



INTEGRITY IN PUBLIC LIFE

STANDARDS COMMISSION'S RESPONSE TO THE PARLIAMENT'S FINANCE AND PUBLIC ADMINISTRATION COMMITTEE CALL FOR VIEWS INTO SCOTLAND'S COMMISSIONER LANDSCAPE

BACKGROUND

The Standards Commission was established by the Ethical Standards in Public Life etc. (Scotland) Act 2000. It is responsible for encouraging high standards of conduct in public life in Scotland. Its remit is to:

- promote high ethical standards and codes of conduct for councillors and members of devolved public bodies; and
- issue guidance on how the Codes should be interpreted.

The Standards Commission is also responsible for adjudicating on alleged breaches of the Codes, and where a breach is found, applying a sanction. Following the conclusion of any investigation he has undertaken into an alleged breach of the applicable Code by a councillor or member, the Ethical Standards Commissioner (ESC) will send a report to the Standards Commission outlining his findings and conclusions. In terms of the governing legislation (the Ethical Standards in Public Life etc. (Scotland) Act 2000), the Standards Commission then must decide whether to hold a Hearing; direct the Commissioner to carry out further investigations; or do neither (which essentially means that no further action will be taken on the complaint). The Standards Commission will decide to take no action if it does not consider it is in the public interest or proportionate to hold a Hearing.

Hearings, conducted by a Hearing Panel comprising of three Standards Commission members, are held, usually in public, to determine whether the councillor or member concerned has breached their respective Code. If a breach is found, then the Panel is obliged to impose a sanction, which can either be a censure, suspension or disqualification.

The separation of the investigative and adjudicatory functions ensures any concerns about fairness of process or inconsistencies between the ESC and Standards Commission as to how the Codes should be interpreted are addressed. It also ensures an independent review of decisions on complaints. This is considered to be of particular importance given a decision to uphold a complaint and suspend or disqualify an individual can have a significant impact on the individual and council or public body (and can, on some occasions, change the political composition of a Council's Administration). Equally, a decision not to uphold a complaint can have a significant impact on any individual involved and, potentially, in the effective administration of the council or public body, particularly if poor behaviours are allowed to continue without sanction. The separation of functions also allows any disputed evidence or representations on how provisions of Codes should be interpreted to be tested fully at a Hearing, where evidence is taken from witnesses on oath or affirmation, and where the participants and Panel can question and respond to submissions made.

The Standards Commission has five part-time Members appointed by the Scottish Parliamentary Corporate Body (SPCB) with the agreement of the Parliament. One of these, the Convener, is contracted to work the equivalent of three days per month, while the remaining members work two days. Members also sit on Hearing Panels, as and when required. The SPCB is responsible for determining the terms and conditions of Members' appointments.

The Standards Commission has one full-time member of staff, being the Executive Director, who is also the Accountable Officer. In addition, it employs a Case Manager, an Office Manager and an Administrative Assistant, all of whom are part-time, (with the overall staffing complement being equivalent to 3.1 full-time members of staff).

The Standards Commission is funded by the Scottish Parliament and submits an evidence-based budget for scrutiny and approval each year. The budget is based on planned actions arising from the requirements of the strategic and annual business plans, as well as projections of Hearings related activity. The Standards Commission receives funding on a cash basis from the overall budget of the SPCB.

The Standards Commission's agreed budget for 2023/24 budget is £338,000. Approximately 84% of budget covers salary costs for staff and Members.

As noted above, the remainder of the budget submission is based partly on projections of Hearings-related activity. The number of complaints made, and consequent number of cases referred to SCS by ESC, is outwith the control of the SCS; but the volume of referrals impacts on the resources required (including Members' pay for Hearings, which is separate from their monthly salaries, but included in overall salary costs).

The Standards Commission has performed effectively every year since its establishment, by achieving its statutory duties and by meeting, or exceeding, the objectives identified in its business plans.

The Standards Commission's office is located in the Scottish Parliament building and, therefore, it does not pay for rent or other accommodation costs. The Standards Commission has agreements in place with the Parliament for the provision of IT, internal audit, data protection officer, communication and financial processing services at no cost. Standards Commission staff also benefit from access to the Parliament's 'SP Learning' portal. The Standards Commission shares a joint contract with three other officeholders for the provision of payroll services.

