



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 20 April 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 20 April 2017

CONTENTS

	Col.
INTERESTS	1
ACTING CONVENER	2
DECISION ON TAKING BUSINESS IN PRIVATE	3
SECTION 22 REPORT	4
“The 2015/16 audit of the Scottish Police Authority”	4
SECTION 23 REPORT	39
“i6: a review”	39

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
10th Meeting 2017, Session 5

CONVENER

*Jackie Baillie (Dumbarton) (Lab) (Acting Convener)
Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Monica Lennon (Central Scotland) (Lab)
*Alex Neil (Airdrie and Shotts) (SNP)
*Ross Thomson (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Flanagan (Scottish Police Authority)
John Foley (Scottish Police Authority)
Paul Johnston (Scottish Government)
Don McGillivray (Scottish Government)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 20 April 2017

[The Deputy Convener opened the meeting at 09:00]

Interests

The Deputy Convener (Liam Kerr): Good morning and welcome to the 10th meeting in 2017 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone to switch off electronic devices or switch them to silent mode so that they do not affect the committee's work.

I welcome our new committee members, Jackie Baillie and Willie Coffey. I invite you both to declare any relevant interests.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Thank you, convener, but I have no interests to declare, other than those already entered in the register of interests.

Jackie Baillie (Dumbarton) (Lab): I have no particular interests to declare for the purposes of the committee, but I refer members to my entry in the register of interests.

The Deputy Convener: Thank you.

Acting Convener

09:00

The Deputy Convener: Our second agenda item is the appointment of an acting convener to the committee. The background to and procedure for the process are explained in committee paper 1.

The Parliament has agreed that only members of the Scottish Labour Party are eligible for nomination as acting convener. I invite members of the Scottish Labour Party to nominate a member from their party for the post of acting convener.

Monica Lennon (Central Scotland) (Lab): After careful consideration, I nominate Jackie Baillie.

Jackie Baillie was chosen as acting convener.

The Deputy Convener: I congratulate Jackie Baillie on her appointment. I will suspend the meeting briefly so that she can assume the chair.

09:01

Meeting suspended.

Section 22 Report

09:01

On resuming—

Decision on Taking Business in Private

The Acting Convener (Jackie Baillie): I thank colleagues for appointing me as acting convener, after due consideration. I look forward to working with you all over the coming months.

Agenda item 3 is on taking business in private. Do members agree to take items 6 and 7 in private?

Members *indicated agreement.*

“The 2015/16 audit of the Scottish Police Authority”

09:02

The Acting Convener: The first substantive item on our agenda is further oral evidence on the Auditor General for Scotland’s report “The 2015/16 audit of the Scottish Police Authority”. I welcome to the committee John Foley, chief executive of the Scottish Police Authority, and Andrew Flanagan, chair of the board of the SPA. I also welcome, from the Scottish Government, Paul Johnston, director general learning and justice, and Don McGillivray, head of the police division.

The committee will be aware that we took evidence on the audit on 2 March 2017. Members discussed a variety of governance issues affecting the SPA and we also discussed those separately with the SPA and Scottish Government officials. At the time, Mr Johnston said to the committee:

“Those are matters that will be discussed further between the Scottish Government and the Scottish Police Authority in the coming days.”—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 2 March 2017; c 50.]

We look forward to hearing the outcome of those discussions. Since then, as set out in the papers and in the media, various other criticisms have been expressed about governance at the SPA, some as recently as today.

There will be no opening statements, so I move straight to questions.

Alex Neil (Airdrie and Shotts) (SNP): I want to address the issue of the letter dated 9 December 2016 from Derek Penman, Her Majesty’s chief inspector of constabulary, to Andrew Flanagan, chair of the board, in which Mr Penman makes a number of substantive points about the governance of the SPA. When was the letter dated 9 December circulated to the board?

Andrew Flanagan (Scottish Police Authority): I do not think that it has been circulated to the board.

Alex Neil: It has not been circulated to the board. The letter is from the chief inspector of constabulary about the governance of the SPA, in which he makes substantial points. He specifically says:

“I accept that it will properly be a matter for the Board to approve the Corporate Governance Framework and my comments are intended solely to inform members ahead of their decision next week”,

which was five days after the letter was sent. Why was the letter not circulated to the board?

Andrew Flanagan: That was because the issues themselves had been well trailed and were well known. Derek Penman's position on those matters had been expressed to members of the board and so was known. Therefore, I did not think it necessary to circulate the letter itself.

Alex Neil: It is not within your remit to make a decision like that. Under the guidelines and under statute, every board member is entitled to know what the chief inspector of constabulary says. Those were substantive points that, in many respects, were very critical of the governance review. Surely to goodness the letter should have gone to every board member before the meeting in December.

Andrew Flanagan: As I have said, the board members were already aware of the comments that Derek Penman expressed. That had been discussed at our meeting on 5 December and a number of the matters had been covered at that point.

Alex Neil: I find that very unacceptable indeed. It breaches every rule in the book about the role of a chair, particularly of a public organisation, and about the issuance of letters to board members. Every board member should have had a copy of that letter and it should have been discussed at that board meeting in December. You are not running the Kremlin; the SPA is supposed to be an open public body in which you are accountable to the board members. The view of the chief inspector, who has statutory responsibility for such matters, as it was set out in that letter, should clearly have been sent to every board member.

Andrew Flanagan: The letter was addressed to me and I believed that the matters had already been covered by the board and that members were aware of them.

Alex Neil: It was addressed to you, but Mr Penman said clearly that he wanted the letter to go to every board member. He specifically said that the letter was to inform board members at their meeting next week before they reached any decisions, but you took a unilateral decision not to circulate that to board members.

Andrew Flanagan: Yes, I did. As I said, the contents of it were well known to board members.

Alex Neil: That is not the point. The letter should have been circulated.

Mr Foley, did you know that it was not being circulated to board members? Did you see the letter?

John Foley (Scottish Police Authority): I do not recall seeing it at that particular point in time.

Alex Neil: So the chief executive did not see the letter either.

John Foley: I may have seen it, but I do not recall it.

Alex Neil: You may have seen it. It is a very important letter from the chief inspector of constabulary. Either you saw the letter before the meeting or you did not. Yes or no, did you see the letter before the board meeting?

John Foley: I am telling you that I do not recall seeing it. I recall having conversations with Mr Penman around that time and him expressing his views to me clearly. Having seen the letter and read it in recent days, I find that it is in accord with a conversation that I had at the time, in which Mr Penman expressed his views.

Alex Neil: So you have seen the letter only in recent days.

John Foley: No, I do not recall seeing it at that point in time, but I might have seen it. A large number of letters come through my office. I just do not recall seeing that one.

Alex Neil: To be honest, given the three years of failure at the SPA, I find it hard to believe that its chief executive does not recall seeing a letter of that importance and with those contents. You do not recall whether you saw it. You are the chief executive and the accountable officer.

John Foley: Mr Neil, I cannot tell you that I did if I do not recall it, and I do not recall it.

Alex Neil: Presumably, every time that you receive a letter, it is date stamped. Is that correct?

John Foley: They usually come in via email. That letter is not addressed to me. I am saying that I might have seen a copy of it. It might have been sent to me; I do not know. I do not recall it, but I did not see an original letter that came in at that time, addressed to the chair.

Alex Neil: Right, so the chief executive did not see the letter—or does not recall doing so. Mr Johnston, when did you become aware of the letter?

Paul Johnston (Scottish Government): I cannot give a specific date when I was aware of the letter. I have discussions with Derek Penman, as chief inspector of constabulary, and I have certainly been aware of some of the concerns that he has had and of the issues that he has raised with the SPA. Indeed, he will shortly undertake a full inspection that will cover those matters. Don McGillivray might wish to say more about the sequencing of when the Scottish Government received particular pieces of documentation.

Don McGillivray (Scottish Government): I saw the letter at the time. The Scottish Government received it at the time, as a courtesy side copy, in hard copy from Derek Penman, on

an informal basis. It was passed to me very informally, as a hard copy.

Alex Neil: We learned from this morning's *Herald* that the Scottish Government gets a copy of all the board papers before each board meeting. Is that correct?

Don McGillivray: Generally, yes.

Alex Neil: Generally. So you would have picked up that the letter was not in the board papers.

Don McGillivray: Yes, we would have been aware of that at the time.

Alex Neil: Did you mention it to Mr Foley or Mr Flanagan? The letter was clearly intended for every SPA board member. Did you draw to their attention the fact that it had not been circulated?

Don McGillivray: I think that we would have regarded that as a matter for the chair to decide on.

Alex Neil: You would have regarded that as a matter for the chair.

Don McGillivray: Yes.

Alex Neil: The SPA was under attack, as it has been—rightly—for the past three years for incompetence after incompetence, including, it would appear, trying to cover up forcing a board member to resign, and yet you did not think that it was important that the letter from the chief inspector had not been circulated to board members.

Don McGillivray: I am clear that the decision on which papers go to the SPA board is for the chair to make.

Alex Neil: Yes, the decision is for the chair. However, in your role as head of police in the Scottish Government, did you not draw attention to the fact that the letter had not been circulated?

The letter clearly states that it should go to board members. You knew that it had not gone to board members, because you get the board papers but, despite the importance of the contents, you did not speak to Mr Flanagan or Mr Foley and say, "Would it not be wise to make sure this letter goes to board members?"

Don McGillivray: Again, I would not have seen that as the role of Government. At the time, I would have seen that as the role of the chair.

Alex Neil: Why, then, do you get the board papers?

Don McGillivray: We get the board papers primarily for information. It is simply to make the Government aware of issues that are coming up at the board.

Alex Neil: And you never comment to the board, the chair or the chief executive on the board papers before they go to the board.

Don McGillivray: We occasionally make comments on the papers, but that is usually on matters of factual accuracy more than anything else.

Alex Neil: Nobody in the civil service thought that, given the controversies, it might be a good thing for the chief inspector's letter to go to board members. Nobody thought to mention it.

Don McGillivray: Again, I would see a difference in the functions of the Government and the SPA in that respect. I am pretty clear that, under the governance framework that exists between the Government and the SPA, it is for the chair and the chief executive to decide on what papers go to the board.

Alex Neil: It is very clear in the rules, however, that a letter such as the one from Mr Penman has to go to board members specifically. The chief inspector asked for it to go to board members, but nobody thought to make sure that the rules were kept to.

Anyway, we will move on to the letter's contents. Can I go through some of the contents, convener?

The Acting Convener: Of course.

Alex Neil: The second paragraph of the letter from Derek Penman, the chief inspector, says:

"I ... understand that the framework has been discussed in private session with members and will be formally agreed at next week's Board meeting."

