



HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

Thematic Inspection of the Scottish Police Authority - Phase 1 Review of Openness and Transparency

June 2017



© Crown copyright 2017

Produced and Published by Her Majesty's Inspectorate of Constabulary in Scotland

ISBN: 978-1-910165-34-8

Laid before the Scottish Parliament by Her Majesty's Inspector of Constabulary in Scotland
under section 79(3) of the Police and Fire Reform (Scotland) Act 2012

HMICS/2017/03

www.hmics.org.uk



HM Inspectorate of Constabulary in Scotland

HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).¹

We have a statutory duty to inquire into the arrangements made by the Chief Constable and the SPA to meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions.
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions.
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit.
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given.
- Where we make recommendations, we will follow them up and report publicly on progress.
- We will identify good practice that can be applied across Scotland.
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication.
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.

This inspection was undertaken by HMICS in terms of Section 74(2) of the Police and Fire Reform (Scotland) Act 2012 and laid before the Scottish Parliament in terms of Section 79(3) of the Act.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.



Contents

	Page
Executive summary	3
Key findings	7
Recommendations	9
Background	11
Meetings in private	17
Distribution of papers	26
Awareness and understanding	28
Next stages of inspection	35
Appendix 1 - Copy letter to Chair of the SPA from HMCIC	36
Appendix 2 - Timeline of governance decisions and review	39
Appendix 3 - List of stakeholders consulted	40

Acknowledgements

HMICS would like to acknowledge the Chair, Chief Executive, Board Members and staff of the Scottish Police Authority for their co-operation during our inspection work. We also acknowledge the feedback from some former Board Members and a wide range of stakeholders.² We would also wish to thank Audit Scotland for their participation and support in conducting our fieldwork as part of their own external audit work in assessing governance arrangements.

This work was led within HMICS by Tina Yule. Executive lead was provided by Gill Imery, Assistant Inspector of Constabulary.

² Our list of stakeholders consulted is at Appendix 3.



Executive summary

1. The overall aim of this inspection, was to assess **the openness and transparency of the way that the Scottish Police Authority conducts its business**. We have specifically examined the Authority's decision on holding meetings in private and the publication of meeting papers. We also assessed the Authority's compliance with relevant legislation, guidance and its own standing orders and took the opportunity to check the awareness and understanding of the Chair, Chief Executive, all Board members and selected senior officials of these key documents.
2. The background to this inspection and our methodology are outlined in the Terms of Reference,³ which were published on 11 May 2017. Although HMICS had committed to a statutory inspection of the SPA as part of our 2017-18 Scrutiny Plan,⁴ the Cabinet Secretary for Justice wrote to me on 20 April 2017⁵ and requested that I bring forward those aspects of my inspection which related to issues of transparency and accountability. This request followed concerns raised by the Scottish Parliament Public Audit and Post-Legislative Scrutiny Committee (PAPLS) and the Justice Sub-Committee on Policing. We have primarily drawn our evidence from interviews, document reviews and feedback from stakeholders to support our key findings within this report, as well as evidence gathered through our ongoing engagement with the SPA.
3. As part of our inspection, we also considered concerns from PAPLS and the Justice Sub-Committee on Policing in relation to the Authority's handling of the resignation of Board member Moi Ali. This was not an investigation into the specific circumstances and was not intended to address any complaint or grievance.
4. There have been positive signs of improvement in SPA Board operations over the last 18 months. The relationships between the SPA and Police Scotland have improved significantly and the shared development of the Policing 2026 Strategy has been a major milestone. Other developments including improved financial reporting, investment in change management, governance of police call handling and the implementation of Board and committee workplans are all evidence of good progress. There is also a strong commitment from the Chair and all members to support policing and drive improvement.
5. However, recent parliamentary scrutiny has raised significant concerns over governance, openness and transparency and the willingness of the SPA to genuinely engage with and respond to concerns from stakeholders. The SPA Governance Review⁶ was explicitly owned by the Chair and influenced by his experience of private sector governance models. There was a clear expectation amongst all stakeholders that they would be consulted on the implementation of the Governance Review and have an opportunity to influence it further. This expectation was not met and many stakeholders were unhappy that the Corporate Governance Framework was not shared until after it was agreed by the Board.

³ HMICS, [Thematic Inspection of the Scottish Police Authority - Phase 1 Review of Openness and Transparency - Terms of Reference](#).

⁴ HMICS, [Scrutiny Plan 2017-18](#), 11 May 2017.

⁵ [Letter from Cabinet Secretary to HMCIC](#), 20 April 2017.

⁶ SPA, [Review of Governance in Policing](#), March 2016.

6. The most contentious proposal within the Governance Review has been holding committee meetings in private. While I recognise and fully support the need for members to have private space and receive confidential briefings in support of their role, I firmly believe that the formal scrutiny of policing in Scotland should be public. The Police and Fire Reform (Scotland) Act 2012 makes a specific requirement for the SPA to hold its board meetings and committee meetings in public, although it does allow some or all of the proceedings to be held in private.⁷ In my view, this creates a statutory presumption in favour of these meetings being held in public and I believe that the SPA has taken a narrow interpretation of the legislation in support of its decision to hold committee meetings in private.
7. I consider the decision in August 2016 to allow committee Chairs to hold meetings in private was precipitous and should not have been implemented until the formal Board approval of the new Corporate Governance Framework in December 2016. I wrote to the Chair on 9 December 2016 detailing my concerns over holding meetings in private. I also requested that all Board members were advised of my concerns in advance of the Corporate Governance Framework being agreed at the next Board meeting. This letter is reproduced in full at Appendix 1 and has been subject to detailed scrutiny by both PAPLS and the Justice Sub-Committee on Policing. The Chair did not circulate my letter to Board members and believes instead that he made them aware of its contents. However, he has since recognised that HMICS and Audit Scotland are not simply stakeholders and has committed to circulating our future communications to all Board members unless otherwise stipulated.⁸
8. There has been significant criticism of the decision by the SPA to restrict the publication of papers to the same day as its meetings. This decision was taken at the SPA Board meeting on 24 June 2015 and implemented in December 2015, primarily to mitigate against issues being played out in the media before members had an opportunity to discuss. Several members believed that media coverage in advance of meetings could detract from meaningful debate at Board meetings, although HMICS acknowledges that it could equally inform members of the potential impact of their decisions. Some stakeholders perceived this as a deliberate attempt to limit the opportunity for them to comment and contribute to the business of the Board. I have previously recognised the legitimate interest of the media in reporting on SPA proceedings and consider that agenda and papers should be published in advance of meetings to promote transparency and inform stakeholders and those with an interest in the policing of Scotland.
9. Although I welcome the recent decision by the SPA to revert to holding its committee meetings in public and publishing papers in advance, I am aware that some Board members continue to maintain that their decisions to implement private meetings and publish papers on the day of the Board were essentially correct. There is a fundamental need to listen to the views of stakeholders to maintain public confidence, and on this occasion the SPA has failed to do so until pressed by parliamentary committees. The SPA must recognise the legitimate interests of parliament, local authorities, staff associations, the press and the wider public in the scrutiny of policing in Scotland.
10. Although the Chair and all Board members have a good awareness of On Board guidance, I found there were differing interpretations amongst members of 'collective' or 'corporate' responsibility.

⁷ Police and Fire Reform (Scotland) Act 2012 - Section 11 of Schedule 1 - Public Access.


⁸ [Official Report Justice Sub-Committee on Policing](#), 18 May 2017.

11. The issues arising from the resignation of Moi Ali were examined in detail by PAPLS and the Justice Sub-Committee on Policing. There has been public acceptance that Moi Ali acted fully in accordance with On Board guidance and that the Chair did not properly interpret 'collective responsibility'. There has also been an acceptance by the Chair that he did not deal with Moi Ali appropriately and he has since made a public apology.⁹ Having examined the circumstances arising from the resignation of Moi Ali, I fully support these conclusions and have commented further within this report.
12. This inspection has identified a lack of clarity in the processes to be followed by the SPA when concerns are raised around a member's conduct. I have also been unable to identify the authority under which the Chair or Chief Executive may take action that affects a member's ability to perform their statutory function. These should be detailed within the SPA Standing Orders.
13. I found no evidence of a 'bullying culture' amongst those we interviewed, and there was strong personal support for the Chair from all members. While there were no specific issues raised by current members, there were some comments from former members which suggested a lack of diversity and equality awareness within the SPA. I consider that diversity and equality training is important within all public sector organisations and should be included as part of the induction for all new members and carried forward into regular refresher sessions for existing members.
14. My inspection has identified shortcomings in the capacity of the Chief Executive, senior managers and committee support services to provide the level of expert advice and governance support needed by the Board. This is a fundamental weakness in the current executive structures and I therefore welcome the recent announcement by the Cabinet Secretary for Justice that there will be a review of the way that SPA Board can be better supported to deliver its statutory functions.¹⁰ I also found dysfunction in the relationship between the Chair and Chief Executive, and identified challenges for the Chief Executive and his senior management team in managing long-term secondments and absences. This is undoubtedly impacting on the effectiveness and efficiency of the SPA to perform its statutory function and should be addressed by the proposed review.
15. I have previously observed that effective scrutiny of policing in Scotland is essential in maintaining both legitimacy and public confidence. The scrutiny of policing must not only be effective, it must also be seen to be effective. While there have been positive improvements under the current Chair, the recent parliamentary scrutiny and media concerns over openness and transparency have weakened public confidence in the SPA and detracted from its ability to perform its statutory function. The conclusions from PAPLS and the report from the Justice Committee on Policing, which states that that it does not have confidence that the current Chair is the best person to lead the Board, are significant. It is essential that Parliament has confidence in those responsible for leading the policing of Scotland and I therefore acknowledge and understand the recent decision by the Chair to step down.¹¹

⁹ See Footnote 8 – Official record.

¹⁰ [Letter from Cabinet Secretary for Justice to Chairs of Scottish Parliament PAPLS and Justice Sub-Committee on Policing](#), 14 June 2017.

¹¹ SPA, [letter to Cabinet Secretary for Justice](#), 13 June 2017.

