identified to strengthen the SPA and to collectively develop efficient and effective scrutiny arrangements for the policing of Scotland that genuinely add value. I and HMICS will work closely with the authority and other stakeholders to drive those improvements as quickly as possible.

**The Convener:** Thank you for that opening statement, Mr Penman.

Before we move to questions, I remind members and witnesses that we are under a great deal of time pressure today and need to conclude the meeting at 2 o'clock. Members may not have an opportunity to question you on some issues, Mr Penman. If we contact you about those with some further questions, I would be grateful if you could provide us with written answers.

**Derek Penman:** Of course.

**The Convener:** I refer members to paper 1, which is a note by the clerk, and papers 2 and 3, which are private papers.

I will start by asking about the need to hold SPA meetings in public. As you will be aware, there has been much discussion in our committee meetings and in the media about whether SPA meetings should be held in public or in private. I accept that your report highlights that issue, as other reports have done, but I note that there is a lack of support from some board members with regard to the need to hold meetings in public. Do you believe that there should be strong guidance and criteria for what should be held in public and what should be held in private?

**Derek Penman:** Absolutely—that is the short answer. On the criteria, paragraph 21 of our report quotes the legislation in which the Parliament has made it clear that meetings—not only of committees but of sub-committees—should be held in public, although it allows the authority to decide to hold all or part of any meeting in private. My interpretation of that is that there is a strong presumption that meetings should be held in public. I think that proceedings should be dealt with on a case-by-case basis in much the same way that local authorities and, I imagine, the committee carry out business.

In our recommendations, we say that there is a need for the authority to develop its own processes and procedures, to be clear about what will be held in public and what will be held in private and to have a process whereby that is discussed between the chief executive and the chairs of the committees. We also say that papers

for meetings that are to be held in private should be endorsed with that information so that there is an audit trail and a rationale on a case-by-case basis.

We are quite firm in the report about the need for anything that is done in private to be properly accounted for.

**The Convener:** Ben Macpherson and Stewart Stevenson have supplementary questions. I appeal to them to make their questions as brief as possible.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** Were you able to ascertain why the current practice of holding a private pre-meeting on the day of a formal board meeting was introduced?

**Derek Penman:** I think that it would be general practice to have a pre-agenda meeting on the day of a public board meeting. It is an opportunity to brief members on particular things or any change of circumstances in relation to the papers.

We picked up on the potential for that meeting to be perceived—or, indeed, to be conducted—as a pre-meeting or a rehearsal for the full board. Our recommendation is therefore that, although it is appropriate to have a pre-agenda meeting to discuss the business, it would be inappropriate to, in effect, run a private meeting beforehand and rehearse the discussion. Our concern is that members would discuss the substantive issues of the main meeting in private and the meeting in public would be perfunctory and things would go through on the nod. That would deprive the public and other stakeholders of the opportunity to understand the discussions.

**Ben Macpherson:** Was the concern about that a result of the historical presumption that meetings would be held in private?

**Derek Penman:** It became the SPA's practice to have such meetings in private. It was clear to us from the governance review that the chair and others felt that they should hold their committee meetings in private and that that was the best way for them to conduct their business.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Would it aid transparency if the board always published reasons why a particular agenda item was being held in private?

**Derek Penman:** The short answer is yes. We address that issue in our recommendations. If an agenda item or discussion on a paper was being held in closed session—rather than in private—the rationale for that would be included in the header at the top of the paper so that there was some transparency around the decision making. We would also expect agendas for closed sessions to indicate the substantive matters that were being

discussed, if not the detail. The only exceptions to that would be areas such as national security.

**John Finnie (Highlands and Islands) (Green):** Mr Penman, my question is about a specific point in your report. It states:

"I consider the decision in August 2016 to allow committee Chairs to hold meetings in private was precipitous and should not have been implemented until the formal Board approval of the new Corporate Governance Framework in December 2016."

Was that decision made unilaterally by the chair? Was it challenged by other senior members of management? Specifically, are you aware of whether the chief executive challenged that decision?

**Derek Penman:** I am not. The reason that the decision was precipitous is that, for me, good governance would have included all of that being discussed and the proposals being taken forward and agreed at a formal meeting of the board. Instead, the committee chairs moved to the practice without having a formal discussion and without a decision having been made at the board meeting. We felt that that made the decision precipitous.