Why are these things discussed only in private session and then formally nodded through at board meetings? That is not what the board is there for. The board is there to hold to account you, Mr Flanagan, as the chair; the chief executive; and Police Scotland. That has to be done openly and transparently.

It seems to me that the letter clearly indicates that a lot of the discussions and decisions are effectively being made in private and nodded through in public. The public does not see what is going on or what the discussions are or anything like that.

Andrew Flanagan: I do not think that that is how it works. A draft was circulated to the members' meeting at the time, I believe, and it was discussed, but decisions were not made at that point. The decisions were made at the board meeting.

Alex Neil: Yes, but it was nodded through at the board. My understanding is that there is a pre-meeting before the board meetings. Is that right?

Andrew Flanagan: There is a very short meeting before the board meeting actually starts.

Alex Neil: Who is at the pre-meeting?

Andrew Flanagan: The board members.

Alex Neil: All of them?

Andrew Flanagan: Yes.

Alex Neil: Is there a record of what is discussed at the pre-meeting?

Andrew Flanagan: No.

Alex Neil: Why not?

Andrew Flanagan: It is only preparatory for the full meeting.

Alex Neil: Why is there no record of it?

Andrew Flanagan: As I say, it is only preparatory. It is simply to say, "Here's the agenda—is there any comment on any of the papers, or any short updates that might have arisen since the papers were issued?"

Alex Neil: So you are saying that something as important as the governance arrangements for the SPA were discussed at a short pre-meeting of which no record was taken. After that discussion, the matter then went to the board to be nodded through.

Andrew Flanagan: I do not think that the governance arrangements were discussed at the pre-meeting.

Alex Neil: The letter from Mr Penman says:

"I now understand that the framework has been discussed in private session".

If it was not discussed at a private pre-meeting, what private session was it discussed at?

John Foley: Perhaps I can be helpful here, Mr Neil. My understanding of the content of Mr Penman's letter is that the framework documentation and associated documents had been discussed in private session, which is a private members' meeting that takes place every month, and—

Alex Neil: Is that in addition to the pre-meeting?

John Foley: Yes—it is in addition to the pre-meeting.

09:15

Alex Neil: You referred to a private meeting of members. Does that include every board member?

John Foley: Yes.

Alex Neil: Is there a record of the meeting?

John Foley: Yes.

Alex Neil: Where are the records? Are they published?

John Foley: The records for the members' meeting are not published.

Alex Neil: Why are they not published?

John Foley: We never publish the—

Alex Neil: But why are they not published?

John Foley: Well, the session is regarded as a meeting at which members can speak freely about matters that are appropriate to the authority. It covers a range—

Alex Neil: In other words the governance issues and the recommendations are all dealt with behind closed doors.

The First Minister said in Parliament that the Scottish Police Authority must take heed of the recommendations on governance and of the comments on the review from the chief inspector and the Auditor General. However, you have a private meeting, with no public present, no publication of the minutes and no public record, to discuss the very issue of governance, on which the main recommendation is that it should be opened up, transparent and accountable. You go ahead with those meetings behind closed doors, with no access to the public—without even telling people that those meetings are taking place—and you call that open governance and transparency.

John Foley: I have to say that, at the meetings at which governance was discussed, the governance documentation was at that point very much a working draft.

Alex Neil: It does not matter—it should be discussed in open session.

John Foley: People must be able to get to a position where there is an acceptable governance document that is fit for purpose. I will add some clarity that might be helpful. We started the process a while back. The first draft of the governance documentation was very thick, and we had to distil it down to get it into a proper document. We had to have those discussions among the members and other people who were working on it to get to that point. That is the way in which those discussions operate—

Alex Neil: Will you now publish the minutes of those private meetings?

John Foley: I would need to check that they are still available.

Alex Neil: What? You will need to check that they are still available?

John Foley: Yes.

Alex Neil: For goodness' sake, you are the chief executive, so surely you keep a record of every minute taken of every meeting. Mr Flanagan, as chair, do you still have your record of those private meetings?

Andrew Flanagan: I do not hold them, but they will exist.

Alex Neil: They will exist.

Andrew Flanagan: Yes.

Alex Neil: The chief executive says, "I don't know if they still exist," and you, as the chairman—although you do not hold the minutes—say that they do still exist.

Andrew Flanagan: I would expect them to exist.

Alex Neil: So which is it? Who is right? Do they still exist?

John Foley: There will be a record of them, yes.

Alex Neil: You just said that you did not know.

John Foley: No—I said that I would need to check whether they are still available, because they are not published minutes, so elements of them may not be there. I have not checked, as I have had no reason to do that, so I would need to check.

Alex Neil: Convener, I strongly suggest that the committee asks for a copy of the minutes of every private session held in respect of governance and of any other related matters that should be in the public domain, and that in future those private meetings should be opened up to the public, unless there is something of obvious import, such as a terrorist matter, that requires a private meeting.

Something as basic as governance is being decided on behind closed doors, to be nodded through by the obviously compliant non-executive members of the SPA without any of them saying a dickie bird about it, and we are all supposed to accept that as a good example of open, transparent governance.

What is Paul Johnston doing about this?

Paul Johnston: So—

Alex Neil: Surely you do not find that acceptable.

Paul Johnston: The committee is raising significant issues that I recognise need to be dealt with.

Alex Neil: Why have you not dealt with them before now? Why have you allowed this? Were you aware of those private meetings?

Paul Johnston: I am absolutely aware that there is a range of meetings—

Alex Neil: Were you aware of the private meeting? Yes or no?

Paul Johnston: I am not aware of all the private meetings that take place within the Scottish Police Authority.

Alex Neil: Were you aware of the private meeting on governance?

Paul Johnston: No.

Alex Neil: You were not aware of that.

Paul Johnston: I do not get a detailed account of every private meeting that is held by SPA members. It is very important that we recognise some of the history around governance—

Alex Neil: We know the history—it has been going on for three years.

Paul Johnston: I refer specifically to the governance review of policing that the Cabinet Secretary for Justice asked Andrew Flanagan to undertake shortly after he took office. The review is in the public domain. It was published around a year ago and contains 30 recommendations.

Alex Neil: We know all that. That is history. I want to know about the private meeting on governance. You did not know that it was taking place. Is that right?

Paul Johnston: What I have said is that I do not have an account of all private meetings.

Alex Neil: Answer my specific question. Forget the civil service nonsense. Did you know in advance that the private meeting that Derek Penman referred to in his letter was taking place?

Paul Johnston: No.

Alex Neil: Did you have the paperwork for that in advance?

Paul Johnston: I do not receive paperwork for SPA private meetings.

Alex Neil: Did your colleagues receive it?

Paul Johnston: Don McGillivray might wish to comment on that.

Don McGillivray: We would have received the agenda for relevant SPA board meetings.

Alex Neil: Was this a relevant SPA meeting and did you receive the agenda for it?

Don McGillivray: We would have received the agenda for all SPA board meetings.

Alex Neil: Does that include those private sessions?

Don McGillivray: Generally, yes.

Alex Neil: Did you get the papers for the private session that was referred to?

Don McGillivray: I think that we almost certainly would have.

Alex Neil: Were you or any of your representatives in attendance?

Don McGillivray: No, we tend not to attend SPA board meetings. We have in the past, but we do not do so now.

Alex Neil: Did you get a copy of the record of the meeting?

Don McGillivray: I do not recall ever seeing a minute of that private session of the meeting, but that does not mean that it was not sent to the Scottish Government at some point.

Alex Neil: Okay, so we have a secret society within the board—not even the full board sometimes, it would appear—of the Scottish Police Authority that decides on the transparency of governance, and the whole thing is done without public knowledge and without people out there being able to hold that board to account. It is all deliberately being done behind closed doors to undermine the very principles of transparency and accountability that the review that the cabinet secretary set up was designed to address. How is that excusable or defensible?

Andrew Flanagan: The discussions were about the detail of how we were going to implement the recommendations in the governance review.

Alex Neil: Do you not think that that is in the public interest?

Andrew Flanagan: It was at quite a detailed level. It did not change the recommendations of the review itself, so those were what we proceeded to implement. I am not sure that it was necessary to discuss them in public.

Alex Neil: If we look at the implementation, we see the recommendations made by Derek Penman in his letter of 9 December. How many of those recommendations have been implemented?

Andrew Flanagan: We have taken into account what he said and other stakeholders have—

Alex Neil: That is not what I asked. I asked how many have been implemented.

Andrew Flanagan: They have not been implemented.

Alex Neil: They have not been implemented?

Andrew Flanagan: No.

Alex Neil: When are they going to be implemented?

Andrew Flanagan: We will take account of the review of the governance arrangements that we have scheduled for June this year to see how the existing arrangements—the ones that we put through in December—are working. We will take account of Mr Penman's views as a central part of that discussion.

Alex Neil: That is the chief inspector who has just about started—he may have started now—his inspection of your governance arrangements. Is that the case?

Andrew Flanagan: He has not started yet.

Alex Neil: Is it right that he is due to start?

Andrew Flanagan: Later in the year, yes.

Alex Neil: You have had the First Minister, the Auditor General and the chief inspector tell you that they do not find the governance arrangements and certain aspects of the recommendations acceptable and that they need to be amended, and you are not going to consider them until at least June this year.

Andrew Flanagan: I have had continuing discussions with the chief inspector and we have agreed when he should schedule the work and what he should do in the review that he says he wants to conduct. He would like to see our review of the governance arrangements taking into account all the evidence and all the views of stakeholders, and being revised and changed in the summer, before he conducts his inspection.

Alex Neil: How did the board members know that when they had not had the letter of 9 December? Are the decisions all being made by you personally, Mr Flanagan?

Andrew Flanagan: No, I have discussed them openly and regularly with the board members.

Alex Neil: The letter could not have been discussed openly, because they never got the letter.

Andrew Flanagan: The contents of it were known to them and they were informed of it.

Alex Neil: The contents were not known. They never got the letter. Did you tell them that there was a letter?

Andrew Flanagan: Yes, and it was actually—

Alex Neil: And no non-executive member asked for a copy of it?

Andrew Flanagan: No.

Alex Neil: You told them that there was a letter. Did you tell them that at the board meeting in December?

Andrew Flanagan: I do not recall if I said it at the December meeting.

Alex Neil: Oh, you do not recall. There must be something wrong with memory around the SPA—everybody seems to have a bad memory. The fact of the matter is that it would appear that SPA members did not know about the existence of the letter at the board meeting in December. Even when they were told, no non-executive member asked for a copy of it. Is that right?

Andrew Flanagan: The existence of the letter was referenced in the Audit Scotland report.

Alex Neil: But nobody asked for a copy of it.

Andrew Flanagan: No.

