

Oversight of Policing in Scotland:

**Independent Review of the Role of the SPA,
The Chair and Members**

August 2020



Scottish Government
Riaghaltas na h-Alba
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OVERSIGHT OF POLICING IN SCOTLAND: INDEPENDENT REVIEW OF THE ROLE OF THE SPA, THE CHAIR AND MEMBERS

Introduction

I was asked by the Scottish Government (Police Division), on behalf of the Cabinet Secretary for Justice, to provide light-touch external advice on the SPA chair and member time commitment. The aim was to address a recommendation in the HMICS Thematic Inspection of the Scottish Police Authority (SPA) which was published in September 2019. The HMICS report said “The Scottish Government and the Scottish Police Authority should undertake an immediate review of the roles of the Chair and Board members in executive work, in line with the principles of good governance empowering the Scottish Police Authority Executive team to assume operational management of the organisation.”

“The consultation will provide independent external assurance and advice to the Scottish Government concerning the legitimate scope and time commitment required of members of the Scottish Police Authority Chair and Board members. The consultation will comprise initial desk-based research, followed by consultation with selected relevant stakeholders.”

There was a concern about whether the Board Members had become involved in operational management which should be the responsibility of the executive team of the SPA. My review was intended to provide assurance and advice to the Scottish Government about the appropriate scope of work and time commitment required of Members of the SPA.

I have read and considered many relevant documents, and I have had discussions by telephone with the interim Chair of the Board, each of the current members of the Board, the Chief Executive, the Chief Constable of Scotland, Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS), the Auditor General for Scotland (AGS), senior officers and staff in the Police Service of Scotland, the senior executive officer in the SPA charged with providing support for the Board and also with the Director General Education, Communities and Justice, the Director for Safer Communities and the Deputy Director of Police Division in the Scottish government. I have also had a conversation with Dame Elish Angiolini DBE QC who is conducting an independent review of complaints handling, investigations and misconduct issues in relation to policing. I am most grateful to everyone who so willingly gave of their time to speak with me.

In September 2019 HMICS published a Thematic Inspection of the Scottish Police Authority. This extensive, detailed and evidence based report contained 14 recommendations on which action continues to be undertaken. It is inappropriate for my limited review to attempt to go over the same ground in any detail, although some of my comments reinforce the findings of the HMICS review in relation to the roles of the Chair and Members of the SPA

My review does not consider any matters relating to the review by Dame Elish Angiolini or the work of the Police Investigations and Review Commissioner (PIRC)

Oversight and governance system

The oversight and governance of police in Scotland involves the SPA, HMICS, the AGS supported by Audit Scotland, the Police Investigations and Review Commissioner (PIRC), the Information Commissioner's Office (ICO) and the Health and Safety Executive (HSE). Each of these bodies, with the exception of the HSE, is accountable either to the Scottish Government, or to the Scottish Parliament, or to both. Within the Scottish Parliament, the Justice Committee and Justice Sub-Committee on Policing considers and reports on the operation of the Police and Fire Reform (Scotland) Act 2012 as it relates to policing, and the Public Audit and Post Legislative Committee considers issues arising from the audit of the Scottish Government and the accounts of public bodies, scrutinises their financial performance, and examines the economy, efficiency and effectiveness of the public sector. There are other bodies which have specific roles to scrutinise specialist areas of policing, such as counter terrorism and other activities.

This is a structure which requires a clear and settled view about the role of these bodies and how they relate to each other. In order to add the greatest public value, each of these bodies must have legitimacy and support for their roles, and the operational capability to deliver what is expected. However, there are differences of perception and opinion about some of the boundaries between the organisations, their respective responsibilities, and how they each deliver public value. These differences are evident from reports of the Justice Committee, its Police Sub Committee and the Public Audit and Post Legislative Scrutiny Committee, and also from remarks made to me during my investigation.

Without an agreed and settled view regarding respective roles and capabilities, there is scope for uncertainty about the legitimate role and required capabilities of the SPA Board and its Members. In my report, I am therefore providing comments on the underlying issues of roles and capabilities which significantly affect the roles of Board Members.

The main statutory functions of the SPA are set out in section 2 of the Police and Fire Reform (Scotland) Act 2012 (the Act). The central purposes of the Act were to create a system of policing in Scotland which is efficient and effective and suited to the challenges of the twenty-first century, to establish an effective system of oversight and governance which safeguards the

operational independence of the Chief Constable of Scotland and to protect policing from political interference.

