

28 September 2011

COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND – POSSIBLE RESTRUCTURE

Executive summary

1. This paper discusses a proposal put forward by the Commission for Ethical Standards in Public Life in Scotland (the Commission) for the Commission in future to be led by a single Commissioner overseeing all the existing functions of the Commission.
2. The proposal is attached at Annexe 1. The SPCB is invited to offer its initial views on the proposal and agree to consult wider within the Parliament on this matter.

Issues and Options

Background

3. The Commission was established on 1 April 2011 under the Scottish Parliamentary Commissions and Commissioners etc Act 2010 (the 2010 Act).
4. The Act was introduced as a Committee Bill by - the Review of SPCB Supported Bodies (RSSB) Committee –an ad hoc committee which was established to review the structures of those officeholders supported by the SPCB. The Committee reported to the Parliament on 21 May 2009 and one of its recommendations was that the roles and responsibilities of the former Scottish Public Appointments Commissioner, the Scottish Parliamentary Standards Commissioner and Chief Investigating Officer¹ should be merged into one Commission comprising two Commission members.
5. In governance terms, the Commission is made up of a the Public Appointments Commissioner for Scotland (PACS) and the Public Standards Commissioner for Scotland (PSCS), both of whom have their property, staff and services provided by the Commission. The PACS is responsible for regulating the way appointments are made to the boards of public bodies and the PSCS is responsible for investigating complaints about MSPs, councillors and members of public bodies.
6. The current PACS is Karen Carlton, who works part-time, and whose term of appointment is due to end on 31 May 2012. The current PSCS is Stuart Allan, whose term of appointment is due to end on 31 March 2014.

¹ The Chief Investigating Officer considers complaints about local authority councillors and members of public bodies under their relevant Code of Conduct and makes reports to the Standards Commission for Scotland

7. The budget for the Commission for 2011-12 is £852K. As with other SPCB supported officeholders the Commission is expected to meet a budget reduction target of 15% in real terms by 2013-14 against a baseline of £888K -- (the 2010-11 combined budget for the then separate Commissions). As part of the budgetary discussions last year between the SPCB and the Commission, the Commission members raised the possibility of changing the structure of the Commission so that in future, instead of having 2 members, it would only have a single Commissioner responsible for all the functions. This is explained further in the attached proposal.

Commission Proposals

8 The proposal argues that under the current arrangements the Commission is “effectively that of an organisation with two Chief Executive Officers albeit with their own separate statutory functions. In the wider context of the ethical standards framework for Scotland this is not considered the optimum organisational model.

9. The Commission proposes a merger of the two Commissioner posts which would bring responsibility for the delivery of the separate statutory functions together. It is not proposed that there should be any diluting of the functions – the proposal is purely in terms of the governance arrangements of the organisation.

10. There are different options for dealing with the situation, as set out below. The Commission’s proposal is when Karen Carlton’s term of appointment comes to an end, Stuart Allan should be appointed as acting PACS and also continue his PSCS role. This arrangement would be competent under the 2010 Act which provides, under section 7(3), that: ‘A Commissioner and an acting Commissioner may each perform the same functions at the same time but in relation to different matters’.

11. In order to balance the additional load on the remaining Commissioner, the proposal is that further support would be required from the senior staff in both offices, and that some staff should be upgraded. The detail of the changes in roles has not been incorporated in the proposal.

Other options

12. In practical terms, the submission put forward by the Commission is viable and would release costs savings.

13. The SPCB may, however, wish to consider alternative options before reaching a final view on this matter.

14. The **first option** is for the status quo. This would involve leaving the existing arrangements as they are and for a replacement for Karen Carlton to be identified by next May to undertake the role of PACS. Should the SPCB consider this the preferred option it would be helpful to have an early

indication as the recruitment process will need to be commenced in November.

15. The **second option** would be to identify a replacement for Karen Carlton in May 2012 who would be appointed for up to 8 years and would also take on the functions carried out by Stuart Allan when his appointment ends in March 2014. This would be dependent on legislative changes being made to allow this person to take on both roles as a single officeholder and not in an 'acting' capacity, but there would be until 2014 to make such changes.