Alex Neil: That tells us a lot about the board of the SPA. Convener, it is quite obvious that this is a shambles.

The Acting Convener: Thank you, Mr Neil. We move on to Monica Lennon.

Monica Lennon: Thank you, convener. I am still quite stunned by what we are hearing this morning. Can you be clear with us, Mr Flanagan—did you give the letter to anyone else?

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

Monica Lennon: So you kept the letter to yourself.

Andrew Flanagan: Yes.

Monica Lennon: Okay. Do the other witnesses find that acceptable?

Paul Johnston: I think that what we have heard is that other members of the SPA were aware of the chief inspector of constabulary's concerns. In light of what we are hearing, and with the benefit of hindsight, it would have been better if the members of the SPA had had sight of the letter.

Monica Lennon: So you agree that it is completely unacceptable for the chairman to have kept the letter to himself. It is not acceptable, is it?

Paul Johnston: What I have said is that, with benefit of hindsight, it would have been better for members of the SPA to have seen the letter. However, I emphasise—I did not have a chance to finish what I was saying earlier—that the points that were raised by Mr Penman in his letter related to matters that had been made public in the report in March 2016. The report, with its 30 recommendations, included all the points that were subsequently discussed by the SPA board in December. It is important to see those particular issues in their context, which is the significant publicity around the specific recommendations that has been associated with the governance review during the past 12 months or so.

Monica Lennon: The letter identifies a concerning pattern of exclusion. The fourth paragraph on the second page says that it is

“not clear whether you will invite representatives from staff associations and others who may have an interest”.

The letter goes on to say that

“it is not clear whether there would be an invitation for HMICS to attend your committee meetings”.

That feels like exclusion to me. Can you explain that, Mr Flanagan?

Andrew Flanagan: I believe that the letter is wrong in those regards. There is a strong history of the SPA inviting key stakeholders. The chief inspector has a standing invitation to any meeting that he wishes to attend. It may not be explicitly set out in the framework document but the chief inspector attends meetings and the staff associations regularly engage with the various committees of the board.

John Foley: If I could perhaps add some clarity to that, the terms of reference give authority to committee chairs to invite representatives to their committees as they see fit. They could be members of staff associations or other people with expert or specialist knowledge, for example.

Monica Lennon: I do not know Mr Penman but I can only imagine that it must have taken a lot of frustration for him to get to the point at which he felt that he had to put this into a letter. I take the point about standing orders but it sounds like people do not feel welcome or included. Do you recognise that, Mr Flanagan?

Andrew Flanagan: No, I do not.

Monica Lennon: Okay. John Scott QC, who advises the Scottish Government on policing matters, gave a speech to the Scottish Police Federation conference in which he talked about the SPA's

“Failure to formally recognise the valuable input of staff associations”

which

“suggests an inability or unwillingness to listen to comments or criticism.”

Do you understand why those comments would have been made, Mr Flanagan?

Andrew Flanagan: No. I do not understand those comments and I am not aware that John Scott QC has had involvement with the staff associations in the meetings with the SPA. The staff associations and the trade unions regularly meet members of the police authority.

09:30

Monica Lennon: Okay. That is cause for concern because, when the Sunday papers ask, “Is Scottish policing fit for purpose?” we want the committee to get some reassuring answers so that the public can feel safe and reassured. You do not

seem to accept that there is a problem and, if you do not recognise the problems, we cannot find the solutions. You are not concerned by anything that anyone is saying about the governance and transparency of the Scottish Police Authority.

Andrew Flanagan: No, we are concerned and we are listening. A number of representations have been made to us, including by the chief inspector. We set out the process for reviewing the governance to which Mr Johnston referred 12 months ago. I was asked to do that review not because it was perceived that things were working well but because there was a series of issues that we wanted to address.

The review made 30 recommendations, two of which Derek Penman—the chief inspector—has concerns about. A number of the other recommendations have been implemented. As recommended in last March's report, we agreed to review the matter within 12 months and will review it in June this year. We will listen to the concerns that have been expressed.

The governance of policing in Scotland is a work in progress. We are trying to see how it is working and improving. My argument is that it has improved during the past 12 months and we are seeing the benefits of that. There is a much better relationship between the SPA and Police Scotland. There have been a significant number of pieces of joint working such as the contact, command and control—C3—governance review and the creation of the new strategy. That indicates a very different approach in the past 12 months to the one that existed previously.

Monica Lennon: The last time that you gave evidence to the committee, you said that Moi Ali did not communicate her position at the December board meeting ahead of time. However, since then, she has told the committee that she twice “made clear” her

“intention to voice concerns about aspects of the governance review”

to you. Is she right? Would you like to correct your original statement?

Andrew Flanagan: No, I think that she is wrong. I think that she said on a number of occasions that she would support the board although she disagreed with two specific recommendations on a personal level. That is documented in the record of the meeting we had on 5 December.

Monica Lennon: It seems to be a widely held view that Moi Ali has been treated appallingly by the SPA, which means you, in effect. Do you feel any regret? Have you apologised to her?

Andrew Flanagan: In my subsequent letter to Moi Ali, I expressed regret about the timing of my

letter, which was caught up in the Christmas festive period. However, I have no regrets about making the challenge that I put to her.

Monica Lennon: You have deliberately withheld information from your own board. You also sent Moi Ali a private letter criticising her comments at the December board meeting and she received it on Christmas eve, unfortunately, although that was not your intention. Are you not concerned that, when people look at all that together, you will be perceived as a control freak?

Andrew Flanagan: I do not think that information was withheld. I agree that the letter was not copied and, as Paul Johnston has said, in retrospect, perhaps it would have been better to do that. However, the letter's contents were shared with the board, which was aware of the chief inspector's concerns.

Monica Lennon: The committee is not in the mood to play with words. You chose to keep the letter—an extremely serious letter—to yourself. You withheld that information. There is no other way to describe it.

Andrew Flanagan: As I said, the content of what Derek Penman was raising was known to the board. Again, in the meeting of 5 December, Moi Ali talked about the chief inspector's concerns. It was known.

Monica Lennon: How can you possibly be in control of all information that is known to other board members? People can be in a meeting and not paying full attention. Are you expecting that everyone has the same level of information and that you would never have to go back and check that? You are treating the board members like infants.

Andrew Flanagan: I disagree.

Monica Lennon: Of course.

Andrew Flanagan: The items were discussed fully and Derek Penman's reservations about the governance review and those two specific points were understood and noted.

Monica Lennon: Perhaps Paul Johnston can shine some light on this. In his speech at the Scottish Police Federation conference, John Scott QC, who I am sure is known to you, said that

“what has been allowed to develop is extremely unhealthy and must not continue”.

It appears that it is still continuing.

Paul Johnston: When I was last in front of the committee, I indicated that a number of issues had been raised around governance and that we would work with the Scottish Police Authority to seek to ensure that those issues were addressed. It is still

important to address outstanding issues or concerns around governance.

Since we last met, a lot of work has been done. The two key issues that I see as being of real interest are, first, the decision that committee meetings will normally be held in private and, secondly, the timing of when papers are made publicly available. The chair wrote to the cabinet secretary after the last session indicating that those matters would be discussed at the public board meeting that took place in March. A record of that meeting is available.

The publication of papers has been addressed and the papers are now being made available under embargo in advance of the public meetings. The chair could say more about that.

The board members had a discussion about whether they wished the committee meetings to continue to be held in private. The chair might wish to say more about that but my understanding is that the conclusion was that some further work should be done on that matter by one specific member of the SPA, and that work is now taking place. Perhaps, if the member agrees, the chair could say a little bit more about that, because we are looking now at the action that is being taken to address the concerns that have been raised around governance.

Andrew Flanagan: Paul Johnston is right that we agreed to start putting the papers out earlier. That decision was based on a request from a number of stakeholders who felt that they could better appreciate the proceedings of the board meeting if they had a chance to read the papers in advance. We acceded to that request. The papers went out under embargo and that worked well. The board agreed to continue with that practice through to June, when we will do the full review.

David Hume, one of our board members who sat on the reference group for the review of governance, has agreed that he will conduct the review in June. In the meantime, he is drawing up a code or policy on how we exercise openness and transparency. We will consider that at the main meeting.

The board committee chairs agreed to look at the schedule of business for the forthcoming meetings and to make more explicit their welcome to various stakeholders to come to present evidence to the committees as appropriate.

Monica Lennon: I am certainly pleased to hear that the papers are now available in advance. How many days before each meeting are the papers circulated?

Andrew Flanagan: Forty-eight hours before the meeting.

Monica Lennon: Forty-eight hours? What day of the week do your meetings normally take place on?

Andrew Flanagan: Sometimes on Wednesdays and quite often on Thursdays.

Monica Lennon: Okay. Do you think that you are giving people enough time?

Andrew Flanagan: I think so. Certainly the feedback that we got last time was positive.

Monica Lennon: You said that it worked well. Can you say a bit more about that?

Andrew Flanagan: It worked well according to the feedback that we got. People were pleased that we were doing it. One or two queries were raised in advance that we were able to deal with so the process seemed to work as well as we could expect.

Monica Lennon: Finally, on the media coverage in *The Herald* today, some comments have been made by the previous chair, Brian Barbour. I have a question for Paul Johnston—why does the Scottish Government get draft agendas in advance?

Paul Johnston: The Scottish Government has an interest in many of the issues that are being discussed by the Scottish Police Authority and, as you will appreciate, it is possible that a decision that is made by the authority could attract media interest and ministers could be expected to comment on it. That is a legitimate role for Government ministers as set out in the Police and Fire Reform (Scotland) Act 2012. It is therefore important that the officials supporting ministers are aware of the matters that are being considered by the SPA board so that they can brief ministers on any significant issues that might arise at board meetings and ministers can be ready to provide comment on those issues. That is the reason for having sight of the board's papers.

Monica Lennon: Has the Scottish Government ever commented on a draft agenda?

Paul Johnston: To the best of my knowledge, such comments would be on issues of factual accuracy, particularly on issues that are legitimately a matter for the Government, such as the overall financial settlement and budget setting. A range of areas that are of interest to the Government might be subject to some comment. Don McGillivray may want to add to that.

Don McGillivray: On Mr Barbour's specific allegation that the Scottish Government is somehow controlling the agenda and demanding that items be removed from it, I cannot recall, in my 18 months in the post, ever asking the SPA to remove anything from the agenda.

John Foley: Similarly, Ms Lennon, I cannot recall ever having an instruction or suggestion from the Scottish Government that we remove a paper.

Monica Lennon: You think that Mr Barbour's statement that things would disappear if the Government or officials did not want them to see the light of day is factually incorrect. You are saying that that did not happen.

