



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 3 December 2019

Session 5



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JUSTICE COMMITTEE

30th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

John Finnie (Highlands and Islands) (Green)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*James Kelly (Glasgow) (Lab)

*Liam Kerr (North East Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ash Denham (Minister for Community Safety)

Gill Imery (Her Majesty’s Inspectorate of Constabulary in Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 3 December 2019

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the 30th meeting in 2019 of the Justice Committee. We have received apologies from John Finnie.

Item 1 is a decision on whether to take in private item 6, which is the committee's review of the evidence that it will have heard earlier in the meeting. Do members agree to take item 6 in private?

Members *indicated agreement.*

Subordinate Legislation

Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019 [Draft]

10:01

The Convener: Item 2 is consideration of the draft Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019, which is an affirmative instrument. I welcome the Minister for Community Safety, Ash Denham, and her officials from the Scottish Government. Lucy Lawson is a senior policy officer, and Katie McGarvey is a lawyer. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I understand that the minister wants to make an opening statement

The Minister for Community Safety (Ash Denham): I thank the committee for inviting me to speak in support of this affirmative instrument, which will place appropriate adult services in Scotland on a statutory footing.

As the committee will be aware, the role of an appropriate adult is to facilitate communication between the police and vulnerable adults during police procedures. Appropriate adult services in Scotland have been delivered on a non-statutory basis since the early 1990s and they perform an essential function in the criminal justice system.

To ensure that those vital services remain sustainable, the Scottish Government included provisions relating to appropriate adults in the Criminal Justice (Scotland) Act 2016, including enabling powers that have resulted in the regulations that the committee is considering today. Those regulations confer duties on local authorities to deliver appropriate adult services and provide training for practitioners. Local authorities currently carry out such functions on a non-statutory basis and so will be well placed to undertake them as part of the statutory service. The regulations also place a duty on the Care Inspectorate to assess the quality of provision of appropriate adult services. That will create a new level of quality assurance and ensure that appropriate adult support in every part of the country will be of a high standard.

The regulations will be underpinned by detailed guidance, to which local authorities must have regard. The Government has shared a draft of that guidance with the committee to assist it in its consideration of the regulations. The guidance will ensure that every local authority has a clear understanding of what is expected of it in discharging its functions. It will also help to ensure

consistency in key aspects of provision across all local authority areas.

To support the introduction of the statutory duties, the Government is providing additional funding of £1 million per annum for local authorities. We have already allocated £500,000 in this financial year to assist local authorities in preparation for providing the statutory service. We have agreed additional funding of £180,000 per annum to assist the Care Inspectorate in undertaking the quality assessment function.

Appropriate adults play an important role in helping to safeguard the rights of vulnerable individuals in the criminal justice system. By supporting the regulations, the committee would ensure that this vital service continued to be delivered to a consistently high standard right across Scotland.

The Convener: Thank you. Do members have questions for the minister?

Liam McArthur (Orkney Islands) (LD): Good morning, minister. I warmly welcome the statutory instrument and the provisions that you have just laid out.

You mentioned the additional funding that is being provided, including £1 million to local authorities. That is welcome. Can you reassure the committee that there is a mechanism in place to ensure that those resources will keep pace with changes in the cost of maintaining the provision and the training that is required?

Ash Denham: As I said, we have allocated £500,000 to enable local authorities to make preparations but, in most cases, local authorities are already delivering the service, albeit on a non-statutory basis. We have agreed to provide funding of £1 million per annum for the next three years. After that time, the amount will be reviewed. I cannot give any more detail at the moment.

Liam McArthur: In a sense, the amount of funding that is provided will be subject to local authorities coming forward with a needs case for the costs over a three-year period.

Ash Denham: Yes.

Liam Kerr (North East Scotland) (Con): I have a similar line of questioning. The £1 million is to help local authorities. What will it cost local authorities to deliver the service in each year over the next three years?

Ash Denham: We have estimated that it will cost around £1 million a year to deliver the service but, as I said, most local authorities are already delivering the service. We imagine that the demand will increase once we place a statutory duty on the police to use the service. An additional £1 million is being provided to local authorities to

make sure that we have the service that we want. We want that service to be consistent across the country, and we will take steps on quality assurance to make sure that we have the quality that we expect.

The Convener: As there are no more questions for the minister, we will move on to item 3, which is formal consideration of motion S5M-19844. The Delegated Powers and Law Reform Committee has considered and reported on the instrument and has no comment to make on it.

Once the motion has been moved, members will have an opportunity to have a formal debate, if necessary. I invite the minister to move the motion.

Motion moved,

That the Justice Committee recommends that the Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019 [draft] be approved.—[Ash Denham]

Motion agreed to.

