



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 25 January 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 25 January 2018

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
SECTION 22 REPORT	2
“The 2016/17 audit of the Scottish Police Authority”	2

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
3rd Meeting 2018, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Bill Bowman (North East Scotland) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Iain Gray (East Lothian) (Lab)

*Alex Neil (Airdrie and Shotts) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Flanagan (Former Chair, Scottish Police Authority)

John Foley (Former Chief Executive, Scottish Police Authority)

David Hume (Scottish Police Authority)

Daniel Johnson (Edinburgh Southern) (Lab)

Dr Nicola Marchant (Scottish Police Authority)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 25 January 2018

[The Convener opened the meeting at 09:02]

Decision on Taking Business in Private

The Convener (Jenny Marra): Good morning and welcome to the third meeting in 2018 of the Public Audit and Post-legislative Scrutiny Committee. I also welcome Daniel Johnson, who is joining us for today's meeting, and I ask everyone in the public gallery to switch off their electronic devices or put them into silent mode so that they do not affect the committee's work.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 3 in private?

Members *indicated agreement.*

Section 22 Report

"The 2016/17 audit of the Scottish Police Authority"

09:02

The Convener: Agenda item 2 is an evidence-taking session on the Auditor General's 2016-17 audit of the Scottish Police Authority. I welcome Andrew Flanagan, former chair of the Scottish Police Authority; John Foley, former chief executive of the SPA; and David Hume and Dr Nicola Marchant, current board members of the Scottish Police Authority.

Although the purpose of today's meeting is to take oral evidence on the Auditor General's 2016-17 audit of the Scottish Police Authority, some members might also wish to ask questions about other governance issues that have emerged since the audit report was published. However, I should point out that the investigations of the Police Investigations and Review Commissioner—or PIRC—into senior police officers are still on-going under a statutory process and committee members and witnesses should not say anything that could compromise them.

I will start the questions. Mr Flanagan, much has been said in public about your meeting with the cabinet secretary in early November and the cabinet secretary himself has made a statement to Parliament on it. Can you give us your account of those events?

Andrew Flanagan (Former Chair, Scottish Police Authority): It surrounded the situation at the end of October and the beginning of November. The chief constable's leave was under consideration. The leave had been agreed in late August or early September and was subject to a four-weekly review that was coming up at the beginning of November; the chief constable had indicated that he was fit and able to return to work, and he had requested permission to do some work for the National Police Chiefs Council. Some of the other things that had been agreed at the start of his leave with regard to the stress that he was under and his health issues seemed no longer to be the case; the distraction created by the complaints seemed to have abated; and the SPA board had to take a view as to whether the terms of the leave conditions had been satisfied and whether he should return to work.

That was the discussion that we had, and we concluded that the temporary leave conditions had been fulfilled and that the chief constable should be considered for a return to work. In that situation, we also had to consider whether suspension would be appropriate, because we

would have to face that issue on his return to work. We talked through those decisions. Only three options are open to the SPA in such a situation: the individual can remain in post; they can have restricted duties; or they can be suspended.

I should emphasise that suspension is no indication of wrongdoing or guilt. As far as suspension is concerned, there are only two considerations for the SPA: whether there is any risk of interference with the investigation and whether it is in the public interest to suspend the person. We discussed the issues and came to the conclusion that suspension was not applicable at that time, so we took the decision to invite the chief constable to return to work. I should point out that the leave of absence was at the chief constable's request. It was not the SPA that put it in place, and the terms of the agreement with the chief constable were that he could elect to return to work. It was not just a decision for the SPA.

I decided to advise the cabinet secretary of the conclusion that we had reached, and I met him in early November—I cannot remember the exact date—to explain the circumstances. He told me that he thought that it was a bad decision, and it was clear to me that he did not want the chief constable to return at that point. We also had a discussion about the stability of the senior team, which was one of the SPA's considerations. However, I had to attend a meeting of the Justice Sub-Committee on Policing, so we had only a short time and I did not extend the conversation.

When I came out of the committee meeting, I was asked to see the cabinet secretary again. At that point, three officials were present. It was clear that the cabinet secretary was still very unhappy, but he changed the discussion to the process instead of the decision itself. I reminded him of his earlier comment about it being a bad decision; he told me not to bother with that, and we went on to discuss the process.

Two particular points were raised, the first of which was the PIRC's position on interference. We had made our own assessment of that position, but the cabinet secretary wanted a more formal, written response from the PIRC. We also discussed the wellbeing plan for those directly affected by the chief constable's return, and the cabinet secretary said that the process was deficient without those things. I thought that "deficient" was an odd word to use, because it sounded as though something was missing instead of there being something wrong. In addition, interference is only an issue for suspension and was not connected to the leave conditions. We could have got the PIRC's position on that—there was no reason to think that it would be anything different. Indeed, I believe that the

PIRC has already come back to say that it had no thoughts at that time that there would be any interference. That took that out of the way.

As for the wellbeing plan, we had already discussed how, as a board, we would approach that. In order to progress the matter and come up with the robust plan that had been requested, we thought it important to involve the senior team at Police Scotland, the individuals who had made complaints and, indeed, the chief constable. We could not really start those discussions until the cabinet secretary had been informed, but it was always our intention to put that in place. In any event, if the chief constable had not taken leave at the end of August or early September, we would have had to put a plan in place at that point. From my point of view, dealing with the issues that the cabinet secretary had raised should not have taken a great deal of time, so I left the meeting and put the chief constable's return on hold.

The Convener: At what point did you change your mind?

Andrew Flanagan: I thought that, if the cabinet secretary was unhappy, it would be better for all parties to try to resolve that before the chief constable returned. Based on that meeting, therefore, I changed my mind.

The Convener: Was your change of mind based on both meetings? You said that there were two that day.

Andrew Flanagan: Yes.

The Convener: Okay. You said that you made the decision because the cabinet secretary was unhappy and that, in your first meeting that day, he made it clear that—I think that these are the words he used—it was a bad decision. Did you feel that you were being directed to change your decision?

Andrew Flanagan: No, not at that point. I thought that there was a point of disagreement, but when I went back for the second meeting, the discussion was about process rather than about the decision itself. As I have said, he deflected the question whether he still thought that it was a bad decision.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I would like to look at the board meeting of 7 November. I presume that, as it was taken in private, there are no minutes. Are there minutes for that meeting?

Andrew Flanagan: There would be, yes.

John Foley (Former Chief Executive, Scottish Police Authority): I am sorry to come in here, Mr Beattie, but I certainly would have taken a note at the meeting. However, I might have left the Scottish Police Authority before the thing had

been typed up, so I cannot give you a 100 per cent answer.

Colin Beattie: Who has those notes?

John Foley: I would have them in a notebook in my office—or what was my office.

Colin Beattie: Would they have been passed on to anybody else to create a minute?

John Foley: I would normally have created the minute from it.

Colin Beattie: So you created a minute from it.

John Foley: No. Actually, when I think about it, I do not think that I did.

Colin Beattie: So you did not.

John Foley: But there was a note. There are minutes of the meeting that took place up until that discussion. At that point, I took a separate note, because the minute taker was asked to leave. After all, it was a confidential matter relating to the chief constable.

Colin Beattie: You were still active in the SPA until the end of November.

John Foley: That is right.

Colin Beattie: And in the period between 7 November and the end of November, you did not create a minute from your notes.

John Foley: Not that I recall. I was on leave for part of that time, too. I would have to ask someone in the SPA to confirm that.

Colin Beattie: And the notes were not passed on to anyone else to create a minute.

John Foley: Again, I would have to ask someone in the SPA to confirm that.

Colin Beattie: So, effectively, there is no record of that decision.

John Foley: There could be a record of the decision.

Colin Beattie: There could be.

John Foley: Yes.

Colin Beattie: But we do not know where it is.

John Foley: No.

Colin Beattie: Was there an agenda for that meeting?

John Foley: Yes, there was.

Colin Beattie: Did it include the discussion about the chief constable?

John Foley: My recollection is that the discussion about the chief constable was taken under any other business.

Colin Beattie: If it was not on the agenda, no one would have known that it was coming up at that point.

John Foley: Other than the members, no.

Colin Beattie: So the board members would have known. How?

John Foley: The chief constable's leave was reviewed broadly every four weeks, but there was a timeline on which these things had to be reviewed. Because they had discussed the matter approximately four weeks prior to that, the members would have known that they had to come back and discuss it again.

Colin Beattie: But they would have had to remember that it was coming up to the time when there had to be another discussion on the matter.

John Foley: No, because the members are in and out—I keep using the wrong tense, because I have not quite got used to not being there.

The members were regularly in and out of the office, so there was dialogue going on between them in relation to various subject matters. That had always been the case. The members would have been aware that there was a requirement to discuss the chief constable's leave and the chair would have been in frequent contact with the members in relation to some of those matters, too.

Colin Beattie: Given the importance of the item, was there full attendance from board members?

John Foley: I think so. I cannot remember any absentees on the day.

09:15

Dr Nicola Marchant (Scottish Police Authority): I apologise for butting in, but I wanted, on behalf of the current board members, to support what Mr Foley is saying. We have a minute from 7 November that was subsequently produced on the basis of Mr Foley's notes and which was circulated to board members. Our records show that the issue was brought up under any other business, and we as board members were aware that the discussion was going to take place, as we had had a previous discussion—which is also minuted—as part of the closed board meeting on 31 October. At that meeting, we considered the case and requested further information, which was brought to us on 7 November.

Colin Beattie: It might be interesting to see a copy of that minute, convener.

The Convener: Is that something that you can provide to us, Dr Marchant?

Dr Marchant: I would have to go back to the Scottish Police Authority to confirm that; because

of the nature of the discussion, it is a restricted document. However, I will ask, and if we can, we will supply it.

The Convener: We will certainly explore the matter with the SPA following this meeting.

Colin Beattie: Coming back to the question of who attended the meeting, was it a full board meeting? Were all the board members there?