**John Finnie:** Specifically, are you aware of any challenge to that decision from the chief executive?

**Derek Penman:** Not specifically. I am aware of the views of members of the board about generally holding meetings in private—those views are probably well known—but I am not aware of anything specifically about the chief executive. Gill, are you aware of anything?

**Gill Imery (HM Inspectorate of Constabulary in Scotland):** I think that the position of most board members was that, because the cabinet secretary had written to the board in June accepting the recommendations, there was an expectation that that represented the go-ahead to implement the governance review in its entirety. The fact that the chair had indicated an intention to review the review in six months' time gave them comfort that anything that emerged would be looked at again in quite a short period of time.

**The Convener:** Recommendation 8 in your report is that a development session with the chair, chief executive and all board members should be held to ensure that there is a consistent and clear understanding of the guidance. Are you concerned that the dysfunctional relationship between the chair and the chief executive impacted on the way in which the board functioned and operated?

**Derek Penman:** I have outlined in the report what we consider to be a good, functioning relationship between a chair and a chief

executive—my comments draw on guidance that Audit Scotland has provided to all boards. We would probably say that we did not find evidence of that within the SPA.

Recommendation 8 points more towards our discussions with members, in which we tested their understanding of the “On Board” guidance and, in particular, the issue around collective responsibility. Some members felt that, if they dissented against an agreement, they would find it difficult publicly to support it, as that would be inconsistent. The view of some board members was that, if they dissented, they would have to resign from the board. However, that is not what the “On Board” guidance says; in fact, it encourages a free and frank exchange of views. Our recommendation is that there is a need to get everybody who is involved in the SPA—board members and officers—together, so that there is a shared understanding and everybody is aware of what they can and cannot do.

**The Convener:** Is it not a surprise to you that those in post as chair and chief executive appear to be unaware of that good practice?

**Derek Penman:** My view is that it was the chair rather than the chief executive who misinterpreted the guidance in relation to that, and that followed through in the letter from Moi Ali. In fact, my understanding is that the chair did not discuss the matter with the chief executive and did not give him an opportunity at that stage to say that the chair’s interpretation was wrong. I do not have the evidence to say that the chief executive’s understanding of the “On Board” guidance was wrong; what I have evidence of is that the chair’s interpretation of it was unduly narrow in the circumstances, and that had an impact on his dealings with Moi Ali.

13:15

**Stewart Stevenson:** I have had some experience, both in my ministerial life and before I came to Parliament, of difficulties between executives and non-executives. Was some of the difficulty between the chief executive, who is an executive member, and the chair, who is a non-executive member, due to a misunderstanding on anybody’s part that one managed and the other had oversight?

**Derek Penman:** I refer to paragraph 127 of my report, which quotes from Audit Scotland’s report:

“It is essential that the roles of chairs and chief executives are clear and their relationships work well”.

I do not think that that was the case in the SPA. There were also issues around the extent to which the chair and members would draw on the advice of the chief executive.

The report identifies the wider issue of non-executive members performing the role of executive members in some cases. Board members are, in effect, doing the work of executive members, often to fill gaps or to do the right thing. They are working hard to do that, but it is something that we have picked up on.

**Stewart Stevenson:** Do we need to go beyond codes of conduct and provide training to board members on what it is like to be a non-executive member? That is distinct from the roles that those people may have fulfilled in other areas of their lives, in which they may have had an executive role. Moving to a non-executive role is a pretty fundamental transition that not everyone is readily capable of making.

**Derek Penman:** That is a good point. The “On Board” guidance training from the Scottish Government should address that. There are other issues relating to the maturity of Police Scotland and the turnover of staff at director level in the organisation that is leading some of the non-executive directors to behave in that way and fulfil those roles. I am not criticising them for doing that or for how they are performing, but there is an issue about borrowing some of that expertise until the situation stabilises.

**John Finnie:** I would like to ask about the role of staff associations, because your report alludes to that and uses a phrase that was new to me, “Strategic Engagement Forums”. I understand that the chief executive initiated quarterly and six-monthly meetings. Is that sufficient? It certainly would not have been my relationship with senior people when I held a staff association position. More importantly, do you know if that has come about as a result of engagement with the staff associations and unions?