The Convener: I thank the minister and her officials for attending. I suspend the meeting briefly to allow for a change of witnesses.

10:07

Meeting suspended.

10:08

On resuming—

“Thematic Inspection of the Scottish Police Authority”

The Convener: The next item is an evidence session with Her Majesty’s Inspectorate of Constabulary in Scotland on its report, “Thematic Inspection of the Scottish Police Authority”. I refer members to paper 3, which is a note by the clerk, and papers 4 and 5, which are private papers.

I welcome Gill Imery to the meeting and invite her to make some brief opening remarks.

Gill Imery (Her Majesty’s Inspectorate of Constabulary in Scotland): I thank the Justice Committee for its interest in our report on the Scottish Police Authority. As members know, under the Police and Fire Reform (Scotland) Act 2012, Her Majesty’s Inspectorate of Constabulary has wide-ranging powers to look at the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority.

I begin by emphasising that the most important aim of all HMICS’s work is to improve policing for the benefit of the Scottish public. As part of that work, we take a keen interest in the governance of policing, because it goes right to the heart of public confidence.

HMICS has looked at the Scottish Police Authority a number of times since it was established. Prior to the 2019 report, the then Cabinet Secretary for Justice instructed HMICS to look at the SPA in 2017. We produced a phase 1 report, which looked specifically at openness and transparency on the part of the SPA. Since that time, there have been a number of changes, not least the previous chair announcing his decision to resign soon after the report was published. Since June 2017, HMICS observed the workings of the SPA and attended board and committee meetings between July 2017 and February 2018. The current chair came into post in December 2017—two years ago, almost to the day.

HMICS was always looking for the right time to conduct an inspection. I am at pains to say that the 2019 report is not a follow-up phase 2 report to the phase 1 report in recognition of the changes that have taken place since 2017. I hoped that the inspection would have a positive story to tell about the progress that has been made since 2017, but members will have seen from the report that that has not been entirely the case. The inspection’s terms of reference were published in March this year, and the report was published on 26 September.

Thank you for the invitation. I am happy to answer any questions that members have.

The Convener: Thank you. I will start with a general question. Does the SPA now have the capacity to deliver on what it was designed for? If not, what more is needed?

Gill Imery: The SPA still has some work to do in building the corporate team and the staff to support the board’s work. That has been referenced many times over the years during the tenures of the current chair and the previous two chairs.

There is a discussion to be had about how the SPA should fulfil its role. The role and remit of the Police Authority are very clear in the 2012 act. When I say the “Police Authority”, I mean the chair and the board members. The question is then the extent to which SPA staff need to be equipped to support the board. In the report, I say a number of times that there is merit in considering the creation of a secretariat for the board, rather than building a body that delivers many of the functions itself.

The Convener: Given what you have said about the corporate team and the other issues that you have covered, is staff morale in the SPA still an issue? If so, what steps need to be taken to improve morale?

Gill Imery: Staff morale was an issue that came across very clearly during our inspection, through the anonymous public survey, which attracted a limited response—there were more than 80 responses, but half of those were from staff—and from our discussions and interviews with members of staff. I have recently become aware, from the interim chief executive’s letter of last week, that efforts are being made to invest in organisational development, which will include engagement with SPA staff. Steps appear to have been taken, but I am not able to say how successful they have been. During the inspection, staff morale was mentioned consistently not only by staff but by staff associations and unions.

10:15

The Convener: It appears that the morale of SPA staff is still a problem—or that it has been a problem and steps might be being taken to deal with it. Will you give an example of what affected staff morale and what was causing the problems?

Gill Imery: Some of the issues relate to uncertainty about the structure. Your first question was about what the capacity of the authority is and how it should discharge its clear functions. Over the years, there have been a number of reviews and recommendations, with a number of suggested structures for the corporate staff complement to support the board.

The previous interim chief executive suggested a structure that was approved at the board meeting at the end of May 2018. That did not come to fruition. The previous chief executive came into post in October 2018. Understandably, time was allowed for that individual to understand what was in the revised structure. However, ultimately, no revised structure was then put in place. Meanwhile, staff who have worked at the authority through more than one iteration of senior leadership are unsure what their roles will be.

The situation was compounded by the staff pay and reward modernisation scheme that Police Scotland and the SPA undertook to ensure that staff roles were assessed and their pay rates agreed. A lot of staff at the authority did not find that their current grades had been upheld during that process.

Therefore, I think that it is fair to say that the morale was not to do only with internal issues at the authority.

The Convener: I take it that the board had agreed the revised structure in 2018.

Gill Imery: Yes, it did.