- 
16. In assessing the openness and transparency of the way that the SPA conducts its business, I have focussed on legislation, stakeholder expectations and the authority's practice against its own published values. Although I have not had an opportunity to conduct benchmarking with other public bodies, I have highlighted the difficulties in making appropriate comparisons given the unique nature of policing, which in my opinion demands greater transparency in its governance arrangements. While I welcome the recent SPA decision to hold committee meetings in public and publish papers, I believe there is more that needs to be done to demonstrate that the SPA is genuinely trying to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to constitute best practice.
 17. This report is intended to support improvement and I have therefore made 11 recommendations. HMICS will request an action plan from SPA outlining how it intends to address my recommendations with agreed timescales. I am also aware that the Chair has personally committed to reporting this information to the Justice Sub-Committee on Policing.
 18. I will report on our scheduled and more comprehensive statutory inspection of the Scottish Police Authority later in 2017-18, which will include a wider assessment of leadership and governance. This will also include an opportunity to provide a formal update on the progress made by the SPA in terms of the recommendations made in this report.

Derek Penman QPM

HM Chief Inspector of Constabulary in Scotland
June 2017



Key findings

- There have been positive signs of improvement in SPA Board operations and relationships which reflect a genuine commitment to good governance. This is also a clear commitment from the Chair and all Board members to improving policing.
- There is strong support for the Chair from all current Board members. They are appreciative of his leadership and the direction he has brought to the Board.
- The Governance Review was owned by the Chair and influenced by his experience of private sector governance models.
- There was a clear expectation amongst stakeholders that they would be consulted on the implementation of the Governance Review and have an opportunity to influence it further. This expectation was not met and many stakeholders were unhappy that the Corporate Governance Framework was not shared until after it was agreed by the Board.
- The decision in August 2016 to allow committee Chairs to decide on whether to hold meetings in private was precipitous and should not have been implemented until the approval of the new Corporate Governance Framework.
- The Police and Fire Reform (Scotland) Act 2012 creates a statutory presumption in favour of Board and committee meetings being held in public. The SPA has taken a narrow interpretation of the legislation in support of its decision to hold meetings in private.
- Many stakeholders feel that the decision to hold meetings in private and withhold papers has been detrimental to their interests in the policing of Scotland and has impacted negatively on the effectiveness and legitimacy of the SPA.
- Whilst there have been improvements between Police Scotland and local scrutiny and engagement committees, there remains an expectation that national governance arrangements through the SPA will be fully transparent to local stakeholders.
- The negative feedback and public criticism of the SPA proposals to hold committee meetings in private and restrict the publication of papers was entirely foreseeable.
- HMICS fully accepts the need for private discussion and the free exchange of views amongst members and with police officers, staff and other stakeholders. However, a balance must be struck between private and public meeting space to ensure that scrutiny takes place in an open and transparent way.
- The decision to limit the publication of meeting papers to the day of a meeting was taken primarily to mitigate against issues being played out in the media before members had an opportunity to discuss. Some members believed that media coverage in advance of meetings could detract from meaningful debate at Board meetings, although HMICS acknowledges that it could equally inform members of the potential impact of their decisions.
- HMICS does not consider that the use of an informal media embargo imposed by the SPA on the release of publicly available information is either desirable or sustainable.
- The Chair and all Board members have a good awareness of *On Board* guidance, although there were differing interpretations of 'collective' or 'corporate' responsibility.
- There is no evidence of systemic bullying within the SPA or concerns amongst current members.
- HMICS finds that former Board Member Moi Ali acted fully in accordance with *On Board* guidance and that the Chair did not properly interpret 'collective responsibility'.



- There has been an acceptance by the Chair that he did not deal with former Board Member Moi Ali appropriately and he has since made public apology.
- HMICS is unable to identify the authority under which the Chair indicated he would not nominate Moi Ali as a member for committee membership nor any formal criteria which would have justified such a decision.
- There is a lack of clarity in the processes to be followed by the SPA when concerns are raised around a member's conduct. These should be detailed within the SPA Standing Orders.
- There are shortcomings in the current executive structures and the capacity of the Chief Executive, senior managers and committee support services to provide the level of expert advice and governance support to the Board. This is a fundamental weakness in SPA's current arrangements.
- There is dysfunction in the relationship between the Chair and Chief Executive, and there have been challenges for the Chief Executive and his senior management team in managing long-term secondments and absences. This is impacting on the effectiveness and efficiency of the SPA to perform its statutory function.



Recommendations

Recommendation 1

The Scottish Police Authority should revert to holding Board and committee meetings in public and Board and committee papers should be made publicly available in advance of meetings.

Recommendation 2

The Scottish Police Authority should review its current meeting structures and make a clear distinction between public committees and private working groups. The revised meeting structure should be clearly documented in the Corporate Governance Framework and relevant terms of reference.

Recommendation 3

The Scottish Police Authority should cease the current practice of holding a private pre-meeting of the Board on the day of the formal Board Meeting and ensure that all items for public decision by the Board are discussed at the formal meeting. This should not prevent the use of private pre-agenda planning meetings.

Recommendation 4

The Scottish Police Authority should ensure that all formal Board and committee meetings are publicised with their full agendas, indicating which items are to be considered in private. The Chief Executive in consultation with the Chair and Chairs of committees should determine which items are to be held in private and all papers tabled in private session should be clearly marked with the specific criteria used to justify their exclusion from public sessions. Minutes should be maintained for all private sessions of the Board and committees.

Recommendation 5

The Scottish Police Authority should review its approach to minute taking, including the format, quality, approval, storage, publication and retention of minutes for all private, closed and public meetings. The revised processes should be clearly documented in the Corporate Governance Framework and made publicly available in relevant terms of reference.

Recommendation 6

The Scottish Police Authority should consider postponing the planned internal six-month review of corporate governance arrangements and instead develop future proposals to evaluate the improvements to governance arrangements envisaged from this inspection and other scheduled reviews, audit and inspection activity. This should not inhibit further improvement of the framework in the short term.

Recommendation 7

The Scottish Police Authority should ensure that all new Board members receive training in both On Board guidance and diversity and equality awareness as part of their induction programme. This should also be included in regular refresher sessions for existing members.

Recommendation 8

The Scottish Police Authority should hold a development session with the Chair, Chief Executive and all Board members to ensure there is consistent and clear understanding of On Board guidance, collective responsibility, supporting processes and relative roles.

Recommendation 9

The Scottish Police Authority should introduce a formal procedure for Board members to raise and escalate grievances or other workplace issues.



Recommendation 10

The Scottish Police Authority should review its processes for addressing concerns around a member's conduct. This should include the authority and processes by which a member may be removed from committees or otherwise subjected to restrictions that would prevent them from fulfilling their statutory function. This should also include an appeals process. These revised processes should be clearly documented in the SPA Standing Orders.

Recommendation 11

The Scottish Police Authority should as a matter of urgency review its internal executive structures and provide the necessary capacity to support the Chair, Board and Authority to fulfil its statutory functions.



Background

19. The Scottish Police Authority (SPA) was established under the Police and Fire Reform (Scotland) Act 2012¹² and its main functions are:
 - To maintain the Police Service;
 - To promote the policing principles;
 - To promote and support continuous improvement in the policing of Scotland;
 - To keep under review the policing of Scotland; and
 - To hold the Chief constable to account for the policing of Scotland.
20. Section 2(3) of the Act imposes a statutory duty for the Authority to *'try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to constitute best practice.'* This highlights the importance of accountability, transparency, good governance and best practice.
21. Section 11 of Schedule 1 of the Act sets out the principles of public access for the SPA and is reproduced in full below:

'The Authority must ensure that its proceedings and those of its committees and sub-committees are held in public.

*(2) Despite sub-paragraph (1), the Authority or, as the case may be, any of its committees or sub-committees **may decide to hold all or part of any proceedings in private.***

(3) The Authority must publish -

(a) agendas for its proceedings and those of its committees and sub-committees,

(b) the papers relating to those proceedings,

(c) such reports of those proceedings as it thinks fit.

*(4) Despite sub-paragraph (3), the Authority **may decide that all or part of any agenda, paper or report need not be published.***

(5) The Authority must publish a statement setting out—

(a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and

(b) the circumstances in which agendas, papers and reports need not be published.'

HMICS considers that this section of the Act creates a statutory presumption in favour of Board and committee meetings being held in public.

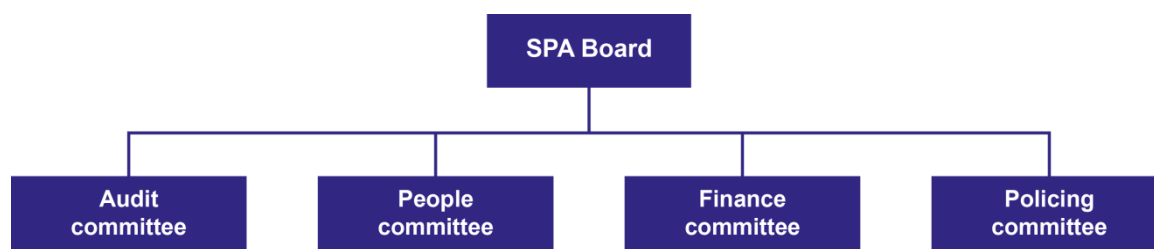
22. Although HMICS has not previously undertaken a formal statutory inspection of the SPA, we have conducted a *Continuous Improvement Review*¹³ of Leadership and Governance to assess how the SPA was meeting its obligations to secure best value and continuous improvement. This resulted in the development of an SPA Improvement Plan agreed in January 2015. We will consider the progress against the improvement actions as part of our statutory inspection of the Authority later in 2017-18, although some relevant references have been included within this report.

¹² <http://www.legislation.gov.uk/asp/2012/8/contents>

¹³ HMICS, [Terms of Reference – Continuous Improvement review of Leadership and Governance in the SPA](#), 7 November 2014.

23. The current Board and committee structure was implemented as part of the Corporate Governance Framework approved by the Board on 15 December 2016. This is set out in Figure 1 below:

Figure 1 – Current Board and SPA committee structures



24. A timeline of key governance decisions by the SPA since 2012 has been included at Appendix 2. This also contains information on both HMICS and the Chair's Governance Review processes.
25. The Scottish Government's Programme for Scotland 2015-16¹⁴ included several policing commitments and highlighted an opportunity for the newly appointed Chair of the SPA to conduct a national review of police governance. This was to ensure accountability arrangements for policing take account of the lessons learned during the operation of the single force to date. The Cabinet Secretary for Justice formally announced his commissioning of the review in the Scottish Parliament on 3 September 2015.¹⁵
26. The Review of Governance in Policing was published on 23 March 2016.¹⁶ It contained 30 recommendations from the Chair, including Recommendation 16 which stated: *'SPA Board meetings which are principally for the purpose of decision making should be held in public. A clear set of criteria should be established for when matters may need to be held in closed session. These criteria should be publicly available. Meetings of committees are working sessions and should be held in private. All decisions will be made by the full Board based on recommendations from the committees. Agendas will be published in advance of the meetings.'*
27. The report made a commitment that the Chair would re-visit his recommendations in 12 months from publication (March 2017) to ensure that sufficient progress had been made and that the recommendations remained relevant.
28. The Cabinet Secretary wrote to the Chair on 30 March 2016, noting that a fuller response would be forthcoming later in the year. The Scottish Government subsequently provided a response to the review in June 2016.¹⁷ It is of note that this response does not explicitly endorse the review or its recommendations, and qualifies that 'if implemented effectively the recommendations in the review provide the opportunity to build on what has been achieved in the last three years to ensure effective and sustainable governance'.

