



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 2 March 2023

Session 6



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PUBLIC AUDIT COMMITTEE

7th Meeting 2023, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Craig Hoy (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stephen Boyle (Auditor General for Scotland)

Pat Kenny (Deloitte LLP)

Richard Robinson (Audit Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament Public Audit Committee

Thursday 2 March 2023

[The Convener opened the meeting at 09:00]

Decisions on Taking Business in Private

The Convener (Richard Leonard): Good morning, and welcome to the seventh meeting of the Public Audit Committee in 2023. The first item on our agenda is a decision on whether to take agenda items 4 and 5 in private. Do members agree to take those items in private?

Members *indicated agreement.*

The Convener: The second item is a decision on whether to hold our next meeting, on Thursday 9 March, in private. Are we agreed?

Members *indicated agreement.*

Section 22 Report: “The 2021/22 audit of the Commissioner for Ethical Standards in Public Life in Scotland”

09:00

The Convener: Agenda item 3, which is our principal item of business this morning, is consideration of the Auditor General for Scotland’s section 22 report “The 2021/22 audit of the Commissioner for Ethical Standards in Public Life in Scotland”. I welcome our witnesses: the Auditor General, Stephen Boyle; Pat Kenny, director of audit and assurance at Deloitte; and Richard Robinson, senior manager at Audit Scotland. We have a number of questions to put to you about the report but, before we do that, I invite the Auditor General to make an opening statement.

Stephen Boyle (Auditor General for Scotland): Good morning, committee. I am presenting this report on the 2021-22 audit of the Commissioner for Ethical Standards in Public Life in Scotland under section 22 of the Public Finance and Accountability (Scotland) Act 2000.

The commissioner’s office plays a vital role in upholding public trust in ethical standards in public life, through investigations into the conduct of members of the Scottish Parliament, local authority councillors, lobbyists and members of public boards. It also oversees the process of appointments to public authorities.

Last year, I reported significant concerns about the operation of the commissioner’s office. Since then, the commissioner’s office has worked hard to address serious failings and it is clear that improvements have been made, but the dual tasks of meeting core business demands alongside addressing all the concerns raised in 2020-21, mean that pressures on the commissioner’s office will continue.

The commissioner’s office has now introduced some of the fundamentals of governance that every public body needs to have to operate effectively. It has also re-engaged with key stakeholders, including the audit advisory board and the Scottish Parliamentary Corporate Body, and reports full compliance with the on-going statutory directions that were issued by the Standards Commission for Scotland. However, concerns about the capacity to manage workload continued in 2021-22. I note that, in October 2022, the SPCB supported the request from the commissioner’s office for additional funding to help to address some of the matters that were identified in the previous year.

The complaints backlog remains high. The commissioner's office website currently reports that it will take up to eight months to conduct an initial assessment of a complaint. Although additional recruitment will help, it will take time to address outstanding complaints. Failure to process complaints in a timely way might affect public confidence in the process, both for individuals making complaints and those who are the subject of one.

A previously agreed restructuring exercise was reversed in the year, meaning that anticipated savings of around £450,000 will not now be realised. Given the pressures to address the backlog, alongside the reversal of the intended cost-saving restructuring, a focus on maintaining financial sustainability over the medium and longer term is needed in the commissioner's office.

I will continue to monitor progress and report publicly as necessary. My colleagues and I will do our utmost to answer the committee's questions this morning.

The Convener: Thank you. That was a useful laying out of the principal points in the report and some of the areas that we are keen to probe a bit more deeply. I begin by inviting Willie Coffey to put some opening questions to you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Auditor General. The section 22 report refers to a number of recommendations—22, in fact. I think that your report tells us that 10 are complete and, from my reading of it, another 10 are still in progress but others may not be being pursued. Will you give a summary of the progress on the recommendations and your view on whether the progress has been satisfactory?

Stephen Boyle: I am happy to start on that, and then I will bring in Pat Kenny. His audit identified the recommendations, and his annual report sets out in detail the progress that Deloitte judges has been made.

In summary, 22 recommendations were made, 10 have been implemented, 10 are works in progress and two are deemed no longer relevant—those were to do with the anticipated savings of £450,000 that I mentioned in my opening remarks and have now been judged as not applicable to tracking progress.

At a high level, the progress relates to establishing some of the fundamentals of governance that we have spoken about with the committee in previous years, such as an internal audit function, a business plan, staff training and a risk register. Some of the detail of that is set out in paragraph 10 of the report.

The work that is still to be done is on some of the staffing and workforce plans—I will come back to that and say a bit more about it, if I may—and other aspects of how the commissioner's office is functioning. Those include, for example, progress on the investigations manual, which is now in draft and, alongside that, engagement with key stakeholders. There has been some progress, but work remains to be done.

The commissioner's office has undertaken a significant workforce planning exercise that has led to the submission to the Scottish Parliamentary Corporate Body for additional resource for staffing to secure the effective running of the organisation and to address the backlog. In totality, we would say that progress has undoubtedly been made in the past 12 months.

I will pause and bring in Pat Kenny. I am sure that he will want to give you a bit more flavour.

Pat Kenny (Deloitte LLP): Progress has been on-going. One of the key outstanding matters was the full investigation manual. That is now complete and will be implemented from this month. It was the subject of wide-ranging consultation with the Standards Commission and local authorities, and it was benchmarked against the manuals of other investigatory bodies in the United Kingdom. It has also been subject to an internal audit review. That is now ready to launch.