The functions of the SPA include maintaining the Police Service of Scotland, promoting and supporting continuous improvement in the policing of Scotland, keeping the policing of Scotland under review, and holding the Chief Constable to account for the policing of Scotland. The Authority also provides forensic services to the Police Service, the PIRC and the Lord Advocate and Procurators Fiscal. It is responsible for dealing with complaints against the police and for independent custody visitors

The SPA must produce a strategic plan and also scrutinise the Annual Plan produced by the Chief Constable. It must produce an annual report. This must include an assessment of the performance of the Police Service of Scotland and it is the responsibility of the SPA to develop a national policing performance framework. HMICS has the power to conduct inquiries about the efficiency and effectiveness of both the SPA and Police Scotland and must publish a plan relating to planned inquiries and how these will be conducted.

In other public bodies in Scotland, the board is part of the organisation with direct responsibility for all aspects of the budget and performance of the organisation. The SPA Board is different from other public bodies in Scotland in one unique and important respect. The Board is not part of Police Scotland, although Police Scotland controls and spends most of the policing budget. The SPA Governance and Accountability Framework Document sets out how the Authority operates and defines key roles and responsibilities which underpin the relationship between the Authority and the Scottish Government. These arrangements for the oversight and holding to account of the Police Scotland are central to ensuring that all operational policing matters are shielded from undue political intrusion.

The Members of the SPA have a legitimate and very important role in the complex, high-profile system of oversight and governance of the police service in Scotland, and they are expected to take clear strategic roles and to have a close engagement with the executive which is more extensive than in many other public bodies.

The role of the Accountable Officer

The Permanent Secretary of the Scottish Government is the Principal Accountable Officer and designates the Chief Executive of the SPA as the Accountable Officer (AO) of the Authority. In this role the Chief Executive is answerable to the Scottish Parliament and must ensure the propriety and regularity of the Authority's finances and must ensure that the resources of the Authority are used economically, efficiently and effectively. These important responsibilities are exercised by the Authority's Chief Executive and they do not rest with the Chief Constable who is responsible for spending the allocated budget on operational policing. Since the Chief Executive sits outside Police Scotland, there are particular challenges for the post holder in

fulfilling the role of AO, although the Chief Financial Officer has a reporting line to the Chief Executive of the SPA as well as to the Chief Constable.

The Joint Strategy for Policing (2020) was prepared jointly by the SPA and Police Scotland. In this strategy report there is the suggestion that “complex governance structures inhibit dynamic decision making, effective responses and the delivery of improvements.”

In my discussions it became clear that some people hold the view that the AO responsibility should rest with the Chief Constable rather than with the Chief Executive of the SPA. In September 2019, HMICS published a Thematic Inspection of the SPA which covered this issue in some detail. The report provides examples of jurisdictions where the Chief Constable has or shares the AO responsibility, notably in Northern Ireland where there is the Police Service of Northern Ireland and the Northern Ireland Police Board. In the opinion of HMICS, there are not insurmountable difficulties and the arrangement does not compromise the operational independence of the Chief Constable.

The view held by some is that the Chief Constable is responsible for spending almost all of the total resources in excess of £1B and therefore should be designated as AO in respect of this budget. The view is that the Chief Constable is spending the money and therefore should be directly accountable for the decisions taken. It is also suggested that there would be efficiency gains, because the Police Scotland would not require to seek formal approval from the SPA for its spending proposals, and it is argued that it would promote a clearer understanding in Parliament and across Scotland about policing strategy and spending decisions.

However, a change in the AO arrangements would lead to the Chief Constable, or a senior designated officer of Police Scotland, having a direct accountability to the Permanent Secretary in the Scottish Government and to the Scottish Parliament. It would alter significantly the role of the SPA. By constraining the legitimacy of the SPA such a change might put at risk the Authority’s ability to oversee effectively the performance of Police Scotland.

There could be a significant risk of compromising the operational independence of the Chief Constable and it would involve replacing the 2012 Act by new legislation, embedded in which would be a very different role and more constrained role for the SPA and for the Members of the Authority.

I consider that the balance of argument is in favour of retaining the current arrangement because it safeguards the operational independence of the Chief Constable and Police Scotland and ensures the legitimacy and capacity of the SPA to hold Police Scotland to account. The SPA currently has a strong board with a good breadth of knowledge and expertise, and there is a strong and effective leadership team now in place in Police Scotland. Although it is widely accepted that in the past the system has not always worked as well as it should, I consider that significant improvements have been made over the

past year and there is evidence of improvement described in the HMICS Thematic Inspection of the SPA.