The Convener: Why was it not implemented?

Gill Imery: In part, there was a recognition, I think, that there would be a new permanent chief executive coming into post and that that individual should have the opportunity to design his own structure, or at least to agree it. Although the structure was approved in May 2018, the individual did not come into post until October 2018 and did not take over the reins as chief executive and accountable officer until November 2018. I am unable to explain why, when approved at the end of May, the restructure did not then proceed.

The Convener: That is about a six months' delay, when things were in limbo.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. My question is in a similar vein. Your report acknowledges that there has been

"genuine progress at the Scottish Police Authority over the past 18-24 months."

What challenges remain for the SPA in fulfilling its core statutory role? Is there an overriding thing that you think would help it to fulfil that role?

Gill Imery: I mentioned the positive work that the authority is undertaking in organisational design. It certainly requires stability. Although the previous restructure that was suggested and approved in May 2018 might not have met everyone's expectations, it would have provided some certainty and stability by now. That seems to be the most important requirement for staff.

Rona Mackay: You have just spoken about the structure and the systems of governance. Your report refers to aspects of that being "under-developed", and you have explained what that means. How optimistic are you that the matter can be fixed, and that there will be a solution to the problems that you are highlighting in the foreseeable future?

Gill Imery: I believe that the structure is correct in the sense that we have a national police authority that sits between the Government and Police Scotland in the national system. The comparative analysis of jurisdictions outwith Scotland shows that the structure works in different ways in different places, but I think that what we have in Scotland can work. However, it is clearly proving to be challenging to make that a reality.

Rona Mackay: I hesitate to ask whether that is just down to the staff or personnel, or is it down to organisational difficulties? You say that the principle and the structure work, so I am keen to know whether you are optimistic about how long it will take to become the model that we think it should be.

Gill Imery: It is difficult. As I mentioned, the reply that I received from the SPA last week was the first communication that I had received from it about the report, which was published on 26 September. I saw the reply at the end of business on Tuesday, and it was published with the board papers during the meeting on Wednesday, so I need a little time to assess its content and check the various pieces of work that are described in it in order to provide the committee with an informed judgment on whether progress is being made. There are very talented and experienced members on the board, and there is a strong, able and talented chief officer team at Police Scotland, so there are grounds for optimism.

The Convener: It took two months for you to receive that reply. Is that a normal time, or would you expect a faster response?

Gill Imery: It is not normal. I would expect some form of response, even if it was a verbal one. The letter makes it clear that the interim chief executive took up post only on the day of publication of the report, but there are other members of staff, not least the chair and members of the board, who could have communicated a response to me. The letter that I sent to the chair with the report provided a timescale of three months within which we expected to receive an action plan, but it also offered the opportunity for dialogue and discussion. We did not intend to say that we did not expect a response for three months. We expected to work together with Police Scotland or the SPA on a response and that there would

certainly be an action plan in place by three months after the report at the latest.

The SPA response makes it clear that it would prefer not to do an action plan. It offers three chunks of works to realise the recommendations of my report. I am not aware of that ever happening before. At the same time, I am more than happy to understand what the authority is doing to meet the recommendations. Indeed, it is a matter for the authority to decide whether it wants to meet the recommendations. I do not have the powers to compel it to do so.

The Convener: As part of your inspection, did you look at the time that it has taken the SPA to respond to key reports? This committee did a post-legislative scrutiny report and it took six months for us to receive a reply, despite asking for it several times. The reply only came in the last week or so and even then key points were not addressed.

As part of the inspection, did HMICS look at such issues? There were key documents that made substantial and significant points, but it took the SPA a long time to reply to those.

Gill Imery: Yes. It emerged during our inspection that there are challenges with receiving prompt responses to correspondence and other requests. For instance, the document request accompanying the inspection was made at the start of June, and the response to that—the documents that were submitted—assisted in the course of the inspection. However, for a considerable period, we did not receive all the documents that we asked for. Indeed, most of the inspection had been completed by the time that we received the documents. During the fieldwork, we reviewed more than 350 documents, on top of conducting more than 40 interviews with people and the public survey that I mentioned, so we had a lot of sources of information.

It emerged that there are issues with the authority's capacity to respond to correspondence, which is compounded by the chair's strong sense of the standard that is required in answering important requests. It appeared that drafts of responses were changed personally by the chair.

The Convener: I see. Liam Kerr has a supplementary question.

Liam Kerr: Did you raise any of the concerns and issues directly with Scottish Government officials before publication of the report?

Gill Imery: Yes. There were issues that emerged in the course of fieldwork—by which I mean the interviews that I have talked about, engagement with staff and the returns from the public survey—that I did not feel were appropriate to include in full in the report, because they were

more about internal matters. However, they were sufficiently concerning to raise personally with the chair and the Scottish Government.