¹⁴ The Scottish Government, [A Stronger Scotland – The Government's Programme for Scotland 2015-16](#), 1 September 2015.

¹⁵ Scottish Parliament: [Official Report – Meeting of the Parliament Session 4](#), 3 September 2013

¹⁶ SPA, [Review of Governance in Policing](#), March 2016.

¹⁷ Letter from Cabinet Secretary to Chair of SPA, 9 June 2016.

29. An implementation plan was created by the SPA and approved at the Board meeting on 20 June 2016.¹⁸ The covering report noted that recommendations from the Governance Review had been consolidated into five key workstream deliverables:
- An overarching external facing governance framework (manual) which will state roles, responsibilities, standing orders, schemes of delegations, committee terms of reference and performance standards
 - An operations manual to allow internal SPA working practices to be documented to allow for consistency, clarity and effectiveness
 - A structure review to look at the corporate structure, as well as looking at options for the current service delivery aspects of SPA
 - Local accountability development proposal to look at what value add activities that SPA can undertake
 - Stakeholder engagement model to identify key influencers and who is best placed to carry out different types of engagement
30. All activities were assessed as 'on target' as of June 2016, with no indication of 'non-delivery' at that stage. The plan indicated that 13 of the 30 recommendations would either be partly or fully addressed in the production and approval of a Governance Manual.
31. Further updates on progress were provided to the SPA Board on 25 August 2016 (as part of the Chief Executive's Report), 27 October 2016 and 24 February 2017. A Steering Group had also been formed to ensure collaboration and transparency between the SPA, Police Scotland and the Scottish Government. Some of the initial timescales set out in the review had not been met and delivery timelines had been amended. In the last of these reports it was noted that, other than the recommendation on SPA structure, all recommendations were forecast to be completed by 31 March 2017.
32. On 15 December 2016, the SPA Board approved and adopted a new Corporate Governance Framework. The Board also agreed that a review of the framework would take place within six months (June/July 2017). Members confirmed that they felt assured that this review would address any issues which might be raised.
33. Since that time, there has been significant parliamentary scrutiny by the Public Audit and Post-Legislative Scrutiny Committee (PAPLS) and the Justice Sub-Committee on Policing. This scrutiny has primarily focussed on the holding of committees in private, the public availability of papers, wider concerns raised by Audit Scotland over financial leadership¹⁹ and the handling of the resignation of Board member, Moi Ali.
34. On 20 April 2017, the Cabinet Secretary for Justice wrote to Her Majesty's Chief Inspector of Constabulary and requested that he bring forward the aspects of his proposed statutory inspection which related to the specific issues of transparency and accountability.²⁰ This request was specifically prompted by the concerns raised by PAPLS and the Justice Sub-Committee on Policing.
35. In May 2017, both the PAPLS²¹ and the Justice Sub-Committee on Policing²² wrote to the Cabinet Secretary to highlight significant governance concerns regarding openness and transparency. The Justice Sub-Committee on Policing also copied its report to HMICS with a specific request that we consider issues of concern to them in this inspection.

¹⁸ SPA, [Review of Governance in Policing Implementation Plan – Board Paper \(item 12\)](#), 20 June 2016

¹⁹ Audit Scotland, [The 2015/16 Audit of the Scottish Police Authority](#), December 2016.

²⁰ [Cabinet Secretary for Justice letter to HMCIC](#), 20 April 2017.

²¹ [Letter from Public Audit and Post-legislative Scrutiny Committee to Cabinet Secretary for Justice](#), 12 May 2017.

²² [Justice Sub-Committee on Policing - Report on governance of the Scottish Police Authority](#), 25 May 2017.

36. On 25 May 2017, the SPA Board approved recommendations for early revision of the SPA Corporate Governance Framework.²³ This included that:
- The Board should revert to holding committee meetings in public wherever possible
 - To enhance transparency, agendas for closed meetings will be published (redacted if necessary) and a summary of the business conducted in closed session published as part of the papers for the next public meeting
 - Agendas should continue to be published for public session Board meetings seven days in advance, and this requirement now be extended to all committee meetings. Papers will be made publicly available on the SPA website three working days in advance of meetings
 - A Deputy Chair will be appointed
 - The SPA Chief Executive will ensure that action is taken to implement the changes with effect from 1 June 2017
 - Where appropriate, the SPA Corporate Governance Framework is revised to properly reflect the Board's decisions
37. PAPLS also wrote to the Cabinet Secretary on 7 June 2017 to note they had received a letter from three members of the SPA Board who had agreed to investigate claims made by Moi Ali at their committee meeting on 11 May 2017. They also note they have received a letter from Moi Ali expressing her dissatisfaction at the way in which the three SPA Board members conducted their investigation. PAPLS have forwarded these letters and invited the Cabinet Secretary to consider them in the context of their previous correspondence to him.²⁴
38. On 14 June 2017, the Cabinet Secretary wrote to both PAPLS and the Justice Sub-Committee on Policing advising that the SPA Chair had decided to step down from his role once a successor has been appointed. He also announced a review into how the SPA Board can be better supported to deliver its statutory functions, which will report in Autumn 2017.²⁵

Standards and guidance

39. A number of sources of guidance exist in terms of overall governance, openness and transparency in public sector bodies. These have developed over time and have borrowed from private sector reports on board level governance. Whilst most set out either 'best practice', 'good practice' or standards for governance, there still remains scope for variance in interpretation and implementation.

²³ SPA Board Report, [SPA Corporate Governance Framework – Recommendations for Early Revision \(Item 7\)](#), 25 May 2017.

²⁴ [Letter from Public Audit and Post-legislative Scrutiny Committee to Cabinet Secretary for Justice](#), 7 June 2017.

²⁵ [Letter from Cabinet Secretary for Justice to Chairs of Scottish Parliament PAPLS and Justice Sub-Committee on Policing](#), 14 June 2017.

40. Much of this guidance is drawn together under one document: *On Board – A Guide for Members of Statutory Boards* (March 2017).²⁶ This guidance has been developed by the Scottish Government and includes five guidance notes, which draw on an extensive list of other guidance, legislation and reports including:

- UK Corporate Governance Code
- Nolan Principles (Committee on Standards in Public Life)
- Ethical Standards in Public Life etc. (Scotland) Act
- Equality Act 2010
- Freedom of Information (Scotland) Act 2002
- Human Rights Act 1998
- Data Protection Act 1998
- Good Governance Standard for Public Services
- International Framework: Good Governance in The Public Sector
- Scottish Public Finance Manual (Accountability)
- Audit Scotland – Role of Boards
- Audit Committee Handbook
- NDPB Model Framework
- Model Code of Conduct for Board Members

The *On Board* guidance existed prior to the establishment of the SPA and is updated on a regular basis.

41. HMICS has assessed ‘compliance’ of the governance exercised by the SPA in terms of the Act, *On Board* guidance and the SPA Corporate Governance Framework approved by the Board. The SPA Corporate Governance Framework is supported by other key documents:

- Scheme of Delegation
- Terms of Reference for the Board and its committees
- Standing Orders
- Codes of Conduct for Board Members and Staff
- Policies (Whistleblowing Policy, Bribery and Corruption Policy, Environment Policy, Ethics Policy and Financial Regulations)

42. Police Scotland is currently working to ensure alignment to SPA governance structures and framework. This includes its own corporate governance structures, schemes of delegation and a range of policies, operational procedures and guidance. The original SPA Improvement Plan also included an action that *‘The SPA will ensure that all required elements of governance and strategic planning are in place within Police Scotland as part of its overall assurance role to ensure alignment between planning and delivery processes’*. HMICS will consider the effectiveness of these arrangements in its forthcoming inspection.

External audit

43. Audit Scotland has been the external auditor to the SPA since April 2013. For each audit year the Auditor General has prepared a Section 22 report to highlight matters of concern that required attention. Successive Section 22 reports by the Auditor General on the same public body are uncommon and have focussed on financial capacity, leadership and financial planning matters in the SPA.

²⁶ On Board, [A Guide for Board Members of Public Bodies in Scotland](#), March 2017.



44. In accordance with their responsibilities under the Code of Audit Practice, Audit Scotland will be assessing governance and transparency as part of the 2016-17 audit, which is planned to report in Autumn 2017. In the same report, they will also assess the SPA's progress in implementing the recommendations contained in the Role of Boards²⁷ report.

²⁷ Audit Scotland, [The Role of Boards](#), 30 September 2010.



