



PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

AGENDA

32nd Meeting, 2017 (Session 5)

Thursday 21 December 2017

The Committee will meet at 9.00 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **The 2016/17 audit of the Scottish Police Authority:** The Committee will take evidence on the Auditor General for Scotland's section 22 report from—

Caroline Gardner, Auditor General for Scotland;

Stephen Boyle, Assistant Director, Carole Grant, Senior Audit Manager, and Mark Roberts, Senior Manager, Audit Scotland.
3. **Settlement agreements and severance policy:** The Committee will take evidence from—

Paul Gray, Director-General Health & Social Care, Scottish Government and Chief Executive, NHS Scotland;

Paul Johnston, Director General, Education, Communities and Justice, Scottish Government.
4. **The 2016/17 audit of the Scottish Police Authority:** The Committee will consider the evidence heard at agenda item 2 and take evidence from—

Caroline Gardner, Auditor General for Scotland;

Stephen Boyle, Assistant Director, Carole Grant, Senior Audit Manager, and Mark Roberts, Senior Manager, Audit Scotland.

PAPLS/S5/17/32/A

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The papers for this meeting are as follows—

Item 2:

Note by the Clerk

PAPLS/S5/17/32/1

PRIVATE PAPER

PAPLS/S5/17/32/2
(P)

Item 3:

Note by the Clerk

PAPLS/S5/17/32/3

PRIVATE PAPER

PAPLS/S5/17/32/4
(P)

Public Audit and Post-legislative Scrutiny Committee

32nd Meeting, 2017 (Session 5), Thursday 21 December 2017

The 2016/17 Audit of the Scottish Police Authority

Introduction

1. At today's meeting, the Committee will take evidence on the Auditor General for Scotland's section 22 report '[the 2016/17 Audit of the Scottish Police Authority](#)'¹
2. The Auditor General also prepared a section 22 report on the SPA for 2015/16 and the Committee took a substantial amount of evidence – full details of the Committee's work can be found [here](#)². The Justice Sub-Committee on Policing also undertook scrutiny of the 2015/16 audit and its work can be found [here](#).³

Briefing Paper and report

3. Audit Scotland has prepared a briefing paper which can be found in Annexe A. The full section 22 report can be found at Annexe B.

**Committee clerks
December 2017**

¹ http://audit-scotland.gov.uk/uploads/docs/report/2017/s22_171208_spa.pdf

² <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103170.aspx>

³ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/103589.aspx>

Annexe A**AUDIT SCOTLAND BRIEFING PAPER, 15 DECEMBER 2017**

1. The Auditor General's report on the 2016/17 audit of the Scottish Police Authority was laid in the Parliament on 8 November 2017. The report is made under section 22 of the Public Finance and Accountability (Scotland) Act 2000. This is the fourth consecutive section 22 report that the Auditor General has made to the Scottish Parliament on the Scottish Police Authority. The annual audit report of the Scottish Police Authority is available on the Audit Scotland website http://www.audit-scotland.gov.uk/uploads/docs/report/2017/aar_1617_spa.pdf
2. Key messages from the report are:
 - The Scottish Police Authority's accounts for 2016/17 are unqualified. For the first time, the auditor has not expressed a modified opinion on the Scottish Police Authority's annual report and accounts. This reflects progress in improving financial leadership and management within both the Scottish Police Authority and Police Scotland.
 - The Scottish Police Authority overspent its budget by £16.9 million in 2016/17. The scale of the overspend was mitigated by a receipt of £13.6 million as part of the negotiated settlement that terminated Police Scotland's i6 programme. The Scottish Police Authority has forecast a deficit of £47.4 million at the start of 2017/18. It does not anticipate achieving a balanced budget until 2020/21. The Scottish Police Authority and Police Scotland have prepared three- and ten-year financial strategies. The ten-year financial strategy suggests a return to a deficit position beyond 2020/21.
 - There were a number of instances of poor governance and poor use of public money during 2016/17 in relation to:
 - the appointment of temporary senior staff
 - the approval of relocation expenses for a deputy chief constable
 - the decision to make the role of the chief executive of the Scottish Police Authority redundant.
 - In June 2017, the Scottish Police Authority and Police Scotland published *Policing 2026* which set out their vision for the future of policing in Scotland. It

places great emphasis on an expanded role for information and communications technology. However, there are concerns over the capacity and capability of Police Scotland's ICT function to deliver this vision. The report notes that it is critical that an ICT strategy capable of delivering the vision described in *Policing 2026* is finalised and implemented.

The 2016/17 audit of the Scottish Police Authority



AUDITOR GENERAL 

Prepared for the Public Audit and Post-Legislative Scrutiny Committee by the Auditor General for Scotland
Made under section 22 of the Public Finance and Accountability (Scotland) Act 2000
December 2017

Auditor General for Scotland

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Introduction

1. 2016/17 was the fourth full year of operation for the Scottish Police Authority and the Police Service of Scotland (Police Scotland). This is the sixth report I have made to the Scottish Parliament on the two bodies since their establishment on 1 April 2013.¹ The Scottish Police Authority's accounts include all £1.1 billion spent by it and by Police Scotland. The chief executive of the Scottish Police Authority is the accountable officer for this expenditure, while the vast majority of the expenditure is made by Police Scotland.
2. This report draws the Parliament's attention to:
 - The auditor's opinion on the [Scottish Police Authority's 2016/17 annual report](#) and accounts (paragraph 3)
 - Key findings from the 2016/17 audit of the Scottish Police Authority, in particular:
 - The final outturn for 2016/17 in terms of the revenue, capital and reform budgets (paragraphs 4 and 5)
 - The process for setting the Police Scotland budget for 2017/18 (paragraph 6)
 - Disclosures in the 2016/17 remuneration report relating to the appointment of temporary senior staff in both the Scottish Police Authority and Police Scotland and the approval of relocation expenses (paragraphs 7 to 15).
 - Reviews of governance conducted during 2016/17 and during 2017/18 and changes in leadership (paragraphs 16 to 23).
 - An update on progress in developing a long-term financial strategy for the Scottish Police Authority and Police Scotland and the long-term financial sustainability of the two organisations (paragraphs 24 to 26).
 - A summary of progress in developing information and communications technology following the termination of Police Scotland's i6 programme in July 2016 (paragraphs 27 and 28).

The auditor's opinion on the Scottish Police Authority's 2016/17 annual report and accounts

3. The Scottish Police Authority's accounts for 2016/17 are unqualified. In contrast to the previous three years, the auditor has not expressed a modified opinion on those matters on which he is required to report by exception. This reflects an encouraging improvement in the quality of accounting records and access to information.

¹ *Police Reform*, Audit Scotland, November 2013; *The 2013/14 audit of the Scottish Police Authority*, Audit Scotland, December 2014; *The 2014/15 audit of the Scottish Police Authority*, Audit Scotland, December 2015; *The 2015/16 audit of the Scottish Police Authority*, Audit Scotland, December 2016; *i6: a review*, Audit Scotland, March 2017.

