

Permanent Secretary
John-Paul Marks



T: 0131-244-4026
E: permanentsecretary@gov.scot

Finance and Public Administration Committee

By email: fpa.committee@parliament.scot

19 May 2022

I welcomed the opportunity to meet with your Committee and discuss public administration within the Scottish Government. I committed to providing you with further information in relation to four areas of interest, outlined below.

Record keeping and documenting Ministerial decisions

I am committed to ensuring robust systems and processes are in place to record and manage information, including Ministerial decisions. This is instrumental to accountability and transparency in the Scottish Government.

The Deputy Convener, Mr Johnson, asked about the requirement to document the Ministerial decision to approve the award of the contract to Ferguson Marine. Recording Ministerial decisions is a vital part of the role of civil servants. I am clear that, although there is no overarching statutory duty to record all decisions in a particular way, such decisions should be documented effectively as part of the official record and be suitably accessible. As we discussed when we met – the original advice to Ministers in 2015 was documented by officials, and this was proactively published by the Scottish Government; and since, albeit with unacceptable delay, further emails have been located and published too, supplementing the documentary record of the decision.

New in post, I am assuring myself that we are able to be confident that the system for recording Ministerial decisions is consistent and robust. I am clear that although foundations are in place there is more to do, not least in the context of the continued growth of digital information and data which – though vital for our work – remains a management challenge for all large institutions and governments. Plans are in place to build a programme of continuous improvement to achieve the highest standards in information management, both in terms of practices and culture. I expect, and will demand of my teams, a rigorous approach to recording official advice and government decisions, underpinned by reliable search and retrieval technology to ensure accountability and transparency. In addition to my and Executive Team oversight of our implementation plans, performance data to monitor improvements will be scrutinised by the Corporate Board at quarterly assurance reviews, the minutes of which are published on the Scottish Government website.

Below I have outlined key actions, made recently, or currently being implemented, to the Scottish Government's record keeping which we will build on over the course of this year.

Firstly, we published a Review of Corporate Information Management in June 2021 to improve the robustness of our document management storage and retrieval processes, for which we are taking forward all eight recommendations. This led to the development of an updated

[Information Management Strategy](#) for the Scottish Government which sets out behaviours, governance and best practice for handling information. It underlines the requirement for clear recording of Ministerial decisions and our plans include actions to ensure that this is applied consistently and robustly across the organisation. We have also established 3 leadership and operational oversight groups to ensure delivery of all the aspects of our Strategy.

Secondly, we have invested in new technology, eDiscovery Solution, that enables the Scottish Government to deliver more reliable searching, and we will upgrade our information management tool, eRDM, to improve its usability, hence compliance with good record management processes.

Thirdly, to strengthen the culture and practice internally, we have completed a review of all training, guidance, and policies relating to information management, engaged with senior leaders to highlight their role in sponsoring adherence with the procedures for record management, and are currently undertaking behavioural insights analysis to allow us to understand this culture better.

I hope my response has assured you that I am committed to driving further improvements in relation to record keeping and the recording of Ministerial decisions, as well as working with colleagues to embed best practice across the organisation. While there is more to be done in order to achieve consistency and instil confidence, we will continue to implement our plans to meet the highest standards. I am very happy to remain in contact with the Committee to update you on our progress.

Ministerial correspondence

Convener, you raised directly with me the issue of Ministerial correspondence and I recognise that a core function of the Civil Service is supporting timely and accurate responses to correspondence as well as Parliamentary Questions (PQs) and Freedom of Information requests (FOIs). In the last 12 months (May 2021 to April 2022) 51,674 of 66,687 (77%) of correspondence items sent to Scottish Ministers were answered within 20 working days, as either Ministerial or Official replies.

Whilst the Civil Service has had to manage its resources carefully to respond to the many challenges presented by the pandemic, the performance data for Ministerial correspondence clearly shows room for improvement. I have recently met with the lead team and commissioned an improvement plan to boost our performance in this area.

I, along with my Executive Team, will continue to monitor quality and performance across correspondence, as well as PQs and FOIs to ensure that we have the processes, skills and culture in place to deliver a consistently high level of service. I will now receive regular performance data across these functions for each portfolio area. Performance will also be scrutinised by my Corporate Board moving forward.

Conflict of interest

Ms Thomson was interested in understanding the potential for conflicts of interest for Civil Servants who work for the Scottish Government, as part of the UK Civil Service. I agreed to write back to her on whether there is a formal policy that governs how to address such conflicts.

The Civil Service Code is clear on my accountability and that of my colleagues. It states that Civil Servants working for the Scottish Government “are accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament” – just as others are accountable to UK, Welsh, or Northern Irish Government Ministers.

Of course part of our role is to support Ministers in engagement with the other Governments in these islands. In that context, the Code's provisions on integrity are particularly important. They require that "Civil Servants must always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings." The Code includes a particular recognition of the importance of co-operation and mutual respect between Civil Servants working for the Scottish Government and the UK Government and other devolved administrations, and vice versa.

The relevant section is paragraph 2, which in the Scottish version reads:

"The Civil Service is an integral and key part of the government of the United Kingdom. It supports the UK Government and Devolved Administrations of the day in developing and implementing their policies, and in delivering public services. As a civil servant, you are accountable to Scottish Ministers, who in turn are accountable to the Scottish Parliament."

The UK version reads:

"The Civil Service is an integral and key part of the government of the United Kingdom. It supports the government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to ministers, who in turn are accountable to Parliament."

A footnote to the first sentence of that reads:

"Civil servants working for the Scottish and Welsh Governments, and their agencies, have their own versions of the code. Similar codes apply to the Northern Ireland civil service and the Diplomatic Service. Civil servants working in non-ministerial departments in England, Scotland and Wales are covered by this code."

Hence, the Civil Service Code, which is adhered to by all Civil Servants, clearly outlines our required commitment to the Ministers and Government of the day.

Freedom of Information communications on the Lochaber Guarantee

The Committee has an interest in the Scottish Government's handling of Freedom of Information (FOI) requests. The Deputy Convener Mr Johnson raised the issue of an email exchange amongst officials on the topic of the Scottish Information Commissioner's determination of an appeal relating to the Scottish Government's contingent liability under the Lochaber Guarantee.

The email exchange that was referred to by the Committee was released to a journalist at the Financial Times by the Scottish Government on 27 January 2022 in response to an FOI request. We have undertaken the publication of significant volumes of material relating to this matter, as well as our other commercial interventions.

Whilst we favour disclosure, it is right that officials continue to assess and apply the necessary exemptions to material. The Scottish Government is obliged under the terms of the Lochaber Guarantee and Reimbursement Agreement (GRA) to consult with the relevant businesses and seek their representations prior to the release of commercial information relating to the transaction. It is essential that the potential for significant commercial impacts are considered carefully and weighed against the public interest prior to any disclosure of information. This was particularly relevant considering the financial situation of the business at the time of the release. In this specific case, however, the Commissioner disagreed with our exemptions and ruled in favour of disclosure. Officials then complied with the terms of disclosure within the established timeframe.

The Scottish Government will continue to seek to balance the respective application of exemptions under FOI with public disclosure to support transparency and accountability, whilst

also complying with the legal and contractual obligations with regards to exemptions, which we seek to manage responsibly with care.

I hope the information provided in this letter supports the Committee and I look forward to continuing to work with you. Please let me know if there is anything further you require at this stage.

Best wishes,

John-Paul Marks
Permanent Secretary to the Scottish Government