Meetings in private

Governance review

45. The broad terms of reference for the Review of Governance in Policing²⁸ were set out in the Programme for Government and developed into those set out in Appendix 2 of the review report. The Chair confirmed the workstreams for the review in a letter to the Cabinet Secretary on 25 November 2015. All those we spoke to agreed that the review process was widely welcomed and emphasised that there was a clear case for improvement in governance arrangements.
46. A Reference Group was established to advise the Chair and was supported by a team of SPA officers. Membership of the group was drawn from the SPA Board, Local Authorities (both elected members and officials), academia, directors of other public bodies and governance experts. The membership of the Reference Group is detailed in the review report.
47. HMICS has found that the Chair clearly viewed the Governance Review as a personal task and exhibited strong leadership and ownership of the review process and final report. Although the report was endorsed by the Reference Group and the Board, those interviewed emphasised that this was the Chair's review and not that of the SPA, the Board, its officers or the Reference Group. Views were expressed that the Chair had clear personal opinions, and although willing to hear those of the Reference Group and consultees, ultimately the review findings and recommendations were his own.
48. There is evidence that a number of Reference Group members and consultees expressed concerns regarding the proposed recommendation to hold committee meetings in private. However there is also evidence that views were expressed in support of the proposals.
49. The Reference Group considered a wide and detailed evidence base for a variety of governance principles, criteria, models and approaches. This included feedback from a range of stakeholders. HMICS cannot evidence how this information influenced or was reflected in the final review report, which is high level and does not reference any source materials. However, a view was expressed by a number of those we interviewed that the Chair's views were influenced by his own personal experience of Board membership and in particular private sector models of Board governance. Some stakeholders also highlighted a lack of appreciation of the wider public sector and political environment by the Chair.
50. Benchmarking was primarily undertaken as a desktop exercise, comparing arrangements in the Police Service of Northern Ireland, Garda, MOPAC²⁹ and Police and Crime Commissioners. The Scottish Institute for Policing Research (SIPR) also provided evidence from a number of international policing sources. Arrangements in other central government national Non-Departmental Public Bodies (NDPBs) were also considered. This evidence base seems to have been used in support of subsequent SPA commentary that their current governance arrangements are 'cutting edge' and 'sector leading' in terms of openness and transparency. HMICS considers this commentary to be misleading given the different legislative and accountability arrangements in place within other organisations and comparative levels of public interest. However, HMICS does acknowledge the innovation from SPA in implementing live streaming of its Board meetings since October 2013.

²⁸ SPA, [Review of Governance in Policing](#), March 2016.


²⁹ Mayor's Office for Policing And Crime – Mayor of London & London Assembly.

51. In assessing the openness and transparency of the way that the SPA conducts its business, we have focussed on legislation, stakeholder expectations and the Authority's practice against its own published values. Although we have not had an opportunity to conduct benchmarking with other public bodies as part of this inspection, we recognise the practical difficulties in making appropriate comparisons and their relative value given the unique nature of policing in Scotland.
52. HMICS found that the review approach included opportunities for a range of stakeholders to express their views and considered alternative models for governance. Although some of these stakeholders raised concerns regarding meetings being held in private, these were balanced by supporting views. A number of stakeholders received no feedback on the specific governance issues they had raised during the review process. There was a clear expectation amongst many stakeholders that they would be consulted on the implementation of the Governance Review and have an opportunity to influence it further. This expectation was not met and many stakeholders were unhappy that the final product from the Governance Review was not shared until after it was approved by the Board.
53. The Reference Group, having commented on earlier drafts, were not consulted on the final version of the review report and were not retained as part of the implementation process. HMICS considers that it would have been helpful to retain this expert group to assess the efficacy of implementation proposals.

Implementation of the governance review

54. As highlighted above, the Cabinet Secretary for Justice wrote to the Chair of the SPA on 30 March 2016, noting that a fuller response would be forthcoming later in the year. He also confirmed his expectation that officials would progress the recommendations as appropriate. A fuller response was sent by the Scottish Government officials in June 2016, which highlighted the importance of a successful implementation of the review recommendations.
55. At this point, the Chair delegated full responsibility for implementation of the recommendations to the Chief Executive who formed a cross-functional team and adopted a project management approach. A Steering Group, which included representation from Police Scotland and the Scottish Government, was formed in August 2016.
56. Staff Associations, Audit Scotland and HMICS had some limited initial engagement with SPA, during which time they continued to highlight concerns. An early draft governance manual was issued for feedback to Board members, Police Scotland, Scottish Government, HMICS and Audit Scotland in August 2016.
57. At that point, HMICS referred the SPA to the previous findings of the Best Value Joint Inspections of Police Forces³⁰ and the key governance principle of transparency. HMICS advised that: *'If these committees are not to have decision making powers and are to be held in private, then they are probably not committees and should be considered as part of internal governance. We are accepting of the need to have 'free and frank discussion in a safe space environment' and are aware that other NDPB-type organisations may operate in this way. However the unique nature of the SPA and Police Scotland and the need to consider public confidence as the key outcome of governance effectiveness should be considered.'*

³⁰ HMICS, [Best Value in police authorities and police forces in Scotland: Overview report](#), 20 November 2012.

- 
58. This early draft version of the manual was generally viewed within the SPA as not fit for purpose and was subsequently re-worked into the Corporate Governance Framework that was approved by the Board on 15 December 2016. Development of this new framework took over eight months to complete. HMICS and Audit Scotland remained unsighted on the revised framework, until a copy was requested in early December 2016, immediately prior to its approval.
 59. HMICS notes that in August 2016, the Chair agreed that committee Chairs could decide whether to hold meetings in private from that point. This was considered as an acceptable way forward by the Chair given that he viewed that the review recommendations had been accepted by the Cabinet Secretary for Justice and that the new governance framework was originally planned for approval in October 2016. Committee meetings thereafter ceased to be held in public and no further information was posted to the SPA website. HMICS views that this decision was precipitous and should not have been implemented until the approval of the new Corporate Governance Framework. Stakeholders confirmed that they were unclear on the rationale for this decision which they felt was not well communicated.
 60. HMICS has found that the rationale for having committee meetings in private is set out in the review report and does not conflict with *On Board* guidance. However, as previously highlighted, the Police and Fire Reform (Scotland) Act 2012 creates a statutory presumption in favour of these meetings being held in public and in Autumn 2016, Scottish Government officials highlighted to the SPA that it needed to pay close attention to this in implementing any changes to committees. HMICS believes that the SPA has taken a narrow interpretation of the legislation in support of its decision to hold meetings in private.
 61. The Chair and current Board members we interviewed were consistent in the view that the aim of the review was always to increase openness and transparency and improve stakeholder engagement. Their view is that by having an increased number of public Board meetings with all decisions made in public, this would improve transparency. Similarly, there was a view amongst some members that by having committees in private they have increased the level of 'safe space' to further develop relationships with Police Scotland and support the more active participation of stakeholders in key discussions.
 62. Most Board members remain convinced of the original rationale for the move to private meetings whilst accepting that the level of concern expressed by key stakeholders has required them to bring forward the recommendation to reinstate public committee meetings.³¹ HMICS notes that the decision to move back to public meetings has been made reluctantly and some members continue to believe their original approach is justified. This is illustrative of an ongoing lack of appreciation amongst some members of stakeholder views and the need to secure public confidence in policing governance.
 63. HMICS also notes that on a number of occasions, the Chair and other Board members have stated that all Board meetings are held in public. HMICS is aware that this is not the case. The SPA has held a number of closed Board meetings since August 2016, which were not notified on the SPA website. This highlights the need for greater transparency over all Board meetings, (paragraph 87).


³¹ SPA Board Report, [SPA Corporate Governance Framework – Recommendations for Early Revision \(Item 7\)](#), 25 May 2017.

Key stakeholder issues

64. The responses to our survey of stakeholders³² indicate that the vast majority are against private meetings. Key stakeholders who have expressed particularly strong views include COSLA, local authorities, staff associations and Unions. These views have been widely reported and raised with parliamentary committees on a number of occasions. The Police Investigations and Review Commissioner (PIRC) has also raised concerns directly with the SPA.
65. Staff associations had been given access as observers to Board and committee meetings in private/closed session since late 2012. This observer status did not allow for participation in meetings, but did provide a level of access to inform their understanding of Board and committee deliberations. The main forums of interest to these stakeholders were the Human Resources and Remuneration Committee (HRRC), now known as the People Committee, and the full Board. From early September 2016, these stakeholders did not have access to Committee meetings and papers. Their first opportunity to fully participate in a People Committee session on health and wellbeing on 27 April 2017 following a specific invitation from the committee Chair. This opportunity was welcomed and felt to be useful.
66. The limited involvement of these key stakeholders has impacted significantly on relationships. Responses to the HMICS survey indicated that stakeholders feel their role has become much more difficult to fulfil as they are unable to make reasonable and meaningful contributions. This is viewed as detrimental to the SPA as it loses access to a wide range of experience and professional expertise and Board members hearing alternative views to those of Police Scotland. HMICS considers that the decision to hold meetings in private was indicative of a wider desire within the Authority to limit the opportunity for others to comment and contribute to the business of the Board.
67. UNISON perceives that the SPA has demonstrated an unjustified lack of trust in terms of how they will handle sensitive information and that their role as a major staff association has been deliberately minimised. They view the Chair as uninterested in their views, delegating engagement to SPA senior managers. The Chief Executive has initiated new quarterly meetings and six monthly Strategic Engagement Forums for staff associations and Unions. Concern was also expressed that these new arrangements do not offer them sufficient reassurance that ongoing engagement will be meaningful and mutually beneficial.
68. Ultimately these stakeholders feel that the decision to hold meetings in private and withhold papers to the day of meetings was to the detriment of their members and the effectiveness and legitimacy of the SPA. HMICS views these relationships as fundamental to the operation of an effective and efficient public sector board, and recognise that trust has been lost.
69. The governance expectations of local government and hence local police and fire scrutiny and engagement committees are informed by those which they themselves are subject to.³³ This includes predominantly public meetings, with limited consideration of items in private and the public availability of agendas and papers at least seven days in advance of meetings. They believe that it is of paramount importance that the SPA operates at the highest standards of openness and transparency in order to promote public confidence.

³² Our list of stakeholders consulted is at Appendix 3.

³³ Sections 50A and 50J of the Local Government (Scotland) Act 1973 require local authorities to hold meetings of both council and committees in public and for papers to be published at least 3 clear days in advance of the meetings.

- 
70. HMICS recognises that as a legacy of the police and fire reform process, there remains strong ownership of police governance within local authorities. This was reflected in the predominant focus of the Governance Review being on local accountability. Whilst there have been improvements between Police Scotland and local scrutiny and engagement committees, there remains an expectation that national governance arrangements through the SPA will be fully transparent to local stakeholders. HMICS is aware that the Chief Executive is pursuing a more proactive engagement model with COSLA to address their concerns.
 71. HMICS acknowledges that local authorities are subject to differing legislative and accountability requirements than central government bodies. However, it remains legitimate for local authorities to express strong views about how policing is governed both nationally and locally. Local authorities are of the firm belief that locally elected members should be able to scrutinise national policing decisions and that by limiting access to meetings and papers, the SPA have prevented them from fulfilling their own statutory duties.
 72. The PIRC highlighted concerns regarding the level of public scrutiny which would be applied to complaint handling review reports as well as to recommendations flowing from investigations reports. These concerns were raised during the Governance Review process and as part of implementation consultation. The PIRC considers that current arrangements detract from identification of relevant matters in advance of meetings and that holding committee meetings in private does not support public confidence due to a lack of transparency.
 73. HMICS accepts that many of these key stakeholders have legitimately, and in some cases publicly raised their concerns regarding transparency. Given that the SPA had previously operated public Board and committee meetings and granted special observer status, it was inevitable that any attempt to reduce this access would result in a perception of retraction, secrecy and a lack of trust. HMICS considers that the SPA failed to fully take into account the views of key stakeholders in its implementation process. We also consider that the strongly negative feedback and public criticism of the SPA proposals to hold committee meetings in private and restrict the publication of papers was entirely foreseeable.