Key findings from the 2016/17 audit of the Scottish Police Authority

Scottish Police Authority's outturn for 2016/17

- The Scottish Police Authority's main financial objective is to ensure that the financial outturn is within the budget allocated to it by the Scottish Government. In 2016/17, it overspent its budget by £16.9 million (1.6 per cent of the total budget) and therefore did not meet this objective ([Exhibit 1](#)). This deficit was accommodated from underspends from elsewhere in the Scottish Government's budget. There were overspends on both the revenue and the capital budgets. These had been forecast and reported to the Scottish Police Authority throughout 2016/17.

Exhibit 1

Performance against Departmental Expenditure Limit (DEL), 2016/17 (£ millions)

	Initial budget	Final budget	Outturn	(Overspend)/underspend
Revenue	1,003.380	1,024.510		
Reform funding	-	34.834		
Total revenue	1,003.380	1,059.344	1,070.462	(11.118)
Capital	16.200	(2.300)		
Capital reform funding	-	17.800		
Total capital	16.200	15.500	21.315	(5.815)
Total resource	1,019.580	1,074.844	1,091.777	(16.933)
Non-cash	50.0	50.0	35.721	14.279
Expenditure outside DEL	5.404	5.404	5.036	0.368
Annually Managed Expenditure (AME)	-	44.000	14.727	29.273

5. The £16.9 million overspend would have been larger but the Scottish Police Authority received a payment of £13.6 million as part of the negotiated settlement associated with the termination of the i6 programme.² The Scottish Government gave permission for the Scottish Police Authority to retain this payment.

Setting Police Scotland's budget for 2017/18

6. The report on the 2015/16 audit of the Scottish Police Authority noted that there was limited publicly available detail about what Police Scotland's 2016/17 budget allocation was to deliver.³ On 22 March 2017, the Scottish Police Authority approved a revenue budget for 2017/18 of £1,069.6 million with a forecast deficit of £47.2 million. The process for setting the 2017/18 budget was more transparent and comprehensive. It provided frank commentary on the scale of the financial challenge facing policing in Scotland and more detailed information on planned revenue, capital and reform expenditure.

Disclosures in the remuneration report

7. Due to initially incomplete disclosures, there were considerable changes to the 2016/17 remuneration report that the Scottish Police Authority provided for audit. These disclosures related to:
 - the appointment of temporary senior staff in both the Scottish Police Authority and Police Scotland at a total cost of £344,819 (paragraphs 8 to 10)
 - relocation expenses paid to a deputy chief constable of £49,000. The Scottish Police Authority also met the costs (£53,000) of the officer's personal tax liability (paragraphs 11 to 15).

Appointment of temporary senior staff

8. In late 2015/16 and 2016/17, the Scottish Police Authority and Police Scotland made three interim senior appointments ([Exhibit 2](#)). The two interim chief financial officer appointments were, in part, intended to address some of the past weaknesses in financial leadership. These three appointments together cost £344,819. The auditor has concluded that the appointments of Police Scotland's interim chief financial officer and interim director of people and development did not demonstrate value for money in the use of public funds. Furthermore, the process for appointing the Scottish Police Authority's interim chief financial officer was inconsistent with procurement procedures.

² *i6: a review*, Audit Scotland, March 2017.

³ *The 2015/16 audit of the Scottish Police Authority*, Audit Scotland, December 2016.

Exhibit 2

Interim senior appointments in the Scottish Police Authority and Police Scotland

Organisation	Post	Duration of appointment during 2016/17	Total cost in 2016/17 (£)	Supplier
Scottish Police Authority	Interim chief financial officer ¹	1 April 2016 - 22 December 2016	39,127	Gleniffer Solutions Limited
Police Scotland	Interim chief financial officer ^{2,3}	6 June 2016 - 31 March 2017	199,500	Secondment from PwC
Police Scotland	Interim director of people and development ³	6 December 2016 - 31 March 2017	106,192	Recruitment through Badenoch and Clark

Note:

1. The interim chief financial officer of the Scottish Police Authority was appointed on 9 February 2016 on a three days per week basis.
2. The interim chief financial officer of Police Scotland was appointed as the permanent chief financial officer on 1 July 2017.
3. The costs associated with Police Scotland's interim chief financial officer and interim director of people and development represent the invoiced day-rate, not their salaries.

Source: Scottish Police Authority

9. On 28 January 2016, the chief executive of the Scottish Police Authority offered the position of interim chief financial officer to a director of Gleniffer Solutions Limited. The director accepted this offer on 29 January 2016. The chief executive subsequently retracted the offer and invited Gleniffer Solutions Limited and two other organisations to tender for the role under the established Quick Quote procurement process.
10. The Scottish Police Authority received three tenders. It assessed two as non-compliant, leaving only the tender from Gleniffer Solutions Limited. The chief executive of the Scottish Police Authority was the only assessor of the tender. This was not consistent with the Scottish Police Authority's procurement process. He assessed all criteria as "5" which is defined as "exceptional, response is completely relevant and exceptional". No justification

was documented to support the scores awarded. This was not consistent with the Scottish Police Authority's procurement process which requires full justification for scores to be provided. The interim chief financial officer began work on 9 February 2016.

Relocation expenses

11. The audit identified a payment of relocation expenses of £49,000 during 2016/17 to a deputy chief constable. This followed a previous payment of relocation expenses of £18,000 in 2014/15 to the same officer. In addition, the Scottish Police Authority met the costs (£53,000) of the officer's personal tax liability during 2016/17.
12. The Police Service of Scotland Regulations 2013 set out senior police officers' entitlement to relocation expenses. The regulations do not specify any limit on relocation expenses. The terms of the officer's appointment stated that: "*Should you need to move house as a result of this appointment the Scottish Police Authority will meet reasonable expenses incurred in relation to the move as agreed.*" The payments made were within the scope of regulations and were in accordance with the terms of the officer's appointment. However, relocation payments of this magnitude do not represent a good use of public money.
13. The Scottish Police Authority's chief executive authorised the relocation payments under the former Strathclyde Police Authority Standard Operating Procedures. These procedures were used because, at the time of the deputy chief constable's appointment in December 2012, there was no Scottish Police Authority relocation policy. The Strathclyde Police Authority Standard Operating Procedures state: "*All claims must be made within 18 months of appointment.*" The extended period for settling the relocation payments was attributed to uncertainties around the location of Police Scotland's headquarters. This is not a legitimate argument for payments being made as recently as early 2017.
14. Given the use of the Strathclyde Police Authority Standard Operating Procedures and the extended timescales, additional governance arrangements would have been expected to support the decision. The chief executive advised the auditor that the payments were within his delegated authority and he did not advise members of the Scottish Police Authority of these payments at any board or committee meeting.
15. The 2016/17 relocation expenses payment was processed as a BACS payment rather than through the payroll system. It had been coded incorrectly within the ledger as childcare vouchers. This meant that it was not included in the remuneration report provided to the auditor and the Scottish Police Authority's Audit Committee. As the payment was not processed through the payroll system, no tax or national insurance calculations had been made to make onward payment to Her Majesty's Revenue and Customs. The chief executive of the Scottish Police Authority and the chief financial officer of Police Scotland, who were familiar with the payments, made insufficient efforts to ensure that the remuneration report in the annual report and accounts were free from error and omission.