Don McGillivray: Mr Barbour's time on the board overlapped only for a few months with my time in post. Nevertheless, I cannot recall ever, in the past 18 months, having asked the SPA to remove items from the agenda.

John Foley: I do not recall being asked to do that, either.

Monica Lennon: Who would do the asking, Mr McGillivray? Would it be you?

Don McGillivray: The day-to-day relationship between the Scottish Government and the SPA operates on a number of levels. I have regular dialogue with the chief executive, and the director I work under has regular dialogue with Andrew Flanagan. There are a number of working-level contacts as well, and I am not aware of anybody who works for me ever having made such a request in the time that I have been in post.

Andrew Flanagan: I have certainly not received such a request in my time as the chair. I do not think that I have even had a conversation with any officials from the Scottish Government about the agenda.

I met Mr Barbour, who—I add this correction for the record—had been a board member, not the chair.

Monica Lennon: Apologies.

Andrew Flanagan: I invited him to talk to me when I had just started, as I was interested in the views of somebody who had just left. There is an opportunity for people to be very candid in those circumstances. I asked him about his experiences and his reasons for resigning from the board, and he did not raise the matter with me as an issue.

Monica Lennon: If you were ever asked by Government officials to change the agenda, you would say no.

Andrew Flanagan: Absolutely, unless there was a valid reason for doing that. However, I cannot, off the top of my head, think of what that reason might be.

The Acting Convener: Colin Beattie wants to come in on that issue.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Yes. My questions will be

based on governance and so on. The letter is obviously of great concern to the committee. Can Mr Foley and Mr Flanagan give us an assurance that no other letters from relevant sources have been suppressed or held back from the board?

Andrew Flanagan: I am not aware of anything other than the letter.

Colin Beattie: This is the only occasion on which something that should have been circulated to the board was not circulated.

Andrew Flanagan: I do not routinely copy all correspondence to me to all members of the board. There is a judgment to be made on that. Formal reports that come in are shared with all board members—for example, reports from the Police Investigations and Review Commissioner would automatically be shared with board members.

Colin Beattie: I think that you are rather qualifying that. You obviously made a judgment that the letter did not need to be circulated to the board, and you are saying that there are perhaps other things that, in your judgment, did not need to be circulated to the board. Was there anything else of that nature—containing suggestions, criticisms or input—of which the board should have been advised, informed and aware?

09:45

Andrew Flanagan: No. I am not aware of anything else. As I said earlier, the contents of Derek Penman's letter and the points that were raised were well known by the board.

Colin Beattie: Have you ever had any freedom of information requests about the secret, or private, meetings?

John Foley: Yes—some. They were mainly information requests, and we complied with them if that was appropriate.

Colin Beattie: So you were able to find the information in records of those meetings and to comply with the freedom of information requests.

John Foley: Yes. I am not aware of any requests that we have not been able to supply information on.

Colin Beattie: So all the records of those private meetings are, in fact, available, and they should be able to be supplied to the committee.

John Foley: They certainly would have been at the time we were discharging anything under freedom of information. I am not trying to give the impression that they are not available; I just need to check that everything is available. My belief is that it is, but I would need to check that.

Colin Beattie: On the second page of the chief inspector's letter, he says in the second paragraph from the bottom that he issued

"a Professional Advice Note in relation to the leadership and governance of the Authority's forensic service",

and he expresses concern about

"how the governance issues raised in our advice note will be fully addressed."

Could we see a copy of that professional advice note? What has been done to answer the issues that the chief inspector raised?

John Foley: Yes, absolutely, you can see a copy of the advice note. We changed the governance arrangements relating to forensics with the introduction of a forensic services advisory board, which involves members of the authority. That has been in operation for a couple of months now.

Colin Beattie: The chief inspector seems to be unclear about whether that answers the governance issues.

John Foley: No. The advice note that we received from the chief inspector suggested a slightly different structure, and it may well be that we adopt it. HMI has recently been conducting a review of forensic services; it has not been finalised, so the report has not been published yet. However, the report will be published, and it will clearly be in the public domain at that point. We expect the document to reflect our dialogue in that inspection.

Colin Beattie: One of the reasons why I raise that issue is that we seem to see governance issues being raised all the way through. There is a pattern; it does not seem to be just a one-off.

In the last paragraph on the second page of the chief inspector's letter, he expresses reservations about the

"proposal that committees will not, in general, have decision-making powers."

Will they just be talking shops? What will they achieve?

Andrew Flanagan: As was set out in the governance review, we wanted to try to improve the amount of safe space for discussions between us and Police Scotland. When I undertook the review, it was clear that there was a lack of information flow from Police Scotland to the SPA. The SPA often heard things at the 11th hour or even after the event, and there were issues to do with stop and search, armed policing, counters and traffic wardens that were not being well handled. In the governance review, I suggested that we should try to shift the spectrum a little bit to have the committees meeting in private so that there would be a safe space for people to discuss

matters. However, in such a situation it would be inappropriate for the committees to have decision-making powers. Therefore, we shifted the decision-making powers to the full board.

As I set out in the governance review, the committees are more like working groups with board members whose skills in those areas are more specific than those of the general membership of the board. They can go through and spend more time looking at the issues in detail. Any points that need to be decided must go to the full board for full discussion.

Colin Beattie: Do those committees make recommendations?

Andrew Flanagan: They do.

Colin Beattie: Are those recommendations normally accepted?

Andrew Flanagan: Not without further discussion and challenge if necessary.

Colin Beattie: But are they normally accepted? There is no point in committees doing all that work if their recommendations are not going to be accepted.

Andrew Flanagan: I can think of some that were not accepted, including recommendations by the finance committee about property in Peterhead and Haddington, whereby we gave only conditional approval and not full approval.

Colin Beattie: How many committees are there?

Andrew Flanagan: There are three—*[Interruption.]* Sorry—there are four.

Colin Beattie: What are they?

Andrew Flanagan: They are the audit and risk committee, the finance and investment committee, the people committee and the police committee.

Colin Beattie: And they all need to meet in private.

Andrew Flanagan: That was the recommendation in the governance review, and its purpose was, I think, to encourage better discussion between ourselves and Police Scotland. That approach has delivered. However, the relationship with Police Scotland has moved on significantly in the past 12 months, and I think that whether we need to maintain that position will be a subject for discussion in the review in June. Personally, I am relatively open-minded about that now.

Colin Beattie: In the second paragraph on the third page of his letter, the chief inspector considers

"whether ... you have sufficient credibility and confidence amongst politicians, public, stakeholders and ... staff to

support your proposal that ... scrutiny should be conducted in private."

Do you believe that you have that credibility and confidence?

Andrew Flanagan: I think that it is work in progress. The SPA and Police Scotland continue to have work to do in that area, but I think that we can get to that position. As I said, I am open-minded, and if the review in the summer concludes that we no longer have to have the committee meetings in private or that parts of them can be in public, I will be quite content with that.

Colin Beattie: Given where you are at the moment, do any stakeholders support your view that the committees should report in private?

Andrew Flanagan: We are undertaking work to talk to all stakeholders, but at the moment I cannot say yes or no with regard to the view of all stakeholders. Clearly, the chief inspector has said that he has concerns, and we are taking that very seriously.

Colin Beattie: Apparently, planning for the chief inspector's inspection started in March 2017. Have there been discussions already about the inspection and its scope?

Andrew Flanagan: We have had discussions about the timetable for the inspection and some aspects of its scope, but we have not had a full discussion at a full planning meeting.

Willie Coffey: I have a further question or two on the letter to you, Mr Flanagan. You have said on a number of occasions this morning that members of the board were generally aware of the contents of the letter and that you therefore decided that there was no need to distribute it. However, I have Mr Penman's letter in front of me and he states in the last paragraph:

"On the basis of ... previous discussions ... I have decided that it would be timely for HMICS to schedule a statutory inspection".

That reads to me that Mr Penman is making an announcement or proposal in his letter. How could your board members have been aware of that?

Andrew Flanagan: The chief inspector has a statutory responsibility to conduct an inspection, and it is clearly his decision as to when he wants to invoke that. We had discussions with him previously. Before I started in my role in September 2015, he had conducted an improvement exercise on governance and there was a report and a series of recommendations that the SPA was working through before I conducted the governance review. The remaining recommendations were overtaken by the governance review itself. Mr Penman came in and did some work to ensure that all the

recommendations that he had previously made were covered either through implementation or through the on-going work on the governance review.

On the timeliness of his inspection, one might even say that an inspection was overdue. We welcome his view. Again, the members of the board knew about that as part of the discussions that we were having with him.

Willie Coffey: We all know that he has a statutory duty to inspect, but in the letter he makes a clear announcement that he is going to conduct the inspection. How could your members possibly have known that? They could not have done, because he makes the announcement in the letter.

Andrew Flanagan: I discussed the contents of the letter. I cannot remember whether I mentioned that specific point, but within a week or 10 days, he put out his annual report and the inspection was mentioned in that. There was also press comment on it.

Willie Coffey: That brings us to the crux of the matter, on which Mr Neil and Ms Lennon have led. You claim that the board knew the entire contents of the letter, but they quite clearly did not know that Mr Penman had made a decision to carry out the inspection, that he had announced it in the letter of 9 December and that he had asked you to tell the board. They could not have known that, so why did you not share that information with them?

Andrew Flanagan: I may have done. I do not remember when we discussed the inspection.

Willie Coffey: But you said that you did not share the letter or its contents with the board.

Andrew Flanagan: I have acknowledged that I did not circulate the letter, but we have discussed his inspection on a number of occasions. Having checked my notes, I can say that at the meeting on 5 December, Miss Ali noted that Derek Penman had said that he may subject us to an inspection. That was before it was announced in that letter.

Willie Coffey: That was that he "may" have an inspection, and we know that there is a statutory duty so an inspection could happen at any point. The letter contains a clear indication to you, as the chair, that an inspection will take place and that there is a clear timetable for it, yet you chose not to share that with the board members.

Andrew Flanagan: As I say, we were aware that he was thinking about it.

Willie Coffey: If we, as a committee of the Scottish Parliament, write to you, as chair of the board, asking you to put certain matters to the board—to table them—do you believe it to be in

your gift to decide whether to share such a request with your board members?

Andrew Flanagan: No. It would be a question of what you were asking for and how that needed to be communicated to them.

Willie Coffey: If we made a specific request, as Mr Penman did, to share a letter and inform your board members, would you have the right to withhold it, if you decided that your board members already knew what the committee wanted to say?

Andrew Flanagan: I could inform the members, but that does not equate to copying the letter to the board in all cases.

Willie Coffey: How do you think that that approach accords with the general principles of openness and accountability?

Andrew Flanagan: As long as the members are informed, it accords with those principles.

