



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Officeholders – Contingency Requests**

## **9 March 2023**

### **Reference: SPCB (2023) Paper 18**

#### **Executive summary**

1. This paper invites the SPCB to consider two contingency fund applications – one from the Scottish Public Services Ombudsman and one from the Scottish Human Rights Commission.
2. The Officeholders' Contingency Fund for 2022/23 is £700k plus additional funding transferred following a forecasting exercise. There is sufficient funding in the Contingency Fund to meet these two requests.

#### **Issues and options**

3. Individual officeholders' budgets do not contain contingency funding. Instead, the SPCB has established a separate central Officeholders' Contingency Fund for exceptional one-off expenditure which cannot be met from an officeholder's approved budget for any given year. This arrangement also prevents an officeholder's budget baseline increasing due to one-off costs in any given financial year.
4. Contingency funding may be requested for costs such as defending legal actions and for temporary staff cover for maternity absences etc.
5. Requests for contingency funding can be made at any time of the year but we would not expect an officeholder to draw down the funding until it is clear that they are unable to meet the costs, in full or part, from their approved budget.
6. The officeholders have kept officials informed of these potential calls on the Contingency Fund throughout the year

#### **The Scottish Public Services Ombudsman (SPSO)**

7. The SPSO is seeking contingency funding of £70k for legal costs.

8. £50k is for legal costs associated with an ongoing Judicial Review (this is only the second time the SPSO has been judicially reviewed since it was established in 2002) about a discretionary decision taken by the SPSO not to investigate a matter, which was taken in line with the SPSO's legislation. The case is currently sisted pending a decision by the applicant about whether they wish to proceed to a full hearing later in March.
9. £20k is for two actions in the sheriff court regarding alleged data breaches-
  - a. the first claim related to an acknowledged data recording error (recording of a single customer service complaint twice). In line with legal advice, SPSO made an offer of settlement. This was initially refused by the claimant, but later accepted at a hearing. This matter has now been concluded.
  - b. a second claim has also been presented and is currently being progressed through the Sheriff Court. This is scheduled for a hearing in March. The SPSO's position is that there was no error in data processing. The Court has already acknowledged the importance of public bodies defending claims where there is no perceived error.
10. A copy of the SPSO contingency application is attached at Annex A.

### **The Scottish Human Rights Commission (SHRC)**

11. The SHRC is seeking contingency approval of £180k for budget cover purposes but will actually only need to draw down £90k as the SHRC had cash in its bank account at the beginning of the 2022/23 financial year. The £180k is made up of the following-
  - Staff costs (including restructuring) - £145k
  - SPSO Start Up Costs for providing shared services - £5k
  - MYCSP Retrospective Testing (the SHRC's pension provider) - £5k
  - Increase in audit fee for 2022/23 - £5k, and
  - Forecast Underspend - £20k
12. SPCB Members will be aware that in 2022, there was a period of significant change in the SHRC due to the chair demitting office, three part-time members resigning and the senior management team leaving the organisation.
13. The SPCB seconded its Head of Internal Audit, Andrew Munro as the Interim Chief Operating Officer and his secondment costs form part of the £145k staff costs along with increased costs for the part-time members as a result of the time commitment being increased from 2.5 days to 4 days a month. and buying out staff leave and flexi when they resigned.
14. A copy of the SHRC's application is attached at Annex B.

### **Governance**

15. The SPCB has a statutory duty to approve the officeholders' funding. As these requests are for additional funding, SPCB approval is required.

## **Resource implications**

16. The Officeholders Contingency Fund for 2022/23 is £700k and following a financial exercise we undertook where we asked the officeholders to surrender funding that they would not be drawing down this financial year, we transferred an additional £372k to the Contingency Fund. One of the main reasons for the officeholders having underspends has been the current recruitment challenges and carrying staff vacancies. As the SPCB is aware, the majority of officeholder spend (upwards of 80% of their budgets) is staffing costs.

17. If these two requests are approved, then the total amount of contingency drawn down by the officeholders in 2022/23 will be £716,201.

## **Publication Scheme**

18. This paper can be published.

## **Decision**

19. The SPCB is invited to approve the contingency funding applications from the SPSO for £70k and the SHRC for £180k for budget cover purposes, although only £90k of this will be drawn down.

## **Officeholder Services**

March 2023

## STRATEGIC ENGAGEMENT

### **Memorandum of Understanding between the Scottish Parliamentary Corporate Body and the Scottish Human Rights Commission on Access to the Officeholders' Contingency Fund**

1. This is a Memorandum of Understanding between the Scottish Parliamentary Corporate Body ("SPCB") and the Scottish Human Rights Commission ("the Commission") on access to the Officeholders' Contingency Fund.