Reviews of governance

Scottish Police Authority

16. At the request of the Cabinet Secretary for Justice, the chair of the Scottish Police Authority reported on the governance of the organisation in March 2016. In December 2016, the Scottish Police Authority discussed the implementation of these recommendations. One member dissented from one element of the proposed implementation plan relating to holding meetings in private. In January 2017, she resigned from the Scottish Police Authority.
17. During early 2017, there were a number of evidence sessions at the Public Audit and Post-Legislative Scrutiny Committee and the Justice Sub-Committee on Policing that focused on the governance and transparency of the Scottish Police Authority. Following these evidence sessions, HM Inspectorate of Constabulary for Scotland, at the request of the Cabinet Secretary for Justice, conducted a review of the openness and transparency of the Scottish Police Authority.⁴ It published the conclusions of this review and 11 recommendations on 21 June 2017.
18. The chair of the Scottish Police Authority resigned on 14 June 2017. He remained in post until the new chair took over on 4 December 2017. In June 2017, the Cabinet Secretary for Justice announced that the deputy chair of the Scottish Police Authority and the chief executive of Comhairle nan Eilean Siar would lead a review of the operation of the Scottish Police Authority as an organisation. This review will report in due course.

Forensic services

19. In October 2016, HM Inspectorate of Constabulary for Scotland presented options to the Scottish Police Authority for the governance and delivery of forensic services. The options were not communicated to all members of the Scottish Police Authority and were not adopted. Subsequently, in June 2017, HM Inspectorate of Constabulary for Scotland published the results of its inspection of forensic services.⁵ It identified a number of weaknesses relating to governance and scrutiny.
20. Following the inspection, there was a change in accountability arrangements so that the director of forensic services reports directly to the deputy chair of the Scottish Police Authority, rather than to the chief executive. This represented a significant change in the responsibilities of the chief executive. At a private meeting on 7 June 2017, the Scottish Police Authority considered a proposed business case for change, outlining the rationale for making the role of the chief executive redundant.
21. The decision to make the role of chief executive redundant was taken in August 2017, by correspondence, not at a meeting of the Scottish Police Authority. Given the significance of

⁴ Thematic Inspection of the Scottish Police Authority - Phase 1 Review of Openness and Transparency. *HM Inspectorate of Constabulary in Scotland*, June 2017. Audit Scotland supported the conduct of this review.

⁵ *Thematic Inspection of the Scottish Police Authority Forensic Service*, HM Inspectorate of Constabulary in Scotland, June 2017.

this decision, a formal meeting of the Scottish Police Authority should have been convened to enable a full consideration of all available options including associated costs prior to approving the business case.

22. The Scottish Police Authority placed considerable importance on the chief executive remaining in his role as the accountable officer until he had signed the 2016/17 annual report and accounts. Due to the uncertainty about this date, the Scottish Police Authority agreed that he would receive a payment in lieu of his contractual notice, in addition to his eligibility for an early retirement payment. Given the chief executive had a six months notice period and the decision was made in August 2017, the Scottish Police Authority could have reasonably decided to ask the chief executive to work his notice period from this date as the annual report and accounts must be laid before the Scottish Parliament by the statutory deadline of the end of December. The Scottish Police Authority has met this deadline in every previous year. It has therefore incurred an additional three months salary costs unnecessarily.
23. The chief executive left the Scottish Police Authority on 30 November 2017. An interim chief officer for the Scottish Police Authority took up post on 13 November 2017 on secondment from the Scottish Government.

Long-term financial strategy

24. In November 2013, we recommended that the Scottish Police Authority and Police Scotland should develop a long-term financial strategy.⁶ This has been reiterated in subsequent reports to the Scottish Parliament on the 2013/14, 2014/15 and 2015/16 audits. In September 2017, the Scottish Police Authority considered three-year and ten-year financial strategies. It plans to consider more detailed financial strategies in March 2018. The development of these strategies is an important first step and provides essential context and understanding for the organisations' future financial sustainability and the delivery of the *Policing 2026* vision.
25. Ultimately, the financial strategies will be underpinned by corporate strategies for fleet, estates, information and communications technology and workforce. These strategies are all at different stages of development. Ensuring that these are completed and the financial strategies reviewed and updated in the context of those strategies is essential.
26. The three year financial strategy notes that in 2017/18, there is a forecast deficit of £47.2 million (see paragraph 6). It indicates that the Scottish Police Authority will be in deficit in 2018/19 and 2019/20 with projected deficits of £35.6 million and £15.9 million respectively. It envisages that the Scottish Police Authority will achieve a balanced budget in 2020/21. The elimination of the deficit is based on recurring savings being secured in the intervening years. The ten year financial strategy suggests that, after achieving financial balance in 2020/21, the Scottish Police Authority will move back into a position of annual deficits due to unaddressed recurring cost pressures.

⁶ *Police Reform*, Audit Scotland, November 2013.

Developing information and communications technology for policing

27. In March 2017, Audit Scotland published a report on Police Scotland's i6 programme which was terminated in July 2016.⁷ In June 2017, the Scottish Police Authority and Police Scotland published *Policing 2026* which set out their shared vision for the future of policing in Scotland. *Policing 2026* placed great emphasis on a vastly expanded role for information and communications technology ranging from the use of body-worn and mobile devices to sophisticated, integrated operational and corporate systems.
28. There has been progress, for example, with the successful roll-out of a national custody system. However, in September 2017, Scott-Moncrieff prepared a report on the current capacity and capability of Police Scotland's ICT function. It concluded that "[...] *conditions do not yet exist within Police Scotland to provide a satisfactory level of comfort that sufficient technology delivery capability is in place to support the delivery of Policing 2026.*" It is critical that an ICT strategy capable of delivering the vision described in *Policing 2026* is finalised, and more importantly, supported, resourced and implemented.