**Derek Penman:** The word “forum” is not mine but the authority’s. The intention behind that was to create a structure where the chief executive—not the chair and the members—could start to engage with the staff associations. There is a theme throughout our report about the authority understanding and respecting the role that the staff associations play in policing. As you know, the Scottish Police Federation has a statutory duty around welfare as well as a duty around the efficiency of the service. It is not necessarily a trade union per se and it is not concerned only with the terms and conditions of its staff; it is very much about the efficiency of the service.

I know that the committee draws heavily on staff associations, and that the reason for that is that you want to understand the issues that are affecting policing. I would say that the same approach should be applied consistently by the Scottish Police Authority, by the chair and by members. Our engagement with staff associations



has been very productive, particularly with Unison, which always provides us with quality information, so my short answer would be that it is critical that the authority understand the role of staff associations and engage with them fully.

**John Finnie:** Was that structure put in place following consultation with the staff associations and unions?

**Derek Penman:** It may have involved engagement with them. I know that, as the report says, the staff associations do not think that the current level of engagement is sufficient and that they are looking for better ways to engage.

**John Finnie:** It is difficult to argue against having a forum to discuss matters, but engagement should be happening on an on-going basis. I wonder if that suggests that there is a malaise and that you need to put a structure in place, if the relationship is not such that people feel that they can pick up the phone. It goes beyond welfare and efficiency; in many instances, where there is a substantive change in the workplace, it is a statutory obligation to consult with the staff associations and unions.

**Derek Penman:** My experience as a chief officer in policing and other organisations is that you would want to have an open-door policy, with good engagement with the staff associations who can raise issues with you informally and give the opportunity to deal with them. Staff associations should not be excluded from committee meetings, because attending and hearing first hand has a real value. The people committee and its chair have recently introduced a process to invite staff associations not just to sit in the room and observe but to sit round the table and participate—not as members, but as participants. That is a helpful way forward.

**Margaret Mitchell (Central Scotland) (Con):** Good afternoon. The report highlights concern about a lack of genuine engagement and a failure to respond to the concerns of stakeholders. How was that culture allowed to develop in the organisation?

**Gill Imery:** I can talk about the feedback from board members. In their interviews, there was a sense that they were committed to achieving improvements in policing, and that it was a huge task. However, stakeholders—including the media and the public—were not recognised as part of the solution to address those issues; hence the desire to get on with the task, as they might have seen it, as opposed to engaging and having the distraction of taking on opinions from elsewhere.

**Margaret Mitchell:** I find that astounding, given that the stakeholders included the SPF—who better to tell board members exactly the information that they so desperately needed to

hear in the review? Was the reason really that board members thought that they were best-placed to look at the issues and move on, and that stakeholders were just a hindrance and an irritation?

**Gill Imery:** Board members would clearly not recognise that description, but there was a sense from their interviews that they were very committed to achieving improvements, but perhaps had not recognised the need to include others to arrive at those solutions.

**Derek Penman:** In the governance review, a group was put together from various stakeholders; that is not evidence to show that views were sought from those individuals, as it was not clear how their views permeated into the outcomes from the review. Although stakeholders were initially involved in the detail of the implementation of the governance review, they were not engaged after that. Stakeholders were unhappy that they were not involved until it was a done deal at committee. As I said in my opening remarks, the key learning from that is about the authority's ability to engage genuinely and effectively with stakeholders.

**Margaret Mitchell:** What recommendation have you put in place that will achieve that aim if they follow it?

**Derek Penman:** Engagement is a general theme in the report. We did not actually dwell on an specific recommendation about improving stakeholder engagement—I think that it comes through as implicit in the whole of our recommendations, which have that as a key theme. We will certainly be looking for evidence of improvement in engagement in various things as we move through.

**Margaret Mitchell:** With respect, where the SPA is concerned, there does not seem to be anything that you can take for granted as implicit.

I move on to your mention of media. You describe the board's decision to prohibit media reporting prior to meetings by embargoing papers as not desirable or sustainable. I ask you to elaborate on that.

**Derek Penman:** A practice has happened recently whereby papers are uploaded through the public website in advance of meetings, but with an attempt to embargo the press from reporting on them. Although the papers are in the public domain, the media cannot report on them, which does not make sense and is neither desirable nor sustainable. The papers should be released publicly before the meeting and the media should have the ability to report on them.