The Standards Commission is open to exploring any future opportunities to further share services with existing or new Commissioners and public bodies.

GOVERNANCE ARRANGEMENTS

As noted above, the Standards Commission is funded through the SPCB and submits an evidence-based budget bid each year for scrutiny and approval. The budget is based on the aims outlined in the Standards Commission's four-year strategic plan in place at the time, and the proposed actions identified in its annual business plan. The budget is scrutinised and approved by the Standards Commission prior to submission to the SPCB, to ensure it reflects requirements and best value. Expenditure against budget is analysed by the Executive Team on a monthly basis, with formal reports on this being reviewed and scrutinised by the Standards Commission each quarter. This system allows for any budgetary and financial concerns to be identified and addressed quickly.

The Standard Commission operates against a four-year Strategic Plan, the objectives of which are delivered through the implementation of annual business plans. Copies of the strategic and business plans are published on its website. All actions in the business plan are linked to one of the strategic objectives, with specific targets and measurement identified for each activity. In addition, reference is made to any applicable risks as identified in the Standards Commission's annual Risk Register.

The Standards Commission has a defined performance management framework, with key performance indicators outlined in the annual business plans. Activities undertaken to progress the actions in the business plan are recorded on an ongoing basis, with performance being reviewed

formally by the Standards Commission on a quarterly basis. A report on overall performance is then included both in its annual report and annual accounts.

The Standards Commission meets ten times a year. Two Members of the Standards Commission are nominated to sit on its Audit & Risk Committee, with a further two on its Human Resources Committee. Agendas for all Standards Commission and Committee meetings are prepared in consultation with the Convener and relevant Chair. Minutes are taken of all meetings and a log of matters arising is kept and reviewed as a standard agenda item at the following meeting.

The Standards Commission's Audit & Risk Committee is responsible for ensuring appropriate corporate governance and risk management procedures, policies and controls are in place and are effectively managed. The Committee is also responsible for providing the Standards Commission with advice and assurance on these matters. The Committee meets three times a year, with the Standards Commission's internal and external auditors being invited to each meeting. The Committee's terms of reference, which are reviewed on an annual basis, state that it can meet more frequently if it deems it necessary to do so and that the Chair can have direct access to the internal and external auditors at any time.

The Standards Commission agrees its Risk Register at the start of the operational year to ensure that risks to the implementation of the strategic and operational objectives are identified going forward. The Risk Register contains a score for each risk, which reflect the likelihood of it occurring and the impact should it occur, in light of the controls in place and actions taken. The Audit & Risk Committee reviews the Risk Register, including the rating value for each risk and the risk tolerance level, at each of its meetings. A report of the review is thereafter provided for consideration by Members at the next available meeting of the Standards Commission. The Executive Team updates the Risk Register on an ongoing basis.

The Human Resources Committee meets once a year and is responsible for providing assurance and support in respect of matters relating to staff, including staffing and human resource arrangements.

RESPONSE TO SPECIFIC QUESTIONS POSED

The Standards Commission has no specific comments to make in respect of questions 1 to 4. The Standards Commission's response to questions 5 to 10 is outlined below. In responding to these questions, the Standards Commission has restricted its comments to its own experience and matters within its knowledge.

Q5. Are the existing governance and oversight arrangements adequate and, if not, what improvements are required?

The Standards Commission considers its governance and oversight arrangements, as outlined above, to be adequate. Its external auditors, Audit Scotland, have consistently found that the Standards Commission had appropriate financial planning and monitoring arrangements in place, and that these are operating effectively. Audit Scotland has further found that appropriate governance arrangements are in place supporting the scrutiny of decisions made by the Standards Commission.

Over the last four years, the Standards Commission's internal auditor, the SPCB's Head of Internal Audit, has reviewed the Standards Commission's payroll contract, its response to the coronavirus pandemic, governance arrangements and general financial control environment. The overall aim of these reviews was to provide assurance to the Executive Director (as Accountable Officer), and the Standards Commission via its Audit & Risk Committee, that the strength and resilience of existing financial and governance control environments are robust and to identify any improvements that can

be made to ensure that best practice was achieved. The internal auditor concluded that overall satisfactory assurance could be taken from the areas reviewed.