Andrew Flanagan: They would certainly all have been invited.

Dr Marchant: My records, which are still in draft form, confirm that there were two apologies but that the rest of the board members were there.

Colin Beattie: Given that two members were not present, is the reference in the documentation to a unanimous board decision correct?

Andrew Flanagan: It was unanimous among the members who were there. That would have been a normal position to take. I would probably have had discussions with the other members who were absent, to inform them of what had taken place at the board meeting, and if any objections had been raised, I would have taken those back to the board.

Colin Beattie: Outside of the board members, did anyone else know that there was going to be a discussion on the chief constable's future? Would any other stakeholders have been consulted prior to the discussion?

Andrew Flanagan: I believe that they would have been aware that the chief constable's review date was 4 November and that we had not extended the period at that point. I do not recall whether we told anybody else, but it would have been evident to those close to the situation that it must have been a topic of discussion.

Colin Beattie: A lot of assumptions seem to have been made that people were somehow keeping a record of the possibility of the discussion coming up. The handling of the matter does not seem to have been particularly strong.

Andrew Flanagan: I think that it was reported in the press that we had still to decide on it. People do take note of those things.

Colin Beattie: So people are expected to look at the press reports and the hope is that they can pick it up from there. The system really does not seem very robust.

On 8 November, you decided that the chief constable would return to his duties, and there was advice on and discussion about press releases in that regard. However, I am curious about the following sentence that was part of that discussion:

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

Was that the criterion on which you decided that he should return to duty?

Andrew Flanagan: It was one of the conditions that were discussed at the time when he asked for temporary leave. He considered himself to be significantly distracted by the intensity of the press activity and by dealing with the issues that had given rise to the complaints in the first place. He had to go through a process of documenting his own response to those complaints, and what he had said—

The Convener: I must interrupt you, Mr Flanagan, to remind members and witnesses that we must not stray into the details of any of the complaints that the PIRC is investigating. Members and witnesses should be careful in their questions and responses.

Andrew Flanagan: Thank you, convener. Because it was one of the things that the chief constable cited as a reason for the leave, we responded in those terms in the press release.

Colin Beattie: Did the board consider the situation of the complainants?

Andrew Flanagan: Yes, we discussed wellbeing arrangements. It is worth noting that none of the complainants reported to the chief constable; only one of them was physically located in Tulliallan, where the chief constable is based, and all the others were in different locations. If there are complaints, it is not unusual for a wellbeing plan to be created to cater for the people who have made complaints and those who have been complained against.

Colin Beattie: You took the decision to go to Mr Gormley. Would it not have been wise to have discussed the matter with other stakeholders such as the Scottish Government or others with an interest in it? After all, it is a matter of great public concern.

Andrew Flanagan: The first step was to have a discussion with the chief constable to see whether there were any other issues preventing his return. I had that conversation, and we had his agreement that he was prepared to return. The next step was to talk to the cabinet secretary about it.

Colin Beattie: At what point did you determine that you would advise senior police officers of the decision?

Andrew Flanagan: I decided that we would do that as soon as we had spoken to the cabinet secretary.

Colin Beattie: As late as 9 November, you were preparing press releases and so forth. At that point—the day before the chief constable was to return to duty—had you contacted any of the senior police officers? Clearly, arrangements would have had to be made and consideration given to how complainants would be protected, which would not have been an overnight job.

Andrew Flanagan: As soon as it was clear that the cabinet secretary was not happy with the decision, I stopped the process.

Colin Beattie: Was it on 8 November that the cabinet secretary expressed dissatisfaction with the decision, because, I presume, of process?

Andrew Flanagan: I would have to consult my diary for the exact date, but I do not have it with me.

Colin Beattie: The period within which that took place seems incredibly compressed.

Andrew Flanagan: Actually, I am not sure that it is. It is no more compressed than the time that it took for the chief constable to go on leave in the first place.

Colin Beattie: Mr Flanagan, having read the various documents that are before us, I have to say that we seem to be talking about a continuation of what the committee has discussed with you in the past: extremely poor governance and poor process. I can see nothing that shows that any sort of open and transparent process was followed.

Andrew Flanagan: You must recognise that, although we are talking about the chief constable, he remains an employee. As an individual, he is entitled to the same personal protections—

Colin Beattie: I am more concerned about the board's procedures—how the board handled the situation and how you handled it. The decision seems to have been rushed through without stakeholders being properly informed and engaged. I find that quite extraordinary, given the sensitivities.

Andrew Flanagan: At the first step of that engagement process, which was planned, a problem arose and therefore the process was halted.

Colin Beattie: But surely you should have engaged stakeholders prior to the board meeting to take that decision so that the board was fully informed of the position of different parties who were involved in the matter—I am not talking only about the Scottish Government; other parties were involved as well—from the point of view of governance.

The Convener: We have rehearsed that argument. Do you want to answer that briefly, Mr Flanagan?

Andrew Flanagan: There was an engagement plan in place, and the cabinet secretary was the first person to be engaged. As soon as we had an issue, the board was informed that there was a problem.

Colin Beattie: But actions were taken before stakeholders were advised. Press releases were being agreed and letters issued to the chief constable. It was a fait accompli.

Andrew Flanagan: You need due process to go through that, and it has to continue. Again, though, the position is that, ultimately, this is a decision for the SPA, and it is therefore advising those stakeholders.

Liam Kerr (North East Scotland) (Con): Good morning. Following on from Colin Beattie's line of questioning, I want to take you to the meeting with the cabinet secretary on 9 November. Am I correct in saying that, at the first meeting, there was just you and him?

Andrew Flanagan: Yes.

Liam Kerr: Is it also the case that neither of you took any notes at that meeting?

Andrew Flanagan: No. It was a very short meeting—it lasted only about 15 minutes.

Liam Kerr: As far as you are aware, neither of you noted anything down at all.

Andrew Flanagan: No.

Liam Kerr: The cabinet secretary has made it very clear that the SPA had no plan to protect the wellbeing of officers and staff who had raised complaints or who had played a role in the investigation of those matters. Is he correct in saying that? Did the SPA really not have a plan for the wellbeing of officers?

Andrew Flanagan: No. We had discussed the matter in some detail, but as I said in my earlier comments, our view was that, to get the robust plan that the cabinet secretary requested, we would have had to involve the participants, and they could be involved only once they knew of the circumstances.

Liam Kerr: So your view is that you had a welfare plan.

Andrew Flanagan: We discussed how the issues might be resolved, but as I have said, if you want a formalised plan, the best way of getting it is to engage with and have the input of those who will be affected by it. That would have included the senior team at Police Scotland, the complainants and the chief constable himself, and we could

have engaged with him only when he was back in place. It would also have involved the human resources director, who had experience of similar situations.

Liam Kerr: Dr Marchant, is the cabinet secretary correct to say that, at the time of his meeting with Mr Flanagan, the SPA had failed to put an appropriate plan in place?

Dr Marchant: I think that, as Mr Flanagan has said, there was a process of follow-up discussions that were going to be had that day. The start of the process was the discussion with the cabinet secretary, but the process itself was paused at that point. There were plans to have those additional conversations and to put the detailed plans in place.

Liam Kerr: Were those plans written down anywhere?

Dr Marchant: There was a list setting out the process for that day.

Liam Kerr: That is not quite what I asked, Dr Marchant. Were the welfare plans that the cabinet secretary says that the SPA failed to put in place sufficiently at that point actually in place? You said that some plans were in place. They must have been written down, or were they just in Mr Flanagan's mind?

Dr Marchant: No, I actually said that a process had been written down that would have led to the establishment of detailed plans. The process was about the conversations that were to be had with stakeholders to seek their input in putting together a detailed plan.

Liam Kerr: Can we have a copy of that?

Dr Marchant: The process?

Liam Kerr: Yes—what had been written down.

The Convener: The plans.

Liam Kerr: Yes, the plans.

Dr Marchant: I did not call them plans. Let us be clear: I said that a process was in place.

Liam Kerr: In that case, can we have a copy of what had been written down?

Dr Marchant: Again, I will take that back to the SPA.

Liam Kerr: Thank you. Mr Flanagan, I believe that you said earlier that in your first meeting with the cabinet secretary he told you that the board—I presume—had made a bad decision. What exactly did he say to you?

Andrew Flanagan: Well, that was the key point. He then asked how we had arrived at the decision; I started to explain the issues that we had and how we had come to that point, but he still felt that it

was the wrong decision. As I have said, it was a very short discussion, because I had to leave for a committee meeting.

Liam Kerr: But he made a value judgment about the substance of your decision.

Andrew Flanagan: I believe so, yes.

Liam Kerr: Did the cabinet secretary tell you either at that first meeting or, indeed, at the second meeting to change your mind?

Andrew Flanagan: No. It was not that explicit.

Liam Kerr: So why did you change your mind?

Andrew Flanagan: As I said earlier, in order for the chief constable to return, it was best for that to happen in the most conducive situation possible. If the cabinet secretary was unhappy, for reasons that I did not understand, I thought that it was best to try to resolve the issues before he returned.

09:30

Liam Kerr: The cabinet secretary must have been incredibly persuasive if you changed the unanimous decision of the board.

Andrew Flanagan: He had asked for two things, and I thought that they could be fulfilled relatively quickly. Therefore, I thought that that would not lead to an extensive delay.

Liam Kerr: On the question of the second meeting, which was a much more planned meeting—

Andrew Flanagan: Not from my point of view.

Liam Kerr: But you were aware that it was going to take place.

Andrew Flanagan: No. I was approached when I came out of the committee meeting and I was asked to go back to the cabinet secretary's office.

Liam Kerr: In that office, there were three officials.

Andrew Flanagan: Yes, there were three officials.

Liam Kerr: Do you recall who they were?

Andrew Flanagan: There was the director, the deputy director and one official whom I did not know.

Liam Kerr: So there were five individuals at the meeting, including you. Did no one at any stage make any notes of what was transacted in the meeting?