16. The **third option** would be for Stuart Allan to continue his role as PSCS until his appointment comes to an end in March 2014 and for a senior member of staff (or any other person) to be appointed by the SPCB as the acting Commission member with responsibility for the functions of the PACS. Section 7(5) of the 2010 Act provides that 'Members of the Commission's staff are eligible for appointment as an acting Commissioner'.

17. A suitable person would have to be identified as an acting Commissioner, but this option would allow the Parliament to identify a successor to Stuart Allan who would take on both the PACS and PSCS roles from 2014 if the legislation was changed.

Legislation Issues

18. The current arrangements have been provided by the 2010 Act which provides that there is a Commission which will be a corporate body. To have one Commissioner responsible in the future for all the existing functions would best be achieved by a change to the 2010 Act. Provision would be needed for the Commissioner to be a corporate sole and for him or her to have the necessary mechanisms to operate, such as powers to enter into contracts etc. These changes would not be difficult to make in terms of drafting.

19. The SPCB may be aware that the Public Services Reform (Scotland) Act 2010 provides Order making powers where changes to an existing public body can improve the exercise of public functions having regard to efficiency and effectiveness. The proposals put forward in this paper would fall into that category, and an Order could be made under section 14 of this Act.

20. As the Commission is an SPCB supported body this would involve the SPCB requesting Scottish Ministers to take forward an Order and undertaking the required consultation on a draft of the Order. An Order made under section 14 is a super affirmative Order and subject to full parliamentary scrutiny.

Other Issues

21. The SPCB will wish to note that there was considerable debate during stage 3 of the Public Services Reform (Scotland) Act 2010² about the SPCB initiating legislation in respect of officeholders. The SPCB will therefore wish to obtain support from within Parliament for its proposals before inviting Scottish Ministers to initiate any legislation.

22. The Commission reports on part of its functions to the Standards, Procedures and Public Appointments Committee. Where there has been a breach of the code of practice on public appointments, the PACS has the statutory power to direct the Scottish Ministers to delay making appointments and to report the case to the Scottish Parliament through the Committee. Where the PSCS considers an MSP has broken the Code of Conduct, he reports his findings to the Committee within rules laid down by Parliament in Standing Orders and the Code of Conduct. The Committee can also direct the PSCS in relation to the undertaking of his functions.

23. We would therefore recommend that the SPCB, before reaching a final decision on this matter, should engage with the Committee to receive its feedback on what is proposed.

Resource Implications

24. With the restructure from a Commission to a Commissioner savings should be released, in particular, as there will only be one office holder salary. Further work will be needed depending on the SPCB's preferred option, which could include looking at salary levels for a Commissioner undertaking both roles.

25. To provide the SPCB with an indication for an initial discussion, the Commission's proposals identify a net saving of £38K in 2012-13 if the restructuring was agreed on the basis set out in the submission. This is based on the officeholder salary saving less increased staff costs to cover the additional workload.

Governance issues

26. In terms of the governance of this matter any decision will be a matter for Parliament to take if it is decided to agree that a restructuring should be taken forward. This would involve a legislative process and public consultation.

² Official report 25 March 2010

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/sor0325-02.htm#Col25002#Col25002>

Publication Scheme

27. This paper has been prepared to enable the SPCB to have an initial discussion on this matter. The paper should not be published until a final policy decision has been taken.

Next steps

28. The next steps would be to work up in more detail the preferred option the SPCB has relating to this matter and to consult on that with the Standards, Procedures and Public Appointments Committee.

Decision

29. This SPCB is invited to give its initial consideration to the possible restructuring of the Commission and to identify a preferred option.

Officeholder Services
September 2011



Commission for Ethical Standards in Public Life in Scotland

Ethical Standards Framework in Scotland

Review of Commissioners' Roles

1.0 Introduction

- 1.1 The Commission for Ethical Standards in Public Life in Scotland ("the Commission")¹ comprises -
- (a) the Public Appointments Commissioner for Scotland ("PACS") and
 - (b) the Public Standards Commissioner for Scotland ("PSCS").
- 1.2 Karen Carlton's appointment as PACS ends on 31 May 2012.
- 1.3 Stuart Allan's appointment as PSCS ends on 31 March 2014.
- 1.4 This paper puts forward proposals to deal with an appointment to fill the PACS vacancy in 2012 and proposals to deal with the longer term.

