

Ard-stiùiriche airson Cothromachadh Carboin

Director-General Net Zero

Michelle Quinn
E: DGNetZero@gov.scot

6 November 2024

Dear Convener,

Thank you for your letter of 2 October seeking further information in relation to the below areas. I have addressed each of the Committee's requests in turn.

The Committee asks for a chronological list of events that took place in the leadup to the former Chief Executive's resignation including – what discussions took place and by whom and when the Scottish Government first became aware that a settlement agreement had been put in place.

We have set out the events which pertain to our involvement below. For context, we have also included dates of the key facts surrounding the CEO's departure as we understand them (shown in grey shading).

10/12/23	CEO sends letter to Chair announcing decision to retire from 31 October 2024. This is forwarded to the Deputy Director (DD) Water Policy by both Chair and CEO.
19/12/23	WICS Chair, Board member and DD Water Policy discuss over the phone that CEO now intends to resign and whether payment in lieu of notice of his contractual six month notice period can be made. DD Water Policy advised that contractual payments did not require approval from Scottish Government. WICS did not mention the use of a formal settlement agreement as the legal means by which to achieve this outcome.
19/12/23	WICS receive resignation from CEO.
20/12/23	Further call between DD Water Policy and WICS Chair.
22/12/23	Email from Chair to DD Water Policy summarising conversations on 19 & 20 December 2023.
31/12/23	CEO resignation takes effect.
04/01/24	Former CEO signs settlement agreement.
05/01/24	Chair signs settlement agreement.
12/01/24	WICS email to SG requesting "formal confirmation and approval (if required)" of former CEO's final payment from WICS. Email makes reference for the first time to a settlement agreement, saying only that WICS has a copy of it.

15/01/24	SG respond to inform WICS that the Public Pay Policy team has clarified that the process set out in the SPFM must be followed in relation to settlement agreements.
17/01/24 to 22/01/24	Correspondence between SG and WICS asking for WICS to explain whether a settlement agreement was used.
23/01/24	WICS share first draft of SPFM business case for settlement agreement.
04/03/24	WICS share final version of business case (3 rd version following iterative amendments based on SG feedback) incorporating SG team's comments.
11/03/24	Submission on the settlement agreement to the then Cabinet Secretary.
15/03/24	Then Cabinet Secretary writes to WICS acknowledging that there had been a swift resolution reached with the former CEO, but that due process wasn't followed for the means by which it was achieved.

The Committee asks that as part of your responses, a copy of all notes or records made by the Sponsorship Team of these discussions is provided.

We have provided copies of emails received on 10 December, when we were informed that the CEO was intending to retire with effect from 31 October 2024.

We have included the record of the conversation on 19 December between Jon Rathjen, the then Deputy Director (DD) Water Policy, and the WICS Chair and Board member that was provided by the Chair on 22 December. The Sponsorship Team did not make a separate note of this conversation.

We have also provided a copy of the email sent by WICS on 12 January and subsequent chain between then and 22 January where WICS informed the Scottish Government of the use of a settlement agreement and the Scottish Government's response to that.

Information on the Scottish Government's limit on what staff can spend on a meal, per person.

The Scottish Government's limit on what staff can spend on a meal (i.e. subsistence) is set out below. This is dependent on whether overnight stays are required. Subsistence expenses may only be claimed where Officials are required to travel to a location which is not the office or location set out in their contract and where a higher level of expense is incurred as a result. Alcoholic drinks cannot be claimed under any circumstances. All claims should be receipted.

- Day subsistence over 5 hours: Up to £4.90 per person per day
- Day subsistence over 10 hours: Up to £10.70 per person per day
- Day subsistence over 12 hours: Up to £15.60 per person per day
- Meals allowance London (for overnight travel): Up to £24.10 per person per night
- Meals allowance elsewhere UK (for overnight travel): Up to £23.50 per person per night

There are separate rates for foreign travel which depend on the country visited. Scottish Government uses the Worldwide Substance rates published by HMRC to determine these rates. This can be found on the HMRC website:

[Expenses rates for employees travelling outside the UK - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The Scottish Government's power to remove a chair of a public body.