**Margaret Mitchell:** I suggest that the reason goes a little further than that. The SPA decided to restrict the publication of papers to the same day

of meetings to militate against an issue being played out in the media before the board had an opportunity to discuss it. What is coming through is a fear of the media. That raises huge questions.

**Derek Penman:** It was more about the specific issue of embargoing documents. That issue arose from an unusual set of circumstances in which the SPA board said that papers would be publicly available but then tried to embargo them, which did not make sense.

The wider issue that you have identified is absolutely right. There was a view among SPA board members that having the media play out the board's papers in advance of their meetings in some way deprived them of the opportunity to discuss the issues freely and to play their part.

I have a contrary view. If papers are made public, the opportunity is given to see what the media and others will make of them. That can help to inform decision making. The situation now is that the SPA board has agreed that its papers will be released in advance of its meetings.

**Margaret Mitchell:** That is a healthy way to proceed, but the previous approach raises questions about the qualities, skills and talents of the chair, given his fear of media reporting and doing everything that he could to circumvent that.

The SPA now needs what will be its third chair. For various reasons, and in many ways, the previous two chairs seem to have been deficient, such as in their experience in handling the media and engaging with staff. Is it not time to look at how the SPA chair is appointed? That is currently done by ministers. Perhaps we need to have an appointments system more like the system that is in place for the appointments of the Scottish Information Commissioner, to the Scottish Human Rights Commission and for the Scottish Public Services Ombudsman. Perhaps it should be like the appointment of the Presiding Officer of this Parliament, where cross-party support of MSPs is needed. We need pertinent and searching questions to be asked on every aspect of the skills that the chair would provide. I suggest that adopting either of those approaches could not be any worse, given the appointments that have been made so far.

**Derek Penman:** We have not offered a view on the selection process. That would very much be for the committee and Parliament to decide on.

I agree that it is critical that the right person, with the right skill sets, be recruited to the post of the chair. The selection process is critical to achieving that.

**Margaret Mitchell:** The members of the SPA board can appoint a deputy chair. Have they done so?

**Derek Penman:** Yes, they have—they appointed Nicola Marchant as deputy chair. I think that that was done at the last public board meeting.

**Margaret Mitchell:** Prior to that they had not appointed a deputy chair.

**Derek Penman:** No.

**Margaret Mitchell:** Was that a failing?

**Derek Penman:** They had discussed the matter and decided not to do that. My view is that having a deputy chair is helpful, because it provides not only additional resilience to the role of chair, but additional support to the chair. I am certainly supportive of the deputy chair role. As I say, the matter had been considered previously, but it was discounted.

**Margaret Mitchell:** Is there any view that Mr Flanagan should step down now and the deputy chair should continue instead?

**Derek Penman:** I have not had such discussions. Indeed, discussions on how that would happen or how Mr Flanagan's departure from the organisation is to be managed would not be appropriate for me to have.

**Margaret Mitchell:** But you recognised that it was right that Mr Flanagan has resigned.

**Derek Penman:** Yes, in my report, I recognise the general point that Parliament, and the committee in particular, must have confidence in the leadership of policing in Scotland. It presents real difficulties if you do not have that. Therefore, I understand why Mr Flanagan has resigned. I also welcome the Cabinet Secretary for Justice's agreement to expedite the recruitment process as soon as he can.

**Margaret Mitchell:** In the meantime, Mr Flanagan remains in post.

**Derek Penman:** As I have said in my report, although the replacement should be made speedily, given some of the things that are ongoing, continuity is an issue and there is a balance to be found between Mr Flanagan remaining in post and introducing interim arrangements in order that someone may be brought in later on. Other people would be better placed than I am to make those decisions.

**John Finnie:** Mr Penman, your second key finding is:

"There is strong support for the Chair from all current Board members."

What is your comment on that situation, given what you have just said about Parliament and this committee having confidence in the leadership of policing? Your finding is subsequent to the

committee making clear its views on the chair's position.

**Derek Penman:** I will perhaps ask Gill Imery to comment on the members, because she interviewed all of them.

My take on this is that people have different experiences and perspectives of the chair, based on what their business has been. What the Parliament has seen is the evidence that the chair provided with regard to the issues that were presented to him, whereas the board would have a very different view of the chair and how he dealt with the board's business. Board members saw the improvements that the chair had made during their time, but I wonder whether Gill—

13:30

**John Finnie:** I just want to push you on that point. In your report, you acknowledge that the board members

“are appreciative of his leadership and the direction he has brought to the Board.”