Liam Kerr: Who in the Scottish Government was that and what form did it take? Was it a sub-report or a letter or something like that?

Gill Imery: I had a discussion with the director general for education, communities and justice, Paul Johnston, and I followed that up with correspondence.

Liam McArthur: Your report states:

"The implementation of the role of Chair and its associated responsibilities, remains subject to interpretation. This is reflected in the differing approaches taken by each of the three Chairs, each of whom has rooted their interpretation in the legislation and developed both their leadership approach and the governance framework to suit that interpretation."

You have spoken about the impact on staff morale of the shifting responsibilities, which I suspect points to the issue that you raise in the report. Why has that situation arisen? Is it a source of concern and, if so, how might the SPA resolve it?

Gill Imery: The report suggests providing some kind of guidance or code of practice that would augment the primary legislation—the Police and Fire Reform (Scotland) Act 2012—so that any chair would have more prescriptive guidance on how to fulfil the functions in the act. There is also a point about the relationship between the chair and the chief executive. The chair and members of the board should set the direction and vision for the Police Authority, and the chief executive should then have operational autonomy to carry that out and report back to the board.

10:30

Liam McArthur: The committee picked that up in its post-legislative scrutiny report, which the SPA was not wholly sympathetic to. The SPA suggested that personalities played a part, but cautioned against an overemphasis on individual leaders and their approach. Your findings clearly hit on the same issue with the divergence in approach by the chairs having knock-on consequences. What is your sense of the negative impacts that that can have? Presumably, an individual will always bring something of their personality to the role. What is your assessment of the diverging approach and its impact on the work and functioning of the SPA?

Gill Imery: It absolutely has an impact on staff, who want to do a good job, and on board members. I mentioned that Scotland has the strongest SPA board that it has ever had, in the sense of a real mixture and depth of experience in a number of different walks of life and professions. However, for the benefits of that to flourish, the

chair has to give the board members the autonomy to carry out roles as committee chairs and contribute to their fullest in that capacity. For staff who are employed by the SPA and for board members, it is hugely important to have stability, continuity and empowerment in order that they can do their jobs.

Liam McArthur: Have you picked up that feedback directly from conversations with board members? Do they feel that they could be contributing but, because of the way that the board functions at the moment and the approach that the chair is taking with the board, that is not being allowed to be realised?

Gill Imery: At the time of the inspection, the board members were very supportive of the current chair and the direction in which she has taken the authority by routing everything back to the functions in the act. However, from other informed observers, we picked up the frustration that perhaps the talent of the board members was not being fully realised.

Liam McArthur: In the report, you also state:

“The Chair and a number of Board members are acting well outwith their core ... role, contrary to agreed job descriptions and guidelines set out in ... guidance.”

How has that come about, and how might we resolve that issue?

Gill Imery: There were a number of perspectives on that during the inspection. On the part of the chair and some of the board members, there was the view that there was a requirement for them to step into executive functions to compensate for weakness in the authority staff team, including that of the previous chief executive. There was a contrary view that the staff team and others were disempowered by a particularly strong interest being asserted by the chair and that, therefore, they were inhibited in carrying out their jobs.

Liam McArthur: Did you see any signs that there would be a willingness by the chair and board members to withdraw from that role if it was accepted that, for a period, there were gaps in capacity that could be addressed through training, recruitment or whatever, which would give optimism that they would step back from their approach in relation to the executive team?

Gill Imery: The chair’s previous update reports to the board and the content of the response from the interim chief executive—which came as recently as last week—indicate a willingness to step back, in the sense of empowering the now-interim chief executive and team to do the work of the authority. However, that response still seemed to resist the idea that the generic guidance, “On Board: a guide for members of statutory boards”, which applies to all public bodies in Scotland,

applies to the authority in the same way. There seems to be a suggestion that the Scottish Police Authority views itself as being unique in relation to all other public bodies.

Liam McArthur: To some extent, that may be an issue of style and approach, as opposed to a reflection of the board trying to manage gaps in the executive team.

Gill Imery: Yes. My conclusion is that the issue is as much about style and approach as it is about requirement.

Fulton MacGregor (Coatbridge and Chryston) (SNP): To quote your report:

“a perception pervades of a passive approach from the SPA and a lack of rigour or effectiveness in holding the Chief Constable to account.”

Will you elaborate on why you think that that is the case and what needs to be done to improve things?