The Acting Convener: I am aware that thinking about an inspection is substantially different from deciding that you are going to have one. I acknowledge the acknowledgement by both the Scottish Government and Mr Flanagan that, with the benefit of hindsight, those matters should have been formally reported to the board.

I am also aware of what the guidance given to members of public bodies says. I would like Mr Johnston to clear something up for me, because—if I may say so—there seems to be a fundamental misunderstanding on the part of the chair of the SPA board. It is all very well to debate and disagree at board meetings, private meetings and committees, but it is only once the board has arrived at a decision following that debate that collective responsibility applies. Is that a fair interpretation of the Government's guidance?

Paul Johnston: Yes, that is a fair interpretation. There are specific provisions on boards that explain what collective responsibility entails. In particular, it is set out that if a board member disagrees with a matter in public, the board member can ask for his or her disagreement to be noted in the minutes, but the concept of collective responsibility means that the board member must then support the decision of the board if he or she is going to continue to be a board member.

The Acting Convener: Based on what we have just heard from Mr Johnston, Mr Flanagan, and given your correspondence with Moi Ali, do you want to reflect on the fact that at no stage did she breach collective responsibility?

Andrew Flanagan: I agree that Moi Ali's support was forthcoming after the board's decision had been made. My main issue was that, up to that point, she had said that she would support the

board's decision, but she did not do that in the meeting.

10:00

The Acting Convener: The board had not reached a decision. Indeed, there was debate—and even dissent—at the board meeting. We have heard quite clearly from Mr Johnston that the provisions on collective responsibility would apply once the board had reached a decision. I put it to you as gently as I can that you perhaps jumped the gun and misinterpreted the guidance to board members.

Andrew Flanagan: There was certainly a point to be discussed with Ms Ali following the board meeting—that was what the letter tried to instigate.

The Acting Convener: I was listening closely to my colleagues' questions to you. It strikes me that a culture of secrecy exists in the SPA. You mentioned papers being offered in advance to some stakeholders. I am curious to know what restrictions are put on the circulation of papers in advance of meetings. Are they published and made available to the public? If that is not the case, you would simply be operating a closed list of who gets the papers.

Andrew Flanagan: The papers for the March meeting had a fairly wide distribution. They went to all the staff associations, the trade unions, the chief inspector, the Convention of Scottish Local Authorities, local authorities, the Scottish Government and the media. The papers are only posted on the SPA website on the morning of the meeting.

The Acting Convener: Given that you send the papers to the media in advance, why do you not put them on the website when you send them to everyone else? That would be transparent and would fit with the recommendations in your governance review.

Andrew Flanagan: That is being considered.

The Acting Convener: Before I move on to other areas, a number of members have asked for information. I reiterate that I seek your agreement that you will provide the committee with the minutes of all the private sessions that have been referred to today and a copy of the chief inspector's advice note on forensic services. Do you agree to do that?

Alex Neil: Can I add to that list? To take up Willie Coffey's point on Derek Penman's formal announcement, as it were, of the forthcoming inspection in his letter, will you give us a copy of the minute of the meeting at which the board was informed of that decision? I do not want to know about rumours or a discussion; I want a copy of

the minute of the meeting at which the board was informed of that decision.

The Acting Convener: Are you happy to provide that?

Andrew Flanagan: Yes.

The Acting Convener: That is very helpful.

Liam Kerr (North East Scotland) (Con): I want to look forward, but I will stay in the same subject area, in so far as I am interested in public trust in the SPA. Your draft 10-year strategy talks quite a lot about trust. It says:

“Communities should influence decisions that affect them and they need to trust the decisions that will be taken about the future direction of policing.”

It also talks about improving

“public confidence in policing and”—

inspiring—

“trust by being transparent, accountable and acting with integrity, fairness and respect.”

What input do communities and the public have to the SPA board and committee meetings? What input will they have in the future?

Andrew Flanagan: At the moment, there are a minimum of eight meetings that are open to any member of the public to attend. They are also live streamed, so they can be watched on the internet. I think that we are the only public body that live streams its board meetings. The papers are also available. There are a number of engagement processes—through Police Scotland with local authorities, and with the scrutiny committees themselves.

We need to reflect on how the board can engage more formally with the public, so we are looking at conducting board meetings at different venues around the country and holding engagement events with the public at the same time.

Liam Kerr: The 10-year strategy is still in draft and subject to consultation. I think that the consultation period is quite short—is it 10 weeks?

Andrew Flanagan: I think that it is 10 weeks. Because of the timing of the local authority elections, we have extended the consultation time for local authorities, which have until the end of May to come back to us.

Liam Kerr: Is it likely that the public will have any impact on the 10-year strategy in a 10-week consultation period?

Andrew Flanagan: There are sessions for local engagement. We are communicating through a series of articles that have gone out through Johnston Press, with all its local titles, which serve a number of communities across the country. We

are being pretty proactive in getting out and hearing views.

Liam Kerr: Could those views change the 10-year strategy?

Andrew Flanagan: Of course; it is a consultation. Clearly, we have put a lot of thought into the strategy and we think that we are proposing sensible ideas about how to take policing forward, but we will be open-minded about the consultation responses.

Liam Kerr: How many responses to the consultation have you had from current police officers?

Andrew Flanagan: I think that we are at about 1,000 responses, which are substantially from police staff and officers.

Liam Kerr: Are they broadly supportive?

Andrew Flanagan: They are supportive of the direction of travel. The questions are often about how the strategy will be implemented, rather than about the principle of some of the things that we are talking about doing.

Liam Kerr: Am I right in thinking that there are 12 SPA board members?

Andrew Flanagan: I think that there are about 10, with the new appointments.

Don McGillivray: We have just appointed four new members.

Andrew Flanagan: Yes, there are 11 plus the chair, so it is 12.

Liam Kerr: Sorry—are there 11 or 12?

John Foley: There are 11 plus the chair.

The Acting Convener: There seems to be some confusion on this point, so perhaps you could let us know.

Don McGillivray: We have appointed four new members in the last couple of weeks.

Andrew Flanagan: One of the board members who has been appointed has not yet started.

Liam Kerr: Is it correct that only one of them has served as a police officer?

Andrew Flanagan: One of the existing members has been a serving police officer—he was a chief constable. The new member who is scheduled to start in June has also been a serving police officer.

Liam Kerr: You no doubt see where I am going. Are you comfortable that the board will fully understand and reflect the views of serving police officers, particularly if you are taking an existing chief constable? How certain are you that you are getting the views of serving officers?

Andrew Flanagan: We all want a certain amount of police expertise around the table. We talked earlier about engagement with the various staff associations and there is always an opportunity to get further views than only those that come through the senior officers of Police Scotland.

The opposite is also true. There would be a genuine concern if we were solely police officers around the board table.

Liam Kerr: I represent the north-east region. In the past months, there have been two incidents that seem to suggest that the centralisation of police forces and control rooms has had a negative impact. As you will be aware, in the north, an air ambulance was sent to Shetland instead of Orkney and, rather closer to home, a police unit was sent to a Tesco store in Glasgow instead of in Aberdeen.

How will you re-establish trust in policing and how will you measure that trust?

Andrew Flanagan: First, you should know that I have asked for reports on both those incidents to come to me directly. I want to know what happened and what the investigation of the circumstances that gave rise to those situations has found.

As part of control room centralisation we established a separate working group to review the process. The chief inspector of constabulary mentioned in his report in January that he felt that the governance of the process by the SPA had improved significantly, but work is in progress to build confidence among the public that the move to centralised control rooms is effective and that the system is operating properly. It is worth investigating the two incidents so that we can find out why they happened.

Liam Kerr: My second question was about how you will measure public confidence and trust.

Andrew Flanagan: Work on that is being done as part of the policing 2026 work. We are creating a performance framework, as a result of which we expect specific measures of public confidence and trust to be developed. At the moment, that is measured through public survey. We are working through the question whether that is enough.

Don McGillivray: I add that the Scottish Government publishes a number of public confidence measures through the Scottish crime and justice survey. That survey, which is published periodically, has a very large sample size.

The Acting Convener: I would like to ask you some questions on the budget—I always enjoy following the money.

Do you yet know what your final overspend for last year was?

Andrew Flanagan: I do not have the final figure. The estimate that was presented to the March board meeting was that there would be an overrun of £17 million. The year-end processes are under way and I have had no indication that the final figure will be different.

The Acting Convener: You are settling on £17 million, subject to rounding.

Mr Foley, do you have any other information?

John Foley: No, convener. The chair gave the correct figure. The accountants in Police Scotland are working on that at the moment and, of course, the figures are subject to audit by the Auditor General.

The Acting Convener: I understand that you have had 18 accountants in three years. Is that right? I thought that that might have been a typographical error, so high is the number.

John Foley: No—18 accountants have left Police Scotland since April 2013. To set that in context, when there were nine forces, there would have been nine finance directors, who had to be distilled down to one. There were people in post who left under the early retirement/voluntary redundancy scheme.

The Acting Convener: Do you have a new chief financial officer yet?

John Foley: We interviewed the shortlisted candidates last week.

The Acting Convener: So we can expect news of a new chief financial officer soon.

John Foley: Very soon.

The Acting Convener: A £17.5 million deficit is expected for 2016-17. As part of your accounts, you report an expected deficit of £47 million for 2017-18. What dialogue have you had with the Scottish Government about closing that gap?

Andrew Flanagan: We have had a number of discussions with the Scottish Government, and discussions are on-going. The Scottish Government was made aware of the deficit before the budget went to the board meeting in March. Police Scotland will undertake a series of actions—which might be of a one-off nature—in an effort to bring that figure down. We wanted to acknowledge what the on-going deficit position was and to work that down through a series of actions. I am hopeful that the deficit will come in at less than £47 million.

The Acting Convener: I want to tease that out a little. You mentioned “one-off” actions. It has been suggested, certainly in relation to this year,

that the £17.5 million deficit will be covered by capital being applied to revenue. Are you suggesting that the same might happen for the £47 million?

Andrew Flanagan: No, we are not.

The Acting Convener: Okay.

Perhaps I can ask Paul Johnston a question. The use of capital—which is a one-off payment—to cover for recurring revenue shortfalls is genuinely frowned upon across the Scottish Government. Why do you consider that practice to be acceptable in the case of the SPA and Police Scotland?

Paul Johnston: That was discussed when we appeared before the committee last month.

The Acting Convener: I was not there.

Paul Johnston: I appreciate that.

The Acting Convener: You can repeat what you said then.

Paul Johnston: I will endeavour to do so, although our finance lead was present at that meeting.

It was agreed that, exceptionally, we had allowed capital to be used to support the overall budgetary situation. My recollection is that that has happened for two years; Don McGillivray might be able to correct me on that. We absolutely do not want that to be the norm. In particular, we want the reform budget, which has a mixture of revenue and capital elements, to be used to deliver on-going sustainability in the budgets. That is our expectation, and work is in hand to ensure that it happens.