2. The fund is held by the SPCB for exceptional one-off expenditure which cannot be met from an officeholder's approved budget for any given year.

3. Requests for contingency funding can be made at any time of the year but funding should not normally be drawn down until it is clear that the expenditure cannot be met in full or part from savings made throughout the year.

5. Accordingly, the following procedure should be followed-

5.1 The Commission must submit to the SPCB, for its consideration, an application (attached at Annex A) setting out the purpose of the funding and the estimated cost. For requests which exceed 10% of the Commission's approved budget, a detailed business case must also be provided.

5.2 When the SPCB has all the necessary information it will consider the request and respond within 20 working days.

5.3 Where a request for contingency funding is received after all the funding has been allocated from the Officeholders' Contingency Fund, the SPCB will consider whether it is possible to meet the request from its overall budget.

5.4 Where additional funding cannot be met from the SPCB's resources a bid for additional funding will be submitted to the Finance and Constitution Committee as part of the in-year budget revision process.

6. Any funding from the Officeholders' Contingency Fund shall be regarded as additional funding and should be applied only to the extent and for the purpose/s so authorised.

7. If, at any time following the authorisation of additional funding, the Commission is satisfied that the costs to be incurred are likely to be less than the sum requested, then the Commission must immediately advise the SPCB. Any contingency funding drawn down which is surplus to requirements must be returned to the SPCB. Any funding surrendered will be returned to the Officeholders' Contingency Fund.

8. If the Commission's application for contingency funding is refused then the Commission may submit a revised budget which will be considered in line with the budget process agreement between the SPCB, the Finance and Constitution Committee and the Commission.

## ANNEX A

### REQUEST FOR ADDITIONAL FUNDS FROM THE OFFICEHOLDERS' CONTINGENCY FUND

#### **Purpose of Funding**

The Scottish Human Rights Commission (SHRC) has an in-year additional resource requirement of **£180,000** in order to remain within budget at 31 March 2023. This includes a modest forecast underspend of approximately £20k to cover any minor unforeseen expenditure items that arise pre-year end.

#### Staff Costs

Additional staff cost budget is required for three temporary staff members who were in post at 1 April 2022 and departed the Commission in-year. It was previously assumed that funding for additional permanent posts would be sought by way of an independently prepared business case for 2022/23 which was not taken forward. In addition, the original 2022/23 budget bid assumed a cost of living pay award for 2022/23 which was less than the actual increase agreed by the SPCB with Trade Union partners.

As agreed with the SPCB, former Members of the Commission were provided with extra paid days to oversee the Commission's ongoing work during the transition period and the incoming members of the Commission, as determined by the SPCB, have been appointed with time commitments in excess of that provided for in the 2022/23 budget (an increase from 2.5 days/month to 4 days/month).

#### SPSO Start Up Costs

The Commission has entered an agreement to share services with the Scottish Public Services Ombudsman (SPSO) across a range of corporate activities. The SPSO has provided its estimate of the set-up costs including the time spent by its staff in 2022/23.

#### MYCSP Cut-over Testing

MYCSP has advised that the time required to perform assurance testing in order to place reliance on the SHRC's payroll provider following the proposal to share services with the SPSO.

#### Increase in audit fee for 2022/23 (£5k overspend)

Audit Scotland has confirmed that the Commission's audit fee will increase by approximately £5k from 2022/23

<b>Estimated Cost of Funding</b>	<b>£</b>
Staff costs (including restructuring)	<b>145,000</b>
SPSO Start Up Costs	<b>5,000</b>
MYCSP Retrospective Testing	<b>5,000</b>
Increase in audit fee for 2022/23	<b>5,000</b>
Forecast Underspend	<b>20,000</b>
<b>Total Funding Requested</b>	<b>£180,000</b>
<b>Additional Information (timing etc.)</b>	
<p>The financial year 2022/23 has been a period of significant transition for the Commission and this contingency application, taken together with the budget bid for 2023/24, is designed to ensure a stable staffing establishment and balanced budget thereby allowing the Commission to continue to fulfil its statutory functions going forward.</p>	
<b>Certified by (name): Andy Munro</b>	
<b>Office held:</b> Interim Chief Operating Officer	
<b>Date: 27 February 2022</b>	

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH PARLIAMENTARY CORPORATE BODY (SPCB) AND THE SCOTTISH PUBLIC SERVICES OMBUDSMAN (THE OMBUDSMAN) ON ACCESS TO THE OFFICEHOLDERS' CONTINGENCY FUND HELD BY THE SPCB**

1. This is a memorandum of understanding between The Scottish Parliamentary Corporate Body (SPCB), as provided for by section 21 of the Scotland Act 1998 (the 1998 Act), and the Scottish Public Services Ombudsman (the Ombudsman), as provided for by Schedule 1, paragraph 13 of the Scottish Public Services Ombudsman Act 2002 (the 2002 Act) in relation to access to the Officeholders' contingency fund held by the SPCB for exceptional expenditure incurred by the Ombudsman which can not be met from the agreed budget allocation for any given year.