‘Safe Space’

74. The requirement for and importance of ‘safe space’ was consistently raised in our interviews and set out clearly in the Governance Review report. This was attributed to the requirement to improve ‘information flow’ between the SPA and Police Scotland to improve relationships with senior police officers.

75. HMICS has consistently acknowledged the importance for 'safe space' and a number of related actions were included within the original SPA Improvement Plan in January 2015:
- *'A review of all non-public meetings and closed session topics and attendance will be undertaken to ensure appropriate transparency. In particular, public scrutiny of Police Scotland Business Change and Improvement activity will be considered to ensure that there is appropriate oversight of the transformation and futures programme through the Board and committee structures, whilst maintaining suitable arrangements for 'safe space' strategic discussion.*
 - *Relationships between the Board and SPA and Police Scotland senior managers will continue to be actively developed to ensure a positive respectful and trusting environment and effective working relationships with a collective aim of improving policing.*
 - *'Safe space' opportunities for joint development activities will be considered. Opportunities should be created for members and officers to offer and receive feedback on the quality of their engagement'.*
76. HMICS fully accepts the need for private discussion and the free exchange of views amongst members and with police officers, staff and other stakeholders. This allows for the development of closer relationships and trust, as well as the early formulation of strategy and policy. Such 'safe space' is vital to allow the SPA to fulfil its legislative responsibility to support policing. However, HMICS considers that a balance must be struck between private and public meeting space to ensure that scrutiny takes place in an open and transparent way.
77. At the PAPLS on 11 May 2017, HM Chief Inspector of Constabulary took the unusual step of pre-empting this inspection and recommendations. He indicated that HMICS would likely be recommending that SPA Board and committee meetings should revert to being held in public and that papers should be circulated in advance of meetings. He also indicated that it would be helpful for the SPA Chair to consider this in advance of the inspection report being published.
78. HMICS therefore welcomes the decision taken by the Board on 25 May 2017 to reverse its previous decision and revert to public committee meetings, with both open and closed sessions as appropriate. Notwithstanding this decision, HMICS takes this opportunity to make this a formal recommendation within this inspection.

Recommendation 1

The Scottish Police Authority should revert to holding Board and committee meetings in public and Board and committee papers should be made publicly available in advance of meetings.

79. The Governance Review recommended that committees should be regarded as 'working groups' and held in private as they have no decision-making powers and are intended to assess options for consideration by the full Board, which may or may not be approved. It recommended that committees should be able to conduct 'deep dives' into key issues and make recommendations to the full Board. HMICS considers that using the term 'committee' to describe informal private working groups envisaged by the Governance Review was inappropriate, especially given these replaced an existing formal committee structure that met in both public and private.
80. Furthermore, the terms of reference for the existing four committees are clear that each has a role in providing *'oversight, scrutiny and assurance to the Board'*. HMICS considers that any oversight and scrutiny should properly be conducted in public and that the terms of reference for each of these committees extends beyond the remit of a 'working group'.

81. HMICS accepts that the SPA should have sufficient freedom to create internal governance structures that support its formal Board and committee structures. This should provide ample opportunity for the SPA to maintain 'safe space' in support of its wider function, whilst demonstrating its commitment to openness and transparency by conducting its scrutiny and decision-making in public. HMICS is also aware that the SPA currently operates several types of private meetings, including members' business meetings; committee chairs' meetings; reference groups, and assurance groups. HMICS considers that this may be confusing for external stakeholders and other interested parties. HMICS therefore recommends that SPA reviews its current meeting structures and where possible rationalise its nomenclature. A clear distinction should be made between public committees and private Working Groups and the revised meeting structure should be reflected in revisions to the Corporate Governance Framework and relevant terms of reference.

Recommendation 2


The Scottish Police Authority should review its current meeting structures and make a clear distinction between public committees and private working groups. The revised meeting structure should be clearly documented in the Corporate Governance Framework and relevant terms of reference.

82. HMICS views the use of private pre-agenda planning meetings as part of normal practice. However, the requirement for private pre-meetings on the day of Board meetings was queried by a number of stakeholders including PAPLS. HMICS has identified that pre-meetings on the day of Board meetings have the potential to be used as a private rehearsal for the public Board meeting and allow for discussion on substantive agenda items which may then be agreed in private and simply 'rubber-stamped' in public.
83. A tangible example of this was in December 2016, when the Corporate Governance Framework containing the proposals to hold meetings in private was discussed at the pre-meeting. This led the Chair to conclude that he would have the full support of members at the subsequent Board meeting. Although it is accepted that Moi Ali expressed her objection to these proposals at the pre-meeting, the Chair stated at the Justice Sub-Committee on 18 May 2017³⁴ that the fundamental issue at the Board meeting was that her decision not to publicly support the Board was a surprise to him.
84. HMICS considers that the SPA should cease holding pre-meetings on the day of the formal Board meeting and ensure that all items for public decision by the Board are discussed openly at the formal meeting.

Recommendation 3

The Scottish Police Authority should cease the current practice of holding a private pre-meeting of the Board on the day of the formal Board Meeting and ensure that all items for public decision by the Board are discussed at the formal meeting. This should not prevent the use of private pre-agenda planning meetings.

³⁴ See Footnote 8 – Official record.

- 
85. The criteria that are used to assess if items are considered in public or private are set out in paragraph 28 of the SPA Corporate Governance Framework. This states that the Board will hold its meetings in public wherever possible and details the circumstances in which proceedings will be held in private. This also stipulates which agendas, papers and reports will not generally be published. This covers items:
- *where the information to be discussed consists of or includes the personal data of individuals who have not provided their consent to its disclosure;*
 - *where public discussion of the information may prejudice national security, legal proceedings (including misconduct or disciplinary proceedings), or police operations;*
 - *where the information to be discussed consists of or includes legal advice provided to the Board or to a third party;*
 - *where an obligation of confidentiality exists in respect of the information that is to be discussed;*
 - *where any of the information to be discussed is commercially sensitive, financially sensitive, relates to proposals for significant organisational change or to significant changes to the terms and conditions of staff;*
 - *where other, exceptional, circumstances exist that justify holding the proceedings in private.*
86. HMICS acknowledges that these criteria are in line with good practice, but considers that the SPA should improve its oversight of their application and ensure they are widely publicised on its website to promote transparency.
87. HMICS recommends that all formal Board and committee meetings should be publicised with their full agendas. Where items are to be held in private in closed session, this should be clearly shown as such on the agenda. A consistent process should also be agreed for determining which items are to be held in private, involving the Chief Executive in consultation with the Chair and Chairs of committees to validate the application of these criteria. HMICS considers it would be good practice for each paper to be tabled in private session to be clearly marked with the specific criteria used to justify its exclusion from public. Minutes should also be maintained for all private, (closed) sessions of the Board and committees.

Recommendation 4

The Scottish Police Authority should ensure that all formal Board and committee meetings are publicised with their full agendas, indicating which items are to be considered in private. The Chief Executive in consultation with the Chair and Chairs of committees should determine which items are to be held in private and all papers tabled in private session should be clearly marked with the specific criteria used to justify their exclusion from public sessions. Minutes should be maintained for all private sessions of the Board and committees.

88. PAPLS has raised concerns over the availability and quality of minutes for private meetings, and noted that the SPA had not provided them with full and accurate copies. It was apparent from the evidence provided to PAPLS and the Justice Committee that there was inconsistency in relation to which meetings were recorded, minuted or simply had notes taken. This inconsistency seemed to extend to the quality, approval, storage, publication and retention of minutes. In her evidence to PAPLS, Moi Ali indicated that there were also unresolved issues with the amendment and accuracy of minutes. HMICS recommends that SPA takes the opportunity to review its approach to minute taking as part of our earlier recommendation to review and rationalise its meeting structures. The revised processes should be clearly documented in the Corporate Governance Framework and made publicly available in relevant terms of reference.

Recommendation 5

The Scottish Police Authority should review its approach to minute taking, including the format, quality, approval, storage, publication and retention of minutes for all private, closed and public meetings. The revised processes should be clearly documented in the Corporate Governance Framework and made publicly available in relevant terms of reference.


89. HMICS has also identified a number of risks and issues associated with the implementation of the revised governance arrangements agreed on 25 May 2017:
- Capacity within SPA Business Services (Board and committee Support) to support the increased number of public meetings
 - Ensuring that committees are aligned to policing strategy and policy
 - Ensuring that planned stakeholder engagement mechanisms are fully implemented as quickly as possible with ongoing evaluation of their effectiveness
 - Addressing how 'observer' status for staff associations and Unions will be taken forward in terms of increased stakeholder participation
 - Expedite the approval of the outstanding governance documents (Bribery and Corruption Policy, Environment Policy, Ethics Policy and Financial Regulations)

These risks and issues require to be addressed by the SPA and will be examined in more detail by HMICS as part of our wider inspection during 2017-18.