2.0 Functions

- 2.1 The PACS has the functions set out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003². The PACS regulates the way appointments are made to the boards of Scotland's public bodies.
- 2.2 The PSCS has the functions set out in the (a) Ethical Standards in Public Life etc. (Scotland) Act 2000³ and (b) Scottish Parliamentary Standards Commissioner Act 2002⁴. The PSCS is responsible for investigating complaints about MSPs, councillors and members of public bodies under their relevant Code of Conduct.

3. Staffing

- 3.1 The current establishment of the Commission is -

<u>PACS</u>	<u>FTE</u>
Commissioner	0.6
Other staff	2.5
12 Assessors	<u>1.3</u>
	4.4

¹ <http://www.commissionforethicalstandards.org.uk>

² <http://legislation.gov.uk/asp/2003/4/contents>

³ <http://legislation.gov.uk/asp/2000/7/contents>

⁴ <http://legislation.gov.uk/asp/2002/16/contents>

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<u>PSCS</u>	<u>FTE</u>
Commissioner	1.0
Other staff	4.3
5 Investigating Officers	<u>1.8</u>
	7.1
Total	<u>11.5</u>

4.0 Budget

4.1 The budget of the Commission for 2011-12 is -

	<u>£,000s</u>
PACS	358
PSCS	<u>494</u>
TOTAL	<u>852</u>

4.2 The budget for 2012-13 and a projected budget for 2013-14 are currently being prepared based on the proposals in this report.

5.0 Recent developments

- 5.1 Following the Crerar Committee Report⁵ and the Report of the SPCB Supported Bodies Committee⁶, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 was passed which – with effect from 1 April 2011 – created the current ethical standards framework in Scotland consisting of the new Commission of Ethical Standards in Public Life in Scotland with the PACS and the PSCS as the constituent members of the Commission.
- 5.2 The SPCB Supported Bodies Committee does not appear to have considered the possibility of merging the respective standards and public appointments functions at Commissioner level. The possibility is considered in this paper in terms of best value. It also fits with the ethos of continuous improvement as, currently, the model is effectively that of an organisation with two Chief Executive Officers albeit with their own separate statutory functions. Whilst the current incumbents work together well, this is not considered an optimum organisational model for the longer term within the wider context of the ethical standards framework for Scotland.
- 5.3 There are significant pressures on public sector expenditure and the Commission has the objective of reducing the budget by 15% in real terms by 2013-14.
- 5.4 The Commission has already made considerable progress in agreeing and implementing joint working arrangements (such as shared office

⁵ <http://www.scotland.gov.uk/Publications/2007/09/25120506/0>

⁶ <http://www.scottish.parliament.uk/s3/committees/rssb/reports-09/rssb09-01.htm>

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accommodation, shared front-line staff and shared web-site) and in effecting revenue savings.

- 5.5 These joint arrangements could be taken further through a formal integration and rationalisation of the Commissioners' posts which would, it is considered, achieve optimum efficiency and economy without compromising on the delivery of the respective statutory functions.

6.0 Constraints

- 6.1 The principal constraints to achieving further rationalisation lie in the provisions of the 2002, 2003 and 2010 Acts.
- 6.2 Nothing, however, precludes a Commissioner from being appointed as the other Commissioner. And a Commissioner may specifically be appointed as an acting Commissioner⁷.
- 6.3 The legislation does envisage two separate office-holders but *in the shorter term* there would not be an impediment to the Standards Commissioner undertaking both functions although it will be appreciated that this would involve certain senior staff taking on additional responsibilities which would involve re-grading or working a longer week.
- 6.4 *In the longer term* it would be more appropriate to consider amending legislation to formalise the position of having a single office-holder dealing with the ethical standards functions, currently split between standards and public appointments. This could also involve reviewing the Standards Commission for Scotland within the context of the prospective UK and Scottish legislative changes to the tribunal system.

7.0 Proposals

Proposals in principle

- 7.1.1 The offices of Public Appointments Commissioner and Public Standards Commissioner should be merged into a new office of Ethical Standards Commissioner for Scotland. Both offices operate within the statutory framework for the promotion of ethical standards in public life in Scotland. This synergy would be enhanced by bringing responsibility for the delivery of these functions together and providing a wholly cohesive public service.
- 7.1.2 It is estimated that merging the two offices into one would bring about net savings in the order of:

2012-13 (ten months) - £38,100

2013-14 (full year) - £43,600

⁷ Section 7(6) of the 2010 Act.