It is important that that point is made; nonetheless, I presume that when that comment was formulated—and I appreciate that it was Ms Imery who interviewed people—these same board members were aware of the disquiet in this building about the chair's conduct.

**Gill Imery:** Yes, and they felt that it was quite unfair to the chair. Some very strong views were expressed in support of the chair, and there was a feeling that the HMICS inspection itself—or the acceleration of aspects of the inspection with regard to specific issues such as meetings being held in public or private, the distribution of papers and so on—was disproportionate. I would stress that all members of the board co-operated fully and were more than professional in all the dealings we and our team had, but there was a strong sense that this was not really necessary and we actually had very positive feedback in strong support of the chair.

**John Finnie:** I have to say that I find that very worrying.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Can you clarify the current process for addressing concerns about a board member's conduct, should anything arise?

**Derek Penman:** We have identified a gap in that respect. Such issues are normally dealt with through something in legislation, in guidance or in the board's standing orders. Given that there was nothing that applied in either legislation or guidance, I asked SPA to provide whatever guidance there was in its standing orders. There was no such guidance, hence our recommendation.

That led us to the conclusion that we highlight in the report. In his letter to Moi Ali, the chair was effectively looking at not appointing her to a committee, from which one might take the view that her ability to act as a publicly appointed member would have been restricted. I suppose that what we were asking was: under what authority or through what process would someone be able to justify or authorise such a move? What was the appeals process? That sort of thing was not there, which is why we recommended that it should be put in place to deal with such matters in future.

**Rona Mackay:** Are you confident that Moi Ali's experience will not be repeated? Is there support for board members who for whatever reason find themselves at odds with the chair?

**Derek Penman:** Again, I think that the chief executive can play an important role in dealing with these situations. If a chair has a concern with a particular board member, the chief executive as accountable officer has a role in providing advice and support. What we have said is that there needs to be some guidance in that respect; indeed, as a matter of fairness, there also needs to be a right of appeal for people to have an opportunity to look at a particular issue again.

**Rona Mackay:** Are you confident that, given your recommendation, that will be addressed?

**Derek Penman:** I find it highly unlikely that the circumstance will arise again. In any case, I would like to think that if it did it would be escalated and picked up by the executive, if not the Scottish Government. However, it is something that needs to be put forward.

There is also a role for other board members to pick up such issues and question or challenge the chair if they feel that certain actions are disproportionate or unfair. A board that was performing well would allow that sort of thing to happen.

**Rona Mackay:** Clearly it did not happen before, and I hope that it will happen in future.

**Derek Penman:** I would like to think that our report and the work of the committee and others have identified the standards that are expected in the way that things are dealt with.

**Rona Mackay:** Thank you.

**Stewart Stevenson:** Forgive my ignorance, because I suspect that the answer can be found in the legislation or somewhere else, but what is the process for dismissing a board member? Who does it, and how is it done?

**Derek Penman:** My understanding is that the answer can be found in the legislation, which says that the board members are ultimately appointed

by Scottish ministers. I therefore think that Scottish ministers are able to ensure that board members demit office.

I think that this is set out in the report, but the actual removal of members is allowed for in the process, and the "On Board" guidance will cover the matter, too. The case in question, though, was not about removing a member but about, in my view, effectively restricting a member's ability to perform their function.

**Ben Macpherson:** My question builds on Margaret Mitchell and Rona Mackay's questions and focuses on recommendation 11:

"The Scottish Police Authority should as a matter of urgency review its internal executive structures and provide the necessary capacity to support the Chair, Board and Authority to fulfil its statutory functions."

Do you have a view on how the SPA board could be better supported? For example, what steps need to be taken to ensure that the board has the appropriate level of expertise—touching on the recruitment process that you alluded to earlier—and governance support in place to allow it to carry on its statutory functions effectively?

**Derek Penman:** I think that there are two answers to your question. One is about bringing into the board the correct capability, capacity and diversity. A lot of effort is being made to recruit new members who have a range of skills that are viewed as necessary to support the board—for example in finance, human resources and information and communications technology. Those skills would be supportive on a range of issues.