There are Scottish Government standard terms and conditions for appointment of the Chair of a public body. These form the basis of the terms and conditions for the appointment of any Chair. These contain the following provisions:

- “The Scottish Ministers may terminate your appointment if they are satisfied that you:
- no longer have a right to work in the United Kingdom;
 - have had your estate sequestrated or have made a trust deed for the benefit or use of your creditors or a composition contract;
 - have been absent from three consecutive meetings of the Board otherwise than for a reason approved by the Scottish Ministers;
 - are otherwise unable or unfit to discharge your functions of appointment; or
 - are no longer suitable to continue in your role, including where you have failed to perform satisfactorily.”

In addition, there may be statutory provisions which govern the appointment and removal of members of a public body. In relation to WICS, it is established under section 1 and schedule A1 of the Water Industry (Scotland) Act 2002 (as amended by the Water Services etc (Scotland) Act 2005). Paragraph 3 of schedule A1 sets contains provisions on the tenure and removal from office of members of WICS. Under paragraph 5(1) of schedule A1 the Scottish Ministers appoint one of the members of WICS as the Chair. In particular, paragraph 3(2) provides in relation to removal of members of WICS as follows -

The Scottish Ministers may remove an ordinary member from office and the Commission may, with the approval of the Scottish Ministers, remove the member who is the chief executive from office if satisfied that—

(a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract, or

(b) the member—

(i) is incapacitated by physical or mental illness,

(ii) has been absent from meetings of the Commission for a period longer than 3 consecutive months without the permission of the Commission, or

(iii) is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

If Scottish Ministers wished to remove a Chair of a public body, they would be required to follow a fair process. This would likely involve informing a Chair of the reasons for removal and allowing an opportunity for representations to be made, before a decision was made by Ministers.

When the independent review of WICS and the internal review of the Scottish Government's sponsorship arrangements will be published.

The independent review of WICS and the internal review of the Scottish Government's sponsorship arrangements will be published on 7 November and will be available at <https://www.gov.scot/publications/>.

Independent review

The independent review of WICS provides a further demonstration of the unacceptable failures in financial management and governance controls that have arisen in WICS. This also further demonstrates the need to change culture and behaviours in WICS as part of a full reset of the organisation.

We note WICS has already taken steps to address the immediate failings identified in the section 22 report and has put in place a management response to its own Grant Thornton internal audit review (shared with PAC with their letter of 31 July). This includes undertaking a wider HR review as well as changes to processes and controls. The departure of the Chair provides another opportunity now to reset. On 14 October the Cabinet Secretary for Net Zero and Energy wrote to Ronnie Hinds on his appointment as Interim Chair to emphasise the priority we place on the cultural change that will be necessary in the organisation, to ensure that it operates with the highest standard of probity, embeds a culture of Best Value and operates within its Governance Framework and in accordance with the SPFM at all times. Mr Hinds has been asked to review the existing action plan and consider what further action may be required to address the findings in this report in full by 28 November. The Cabinet Secretary is meeting with Mr Hinds and David Satti to discuss this on 5 December.

Internal review

We welcome the internal review on the Scottish Government's sponsorship of WICS and we accept the findings in full.

On learning of the section 22 report we took immediate steps to improve our Sponsorship function and align our approach with the themes set out in the Review of the Scottish Government's Relationships with Public Bodies ("Ryan Review"). The internal review identified some further actions to help us embed this approach. The report sets out seven actions, of which six are now fully completed. The seventh action is to update the framework document for WICS. We have provided WICS a draft of this and expect to receive a response shortly following consideration by their Board. Once we have received their comments, we will work with WICS to finalise the update and publish this once it is completed.

MICHELLE QUINN

Annex A: A copy of all notes or records made by the Sponsor Team of notes or records of discussions in the lead up to the former Chief Executive's resignation

Item 1: Email from the Chair on former CEO's intention to resign

From: Donald MacRae <[Redacted]@wics.scot>
Sent: Sunday, December 10, 2023 11:08 AM
To: Jon Rathjen <[Redacted]@gov.scot>
Subject: AS Retiral letter

Hello Jon,

I received this letter this Sunday morning (10th). I have sent to the WICS board - we are meeting provisionally by Teams on Tues 12th pm to discuss. So far, positive reaction from two of the three – still awaiting a full reaction from the remaining NXD. This development highlights WICS dependence on AS for Hydro Nation activity and income.

