

Scottish Parliament Corporate Body submission of 18 January 2023

PE1964/H: Create an independent review of the Scottish Public Services Ombudsman

Governance

The Scottish Public Services Ombudsman (SPSO) is established by the Scottish Public Services Ombudsman Act 2002. The Act provides statutory functions for the SPCB including:

- Determining the terms and conditions of appointment of the, including salary and term of office.
- Providing annual funding for the office
- Appointing the Accountable Officer
- Agreeing determinations for staff numbers and their terms of employment and adviser fees
- Powers of direction for the sharing of services and office location
- Commenting on draft strategic plans, and
- Appointing an acting Ombudsman when the office is vacant for any reason

The SPSO can be removed from office if (a) the SPCB is satisfied that the officeholder has breached their terms and conditions of appointment and the Parliament resolves that the officeholder should be removed from office for that breach or (b) the Parliament resolves that it has lost confidence in the officeholder's willingness, suitability or ability to perform the functions of the office. In either case, the resolution is voted for by members not fewer than two thirds of the total number of seats for Members of the Parliament.

As can be seen from the above, the SPCB's relationship with the SPSO is a governance oversight role. These governance arrangements have evolved following parliamentary reviews carried out by committees in previous sessions.

It is also important to note that the SPSO, in respect of the functions of the office, is independent of the SPCB, Ministers and MSPs and this is

set out in legislation to ensure there is no interference in the decisions they make.

The SPCB supplements the above statutory governance requirements in several other ways.

Terms and Conditions of Appointment

The SPSO is provided with an appointment letter when they take up office setting out their terms and conditions of appointment. It also sets out their functions and that it is a matter for them to familiarise themselves with their statutory powers and all other statutes applying to their office and to undertake any necessary personal development to ensure they can fulfil their functions and duties.

Annual Evaluation

The SPSO is subject to annual evaluation which is undertaken by an independent assessor for the SPCB. The annual evaluation process is designed to provide independent information to the SPCB on whether an officeholder is fulfilling the functions of their post; evaluates an officeholder's performance against the objectives they have set; and ensures any development needs are identified quickly and support provided.

Accountable Officer

The SPSO receives an Accountable Officer letter from the Presiding Officer and a detailed Memorandum setting out their duties. This appointment is a personal one and cannot be delegated to others. Accountable officers are directly answerable to the Parliament in the exercise of the following functions:

- a) signing their accounts of their expenditure and receipts
- b) ensuring the propriety and regularity of their finances; and
- c) ensuring that their resources are used economically, efficiently and effectively.

The Memorandum sets out what governance arrangements should be in place including a sound system of internal control, strong corporate governance arrangements and access to an Advisory Audit Board for independent advice on their corporate governance and risk and financial management performance arrangements and internal control systems.

Arrangements should also be made for internal audit which should accord with the latest standards and practices.

Strategic Engagement Documents

The SPSO must adhere to a suite of strategic engagement documents issued by the SPCB. These include a Finance Manual, a Framework document to support the efficient administration of the relationship between an officeholder and the SPCB and a budget process agreement.

In addition, the SPSO is subject to external audit which provides assurances that the financial accounting and governance arrangements are working properly on an annual basis. There have been no adverse external audit reports regarding the office of the SPSO.

Advisory Audit Board

The SPSO has an independent Advisory Audit Board (AAB). This acts in a similar way to an audit committee and provides advice and assurances to the SPSO about the governance arrangement they have in place.

Internal Audit

The SPSO has the services of an internal auditor who works closely with the AAB.

Certificate of Assurance

It is a formal requirement that the SPSO provides the SPCB's accountable officer (the Clerk/ Chief Executive) with an annual Certificate of Assurance that they have followed good governance practices and used resources appropriately. This certificate is also discussed with external auditors before it is submitted.

