SCOTTISH POLICE
**AUTHORITY**

1 Pacific Quay
Glasgow
G51 1DZ
Tel: 0141 585 8300

**LETTER SENT BY E-MAIL**

Gillian Russell
Director for Safer Communities
The Scottish Government
St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

02 September 2016

Dear Gillian

**Interpretation of Scottish Public Finance Manual**

I write to seek sponsor department clarification on an issue related to interpretation of the Scottish Public Finance Manual.

The issue relates to the SPA having contracted with a limited company, Gleniffer Solutions Ltd, to fulfil its temporary and part-time requirement for an additional Chief Financial Officer resource.

As you will be aware, at the turn of the year the need for urgent and decisive initiative around financial leadership and controls was one acknowledged and accepted by SPA, Police Scotland and the Scottish Government. As such, the timing of this decisive initiative precluded lengthy recruitment or procurement routes.

SPA, supported by Police Scotland procurement leads, carried out a competitive tender exercise to secure contractor resource as this was required immediately and the resource was also to be interim. The procurement leads advised the SPA that two of the tender submissions were non-compliant, which left one remaining tenderer; being Glennifer Solutions Ltd. As CEO, I took the decision to approve the contract with Gleniffer Solutions for the temporary and part-time services of Karen Kelly. I did so in full cognisance of the Scottish Public Sector Finance Manual, and its overarching aim of achieving value for money for the taxpayer.

The/

The contract to provide a temporary CFO resource has so far cost the SPA less than £25,000 since February 2016. The decision to approve was taken within my delegated authority as CEO of a sponsored body. The CFO resource is not, and was never considered to become, an employee. Indeed the person carrying out this interim function has always made it clear that she has no desire to become an employee of SPA.

I did not believe that there could be a perception that engaging with a contractor to carry out this function, as opposed to an employee, could be perceived reasonably, as seeking to minimise any form of tax liability. The part time contractor is paid £350 per day (average 3 days per week). The contractor was largely unknown to me at the time of appointment though I was aware that she had previously been a well-respected former Finance Director of Edinburgh City Council. As a result of not knowing the contractor personally I took soundings from senior figures from within the Scottish finance community, including [redacted] also did not know her personally but like me was aware of her strong professional reputation as an accountant of high standing.

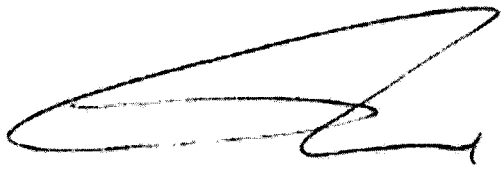
The procurement sections of the Scottish Public Finance Manual make clear that the grounds for exclusion of bidders are very limited.

I am advised that in exchanges between SPA and sponsor officials it would appear that there is a difference of interpretation over whether appointing a contractor to carry out an interim function as opposed to going down a lengthy recruitment route constitute arrangements for taxation purposes that are 'complex or artificial'.

This was not my interpretation when appointing the contractor, and I do not believe that the SPA would be unique in the wider public sector in Scotland in making that judgment.

I would be grateful therefore, and in order to ensure that that we mitigate any future issues, for specific clarity on this point.

Yours sincerely



JOHN FOLEY
Chief Executive Officer

Rùnaire a' Chaibineit airson Ceartais
Cabinet Secretary for Justice
Micheal Matheson BPA
Michael Matheson MSP

F/T: 0300 244 4000
E: scottish.ministers@gov.scot

Scottish Government
Riaghaltas na h-Alba
gov.scot

Ms Claire Baker MSP
The Scottish Parliament
EDINBURGH
EH99 1SP

Ar faidhle/Our ref: 2016/0032020

26th October 2016

Dear Claire,

Thank you for your letter of 29 September 2016 about the appointment of Karen Kelly as an interim Chief Financial Officer for the Scottish Police Authority.

The Scottish Ministers were not requested to approve the approach taken by the Scottish Police Authority or agree any special arrangements in this case.

It will be for the Chief Executive of the Scottish Police Authority, in his role as Accountable Officer, to satisfy the Scottish Police Authority's auditors that the actions taken in this case were compliant with the Scottish Public Sector Finance Manual.

I hope you find this helpful.

Best wishes

Michael Matheson

**MICHAEL MATHESON**

**Question S5W-03673: Liam McArthur, Orkney Islands, Scottish Liberal Democrats, Date Lodged: 11/10/2016**

To ask the Scottish Government what its position is on the decision by the Scottish Police Authority to hire an interim chief financial officer via a service company; whether it is satisfied that this decision complies with the *Scottish Public Finance Manual* and for what reason, and whether it will publish all correspondence that it has had with the authority regarding the appointment.