Andrew Flanagan: I do not recall seeing notes being taken. That said, I have had many meetings with the cabinet secretary with officials present and I do not remember any formal record being made of those meetings.

Liam Kerr: Could you qualify that? Does that include the keeping of informal records, such as people just noting stuff down as it is transacted?

Andrew Flanagan: As in the normal course of things, they might have had notebooks in which they might have noted something for follow-up or something like that.

Liam Kerr: But you did not notice anybody doing that.

Andrew Flanagan: I did not notice anything specific.

The Convener: Would you expect minutes to be taken, Mr Flanagan?

Andrew Flanagan: No.

Iain Gray (East Lothian) (Lab): Mr Flanagan, I would like to follow on from Liam Kerr's questioning about how we got from the morning of 9 November, at which point the board had made a unanimous decision, to the end of that day—I am not sure of the exact time—when that decision had been reversed, de facto, and the chief constable was asked not to return. Mr Kerr went through the two meetings, and I would like to ask at what point after you came out of the second meeting you decided to stop the return of the chief constable. To what degree was anybody else involved in that decision—specifically, other members of the board?

Andrew Flanagan: It would have been that afternoon. I think that I emailed the board to say that there had been an adverse reaction from the cabinet secretary, and I phoned the chief constable and said that we should postpone.

Iain Gray: Dr Marchant, as a member of the board, when do you recollect hearing about the change and the nature of that message?

Dr Marchant: I concur with what Mr Flanagan said. I recollect that the board received an email to say that we were pausing the decision.

Iain Gray: But that email did not involve you in the decision; it was a communication to you from Mr Flanagan of the decision that he had taken.

Dr Marchant: Yes, that was the communication from Mr Flanagan.

Andrew Flanagan: I cannot remember the details, so I am going from memory, but I think that I said that I recommended that we pause the situation. I do not recall anybody coming back to me with a differing view.

Iain Gray: Did you give the members of the board time to return to you with a view? You recommended that approach, but then you acted on it. Did they have the opportunity to come back

to you, or would they have had to have done that instantaneously?

Andrew Flanagan: I believe that a number of them got back to me, but I do not know that everyone did.

Iain Gray: In answer to Mr Kerr, you said that you were pausing the decision and that you felt that the difficulties or concerns that the cabinet secretary had expressed could be readily resolved. For example, you talked about getting a view from the PIRC. If that had been the case and you had been right, one would imagine that there would have been a short pause and you would have continued with the board's plan of action, which was for the chief constable to return. Why did that not happen?

Andrew Flanagan: For me, of course, it was the last couple of weeks before I stood down. We had further discussions—I had discussions with Dr Marchant and officials the following day. My feeling or impression was that it would perhaps have been better for the new chair to take the issue forward, rather than me. The view of a fresh pair of eyes might have been more convincing to the cabinet secretary than mine.

Iain Gray: If we look at what happened on that day—9 November—you went into it with a unanimous board decision. You met the cabinet secretary, who indicated to you that, in his view, the board had taken a bad decision. You met the cabinet secretary later, when he expressed a number of concerns about the process and the way in which the decision had been reached. Quite quickly after that, having informed board members by email of what you intended to do, you stopped the process that was under way of the return of the chief constable.

Earlier, the convener asked whether you felt that the cabinet secretary was directing you to stop the process. Do you accept that if you look at the situation objectively, it is quite difficult not to conclude that you felt that the cabinet secretary was telling you to stop the process?

Andrew Flanagan: "Direction" is a more formal term, and I could not say that I had been directed to do that. However, I felt that I was not in a position to move forward with the decision.

Iain Gray: So you felt that you had no choice but to pause the decision.

Andrew Flanagan: Yes.

The Convener: Let me follow on from that briefly, Mr Flanagan. What would have happened if you had left the building that day and had not changed your mind?

Andrew Flanagan: First, I would still have had to brief my colleagues on the board and gain their

views on what we should do and whether or not we should press ahead. I would also have wanted to consult the chief constable to hear his view. Again, we need the parties to be comfortable and happy with the circumstances that arise.

The Convener: My question was about how the cabinet secretary would have felt about it if you had not changed your mind.

Andrew Flanagan: If we had not changed our mind, as a board, and I stress again that it is “we”, not “me”, and if we had agreed that it was important to press ahead—again from recollection, some members raised the question whether we should press ahead—I think that we feel independent enough as individuals that, if that had been our considered position, we would have continued with the process.

Alex Neil (Airdrie and Shotts) (SNP): Correct me if I am wrong, but in the earlier remarks I think that Dr Marchant referred to a board meeting on 31 October that first considered reinstatement of the chief constable. Is that correct?

Dr Marchant: No, not reinstatement—at that meeting we discussed the continuation of a leave of absence.

Alex Neil: Right. We have heard that that vital item was taken under the agenda item of any other competent business at the board meeting on 7 November, but were the board members informed that a proposal to reinstate the chief constable would be tabled at that meeting? Were they given advance notice that that specific proposal was on the agenda?

Dr Marchant: I cannot recollect whether that is or is not the case. As the deputy chair, I had had discussions with the chair and was aware of it. I do not have records to show whether other board members were or were not aware of what was going to be discussed on 7 November.

Alex Neil: You are the deputy chair of the organisation and you are telling me that, on the most vital decision that you have had to make in months, if not years, you cannot recall whether board members were informed in advance of the meeting that a proposal would be tabled to reinstate the chief constable. Are you seriously expecting me to believe that you do not know that?

Dr Marchant: What I am actually saying is that I do not know whether there was a formal communication to the other board members on the 31 October meeting discussion that was proposed around—I am sorry, I am just trying to be very careful with the words that I am using.

The Convener: Take your time.

Dr Marchant: I apologise. The discussion on 31 October was about the continuing leave of absence. We also discussed the welfare issues of complainers and complainees.

At that meeting, there was then a discussion around the NPCC and the redeployment opportunity. We discussed what information we required to make a more informed decision regarding that and the continuation of the leave of absence. There was an expectation that that would be brought back to a future meeting, which would have been on 7 November.

Alex Neil: You say that it would have been brought back to a future meeting, but were board members not told that it would be brought to the meeting eight days later?

Dr Marchant: Yes—they were advised that it would be at the meeting on 7 November.

Alex Neil: It would be tabled at that meeting.

Dr Marchant: Yes. The responses to the questions that had been posed would come to the meeting on 7 November.

Alex Neil: Was the chief constable given any advance notice of what was to be discussed on 7 November?

Andrew Flanagan: He was not given precise details of when the board would come to a conclusion but, at the earlier meeting, I had been asked to seek the chief constable’s position on whether he was open to returning to work.

Alex Neil: Was the chief constable told that that would be, or might be, tabled at the meeting on 7 November?

Andrew Flanagan: He was not told about the details of the 7 November meeting. We wanted his views on whether he was willing to return to work, so he would have been aware that we were to discuss and consider that.

Alex Neil: The chief constable was aware but the acting chief constable was not aware, PIRC was not aware and the cabinet secretary was not aware, and we are not absolutely sure that the board members were aware that they were going to be discussing that on 7 November.

Andrew Flanagan: I believe that all the board members were aware that they were going to discuss that on 7 November. All the board members knew that we had to arrive at a decision either to extend the leave or return the chief constable to work. There was no doubt or dubiety in the minds of the board members about what the discussion was going to be about.

Alex Neil: How many board members were there at that time? I know that there has been recent recruitment to the board but how many

people were entitled to turn up as board members on 7 November?

Andrew Flanagan: I think that it was 11.

Alex Neil: How many turned up?

Andrew Flanagan: The minutes show that there were two apologies, so nine turned up.

Alex Neil: What is the quorum?

Andrew Flanagan: It is a majority of those present.

Alex Neil: A majority of those present cannot be the quorum. If two folk turn up—

Andrew Flanagan: Yes. The quorum is six.

Alex Neil: The meeting was quorate.

Andrew Flanagan: Yes.

Alex Neil: After the meeting, the chief constable was informed. At what stage was he informed of the board's decision to invite him to start work again on the Friday?

Andrew Flanagan: He was informed on the Wednesday.

Alex Neil: He was told on the Wednesday.

Andrew Flanagan: Yes.

Alex Neil: Was that before or after you had your conversation with the acting chief constable, Iain Livingstone?

Andrew Flanagan: I did not have a conversation with the DCC designate until the Thursday.

Alex Neil: Mr Livingstone gave evidence to the Justice Committee on Tuesday, and he said:

"I had no conversations with the cabinet secretary ... I had some communication with the then chair of the SPA. On the evening of Tuesday 7 November, I asked Andrew Flanagan for an update on the Police Authority's meeting. I knew that there had been a meeting and I felt that it was important to get that update because I had a responsibility to the men and women, officers and staff within Police Scotland, should there be a change in Phil Gormley's circumstances. I did not get a reply to that, and on the Wednesday I was told—"

by you, and on the Wednesday, not the Thursday—

"that deliberations were on-going."—[*Official Report, Justice Committee, 23 January 2018; c 24.*]

Is that correct?

Andrew Flanagan: As I said, for me, the first step was to advise the cabinet secretary. I would then have spoken to the DCC designate.

09:45

Alex Neil: Would it not have been more appropriate and accurate to have told the acting chief constable, when he asked you on the Wednesday morning, that you needed to speak to the cabinet secretary first and would then contact him?

Andrew Flanagan: Perhaps.

Alex Neil: To say that deliberations were on-going at that stage—

Andrew Flanagan: I had not spoken to the chief constable at that point to confirm that he would return.

Alex Neil: So what was the sequence? You said that you had not spoken to Iain Livingstone until the Thursday. Iain Livingstone said that you spoke to him on the Wednesday. Do you now accept that you spoke to him on the Wednesday?

Andrew Flanagan: Yes, I accept that.