This summer we contacted all officeholders supported by the SPCB, including the SPSO and sought and were provided with written assurances on the following-

- That they all have governance processes in place and that they are operating effectively
- they have a defined performance management framework in place to monitor performance against key performance indicators

- they have an Advisory Audit Board (AAB)
- they have an effective risk management framework which has been approved by the AAB and that their risk management policy and risk register are reviewed regularly with the AAB
- they have an internal audit function in place
- they have a whistleblowing policy in place for staff to raise concerns within the organisation and externally.

Taking account of the above, we are confident that the governance arrangements of the SPSO's office are working well.

Scrutiny

While the oversight of governance is for the SPCB, the oversight of the functions of the SPSO is more a matter for parliamentary committees.

While the SPSO is, under the legislation, independent in her decision-making and how the office functions, the SPSO is accountable to the Parliament for these functions and that is by committee scrutiny. In respect of the SPSO, this is primarily through the Local Government, Housing and Planning Committee.

Committee work related to officeholders can include the scrutiny of annual and other reports which are referred to the relevant committee(s) by the Clerk/Chief Executive. It is for committees to decide the frequency and level of scrutiny they undertake in relation to how the officeholders within their respective remits, carry out their statutory functions.

Committees do not have a governance role in respect of officeholders, although they may consider governance arrangements as part of their scrutiny work. We would expect that committee scrutiny work focusses on how the SPSO is carrying out their functions at a high level and is not intended to review, direct or control specific decisions or actions, which are properly matters for the SPSO.

I hope this provides the committee with details of the relationship between the SPCB and the SPSO.

Independent Review

The committee has sought the SPCB's views on an independent review. As the Committee will appreciate, the primary purpose of the SPCB is to provide the Parliament with the property, staff and services it requires to

function. The SPCB also has governance oversight of officeholders as outlined above.

Officeholders are set up under legislation agreed by the Parliament and the SPCB does not have a policy role in respect of their functions. The SPCB takes its directions from the Parliament in respect of its oversight role. We note that the petitioner is calling on the Parliament to urge the Scottish Government to undertake an independent review. While there is nothing to prevent the Scottish Government instigating such a review, we should point out that the SPSO is a parliamentary funded officeholder and is accountable to the Parliament. Decisions of the SPSO can only be challenged through the courts.

We have some observations which may be helpful to the Committee in its consideration of the Petition.

As set out above, external positive assurances have consistently been provided to the SPCB about the governance of the SPSO's office. While it is more a matter for committees in relation to scrutiny, there has not been any concerns from any committee raised with the SPCB in either this or the last parliamentary session.

As committee members will be aware, it is in the nature of the role of the Ombudsman that not everyone will be satisfied with all the decisions reached and that is understandable. Indeed, over this session and the last session, the SPCB has only received a handful of representations about a decision of the SPSO. We would, however, draw the Committee's attention to the latest annual report (2021-22) published by the SPSO.

The report sets out that during the reporting period the SPSO handled 3,492 complaints, and it upheld 63% of complaints it dealt with. In doing so, it made 511 recommendations to public bodies – 51% about learning and improvement. Also in the same period, the SPSO received 222 requests for a review of its decisions and dealt with 214 of these of which 173 of the original decisions were upheld. To put it in context, the number of reviews of its decisions amounted to 6% of the cases dealt with.

The Local Government, Housing and Planning Committee took evidence on the SPSO's Annual report on 6 December this year and the [Official Report](#) of that meeting has been published.

Finally, in recent years the remit of the SPSO has been extended again to cover the role of independent review service for the Scottish Welfare Fund with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications. It is also now the Independent National Whistleblowing Officer for the NHS in Scotland (INWO); the final stage for complaints about how the NHS considers whistleblowing concerns and the treatment of individuals concerned.

We are not aware of any concerns raised about the work of the SPSO when consideration was given to extending the SPSO's role to include these important functions.

In conclusion, and based on all of the above, we can see there may be some scope for a review by the Scottish Government on how well the legislation is working and any areas that could be improved, but given the independent role of the SPSO and the assurances we have that the office is working well, we do not consider there is a need to undertake an independent review into the quality of the work or the decisions taken by the SPSO or to investigate complaints received.