The SPA has been working to improve its arrangements for the oversight of policing, starting with a report prepared in 2019. That report describes in detail the processes in place to provide oversight and the improvements required. It is not appropriate for me to engage with this work in any detail, but it seems to me that some further improvements in working arrangements should be made if the current oversight of Scottish policing is to be made more efficient effective and transparent.

In the rest of my report I suggest changes which could strengthen the working relationships between Police Scotland the SPA and HMICS, without compromising either the operational independence of the Chief Constable or the ability of the SPA and HMICS to report independently on the performance of Police Scotland. These changes are similar to some of those recommended by HMICS but I have concentrated on those which could help to clarify and support the roles of Members of the SPA. They would bring about a greater similarity between SPA and other large public sector boards in Scotland, but as explained earlier, the Board Members must have strategic and oversight roles which involve engaging closely with Police Scotland. My suggested changes cover support for the Board, co-operation and joint planning between the SPA and HMICS, greater clarity in strategic reports and annual reports, accountability to elected representatives, the governance and representative roles of Board Members of the SPA, and the time commitment and allowance system for Members.

Support for the Board of the SPA

The Authority currently has very limited staff resources at its disposal and at the same time, there is a concern within Police Scotland, that reports on significant issues such as business plans and spending proposals are at risk of double handling, firstly by staff within Police Scotland, and then by committees of SPA, notably by the Resources Committee. There is a risk that this arrangement could sometimes be inefficient, but the view of the interim Chair of the SPA is that there is not currently a problem in this area. If a draft business case presented by Police Scotland is in need of improvement, then there would be a need for Police Scotland to provide more information to the SPA.

There is a large number of corporate support staff delivering the finance, HR, IT and estates functions, all of whom are located in Police Scotland. The SPA, in contrast, currently has fewer than 40 staff in total. Under the current arrangements, the Authority has very limited capacity, given the wide ranging responsibilities which it carries. I suggest that the scheme of delegation should give explicit authority to the senior staff of Police Scotland to undertake spending up to a specified limit. Beyond that limit, Police Scotland should engage with relevant committees of the SPA in the early stages of project planning to ensure that the Authority has a well-informed understanding of all major projects and to ensure that proper gateway reviews are undertaken. In

addition, the aims would be to remove the risk of inefficiency caused by the double handling of projects, and to use the expertise of Members of the SPA through the appropriate committees to examine and test business plans before they are presented to the Authority for final decision.

The SPA Committees should ensure that their challenge function is exercised from a strategic viewpoint, and that requests for information are targeted and proportionate. The opportunity cost of information requests, which can be high, should be considered before requests are made.

Senior support staff located in Police Scotland should have an explicit duty to support and make reports to the SPA as well as a duty to provide high quality services to Police Scotland. Their performance should be assessed jointly by the Chief Constable and the Chair of the SPA, advised by the Chief Executive, against both these duties. This is a form of matrix management which is common in large organisations.

For these arrangements to work well, there must be a culture of openness, transparency, trust and mutual respect in both Police Scotland and the SPA. There is a widely held view that the finance function is now a good example of matrix management which is held in high regard by everyone.

The Chief Executive of the SPA and the Deputy Chief Officer in Police Scotland, who leads most of the support services, should be seen as having a key role in jointly leading and developing the culture of openness, transparency and trust. They should work together to ensure that the arrangements are working efficiently and effectively. The Deputy Chief Officer should be seen as having a key role in supporting the Chief Executive of the SPA. For all practical purposes, the Deputy Chief Officer and the Chief Executive should be seen as having joint responsibility for the AO statutory duty although the Chief Executive formally signs off the accounts and assurance documents.

The internal audit function is a vital resource in all public bodies, providing assurance on the probity and propriety of public spending. Through the programme of internal audit reports, internal audit can give assurance to audit committees and boards on risk management, efficiency and effectiveness. The internal auditor is a resource for both the SPA Audit Committee and Police Scotland. The Audit Committee of the SPA must continue to have responsibility for approving the annual audit plan and should as far as possible agree the content of the plan with Police Scotland.

The SPA Board and its Chief Executive, as the AO, require the support of expert strategic advice and also an adequately resourced secretariat to administer and advise on the business of the Board and its Committees. It appears from my conversations with Board Members and others that the Committees need a strong clerking function which is not adequate at present. I understand that the SPA is currently considering proposals to strengthen corporate support services. I suggest that the SPA should perhaps have a

budget to enable it to commission research which is not readily available from internal audit and other scrutiny bodies such as HMICS or Audit Scotland.