Recommendation 11 is very much about the executive structures—the chief executive, the directors and the composition of the SPA and how it operates to support the board. Our view is that the executive structures need to be strengthened to support the board better, almost in the way that a clerk supports the committee or member services provide support within a local authority. Some of those skills are needed to provide the expertise that enables the board to provide scrutiny. We think that there is more to be done in that area.

**Ben Macpherson:** Is that about capacity, communications or a bit of both?

**Derek Penman:** Capacity is just about the time and availability for people to do some of those things. There is a need to look at what support the board needs; that is the issue behind the recommendation and the cabinet secretary's recent announcement.

Our view is that you have to identify the skill sets that are needed even for the directors in the

Scottish Police Authority, and then you have to get the right skill set in there.

**Ben Macpherson:** Does an evaluation need to be done of the skill gaps?

**Derek Penman:** I think that a wholesale review of the executive structures within the SPA is needed to look specifically at what is needed, what their function is and how they can best support the board members. That can then be built on for the future.

**Margaret Mitchell:** When you carried out your review, was it your opinion that the chair and the chief executive worked well together?

**Derek Penman:** No is the short answer. As I think that I have said, we identified elements of dysfunction in the relationship between the two. Paragraph 127 of the report sets out what we would consider to be a good relationship. We found an absence of some of that.

A good example of the dysfunction was the Moi Ali situation, in which I would have expected the chair to raise his concerns with the chief executive; the chief executive would then have had an opportunity to offer advice. That did not happen. Had it happened, there might have been a different outcome.

There are issues around valuing the relationship between the chair and the chief executive, understanding their roles—in particular—and drawing on the expertise of the chief executive. The authority needs to have a strong chief executive, in my view, to support the chair.

**Margaret Mitchell:** You say that that did not happen. Did Mr Foley try to offer advice, or was he happy just to do what, in all fairness, he seems to have done every time he has appeared before this committee, which is to sit quite quietly unless he is absolutely pinned down on a question?

**Derek Penman:** My understanding of the specific issue is that he was not asked by the chair prior to the letter going out.

**Margaret Mitchell:** How far can an official go in suggesting advice in those circumstances?

**Derek Penman:** The chief executive is the accountable officer in the authority and, in effect, is the full-time professional there and has a very significant role. I would expect them to be able to offer advice and guidance around the chair.

They should work together as an effective team. The chair is a part-time function and a non-executive role, while the chief executive is a critical role in the authority. A good relationship would be one in which the chair and chief executive work well together and feed advice to each other.

**Margaret Mitchell:** So if the chief executive sees something that he thinks is a mistake, you would expect him to say privately to the chair, "Of course the final decision is up to you, but this is my opinion and these are the reasons why"?

**Derek Penman:** Yes. That would show a well-functioning relationship with the chief executive. If the issue was significant and it would have an impact on the authority or the policing of Scotland, it would be incumbent on the chief executive to share the view with other non-exec members and the chair and perhaps have a discussion with them about the issue. Good would look like the issue being aired by the chief executive with the chair and other members in order to allow the other members to form a view and support or assist the chair in his decision making.

**Margaret Mitchell:** You mentioned a number of areas in which you would expect the chief executive to have input, and you gave as an example the Moi Ali situation. In what other areas do you think that the chief executive should be strong and have input?

**Derek Penman:** In general, I think that the chief executive should have a view of all the business that is coming to the board and be able to offer the chair and members a view and expert advice. Without getting drawn into lots of specifics, I note that the chief executive is there to run the SPA from the executive side with the direction of the board. I would expect the chief executive to have discussions with the chair on most issues and most of the substantive business that the board will discuss.

**Margaret Mitchell:** Forgive me. You mentioned a specific paragraph in your report—

**Derek Penman:** It was paragraph 127, which quotes Audit Scotland's description of effective relationships between chairs and chief executives. It covers what Audit Scotland believes good looks like in that regard.

**Margaret Mitchell:** And you agree with that.

**Derek Penman:** I absolutely agree with Audit Scotland. As I have said, there was probably an absence of that within what we saw in the Scottish Police Authority.