10:15

The Acting Convener: Just to aid my understanding, how much capital will be applied to reducing the £47 million deficit? The exceptional payment that you talk about might roll into a third year.

Paul Johnston: The £47 million is the projection for the year that has just commenced. At present, we do not anticipate that there will be any switch of capital to revenue, although in the past that has been requested as the year has gone on. For example, it has happened in response to slippage in capital projects. We are starting this new financial year with the assumption that there will not be movement from capital to revenue, and on the basis of a plan to deliver long-term sustainability, as set out in the 2026 documentation.

The Acting Convener: However, as you have described, you get requests in-year and the profile changes. Are you ruling out the use of capital in

that way, given that, to use your words, it is an “exceptional” thing and therefore running into a third year would not be very good in accounting terms?

Paul Johnston: I certainly hope that we do not have to do that again this year. I am loth to rule it out, given the early stage that we are at in the financial year and the range of unknowns that may lie ahead of us. However, we are clear that our wish is to have a sustainable budgetary position so that we do not have to rely on capital to revenue transfers. That is exactly what the 2026 proposal seeks to deliver.

Alex Neil: I have a factual question for Paul Johnston. Does the £47 million projection take into account the additional money that Derek Mackay, the finance secretary, announced in his budget?

Paul Johnston: Yes.

Don McGillivray: Yes.

Alex Neil: So, after that £25 million has been used, there is still a projected deficit of £47 million.

Paul Johnston: That is the projection as of the start of this financial year. Our expectation is that the SPA and Police Scotland will work to bring that down. In previous years, when there has been a gap, work has been done to reduce that. We will work with the SPA and Police Scotland to support their efforts to reduce that deficit in the course of the year.

The Acting Convener: Liam Kerr can ask a quick question before I bring in Ross Thomson.

Liam Kerr: It is very quick. What is the proposed salary of the CFO that you are recruiting?

John Foley: We have not nailed it down, but I anticipate that it will be in the region of £115,000. It could be less. I do not want to say too much, because obviously there is a shortlist of candidates, and they would know if they saw this meeting.

The Acting Convener: I always thought that there was transparency in public pay, but there you go. That is clearly not the case.

John Foley: There will be, as soon as it is announced. We are in negotiations with people.

The Acting Convener: Okay—interesting.

Ross Thomson (North East Scotland) (Con): I want to return to the SPA's draft 10-year strategy, which my colleague Liam Kerr asked about. The strategy says that the SPA will

“Continuously improve public confidence in policing and inspire trust by being transparent, accountable and acting with integrity, fairness and respect.”

In the fourth paragraph of Mr Penman's letter, he says that the SPA's approach

"seems at odds with your key principle of transparency and your commitment that the Authority should be open and transparent and operate to the highest standards of public sector administration and management."

He goes on to say:

"Effective scrutiny of policing in Scotland is essential in maintaining both legitimacy and public confidence".

Given what is in that letter and what we have heard in answer to questions, and given the convenient collective amnesia that we have heard today, the SPA is not fit for purpose, is it?

Andrew Flanagan: No, I do not agree. We have made a number of substantial movements in the past 12 months, based on the governance review. I think that we are becoming more effective. It is important that we recognise that there is already a high and significant degree of openness through the public board meetings that we have, which are second to none among public bodies in Scotland.

In terms of progress, the policing 2026 strategy represents the first time that we have had a clear direction of travel for policing in Scotland. There are a number of steps that will be taken with the performance framework that were not there before, to show exactly what is meant by holding the chief constable to account. We are on a journey. Is it perfect? No, it is not perfect, but in the past 12 months or so there have been significant steps forward.

Ross Thomson: Thank you. You talked about the effectiveness and openness of board meetings, but let us look at the evidence. Mr Penman states in his letter that

"there is a real risk that proceedings at formal board meetings will become truncated and perceived by some as perfunctory ... It is my strong view that scrutiny in policing not only needs to be effective—it needs to be seen to be effective."

Do you agree that there is a real risk of public confidence being further eroded if you do not work to address the concerns that Mr Penman has highlighted in his letter?

Andrew Flanagan: I think that we have to ensure that the board meetings are not perfunctory or rubber stamped. We need to have open discussion at those board meetings. We have taken a number of steps to improve the quality of the agendas and of the papers, so that we do not get 200-page reports that nobody can read, and we have made a lot of progress in ensuring that we are having informed discussions at the board in a much better way than was the case previously.

Ross Thomson: If the SPA is not functioning—and deep concern has been highlighted in this

committee and by the inspectorate—who is ultimately responsible for that?

Andrew Flanagan: Ultimately, the board of the SPA is responsible for it.

Ross Thomson: I do not want to speak for all committee members, but given that two members of the board have resigned and there is evidence in the newspapers today of another, it seems that the committee can have little confidence in the SPA. Have you thought about your own position at all?

Andrew Flanagan: No, I have not. I was brought in to do a job. I am subject to annual performance reviews. I have had positive feedback. I have talked to my board about my performance and I believe that I am doing an effective job.

Ross Thomson: Do you agree, Mr Johnston?

Paul Johnston: Yes. As Mr Flanagan said, the chair is subject to regular performance reviews. That responsibility falls to me. I am sure that the committee would not expect me to conduct that review in public to any extent, but on-going performance reviews will be undertaken by me.

Ross Thomson: Given the letter from Mr Penman, the second resignation and the damning comments by this committee, I presume that you will be acting with urgency to address the concerns that have been raised.

Paul Johnston: I will be working closely with the chair and with the police authority on the matters raised.

On a point of factual accuracy, I would like to state that the media reporting today does not relate to a recent resignation. I am not sure when Mr Barbour resigned, but I think that it was about two years ago.

Don McGillivray: It was a year and a half ago.

Ross Thomson: I presume that two resignations from a board would still trouble you.

Paul Johnston: We would certainly want to understand the circumstances of all resignations, and if there are lessons to be learned from resignations I would want to be sure that we learned those lessons.

Andrew Flanagan: For clarity, I should say that Mr Barbour resigned before I joined as chair.

Alex Neil: I have a quick supplementary question regarding Paul Johnston's comment. Given your statement that you would like to get a good understanding of what is behind resignations, I take it that you have asked for a debriefing and a meeting with Moi Ali to understand why she resigned.

Paul Johnston: I can confirm that my colleague who is director for safer communities has had engagement with Ms Ali regarding the circumstances of her resignation. If I am not undertaking it personally, I want to ensure that members of my team are having that engagement and are reporting to me.

Alex Neil: Has that already happened?

Paul Johnston: Don McGillivray has reminded me that discussions took place shortly before the resignation. When I was last before the committee, I indicated that I was very keen that we gave full consideration to the circumstances of the resignation, and particularly the matters that Ms Ali has set out. Indeed, that is what we have been discussing today—particularly the point about both committees meeting in private, which is still very much the subject of live consideration, and the points around on board guidance that we have discussed with the convener.

Alex Neil: But the convener's earlier point was that Ms Ali has apparently acted totally within the rules, and yet she appears to have been forced off the board because she wanted to minute her disagreement with a board decision. That is perfectly allowable under the rules, yet the chairman, in his letter in correspondence with Ms Ali, said that he thought that it was a resignation issue.

The Acting Convener: To aid discussion, I suggest that perhaps either Mr Johnston or Mr McGillivray should speak to Moi Ali directly rather than delegating it to anybody else.

Don McGillivray: I was present at the meeting with Moi Ali that took place on 31 January, to which Paul Johnston referred. I make the point that it was in the days just prior to her resignation rather than just subsequently.

Paul Johnston: On the convener's point, I add that I am very happy to meet Ms Ali directly, to have a further conversation about the matters that she has set out.

The Acting Convener: That would be very helpful.

Alex Neil: But do you agree that she has not broken any rules and that she was perfectly entitled to minute her dissent from a decision?

Paul Johnston: As I have set out, the on board guidance anticipates a situation in which a member can indicate their concern and can ask for their dissent to be minuted.

Alex Neil: Why, then, did the chairman basically force her to resign because she did so?

Paul Johnston: The chair might wish to comment further on that, but I think that there is an issue with the characterisation of the

communication. In particular, the SPA has submitted to the committee a subsequent letter that was sent from the chair to Ms Ali, which perhaps the chair would wish to describe—

Alex Neil: That makes it worse. It reinforces the point that she was driven off the board because she minuted her dissent. Mr Flanagan's letter makes it absolutely clear that she was driven off the board even though she had not broken any rules. It even hints that she had leaked information. There is no evidence whatsoever that she leaked any information. Mr Johnston, you should be very concerned about that.

The Acting Convener: I accept Mr Johnston's commitment to meet Ms Ali, which I think is productive, given the correspondence that has been going backwards and forwards. We are grateful for that.

There are no more questions from members. I thank all our witnesses for appearing this morning. I gather that two of you are staying on, so we will have a short suspension to enable the seats to be changed around.

10:27

Meeting suspended.

10:28

On resuming—

Section 23 Report

“i6: a review”

The Acting Convener: We move to agenda item 5, under which the committee will take evidence on the Auditor General for Scotland’s report, which is entitled “i6: a review”. I welcome back Mr Foley and Mr Flanagan. Thank you very much for your written responses to our numerous questions. As there is no opening statement, we will move straight to questions.

Colin Beattie: I am looking at page 5 of the SPA letter of 13 April 2017 that was sent to the convener, and in particular at the second question and answer. During our previous session, a question was asked about whether any cost had actually been incurred by the cancellation of the system. An assurance was given that it had not, although there was the question of the notional loss of potential savings that would have arisen from that system.

However, the letter says:

“The decision to cancel i6 has resulted in a need to reinvest in maintaining ... 125 legacy systems that would otherwise have been decommissioned.”

How much money is being put into maintaining 125 legacy systems and were we given incorrect information last time?

10:30

John Foley: No, you were not given incorrect information.

Colin Beattie: Incomplete information?

John Foley: No. I think that I was trying to convey that some of those systems would have carried on for a period of time anyway, while they were being decommissioned. Not all those systems incur a cost and some of the cost is in house; we have programmers and developers and such like—

Colin Beattie: But an in-house cost is a real cost.

John Foley: It is a real cost but we have a no compulsory redundancy policy as well, so it is very difficult—

Colin Beattie: I am sorry—how does that feed into this?

John Foley: Some of the people who would be involved in that work would be involved in this—

Colin Beattie: Some of the people involved in this work would have been—

John Foley: In-house people—

Colin Beattie: Would they be made redundant?