Gill Imery: I know and can see that Police Scotland is very keen to be scrutinised and wants to be held to account. Police Scotland’s chief constable and chief officer team have invited me to come in and inspect various functions within their organisation, because the organisation is frustrated that the Scottish Police Authority has not done so. There is a desire from Police Scotland to be able to publicly demonstrate the efforts that it is making. I find it difficult to understand why the authority is not more rigorous in holding the chief constable and Police Scotland to account. A huge effort goes into providing briefing papers and reports to the authority, and yet one can see from the publicly held SPA board meetings how much time is spent actually utilising the content of those papers.

Fulton MacGregor: Is there any issue relating to matters that are reserved to the United Kingdom Government and are those resulting in any difficulties in normal relationships or accountability, or in a lack of focus for the SPA?

Gill Imery: There are issues that concern reserved matters, primarily national security and counter-terrorism, where there is a difficult and non-overt role for the Scottish Police Authority. There are direct communications among members of the National Police Chief’s Council, of which the chief constable of Police Scotland is now a full member, and between the Scottish Government and Police Scotland. The report highlights the need to be more specific about the role for the authority in those sorts of matters—Brexit being the most obvious one. Having said that, I do not think that that issue accounts for a large part of the observation in the report on the lack of rigour and the generally passive—and indeed reactive—roles that the Police Authority has played. Mostly, that observation relates firmly to devolved matters that

are within the remit of the Police Authority in Scotland.

Fulton MacGregor: Thanks for clarifying that issue. Can you pick up on recommendation 11 in the report and the specific example of cyberkiosks? Has the SPA demonstrated that it has taken on board the key learning points from the proposed introduction of cyberkiosks? You may be aware that we looked at that matter in some detail at the Justice Sub-Committee on Policing.

Gill Imery: Yes; I think the Police Authority and Police Scotland have now put in place many of the measures you might have wanted to see prior to the purchase of equipment—in other words, consideration of ethical implications and human rights considerations. I am aware that those have been given a lot of attention within the Police Authority and that will continue.

The Convener: When we did pre-legislative scrutiny there was some concern, to put it mildly, over whether it would be possible for the SPA to promote and monitor work with Police Scotland and to provide that very important scrutiny function. I suppose that that concern was added to when we heard from the union, the Scottish Police Federation, which did not feel that its views were taken into account. It had concerns, mostly about funding, that, at one point, had not been raised at all with the SPA. Did that problem with the dual role come through in your report?

Gill Imery: There are challenges in striking a balance between promoting policing in Scotland through Police Scotland and holding Police Scotland to account. The two roles can coexist, but there needs to be healthy scrutiny and a holding to account in order to promote and advocate for Police Scotland. The Police Authority should be the body that understands the challenges that Police Scotland faces, both financial and operational, and uses its voice to influence the Government and the public debate about the challenges and the effort that Police Scotland makes to deliver for the public under difficult circumstances.

The Convener: Would you say that there is an imbalance at present? As part of your scrutiny you pick out points for improvement that can be acted on, but do you think that the balance is more towards improvement and monitoring without an articulation of the problems that scrutiny has highlighted?

Gill Imery: To be candid, I do not feel that the authority is doing either particularly well at the moment. It is neither promoting and advocating for Police Scotland, nor holding Police Scotland effectively to account.

Liam McArthur: I will follow up Fulton MacGregor's point about cyberkiosks. He rightly said that the Justice Sub-Committee on Policing has gone into that in some depth. We were all more than a little surprised at what appeared to be a lack of scrutiny and oversight of that by the SPA. Was it your conclusion that the papers that were prepared for SPA members were somehow deficient in the detail that was provided and made it more difficult to cross-examine the chief constable and senior police officers, or was it that the information was there but was not picked up and used? It is difficult to know what you do not know, in a sense, but if the papers prepared for that meeting were full and detailed, one would expect board members to draw the relevant information from them and use it in any interrogation of the chief constable.

Gill Imery: Police Scotland has improved its provision of information to the authority very much since we looked at the authority in 2017. Certainly, on cyberkiosks and many other examples, the information is there in the papers for the committees or the board of the authority. However, the ability of the board to identify issues that will be of significant interest to the public is limited, as I say in the report.

10:45

Liam McArthur: It is not that the board is trying to cram too many agenda items into a single meeting and is therefore finding itself glossing over issues that should be drilled down into in more detail; it is that the board is not picking out the information that is being provided by Police Scotland and, I presume, by SPA members of staff.

Gill Imery: The board meetings are very busy by way of agenda items. They are also very frequent, in the sense that there is the rhythm of monthly meetings. As soon as one meeting finishes, preparations have to begin—certainly on the part of Police Scotland—for the next one. That is an area in which the board would highlight that there are deficiencies in relation to capacity and support for the board from staff. Within the SPA, there perhaps needs to be more focus on providing staff to analyse the papers that are submitted and to pick out the salient points to draw to the attention of board members.