Q6. How appropriate are existing lines of accountability and how does the process work in practice? What other accountability models should be considered?

The Standards Commission consider that the question of how well the existing lines of accountability to Parliament work in practice depends on how well (or not) the work and functions of a commissioner align to a relevant Parliamentary Committee. The Standards Commission considers the appropriateness and adequacy of accountability arrangements may also be dependent, to an extent, on how the organisations supporting each individual Commissioner are structured.

The Standards Commission is accountable to the SPCB and to the Parliament via its Committees. In contrast to a single officeholder, the Standards Commission has five Members who are responsible for leading the organisation, overseeing the systems of governance and internal controls and setting the strategic direction. The Standards Commission employs an Executive Director, as Accountable Officer, who has a personal responsibility for the propriety and regularity of the finances under their stewardship and for the economic, efficient and effective use of all related resources. The Accountable Officer is personally answerable to both Commission Member and the Parliament for the exercise of the Standards Commission's functions. The Executive Director attends formal quarterly meetings, and regular informal meetings, with Officeholder Services to provide updates on governance arrangements and expenditure against budget. Standards Commission Members meet the SPCB on an annual basis, with the Convener's performance being appraised by an external assessor appointed by the SPCB. The Standards Commission is also subject to a separate annual external and internal audit.

The Standards Commission considers that its structure and operating model provides clear lines of accountability that operate well in practice.

Q7. To what extent is the current model of Parliamentary committee scrutiny of the performance and effectiveness of how Commissioners exercise their functions appropriate?

The Standards Commission understands that its work falls under the remit of both the Local Government, Housing and Planning, and the Standards, Procedures and Public Appointments Committees. The Standards Commission consults with, and advises, both committees on its strategic plans and any key issues or work, such as the issuing of statutory directions to the ESC and its annual reports. The Executive Director is invited to appear before the Local Government, Housing and Planning Committee each year, to give evidence about the Standards Commission's annual report.

As a public body, the Standards Commission is also subject to scrutiny by the Finance and Public Administration Committee, and the Public Audit Committee.

The Standards Commission has no reason to consider that the Parliamentary committee scrutiny of the performance and effectiveness of how it exercises its functions is anything other than appropriate.

Q8. Does the current Commissioner model in Scotland deliver value for money?

The Standards Commission considers that it consistently delivers value for money. As noted above, the Standards Commission enjoys limited resources in terms of both its staffing complement and budget. The Standards Commission considers, nevertheless, that its work in promoting high ethical standards, in training councillors and members of devolved public bodies on the standards expected and best practice, and in adjudicating on potential breaches of the Codes has made a significant impact in terms of preventing poor conduct.

The Standards Commission believes that the public have a right to expect, and have confidence, that those elected to represent them, and those appointed to public office, are making decisions in the public interest and not in those of themselves, their friends or family. The Standards Commission's work helps ensure awareness of, and compliance with, the rules and standards expected of those in public life in Scotland. It also allows the public to have confidence that allegations of misconduct will be investigated and that the rules will be firmly and fairly enforced. This confidence is important as a lack of trust and confidence in those in public life affects not only the reputation of any one individual. It can also erode confidence in public messaging and public bodies which, in turn, can have an adverse effect on the delivery of public services. A lack of trust in politicians and others in public life can also have an adverse effect on participation and diversity of representation as members of the public may be discouraged from standing for office if they have no faith in those in charge.

In the past two years alone, the Standards Commission has, to date, provided tailored training sessions to 14 public bodies and three local authorities. It has produced, published and disseminated Guidance, Advice Notes, interactive e-learning modules and videos on various key aspects of the Codes and ethical standards framework. In addition, the Standards Commission has held 22 Hearings and made decisions on 88 complaints about councillors and members of devolved public bodies.

Q9. Are the processes for setting and scrutinising the budgets of each Commissioner adequate?