John Foley: Potentially, if i6 had been successful, on the basis that it would have been much more efficient than some of our current systems, we might have expected some of those posts to be made redundant, but—

Colin Beattie: But that comes under what we spoke about a moment ago, which is the notional loss of savings, which we understood. However, the letter says specifically that there is

“a need to reinvest in maintaining ... 125 legacy systems”.

How much are we spending on that?

John Foley: I would have to come back to you on that. That work is carried out within Police Scotland, so the information is held there—

Colin Beattie: But it is important information that is referred to in your letter.

John Foley: I can certainly get the information for you.

Colin Beattie: I would appreciate it if you could.

I was also told that there had been no integration of systems across the eight legacy police forces. When i6 was cancelled, I asked a specific question about that and I was told that there was no integration and that no system had been successfully integrated. Now, in the second part of that answer in your letter, you say that

“30 new national applications have been implemented.”

John Foley: That was prior to i6—

Colin Beattie: Prior to i6?

John Foley: Prior to i6 concluding.

Colin Beattie: But my question did not relate specifically to i6. It was in the wider context of Police Scotland and it was about whether any single system had been successfully integrated. Now you are saying that there are 30 new national applications. Does that mean that there has been successful integration at any point?

John Foley: Those would have been new systems that were put in, which are in use across the national force—across the legacy areas. However, they were not integration of existing systems, if you see what I mean.

Colin Beattie: But you say in the letter that

“a significant number of legacy systems have been closed down”.

John Foley: Yes, because they were redundant—they were no longer required.

Colin Beattie: They were redundant and no longer required—were they replaced by national applications?

John Foley: They might have been replaced in some cases, but not in others. When the forces came together, we uncovered some systems that had not been used, had been used very rarely or were not required, so those systems were closed down as unnecessary. However, there was no impact on policing as a result of that.

Colin Beattie: The impression that I got at our previous meeting was that there had been no successful integration of any systems within Police Scotland in those three years. Is that correct?

John Foley: No, and if that was the impression, that was not the intention.

Colin Beattie: It was what was said.

John Foley: There are the systems that were put in over that period of time and there is also the custody system, which was rolled out nationally after the failure of i6. That system was previously held in Dumfries.

Colin Beattie: It would be helpful to understand a little bit more about which systems have been integrated across the legacy police forces because it is of great concern if, in three years, we have not succeeded in doing any of that.

John Foley: Work has been done, Mr Beattie, and I can certainly furnish you with information on that.

Colin Beattie: Can we get that information? The information that we received previously does not appear to be correct.

In the letter, at the bottom of page 3, there is an answer about efficiency savings. I take the point about that. You talk about

“a robust ICT strategy which is nearing completion”.

When will that strategy be available?

John Foley: It should coincide with the launch of the policing 2026 strategy. As we mentioned earlier, that is out for consultation and the information and communications technology strategy must support that. They should come together at the same time.

Colin Beattie: That is critical if this committee looks at the potential savings for the future.

John Foley: Yes, it is vital. We need to have the strategy in order to deliver the savings and efficiencies in the 2026 strategy. That is well recognised.

Colin Beattie: When will the ICT strategy be available?

John Foley: It should be available around about June or July to coincide with the policing 2026 strategy. As we said earlier, the consultation period for local authorities will finish at the end of May, which is when we will start to gather up all the information and comments from the public and stakeholders. That will inform the final version of the policing 2026 strategy and the ICT strategy will absolutely underpin it.

Colin Beattie: To return to i6, I accept what the Auditor General stated about Police Scotland and the SPA doing all the right things and ticking all the right boxes. However, it still went wrong.

John Foley: Yes, it still failed.

Colin Beattie: What lessons have been learned from that? There is now a digital Government body—I cannot remember its name—that co-ordinates all that. How do you feed back into that?

John Foley: There are aspects about the lessons learned in the Auditor General's report. Looking back, there were lessons learned internally. For example, we would never go into another project using the waterfall approach and we would have more technical expertise on board if we were going into significant IT projects in the future. In my view, the i6 project did not have enough ICT experience. In the future, we will engage more with the Scottish Government's chief technology officer on such projects. Those are all important lessons that we have learned. We intend to participate more with a number of public sector bodies to gain the benefit of their knowledge and lessons learned, and to share our experiences.

Colin Beattie: I am looking at the first question and answer on page 6 of your letter, on the three external expert advisers and how much they were paid. I realise that you got the money back, but, including VAT, they were paid more than £4.6 million.

John Foley: Yes.

Colin Beattie: I do not know about anyone else, but I find that eye watering. How much was the project?

John Foley: Forty-five million pounds.

Colin Beattie: Forty-five million pounds, and more than 10 per cent of that was for three external advisers. I find that astonishing.

John Foley: If, for example, you take the amount that was paid to Exception—that was the highest figure—that was because that level of expertise did not exist in Police Scotland and it had to be bought in. That is why the amount is so high. In most organisations, you might expect to have a level of expertise that could deal with technical aspects on behalf of the client, but it did not exist in Police Scotland.

Colin Beattie: Were there no resources in the Scottish Government that you could tap into to get that expertise?

John Foley: We tapped into some resource from the Scottish Government; we had the assistant chief technology officer on the programme board. However, the project was so specialist and detailed that it was felt that we really needed to have external advice prior to and in the course of the contract.

Colin Beattie: Basically, the internal resources did not have the expertise to handle a project of that scale.

John Foley: That is my understanding of what happened at the outset. I was not there, so I am answering based on knowledge that I have picked up since being in the job. My understanding is that that was why the decision was taken at the beginning. I also understand that a significant amount of the Deloitte cost was in relation to managing the procurement process, because—again—it was so specialist.

Colin Beattie: Managing the procurement process?

John Foley: Yes. It was involved throughout the duration of the project, but it was heavily involved in the procurement of i6, too.

Colin Beattie: Who wrote up the specifications for the project? Was that Deloitte?

John Foley: My understanding is that the specs for the project were written up by Exception with the involvement of Deloitte. Exception was the technical lead.

Colin Beattie: I return to the £4.6 million figure. That still seems like an awful lot of money for the size of the project and for what was achieved. We got the money back, but I am looking to the future and to other projects that might attract that level of external costs.

John Foley: Looking to the future, we would not do it the same way. A clear lesson has been learned from the experience. We would do a project like i6 on a modular basis, and slice it into small pieces. We would seek wherever possible to manage the technical aspects in house, under the ICT director in Police Scotland, and we would draw in specialist expertise as and when it was required. I genuinely do not believe that it would be undertaken at the same level.

Willie Coffey: It feels like groundhog day. I have served on the Parliament's public audit committees for a number of years and looked at many information technology projects, and our discussions today sound very much like the conversations that we had five, six or seven years ago. There is a lack of expertise in the

organisation to define the requirements for a piece of software, leading to inevitable delays, problems and issues further on in the development programme.

I want to pick up on the point about the requirements that we wished the software to deliver for us. You said that Deloitte and Exception were involved in that, but—surely to goodness—you were the client, or the customer, who was commissioning the system and you knew what you wanted. Why was your organisation not at the forefront in defining the requirements, rather than relying on an external body to do that for you?

John Foley: Deloitte and Exception brought the particular expertise. My understanding is that, prior to the contract being awarded, Police Scotland was heavily involved all through the process, with Deloitte and Exception, in defining the requirements, but it did not deal with the technical aspects, which were something else. With regard to the actual operation and use of the software, my understanding is that Police Scotland was definitely involved in defining the requirements.

The project was under the control of a former deputy chief constable, who was the senior reporting officer to whom all the consultants and the i6 programme team reported. The policing aspect was very much at the forefront. That is why people were able to say throughout the duration of the project that, if it was successful, it would free up 23 per cent of additional police time—only the police would have an idea of how that would come about. Exception would not be able to do that, because it dealt with the technical aspects, and Deloitte is a firm of consultants, so it would not have had the knowledge to do that.

Willie Coffey: If you are going to design a piece of software that is based on the requirements that you want it to deliver, you need a detailed requirements specification. I cannot see from the Auditor General's report or from your answers to the questions in the letters that a detailed requirements specification was in place. It looks to me as though the software was based on the Spanish system, which was thought to be what was required in Scotland. The report says that quite clearly. I do not see where effort and time went into defining in detail the requirements for what the software had to carry out. Is that inaccurate?

John Foley: I was not there personally, but my understanding is that that is what happened when the requirements were defined. From my attendance at meetings on i6 over the past three years or so, I have the impression that the senior officers in Police Scotland knew exactly what they wanted. They had gone out to Seville to see the system there, but they did not go out with the view that that was what they would bring back. My

understanding is that they went out to look at the system to see whether Accenture had delivered successfully for another police organisation in a different country, and a view was then taken on whether some of that could be replicated for Police Scotland. It was not intended at any point in time that the system in Seville would be used by Police Scotland.

Willie Coffey: I can only go by what I have in front of me. The timeline at the back of the Auditor General's report shows quite clearly that the full business case was approved and the contract awarded to Accenture in June 2013, and that the high-level design started the following month. I have never seen anything like that in my life, and I am a software engineer with 25 years' experience. There is a bit missing—the detailed requirements specification, which can take months and months, or even a year, to get right.

I suggest to committee members and to you that that is why the project went wrong. You thought that you were getting a bus but the contractor delivered a truck because you did not define what the requirements were. You got what the contractor thought that you wanted. If you set out the detailed requirements to be followed, you usually get what you want. From what I can see, that is what was missing in the project.

10:45

John Foley: Again, I do not want to sound as if I am not taking any responsibility for that, but I was not in post at that stage. I have to accept that your technical knowledge is greater than mine. If that is how you see that type of project being designed, I have to accept that that is a valid assumption.

Willie Coffey: Okay. There was a discussion about the waterfall approach versus the agile approach, which are development methodologies, and it was suggested that the waterfall approach would never be used again and that the agile approach would now be used. However, that hides the fact that the key component at the beginning of any project, software or otherwise, is the defining of requirements. If we get that right, we usually get what we want.

What happened with the i6 project is another example of something that I have seen in the past. Public bodies seem not to have learned the lessons from a number of previous Audit Scotland reports relating to IT projects. That kind of thing does not happen only in Scotland, but it seems to happen at the heart of public bodies such as yours, Mr Foley. You said a moment ago that you do not have enough technical expertise or IT expertise within the organisation. That seriously has to be addressed so that we do not keep having to give the same message year after year

when looking at IT projects that just do not work. They can work if they are done correctly and proper quality management and development methodologies are applied and embraced at the outset in the organisation. In such cases, the things that happened with the i6 project will not happen.

John Foley: I agree. However, having had discussions with the information and communications technology director of Police Scotland, I can assure the committee that that is how he approaches matters. That might give some assurance that any issues will be addressed as we move forward.