2. Schedule 1, paragraph 13 of the 2002 Act, provides that the SPCB shall pay any expenses incurred by the Ombudsman in the exercise of her functions. The arrangements for budget setting are set out in the Memorandum of Understanding between the SPCB, the Finance Committee and the Ombudsman and relevant information is also contained in the Accountable Officer Memorandum and the Financial Memorandum Manual for Officeholders.

3. The SPCB has agreed that there should be a separate ring-fenced central contingency for use by the Parliamentary nominated Officeholders for any exceptional additional funding requirement which can not be met from their agreed budget allocation. Consequently it is agreed that the Ombudsman, to the extent deemed necessary and certified by the Ombudsman, as being a sum or sums for the purpose of undertaking her functions within the statutory framework provided by the 2002 Act may have access to the Officeholders' contingency fund.

4. Accordingly, the following procedure should be followed:-.

4.1 Where additional funds to the original budget for any financial year are required on an exceptional basis, the Ombudsman will submit to the SPCB for consideration an estimate of funds required at the earliest possible opportunity, explaining the purpose of the funding by way of an accompanying certification as provided for in the Annex to this memorandum.

4.2 Where there are insufficient funds in the Officeholders' contingency fund, then the SPCB shall consider whether it is possible to meet the additional funding from elsewhere in the SPCB's overall budget.

4.3 Where additional funding cannot be met from the SPCB's resources a bid for additional funding will be submitted to the Finance Committee as part of the in-year budget revision process. The Officeholder should expect to give evidence to the Finance Committee in support of any bid.

4.4 Any funding from the Officeholder's contingency fund shall be regarded as additional funding and should be applied only to the extent and for the purposes authorised.

4.5 If, at any time following the authorisation of additional funding, the Officeholder is satisfied that the costs likely to be incurred are less than the sum requested in paragraph 4.1 he shall advise the SPCB of the additional funds no longer required in order that the budget allocation can be returned to the SPCB.



## CERTIFICATION REQUESTING ADDITIONAL FUNDS FROM THE OFFICEHOLDERS CONTINGENCY FUND

### Executive summary

2. SPSO carries a small annual budget for legal costs (£12,000 this year) for casework and corporate advice. This does not include any contingency for court proceedings including sheriff court actions or judicial review proceedings in the casework challenges
3. SPSO is seeking £70,000 contingency funding for additional legal fees incurred in 2022-23 in relation to court action brought against the SPSO.
4. SPSO will seek to recover costs as far as possible pending any further decisions.

### Background

#### *Judicial review costs*

5. £50,00 of the £70,000 costs relate to an ongoing judicial review (JR).
6. Judicial review challenges are rare – the current challenge is only the second since SPSO was established in 2002. The challenge relates to a discretionary decision by the SPSO not to investigate a matter, which was taken in line with the SPSO's legislation.
7. The case is currently sisted pending a decision by the applicant about how to proceed and whether they wish to proceed to a full hearing, due on 16<sup>th</sup> March 2023. If the full hearing proceeds, there will likely be further costs be incurred in 2023-24, but these are currently unquantifiable
8. As indicated above, SPSO will seek to recover costs as far as possible.

#### *Sheriff court claims*

9. The remaining £20,000 relates to two actions in the sheriff court regarding alleged data breaches claims:
  - a. the first claim related to an acknowledged minor data recording error (recording of a single customer service complaint twice). In line with legal advice, SPSO made an offer of settlement. This was initially refused by the claimant, but accepted at a hearing. This matter has now been concluded.
  - b. a second claim has also been presented and is currently being progressed through the Sheriff Court. This is scheduled for a hearing in March. Our position is that there was no error in data processing. The Court has already acknowledged the importance of public bodies in defending claims where there is no perceived error.
10. In line with usual budgeting processes, SPCB will be notified of any additional potential legal costs incurred in 2023-24 in relation to this matter and additional costs will be absorbed within the existing budget as far as possible.

### Requirement

11. As set out above, SPSO is seeking £70,000 of legal costs in relation to court proceedings.

<b>S</b>	£70,000
<b>Total Funding Requested</b>	<b>£70,000</b>
<b>Additional Information (timing etc.)</b>	Contingency requirement in March 2023
<b>Certified by:</b> <b>Date:</b> <b>Office held:</b>	<b>Niki Maclean</b> <b>22/2/2023</b> <b>Director, Scottish Public Services</b> <b>Ombudsman</b>