

Written submission from Standards Commission for Scotland, 14 January 2025

SPCB Supported Bodies Landscape Review

Q1: How do you measure and demonstrate outcomes, and how are these outcomes selected and prioritised? What improvements could be made to this process?

How outcomes are selected and prioritised

The Standards Commission has a statutory responsibility to adjudicate on alleged breaches of the codes of conduct for councillors and members of devolved public bodies and, where a breach is found, to apply a sanction. Following the conclusion of any investigation he has undertaken into an alleged breach of the applicable code by a councillor or member, the Ethical Standards Commissioner (ESC) will send a report to the Standards Commission outlining his findings and conclusions. In terms of the governing legislation (the Ethical Standards in Public Life etc. (Scotland) Act 2000), the Standards Commission then must decide whether to hold a Hearing; direct the Commissioner to carry out further investigations; or do neither (which essentially means that no further action will be taken on the complaint). The Standards Commission is also obliged by the 2000 Act to issue guidance on how the Codes should be interpreted.

The Standards Commission has five part-time Members appointed by the Scottish Parliamentary Corporate Body (SPCB) with the agreement of the Parliament. One of these, the Convener, is contracted to work the equivalent of three days per month, while the remaining members work two days. Members also sit on Hearing Panels (consisting of three Members), as and when required. The Standards Commission has one full-time member of staff, being the Executive Director, who is also the Accountable Officer. In addition, it employs a Case Manager, an Office Manager and an Administrative Assistant, all of whom are part-time, (with the overall staffing complement being equivalent to 3.1 full-time members of staff).

The Standard Commission operates against a four-year strategic plan (currently its plan for 2024-28), the objectives of which are delivered through the implementation of annual business plans. Copies of the strategic and business plans are published on its website. All actions in the business plans are linked to one of the strategic objectives, with specific targets and measurements identified for each activity. Progress against the plans is reviewed regularly by the Executive Team and then formally by Members at least once a quarter.

When selecting outcomes to be included in the strategic and business plans, the Standards Commission gives priority to its statutory functions. Other outcomes connected to these functions, in respect of promoting high ethical standards and awareness, understanding and adherence to the Codes are identified in its strategic and business plans, following ongoing reviews and analysis of intelligence provided and gathered via:

- feedback and surveys;

- enquiries and requests for assistance received;
- cases referred and Hearings held;
- collaborative working and discussions with stakeholders (please see the response to question 3 below); and
- monitoring of the media, the public sector landscape, and work of equivalent bodies in other parts of the UK and Ireland and other analogous standards organisations.

It should be noted, however, that the process of identifying and selecting the Standards Commission's non-statutory outcomes and priorities also involves consideration of the limitations of its budget and the associated constraints on resources. As the Committee will be aware, the Standards Commission is funded by the Parliament and submits an evidence-based budget for scrutiny and approval each year. At present, staff and Member salaries comprise, on average, 87% of expenditure. The majority of the Hearings-related costs comprise of Members' salaries, so the budget submission is based mainly on projections of Hearings-related activity.

While the number of complaints made, the eligibility of those complaints for investigation, and consequent number of cases referred by the ESC to the Standards Commission is outwith its control, the volume of referrals impacts on the resources required (including Members' pay for Hearings, which is separate from their monthly salaries, but included in the overall salary costs). The anticipated number of Hearings is forecast using information relating to the previous year and estimates provided by the ESC. As the Committee will appreciate, it is not possible to accurately determine, before the start of any financial year, how many cases will ultimately be referred and, of those, how many will result in Hearings. The costs incurred in holding Hearings continues to depend on a variety of unquantifiable factors, some of which are, again, outwith the control of the Standards Commission, such as the location, potential duration and complexity of the complaint under consideration.

The fluctuations in the volume and timing of case referrals, and the impact of this on the budget and resources available, means the Standards Commission is required to plan ahead carefully, and to review and assess its priorities on an ongoing basis to ensure it achieves the outcomes identified in its strategic and business plans. As noted above, it does so by reviewing the business plan on a continuous basis.