James Kelly (Glasgow) (Lab): In the report, you highlight the

"lack of ... impact assessment of ... operational policing policy",

which has caused

"reputational issues."

Why has that occurred? What steps need to be put in place to fix it?

Gill Imery: Through a desire to deliver operational outcomes, Police Scotland did not previously give sufficient thought to impacts on communities. There have been improvements because impact assessments are now carried out routinely. On top of that, there is an appetite for wider consultation before policy is decided.

I have had the opportunity to participate in training to raise awareness of the ethics advisory panels that Police Scotland is considering introducing in order to open up various challenges to a much wider set of perspectives. The local policing programme has a reference group with an eclectic mix of people who have different perspectives, including people from academia and local government. As recently as Friday, I was at a round-table event that was jointly chaired by Police Scotland and Martyn Evans, who is a member of the SPA. It brought together a mix of people to talk about use of research and evidence to inform policy and practice in policing. There are signs for real optimism.

James Kelly: That is welcome. You highlighted that performance reporting on policing is hindering scrutiny. Why?

Gill Imery: The performance picture in Police Scotland has been under development for some time. Police Scotland has committed to providing performance reporting that is based on outcomes for communities and citizens. The quarter 2 performance report, which was the second to use the new performance framework, was given to the board last Wednesday. HMICS absolutely welcomes the focus on outcomes, which is a really positive development.

It has taken quite a long time to get to the stage that we are at, and there are still gaps, but the quarter 2 performance report provides a significant amount of information. There is a lot of narrative, but there is also, towards the end of the report, a huge amount of hard data on recorded crime and detection rates, which will equip the board to ask some very informed questions about trends. The report provides comparison not only with the previous year but across five years, which is hugely helpful. Unfortunately, such scrutiny did not take place last week.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): In response to Liam McArthur's question, you said that the SPA "sees itself as ... unique". I know that that relates to recommendation 2. Could you say a little more about why, and where you think the Government needs to focus its energies in terms of the differences and how they might impact on governance?

Gill Imery: There are unique features, in the sense that the chief constable has operational autonomy and responsibility, which makes the SPA distinct from other public bodies. However, it is not entirely unique; other countries must clearly overcome a similar challenge of ensuring operational delivery of policing under strong leadership, and ensuring that there is a layer of governance between the Government and delivery of policing. To that extent, the SPA has different features from other public bodies, but I would not say that they make it entirely unique.

"On Board: a guide for members of statutory boards", which is for all public bodies, applies to the relationship between the chair and chief executive of the authority, and to that between the chair of the authority and the chief constable of Police Scotland. The challenge is compounded partly by accountable-officer status and where the purse strings are held. In the structure at the moment, the chief executive of the SPA holds the purse strings for the whole of policing—Police Scotland, forensic services, and the SPA.

Members will have seen from the documents that they have that only about 12 per cent of the overall budget for policing is not pay related. The chief constable is therefore responsible for spending most of the budget, but is not accountable for his decisions about spending it. Providing additional accountable-officer status for the chief constable would make the chief constable more accountable than is the case at the moment.

Shona Robison (Dundee City East) (SNP): You have acknowledged in your report that some improvement has been made in local engagement, and that there has been a renewed focus on it by the SPA and Police Scotland, and you have highlighted the communications strategy and plan. Can you say a bit more about what needs to be done to make further improvements, on top of the improvements that have already been made?

Gill Imery: The chair and the board have taken the board's meetings around the country. The most recent board meeting was last Wednesday in Aberdeen. I know that the day before that, there were various visits in Aberdeenshire and Aberdeen city. That is really positive.

I suggested that representation on the board from the Convention of Scottish Local Authorities or from a local authority would be helpful. You will have seen in the response to the report that there is a view that there is an inhibitor to co-opting local authority representatives formally and making them full members of the board. However, there is nothing to inhibit members of COSLA being represented on committees or having attendee status at board meetings. There certainly needs to be some means of introducing a local authority

perspective to the considerations that take place at national SPA level, because it is necessary that the board understands how decisions that are made centrally manifest themselves and have consequences locally for people in communities and for practitioners.

Shona Robison: Do you think that local authority members being on committees and having attendee status at board meetings would be a reasonable compromise that would be sufficient to meet that need?

Gill Imery: The link would also go in the other direction, to the 32 scrutiny committees at local authority level. I know that the chair and the interim chief executive attended the most recent meeting of the forum for the conveners of those scrutiny committees. It is a two-way relationship—there is communication in both directions. As well as the perspective of local authorities and local communities being injected into the national SPA considerations, the authority is involved in and aware of the perspective of the 32 local scrutiny committees.