Alex Neil: So what was the sequence? Did you speak to Phil Gormley before you spoke to Iain Livingstone, or did you speak to Iain Livingstone before you spoke to Phil Gormley? I bet that you do not remember.

Andrew Flanagan: I do not remember in what order—

Alex Neil: There is a surprise—you do not remember. The amnesia that surrounds the Scottish Police Authority is beyond belief. We discovered that the last time, about nine months ago. The acting chief constable is basically saying that—in words of one syllable—you lied to him.

Andrew Flanagan: No—I do not think that I did.

Alex Neil: That is what he is implying.

Andrew Flanagan: I did not have a firm conclusion at that point.

Alex Neil: Deliberations were not on-going at the board; the board had taken a decision. Surely the honest thing to have done would have been to tell the acting chief constable, who, as he rightly says, is responsible for the welfare of all those who work in Police Scotland, that you could not tell him what the decision was until you had spoken to the chief constable, Mr Gormley, and to the cabinet secretary, but that you would call him back in the afternoon once you had done that. Surely that would have been the professional way to handle that.

Andrew Flanagan: I do not recall the details of the call. I thought it best to advise the cabinet secretary first, and, in the event, that turned out to be a wise decision.

Alex Neil: When did you ask for the meeting with the cabinet secretary?

Andrew Flanagan: I think that it was asked for on the Wednesday, but it was set for the Thursday morning because I was in Edinburgh for the committee meeting.

Alex Neil: Did you not think that it was important to inform the cabinet secretary of the board's decision on the Tuesday evening, or some time on the Wednesday?

Andrew Flanagan: The last time that I had met with the cabinet secretary, we had talked about the chief constable's situation. There was no indication that that was going to be a significant issue.

Alex Neil: Obviously, I was not party to that meeting and cannot confirm that, but was it not the case that, by the time that you spoke to the cabinet secretary, the chief constable, Mr Gormley, had already left his home in Norwich and was driving to Scotland?

Andrew Flanagan: I do not know the chief constable's travel arrangements.

Alex Neil: You know that he had to turn back in the middle of his journey.

Andrew Flanagan: I saw that reported in the press, but I do not know the details. I know that—

Alex Neil: When you spoke to Mr Gormley, was he in his car?

Andrew Flanagan: I do not know whether he was in his car.

Alex Neil: Mr Gormley's lawyers have, I think, confirmed that he had to turn back because he was already on his way. He was already on his way to Scotland to take up his duties the next day before you told the cabinet secretary—you had not even told the acting chief constable, let alone the PIRC.

Is it not the case that, in his previous concerns about governance in the Scottish Police Authority, the chief inspector of Her Majesty's inspectorate of constabulary in Scotland had already advised the SPA that it had to improve its governance on those matters?

Andrew Flanagan: There were some recommendations from HMICS and I believe that they were implemented.

Alex Neil: Did those recommendations not include that, in circumstances such as this, there needs to be preparation before—not after—a decision is taken? Appropriate considerations need to be taken in discussions with the PIRC on the welfare of those who work in Police Scotland, and other appropriate stakeholders need to be consulted.

Andrew Flanagan: I do not recall any recommendations of that nature.

Alex Neil: Are you saying that the chief inspector of HMICS has never made such recommendations?

Andrew Flanagan: I believe that the last time that we received recommendations from HMICS was in the transparency review in June and in the forensics review around the same time. I do not recall any comment from HMICS on the particular issue of the return of the chief constable.

Alex Neil: Is it not the case that the chief inspector had made those comments at a previous private board meeting, and then followed them up by email?

Andrew Flanagan: I do not remember that.

Alex Neil: When you talked about the chief constable coming back, you made a fleeting reference to work for the National Police Chiefs Council, which I think is a United Kingdom body.

Andrew Flanagan: Yes.

Alex Neil: That again seems to contradict the press release that the SPA was going to release on the chief constable's reinstatement, which said that he would be returning to operational duties. The implication was that he would return to operational duties at Police Scotland. Will you clarify what duties he was to return to? Was he to return full time to operational duties at Police Scotland? What is the reference to the National Police Chiefs Council all about?

Andrew Flanagan: We were asked in early or mid-October—around that time—whether we would agree to the chief constable going to do work on a specific project for the NPCC. The chief executive was asked to explore what that was about and what it meant, and it turned out to be full-time involvement over a nine-month period. We did not think that that was appropriate for the chief constable to do.

Alex Neil: To be clear, if he was to return, he was to return to full operational duties, full time, with Police Scotland.

Andrew Flanagan: Yes. We did not think that it was appropriate for the chief constable to be paid for his normal role while conducting work on behalf of the NPCC. However, the situation indicated to us that he felt that he was fit and able to do a full-time job.

Alex Neil: The convener is indicating that I am running out of time, so I will ask a final question, which is for Dr Marchant and Mr Hume. You are both non-executive directors on the SPA board. Over the past nine months, we have heard what a pantomime there has been. We have heard about poor governance, we have had the auditors'

report, and we have had crisis after crisis. This morning you have all come unprepared to this meeting and cannot answer basic questions. You have not brought your notes. You have not brought your minutes. You do not seem to be well prepared at all. Is it time for you and some of the other non-executive directors who have been part of this pantomime to fall on your swords?

Dr Marchant: We listen to input from you and from HMICS, and I, personally, take that input very seriously.

Alex Neil: You cannot be proud of your record. The non-executives have utterly failed—utterly failed—in their duty.

Dr Marchant: My view is that there are always areas of improvement, on governance and on processes. We continue to strive to improve. We accept the findings in the reports of HMICS and Audit Scotland.

David Hume (Scottish Police Authority): I agree with Nicola Marchant. There are improvements, and if members read the annual audit report and the section 22 report, they will find that it is acknowledged that improvements are being made. I know, from the areas in which I am involved, that there are obvious improvements. With the new chair and chief officer taking post, I think that improvements will continue.

I do not accept wholly what Alex Neil said. Some things have been said this morning about how the board went about its business that I do not recognise. We took the matter extremely seriously. We knew, because of the four-week cycle of renewal of the leave of absence, that the board had to take a decision, and we knew on 31 October that we would be coming back to a convened meeting on 7 November. That meeting was duly called and held, and the principal adviser to the board, in the form of the chief executive, was there. There was no proposal tabled at that meeting; it was the same issue that we had talked about in previous four-weekly meetings, which was whether the chief constable's leave of absence would continue. As always, we very thoroughly went through a number of basic considerations that allowed us to take the view that we took. We always talked about the welfare arrangements for the other members of staff and the chief constable.

We directed the chief executive to consult the PIRC, because we had a number of options: we could continue the chief constable's leave of absence; we could move to suspension; or he could return to work. In making that judgment, we were mindful of the regulations that set out the criteria for suspension. We directed the chief executive to stay in contact with the PIRC so that we would know about any potential interference

with the investigation, which is one of the two criteria for suspension. The other criterion relates to the public interest and whether there would be a public interest driver for suspension.

At the meeting on 7 November, there was no proposal tabled. We recognised that, by dint of the timetable, we needed to make a decision about the position of the chief constable. We again reflected on the welfare arrangements and on the chief executive officer's view about the role of the PIRC. At that time—

Alex Neil: I am sorry to interrupt you, but you said:

"There was no proposal tabled".

Am I correct in thinking that you mean that there was no proposal to reinstate the chief constable?

David Hume: As I understand it, when we went into the meeting, no proposal had been tabled. I do not think that anybody had reached that decision point before the meeting.

Alex Neil: So how did the proposal come about in the meeting?

David Hume: I am sorry to repeat myself, but the context for the meeting was the four-weekly review. We knew that we had to come to a view. The options in front of us were clear. Under the terms of the regulations—

Alex Neil: You have gone through all of that. I presume that you had legal advice at the meeting in question.

David Hume: We did not have legal advice.

Alex Neil: Well, there's a surprise.

David Hume: However, we had had legal advice on the issues at previous reviews.

Alex Neil: Leaving aside the absence of legal advice, who proposed the reinstatement of the chief constable?

David Hume: It was a consensus of the board, having gone through the process—

Alex Neil: Surely somebody had to propose it. At any board meeting—I have been on a lot of boards—when a decision is taken, somebody has to propose a particular course of action. There were three options. Surely somebody must have said, "I propose that we go for the option of reinstating the chief constable."

David Hume: There was a discussion about the feedback, through John Foley, from the PIRC. There was a discussion about the public interest matter. We were aware of the discussion about the NPCC. As a board member, at that meeting I felt that I had got to the point of thinking that the conditions for suspension were not met. The chief constable had declared that the reason for him

wanting leave had ended, and I felt that, on the basis of the discussion about the NPCC, it was in the public interest for him to return. I felt that I could not justify a continuation of his special leave when he ought to be back at work.

Alex Neil: I need to wind up but, for the record, we have it in writing from the PIRC that the PIRC was not consulted about the reinstatement proposal.

David Hume: I am sorry, but I can only tell you what I expected at the meeting in question.

Alex Neil: You were told that the PIRC had been consulted.

John Foley: I would like to come in on that. You are absolutely correct, Mr Neil. I certainly did not consult the PIRC in relation to that. My recollection of what happened at the meeting at which the decision was taken is that I was going on leave two days later, and I took the action of writing the letter to the chief constable. I know that the committee has a copy of that. My recollection of the actions that were to be taken is that the chair was to communicate with the PIRC as well as the cabinet secretary and the chief constable, but that I was to maintain regular contact with the PIRC, which I always did.

Alex Neil: But surely the sequence is important. In any investigation of a disciplinary nature, surely the first thing to do when reinstatement is being considered is to check the view of the person who is investigating the complaints on whether it would be appropriate for the person to be reinstated at that stage. The PIRC has said that no such consultation took place.

10:00

John Foley: That is correct.

Alex Neil: That is damning, as well as correct.

The Convener: You referred to the board meeting of 31 October. I have just checked and there is a note saying that it was a closed meeting. We are also looking for the minutes of the meeting on 7 November. They were agreed on 20 November, but they are not public.