**Answered by Michael Matheson (01/11/2016):**

This is a matter for the Scottish Police Authority and it will be for the Chief Executive in his role as Accountable Officer to satisfy the SPA's auditors that the actions taken in this case were compliant with the Scottish Public Finance Manual

Scottish Ministers were not requested to approve the approach taken by the Scottish Police Authority or to agree any special arrangements.

**Current Status:** Answered by Michael Matheson on 01/11/2016



INVESTOR IN PEOPLE

**From:** McGillivray D (Donald)
**Sent:** 23 August 2017 18:50
**To:** McCroskie, John; [redacted]
**Cc:** [Redacted – section 38(1)(b)] Fallis R (Russell); Lewis SJ (Stuart)
**Subject:** FW: Forensic Services/CEO [PROTECT]

Nicola
John

I've discussed this revised version with colleagues here.

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

[redacted – three paragraphs – Section 30]

[redacted – one paragraph – Out of Scope]

Don

Don McGillivray
Deputy Director: Police Division
Scottish Government
1WR St Andrews House
Edinburgh EH1 3DG
[redacted]

**From:** Lewis SJ (Stuart)
**Sent:** 23 August 2017 17:05
**To:** McGillivray D (Donald); Russell GE (Gillian); [Redacted – section 38(1)(b)]
**Cc:** Fallis R (Russell)
**Subject:** FW: Forensic Services/CEO [PROTECT]

**From:** Ewing, Vanessa [redacted]
**Sent:** 23 August 2017 16:43
**To:** Lewis SJ (Stuart); Fallis R (Russell)
**Cc:** McCroskie, John; [Redacted – section 38(1)(b)]
**Subject:** Forensic Services/CEO [PROTECT]

**PROTECT MANAGEMENT**

Russ/Stuart.

Updated message re Forensic Services/CEO which will be communicated internally and externally from 10am tomorrow morning. I am also attaching the updated Q&A for your awareness.

Vanessa

**From:** [redacted]
**Sent:** 23 August 2017 14:59
**To:** Ewing, Vanessa
**Subject:**

Hi Vanessa,

Could you give me a call when you get a sec? Have tried your office number a few times.

Cheers!

*Stuart Lewis*
*Senior Media Manager*
*Justice/Education hub*
*Scottish Government*
[redacted]
[Redacted – section 38(1)(b)]
*Email* [redacted]

SCOTTISH POLICE
**AUTHORITY**

**1 Pacific Quay**
**Glasgow**
**G51 1DZ**
**Tel: 01786 896977**
**Email: enquiries@spa.pnn.police.uk**

Mr Paul Johnston
Director-General Education, Communities and Justice
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG

19 January 2018

Our ref: SD/022/17/CW

Dear Paul

Further to my letter to you 22 December 2017 about proposed payments associated with the exit of the former Chief Executive of the Scottish Police Authority, John Foley, I am writing to provide an update.

In my letter of 22 December I explained that I had instructed that the proposed payment in lieu of notice to Mr Foley of £56,666.50 should be paused to enable a review in the light of concerns raised by the Public Audit and Post-Legislative Scrutiny Committee. I subsequently instructed Kenneth Hogg, SPA Interim Chief Officer and Accountable Officer, to carry out that review and report his findings to me.

That review has now been completed. In carrying it out the Interim Chief Officer took independent legal advice, as well as legal advice from within the SPA and HR advice. His conclusions are as follows. The financial aspects of John Foley's exit from the SPA are set out in a contractual agreement between him and the SPA, and Mr Foley has a contractual entitlement to be paid the PILON sum agreed. The current position is that the SPA has no option in law but to honour the contract with Mr Foley and that any attempt to reduce the contractual obligation to pay would fail. In addition it is likely that if the SPA were to continue to withhold part or all of the PILON sum any subsequent legal challenge would be likely to result in the SPA being required to pay also legal costs arising from the action in addition to the original full sum agreed. These costs could represent a significant additional proportion of the sum questioned by Audit Scotland (3 months' salary costs equate to approximately £28,333). Given the current position and having reviewed the options available now, I agree that paying the sum agreed is the correct course of action and avoids further financial risks to the SPA, and I have now instructed the sum to be paid to Mr Foley.

Yours sincerely

Susan C. Deacon

Chair,
Scottish Police Authority