Best regards,
Donald

Item 2: Email from the former CEO on his intention to resign

From: Alan Sutherland <[Redacted]@wics.scot>
Sent: Sunday, December 10, 2023 3:33 PM
To: Jon Rathjen <[Redacted]@gov.scot>
Subject: Fwd: Attached letter

Hi Jon

This is the letter that I sent to Donald earlier today. He asked that I only send to you in the afternoon.

All best wishes

Alan

Begin forwarded message:

From: Alan Sutherland <[Redacted]@wics.scot>
Date: 10 December 2023 at 07:22:00 GMT
To: Donald MacRae <[Redacted]@gmail.com>, Donald MacRae <[Redacted]@wics.scot>
Subject: Attached letter

Hi Donald

Please find attached a letter. I will pass you a signed hard copy the next time that I see you. I look forward to talking with you later.

Thank you for your support.

All best wishes
Alan

Item 3: Email from the Chair to SG summarising 19 December discussion

From: Donald MacRae <[Redacted]@wics.scot>
Sent: Friday, December 22, 2023 2:05 PM
To: Jon Rathjen <[Redacted]@gov.scot>
Subject: The resignation of Alan Sutherland

Dear Jon,

Thank you for taking time this week to discuss the resignation of Alan Sutherland both on the call with Ann Allen and myself on Tuesday and the subsequent call with myself on Wednesday. Alan did send in his resignation notice on Tuesday, which we as a Board have accepted. However we asked him to step down as CEO and accountable officer with immediate effect by refraining from attending meetings and contacting WICS staff. Under his contract he had to provide six months notice and as confirmed by the Scottish Government Public Pay Policy Unit to you he is entitled to his salary for the period of his notice; in paying this WICS is meeting it's contractual obligation and not making any change to his contract. WICS had received legal advice confirming our contractual obligation in respect to Alan's notice period.

[Redacted] In considering these options we needed to balance three things, firstly capacity of the organisation, as a small organisation we wanted the focus for staff to be on implementation of the Sc 22 action plan and the pending price review. We also considered the welfare of the staff. As a small organisation the Sc 22 had impacted a large number of people who had worked with focus and intensity to develop the action plan and wanted to have the capacity to deliver on it. [Redacted]

The senior team within WICS have agreed to act collectively for the next few weeks to ensure that the Sc 22 action plan is taken forward promptly. With this and the important work of the price review we will need to look at capacity and leadership within the organisation. Upon return from the festive break the Board will focus on the open selection and appointment of a new CEO. However to ensure that we have capacity to work well during this process we will look at the possible need for additional interim leadership support. I look forward to working with you and Kersti Berge on moving the organisation forward.

Festive greetings,
Donald

Item 4: Settlement agreement email exchange

From: David Satti <[Redacted]@wics.scot>
Sent: Monday, January 22, 2024 5:15 PM
To: [Redacted]@gov.scot>; [Redacted]@wics.scot>
Cc: Jon Rathjen <[Redacted]@gov.scot>; [Redacted]@gov.scot>; Donald MacRae <[Redacted]@wics.scot>
Subject: Re: [EXT] RE: [EXT] RE: [EXT] RE: [EXT] RE: Confirmation and approval of CEO final pay

Hi [Redacted]

We have been working over the weekend to draft the settlement agreement templates and it is with our lawyer currently. We hope to get the templates to you later this evening or first thing tomorrow morning.

I understand better the process that you and your team have to undertake once you receive the business case and hope that this case can be processed quickly given the nature of what has been agreed. We will engage with Alan as necessary given the commitment to make payment in January.

best regards
David

From: [Redacted]@gov.scot
Sent: 22 January 2024 17:10
To: David Satti <[Redacted]@wics.scot>; [Redacted]@wics.scot>
Cc: Jon Rathjen <[Redacted]@gov.scot>; [Redacted]@gov.scot; Donald MacRae <[Redacted]@wics.scot>
Subject: [EXT] RE: [EXT] RE: [EXT] RE: [EXT] RE: Confirmation and approval of CEO final pay

Hi David

Thanks for sharing the document - [Redacted]. But it does look like it's a "settlement agreement" – and so the corresponding business case and info sheet will be needed (copied links below from my email to [Redacted]).

Given the timescales, and that this process is being followed retrospectively rather than in the order set out in the SPFM, in the meantime could you complete these two documents please.

Settlement agreements, severance, early retirement and redundancy terms - Scottish Public Finance Manual - gov.scot (www.gov.scot)

- Business case – June 2021 version
- Supporting documentation – Information schedule – June 2021 version

We also need to establish who the Accountable Officer can be in signing this off.

Thanks
[Redacted]
Water Industry Unit
Water Policy and DECC Operations
Directorate of Energy & Climate Change

[Redacted]

From: David Satti <[Redacted]@wics.scot>
Sent: Friday, January 19, 2024 1:29 PM
To: [Redacted]@gov.scot; [Redacted]@wics.scot>
Cc: Jon Rathjen <[Redacted]@gov.scot>; [Redacted]@gov.scot; Donald MacRae <[Redacted]@wics.scot>
Subject: Re: [EXT] RE: [EXT] RE: [EXT] RE: Confirmation and approval of CEO final pay

[Redacted]

Thanks for setting up the meeting - it will be good to keep this dialogue going.

As requested, attached is the agreement that was reached with Alan. This document has been titled 'settlement' but it wasn't with a view to the SPFM.

It would be good to understand whether there is a different interpretation of this. You'll see in the agreement the reference to the six months and [Redacted] days as per the letter of appointment. Therefore, the payment that we are requesting approval for Alan was for these two components.

You'll also see in the agreement, a reference to legal fees - note that this isn't part of the payment. The legal fees will be paid to our lawyers in conjunction with what was agreed as per this document.

Happy to discuss
Regards
David

From: [Redacted]@gov.scot
Sent: 19 January 2024 12:19
To: David Satti <[Redacted]@wics.scot>; [Redacted]@wics.scot
Cc: Jon Rathjen <[Redacted]@gov.scot>; [Redacted]@gov.scot; Donald MacRae <[Redacted]@wics.scot>
Subject: [EXT] RE: [EXT] RE: [EXT] RE: Confirmation and approval of CEO final pay

Hello David

Good to meet with you yesterday in the first of the new series of Liaison meetings. I will follow up on other items arising from that meeting separately.

But for now, as I mentioned yesterday, we need to confirm whether or not the agreement that has been drawn up by solicitors is a "Settlement Agreement" or not.

This is a particular legal document and not something I can judge. Would it be possible to share the agreement with us [Redacted] to confirm its status? As we mentioned, we're checking anything regarding the content of the agreement – just it's status, to ensure that the necessary SPFM process is followed and there are no surprises later.

Hopefully it is a voluntary severance as you say. Or if you are not able to share it, could you ask your lawyers to email us to confirm the status of it?

Thanks
[Redacted]

From: David Satti <[Redacted]@wics.scot>
Sent: Thursday, January 18, 2024 12:29 PM
To: [Redacted]@gov.scot; [Redacted]@wics.scot
Cc: Jon Rathjen <[Redacted]@gov.scot>; [Redacted]@gov.scot; Donald MacRae <[Redacted]@wics.scot>
Subject: RE: [EXT] RE: [EXT] RE: Confirmation and approval of CEO final pay

[Redacted], and team

We have reviewed the SPFM, in particular the section when to use settlement agreements, and concluded that a voluntary severance is more appropriate in this instance.

I've filled in and attached the template in draft perhaps for discussion during or after our meeting later.

Thanks for your help on this and speak soon.

Regards
David

From: [Redacted]@gov.scot
Sent: Wednesday, January 17, 2024 5:16 PM
To: [Redacted]@wics.scot
Cc: [Redacted]@gov.scot; [Redacted]@gov.scot; Donald MacRae <[Redacted]@wics.scot>; David Satti <[Redacted]@wics.scot>
Subject: [EXT] RE: [EXT] RE: Confirmation and approval of CEO final pay

Hi [Redacted]

Thanks for the discussion just now. As I mentioned on the phone, in order to determine the process for approving this final payment could WICS please clarify whether this is actually a 'Settlement Agreement' as defined in the SPFM or not. (Rather than just the contractual notice period settlement).

Settlement agreements, severance, early retirement and redundancy terms - Scottish Public Finance Manual - gov.scot (www.gov.scot)

If it is indeed a Settlement Agreement, then the process set out in the SPFM has to be followed and WICS will need to submit a business case and info note to the Sponsorship team – see below.

- Business case – June 2021 version
- Supporting documentation – Information schedule – June 2021 version

I'm happy to help facilitate the process within SG one you've established whether or not this is indeed a Settlement Agreement.

Thanks
[Redacted]
Water Industry Unit
Water Policy and DECC Operations
Directorate of Energy & Climate Change

[Redacted]

From: [Redacted]@wics.scot
Sent: Monday, January 15, 2024 12:51 PM
To: [Redacted]@gov.scot
Cc: Jon Rathjen <[Redacted]@gov.scot>; [Redacted]@gov.scot; Donald MacRae

<[Redacted]@wics.scot>; David Satti <[Redacted]@wics.scot>

Subject: RE: [EXT] RE: Confirmation and approval of CEO final pay

Hi [Redacted],

Thank you very much for your response. It is nice to meet you (virtually) too. I will hold off on any payment for the moment. I have copied WICS' Chair and my colleague, David, and would appreciate it they could be included when you get back to me.

If there is anything else you need from us in the meantime, just let me know.

Kind regards

[Redacted]



From: [Redacted]@gov.scot

Sent: Monday, January 15, 2024 10:55 AM

To: [Redacted]@wics.scot

Cc: Jon Rathjen [Redacted]@gov.scot

Subject: [EXT] RE: Confirmation and approval of CEO final pay

Good morning [Redacted]

I have started in [Redacted]'s team working on Sponsorship and Charging matters – nice to virtually meet you.

Jon passed on your below email regarding Alan Sutherland's final settlement. We aren't in a position to approve the payment yet – so please hold off on processing it. This is regarding process.

The Public Pay Policy have already informed us that the settlement payment cannot be approved until the process set out in the SPFM has been followed. Namely WICS must complete a business case. Settlement agreements, severance, early retirement and redundancy terms - Scottish Public Finance Manual - gov.scot (www.gov.scot) We are speaking with these colleagues later this week to find out more, and will get back to you once we have more information on what is required from WICS.

However in the meantime, please don't go ahead and process this payment.

Kind regards

[Redacted]

Water Industry Unit

Water Policy and DECC Operations

Directorate of Energy & Climate Change

[Redacted]

From: Jon Rathjen <[Redacted]@gov.scot>

Sent: Friday, January 12, 2024 4:06 PM

To: [Redacted]@gov.scot; [Redacted]@gov.scot
Subject: Fwd: Confirmation and approval of CEO final pay

From: [Redacted]@wics.scot>
Sent: Friday, January 12, 2024 3:40:38 PM
To: Jon Rathjen <[Redacted]@gov.scot>
Cc: David Satti <[Redacted]@wics.scot>; Donald MacRae <[Redacted]@wics.scot>
Subject: Confirmation and approval of CEO final pay

Hi Jon,

I am writing for formal confirmation and approval (if required) of Alan Sutherland's final payment from WICS.

The final settlement is:

- Final date of employment: 31 December 2023
- Payment of salary and all contractual benefits up until final day of employment (already paid in December salary)
- 6 months' notice: £[Redacted] (2023-24 salary, as agreed per pay policy settlement: £[Redacted])
- [Redacted] days of untaken leave: [Redacted] (holidays accrued can be evidenced using our internal HR system)
- Contribution towards legal fees: £[Redacted]

Therefore, I intend to pay Alan [Redacted] in January. I believe this is in line with the discussions you had with WICS' Chair, Donald MacRae, and Board Member, Ann Allen.

It is also in line with Scottish Government's Pay Policy. Per the approved pay policy CEO remit for 23-24 (see attached) – the salary used to calculate Alan's payment is in line with the approved salary for 2023-24 and the notice period is within the agreed understanding of Alan's contractual notice period.

WICS has a copy of the settlement agreement, signed by Alan, Donald MacRae and Alan's legal representative.

If you require any further information, or have any queries, please let me know. Otherwise, if you could reply to confirm you are content with this final payment, that would be appreciated.

Kind regards
[Redacted]