Mr Flanagan, I know that you have since stepped down but the theme running throughout your chairmanship was the issue of secrecy. So many comments today have been, "Oh, I think I recollect that," or, "I'm not sure about that," or, "Was there a minute? No, there wasn't." Do you regret that this whole process, under your chairmanship, was not more transparent?

Andrew Flanagan: I think that we document things properly. Dr Marchant has confirmed that there are minutes of those meetings.

The Convener: They are certainly not on the website. I stand to be corrected, but they do not seem to be publicly available.

Andrew Flanagan: The practice is supposed to be that, at the next public meeting after a closed meeting, we report the business that was conducted and any decisions that were made at the closed meeting. However, that was after I left.

The Convener: My next question is for Nicola Marchant and David Hume. A previous board member raised concerns about the lack of transparency and privacy. Did you share those concerns?

David Hume: Yes. Going back almost a year, I indicated that I had concerns and that we should embark on a review of the arrangements by comparing the standards of governance in the SPA with the best available international standards of governance.

The Convener: Did you make those concerns clear to Mr Flanagan?

David Hume: Yes.

The Convener: Did you do it privately? There is no minute of that, is there?

David Hume: I think that there are several minutes. I might be wrong, but I think that I even mentioned it when I was here a year ago. I will just say again, if I may—

The Convener: Briefly.

David Hume: There is an international standard for good governance that the International Federation of Accountants developed with the Chartered Institute of Public Finance and Accountancy. That is the one that I wanted to use. The then chair agreed, and I have developed from that standard a framework for the measurement of the governance standards in the SPA.

The Convener: We are all hopeful that the situation will improve going forward.

I call Daniel Johnson.

Daniel Johnson (Edinburgh Southern) (Lab): Thank you, convener, for bringing me in at this point. As an MSP who is not a member of the committee, I appreciate that.

I would like to establish the facts of the meetings that have occurred and what was discussed. Mr Flanagan, you said that, at the meeting that you had with the cabinet secretary prior to 7 November, you discussed the chief constable's situation. How many meetings did you have with the cabinet secretary between the point at which the chief constable went on special leave and the meeting on 7 November, and how many times was his situation discussed?

Andrew Flanagan: The cabinet secretary and I typically met every four to six weeks. The chief constable went on leave at the beginning of September. I had a meeting in September and one in October.

Daniel Johnson: You met on a number of occasions and you discussed the chief constable's situation. What sort of questions was the cabinet secretary asking about the process? What sort of interest was he taking?

Andrew Flanagan: It is an important issue. The absence of the chief constable for an extended period of time is challenging for everyone. There are certain powers vested in the chief constable that are not transferable. We had already had a situation where the previous chief constable was absent for about four months and we had a designate in place at that point.

Everyone was concerned that there should not be a prolonged period of uncertainty. If I recall correctly, the discussion in October was around the length of time that the PIRC investigation was taking and whether the police regulations, which combine police standards with employment standards and management standards, were fit for purpose. We did not discuss the specifics of the complaints themselves.

Daniel Johnson: But you did discuss the process. Would you say that the cabinet secretary was aware that you were reviewing the matter on a four-weekly basis? Was he aware that you had the list of procedural steps that Dr Marchant set out? Was he familiar with those?

Andrew Flanagan: The procedural steps came later. At the time of the meeting—probably around the second week of October—we were not at the point of running up to the review of temporary leave, so there was nothing specific on that. Later on, Dr Marchant and I had discussions with officials that were more about the generalities of the situation and—in our view—some concerns about the long-term structure of the senior command, the lack of succession planning, possible outcomes of the complaints process itself and what would happen in those circumstances. We had those discussions with the director for safer communities at the end of October, or something like that.

Daniel Johnson: In any of those meetings, did the cabinet secretary or any of his officials raise the matter of the two requests as a condition, in their view, of a satisfactory return for the chief constable?

Andrew Flanagan: No.

Daniel Johnson: They did not raise them in any of those meetings. I want to focus on the

meetings. There were two meetings on 9 November—I believe that that is new information.

Andrew Flanagan: I do not know whether it is new or not, but, yes, there were two.

Daniel Johnson: I am referring to meetings with the cabinet secretary.

Andrew Flanagan: There were two meetings with the cabinet secretary.

Daniel Johnson: There was one that you requested and then one that he subsequently requested.

Andrew Flanagan: Yes.

Daniel Johnson: You said that, in the first of those meetings, the cabinet secretary described your decision as a bad decision. What did he say were the consequences of that bad decision? Did he say that there was anything that he felt should happen as a result of his indication that it was a bad decision?

Andrew Flanagan: I think he indicated that he thought that it was a risk to the stability of the senior team. I referred earlier to a discussion that I had with him about the stability of the senior team—I had a different view on that.

Daniel Johnson: Was anyone else present at that first meeting?

Andrew Flanagan: No.

Daniel Johnson: It was just you and the cabinet secretary. You said that there were three officials at the second meeting. That must have felt like quite an official meeting, given the number of civil servants present, as well as the cabinet secretary.

Andrew Flanagan: Yes. I suspect that it felt rather one-sided, if I can put it that way.

Daniel Johnson: You said that you felt that you could not have taken any course of action other than the recommended one—otherwise, you would have displeased the cabinet secretary, and that was not something that was acceptable. Is that a fair characterisation of what happened?

Andrew Flanagan: No, I do not think that it is. I do not think that my role is to please, or otherwise, the cabinet secretary.

Daniel Johnson: I guess that what I am trying to ask is this: do you feel that you had any course of action available to you other than what had been recommended and requested?

Andrew Flanagan: Because the issues were characterised in terms of process, I had to make a judgment as to whether those process issues could be dealt with—hopefully, as I said earlier, creating a more conducive atmosphere to the

return of the chief constable. As I assessed at the time, I thought that those matters could be resolved relatively quickly and therefore I decided that the best course of action was to pause and see if we could resolve them.

Daniel Johnson: The reason I ask is that yesterday the cabinet secretary said that if you had not acquiesced to his request, he would have felt compelled to invoke his powers under statute to direct. It strikes me that, in that situation, you really would have felt that there was no other course of action.

Andrew Flanagan: He is the cabinet secretary and therefore he can override in that situation, but invoking his powers is a very big step.

We must also recall that I had already resigned and was in the last two or three weeks before my departure. If I had thought that that was the right course of action, I would have felt obliged to do it. If it had been the case that the decision for the chief constable not to return had to be a political one, that would have been clear and everybody would have understood that.

I do not think that it is correct that it has somehow been pushed back to the SPA, in a situation in which the basis of the chief constable's current absence is now not clear. There is a risk of an interpretation, a perspective or a presumption that there has been some sort of political decision but that it is not overt. That is not how it should happen. If the cabinet secretary wishes to make such a direction, he should make it.

The Convener: Mr Johnson, I ask you to wind up, please.

Daniel Johnson: I am interested in your opinion, Mr Flanagan, on the difference between a request and a direction, whether that is a direction in the formal sense or otherwise.

Andrew Flanagan: As I said, the cabinet secretary did not request: he said that he thought that there were steps that we should be taking before the return took place. At that point, my judgment was that we could do those things and that that would be better than a situation that would be more confrontational.

Daniel Johnson: "Request" is the cabinet secretary's word rather than mine.

The Convener: "Request" is the word that the cabinet secretary used in the chamber when he made his statement.

Willie Coffey has a question.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to ask about the wellbeing plan and the process for putting it in place. Dr Marchant, you said that the process was written down and would lead to a plan being put in place to deliver

wellbeing for all the staff who were involved. Was that discussed at the board meeting on 7 November? Was due consideration given to whether there was sufficient time to put the plan into place before the chief constable's return?

Dr Marchant: Just to be clear, the process that I am talking about is a series of conversations that would enable that plan to be put in place. On 7 November, the welfare and wellbeing of individuals were discussed, and it was agreed that the issues would form part of the enabling that would happen prior to the chief constable's starting work.

Willie Coffey: But was there an agreement that there was sufficient time to deliver that, given that, at the board meeting, you had taken the decision to reinstate the chief constable, who was then going to return to work only three days later?

Dr Marchant: The view was that, once those conversations had been had, those individuals could best inform as to whether it would be possible, given the time consideration. However, as Mr Flanagan has said, those conversations did not take place.

Willie Coffey: The deputy chief constable told the Justice Committee that, by Wednesday 8 November, he still did not know about any welfare plans being put in place and, at that point, the chief constable was returning to duty two days later. Are you honestly saying that there was sufficient time to ensure the welfare of all the staff who were involved in the matter, before the chief constable returned to duty?

Dr Marchant: What I am saying is that those conversations were going to be had. If a concern had been raised, I am sure that I would have gone back to the chair and asked for the board to reconsider its position. However, I had not had those conversations.

Willie Coffey: So the chief constable could have returned to duty on Friday 10 November and the welfare plan might still not have been delivered or implemented across the service.

Dr Marchant: That is not what I said. What I actually said was—

Willie Coffey: But do you think that that was the case?

Dr Marchant: No. I do not think that is—

Willie Coffey: So it would all have been done and dusted in two days.

Dr Marchant: No. I actually said that I would have had the conversations that would have enabled me to make an informed decision on the welfare plan and that, if I had a concern about it, I would have raised that with the chair and the rest of the board.

The Convener: Thank you.

Iain Gray has a question.

Iain Gray: I turn to the section 22 report on the audit of the SPA, and will start with quite a general question. The report tells us that, in 2016-17, the SPA overspent its budget by just under £17 million and that the budget that the authority approved for 2017-18, which is the current financial year, forecast a deficit of more than £47 million. The Auditor General tells us that indications are that that will indeed be the outturn position, so it is hardly a stellar financial performance. I want to ask the panel why they felt that it was acceptable to approve a budget with such a large overspend, and what options were considered that might have allowed a balanced budget to be achieved.