In addition, the Standards Commission agrees its Risk Register at the start of the operational year to ensure that reasonably foreseeable risks to the implementation of the strategic and operational objectives are identified. The Risk Register contains a score for each risk, which reflects the likelihood of it occurring and the impact should it occur, in light of the controls in place and actions taken, and is reviewed and updated by the Executive Team on an ongoing basis. The Standards Commission has an Audit and Risk Committee, which formally reviews the Risk Register, including the score for each risk and the risk tolerance level, at each of its meetings (held three times per year). A report of the review is thereafter provided for consideration by Members at the next available meeting of the Standards

Commission. These review processes ensure that any risks to the achievement of the strategic and operational objectives are identified and monitored regularly.

How outcomes are measured and demonstrated

The Standards Commission has a defined performance management framework, with key performance indicators outlined in its annual business plans. These key performance indicators include measurements relating to the timescales involved in the disposal of cases and the achievement of the service standards outlined in the Standards Commission's Service Charter. Activities undertaken to execute the strategic aims and actions in the published business plan are recorded on an ongoing basis, with performance against this being reviewed formally by the Standards Commission on a quarterly basis. The Standards Commission also reviews progress against the key performance indicators formally three times a year to identify any trends and improvements that need to be made to processes, or changes to priorities and how resources are allocated, should there be any significant and / or consistent failure to meet targets. The key performance indicators are also reviewed and adjusted on an annual basis to achieve business objectives, drive performance and ensure the needs of service users continue to be met. A report on overall performance is included in both the Standards Commission's annual report and its annual accounts.

The Standards Commission meets ten times a year. Two Members of the Standards Commission are nominated to sit on its Audit and Risk Committee, with a further two on its Human Resources Committee. Minutes are taken of all meetings, with agreed actions recorded in a log of matters arising. Progress against this log is then reviewed as a standard agenda item at each meeting. As outlined above, the progress against the business plan is reviewed formally on a quarterly basis, with actions taken to mitigate risk being reviewed formally three times per year.

The Standards Commission also measures outcomes by seeking feedback from all service users and stakeholders on how it has made decisions on case referrals, conducted Hearings, dealt with enquires and on its training events and educational material. A review of all feedback received is included as a standard agenda item, and undertaken, at each Standards Commission meeting. In addition, following the making, issuing and publishing of a 'no action' or Hearing decision, a review of the particular case is undertaken at the next Standards Commission meeting, to check that it was well-reasoned, consistent and clear, and to identify any potential learning points in respect of how the referral and adjudication process was managed. The Standards Commission also undertakes a full annual review of all decisions made, and feedback received, in respect of case referrals and Hearings in the previous year, to identify any potential improvements to its case related policies, procedures and standard documents.

The Standards Commission conducts surveys of councillors, members of devolved public bodies, council Monitoring Officers and public body Standards Officers on a five-yearly basis (with the last ones being undertaken in 2021/22). The purpose of these surveys is to learn about stakeholder experiences with the ethical standards framework and their awareness of the provisions in the codes of conduct. The Standards Commission also uses the surveys to measure its own strategic

performance by asking questions about its educational material and training events, and the experiences any stakeholders have had in respect of its adjudicatory work.

Further ways in which the Standards Commission measures and demonstrates outcomes is by holding events and meetings with stakeholders (such as its annual workshops with Monitoring Officers and Standards Officers). The Standards Commission seeks feedback on its case related processes, educational material and future plans at these events. In addition, the Standards Commission further reviews questions posed, and suggestions made, by the Local Government, Housing and Planning Committee and the SPCB when it appears before them. It then demonstrates outcomes by circulating agreed actions and by subsequently advising stakeholders on progress against these in its annual reports and its quarterly professional briefings (which are published on the Standards Commission's website and circulated to all councillors and members of devolved public bodies through Monitoring Officers and Standards Officers). The Standards Commission also engages with stakeholders by consulting with them on any proposed new educational material or significant changes to its Guidance, Advice Notes and case related policies and processes.

The Standards Commission monitors the number and nature of complaints made to the ESC, cases referred to it, and enquiries and requests for training received, in order to understand awareness, understanding of, and adherence to, specific provisions in the codes of conduct, so that it can gauge the success of its promotional and educational material and identify whether further targeted guidance or a new approach may be required. It then demonstrates outcomes by recording, in the published minutes of its meetings, actions taken in this regard. This includes changes to policies, procedures and educational material; dissemination and publication of further advice; and the production of guidance in alternative formats (such as eLearning modules and videos).