Those 32 scrutiny committees vary significantly in terms of remit and the frequency with which they meet. In some areas police performance at local authority level is scrutinised only once a year, and in others it is done quarterly. Some areas have a bespoke police and fire scrutiny committee, whereas others scrutinise police performance as part of their wider community safety arrangements or in other local authority fora.

Shona Robison: Should there be more standardisation, or is that variation to do with the fact that there is local decision making on how such arrangements operate?

Gill Imery: There should be more consistency. Clearly, local authorities must have the flexibility and the autonomy to manage their governance and business as they see fit, but policing is hugely important to communities in Scotland. As such, it merits more than cursory annual consideration of the local police plan. I know that the local police commanders who are responsible for the 32 local authority areas through the 13 divisions would absolutely welcome the opportunity to speak about what they are doing to deliver policing to communities in all areas of Scotland.

Liam Kerr: Good morning. I want to change the subject slightly. The SPA and the chief constable have told the Scottish ministers that the estate, the information and communications technology and the fleet require significant capital investment, without which it will not be possible to continue to deliver a fit service, and the SPA has said that it has managed to remove £200 million annually from the revenue budget but cannot continue to remove that money. What is your view of those

statements? What do you think about the impact that the SPA and chief constable have concluded that there will be on their ability to meet their long-term strategic objectives?

Gill Imery: There is a need for significant capital investment to improve the quality of the estate, to maintain and improve the fleet, and to realise the real benefits of transformation in design and development of ICT. Many of the estate and the fleet issues are not new—that is certainly the case with the buildings. Police Scotland is dealing with situations and standards that it inherited from the previous forces.

We are where we are: there is a need for capital investment. I already mentioned the small portion of the budget that is not spent on staff. That is where workforce planning becomes really important, because if, as was previously the case, a specific number of officers must be employed, that affects the amount of flexibility in the budget.

11:00

Liam Kerr: You said that the issues are not new. However, in your report, you said:

“the SPA ... has failed to advocate this position effectively on the national stage.”

I found that to be surprising. Can you say more about why the SPA has failed to articulate that?

Gill Imery: That situation has changed in the recent past. I mention in the report that, at the August meeting prior to publication of the report, there was much more overt support for the need for investment in policing. We have certainly seen that support continue, including in the correspondence to which the convener referred. I am aware that the chair concentrates significantly on the shortfall in funding and the need for investment, which is welcome. I do not know why that was not previously the case.

Liam Kerr: James Kelly asked about performance reporting. What are your views on the adequacy of the SPA's financial reporting system, particularly with regard to openness and transparency?

Gill Imery: Is that in respect of the finances of Police Scotland or the SPA?

Liam Kerr: Both.

Gill Imery: The merging of the previous finance and human resources committees to form an overarching resources committee has been a good thing. The quality of financial reporting has improved significantly. I interpret that as being down to the contribution of Police Scotland's chief financial officer and deputy chief officer, as opposed to any improvements on the part of the authority.

The Convener: Audit Scotland has issued several section 22 reports on the SPA in the past four years. Do you think that this year there might not be a section 22 report, or are there still issues that are likely to cause Audit Scotland to deem it necessary to publish another one?

Gill Imery: I think that there will be another section 22 report.

The Convener: This is at the crux of the evidence that we have heard today. I noted that, under “Governance”, the report said:

“The Chair and a number of Board members are acting well outwith their core non-executive role, contrary to agreed job descriptions and guidelines set out in On Board guidance.”

Will you define what the role of the chief executive is? Where does the buck stop? How far can the chair and the board go, and how does that differ from what we are seeing in practice?

Gill Imery: The board—by which I mean the chair and members of the board—should set the strategic direction and vision for the Scottish Police Authority. Under the legislation, the chair and board members are the authority. The chief executive role delivers the operational business and the vision that the board sets. The board sets the culture and the strategic direction, and the chief executive and their officer team deliver.

As I said earlier, that is slightly complicated by the structure for policing, because we could argue that the chief constable has a chief executive function, in the sense that that role is responsible for delivering operational policing. Therefore, the chief constable provides leadership in and delivery of the business of policing. That goes back to my earlier suggestion that we should consider having two accountable officers—one in the authority and an additional responsibility for the chief constable.

The Convener: That is helpful. The post-legislative scrutiny report and the HMICS report require responses. Who should respond to them formally on the part of the SPA—the chair or the chief executive?

Gill Imery: They should both respond. The chief executive has a responsibility to carry out the work. The chair, as leader of the SPA, should respond to significant pieces of work, such as the committee’s report and mine.