7.1.3 The current legislation should be reviewed to establish the new office and the opportunity should be taken to consider other changes to optimise the effectiveness of the ethical standards framework in Scotland.

Proposals in the short term

7.2.1 For the period from 1 June 2012 (being the date following the retirement of Karen Carlton as PACS) to 31 March 2014 (being the date of the retirement of Stuart Allan as PSCS), Stuart Allan would also be appointed as Public Appointments Commissioner (or Acting).

7.2.2 In order to accommodate the PSCS assuming these additional responsibilities, support would be required from senior staff in both offices. It is envisaged that two staff in the public appointments office could take on additional responsibilities. A senior staff member in the standards office could extend his existing part-time contract by an extra half-day each week. A member of the administrative team currently dedicated to standards work could provide support to the appointments team by working one additional day each week. These proposals would involve a reduction in the staffing establishment of the combined offices from 11.5 FTE to 11.2 FTE.

7.2.3 Details of the savings to be achieved through the removal of the PACS post and the additional staffing costs to accommodate the removal are set out in the **appendix**.

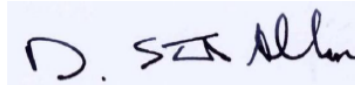
Proposals in the longer term

7.3.1 Legislation should be considered formally to merge the two existing offices of Public Appointments Commissioner and Public Standards Commissioner into a new office of Ethical Standards Commissioner for Scotland and to amend the provisions relating to the constitution of the Commission for Ethical Standards in Public Life in Scotland.

7.3.2 The opportunity could also be taken to consider other statutory changes to make the overall ethical standards framework in Scotland as effective, efficient and economic as possible with the prospect of improved public service delivery.



Karen Carlton
Public Appointments Commissioner
for Scotland



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Public Standards Commissioner
for Scotland

24 August 2011

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APPENDIX Savings in 2012-13

The proposal is that the current Public Standards Commissioner for Scotland becomes the Public Appointments Commissioner for Scotland (or Acting) when the current incumbent vacates office on 31 May 2012.

Savings

- PACS duties transfer to the PSCS on 1 June 2012.

PACS (10 months)	£
Salary	39,924
Employer's Pension Contributions	9,702
ERNIC	3,680
	53,306

Additional Costs

- Increasing working hours of Senior Investigating Officer by half a day per week to undertake additional PSCS functions.
- Upgrading Business Manager to undertake additional business planning, financial and accounting responsibilities
- Upgrading Compliance Manager to undertake additional Public Appointments functions
- Additional administrative support of one day per week

	SIO	Business Manager	Compliance Manager	Admin Support	TOTAL
Salary	4,812	1,475	1,475	3,861	11,623
Employer's Pension Contributions	1,158	277	277	645	2,357
ERNIC	678	149	149	247	1,223
	6,648	1,901	1,901	4,753	15,203

Net saving in 2012-13 £38,103

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Estimated savings in 2013-14

The proposal is that the current Public Standards Commissioner for Scotland becomes the Public Appointments Commissioner for Scotland (or Acting) when the current incumbent vacates office on 31 May 2012.

Savings

- PACS duties carried out by the PSCS.
- Assumed no increase in salary or contributions for the PACS

PACS (Full year)	£
Salary	47,909
Employer's Pension Contributions	11,642
ERNIC	4,416
	63,967

Costs

- Increasing working hours of Senior Investigating Officer by half a day per week to undertake additional PSCS functions.
- Upgrading Business Manager to undertake additional business planning, financial and accounting responsibilities
- Upgrading Compliance Manager to undertake additional Public Appointments functions
- Additional administrative support of one day per week
- Assumed no increase in salary or contributions for Senior Investigating Officer
- Assumed grade increments for Business Manager, Compliance Manager and administrative support in line with SPCB scale. Assumed no cost of living salary increase or increase in contribution rates.

	SIO	Business Manager	Compliance Manager	Admin Support	TOTAL
Salary	4,812	3,323	3,323	4,092	15,550
Employer's Pension Contributions	1,158	624	624	683	3,089
ERNIC	678	368	368	271	1,685
	6,648	4,315	4,315	5,046	20,324

Net savings in 2013-14 £43,643

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