What improvements could be made to the process for selecting and prioritising outcomes

Given the fairly limited extent of the Standards Commission's remit and, particularly, its statutory responsibilities, it considers its existing processes for selecting and prioritising outcomes is proportionate and appropriate. The Standards Commission nevertheless recognises that more work could be undertaken to measure and assess its outcomes, especially in respect of public understanding of, and confidence in, the ethical standards framework and those in public life. The Standards Commission acknowledges it would be possible to conduct research, albeit it notes that it would require further resources to be able to do so. The Committee may wish to note that the Standards Commission and ESC recently provided the Scottish Government with questions on public confidence in local councillors for potential inclusion in next Scottish Household Survey.

Q2: How has Parliamentary committee scrutiny worked in practice and how has this impacted performance? How could scrutiny be improved and/or standardised?

How Parliamentary scrutiny has worked in practice and how this has affected performance

The Standards Commission is accountable to the SPCB and to the Parliament via its Committees. The Standards Commission understands that its work falls under the remit of both the Local Government, Housing and Planning, and the Standards, Procedures and Public Appointments Committees. The Standards Commission consults with, and advises, both committees on its strategic plans and any key issues or work, such as the issuing of statutory directions to the ESC and its annual reports. The Standards Commission is invited to appear before the Local Government, Housing and Planning Committee each year, to give evidence about its annual report. As a public body, the Standards Commission is also subject to scrutiny by the Finance and Public Administration Committee, and the Public Audit Committee.

Standards Commission Members meet the SPCB on an annual basis, with the Convener's performance being appraised by an external assessor appointed by the SPCB. The Standards Commission's Executive Director attends formal quarterly meetings, and regular informal meetings, with the Parliament's Officeholder Services Team to ensure the SPCB is provided with updates on governance arrangements and expenditure against budget.

The Standards Commission considers that all scrutiny, whether by the Parliament (via its committees), through external audit or by the media, service users and other stakeholders, provides accountability and serves to encourage best practice and value for money, all of which have a positive impact on performance and service delivery. The Standards Commission has found that the questions posed, and points and suggestions made, by the Local Government, Housing and Planning Committee helpful in terms of planning and prioritising work. For example, the Standards Commission recently exchanged correspondence with the Committee in respect of making training on the Councillors' Code mandatory for elected members. Appearing before the Committee and SPCB also prompts useful critical thinking on the Standards Commission's annual progress, main achievements, key challenges and any notable trends.

How scrutiny could be improved and / or standardised

The Local Government, Housing and Planning Committee's remit does not cover the Standards Commission's role in respect of members of devolved public bodies. It may be appropriate, therefore, for the Standards Commission to also be invited to give evidence on its annual report and performance to the Standards & Public Appointments Committee. In order to enhance the benefit of committee scrutiny, the Standards Commission considers it may also be helpful for it to receive feedback on any committee deliberations on its work which are undertaken in private. The Standards Commission further considers that scrutiny could be improved by members of committees or the SPCB observing any of its public meetings or Hearings.

In terms of standardisation, the Standards Commission notes that the various SPCB-supported bodies have distinct operating models, with some being significantly

different both in terms of the scope of their remit and extent of their expenditure and budget. It may be, therefore, that the most suitable scrutiny model for one body may not necessarily be proportionate or appropriate for another.

Q3: How do you work in practice with other public bodies or services and what are the main barriers faced? How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

How we work in practice with other public bodies or services and what are the main barriers we face

The Standards Commission works closely with the ESC to identify and try to resolve issues arising in respect of the interpretation of the Codes. The Executive Team engages with the ESC's team regularly and receives fortnightly updates on the number and nature of forthcoming case referrals. The Standards Commission's Executive Director meets the ESC on a fortnightly basis, to discuss issues of common interest, including suggestions for improving the processes for the investigation and adjudication of complaints about councillors and members, in order to achieve efficiency, transparency and consistency in decision-making. Standards Commission Members hold formal meetings with the ESC twice a year to discuss complaint trends, matters concerning the ethical standards framework, and to exchange information about ongoing work and future plans.

The Standards Commission works with its other stakeholders to share information, best practice and to discuss and resolve any issues affecting the ethical standards framework. This includes engaging and holding regular meetings with the Scottish Government, the Improvement Service, SOLAR, Accounts Commission, COSLA, the College Development Network and NHS Education for Scotland. It also works closely with councils, public bodies, the Government and the Improvement Service to train and induct councillors and board members on the provisions of the codes of conduct, and to promote the importance of compliance with these and high ethical standards.