The Standards Commission submits, to the SPCB for scrutiny and approval, an evidence-based budget projection, every September, for the forthcoming financial year, along with indicative budgets for the following two years. An accompanying commentary setting out information on particular items of note, and a breakdown by each budget heading is included as an appendix. The budget projections are based on planned actions arising from the requirements of the strategic and annual business plans, as well as projections of Hearings related activity (based on previous experience and intelligence provided by the ESC). The Standards Commission also bases the submission on information provided by the SPCB about the projected rate of inflation and expected cost of living pay awards for staff and Members. As noted above, Members' terms and conditions are determined by the SPCB. The Standards Commission has adopted the SPCB's grading structure and pay arrangements for staff. It is unable to recruit additional staff or change the grading of existing staff roles, without approval from the SPCB.

In accordance with the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, the Accountable Officer is required to confirm the Standards Commission will continue to comply with the duty to ensure the resources of the organisation will be used economically, efficiently and effectively.

The Standards Commission's funding model does not provide for the holding of contingency funds although it has access, however, to contingency arrangements through the Scottish Parliament where required. The Standards Commission does not make provision for costs of any legal advice or representation required in respect of any appeal against one of its Hearing Panel's decisions, as it is not known whether any such appeal will be lodged and, if so, whether leave to appeal would be granted. It will, therefore, seek contingency funding to defend appeals if required. The Standards Commission may also seek additional funding for specific projects or initiatives or for any one-off purchases, if there is a sound business reason for doing so.

The Standards Commission will exhaust any potential to absorb costs from its agreed budget before seeking contingency funding. It will also ensure that it advises the SPCB of any potential requirement to seek contingency funding at the earliest possible opportunity and will ensure any proposal is supported by a clear and well-reasoned business case.

Since 2015, the Standards Commission has only sought contingency funding to cover the costs associated with one appeal against one of its case decisions. It has not sought contingency funding for any specific projects or initiatives or for any one-off purchases.

The Standards Commission understands that its budget submission is scrutinised carefully by the SPCB as part of the overall consideration of officeholder budgets. The Standards Commission has no reason to consider that the process is inadequate.

Q10. To what extent is there overlap and duplication of functions across Commissioners, and across other organisations in Scotland and how can this be avoided?

There is no overlap or duplication of functions between the Standards Commission and any other commissioner or organisation in Scotland. The Standards Commission's remit covers the conduct of councillors and members of devolved public bodies. It does not cover their performance or quality of their decisions. The Standards Commission does not have any role or remit in respect of decisions taken by a council or devolved public body, the level of service provided or the conduct or performance of officers and employees.

The roles and remits of the Standards Commission and ESC are also distinct. The ESC is responsible (amongst other statutory functions), for investigating complaints about councillors and members of devolved public bodies, whereas the Standards Commission is responsible for:

- promoting the ethical standards framework;
- providing guidance and advice on how the Codes of Conduct should be interpreted;
- adjudicating on complaints that a councillor or member of a devolved public body has breached their respective Code, following a referral from the ESC post investigation; and
- applying a sanction should a breach of a Code be found.

As noted under the background section above, the Standards Commission considers it is important to ensure there is a clear separation of investigative and adjudicatory functions as such an approach ensures any concerns about fairness of process or inconsistencies between the ESC and Standards Commission as to how the Codes should be interpreted are addressed. It also ensures an independent review of decisions on complaints. This is considered to be of particular importance given a decision to uphold a complaint and suspend or disqualify an individual can have a significant impact on the individual and council or public body (and can, on some occasions, change the political composition of a Council's Administration). Equally, a decision not to uphold a complaint can have a significant impact on any individual involved and, potentially, in the effective administration of the council or public body, particularly if poor behaviours are allowed to continue without sanction. The separation of functions also allows any disputed evidence or representations on how provisions of Codes should be interpreted to be tested fully at a Hearing, where evidence is taken from witnesses on oath or affirmation, and where the participants and Panel can question and respond to submissions made.

The Standards Commission nevertheless works closely with the ESC to share and disseminate intelligence about issues that arise in respect of how the Codes should be interpreted. The Standards Commission also uses information provided by the ESC about trends in the nature and types of complaints received to strengthen its educational material and to provide targeted training sessions.

The Standards Commission also works closely with devolved public bodies and the Scottish Government's Public Bodies Unit, along with the College Development Network and other sectoral bodies to train and induct public body members on their Codes of Conduct. It also works closely with councils, the Improvement Service and COSLA to train and induct councillors on the provisions in the Councillors' Code, and to promote the importance of compliance with these and high ethical standards.

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