10:15

Andrew Flanagan: When I started in September 2015, there was a paucity of financial information to allow us to determine what the financial situation was in Police Scotland. We spent most of that first year trying to determine that, and we got to a position where we had a much greater degree of clarity about current spending and cost pressures. We were also able to identify some of the options that were open to us, and the issues that arose in terms of reducing the costs and bringing the budget back into balance were quite fundamental and long term.

There were three options for delivering those cost reductions. The first was to reduce the number of police officers, compared with the mandated criterion of 17,234. Police officer payroll costs represent some 65 per cent of the budget, or maybe even up to 70 per cent; I am sure that the chief executive can be more precise about that.

The second was to introduce much more effective procurement and purchasing of non-pay items. Again, because of long-term contracts that were in place, that would take some time to effect.

The third area was a complete reform of the back office, which had not been significantly moved on since the creation of Police Scotland in 2013, to the extent that we still had no single payroll system, we had ineffective HR processes, and we had no agreed terms and conditions that were consistent across the workforce.

All those issues were going to take some time to resolve—we thought that it would take three years in total. We explained the situation and our position to the Government. The more immediate, quicker position would have been to start to reduce police officer numbers, because normal turnover and retirements would have had the quickest effect, but the Government was not willing to contemplate that.

Colin Beattie: I would like to look at the process around the settlement that was made to Mr Foley—I hope that we can get some direct answers. On 17 August, the deputy director for the police division contacted the SPA deputy chair, Dr Marchant, in connection with the payment in lieu of notice issue. You stated that you had received clear HR advice on that point, Dr Marchant. Was that in writing?

Dr Marchant: The HR advice that I received was part of the preparation for the consultations and discussions and was in verbal form. I confirmed that the PILON was part of our standard operating procedure—that was confirmed back to me—and I was shown the written standard operating procedure.

Colin Beattie: So, you gave HR details of what was proposed and they came—

Dr Marchant: No.

Colin Beattie: You did not?

Dr Marchant: No, it was a consultation discussion.

Colin Beattie: Which means?

Dr Marchant: To go back a step, the process was that, on 7 June, there was a closed board meeting where there was a proposed business change, which would have meant the redundancy of the role of the CEO and accountable officer. That was a board discussion. The board supported that proposed business change, which led to my being asked to formally write the business case for change, which would enable the start of a consultation, as per due process for impacted individuals.

That was done and the consultation was started with those who were impacted by the proposed business change. It should be borne in mind that we work under a no compulsory redundancy policy, which means that, when there are individuals who are impacted because their roles no longer exist in the organisation and therefore are redundant, such individuals have the option of volunteering to take redundancy terms and conditions. They also have the right to stay in our organisation, and we would provide them with meaningful work. In that case, they would sit within what is called our supernumerary pool, which exists because of our no compulsory redundancy policy. We provide any person in the supernumerary pool with meaningful work until a suitable alternative role becomes available in the organisation. In this case, it was very unlikely that a suitable alternative role would become available at the CEO's level. The third element is that the individual is given the option to be considered for new roles that appear in the organisation as a consequence of the change.

Colin Beattie: I am looking—

Liam Kerr: Forgive me, Colin, but may I ask a question? With regard to the point about a suitable alternative role, there was such a role, the pay for which was somewhere between £107,000 and £120,000, which would have involved Mr Foley doing fundamentally the same job that he had been doing. Is that not the case?

Dr Marchant: The interim chief officer role was submitted to the Scottish Government, as per the process for banding and salary. It was banded at a band lower than Mr Foley's CEO role. That meant that we were talking about a redundancy, because the alternative role that was available was at a band lower than the role that he had.

Liam Kerr: I am not questioning the redundancy, although I might do so at a later stage; I am questioning your assertion that there was no suitable alternative. There was a suitable alternative.

Dr Marchant: To recap, as part of the consultation process, any new role that is created following a business change is considered as an opportunity for the individual concerned.

Colin Beattie: I am looking at Paul Johnston's letter of 18 January, which lays out the position very clearly. The clear HR advice that you received was verbal.

Dr Marchant: The clear HR advice that I received was verbal.

Colin Beattie: You were told that the position was that no discretion was available with regard to the size of the offer.

Dr Marchant: There is an agreed voluntary redundancy/voluntary early retirement package. Although there are options to consider with regard to how an individual exits the organisation, the approved VR/VER package applies to all individuals who elect to take redundancy.

Colin Beattie: Given the importance of the process and the decision that was being taken, should you not have asked HR for something in writing?

Dr Marchant: The VR/VER policy goes through the board approval process. We were working within the agreed policies and the standard operating procedures, but I sought an assurance from HR that we were working within those policies and processes.

Colin Beattie: As a result of that advice, you proceeded to make an offer.

Dr Marchant: As a result of that advice, I went through consultation with HR, the outcome of which was the offer letter.

Colin Beattie: At what point did the board become aware of what the settlement was?

Dr Marchant: On 11 August, which is when Mr Flanagan requested authorisation from the board. He emailed the board with the outcome of the consultation, which was to progress with the settlement offer.

Colin Beattie: The deputy director of the police division emailed you on 23 August to highlight the fact that the decision could be open to scrutiny. I think that I am quoting when I say that it was suggested that it might be worth thinking about what the answer to that specific question might be. Did you take that into account?

Dr Marchant: Yes, I did. Three business imperatives or objectives were set out at the beginning of the business case for change. One of them was to change as quickly as possible the reporting relationship between forensic services and the board, in response to the recommendation that was made in HMICS's thematic review of forensic services in June 2017 and in an HMICS public advice note from 2016.

The second imperative was

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

That was because the chief officer and the CEO role took on the accountability of the accountable officer.

The third imperative was

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

Colin Beattie: I will come back to those business imperatives.

The board meeting at which the decision was taken to approve the package was held on 11 August. You asked HR about the decision on 17 August. Should you not have asked HR first, before going to the board?

Dr Marchant: No. I was accompanied by HR in conversations that I had during the consultation process, which commenced on 27 July.

Colin Beattie: So, 17 August was not a definitive date as far as your consulting HR was concerned.

Dr Marchant: No.

Colin Beattie: Given the criticism from Audit Scotland and Paul Johnston, do you think, in

retrospect, that you were correct to proceed in the manner in which you did?

Dr Marchant: It was about looking at value for money and how best to achieve the business imperatives. All three business imperatives were achieved through the course of action that was taken.

Colin Beattie: Let us look at the three business imperatives. The first was

“to change as quickly as possible the reporting relationship between Forensic Services and the Board”.

Was that imperative reliant on the chief executive being in place before that could happen?

Dr Marchant: The business case for change proposed the change in reporting relationship, which resulted in the role of the CEO becoming redundant; therefore, consultation needed to progress before we could make that change.

Colin Beattie: When did that change take place?

Dr Marchant: On 1 September.

Colin Beattie: On 30 September?

Dr Marchant: On 1 September. *[Interruption.]*

The Convener: I am sorry to interrupt, but can the person in the public gallery who is having trouble with their mobile phone please step outside the committee room?

Dr Marchant: On 1 September, the reporting relationship with forensic services was changed. At that point, the role of the CEO was redundant.

Colin Beattie: On 1 September, the first business imperative was achieved. However, Mr Foley was still in position until 30 November.

The second business imperative was “business continuity”. In most cases, it is rather a luxury to be able to hold a double position. For how long did the interim chief officer understudy the previous CEO?

Dr Marchant: The interim chief officer took his position on 13 November.

Colin Beattie: On 13 November.

Dr Marchant: Yes.

Colin Beattie: That was 17 days before Mr Foley left.

Dr Marchant: That is correct.

Colin Beattie: Was that period planned? Was it adequate?

Dr Marchant: The start date was agreed between the board and the interim chief officer, and we had discussions about whether that handover time was sufficient—other executives

within the SPA team and board members helped to make that decision. We were planning on the basis that the accounts would go to the board for approval on 28 November.

Colin Beattie: The third business imperative was not achieved because, according to what I see in front of me, the accounts were not signed off until after the CEO had departed.

Dr Marchant: No. The accounts were approved at the board meeting on 28 November.

Colin Beattie: That was two days before he left.

Dr Marchant: That is correct.

Colin Beattie: It was just managed.

Dr Marchant: Sorry—to be clear, Mr Foley was not told that his departure date was 30 November until the chair of the audit committee had notified me and the HR business partner that the audit committee was able to recommend the accounts for approval. If the accounts had not been presented to the board on 28 November, Mr Foley would not have left on 30 November. The agreement that we had was that he would stay in his role until the accounts had been approved and signed off by the board.

10:30

Colin Beattie: That is interesting.

What is the accelerated consultation process and how is it documented and monitored?

Dr Marchant: The consultation meetings are minuted and documented by the HR business partner. The accelerated part of it means that, with Mr Foley's support, our processes, which would normally have meant that Mr Foley had one week's notice before coming to a consultation meeting, were faster. Mr Foley wrote to me to request that the process be accelerated and we met him earlier. We expedited the process as far as possible so that the consultation took approximately four weeks. In normal Police Scotland processes, according to the guidance, consultation takes 12.5 to 14.5 weeks.

Colin Beattie: The accelerated process is documented.

Dr Marchant: The accelerated process is documented in the consultation minutes.

The Convener: Colin Beattie has explored the process around that. Audit Scotland clearly said that Mr Foley received three months' salary unnecessarily and at the expense of taxpayers. Do you agree with that?

Dr Marchant: I agree that that is a valid point, but it is based—

The Convener: Do you agree that that is correct?

Dr Marchant: I agree that that is a valid point, but it is based on the assumption that the consultation would have concluded with our entering into a VER contract on—

The Convener: I do not think that it is based on any process; it is based on the fact that the auditors think that that £28,000 was an unnecessary expense to the taxpayer.