If these improvements were to be made, then the SPA would have an enhanced capacity and legitimacy to undertake its role. The roles of the Board Members would be more clearly defined and would more closely resemble the roles fulfilled by non-executives in other large public bodies.

Co-operation and joint planning between the SPA and HMICS

The SPA and HMICS have distinct and complementary roles in the oversight of Police Scotland. The SPA is responsible for promoting the improvement of policing in Scotland and for holding the Chief Constable to account for police performance. In fulfilling these statutory responsibilities, the SPA is reliant on HMICS for expert advice on operational policing. HMICS shares its scrutiny plan with the SPA and many others. I suggest that co-operation and joint forward planning between the SPA and HMIC might be further strengthened, with a sharing of forward work programmes and an enhanced opportunity for the SPA to suggest areas of investigation and analysis which might be undertaken by HMICS. Greater co-operation would not constrain the independence of HMICS, who would continue to decide on the programme of inspections and the content and conclusions of all inspection reports. These arrangements would strengthen the efficiency and effectiveness of the system of oversight and governance of Police Scotland. In particular, I suggest that HMICS might consider providing the SPA with performance metrics against which to hold Police Scotland to account over time.

The SPA and Police Scotland acknowledge that in the past there have been inadequate performance measures and performance reporting. This has been recognised as a weakness and the Authority is taking steps, through its Strategy, Policy and Performance Committee, with the support of Police Scotland, to improve its capacity for evidence-based performance reporting. There may be a case for more thematic inspection reports containing performance standards for policing in Scotland. HMICS recognise that they could do more work to help comparisons with other forces. HMICS does not consider that it should be comparing the performance of the local area divisions within Police Scotland. I would encourage Police Scotland to consider whether this is an area of work where more could be done. The SPA could then monitor and report on police performance against the standards recommended by HMICS and using improved performance information provided by Police Scotland. This should strengthen the quality and impact of SPA reports.

Audit Scotland has the legitimacy and capacity to keep under review the effectiveness of the whole system of oversight of policing in Scotland and should be encouraged to prepare overviews and Best Value audits from time to time.

Greater clarity in strategic reports and annual reports

With the AO responsibility resting with the Chief Executive of the SPA, joint strategic planning and annual reporting by the Chief Constable and the SPA are a necessary part of the statutory arrangements. However, it is not always clear in these reports that the SPA is a separate body with a distinct and important role in the oversight and governance of policing in Scotland. Reports could explain more clearly that the Chief Constable supported by Police Scotland is responsible for drafting the strategy for operational policing. It is the Chief Constable who carries the operational capabilities and legitimacy to prepare the policing strategy. The SPA has the duty and the power to scrutinise the performance of the police service, commenting on draft reports, and the Authority is responsible for approving the policing strategy and the draft budget before submission to the Scottish Government and the Parliament. These distinct roles are not always clear in joint strategic planning and annual reports.

Having exercised its scrutiny function, once the SPA is satisfied with budget proposals, it should be encouraged to say so in public and in Parliament. In its Thematic Inspection report, HMICS welcomed clear statements made by the Chair of the Authority in 2019 about the demands and funding challenges faced by policing. The SPA's statutory duty to maintain policing in Scotland is not inconsistent with its scrutiny role. The further improvements in joint working which I have suggested would not compromise the operational independence of Police Scotland but they could enhance the ability of the SPA to hold Police Scotland to account.

Accountability to elected representatives

All these bodies involved in the oversight of policing in Scotland are accountable to Scottish Ministers and also to the Scottish Parliament. It is very important that elected representatives are provided with rich knowledge and understanding of the challenges facing the police service and the work of Police Scotland, but at present MSPs have limited opportunity to be fully briefed about the strategy for the future direction and priorities for policing.

Accountability to Parliament could be further improved by regular meetings, at least annually, between the Justice Committee (or the Police Sub Committee) and the SPA Members along with Police Scotland senior staff. At these meetings the SPA and Police Scotland could jointly describe the strategy for policing and the SPA could outline its forward plan for reviewing and reporting the performance of Police Scotland. This discussion should never be permitted to stray into operational policing matters.