Conclusion

29. 2016/17 was the first year that the auditor did not make a modified opinion on the Scottish Police Authority's accounts. I welcome this progress in terms of the financial management of the Scottish Police Authority and Police Scotland. This has, in part, been helped by an investment in the Police Scotland finance function. The development of initial three and ten-year financial strategies represents an important first step. These must be reinforced by the development and implementation of detailed, underpinning strategies if the two organisations are going to achieve a balanced budget by 2020/21 and then address the longer-term deficits forecast in the ten-year financial strategy.
30. *Policing 2026* sets out an ambitious vision for the future of policing. Realising this vision over the next eight years will be immensely challenging in the context of:
 - the scale of transformational change needed;
 - current and future financial constraints;
 - the integration of British Transport Police functions into Police Scotland;
 - instability created by ongoing changes in the leadership of the two organisations; and
 - the current capacity and capability of Police Scotland's ICT function.
31. Since the publication of the report on the 2015/16 audit of the Scottish Police Authority, there has been significant public attention on its governance. Responding to the recommendations of the review on the operation of the Scottish Police Authority (paragraph 18) and ensuring that the organisation operates effectively and transparently must be an immediate priority for the new chair and interim chief officer. In addition, rapid progress must be made on finalising

⁷ *i6: a review*, Audit Scotland, March 2017.

the various strategies (see paragraph 25) that will support the transformational change necessary to deliver the vision outlined in *Policing 2026*.

32. The 2016/17 audit of the Scottish Police Authority identified a number of instances of poor governance and poor use of public money in the Scottish Police Authority and Police Scotland. This is unacceptable. The new chair and interim chief officer must ensure that the culture, policies and operating systems of both the Scottish Police Authority and Police Scotland improve so that such occurrences are not repeated.

The 2016/17 audit of the Scottish Police Authority

This report is available in PDF and RTF formats, along with a podcast summary at:

www.audit-scotland.gov.uk 

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Public Audit and Post-legislative Scrutiny Committee

32nd Meeting, 2017 (Session 5), Thursday 21 December 2017

Settlement Agreements

Introduction

1. The Committee will take evidence on the Scottish Government's annual report on settlement agreements and its recent consultation on a severance policy for Scotland.

Settlement agreements

2. For the past three years, the Scottish Government has prepared an annual report on the use of 'settlement agreements' by the Scottish Government and public bodies; NHSScotland; and further education colleges. The Scottish Government has defined settlement agreements as "a legally binding contract entered into by an employer and employee to resolve an employment dispute".
3. The most recent report covers the period April 2016 – March 2017 and is reproduced in **Annexe A, page 3**¹. Alongside this report, the Scottish Government also replied to questions asked by the Committee about the previous year's report i.e. for 2015 – 2016².
4. The production of these reports stems from the session 4 audit committee's consideration of a report by the Auditor General entitled 'Managing early departures from the Scottish public sector'. Further information on the previous committee's work is available [here](#)³.

Severance policy

5. On a related note, the Scottish Government recently undertook a consultation on a severance policy for Scotland⁴.
6. On 6 October 2017, the Committee wrote to the Cabinet Secretary for Finance and Constitution about the policy and to raise relevant concerns arising from its scrutiny of section 22 reports by the Auditor General⁵. This letter is reproduced in **Annexe B, page 15**.

¹ http://www.parliament.scot/S5_Public_Audit/General%20Documents/2016-2017_Settlement_Agreement_Report.pdf

² http://www.parliament.scot/S5_Public_Audit/General%20Documents/Settlement_Agreement_1516_answers.pdf

³ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/63783.aspx>

⁴ https://consult.gov.scot/financial-strategy/severance-policy-in-devolved-public-sector/supporting_documents/A%20Severance%20Policy.pdf

⁵ http://www.parliament.scot/S5_Public_Audit/General%20Documents/Letter_from_Converer_to_Cabinet_Secretary_for_Finance_and_Constitution_Severance_Policy.pdf

7. The Cabinet Secretary's reply was contained within a wider letter about governance (on which the Committee had written separately to the Scottish Government)⁶. The salient points from his reply are reproduced in **Annexe C, page 16**.
8. The Cabinet Secretary's letter describes settlement agreements as a "subset of severance arrangements" and also makes reference to the 'Scottish Public Finance Manual'. The most relevant section of the manual – on Settlement Agreements, Severance, Early Retirement and Redundancy Terms – can be found [here](#)⁷.

Convener's group discussion

9. It is also relevant to note that the Conveners Group met with the First Minister

on 25 October where each convener asked questions about committee business⁸. The acting convener of the Public Audit and Post-Legislative Scrutiny Committee raised the issues discussed above. The exchange can be found in **Annexe D, Page 18**.

**Committee clerks
December 2017**

⁶http://www.parliament.scot/S5_Public_Audit/General%20Documents/Letter_from_Derek_Mackay.pdf

⁷<http://www.gov.scot/Topics/Government/Finance/spfm/severanceetcterms>

⁸http://www.parliament.scot/PublicEngagement/Conveners_Group_25_October_2017.pdf

Annexe A

**SCOTTISH GOVERNMENT ANNUAL REPORT
ON THE USE OF SETTLEMENT AGREEMENTS
APRIL 2016 – MARCH 2017**

Introduction

1. The Scottish Public Finance Manual (SPFM) states that in considering terms for settlement agreements, severance, early retirement or redundancy packages public bodies should ensure that issues of regularity, propriety and value for money are fully taken into account. The Scottish Government (SG) will be entitled to use the fact that a settlement agreement has been entered into to collate and provide information to the Scottish Parliament on the number of settlement agreements and the costs of special payments across the Scottish Administration¹. This report should be seen therefore as the means by which pan Scottish Administration information has been gathered.
2. The SG role in the process (as set out in the SPFM) is one of consultation, advice and reporting. The SPFM supporting guidance on Settlement Agreements clearly states that the final decision as to whether to enter into a Settlement Agreement will rest with the Accountable Officer for the public body. The SPFM also sets out the requirements for annual accounts disclosure in relation to settlement agreements.
3. On 11 June 2014 the Scottish Government notified the Public Audit Committee of the implementation of above mentioned SPFM guidance on Settlement Agreements and undertook to report back to the Committee on the first year of operation of the guidance, spanning the period April 2014 – March 2015². The first report was submitted in June 2015 and was considered by the Public Audit Committee in February 2016. The Public Audit Committee noted the report in their legacy paper and asked that the Scottish Government continue to submit a report annually to the Parliament to be placed in the Scottish Parliament's information centre, SPICe³. The second report was submitted in August 2016 and was considered by the Public Audit Committee in March 2017.
4. This report continues to fulfil the 2014 commitment and covers pan Scottish Administration information on:
 - The status and use of Settlement Agreements;

¹ <http://www.gov.scot/Topics/Government/Finance/spfm/severanceetcterms>

² Written submission from the Scottish Government to the Public Audit Committee, 11 June 2014
http://www.scottish.parliament.uk/S4_PublicAuditCommittee/General%20Documents/Written_submission_from_the_Scottish_Government_to_the_Public_Audit_Committee_dated_11_June_2014.pdf

³ 3rd Report, 2016 (Session 4): Session 4 Legacy Paper
<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/97733.aspx#e>