Dr Marchant: It is based on their explanation of how the process moved forward. It is based on the fact that the consultation leading to the announcement and implementation of the business case for change was announced on 24 August—it is based on that having been a fixed date. However, the start of the consultation was not a fixed date. In my view, if the consultation had been extended—

The Convener: Dr Marchant, it is the committee's job to follow the public pound, and Audit Scotland has told us that 28,000 of those pounds were spent unnecessarily in a payment to Mr Foley. All those processes might have been followed but, in the view of the auditors, that payment was unnecessary. Do you agree with that, Mr Foley?

John Foley: As the process was developing, I deliberately did not engage with board members as a board on that matter, because I felt that that would be inappropriate. The process that Dr Marchant has outlined was followed; I then reacted to an offer.

The Convener: We have heard a lot about the process. You were paid £28,000 that Audit Scotland said was an unnecessary cost to the taxpayer. Do you agree that it was unnecessary?

John Foley: I agree that I could have perhaps worked a notice period, in which case the expense would still have been incurred.

The Convener: Have you paid the money back?

John Foley: No, I have not.

The Convener: Do you intend to pay the money back?

John Foley: No, I do not, because I had a contractual arrangement with my employer under UK employment law. It is all above board and I have done nothing wrong.

The Convener: Do you agree that it is an expense to the taxpayer that could have been avoided?

John Foley: I do not know how it could have been avoided, because I had a notice period. If I

had worked the notice period, I would have been paid for it.

The Convener: Let us turn to some of the payments that were made to the deputy chief constable, about which we heard evidence at our meeting on 21 December 2017. Relocation payments were made to the deputy chief constable, and I believe that Mr Foley was in charge of those payments being made—is that correct?

John Foley: Yes, that is correct.

The Convener: Did you feel that the magnitude of those relocation payments was appropriate?

John Foley: They were contractual entitlements. If I may, I will explain some of the context, as briefly as possible. On the creation of Police Scotland, the deputy chief constables and senior officers were all given contracts in which there was a clause that said they were entitled to relocation payments. At that point, the relocation clauses pointed to what is commonly referred to as the Strathclyde policy—that is, a legacy policy was adopted and put in place. It is important to note that, in police regulations, there is no upper value limit or time limit for such payments. Notwithstanding that—

The Convener: I understand that the Strathclyde police authority standard operating procedures put a time limit of 18 months on that payment.

John Foley: I will come on to that. I was referring to the regulations. The policy in Strathclyde was not the same as the regulations. Police regulations and policy are different.

The Convener: Why did you adhere to the Strathclyde operating procedures if there were other regulations in place?

John Foley: If I can come on to that, I will try to explain it quickly.

The Convener: If you could do that quickly, that would be good.

John Foley: As we moved into the summer of 2014, we found ourselves in some difficulties, as we were fast approaching the end of the 18-month period that was specified in the Strathclyde policy. At that point, the general secretary of the Scottish Chief Police Officers Staff Association contacted the then chair of the Scottish Police Authority to seek a meeting to consider what could be done. The chair instructed me to meet Mr Barker, and he and I met on 6 August and made a determination that we would extend the policy on a case-by-case basis until such time—

The Convener: Were you extending the Strathclyde policy?

John Foley: Yes. We decided to do that until such time as a permanent place of work was determined for the senior officers. As far as I am aware, the first time that that was determined was on 31 March 2016. I recall the conversation with Mr Barker clearly because he used the phrase—which is uncommon nowadays—that the then chief constable had been “humming and hawing”, changing his mind regularly as to where the permanent place of work should be. That is how we got to the point at which the decision was made. When the DCC submitted the claim in relation to the relocation expenses, I had that knowledge. Further, I still did not take the decision to authorise the payment until I had spoken to the chair, and that is what happened.

The Convener: Gosh. I am not convinced that members will have followed that convoluted explanation.

John Foley: Apologies for that, convener.

The Convener: I am still not clear whether you were following Strathclyde operating procedures or other operating procedures.

John Foley: I was pointing to the Strathclyde procedure at that point, but—

The Convener: So, why did you go over the 18-month period?

John Foley: Because the permanent place of work had not been determined for the senior officers.

The Convener: You were just making it up.

John Foley: No. I met the general secretary of the SCPOSA and that is what we decided to do at that point.

The Convener: You just decided to put your own rules in place.

John Foley: No, because I was instructed to go and sort it out by the chair.

The Convener: The move cost the taxpayer £67,000 in relocation expenses. I do not know anyone in Scotland who expects relocation expenses of that magnitude.

John Foley: I understand fully the issue here. Indeed—

The Convener: That was taxpayers’ money, Mr Foley. You said that you just decided to disregard or overrule the Strathclyde procedures.

John Foley: No. The DCC had a contractual entitlement to relocation expenses. As far as I am concerned, it was a contractual entitlement. I do—

The Convener: You say that she was entitled to £67,000 in relocation expenses. What about the £53,000 in tax liability?

John Foley: The Strathclyde policy had a clause in it about that. The board of Strathclyde police had decided that payments to officers for relocation should include payments for the tax. There is a clear clause on that.

The Convener: So, you decided to stick with the Strathclyde regulations on tax liability but not on the relocation time limit.

John Foley: No—not on the time limit. As I said, Andrew Barker and I met in August 2014. I was instructed to go to that meeting by the chair, who was not Andrew Flanagan. I informed the chair of the outcome of that meeting, and the policy continued thereafter. I agree that it is a lot of money, but it was a contractual entitlement. Before leaving, I told the auditors at the audit clearance meeting and the authority’s audit committee that my recommendation—even though I would not be there to see it implemented—was that, in policy and in police regulations, we need to apply some kind of cap to relocation payments.

The Convener: That would be very advisable. Why were the payments coded as childcare vouchers?

John Foley: I was advised by the chief financial officer and the head of financial accounting that a member of the finance staff had made a mistake when they coded the payments.

I also recommended to the audit committee that, although it would not be for me to decide, we needed to look at some way of improving the checks and balances in relation to payments to senior officers. In my view, the simple way of doing that—because there are not many senior officers—would be to have a report, prior to the accounts being submitted to Audit Scotland each year, that sets out the payments that have been made to senior officers. Relocation payments are not that common, but it is important to see all payments of whatever type of expense. It would not be difficult to do that, and it would be an improvement.

Liam Kerr: If you would stay on that point briefly, Mr Foley, you have said a number of times that the payments that the convener has referred to were contractual. You have also talked about the Strathclyde policy. Can you give a bit more detail as to how the Strathclyde policy is ported into an officer’s contract, such that it becomes a contractual entitlement?

John Foley: The contractual entitlement that I referred to stands separate from the Strathclyde policy. The officer is given a contract on getting the position. It says in the contract—I am paraphrasing—that an officer who has to move home will be entitled to relocation expenses. It stops dead on that. My own view is that—

Liam Kerr: Let us be very clear. The contractual entitlement is to relocation expenses, but not to the sums set out in the Strathclyde policy. Is that correct?

John Foley: No. The contract stands alone. The contract has a clause that says that the officer is entitled to relocation expenses.

Liam Kerr: But it does not set out the contractual amount of the relocation expenses.

John Foley: It does not set out the amount.

Liam Kerr: That is what I am asking. Somebody made a decision at some point, for the value, to use the Strathclyde policy.

John Foley: In February—

Liam Kerr: Is that correct?

John Foley: Yes.

Liam Kerr: Thank you.

Moving back to something that Colin Beattie asked about, I ask Dr Marchant whether it is correct that, in August 2017, the SPA made the final decision about the role of the chief executive by correspondence.

Dr Marchant: The SPA made the decision regarding approval of the costs by correspondence. The decision to progress to a redundancy of the role was made at a board meeting on 7 June.

Liam Kerr: What proportion of the board made each of those decisions? How many board members acceded to them and how many rejected them?

Dr Marchant: I do not have that information today. I do not remember an objection, but I would have to go back to provide you with that information.

Liam Kerr: I would be grateful to know whether there was any dissent from board members. Perhaps Mr Hume might comment. Was there any dissent from the board either to the final decision about the chief executive or on starting the consultation?

David Hume: Not that I recall.

Liam Kerr: There was no dissent. Paul Johnston's written submission of 18 January says that Scottish Government officials contacted the SPA on as many as three occasions in August 2017 raising concerns about the payment to the outgoing chief executive. Was the full board aware of those concerns, and was it clear about the Scottish Government's interest in the matter?

Dr Marchant: The board was clear that the Scottish Government had an interest in it.

Liam Kerr: All of the board?

Dr Marchant: I would have updated the board at members' meetings on conversations that I had had. I made the chair aware of the concern around the package.

Liam Kerr: Having been made aware, did Mr Flanagan disseminate that? Were you comfortable that the entire board were involved and knew what they were talking about?

Andrew Flanagan: I believe that the board was aware of both the concerns that had been expressed by Government and the basis of the calculations. They were advised by Dr Marchant about the way forward. I do not think that any board member would say that they were not properly informed.

Liam Kerr: My final question is one that I have posed before about a settlement agreement codifying what Mr Foley received when he exited. I understand that the SPA considered using a settlement agreement but ultimately rejected the idea, yet we have heard that there is some form of contract in place. Why did the SPA reject using a settlement agreement?

10:45

Andrew Flanagan: We had some discussions with Mr Foley and it was clear that the settlement that he would have been looking for under those circumstances would have exceeded the early retirement/voluntary redundancy arrangements, so we decided not to pursue a settlement agreement.

Liam Kerr: For the avoidance of doubt, when you say "we", does that mean you, Mr Flanagan, or does it mean in consideration with the whole board?

Andrew Flanagan: I had discussions with Mr Foley and discussions with Dr Marchant and we reported that to the board.

Liam Kerr: My understanding is that a settlement agreement involves saying to the outgoing employee, "Here's a large payment, in return for which you will sign away your rights to sue us, to take us to tribunal and to say nasty things about us"—or something like that, because I am sure that Mr Foley would not do that. I struggle to understand why, when a rather large payment that Audit Scotland has said may not have been entirely necessary was being made, you explicitly decided not to go down that route. Who took that decision and was it in conjunction with the HR department?