Distribution of papers

90. The decision to limit the publication of papers to the day of a meeting was taken at the SPA Board meeting on 24 June 2015 and implemented in December 2015. The Board approved revisions to existing Standing Orders as part of the SPA's continuous improvement work which included this change. However, the SPA Improvement Plan agreed as part of the HMICS Continuous Improvement Review on Leadership and Governance included an improvement action that 'All public papers will be made available four days in advance, or in line with Standing Orders'.
91. The SPA website states that: *'The revised standing orders aim to improve the efficiency and effectiveness of our governance meetings, making them more focused and reflective of best practice across public bodies, and take effect from the next Board meeting on 16 December 2015. Agendas and papers for the public sessions of the meetings will continue to be published and are accessible on the SPA website. In line with the revised standing orders, papers will be made available on the day of the meeting'*. HMICS considers this statement to be misleading in that it suggests that releasing papers on the day of the meeting represents an improvement and is reflective of best practice across public bodies.
92. HMICS notes that this decision was taken and implemented well in advance of the publication of the Governance Review or the subsequent approval of the Corporate Governance Framework. It should be noted that the Board also agreed to amend the SPA committee structures at its' meeting on 24 June 2015. However these changes were 'paused' until Spring 2016 to take account of any interdependencies arising out of the Governance Review.
93. During our interviews, it was identified that the primary reason for restricting access to papers on the day of the meeting was to mitigate against issues being played out in the media before members had an opportunity to discuss. Several members believed that media coverage in advance of meetings could detract from meaningful debate at Board meetings, although HMICS acknowledges that it could equally inform members of the potential impact of their decisions. There was a perception amongst some members that the media were misinterpreting papers and not accurately reflecting discussion or scrutiny at SPA Board or committee meetings in their articles, which were often highly critical.
94. Current Board members accepted that the public should be able to review papers in advance of meetings to better inform their understanding of the discussion and scrutiny which takes place. Some members did however continue to express concern regarding media reporting.
95. HMICS welcomes the decision taken by the SPA Board on 27 May 2017 to reverse its decision and to publish meeting papers three days in advance of meetings. HMICS is clear that the media has a legitimate interest in the governance and delivery of policing and as such prior access to papers is essential to inform their reporting. HMICS does not consider that the use of an informal embargo imposed by the SPA on the release of publicly available information is either desirable or sustainable.

- 
96. HMICS notes the decision of the SPA Board to undertake a six-month review of the Corporate Governance Framework and the recommendations from the original Governance Review. During our inspection, we identified varying views and concerns regarding the scope and value of this review. There are also a number of audits and further inspection activity scheduled over the next six months, which could result in a considerable overlap with any this review. Given our comments regarding current capacity within the SPA, (Paragraph 89), HMICS has reservations regarding the ability to deliver such a review within existing resources and the potential cost of externalising such work.
97. HMICS also welcomes the Cabinet Secretary's announcement of a review of the ways in which the SPA Board can be better supported to deliver its statutory functions. This will require additional resources and draw on the existing capacity of members, officials and key stakeholders to support and should take precedence. In the event that additional activity is commissioned by the Board, it should be complementary to the review announced by the Cabinet Secretary.
98. HMICS recommends that the SPA should consider postponing the planned internal six-month review of its corporate governance arrangements and instead develop future proposals to evaluate the improvements to governance arrangements envisaged from this inspection and other scheduled reviews, audit and inspection activity.³⁵

Recommendation 6

The Scottish Police Authority should consider postponing the planned internal six-month review of corporate governance arrangements and instead develop future proposals to evaluate the improvements to governance arrangements envisaged from this inspection and other scheduled reviews, audit and inspection activity. This should not inhibit further improvement of the framework in the short term.

³⁵ *On Board, A Guide for Board Members of Public Bodies in Scotland*, March 2017.



Awareness and understanding

99. HMICS found that all Board members had a good awareness of *On Board* guidance and that most had reviewed these materials in advance of our inspection. The guidance is referenced in appointment letters and included in induction materials along with relevant legislation and a full set of corporate governance documentation. This constitutes a large volume of information for new members to absorb.
100. New Board members typically receive a number of inputs as part of their induction. This includes meetings with the Chair, Chief Executive, Scottish Government and HMICS. It was accepted that these meetings were not intended to provide either an introduction to - or training in - *On Board*, although elements of the guidance would be covered in discussion. In the past, senior staff within the SPA provided overviews of their own function with the Director of Governance and Assurance providing the necessary guidance on *On Board*. However, it was noted that there was currently limited capacity within the SPA to undertake this form of induction.
101. Since 2016, the Scottish Government has implemented a corporate induction for new Board members to support them as they step into their roles. This provides an opportunity for Board members – through networking and inputs from a range of speakers - to explore the practical implications of the *On Board* guidance. This is part of a rolling programme of networking and peer-learning activities for those involved in public body governance around topics related to *On Board*, including events for Chairs and development days for Board members. These developments have included a one day training course on *On Board*.
102. The original SPA Improvement Plan also includes an action to deliver *On Board* training. HMICS considers that all new Board members should undertake the Scottish Government training and that consideration is given to regular refresh sessions for existing members.
103. HMICS established that there was no specific training on diversity or equality issues, and that there were no such plans for the new intake of Board members. While there were no specific issues raised by current members, there were some comments from former members which suggested a lack of diversity and equality awareness within the SPA. HMICS considers that diversity and equality awareness training is important within all public sector organisations and should be included as part of the induction for all new members and carried forward into regular refresher sessions for existing members.

Recommendation 7

The Scottish Police Authority should ensure that all new Board members receive training in both *On Board* guidance and diversity and equality awareness as part of their induction programme. This should also be included in regular refresher sessions for existing members.

104. HMICS has identified a degree of ambiguity in the views expressed by some Board members and officers in a number of governance areas. These may have impacted on decisions made as part of the implementation of the Governance Review and in the recent handling of the resignation of Board member Moi Ali, and include:
- Understanding of the statutory role of the SPA
 - Interpretation of the sole decision-making authority of the Chair
 - Clarity on the role and expectations of committee Chairs
 - Clarity of the assurance process and level of required reporting from Police Scotland and Forensic Services
105. HMICS has found differing interpretations of ‘collective’ or ‘corporate’ responsibility amongst current Board members. Most understood that they could express dissent, but varied in their interpretation of whether this can be expressed in public and if so, whether a member can thereafter legitimately accept and support the decision of the Board. Some members considered that having publicly expressed dissent, it would not be credible for them to accept or support the collective decision of the Board and they should resign.
106. *On Board* clearly establishes the three Fundamental Principles of Board Life. These are Corporate Responsibility, Confidentiality and Conduct. In terms of Corporate Responsibility, it clearly states that: *‘While Board members must be ready to offer constructive challenge, they must also share collective responsibility for decisions taken by the Board as a whole. If they fundamentally disagree with the decision taken by the Board, they have the option of recording their concerns in the minutes. However, ultimately, they must either accept and support the collective decision of the Board – or resign.’*
107. The guidance recognises that Board members may or may not be able to ‘accept and support’ collective decisions. However, it does not state that by publicly dissenting members are unable to support a decision. Parliamentary committees have highlighted the Chair’s preference for debate and dissent to be confined to private meeting space. Although the Chair has indicated a preference for building consensus prior to public meetings and being formally notified before a public meeting if a member is likely to dissent, this is not a requirement of *On Board* guidance. Indeed, this approach was described as being ‘out of step’ with guidance by the Justice Sub-Committee on Policing, who also made the distinction between a united board and an effective board.
108. HMICS acknowledges that there is a difference in the interpretation of collective responsibility in both the Scottish Government Ministerial Code 2016³⁶ and the UK Government Cabinet Office Ministerial Code 2016.³⁷ Both codes reflect the fact that cabinet discussions are held in private and state that where a Minister considers that they cannot support a decision reached collectively by the relevant Government and wishes publicly to dispute that decision, the Minister in question should consider whether it is appropriate to resign from his or her Ministerial role. This principle of collective responsibility in a Ministerial context is often reflected in that of private sector Boards.

³⁶ [Scottish Ministerial Code 2016 edition](#), 31 August 2016.

³⁷ UK Government Cabinet Office [Ministerial Code 2016](#), 31 December 2016.

109. HMICS considers it is essential that the Chair, Chief Executive and all Board members have a good awareness of *On Board* guidance and a shared understanding of ‘collective responsibility’ and ‘the implications of publicly dissenting’. PAPLS has also indicated that they expect that steps will be taken to ensure that the Chair and all Board members are fully aware of the practical implications of the *On Board* guidance. Given the different interpretations that we have found amongst existing members, HMICS recommends that a development session is held with the Chair, Chief Executive and all Board members to ensure there is consistent and clear understanding of *On Board* guidance, collective responsibility, supporting processes and relative roles.

Recommendation 8

The Scottish Police Authority should hold a development session with the Chair, Chief Executive and all Board members to ensure there is consistent and clear understanding of *On Board* guidance, collective responsibility, supporting processes and relative roles.

110. HMICS could find no evidence of systemic bullying within the SPA or concerns amongst current members. However, it is acknowledged that bullying can be specific to an individual’s own subjective views and should not be discounted.
111. At present there is no procedure in place for Board members to escalate grievances or other workplace issues, and HMICS considers this to be an omission that requires to be addressed.

Recommendation 9

The Scottish Police Authority should introduce a formal procedure for Board members to raise and escalate grievances or other workplace issues.

112. The issues arising from the resignation of Moi Ali were examined in detail by PAPLS and the Justice Sub-Committee on Policing and have been widely reported. Although HMICS has not investigated the circumstances surrounding the recent resignation of Board member Moi Ali, it has examined the issues that have been raised and considered them within this inspection.
113. HMICS finds that former Board Member Moi Ali acted fully in accordance with *On Board* guidance. Although she asked for her disagreement over the decision to hold committee meetings in private to be recorded in the Board minutes, she did not indicate at any time that she would not subsequently support or accept the collective decision of the Board. It was clear from our interviews with the Chair, Chief Executive and Board Members that Moi Ali had consistently expressed concerns over the Board proposals to hold committee meetings in private and her actions at the Board meeting and her decision to dissent at the at the public meeting should not have been unexpected.
114. It has been publicly accepted that the Chair did not properly interpret *On Board* guidance in respect of ‘collective responsibility’. HMICS believes this to have been a genuine error by the Chair, informed by his experience of the private sector and his personal understanding of the guidance.

115. The Chair has accepted that he did not deal with Moi Ali appropriately and he has since made a public apology.³⁸ HMICS is clear that even although the Chair believed he was correct in his interpretation of *On Board* guidance, he should not have escalated this in writing to Moi Ali without first discussing it with her. This discussion would at the very least have allowed the Chair to assess whether Moi Ali was prepared to accept or support the collective decision of the Board. HMICS would also have expected the Chair to have discussed his intention to escalate this issue with the Chief Executive. This would have provided an opportunity for professional advice and to check his understanding of *On Board* guidance before sending the letter. HMICS considers that the timing of the letter to Moi Ali in advance of the festive holiday period was unfortunate and believes that the Chair and the Chief Executive did not resolve the subsequent issues raised by Moi Ali with sufficient urgency.
116. HMICS has identified a lack of clarity in the processes to be followed by the SPA when concerns are raised around a member's conduct. The SPA Standing Orders³⁹ for committees and sub-committees state that *'The membership of a Committee (including the 'Committee Chair') shall be proposed by the Chair of the Board ('the Chair') and determined by the Board'*. This clearly established that the Chair can nominate members to committees, but ultimately it is a Board decision to formally appoint them to committees. Standing Orders do not provide for the removal of members from committees based on a decision to dissent or at the Chair's discretion.
117. The Act, SPA Standing Orders and *On Board* refer to grounds⁴⁰ under which Ministers may remove members from the Board, but do not refer to removal from membership of committees or any other restriction that would prevent a publicly appointed member fulfilling their statutory role. HMICS is therefore unable to identify the authority under which the Chair indicated he would not nominate Moi Ali as a member for committee membership nor any formal criteria which would have justified such a decision.