- Scottish Government Settlement Agreement guidance and review process;
- The use of confidentiality clauses;
- The number and cost of settlements entered into during 2016-17; and
- Process improvements

Status and use of Settlement Agreements

5. A Settlement Agreement is a legally binding contract entered into by an employer and employee to resolve an employment dispute. Settlement Agreements are recognised in law and are an accepted part of employment practice. As such, they are the subject of guidance by the Advisory, Conciliation and Arbitration Service (ACAS)⁴. Settlement agreements are specific to an individual case and are separate from more general voluntary severance arrangements which enable organisations to make changes to their workforce by allowing staff the opportunity to leave the organisation with compensation as set out in their compensation schemes.
6. Settlement Agreements are used in circumstances where:
 - a) the employment relationship has broken down or been significantly impaired;
 - b) the situation cannot be remedied through mediation or other personnel processes; and
 - c) alternative routes to resolution would involve disproportionate cost at a tribunal or otherwise at law; and impair the efficient functioning of the service.
7. Consideration of the use of a Settlement Agreement will take into account:
 - a) the direct and indirect costs of alternative proceedings and of any awards that might be made;
 - b) disruption to the effective and efficient operation of the service caused by an on-going dispute and the resultant stress on individuals; and
 - c) the likely timescales involved, against the need to bring matters to a timely conclusion.
8. Scrutiny of Settlement Agreements by Accountable Officers is undertaken because:
 - a) they may involve payments to individuals above and beyond their normal contractual entitlement;
 - b) Parliament and the public will want to be assured that, in all the circumstances of the case, their use was appropriate and reasonable; and

⁴ ACAS statutory code of practice on Settlement Agreements. <http://www.acas.org.uk/media/pdf/j/8/Acas-Code-of-Practice-on-Settlement-Agreements.pdf>

- c) there is a need to ensure their use does not cut across the important protections offered to whistleblowers.

Scottish Government Settlement Agreement guidance and review process

9. Settlement Agreement guidance introduced by the Scottish Government in 2014 provides for the central review and reporting of Settlement Agreements and is designed to increase transparency, promote consistency and ensure value for money.
10. The first line of assurance lies with the designated Accountable Officer for each body as set out in the Scottish Public Finance Manual⁵ (SPFM). The SPFM notes that “the essence of the Accountable Officer's role is 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. Accountable Officers are personally answerable to the Parliament for the exercise of their functions”⁶. The SPFM and supporting guidance makes it clear that final decisions on Settlement Agreements rest with the Accountable Officer.
11. Our guidance sets out the process for interaction between a designated Accountable Officer and the Scottish Government, and requires the relevant body to consult the Scottish Government before entering into a Settlement Agreement and to submit a business case.
12. The bodies covered by the reporting procedure in the Scottish Government guidance are set out at **Annex A**. For NHSScotland bodies, the reporting procedure follows a similar process and is overseen by DG Health and Social Care / Chief Executive of NHSScotland. As noted in the 2014-15 year report, scrutiny and oversight for the college sector is delegated to the Scottish Funding Council (SFC).

Confidentiality clauses

13. At the request of the employee or their legal representative, Settlement Agreements may include a voluntary provision whereby the parties agree to keep the agreement itself confidential and not disclose its details to third parties. Inclusion of such a clause protects the rights of the employee who may have legitimate concerns that disclosure of the terms and circumstances of the agreement and their identity would impact negatively on their privacy and employability. The ACAS guidance provides a model Settlement Agreement which includes a standard confidentiality clause⁷.

⁵ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro>

⁶ <http://www.gov.scot/Topics/Government/Finance/spfm/Accountability>

⁷ <http://www.acas.org.uk/media/pdf/n/h/Settlement-agreements-a-guide.pdf> (p.69)

14. Nothing, however, in a Settlement Agreement can prevent the individual from making a protected disclosure under whistleblowing legislation. Any agreement which sought to prevent staff from raising concerns about health and safety or malpractice would be void under the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998).

Information sharing

15. In presenting material we are mindful of the need to respect the confidentiality of Agreements and the general entitlement of individuals to privacy. We have thus provided information on the number of Settlement Agreements entered into and the costs involved.
16. Disclosing the name of the body entering into the agreement alongside the cost can effectively disclose the identity of an individual. As with the previous reports, an anonymised breakdown of each of the agreements and the associated costs is thus provided at **Annex B**.

Numbers and costs of settlements

17. Headline costs and number of Settlement Agreements for 2016-17 are set out below. A full anonymised breakdown is provided at **Annex B**.
18. Table of Agreements and associated costs (to nearest £)

Oversight Body	Number of Agreements	Number of bodies	Total gross cost (£)	Non-contractual element	Number of confidentiality clauses used
Scottish Government and Public bodies	23	19	1,002,878	534,696	14
NHSScotland ⁸	36	13	780,502	568,204	2
Scottish Funding Council	11	9	364,161	176,237	9
TOTALS	70	41	2,147,541	1,279,137	25

19. The costs above include the total gross cost of the Settlement Agreement to the employer, including the contractual and non-contractual payments made to the employee and ancillary costs, such as the cost of negotiating and concluding the settlement and any legal costs.
20. Contractual payments are those to which the employee is legally entitled. These will include payments such as, on termination, notice payments and pay in lieu of time owed. They will also include any lump sum and pension

⁸ In addition, 32 individuals received a total of £160,000 in settlement of a historic dispute with NHS Greater Glasgow and Clyde via collective agreement (rather than individual settlement agreement). There were no confidentiality clauses used.

payments to which the employee is entitled on termination of employment through the Civil Service Compensation Scheme or an equivalent scheme.

21. Non-contractual payments are those offered in order to resolve the employment dispute.
22. The level of proposed non-contractual payment is included in the draft business case submitted for consideration. This is weighed against the risks and costs of not entering into a Settlement Agreement, as set out in paragraph 5 above.
23. Employment disputes are fact and case specific, and the number of settlements (and overall cost) reported in a given year will fluctuate relative to the number of employment disputes in that year across the range of bodies. The objective here is to ensure that business cases for settlement are scrutinised effectively and that robust controls are in place rather than to bear down on the number of cases. The business case process aims to ensure that these are the best value conclusions to disputes. While the number of cases this year has decreased we would not draw inference from this fact or assume that it will, or should, continue in future years.
24. When considered against the overall size of the public sector workforce and the number of leavers per annum however, it is clear that, Settlement Agreements are used only in very limited circumstances— in NHSScotland for example, amongst a workforce of over 160,000 staff and a cohort of over 10,000 leavers⁹, 36 agreements were concluded. Similarly, the costs of settlements were a tiny fraction of the overall staff budget of over £6 billion.

