



The Scottish Parliament
Pàrlamaid na h-Alba

The Presiding Officer

Richard Leonard MSP
Convener
Public Audit Committee

By email

11 May 2023

Dear Richard,

The 2021/22 audit of the Commissioner for Ethical Standards in Public Life in Scotland

Thank you for your letter of 24 April 2023 seeking further information about the above audit report.

The SPCB has been following your consideration of the Section 22 reports with interest, including the evidence taking sessions you have undertaken. As you know, the SPCB wrote to your Committee on 6 May 2022 and subsequently gave evidence to the Committee on 29 September 2022.

Governance

In our letter of 6 May 2022, we outlined the governance arrangements we have in place and how we proposed to enhance them as part of a review of the governance arrangements between the SPCB and officeholders.

As you know, we have received assurances from all the officeholders that arrangements are in place for internal audit, whistleblowing and that each officeholder has an audit advisory board (AAB) in place. Some of these key scrutiny and challenge functions were not in place in the office of the Ethical Standards Commissioner in 2020/21 when the issues arose, so we consider that these should go a long way to ensuring there is no repeat of what happened in that particular office.

We note that during your Committee's meeting on 2 March 2023, the Commissioner's external auditor suggested there should be some form of communication route between the officeholders' AABs and the SPCB. The role of the officeholders' AAB is to provide independent support to the respective Accountable Officers in respect of their responsibilities for issues of risk, control and governance by considering the

comprehensiveness of assurances and reviewing the reliability and integrity of these assurances.

If a governance issue arises, we would expect the Accountable Officer (who may or may not be the Officeholder) to engage their own AAB and depending on the nature of the issue, report it to Audit Scotland and inform the SPCB.

Recommendation 5.2

In respect of recommendation 5.2 in the 2020/21 Annual Audit Report, we have provided the Commissioner with the following documents on taking up office-

- an appointment letter and terms and conditions of appointment, and
- an accountable officer appointment letter and memorandum.

Officeholder terms and conditions have been reviewed as part of our governance review. They now provide:

- annual evaluations being mandatory,
- the mandatory reporting of excess annual leave and requirement that it is then used in the following leave year, and
- mandatory training where the officeholder is new to the role of Accountable Officer.

We have started to meet formally on a quarterly basis with the officeholders and the agenda for these meetings covers issues such as audit (internal and external), Accountable Officer duties, shared services, adviser costs, new ways of working, budgets, forecasting and new functions. We consider that this should provide the SPCB with early warning signs of any concerns about an office. This, of course, can only work with the full and open engagement and co-operation of both parties.

We are also liaising with outgoing officeholders and their staff to ensure that a full induction programme is in place for new officeholders.

As you know, the SPCB has put in place a Written Agreement with committees about their respective relationships with officeholders. This sets out the distinct roles of the SPCB regarding the governance arrangements and the committees, who have parliamentary oversight of the functions and performance of officeholders. We are pleased to report that since the introduction of the agreement in January 2023, there has been more engagement between committees and officeholders.

Ultimately, along with all public sector bodies in Scotland, assurances about the financial propriety and governance can only be provided by the audit reports prepared by external auditors.

Code of Conduct

Discussions have been held individually and collectively with all the officeholders about a Code of Conduct. Although issues have been raised with us about the officeholders'

independent status, nonetheless, we have reached a collective view with the officeholders about the importance of having a Code of Conduct in place. We expect the introduction of a Code in each office to now form part of the governance arrangements in place, in the same way offices are required to have an AAB and internal audit.

We anticipate that complaints received about the conduct of an officeholder will be investigated by an independent person appointed by the respective office and a report prepared. Where there have been serious failings then we would expect the report to be shared with the officeholder's AAB and the SPCB, and we are still in discussion about the detail of this.

Reporting concerns

You asked about the reporting of concerns and I have touched on this above. We have put in place a Written Agreement which sets out the respective roles of the SPCB and committees. Officeholders have reviewed and updated, where necessary, their whistleblowing policies to include for when the concern relates to them.

Concerns about an operational decision an officeholder has made will be dealt with through the officeholder's internal complaints process. Ultimately, an officeholder's decision can be judicially reviewed on a point of law.

A concern about criminal activity, must be reported to the appropriate authority.

Concerns raised about an officeholder's conduct could be considered by an independent reviewer as mentioned above. A mechanism will require to be developed for investigation reports, where serious breaches have been found, to be referred to the SPCB.

In line with establishing legislation, we consider that for the more serious substantiated concerns where these relate to terms and conditions of appointment that these will be considered by the SPCB, while those relating to the confidence the Parliament has in an officeholder will be considered by committees. We are still working on this, but I thought it best to be as open as possible with you on our current thinking on this matter.

I hope this letter provides you with the additional information sought.

Yours sincerely

Rt Hon Alison Johnstone MSP
Presiding Officer