Once it is clear that these arrangements are working well, the Scottish Parliament might wish to review the role of the Justice Sub-Committee on Policing to ensure that it complements the role of the SPA and that there is no overlap of activities

Both the Chief Constable and the SPA are very committed to ensuring that accountability extends to local communities, notably through the Divisional Police Commanders and local authorities. An arrangement similar to that suggested for the Justice Committee and the Police Sub-Committee could be put in place with the Convention of Scottish Local Authorities (COSLA).

The governance and the representative roles of the Board Members of the SPA

The vital role of the Authority in its oversight of policing in Scotland encompasses the core governance functions of legality, probity, finance, audit, HR, IT, estates, risk and performance. The Board requires a range of people with the appropriate skills and experience to exercise these functions, including Members with a background in policing and a knowledge of IT and cyber security issues. It is generally recognised good practice to have governance boards of around ten people. Although larger boards can become unwieldy and require strong chairing skills, they are often found in the public sector because of the requirement to be representative of the constituency of interests.

The SPA also has a representational role - the Authority should as far as possible reflect the diversity of the society and communities in Scotland. In the recruitment of members of the SPA board, there has been an attempt by the Scottish Ministers to ensure representation from diverse communities in Scotland, but the current membership of the Board is drawn mainly from Edinburgh and the surrounding area. It is lacking in representatives of many groups, such as rural Scotland, the disabled, people from diverse ethnic groups and also people with experience of living or working in disadvantaged communities.

If the Board were to operate with a full complement of 15 Members, it might perhaps be possible to deepen the understanding of the issues facing diverse groups in Scotland, notably BAME groups and disability groups, and to strengthen links with the diverse communities which are served by the thirteen police divisions. It is generally recognised that the SPA should have a good appreciation of the issues and priorities of local policing in different parts of Scotland.

The time commitment and allowance system for Members of the SPA Board

Under the current guidance, Board Members are expected to work five days a month on SPA matters. Many of the members have said that from time to time they work for longer than the indicative days for which they are remunerated, and they do not always claim for the extra hours worked. Concerns were also expressed that payment could be claimed only for attendance at board and committee meetings, with no allowance for other discussions or for the extensive preparatory reading which is often required, or for participation in special working groups which are set up from time to time. As an example, I was informed that the Resources Committee normally

lasts for a full working day and requires a great deal of prior reading. There is not generally a recognition of travel time in the current system of allowances, although travel costs are reimbursed. The extra time commitment for some members can be significant. For example, one current member of the board lives on the island of Mull and on an exceptional basis, this is recognised in the allowance system. A striking feature of the work of Board Members is the requirement that they should lead or participate in working groups set up to deal with significant issues, such as the response by the Police Scotland to the challenges of the Covid-19 epidemic and preparations for the policing the major climate change conference which is due to be held in Glasgow in 2021.

There was a clearly expressed view amongst Board Members that the current allowance system based on time recording is inefficient, onerous and did not reflect how the Members undertake their roles in practice. I suggest that the allowance system should be replaced by a system of annual salaries for Board Members. There should be an indication of the time commitment which would be reasonably expected from each board member, but there would be a clear expectation that Members should devote whatever time is required, with a recognition that the actual days and hours worked might fluctuate from one month to another.

The SPA has a very important, high profile role in the oversight of policing in Scotland, located between the Scottish Ministers, the Parliament and the Chief Constable. The role of Members, including the Chair, is complex and demanding. This should be reflected in the payments system which must be widely seen as appropriate, reasonable and affordable.

Conclusion

The SPA is charged with maintaining the police service of Scotland, and at the same time, holding the Chief Constable to account. Some have argued that the governance and accountability arrangements are flawed and in need of further reform. I do not believe this is the case at this time. After years of instability, significant improvements are being made. The Chief Constable has built a strong and very capable senior leadership team and the SPA has a strong Board populated with people with the right range of skills and experience to improve the Board's effectiveness, supported by a recently appointed Chief Executive who is held in high regard by the Board.

The changes which I have suggested are generally in accordance with those in the HMICS Thematic Inspection report. They would clarify and reinforce the roles of the Chair and Members of the SPA. They could be made within the current legal framework if there is culture of openness, transparency and trust, with a recognition that everyone involved is personally committed to the good policing of Scotland.

I suggest that a Memorandum of Understanding might help to confirm and clarify the roles and relationships expected of all the organisations involved in police governance.

Audit Scotland should be invited in two years' time to review the operation of the governance and accountability arrangements.

Robert Black

June 2020



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-958-9 (web only)

Published by The Scottish Government, August 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS752926 (08/20)

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