Recommendation 10

The Scottish Police Authority should review its processes for addressing concerns around a member's conduct. This should include the authority and processes by which a member may be removed from committees or otherwise subjected to restrictions that would prevent them from fulfilling their statutory function. This should also include an appeals process. These revised processes should be clearly documented in the SPA Standing Orders.

118. HMICS notes the overly formal approach taken by the SPA in responding to a request by Moi Ali for copies of documents to assist with her preparation of evidence for PAPLS. In the interests of supporting parliamentary scrutiny and given her status as a former Board member, HMICS would have expected these documents to have been provided timeously to Moi Ali in the same way that they would have been provided to existing Board members. Whilst the request for information was dealt with in line with legislation and guidance, HMICS considers that the matter could have been dealt with more sensitively. HMICS understands that these documents were provided two days past the required statutory timescales.

³⁸ See Footnote 8 – Official Record.

³⁹ SPA, [Standing orders for committees and sub committees - constitution and membership – paragraph](#), 24 June 2015.

⁴⁰ *'The member is an undischarged bankrupt; without reasonable excuse, been absent from meetings of the Authority for a period longer than 4 consecutive months; without reasonable excuse, been absent from 3 consecutive meetings of the Authority; been convicted (whether before or after the member's appointment) of a criminal offence; failed to comply with the terms or conditions of the member's appointment; or Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member's functions'*. Extract from *On Board Guidance*.

119. In her evidence to PAPLS, Moi Ali referred to a previous Freedom of Information request by her in relation to appraisal information held by the SPA. While this issue has not been examined as part of this inspection, information management will be considered in more detail as part of our wider inspection into the SPA and our assessment of Board member annual appraisals, evidence gathering and record keeping.
120. In his evidence to PAPLS, former Board Member Brian Barbour alluded to Scottish Government interference with SPA meeting agendas. During this inspection, HMICS found no evidence of Scottish Government interference in the setting of agendas or submission of papers.

Leadership, skills and support requirements

121. HMICS has found that a number of stakeholders had concerns regarding the capacity of the Chief Executive, senior managers and committee support services to provide the level of expert advice and governance support required by the Board. There have also been concerns expressed over the existing organisational structures and roles within the SPA executive. HMICS views this as a fundamental weakness in current arrangements.
122. In the SPA Improvement Plan agreed with HMICS in January 2015, it was clearly stated that:

‘A review of skills and capacity within each of the SPA directorates will be undertaken to ensure that there is consistency and appropriate support is available to the Board as well as capacity to manage the organisation and deliver statutory duties. The availability of administrative support to all directorates will also be reviewed. This will form part of the development of a resource management plan for the SPA... ‘As a fundamental part of the review of skills and capacity within each of the SPA directorates, the SPA will implement the most appropriate structure to clearly identify the most effective delivery of governance advice, support and guidance to the Board, clarifying the role of business services and governance and assurance’.
123. The Governance Review made a specific recommendation *that ‘Scottish Government should conduct a review of the original organisational structures and remits established as part of the Police & Fire Reform (Scotland) Act 2012 to ensure responsibilities are clear and consistent with the intentions behind the reform’.*⁴¹
124. The Governance Review also recommended that following the review by Scottish Government, *‘the organisational structure and skills of SPA staff should be reviewed with the aim of enhancing the governance skills and removing duplication’.*⁴²
125. HMICS is aware that a number of internal reviews of structure have been produced, but not as yet formally progressed. The Chair has also indicated that he is currently considering options for restructuring which reflect issues raised in previous HMICS inspection reports and advice. However, HMICS considers that the current SPA internal executive structures are impacting negatively on the effectiveness and efficiency of the SPA to perform its statutory functions and must be addressed as a matter of urgency. HMICS therefore welcomes the recent announcement by the Cabinet Secretary for Justice that there will be a review of the way that SPA Board can be better supported to deliver its statutory functions⁴³ HMICS will engage fully with this review and would anticipate the improvement sought from the following recommendation to be fully captured within its remit.

⁴¹ SPA, [Review of Governance in Policing](#), March 2016. Recommendation 10.

⁴² SPA, [Review of Governance in Policing](#), March 2016. Recommendation 12.

⁴³ [Letter from Cabinet Secretary for Justice to Chairs of Scottish Parliament PAPLS and Justice Sub-Committee on Policing](#), 14 June 2017.

Recommendation 11

The Scottish Police Authority should as a matter of urgency review its internal executive structures and provide the necessary capability and capacity to support the Chair, Board and Authority to fulfil its statutory functions.

126. During our inspection work on both this inspection and Forensic Services, HMICS identified dysfunction in the relationship between the Chair and Chief Executive. There have also been challenges for the Chief Executive and his senior management team in managing long-term secondments and absences. This is evidenced through a number of issues including a lack of ongoing and effective engagement, a lack of escalation of key risks and issues and a lack of input and influence in the Chair's decision making.
127. HMICS views that it is essential that the Chief Executive works effectively with the Chair and that his expert advice is valued and respected by the Board. This is emphasised in Audit Scotland's Role of Boards report:
- *'It is essential that the roles of chairs and chief executives are clear and their relationships work well to ensure effective leadership.*
 - *The combined responsibility for leadership and accountability between the chair and the chief executive may cause confusion and tension unless roles are clear and relationships are well managed, irrespective of whether the chief executive is a member of the board.*
 - *This requires that they act professionally, trust and respect each other. Neither the chair nor the chief executive should be too dominant. In practice, this means that much of the success of the relationship between a chair and the chief executive relies on their personalities'.*
128. Whilst current Board members felt well engaged by the Chair, there was a perception from some SPA staff that he was uninterested in them and the organisation, having formed a negative view early in his tenure. Whilst these views may be subjective, HMICS considers it important that the Chair not only has the support of the Board, but develops professional and productive relationships with senior officials and staff.
129. HMICS has previously observed that effective scrutiny of policing in Scotland is essential in maintaining both legitimacy and public confidence. While there have clearly been positive improvements under the current Chair, the recent parliamentary scrutiny and media concerns over openness and transparency has weakened public confidence in the SPA and impacted on its ability to perform its statutory function. The conclusions from PAPLS and the report from the Justice Committee on Policing, stating that it does not have confidence that the current Chair is the best person to lead the Board, are significant. HMICS believes it is critical that the Scottish Parliament has confidence in those responsible for leading the policing of Scotland.
130. HMICS recognises that if the Chair is unable to regain the confidence of Parliament, then his effectiveness will diminish and his continuation in post could become a distraction to the effective governance of policing in Scotland. HMICS therefore acknowledges and understands the recent decision by the Chair to step down once his successor has been appointed.⁴⁴ We welcome the commitment from the Cabinet Secretary to begin the process to recruit a new chair as soon as possible and note that in the wider interests of continuity and finalising the Policing 2026 Strategy, it would be preferable for the current Chair to remain in post until his successor is appointed, rather than introduce any interim arrangements.

⁴⁴ SPA, [letter to Cabinet Secretary for Justice](#), 13 June 2017.



Police Scotland governance and information

131. As highlighted earlier in this report, both the Chair and Board members have identified issues with 'information flows' from Police Scotland. These were also reflected in the Governance Review, which stated: *'There are concerns from within SPA and externally that information and information flows from Police Scotland have not been sufficient to allow SPA to have all material and data required in a timeous fashion in order to discharge its oversight function effectively. Additionally, SPA has not been clear or consistent in its requirements, partly due to the lack of detailed internal governance and communication processes'*.
132. HMICS has also identified that the provision of reports and papers to the SPA Board and committees by Police Scotland requires to further improve. The issues raised with HMICS include:
 - A lack of governance and committee support skills within Police Scotland
 - Requirements of Police Scotland internal governance approvals, often mean reports and papers are submitted late or tabled on the day
 - The quality and length of Police Scotland reports, although much improved, requires further development
133. HMICS has not conducted a detailed assessment of these issues as yet and will consider them further during our main inspection.



Next stages of inspection

134. HMICS has identified evidence of a number of areas of positive progress in terms of governance in this initial inspection phase. These include:
- The development of the 2026 Strategy – a joint venture between the SPA and Police Scotland evidencing a positive change in relationships and culture led by the Chair and Chief Constable
 - The C3 Governance and Assurance Group – implemented to improve SPA governance over a key change programme – has been led by SPA members and has developed a clear chain of assurance and reporting to the SPA Board
 - The improvement in financial reporting to the Finance Committee and the Board
 - The development of ‘deep dive’ scrutiny sessions into key operational and corporate support areas
 - The implementation of Board and committee workplans and the development of 12-18 month calendars for the submission of reports
 - General evidence of continuous improvement in relationships and development of Board operations
135. These are positive signs which reflect a genuine commitment to good governance. This is also reflected in Board members’ genuine commitment to improving policing for the greater good and not personal interest. HMICS will review these developments in the next stages of this inspection.
136. HMICS has also identified a number of governance and other risks which will be key areas of enquiry in the next stages of this inspection:
- Progress on performance reporting to the Board and committees
 - Risk management reporting to the Board and supporting processes
 - Governance of transformation, change and major programmes/projects associated with the delivery of 2026
 - Financial governance over a deficit budget
 - SPA organisational structure meeting future needs
 - Effectiveness of the Audit Committee
 - Role of the Accountable Officer
 - Management of information (availability, security, freedom of information release etc.)
137. These areas have been identified during the course of this initial inspection phase and evidence recorded in order to inform and contribute to our forthcoming work. HMICS intends to publish a complete terms of reference for the remainder of our inspection work in due course.



Appendix 1 – Copy letter to Chair of the SPA from HMCIC

Mr Andrew Flanagan
Chair
Scottish Police Authority
1 Pacific Quay
Glasgow
G51 1DZ

9 December 2016

Dear Andrew

Governance Review and Corporate Governance Framework

I refer to our previous discussion in respect of your Governance Review and the implementation of your recommendations. As you are aware, HMICS previously supported the Authority in developing an improvement plan and had received assurances that a number of the outstanding recommendations would be taken forward through your review and included in the new Corporate Governance Framework. We have therefore been keen to follow the progress of your review, offer comment on your framework and assess whether the previously identified improvements in governance will be addressed.