The Convener: You said that drafts have been sent and that they have been changed. Do you have confirmation that the changes have gone back to be fully discussed by the board and the chief executive? Would you expect that? Earlier, you said that delay can be caused if a response that has been prepared is then substantially changed. Did I pick you up wrongly?

Gill Imery: I said that certain pieces of work are subject to amendment and that that introduces delay. However, as regards the response to my report, I had no verbal or written communication until last Tuesday, so I am not aware of any drafts prior to that.

The Convener: That is helpful.

On cyberkiosks, you touched on the Justice Sub-Committee on Policing’s role. The sub-committee made sure that it heard from, for example, the freedom of information officer and other experts, including the Scottish Human Rights Commission. However, it appears that the SPA did not do that, but spoke only to the police. Is that an issue to pick up? Should it be considering wider engagement with key stakeholders, in order to move from being reactive to the proactive role that is expected?

Gill Imery: Yes, absolutely. I mentioned the round-table event, which is a good sign that the SPA and Police Scotland sought to involve people from a wide variety of perspectives. However, wider engagement would improve things.

The Convener: I should have said the Information Commissioner’s Office, as opposed to the freedom of information officer.

I thank Gill Imery for attending today and for a concerning but worthwhile information session.

I suspend the meeting in order to allow for a change of witnesses.

11:08

Meeting suspended.

11:09

On resuming—

Subordinate Legislation

Firefighters' Pension Scheme (Scotland) Amendment Regulations 2019 (SSI 2019/357)

Firefighters' Pension Schemes (Scotland) Amendment Order 2019 (SSI 2019/358)

Police Pensions Amendment (Increased Pension Entitlement) (Scotland) Regulations 2019 (SSI 2019/380)

Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2019 (SSI 2019/381)

Firefighters' Pension and Compensation Schemes (Amendment) (Scotland) Order 2019 (SSI 2019/382)

The Convener: Agenda item 5 is consideration of five instruments that are subject to the negative procedure. I refer members to paper 6, which is a note by the clerk. The Delegated Powers and Law Reform Committee has considered and reported on the instruments and has made a number of comments, which are set out in the paper by the clerk. Do members have any comments?

Fulton MacGregor: I have some comments, although they do not relate specifically to the instruments that are in front of us. I have been dealing with a constituency case involving firefighter pensions. It is about pre-1992 pensions which, unlike later pensions, are not given to partners who are not surviving spouses or surviving civil partners, even if, as in this case, there was a relationship for several decades.

I know that the matter is mainly reserved to the UK Government, and that the Scottish Public Pensions Agency does not plan to make any changes because its view is that there is a principle that changes to public service pensions should not be made retrospectively because improvements to schemes should generally be met by members and not by the taxpayer. However, my constituent feels that there is discrimination against them in this case.

Will the committee agree to write to the Minister for Community Safety to bring the anomaly to her attention and ask her how many surviving partners are affected, what it would cost to make such a change to pre-1992 pensions and whether she is minded to do that at any point?

The Convener: Do you have a suggestion?

Fulton MacGregor: My suggestion is that we write to the minister.

The Convener: Yes. Is the committee content with that? Do members have any other comments?

If we write to the minister, there will be a delay before we receive a response. As I said, the Delegated Powers and Law Reform Committee has considered the instruments and made some comments—not least about the drafting, which appears to be defective. Does the committee agree to write to the minister as Fulton MacGregor suggests, and allow her an opportunity to address the comments on the defective drafting? I believe that we have time to delay.

Stephen Imrie (Clerk): There is time for the Firefighters' Pension and Compensation Schemes (Amendment) (Scotland) Order 2019.

The Convener: Do members agree to delay a decision on that order until our meeting on 7 January, and to do the same for the regulation that Fulton MacGregor talked about?

Members indicated agreement.

Stephen Imrie: If I understand correctly, we will write to the minister about the broader point that Mr MacGregor raised and in relation to SSI 2019/382, and we will hold that off until 7 January, pending further correspondence with the minister on the suggestion that there is defective drafting. We will combine the two issues in the same letter to the Minister for Community Safety.

The Convener: And the other instruments can proceed.

Stephen Imrie: Yes.

The Convener: With that in mind, we will delay a decision on SSI 2019/382 until 7 January. Does the committee agree that it does not want to make any recommendation in relation to the other instruments?

Members indicated agreement.

The Convener: Thank you. That concludes the public part of today's meeting. Our next meeting will be on Tuesday 17 December, when we will continue to take evidence on the Children (Scotland) Bill.

11:14

Meeting continued in private until 12:07.

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