Andrew Flanagan: I believe that it was in discussion with the HR department. Dr Marchant had a number of conversations with the HR department. She and I and, I think, the HR

department had discussions with the Scottish Government, which indicated that it would not be happy with any settlement that exceeded the amount of the ER/VR scheme.

Liam Kerr: But did the Scottish Government say that you should put Mr Foley under a settlement agreement?

Andrew Flanagan: Quite the reverse. I think that Mr Johnston sets out in his letter that there is a presumption against confidentiality agreements in settlement—

Liam Kerr: I am not talking about confidentiality agreements. Mr Johnston was clear that he did not want to see a settlement agreement used in the process.

Andrew Flanagan: Because it would exceed the terms of the ER/VR scheme.

Liam Kerr: Not necessarily. It is a matter for negotiation, is it not?

Willie Coffey: I want to ask about the policing 2026 strategy and the development of the strategic approach to information and communication technology. Doubt has been expressed about whether there is sufficient technology delivery capacity within the service to deliver the strategy. Do you agree? Where are we in relation to the development of the ICT strategy?

David Hume: We had an audit committee meeting on 22 January at which we received from our internal auditors a management report for Police Scotland on ICT preparedness. The committee was pleased to receive such a well-written and considered report, because a number of internal audit reviews have indicated difficulties around aspects of ICT.

We all recognise across the board the important role of a proper ICT vision and strategy for the delivery of policing 2026. We in the audit committee felt that we have now seen a considered, well-articulated statement of the difficulties and issues around ICT that provides an excellent basis for the development of an ICT strategy—it is probably better than any that we have had before. I understand that arrangements are being taken forward in Police Scotland to deliver a draft ICT strategy by March 2018.

Willie Coffey: I asked whether you think that there is sufficient capability within the service to deliver the strategy, because some doubt was expressed about that in a formal report. Do you think that you now have the capability to deal with this?

David Hume: The management report that the audit committee received the other day indicates concerns about that. We now need to enter into a discussion with Police Scotland from the audit

committee point of view about the arrangements that it is putting in place to design the strategy. We will then, obviously, be looking for assurances about the delivery of that strategy.

Willie Coffey: Given the experience that we had with the i6 project, when do you think you will be in a position of comfort and be able to persuade members of this committee and the public that the capability is there and the schedules and timescales can operate to deliver it successfully?

David Hume: We now have the review and I understand that arrangements are in hand to deliver a draft strategy by March 2018. That will give us the scope of the work that is involved. The audit committee will be looking for assurances about implementation and delivery.

We are looking at a not-too-far-distant point after March, when we have had a chance to reflect on the ICT strategy as that moves forward for approval. We need the implementation strategy underneath, which will reconcile the resources and the challenges that the strategy sets out.

Bill Bowman (North East Scotland) (Con): Mr Hume, are you chair of the audit committee?

David Hume: Yes.

Bill Bowman: Do you have an auditing qualification?

David Hume: I do not.

Bill Bowman: We started by looking at the 2016-17 audit report, which had a number of recommendations, and we have gone on to look at some of the items that are in an audit gap period and will, I presume, appear in the 2017-18 Audit Scotland report that will come out later in the year. We have heard comments about certain transactions and whether they were correct and correctly recorded. What has the audit committee done to be satisfied that we will not hear such comments in the future?

David Hume: In the normal course of business, the audit committee receives evidence-based reports from the internal audit service, which identify recommendations for action. During the time that I have been in the chair and the current providers have been providing the internal audit service, there have been 227 recommendations for improvements, and the majority of those are either complete or in progress. That gives us a pattern of assurance through the audit committee that it is identifying areas of risk around internal controls.

When we receive the annual audit plan, the audit committee typically takes a meeting to receive and hear from the—

Bill Bowman: Is the plan external or internal?

David Hume: I am talking about the annual audit plan that is provided by external audit. That is received when we receive the draft accounts. On this occasion, we received both documents on 22 November. The documents then go to the board, and on this occasion they went on 28 November. The audit committee receives the audit plan again at its next meeting. We considered it along with the section 22 report at our meeting on 22 January, as we have done in previous years.

We have indicated that we accept the terms of both reports. We have taken an instruction that management is now required to develop an implementation plan around all the recommendations and actions that are set out in the annual audit report. That is being included in a tracker, and regular reports will come back to the audit committee on the implementation and delivery of the actions that are set out in the annual audit report.

Bill Bowman: How do you structure the internal audit? If I understand the position, you can have an internal auditor in the organisation, either with their own staff or with an outside body doing the work, or you can totally externalise it and have somebody else doing the work. Are you included in the third case?

David Hume: We are. The internal audit service for Police Scotland and the SPA is provided by a private company under tender.

Bill Bowman: Given the issues that have come up, does that give you close enough control over what is going on in the organisation?

David Hume: I think that it does. In your first question, you asked whether I have an auditing qualification. I do not, but I have served on audit committees and worked on them as a professional. I have worked with internal audit services that have been in house over decades.

I need to be careful about what I say here, because we are about to enter a tendering arrangement for a new contract. However, I have to say that, having experienced working in that way, I am content with it and I believe that we have derived a good service from that arrangement. I say that without commenting on the company that provides the service.

Bill Bowman: I am not questioning it. My feeling is that, if you do not have one person who is an internal auditor, who has their feet under the desk and knows what is going on by walking the corridors, having somebody just coming in and doing the job through a program may not give you the right answer.

David Hume: I would not challenge your view; it is an interesting perspective. My perspective is that the head audit partner is very well acquainted

with the issues. You may know that, as it puts together the internal audit annual plan for the coming year, the audit service engages in wide consultation with management, staff and stakeholders through the work that we do on risk.

The Convener: So you are quite confident of its abilities, Mr Hume.

David Hume: I am.

The Convener: Okay. Thank you very much.

I am going to take the panel back, briefly, to the deputy chief constable's relocation payments. Nicola Marchant and David Hume, would you have expected those decisions to have come past the board?

Dr Marchant: If the decisions regarding the amounts were within the delegated authority of the CEO, I would not have expected approval of the amounts.

The Convener: Audit Scotland has said that it would have expected additional governance arrangements to support the decision that Mr Foley made on those relocation expenses. Do you think that that is wrong?

Dr Marchant: No. I said that, if the payment was within the delegated authority of the CEO, I would not have expected approval. The challenge is regarding the 18-month time limit for payment claims and the decision on that. However, as Mr Foley has reported, that was a discussion that he had with the then chair. I was not a member of the board at that time and I do not know whether the then chair had any conversations with the board.

The Convener: Audit Scotland has reported that he

"did not advise members of the Scottish Police Authority of these payments at any board or committee meeting".

Are you content with that?

Dr Marchant: No, that is not what I said.

The Convener: Sorry.

Dr Marchant: I said that I would expect that, if an individual wanted to work outside a policy or a standard operating procedure, there would be some governance around how the approval for doing so was in place.

The Convener: Okay, but your take on that was that he was working not outside but within his delegated authority, so there was no need to bring it to the board.

Dr Marchant: What I said was that I believed that he was working within his delegated authority regarding the amounts that were signed off. I was not on the board at that time and I was not involved in whether any discussions were had between the then chair and the board regarding

the circumstances in which the payment was made.

The Convener: So you think it is fine that all of that did not come to the board.

Dr Marchant: No, I said that I—

The Convener: I am sorry; I am struggling to get the difference.

Dr Marchant: As part of a continual improvement and strengthening of governance, my preference would be that, when there were exceptions to policy, there would be a governance route in place. Depending on where such exceptions were in the organisation, I would expect a grandparenting process.

The Convener: Would you have preferred that such decisions came to the board?

Dr Marchant: If they were decisions that were associated with senior people in the organisation—

The Convener: Given the scale of the payments, would you have preferred that this had come to the board or are you happy that it did not?

11:00

Dr Marchant: The board delegates authority to the chief executive with regard to approvals. If there are policies—

The Convener: Dr Marchant, please forgive me, but this is about taxpayers' money, and I really think that that is semantics. The SPA has a responsibility for what we do with taxpayers' money. We find that the deputy chief constable has been paid over £100,000 in relocation expenses and tax liability, and you tell me that you are content that that did not come to the board.

Dr Marchant: No, I am saying that, if the delegation of authority meant that the CEO was authorised to approve payments of that value, the board had made that decision to delegate to the CEO. However, as an improvement in our governance process, if such payments were potentially going to go outside a policy or a process, I would have expected an exception to that policy or process to go to either an audit committee or the board.

The Convener: Do you know whether the new interim CEO's contract has been fully reviewed to ensure that it does not allow him to take actions that would be more appropriately taken by the board?

Dr Marchant: That would not be in his contract; it would be in the governance documents of the board. I will confirm that with my colleague David Hume.

David Hume: Yes.

John Foley: Convener, in case it is helpful, I will add a comment. I referred earlier to the recommendation that I made before leaving. I accept that that was an unusual circumstance, but part of my recommendation to the audit committee was that, in future, all such payments should go before a committee. In much the same way as Dr Marchant has just said, whether the issue is about people or about audit, that is for the members to determine—I have gone now.

The Convener: Thank you, Mr Foley. That is helpful.

Has the SPA considered reclaiming any of those relocation expenses?

Dr Marchant: Not that I am aware of, but I have not had any discussion regarding them.

The Convener: I ask all panel members whether they were contacted by Scottish Government officials before today's meeting, regarding the evidence that they were to give today.

Andrew Flanagan: No.

John Foley: No.

David Hume: No.

Dr Marchant: No.

The Convener: Not at all?

Andrew Flanagan: No.

John Foley: No.

David Hume: No.

Dr Marchant: No.

The Convener: I thank all panel members very much indeed for their attendance and their evidence this morning. I now close the public part of the meeting.

11:02

Meeting continued in private until 11:19.

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