Although we were initially engaged with your officers and commented on an early draft, we did not receive a revised copy of the framework and supporting documents until late last week. I now understand that the framework has been discussed in private session with members and will be formally agreed at next week's Board meeting. While this curtails the opportunity for HMICS to offer detailed comment, I thought it would nonetheless be helpful to share my initial observations.

In general terms, I welcome the framework and the clarity it provides in terms of individual roles and responsibilities and the proceedings of the Board. I also welcome the detail contained in the attached protocols and in particular the identification of key deliverables with timescales. These are all helpful to HMICS in terms of our scrutiny role and holding the Authority and Police Scotland to account against the standards you set.

However, I do have some observations in relation to your intention to hold committee meetings in private. This 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. Effective scrutiny of policing in Scotland is essential in maintaining both legitimacy and public confidence and the Authority should endeavour at all times to demonstrate its competency in performing its statutory functions.

Having reviewed your draft terms of reference, I note that Audit Committee, Finance Committee and Policing Committee all focus on providing oversight and scrutiny and I would question the need for their important work to be conducted in private. These committees will all perform an important governance function and undertake detailed examination of critical issues. The new Policing Committee in particular will deal with a range of business that would previously have been heard in public, specifically operational performance and complaints handling.

I accept there will always be a need for some proceedings to be held in private, although I would have thought the measures and safeguards outlined in Paragraph 29 of your Framework could apply equally for committees as they will for the full board.



Although not explicit within your framework, it would seem that supporting papers will also be kept private. This has the potential to further weaken scrutiny and reduce transparency in board proceedings, especially as members will be relying upon the information contained within these papers to inform their views and make recommendations to the full board. I am certain there will continue to be legitimate media interest in committee meetings and you may wish to consider your approach to the publication and disclosure of agenda and committee papers that will inevitably become the subject of FOI requests.

While the framework states that members of Authority staff and police Scotland representatives may be invited to attend committee meetings, it not clear whether you will invite representatives from staff associations and others who may have an interest in the welfare and efficiency of policing in Scotland. I am aware that the exclusion of staff associations from private sessions under the current committee structures has previously drawn criticism and I would suggest you consider addressing this issue explicitly within your framework. Regardless of your decision on whether committee meetings should be held in private, I believe there is considerable value in allowing access to staff associations. They should only be excluded where there are specific items where their attendance would present a conflict.

With the exception of a single reference in the section for Members' Business Meetings, it is not clear whether there would be an invitation for HMICS to attend your committee meetings or receive copies of agenda and papers. While it may be helpful for the sake of clarity to consider including this within your framework, it would be my intention to rely on my statutory powers if necessary to provide scrutiny over committee meetings and private sessions.

As you are aware, I previously provided a Professional Advice Note in relation to the leadership and governance of the Authority's forensic service. This was brought forward from our planned statutory inspection of forensic services later this year and was intended to assist with your consideration of this issue as part of your governance review. Having now seen your proposals for the Forensic Services Management Advisory Board, I am unclear how the governance issues raised in our advice note will be fully addressed . Clearly an opportunity exists for us to review the governance arrangements for forensic services and comment on operation of this committee in more detail during our statutory inspection.

I also have some reservations over your proposal that committees will not, in general, have decision- making powers. Although you have committed to a minimum of eight scheduled board meetings per year, I would question whether this will be sufficient to meet the volume of business and formal decision making required, taking into account the need to provide some degree of public scrutiny. Notwithstanding your proposal that in practice much of this scrutiny will take place in private committee meetings, there is a real risk that proceedings at formal board meetings will become truncated and perceived by some as perfunctory. This was one of the enduring criticisms of the legacy police Authority meetings, even where there was a significant volume of business conducted out with public meetings, and something that the creation of the Authority was intended to remedy. It is my strong view that scrutiny in policing not only needs to be effective - it in needs to be seen to be effective.

My final observation relates to the current maturity of both the Authority and Police Scotland and whether on the basis of past experiences, you have sufficient credibility and confidence amongst politicians, public, stakeholders and your own staff to support your proposal that much of your scrutiny should be conducted in private. I would have thought it more beneficial for the Authority to implement its new governance structures in public, not only demonstrating increased competence over its statutory functions, but demonstrating its commitment to openness and transparency in holding the Chief Constable to account for the policing of Scotland.

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.



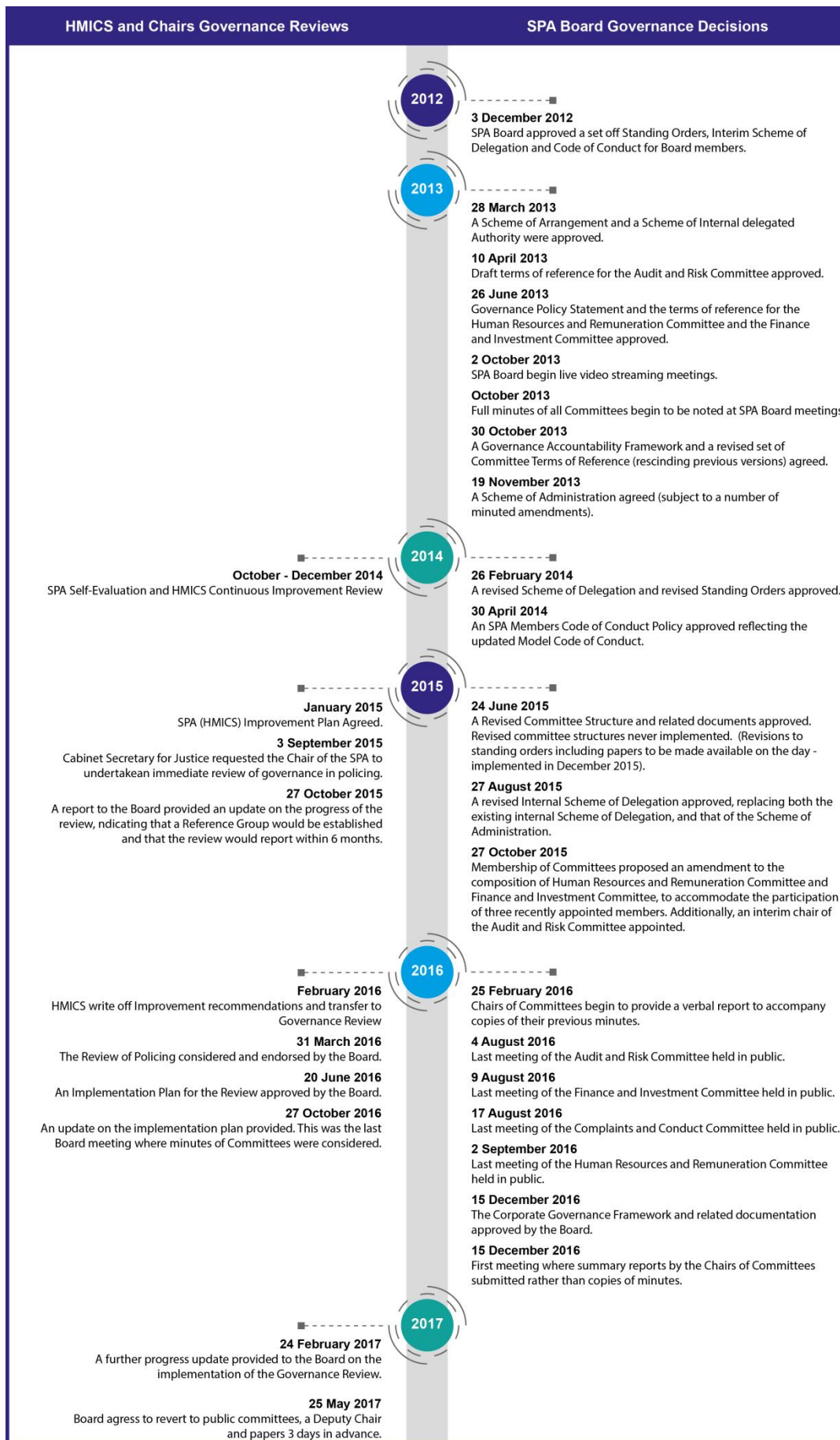
On the basis of our previous discussions and given that you will be implementing your new governance arrangements in 2017/18, I have decided that it would be timely for HMICS to schedule a statutory inspection into the state, efficiency and effectiveness of the Authority. This will provide an opportunity for an evidence led review of the new governance arrangements and supporting protocols, as well as a wider review of the Authority, the work of its officers and the services it provides. We will also seek evidence of improvement in those areas we previously identified and were being progressed through your improvement plan. This will complement our forthcoming statutory inspection of forensic services and should combine to provide a holistic assessment of the Authority. Our timing for this inspection will be dependent upon when you choose to implement your new governance arrangements and will involve discussions with you and the Chief Executive. However, it would be my intention to start planning for this in March 2017 with a view to conducting the inspection during 2017/18.

I trust these comments are helpful and I look forward to meeting with you in early course to discuss both your Governance Review and our proposed inspection.

Yours sincerely

Derek Penman
HM Chief Inspector of Constabulary

Appendix 2 - Timeline of governance decisions and reviews





Appendix 3 - List of stakeholders consulted

Scottish Government (SPA sponsor division)
Police Scotland
PIRC
Scottish Police Federation (SPF)
Association of Scottish Police Superintendents (ASPS)
UNISON
UNITE
COSLA
Scottish Local Government Partnership (SLGP)
Scottish Institute of Policing Research (SIPR)
Equalities and Human Rights Commission (EHRC)
Scottish Information Commissioner (SIC)
Scottish Police Muslim Association (SPMA)
SEMPER
Gay Police Association (GPA)
The Scottish Chief Police Officers' Staff Association (SCPOSA)
Scottish Information Commissioner (SIC)
All 32 Local Authorities Chief Executives



HMICS HM INSPECTORATE OF
CONSTABULARY IN SCOTLAND

HM Inspectorate of Constabulary in Scotland
1st Floor, St Andrews House
Regent Road
Edinburgh EH1 3DG

Tel: 0131 244 5614

Email: hmic@gov.scot

Web: www.hmics.org

About Her Majesty's Inspectorate of Constabulary in Scotland

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

© Crown copyright 2017