As noted above, the Standards Commission consults with the ESC and other stakeholders on any changes it is proposing be made to its case related policy and process documents, and educational material. It engages directly with councillors and members via quarterly standards updates, news updates and blogs, training events, and when dealing with enquires on how the codes of conduct should be interpreted. The Standards Commission also engages with other standards bodies in others part of the UK and Ireland to share best practice and learning.

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

The Standards Commission's Executive Director attends meetings with other Officeholders to discuss issues of common concern and to explore the possibility of sharing services and procuring joint contracts. It has provided training to other Officeholders and assisted with mentoring new appointees and grievance investigations. The Standards Commission has benefitted from shared training opportunities arranged by other Officeholders and from taking part in various networking groups, such as the Part 7 Network, Officeholder Shared Services Network, DPO Officeholders' group, and training events organised by National Records for Scotland and Cyber Scotland.

The Standards Commission has not experienced any significant barriers in terms of its ability to work in practice with other public bodies or services. On the contrary, the Standards Commission considers it has developed strong and constructive relationships, which has enabled it to work effectively with its various stakeholders and other Officeholders.

As noted above, the Standards Commission benefits greatly from the location of its office and the service agreements in place with the Parliament. The Standards Commission is willing to explore any other opportunities to work and share services with other bodies.

How can these barriers be overcome to improve efficiency and reduce costs while ensuring that shared services maintain high standards of quality and accountability?

The Standards Commission considers there is scope for further shared services between Officeholders, possibly in respect of governance reporting, human resources and administrative matters. It would also be open to sharing contracts for the provision of training and services that may be of interest to all, such as on cyber resilience or the provision of design work.

Q4: Criteria were developed by the Session 2 Finance Committee to help guide decisions on whether to create a new commissioner. These criteria (Clarity of Remit, Distinction between functions, Complementarity, Simplicity and Accessibility, Shared Services and Accountability) are considered by the Scottish Government and Members when proposing Commissioner related bills. Are these criteria currently adequate and how could they be improved?

The Standards Commission agrees the criteria identified by the Finance Committee are appropriate. The Standards Commission considers they offer a standardised framework under which decisions are made, while nevertheless allowing for significant diversity to encompass any new and different remit and functions any new commissioners would be required to fulfil.

The Standards Commission would suggest that further criteria could be:

- demonstrable public need, with a clear link to the broader vision of focusing on 'human rights and equality for everyone' as mentioned in the "Commissioner Landscape Strategic Approach";

- affordability
- ability to provide value for money; and
- feasibility in terms of any new commissioner's likely ability to implement or deliver strategic change.

It might be helpful for consideration to be given, when commissioner-related bills are proposed, to comparable organisations or commissioners in other jurisdictions and the impact they have, as well as to whether any desired functions could be covered relatively easily by other existing organisations or whether an alternative model could meet the same public need (i.e. including an appraisal of other potential options as part of the decision-making process).

The Standards Commission further suggests that consideration should be given to the possibility of establishing a commissioner for a set period or purpose.

Q5: What should the optimal model and structure for commissioners look like, and what key features should it include?

The Standards Commission considers the optimal model and structure for commissioners may well depend on each individual organisation's remit meaning it may not be appropriate to take a 'one size fits all' approach. In contrast to a single officeholder, the Standards Commission has five Members who are responsible for leading the organisation, overseeing the systems of governance and internal controls and setting the strategic direction. The Standards Commission is satisfied that its model of five part-time Members, with an Executive Director as Accountable Officer, is the appropriate structure for its remit, given its Members have not only a strategic and scrutiny role (similar to a board), but also an operational one, in terms of its adjudicatory function (in making decisions on referrals from the ESC and in forming Hearing Panels). The Standards Commission notes, however, that this model might not suit a rights-based commissioner who is not expected to fulfil an operational role.

The Standards Commission nevertheless considers that key features of the model should include:

- having a clear remit and terms of reference (to avoid 'mission creep' and organisational expansion);
- a structure that enables the organisation to achieve its purpose and aims efficiently and effectively; and
- clear lines of accountability and means of measuring impact and assessing performance, including scrutiny of whether the purpose is being fulfilled and whether the organisation continues to provide value for money.

The Standards Commission further suggests that, depending on the nature and scale of a commissioner's remit, it could be helpful to have some representation from members of the public, (lay members) in addition to an appropriate balance of qualified professionals.