Governance and process improvements

25. Colleges effective governance is fundamental in supporting colleges to improve the life chances of their students and the performance of businesses. The Scottish Government have recently consulted on the commitments given in Good College Governance: The Report of the Education Secretary's Task Group (March 2016). This consultation covered a range of matters arising from the Task Group's consideration of events at a few colleges in recent years to learn lessons to minimise the risks of governance failures in the future. A key element of recent reforms to the college sector has been to make significant improvements to the accountability of boards. This includes the new transparent appointment system for college sector boards, guidance for which is set out in College Sector Board Appointments: 2014 Ministerial Guidance (August 2014). The SFC continues to keep its guidance around

⁹ https://www.isdscotland.org/Health-Topics/Workforce/Publications/2017-06-06/Turnover_M2017.xls

settlement and severance arrangements to the college sector (March 2016) under review and will update when necessary.

26. Scottish Government reviews the guidance given to NHSScotland on an annual basis. The guidance within Scottish Government itself (for SG overseen bodies) has been similarly refined and improved. Scottish Government itself continue to engage with Internal Audit to provide assurance on the processes surrounding the scrutiny of data. For the second year running, Internal Audit have provided a substantial assurance opinion, the top assurance level available, noting that controls are robust and well managed and risk, governance and control procedures are effective in the delivery of the scrutiny and challenge function and collective oversight.
27. Scottish Government engage in a process of continued education and awareness raising with bodies to whom the Scottish Government guidance applies to ensure that the information supplied is of sufficient quality and consistency. This has included work with individual bodies and sponsor teams, and wider networks such as the Scottish Government delivery bodies group, Public Bodies network and public body HR professionals through the Scottish Government HR network in this year. In particular, this has included engagement in relation to wider severance issues prompted by Scottish Ministers' consultation on a severance policy for Scotland, advice on which will be put to Ministers in the Autumn. Depending on Ministers' decisions, this may have an impact on the settlement agreement process once this has been announced.

Conclusion

28. SPICe are asked to note this report.

ANNEX A

**LIST OF PUBLIC BODIES COVERED BY REVISED REPORTING PROPOSAL
FROM 1 APRIL 2016 – 31 MARCH 2017**

[N.B. this list will be updated from time to time as required]

Scottish Government	Executive NDPBs
	Accounts Commission for Scotland
	Architecture and Design Scotland
	Bòrd na Gàidhlig
	Cairngorms National Park Authority
	Care Inspectorate
	Children's Hearings Scotland
	Community Justice Scotland
	Creative Scotland
	Crofting Commission
	David MacBrayne Ltd
	Highlands and Islands Airports Ltd
	Highlands and Islands Enterprise
	Historic Environment Scotland
	Loch Lomond and The Trossachs
	National Park Authority
	National Galleries of Scotland
	National Library of Scotland
	National Museums of Scotland
	Police Investigations and Review
	Commissioner
	Quality Meat Scotland
	Risk Management Authority
	Royal Botanic Garden, Edinburgh
	Scottish Agricultural Wages Board
	Scottish Children's Reporter
	Administration
	Scottish Criminal Cases Review
	Commission
	Scottish Enterprise
	Scottish Environment Protection
	Agency
	Scottish Funding Council
	Scottish Futures Trust
	Scottish Land Commission
	Scottish Legal Aid Board
	Scottish Legal Complaints
	Commission
	Scottish Natural Heritage
	Scottish Qualifications Authority
	Scottish Social Services Council
	Skills Development Scotland
	SportScotland
	VisitScotland
The Crown Office and Procurator Fiscal Service	
Executive Agencies	
Accountant in Bankruptcy	
Disclosure Scotland	
Education Scotland	
Scottish Prison Service	
Scottish Public Pensions Agency	
Student Awards Agency for Scotland	
Transport Scotland	
Non Ministerial Departments (NMDs)	
Food Standards Scotland	
National Records of Scotland	
Office of the Scottish Charity Regulator	
Registers of Scotland	
Revenue Scotland	
Scottish Court Service	
Scottish Housing Regulator	
Scottish Fiscal Commission	
Public Corporations	
Caledonian Maritime Assets Ltd	
Prestwick Airport	
Scottish Canals	
Scottish Water	
The Crown Estate Scotland – Interim Management	

Water Industry Commission for Scotland

Advisory NDPBs

Judicial Appointments Board for Scotland
 Local Government Boundary Commission for Scotland
 Mobility and Access Committee for Scotland
 Scottish Advisory Committee on Distinction Awards
 Scottish Law Commission
 Scottish Local Authorities Remuneration Committee

Tribunals

Additional Support Needs Tribunals for Scotland
 Lands Tribunal for Scotland
 Mental Health Tribunal for Scotland
 Parole Board for Scotland
 Private Rented Housing Panel/
 Homeowner Housing Panel
 Scottish Charity Appeals Panel

Health Bodies

Healthcare Improvement Scotland
 Mental Welfare Commission for Scotland
 NHS 24
 NHS Boards
 NHS Education for Scotland
 NHS Health Scotland Board
 NHS National Services Scotland
 National Waiting Times Centre Board
 Scottish Ambulance Service Board
 State Hospital Board for Scotland

Colleges

Ayrshire College
 Borders College
 City of Glasgow College
 Dumfries and Galloway College
 Dundee and Angus College
 Edinburgh College
 Fife College
 Forth Valley College of Further and Higher Education
 Glasgow Clyde College
 Glasgow Kelvin College
 Inverness College
 Lews Castle College
 Moray College
 New College Lanarkshire
 North East Scotland College
 The North Highland College
 Perth College
 South Lanarkshire College
 West College Scotland
 West Lothian College
 Glasgow College Regional Board

Other Significant National Bodies

Drinking Water Quality Regulator
 HM Chief Inspector of Constabulary in Scotland
 HM Chief Inspector of Prisons in Scotland
 HM Chief Inspector of Prosecution in Scotland
 Office of the Queens Printer for Scotland
 Scottish Roadworks Commissioner
 The Scottish Police Authority
 The Scottish Fire and Rescue

Scrutiny and oversight for the **college sector** is delegated to the **Scottish Funding Council (SFC)**.