Willie Coffey: What methodologies do your development projects use?

John Foley: The director has a quality management system, but I do not know what it is called.

Willie Coffey: Okay.

Liam Kerr: I want to stay on that theme, if I may. The letter that we received has a section entitled "Contract failure", in which the SPA notes at least eight learning points from the failure of i6. However, the SPA also states that there was no failure on the part of Police Scotland or SPA staff to carry out their responsibilities effectively. Given the project's failure, is it credible to suggest that there were no failings on the part of SPA or Police Scotland staff?

John Foley: The project was managed within Police Scotland. As I said earlier, heavy reliance was placed on the contractors, particularly from the technical point of view. Exception was the technical lead on the project, and clearly we would expect Accenture, as the contractor or deliverer of the software, to be extremely technically capable as well.

Liam Kerr: In your view, were Police Scotland and the SPA not responsible at all for what happened with the i6 programme?

John Foley: There has to be some responsibility, but whether that is a failing of the staff who were involved is a different matter. Clearly, there is responsibility, because the project failed.

Liam Kerr: Whose responsibility is that in Police Scotland, then? Do you take the responsibility?

John Foley: The senior officer who was responsible for it in Police Scotland was a deputy chief constable who is now retired. He was the responsible officer for the whole project.

Liam Kerr: Okay, but that is different from what you have said in your responses to the committee's questions, which is that Police

Scotland and SPA staff are completely in the clear. Is that your position?

John Foley: In terms of the SPA staff, they had little involvement in the delivery of the project.

Liam Kerr: Is that your position, Mr Foley?

John Foley: My position is that the majority of the failings that occurred in the project were centred around its technical aspects.

Liam Kerr: If the majority were centred around the technical aspects, the minority were somewhere else. Was that within the police?

John Foley: I am not aware of anybody within Police Scotland who failed in their duty in relation to the project. From a contract point of view, the project was very tightly managed, which is why we managed to get the money back.

Liam Kerr: I will come back to the contract, because that is interesting, but first I want to follow on from the questions that Willie Coffey and Colin Beattie asked. Am I correct to say that you have been the CEO since autumn 2013?

John Foley: Yes.

Liam Kerr: You are a chartered accountant to trade.

John Foley: Yes.

Liam Kerr: You are a former president of the Chartered Institute of Management Accountants.

John Foley: Yes.

Liam Kerr: You are a fellow of the Institute of Directors.

John Foley: Yes.

Liam Kerr: You have been the director of over 40 companies, at one time or another.

John Foley: In the past—yes.

Liam Kerr: Yet at no stage from 2013 did you pick up that something was going massively wrong. Is that correct?

John Foley: We picked up that things were going wrong at the user acceptance testing stage.

Liam Kerr: I am not asking about “we”; I am asking about you.

John Foley: That is when I picked it up as well.

Liam Kerr: When was that?

John Foley: That was in autumn 2015.

Liam Kerr: So, between 2013 and 2015—through a contract variation, mind—you did not pick up anything at any point. Despite all your experience, at no point did you say, “Hang on—I think we’ve got a problem.”

John Foley: There was no indication that we had a problem until the user acceptance testing stage. That is where you normally pick up these things.

Liam Kerr: There was enough of an issue to do a contract variation.

John Foley: The contract variation was put in place as a result of difficulties between Accenture and Police Scotland that surfaced in the summer of 2013. The main purpose of the contract variation was to provide more flexibility for both parties to deliver the product. As the Auditor General refers to in the report, there had been tensions between the parties, and there was an attempt to alleviate those tensions and improve working relationships between the parties. That was a positive and proactive measure that was instigated by the SPA at that point. That was delivered, and then we carried on, with support from the consultants.

As I said, we did not have the technical experience, which is why we used Exception—it was acting on our behalf and working with Accenture.

Liam Kerr: Let us look at the consultants. When the committee last discussed the issue, on 16 March, I said:

“When I was in professional legal practice, I was paid to make sure that there was no ambiguity in my clients’ contracts. Does the ambiguity in this contract suggest that the failing—or a failing—lay with the professional advisers who had been engaged?”—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 16 March 2017; c 8-9.]

You say in your letter that you were “well advised” by the adviser—which, as Colin Beattie rightly pointed out, was at a cost of over £4 million. How is that position sustainable when it appears that there are fundamental flaws in the contractual nexus, as Willie Coffey has highlighted?

John Foley: The issues with i6 came to light during the user acceptance testing, which was part of the programme. They were uncovered by Exception. Exception noticed that something was awry and it challenged Accenture on that and advised Police Scotland. That is when I became aware of the issue as well. Work then started, first by Accenture, to establish exactly what the problem was, because it was not fully aware of the problem at that point. Accenture brought in additional expertise to its part of the programme to consider what the problem looked like. In early 2016, it was obvious that delivery was not possible in the way that had originally been set out, so an options appraisal had to be carried out to consider what we could do. I took charge of that project and led it through to 1 July 2016.

It was the advice from Exception that highlighted that there was an issue. That was its job.

Liam Kerr: Good on Exception, but what about back at the start? As Willie Coffey pointed out, you cannot go into something of such a scale with any ambiguity or uncertainty in what you are signing up to. Very quickly, the programme started to unravel. To my mind, that is a flaw in the contractual nexus. People were going into things not knowing what they were doing. The authority seems to have paid nearly £5 million to external advisers to avoid that situation. In your letter, you have lauded those external advisers and said that they are wonderful, but that is clearly not true, is it?

John Foley: They did not fail.

Liam Kerr: Who did fail? Was it Accenture?

John Foley: Accenture was delivering the system.

Liam Kerr: Is Accenture the only party that is responsible for the failure of the i6 programme?

John Foley: The relationships could have been better on the way, and if they had been, it might have helped in identifying issues earlier. However, that is just potentially the case; I do not know whether it would definitely have been the case.

Liam Kerr: Mr Foley, I asked you a closed question. In your view, is Accenture the only party that is responsible for the failure of the i6 programme?

John Foley: No.

Liam Kerr: Who else is responsible?

John Foley: Police Scotland and the Scottish Police Authority also have to take some responsibility.

Liam Kerr: That is interesting, because that is not what you say in your letter. Who in Police Scotland and the SPA should take responsibility?

John Foley: We should take collective responsibility for the fact that a contract that we signed up to back in 2013 did not work out.

Liam Kerr: Did someone misadvise you? As an authority, you would surely not have signed that—collectively—if you had been properly advised.

John Foley: The contract was signed in June 2013, but a lot of work was carried out before that. My understanding is that a lot of the detailed work was carried out—principally by Police Scotland, with the knowledge of the authority—at that time. However, I was not there, so I cannot tell you whether that was of sufficient quality or not. I am sorry, but I was not there. I have no evidence to suggest that.

Liam Kerr: You have evidence, because I am putting it to you that it has all gone wrong. The problem is that you talk about lessons having been learned and you say that this will not happen again, but the reality for the committee is that we see it happening time and again. With respect, I have absolutely no confidence that it will not happen again.

What I hear from the responses to our questions is a suggestion that Accenture is to blame for everything. You now accept that Police Scotland had some role, but you will not accept that the external advisers had any role. I foresee this happening over and over again. Is that a fair summary?

John Foley: No, I do not think that that is fair. I do not think that it would happen again in that fashion. We have learned enough to know that we would never attempt to have what we might call a big bang approach to such projects—it just would not happen. We have learned from that. We would have more in-house involvement than we had before, and if that meant going into smaller installations or implementations and employing expertise rather than contracting it, that is how we would approach it.

Liam Kerr: I am interested in that point because you are currently adopting a new in-house modular build. You are in that process at present, are you not?

John Foley: Yes. Some of that is going on.

Liam Kerr: Have you taken the steps that you have just talked about?

John Foley: In part, yes, but it depends on the project. Doing something that is highly specialised and involves a significant contractual arrangement is different from carrying out a piece of work largely in house but with input from experts for a week or so at a time. We would use a different arrangement going forward. We would never have the previous type of arrangement again—absolutely not.

The Acting Convener: I want to pick up on that and take it further. In August 2014, the Scottish Government conducted a gateway review of the project and designated it “amber/green”—it was called a delivery confidence assessment. In effect, it said that it was all systems go, yet in the same month, according to the Auditor General’s report, milestone 5, which was the functional design, was behind schedule and you withheld the payment of £2.6 million.

Given the exact overlap of time, I am curious to know whether the Scottish Government was told about that. Was the information withheld? Did the Government understand what was going on with

the delays that were already being experienced, which the Auditor General identifies?

John Foley: Yes. Audit Scotland was aware of that. There was a programme board, which was chaired by the DCC who was responsible for the project within Police Scotland, and the Scottish Government had representation on that board.

The Acting Convener: If I am right, the Scottish Government will go through a separate assessment process to assure itself that a project is running according to specification and time. The Scottish Government gave the project an “amber/green” designation in the delivery confidence assessment at the same time as delays were being experienced. How do you explain that?

11:00

John Foley: I can explain it only by saying that there was perhaps a timing difference. It is more than likely that, although the gateway review was published in August, the work had been carried out before that. Because it was a fairly fast-moving contract, if people did not hit a milestone, payment could be withheld. This is only a possible explanation, convener, but it could be that there was a time lag between the publication of the gateway review and this fast-moving project not hitting a milestone later in the same month.

The Acting Convener: I would be grateful if you could reflect on that and come back to the committee on the timing, because it seems extraordinary that we are pointing in two different directions in the same month.

John Foley: I will come back to the committee on that.

The Acting Convener: Thank you. I have a final question, and then I will see whether other committee members have any more questions. A recent newspaper report, in the *Daily Mail* of 18 April, quotes an SPA director as saying that the i6 failure has

“left policing five years at least behind where it should be.”

The article goes on to quote the general secretary of the Scottish Police Federation as saying:

“Five years seems a very generous underestimate”.

What would you put it at?

John Foley: Personally, I do not believe that we are a full five years behind. We are years behind, and when the ICT strategy is finalised and made public in a few months’ time, it will set out the timeframe to get to delivery of what we lost in i6. In conversations that I have had with the ICT director in Police Scotland, he has suggested to me that the time to do that is closer to four years, but that

includes some other installations that he has planned. We are a number of years behind.

The Acting Convener: We can debate the number of years, but there has clearly been an opportunity cost.

John Foley: Yes, there has indeed.

The Acting Convener: As there are no further questions from other members. I thank both witnesses for attending. Mr Flanagan did not get many questions in this session, but I am sure that he is grateful for that. The committee will write to you with our requests for additional information, and I hope that they can all be met.

We will now move into private session.

11:02

Meeting continued in private until 11:20.

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

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba