

Written submission from the Commissioner for Ethical Standards in Public Life in Scotland, 14 January 2025

SPCB Supported Bodies Landscape Review

How do you measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?

We measure outcomes through a combination of quantitative and qualitative metrics, designed to assess our efficiency, effectiveness and impact. These metrics are set out in appendix five to our [strategic plan for the period from 2024 to 2028](#), which we consulted on extensively with all of our stakeholders, inclusive of the Scottish Parliamentary Corporate Body (SPCB), the Standards Commission for Scotland (SCS) and the two subject committees that we report to, these being the Local Government Housing and Planning Committee (LGHPC) and the Standards, Procedures and Public Appointments Committee (SPPAC). A proportion of these outcomes are included in the framework agreement that we have in place with the SPCB, although we have chosen to identify additional ones in order to provide further assurance to the public about the way in which we fulfil our role.

The outcomes are selected and prioritised on the basis of the statutory functions that my office fulfils and on the views of stakeholders who responded to the draft version of the strategic plan during the consultation period.

My primary statutory functions are as follows:

- to investigate complaints about the conduct of Members of the Scottish Parliament (MSPs), local authority councillors and board members of public bodies. Where I consider that there has been a breach of the relevant Code of Conduct, I will report
 - in the case of councillors and members of public bodies, to the Standards Commission for Scotland (SCS)
 - in the case of MSPs, to the Scottish Parliament.
- to investigate complaints about lobbyists who have failed to register or provide certain information to the Scottish Parliament and, where there has been a contravention, to report to the Scottish Parliament.
- to regulate and monitor how people are appointed by the Scottish Ministers to the boards of public bodies in Scotland, and to promote diversity in that process. The key functions are:
 - to prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)

- to issue guidance on the Code and to promote compliance with its provisions
- to examine the methods and practices employed by the Scottish Ministers when making appointments
- to report to the Scottish Parliament instances of material non-compliance with the Code of Practice; and
- to ensure that, as far as possible, appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

We have adopted a range of Key Performance Indicators (KPIs) to measure the extent to which we are fulfilling these functions appropriately and in accordance with the principle of Best Value.

To provide two simple examples, one of our KPIs includes the number of complaints that we investigate to a conclusion within target timeframes. For public appointments, we measure our impact by assessing the extent to which public body boards are reflective of the people that they have been established to serve. As with other elements of the strategic plan, these KPIs were consulted on.

We demonstrate the extent to which we are meeting KPIs by publishing this information each year in our annual report and accounts. We also publish standalone information on our website such as on complaint waiting times and on the views of applicants about the public appointments process.

We regularly review our KPIs to ensure they remain aligned with our priorities in our strategic plan and address the needs of our stakeholders more widely. As such, we also produced a [standalone document containing additional metrics](#) that we can refine during the period of the strategic plan, based on feedback from those who come into contact with our office.

My view is that the process used to select and prioritise outcomes is already a robust one inasmuch as it involves formally and proactively gathering the views of our stakeholders to inform outcomes for the coming four years, each time our office consults on its strategic plan for that period. In terms of scope for improvement, I believe that we could do more to engage with the general public in this area and we already have plans in place to do so.

How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?

It is a matter of public record that the Auditor General for Scotland laid a section 22 report on the work of our office in December 2021. Since that time, it is my view that parliamentary scrutiny of our work has been regular and robust.

Parliamentary committee scrutiny has provided valuable opportunities to ensure transparency and accountability in our work. In practice this has involved giving

evidence at least annually to both the LGHPC and SPPAC at public sessions. Each committee's area of focus is aligned with the separate statutory functions that I fulfil; in this case, respectively, complaints about councillor conduct and complaints about lobbying, MSP conduct and my regulation of ministerial public appointments. I also meet with Committees and Committee Conveners at informal ad hoc private sessions to provide briefings and/or to answer specific questions of interest to the Members.

The SPCB also scrutinises my governance, staffing and financial arrangements by way of quarterly meetings with SPCB representatives and an annual in person meeting with the Members of the SPCB itself.

As my decisions on councillor/member and MSP conduct are independently scrutinised by the Standards Commission for Scotland and the Scottish Parliament, and as both bodies may issue statutory directions to me, there is a measure of public assurance that I am fulfilling my statutory functions appropriately.

Over and above this my performance is annually appraised by an independent assessor assigned by the SPCB to fulfil that activity. The results of these performance reviews are submitted to the SPCB.

We welcome scrutiny of our work to enhance our own credibility and public trust by demonstrating transparency and a willingness to be held accountable. Scrutiny has offered us valuable feedback and recommendations, which have supported continuous improvement in our processes, decision making and delivery of our functions.

In terms of how scrutiny has impacted performance more directly – it does help highlight where issues lie and enables us to focus on addressing those issues, for instance relative to complaint wait times and measures introduced specifically to improve these remain an on-going feature of our work following previous engagement with the LGHPC, SPPAC and SPCB, which complements our external and internal audit recommendations, alongside workforce planning and strengthening corporate governance.

We have developed a Quality Assurance Framework to provide assurance on the quality of all our investigatory work. Through rigorous quality assurance measures, we seek to identify trends, be accountable for and prevent reoccurrence of issues, improve our service and provide assurance to stakeholders that our work is of the highest quality and stands up to external scrutiny. The framework covers key areas of our work including training, quality reviews and the on-going development and enhancement of our Investigations Manual.

We believe that parliamentary committees could play a valuable role in scrutinising our performance against this Framework as well as against the other outcomes identified in our strategic plan. Such oversight would not only reinforce transparency and accountability but also support the refinement of our practices to better meet the needs of stakeholders.

As to the final part of your question, as well as parliamentary oversight, I think it is important to highlight that we are subject to annual audits by Audit Scotland, which

review both our governance and finances and that we also commission internal audits to examine aspects of the way in which we fulfil our functions.

My view is that improving scrutiny should involve the sharing of intelligence across all of the parties that oversee the work of my office. Doing this should reduce overlaps in scrutiny and the duplication of effort. It should also ensure that our auditors, the SPCB and parliamentary committees have a complete picture in respect of how we are fulfilling our role. I attach at Appendix One, for illustrative purposes, a copy of a diagram that demonstrates the number of the different bodies etc. that oversee my work. It is not exhaustive but does demonstrate, as it stands, the complexity of current oversight and reporting arrangements.

I am not persuaded that standardisation of scrutiny beyond this is appropriate as I anticipate that the subject committees that I report to will continue to have an interest in those aspects of my work that are relevant to them and will continue to wish to take evidence from and question me on my work in these areas.

The current officeholders are not a homogeneous group and oversight of each one should be tailored to ensure that the respective subject committees they report to continue to have a role in holding them to account.

I understand that the SPPAC is already looking at committee effectiveness as part of its current work programme and consider that this must overlap with your own review.

How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

In respect of other SPCB supported officeholders we work together in practice in two main ways, over and above ad hoc contact on a range of issues of mutual interest.

Firstly, our corporate services team meets with their equivalents from each of the other SPCB supported officeholders on a quarterly basis. These meetings are run under the auspices of the Officeholders Shared Services Network (OSSN). Over the course of the last two meetings, the OSSN has discussed, among other things:

- sharing updated BSL plans and ways of mitigating the associated costs through shared learning and/or procuring shared services.
- sharing hints, tips and best practice around the practicalities of moving to Sharepoint and cloud-based IT services.
- combining resources when introducing and updating HR policies.
- the benefits of officeholders tendering together to reduce time and combine resources.
- hosting others in their premises (a number already share premises and back office services).

Secondly, I meet with my fellow officeholders on a regular basis to discuss issues of mutual interest and to explore other opportunities for us to work together and pool resources. Most recently, I circulated a database of all of the activities that my office engages in – showing both “back of house” and “front of house” functions – to allow each of us to more readily identify areas in which services could be shared, pooled or outsourced as appropriate. As with the OSSN, we also discuss options relating to tendering jointly for training etc and pooling resources on activities such as policy work to reduce duplication of effort.

My office’s work with others is, of course, not restricted to working alongside my fellow officeholders. We work closely with our other statutory stakeholders including the Scottish Parliament, Scottish Government and the Standards Commission for Scotland.

By way of example, we assist the Standards Commission for Scotland with training and the development of its statutory guidance and advice notes on application of the Codes. We assist the Scottish Government in developing guidance and training on adherence to the Code of Practice for ministerial appointments to public bodies in Scotland. We also provide support for its aspiring NHS Chair’s programme.

For the Committee’s reference, we first mapped our key stakeholders in early 2021 and included all of the organisations in Scotland who have a clear interest in, or who may be affected by, the work that we do. The outcome of our stakeholder mapping is set out in our [Communication Strategy](#) that was republished on our website in November 2024. The strategy provides details of not only how we will communicate with our stakeholders but areas where we will work in partnership directly. In carrying out a stakeholder analysis and categorising our stakeholders into groups, we have sought new ways to communicate, engage and work in practice with other bodies.

One very positive example where we already seeing the benefits of engagement with other public sector bodies, relates to the work we have led on in recent months to re-establish a UK wide Ethical Standards Network (ESN) with colleagues at the Public Sector Ombudsman for Wales and Northern Ireland Public Services Ombudsman. We expect to see significant benefits from this approach, in terms of sharing best practice and enabling improved consistency and efficiency in complaint handling. This network approach also supports professional development through peer learning and enhances accountability by promoting high standards across the different bodies.

A practical example of shared service in this area is the joint delivery of training that we are engaging with other bodies on through the ESN. This approach offers several benefits which include financial savings as, by pooling resources and sharing costs, we have reduced the financial burden on each participating organisation, making training more cost-effective. We found that our own colleagues and those of other these organisations have benefited from the networking opportunity this has brought, which we hope will lead to further co-operation and innovation in the future. The ESN are already scoping for the next joint training opportunities likely to take place in the 2025/26 year.

In terms of barriers to working and engaging with other public bodies or services, we have sought ways to address these through our communications strategy and

indeed wider strategic plan. However, on a more practical level, given the nature of our role, barriers can include maintaining impartiality and managing public perception while collaborating with other bodies. All of the SPCB supported officeholders are statutorily independent and I am answerable to some of them. For example, the SPSO can investigate complaints about maladministration on the part of my office and the Scottish Information Commissioner can review and disagree with decisions I have reached about the release of information.

Over and above this, and as the Committee is already aware, the Commissioner landscape has developed in a piecemeal way over time and each officeholder has had to establish and run their offices, complying with all statutory obligations, based on the prevailing circumstances at the time. It is not straightforward to unpick this, although if one were starting with a blank piece of paper with the purpose of establishing all current officeholders from scratch, and with the powers now in place to direct them in respect of accommodation and other matters, I anticipate that a different approach would be taken.

The Committee will appreciate that these factors can at times complicate opportunities for collaboration or co-ordination of efforts towards a particular end. This doesn't, however, preclude our engaging in the types of activities I have described above, and I remain committed to exploring further opportunities to do so.

[Criteria were developed by the Session 2 Finance Committee](#) to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

The criteria as developed by the Finance Committee provide a helpful framework for consideration when any new "Commissioner" (or equivalent) related bills are proposed. They should help to ensure a consistent and thorough evaluation and inform any decision making.

In terms of how these could be improved, we would suggest that "Affordability" should be considered for inclusion. It is clear that funding for new Commissioners has been a key consideration, given that it was the Finance and Public Administration Committee's review and recommendations which led in turn to the establishment of the SPCB Supported Bodies Landscape Review Committee.

"Best Value" and/or "Added Value" could be an additional criterion for the Committee to also consider including in deciding on the creation of new Commissioner posts. This would be with a view to ensuring that the posts will in some way enhance the effectiveness and impact of public services and deliver better outcomes and/or levels of accountability, where such posts are deemed to be necessary.

In combination these additional criteria could involve further assessment of where proposed posts address a clear need and fill a gap that cannot be met within any existing structures and also whether the value to be added is justified in terms of public spending.

What should the optimal model and structure for commissioners look like, and what key features should it include?

We consider the model and structure of our office functions well. We have a small team dedicated to corporate governance covering a multitude of finance, IT, training and HR matters, whilst having support staff to assist teams dedicated to public appointments and investigations. These in turn support the senior management team who in turn support me to acquit my statutory functions appropriately.

We also have an agreed scheme of delegation in place which ensures that staff can provide cover wherever needed and are empowered to take action on matters as delegated to avoid 'bottle necks' in work flow. The external and internal auditors provide assurance that our processes in place are effective and ensure we improve where they are not.

All work within the office is aligned to achieving the objectives set out in the strategic plan and our performance framework is the mechanism used to ensure that our resources are dedicated to that end.

In terms of an optimal structure for Commissioners more generally, this will depend on their specific roles, functions and the outcomes they are tasked with delivering. This means that a one-size fits all approach may not be appropriate or feasible. However, it is important that key principles guide their design and the criteria as already established by the Finance Committee may be helpful in this regard. They could also act as a helpful reference point for consideration of the current landscape and how it might be adapted.

When looking across the landscape currently and in prospect, Simplicity and Accessibility are, in my own personal view, particularly important in this respect. Members of the public are not necessarily concerned to know whether there is a *specific* body that advocates for them or that handles complaints about, for example, the delivery of public services or the ethical conduct of their local councillor. They do however want to be able to complain about such issues, to have their concerns listened to and, where appropriate, investigated and addressed. They want to know that public bodies and the people elected or appointed to serve them will be held to account when things go wrong, and that services or conduct will improve as a consequence. They don't want to have to do research to find out who can help them. They don't want to have to be sent from pillar to post in pursuit of their quest for justice and answers. If the landscape isn't currently meeting all these needs, then we collectively have a responsibility to address the deficiencies in it. If any changes to the landscape are to be made, we collectively have a responsibility for ensuring that it makes the ability of the public to raise their legitimate concerns easier, not more complicated than it already is.

I trust that these responses will be of some assistance to the Members and look forward to giving evidence in person at the end of the month.

Ian Bruce, Ethical Standards Commissioner

Annexe: our oversight and reporting lines