ANNEX B

LIST OF AGREEMENTS AND COSTS

TABLE A: All Agreements in cost order

(including Scottish Government and public bodies, NHSScotland and Further Education colleges)

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1a	650	0	150	500	Yes
2a	2,300	0	2,000	300	Yes
3a	2,500	0	2,000	500	No
4a	3,750	1,225	300	2,225	No
5a	4,000	0	3,500	500	No
6a	4,250	0	4,250	0	Yes
7a	6,122	447	5,475	200	Yes
8a	6,250	0	6,250	0	Yes
9a	6,500	0	6,000	500	No
10a	6,999	3,034	3,362	603	No
11a	7,677	2,499	5,178	0	No
12a	8,500	0	8,000	500	No
13a	9,138	0	8,638	500	No
14a	9,500	0	9,000	500	No
15a	10,000	0	10,000	0	No
16a	10,000	0	10,000	0	Yes
17a	10,500	6,445	3,555	500	No
18a	10,500	0	10,000	500	No
19a	10,750	0	10,000	750	No
20a	11,135	1,150	9,735	250	Yes
21a	11,331	3,831	7,000	500	No
22a	11,669	10,169	0	1,500	Yes
23a	12,540	6,190	5,000	1,350	No
24a	13,250	0	12,250	1,000	No
25a	14,329	7,401	6,127	800	No
26a	14,934	4,984	9,000	950	Yes
27a	15,000	0	15,000	0	Yes
28a	15,000	0	13,750	1,250	No
29a	16,500	0	15,000	1,500	No
30a	16,874	8,290	6,864	1,720	Yes
31a	17,706	7,706	10,000	0	No
32a	17,788	17,788	0	0	No
33a	18,453	17,603	0	850	No
34a	20,168	4,668	15,000	500	No
35a	20,374	20,074	0	300	Yes
36a	20,500	0	20,000	500	No
37a	21,127	9,427	11,200	500	No

38a	23,300	1,100	20,000	300	Yes
39a	23,881	5,236	17,345	1,300	Yes
40a	24,056	16,120	6,687	1,250	Yes
41a	26,240	5,240	20,000	1,000	No
42a	27,000	0	25,000	2,000	No
43a	27,120	27,120	0	0	No
44a	27,240	5,240	21,000	1,000	No
45a	28,982	3,482	25,000	500	No
46a	29,000	0	28,000	1,000	No
47a	29,560	4,130	18,800	6,630	Yes
48a	30,000	0	30,000	0	Yes
49a	31,648	198	30,850	600	No
50a	33,186	16,186	16,000	1,000	No
51a	33,646	15,496	17,800	350	No
52a	34,102	7,102	25,000	2,000	No
53a	37,769	17,519	20,000	250	No
54a	39,261	0	38,761	500	Yes
55a	41,704	23,948	15,456	2,300	Yes
56a	45,000	0	45,000	0	No
57a	45,025	14,725	30,000	300	No
58a	48,019	0	47,519	500	Yes
59a	53,408	2,808	50,000	600	No
60a	57,528	19,082	37,946	500	Yes
61a	57,863	26,363	30,000	1,500	No
62a	59,878	18,978	40,000	900	Yes
63a	65,097	52,956	0	12,141	No
64a	65,278	0	65,278	0	Yes
65a	69,543	20,643	48,400	500	No
66a	70,883	7,680	60,832	2,371	Yes
67a	93,830	0	92,320	1,510	No
68a	108,855	108,605	0	250	No
69a	136,221	46,362	89,559	300	Yes
70a	204,854	198,339	3,000	3,515	No

TABLE B: NHSScotland Agreements in cost order

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1b	2,500	0	2,000	500	No
2b	3,750	1,225	300	2,225	No
3b	4,000	0	3,500	500	No
4d	6,500	0	6,000	500	No
5b	8,500	0	8,000	500	No
6b	9,138	0	8,638	500	No
7b	9,500	0	9,000	500	No
8b	10,000	0	10,000	0	No
9b	10,500	6,445	3,555	500	No
10b	10,500	0	10,000	500	No
11b	10,750	0	10,000	750	No
12b	11,331	3,831	7,000	500	No
13b	12,540	6,190	5,000	1,350	No
14b	13,250	0	12,250	1,000	No
15b	15,000	0	15,000	0	Yes
16b	15,000	0	13,750	1,250	No
17b	16,500	0	15,000	1,500	No
18b	17,706	7,706	10,000	0	No
19b	17,788	17,788	0	0	No
20b	20,168	4,668	15,000	500	No
21b	20,500	0	20,000	500	No
22b	21,127	9,427	11,200	500	No
23b	26,240	5,240	20,000	1,000	No
24b	27,000	0	25,000	2,000	No
25b	27,120	27,120	0	0	No
26b	27,240	5,240	21,000	1,000	No
27b	28,982	3,482	25,000	500	No
28b	29,000	0	28,000	1,000	No
29b	31,648	198	30,850	600	No
30b	33,186	16,186	16,000	1,000	No
31b	34,102	7,102	25,000	2,000	No
32b	37,769	17,519	20,000	250	No
33b	39,261	0	38,761	500	Yes
34b	45,000	0	45,000	0	No
35b	57,863	26,363	30,000	1,500	No
36b	69,543	20,643	48,400	500	No

TABLE C: Further Education College Agreements in cost order

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1c	2,300	0	2,000	300	Yes
2c	4,250	0	4,250	0	Yes
3c	6,250	0	6,250	0	Yes
4c	7,677	2,499	5,178	0	No
5c	10,000	0	10,000	0	Yes
6c	14,934	4,984	9,000	950	Yes
7c	20,374	20,074	0	300	Yes
8c	23,300	1,100	20,000	300	Yes
9c	30,000	0	30,000	0	Yes
10c	108,855	108,605	0	250	No
11c	136,221	46,362	89,559	300	Yes

TABLE D: Scottish Government and other public bodies Agreements in cost order

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1d	650	0	150	500	Yes
2d	6,122	447	5,475	200	Yes
3d	6,999	3,034	3,362	603	No
4d	11,135	1,150	9,735	250	Yes
5d	11,669	10,169	0	1,500	Yes
6d	14,329	7,401	6,127	800	No
7d	16,874	8,290	6,864	1,720	Yes
8d	18,453	17,603	0	850	No
9d	23,881	5,236	17,345	1,300	Yes
10d	24,056	16,120	6,687	1,250	Yes
11d	29,560	4,130	18,800	6,630	Yes
12d	33,646	15,496	17,800	350	No
13d	41,704	23,948	15,456	2,300	Yes
14d	45,025	14,725	30,000	300	No
15d	48,019	0	47,519	500	Yes
16d	53,408	2,808	50,000	600	No
17d	57,528	19,082	37,946	500	Yes
18d	59,878	18,978	40,000	900	Yes
19d	65,097	52,956	0	12,141	No
20d	65,278	0	65,278	0	Yes
21d	70,883	7,680	60,832	2,371	Yes
22d	93,830	0	92,320	1,510	No
23d	204,854	198,339	3,000	3,515	No

Annexe B

Derek Mackay Cabinet Secretary for
Finance and Constitution

**Public Audit and Post-legislative
Scrutiny Committee**

Room T 3.60
The Scottish Parliament
EDINBURGH

By e-mail only

EH99 1SP
Direct Tel: (0131) 348 5390
Email: papls.committee@parliament.scot

06 October 2017

Dear Cabinet Secretary,

The Committee has considered various 'section 22' audits by the Auditor General this session, which usually highlight financial or governance concerns at a particular public body. In doing so, we have tried to identify any cross-cutting or recurring themes in these audits, as this may suggest wider challenges for the public sector as a whole.