**Margaret Mitchell:** Thank you.

**The Convener:** John Finnie and Stewart Stevenson have supplementary questions.

**John Finnie:** We are grateful for your comprehensive report, Mr Penman. I think that its layout lends itself to evidencing all the points that you have made. You and your staff have had the benefit of regular contact with the Scottish Police Authority and indeed the individuals. Do you have confidence in the chief executive of the SPA?

**Derek Penman:** My position around the chief executive is that there needs to be an effective relationship with the chair, and they need to have the skill set that is necessary for moving policing on under the new structures and reviews. I hope that, in acting on our recommendations and looking at the executive structures, the SPA will also look at what skill sets are required and determine what the best mix of teams and staff would be.

**John Finnie:** If we separate the individual from the role—and if I push you a bit further—can we say that the review has identified a training needs analysis for the role?

**Derek Penman:** To me, it has probably identified two things. In fairness to the individual, I note that it has identified an issue for him and his team in that, because of abstractions of directors and, in some respects, confusion between various roles at director level in the SPA, he is very busy and has limited capacity. He is doing lots of different things and is being spread quite thinly, so there is an issue around his capacity to deal effectively with the work. If that was addressed, it would have a positive impact.

There is also a point about the relationship between the chair and the chief executive, which needs to be effective, as I said in response to Mrs Mitchell's question.

**John Finnie:** In your dealings with the chief executive, did he highlight the capacity issues?

**Derek Penman:** Yes—absolutely. He was very frank in our conversations. He identified that, although there are four directors, in effect, only one is still available to him. One has been seconded and one is off on long-term sick absence, unfortunately, so he has lost a lot of the support that was there and he is spread very thinly. The report that we will be publishing on forensic services, which Gill Imery has led on, identifies issues around his responsibility for forensic services over and above everything else. We believe that that is too much for the role and that it needs to be separated. The capacity issue is about the current chief executive being very busy and spreading himself very thinly.

**John Finnie:** Was he proactive in highlighting capacity issues or was it just in reaction to—

**Derek Penman:** In fairness, the chief executive has been clear to us in conversations about the capacity issues that he has.

**John Finnie:** Sorry—I meant in advance, to others. Do you know whether that was raised?

**Derek Penman:** In terms of conversations with board members, I do not know.

**John Finnie:** Was the matter raised with the cabinet secretary?

**Derek Penman:** I do not know.

**John Finnie:** Okay. Thank you.

**The Convener:** Do you know whether stakeholders have confidence in the senior management of the SPA?

**Derek Penman:** That question would probably be best led to them. They are certainly unhappy with the level of engagement that they currently have with the senior leadership of the SPA. That is probably as much of an answer as I can give based on our inspection.

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

13:45

**Stewart Stevenson:** My question is a relatively mechanical one. Is there a formal system by which the non-execs and execs know what the others are doing? In particular, if a non-exec—the chair, for example—issues a letter, how quickly does the chief executive see a copy of it? I was used to an environment in my previous life where we had what we called a day book system. A copy of everything that went out had to go in the day book, and the next person up the line had to initial it within a single working day to show that they had seen it.

Is there an equivalent formal system by which people who make the real decisions, whether they are execs or non-execs, are aware of the communication activity and decisions of the others? If not, would you care to comment on whether there should be such a system?

**Derek Penman:** I am not aware of such a process. One of our recommendations is about improving minutes, including their retention, and record keeping. There is definitely an issue around communication. The issue in relation to my letter highlighted that, because a letter that came into the organisation was not circulated to members. I understand that a process has now been put in place to ensure that circulation happens.

I agree that there needs to be a process whereby there is better exchange and people are clear about what their roles are.

**Stewart Stevenson:** Does the SPA have a register of things that it receives, such as that letter, which we would think might be important communications?

**Gill Imery:** We did not look specifically at that. It will absolutely have administrative processes in place, but that does not go to quite the same point.

**Stewart Stevenson:** Okay. Thank you.

**The Convener:** As there are no further questions from members, I thank both our witnesses. We appreciate your taking the time to come along today. We have covered a fair number of things effectively and quickly, and I appreciate that. If any further questions arise, I will contact you, and I would be grateful if you could respond in writing to the committee. Thank you again.

The next meeting of the Justice Sub-Committee on Policing will be on Thursday 14 September, which seems a long time away.

*Meeting closed at 13:47.*

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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