In this context, we write to highlight some instances where individuals who may have been at least partly responsible for a performance issue at a public body were no longer in post by the time we came to consider the Auditor General's report. As you can imagine, this has created some frustration about whether such individuals have been satisfactorily held to account. It also raises questions about how they are recompensed.

We recently received an informal update on the Scottish Government's consultation on a severance policy for Scotland. We understand that Scottish Ministers are considering their next steps and have therefore decided to highlight our concerns to you.

We believe that, in the circumstances we have described, the award of an agreement should be very carefully considered by the body in question. In short, our concern is that failure should not be rewarded.

We would welcome an update on how the Scottish Government could address the issue highlighted in this letter and would be grateful for a reply by 3 November 2017.

Yours sincerely,

Jackie Baillie MSP Acting Convener of the Committee

Annexe C – extracts from the Cabinet Secretary’s reply

“3. I recognise, as the Committee notes, the proportion of organisations subject to critical audit reports is relatively small. However, on the rare occasion when this does happen there can be significant concerns and opportunities for wider learning. I also note the frustration of the Committee when it highlights situations where individuals have left organisations with a severance package and those individuals are apparently not held to account. I fully agree with the Committee’s view that failure in public bodies should not be rewarded ...

“23. For situations where employees are compensated through severance payments (including settlement agreements, voluntary early severance or retirement), public bodies accountable to Scottish Ministers must comply with requirements in the SPFM to ensure that issues of legal and regulatory compliance, propriety and value for money are fully taken into account, alongside employee relations issues by:

- Submitting a business case which needs to be approved by the Scottish Government for proposals to offer new or changes to a severance scheme, individual exits and/or settlement agreements.
- In arriving at a decision on approval (including on the benefit structure and the terms of compensation schemes), the Scottish Government will consider comparability i.e. are they broadly similar to Scottish Government equivalent schemes (which apply Civil Service Compensation Scheme rules currently in force for civil servants), along with an assessment of the regularity, propriety and value for money offered by the proposals.
- Ensuring public bodies comply with specific requirement to disclose remuneration relating to exit costs in annual accounts.

24. For organisations not subject to the SPFM, such as local authorities, the Scottish Government expects them to meet their duties to deliver best value while ensuring fairness to their staff and accountability to their local electorate.

25. The Severance Policy for Scotland consultation did not set out to respond to the Committee’s specific concerns about rewarding failure. It does, as the Committee notes, offer an opportunity to improve governance through the SPFM (reinforced through On Board guidance) and therefore outcomes when exit payments are made. The concerns expressed in your letter, conveyed to the First Minister at the Conveners’ meeting on the 25 October, give further weight to this as an appropriate course of action.

26. Furthermore, as the Committee notes, I have not yet made my decision on how any cap, claw-back or reducing terms of severance arrangements might apply across the wider devolved public sector in Scotland. I thank the Committee for continuing to raise issues in public bodies where exit payments are made, as this provides increased focus on the opportunities to claw-back exit payments, especially

where failures are apparent, as part of Scottish Ministers' decisions on the right Severance Policy for Scotland.

27. I understand the Committee has seen the Scottish Government's 2016-17 annual report on the use of settlement agreements - a subset of severance arrangements. This report provides further clarity on the settlement agreement process, the responsibilities of Accountable Officers and the robustness of the business case in ensuring these deliver value for money and are in the best interest of the public purse. Settlement agreements are recognised in law and are an accepted part of employment practice in the settlement of significant disputes. Inclusion of a confidentiality clause does not – under any circumstances – prevent an employee from making a protected disclosure under whistleblowing legislation.”

Annex D

Jackie Baillie (Convener, Public Audit Committee): Over the past few years, the Public Audit and Post-legislative Scrutiny Committee has seen repeated problems with governance and financial management in some of our public bodies. That has resulted in successive Audit Scotland reports that are often accompanied by the staff involved leaving, so that there is a lack of accountability.

Recent examples that you will be aware of include colleges and the Scottish Police Authority, where I understand that the chair and the chief executive are standing down. I know that the Scottish Government is considering its severance policy, but would the First Minister agree that paying people substantial sums of money to leave an organisation can be seen by many as rewarding failure? What assurances can she give that that will be minimised?

The First Minister: First, I will deal with the latter part of your question and I will be quite frank about it. I am talking generically here, not in relation to any particular example. I agree that, in circumstances in which somebody leaves an organisation when there has been controversy and there is a severance payment, in particular when that is seen to be large, that can be perceived to be, as you put it, rewarding failure—that may not always be the case. We do not want that perception and we certainly do not want that reality in our public sector. There are rules in place that govern severance payments and, as you say, we are reviewing that area just now.

Some very importance tests have to be applied. Public confidence is one, and value for money and reasonableness are others. It is vital that they run through decision making. I will not go into some of the issues that your committee has looked at, but you are aware that there have been some instances where the Government has expressed its disquiet at some of the arrangements.

More generally, governance is an important area and, right since my days as health secretary, I have been very interested in how we improve governance and build the capacity in our public sector organisations. As I think you would concede and your committee has noted, the proportion of organisations that have been subject to critical audit reports is relatively small but, nevertheless, when it happens, that is significant. The Government supports board members and chairs through its “On Board” guidance and there are induction events and a range of work that we take forward or support to try to improve the capacity and governance capability of boards. It stands to reason—it is true of a Government and of public boards—that it is the abilities and the strength of decision making there that affect issues right through the wider organisations. Those are important areas; it is important that the Public Audit and Post-legislative Scrutiny Committee has a close oversight and that, where there are Audit Scotland reports or the committee comments, we learn from those reports and apply that learning more widely across the public sector.

Annex D

Jackie Baillie: Thank you for those comments. Let me take you back to the severance policy, because I think that that is critical, particularly at a time of austerity, when the general public might not understand why a small number of people get paid quite substantial amounts of money—the overall figure for last year may have been in the millions. I think that we need some clarity on that. In that context, you—or somebody in the Government—gave an undertaking to end the use of gagging clauses as part of severance agreements, yet they are still being used in the overwhelming number of cases. When do you see that practice ending?

The First Minister: I am happy to make sure that your committee has sight of the changes that we made in terms of—if I can use the technical term—confidentiality agreements. There will sometimes be occasions where it is appropriate that confidentiality agreements are put in place. However, one of the concerns that were raised, which I absolutely share, particularly in the context of the health service, involves any potential for confidentiality agreements to stand in the way of whistleblowing. Legally, that is not possible, because of people's statutory whistleblowing rights. We made some changes to put that absolutely beyond doubt.

I do not think that any Government or any other organisation anywhere would say that there is never any circumstance in which a confidentiality agreement is appropriate, but that must not impinge on the ability of people in the public sector or people leaving the public sector to raise concerns or speak out about things that they think are important, and it should never stand in the way of the good governance of public sector organisations.

As I say, I fully believe that your committee should have full sight of the information in that regard, and I will ensure that you have that.