The other major outstanding recommendation was on medium-term financial planning. Again, progress has been made on that since the section 22 report, and I understand that it will also be ready to go this month.

The commissioner's office is making good progress with recruiting the additional personnel that were approved by the Scottish Parliamentary Corporate Body. Individuals have been recruited to the investigatory team and corporate services. There is still progress to be made on recruitment to the public appointments team but, based on what I have seen, there is steady and on-going progress on the outstanding recommendations. The new auditor will assess that again during the next year's audit. I see good progress on the outstanding recommendations since the section 22 report.

Willie Coffey: Colleagues will probably pick up on the staffing issue and the £450,000, but do you get the sense that the progress that has been made is addressing the weaknesses that were identified? Are you confident and assured that what you have seen is doing what it has to do to get the organisation back into a good state?

Stephen Boyle: None of us should underestimate the scale of progress that was required on the basis of last year's report. Some fundamentals were absent from the

commissioner's office. We have talked about some aspects of governance, such as not having an internal audit function or an audit advisory board, and the breakdown in relationships, alongside the backlog in cases. Progress has undoubtedly been made, but there are significant challenges still to be resolved. Notably, there is the backlog and the concerns about what that might mean for public trust in the process.

Progress so far has given the office a platform with much stronger prospects of success. However, I would bring it to the committee's attention that this process has required a lot of the organisation over the past 12 months—the organisation has described addressing very substantial audit recommendations while delivering statutory functions as being like rebuilding in mid-flight. The organisation has done well, but it still has some work to do.

Willie Coffey: Will you revisit and continue to check progress, or is this the last that we might hear of the issue?

Stephen Boyle: I will keep an open mind on that. Pat Kenny and his colleagues at Deloitte have now finished their audit appointment in the commissioner's office. As part of the audit rotation arrangements, a new team has been appointed, and there is always an opportunity when a new auditor engages with an organisation, as that brings a fresh perspective. I await the new team's conclusions and judgments as we move into the autumn, and I will take a view then as to whether any public reporting is required.

Willie Coffey: Will anyone share with us information on whether the 10 recommendations are still in progress or have, by and large, been completed?

Stephen Boyle: I will follow my established process with the committee. If I decide not to do a section 22 report on a public body on the back of having done one in the previous year, I will write to the committee with the details and set out some of the progress and my rationale for why I have decided to report or not.

Willie Coffey: Okay—thank you.

The Convener: The action plan on the 22 recommendations and the charting of progress in the wider audit report are very useful for us. That gives us a factual presentation of how well things are going and where there are issues. We will come on to some of the issues that are identified in the action plan and that we think are outstanding. I turn to the deputy convener, Sharon Dowey.

Sharon Dowey (South Scotland) (Con): Good morning. In paragraph 15, the section 22 report states that the auditor has reported

“that issues remain where the SPCB and the Commissioner's Office need ‘to work together to address some of the specific governance issues identified’”.

Could you tell us more about those issues?

Stephen Boyle: I am happy to kick off, and then I will bring in Pat Kenny and Richard Robinson to say a bit more.

We have mentioned the scale of the challenge that existed in relation to the corporate body's relationship with the commissioner's office. There has been engagement over this year, first on the financial position of the commissioner's office through a new budget request, which was subsequently approved by the Parliament, for investment in the organisation. There has also been wider consideration, including this committee's engagement with the corporate body through evidence sessions and subsequent correspondence with the Presiding Officer, and there have been suggestions about wider oversight arrangements between the Parliament and its commissioners.

Clearly, it is a matter for the Parliament to determine what is most appropriate and what represents progress by striking the right balance between operational independence for its commissioners and providing a clearer and more effective channel for accountability and oversight. There are signs of progress on that front. As ever, the position will be tested on the rare occasions when there is stress on relationships and so on, but we are not in that situation at the moment. We have seen signs of progress that set out the relationship between the commissioner's office and the corporate body.

I turn to my colleagues to see whether they want to add anything about the wider governance relationship.

Richard Robinson (Audit Scotland): There are probably a couple of dimensions in the audit report. As is set out in last year's report, one relates to the breakdown in engagement and relationships. I think that the committee heard evidence from the SPCB last year about how to formalise the requirements for engagement in order to improve that element of governance.

The other dimension relates to internal checks and balances. The auditor's report mentions talking to the SPCB about identifying

“reporting routes in cases in which the threshold for protected disclosures is not met”.

In effect, is the SPCB comfortable that, if there were concerns about the internal operation of the office but the normal whistleblowing thresholds were not met, there would be clear reporting routes?

Those are the two dimensions.

09:15

Pat Kenny: The routes that staff can use if they are concerned about the office holder in the future have been re-emphasised within the organisation. For example, one route that has been emphasised involves going to Audit Scotland to raise certain concerns. The accountable officer of the ethical standards commissioner can also go to the accountable officer of the corporate body, and it has been clarified that there is a reporting route to the chair of the audit advisory board if there are concerns within the organisation.

There has definitely been progress in that respect. Lack of clarity was a major root cause of previous governance failure, so it was very important to rectify that. If I was continuing my audit role, I would be keeping a very close eye on that process to ensure that it beds in and is implemented effectively, because it is key that that be put right. Progress has certainly been made in that respect, but it is very important that the audit function continues to look at that issue.

Sharon Doweey: Will we continue to be updated on the issue?

Stephen Boyle: Yes. I reiterate my comments to Mr Coffey. There will be an audit this year, as always. The incoming auditor will assess whether progress has been made against previous audit recommendations. It will take a view on that, and so will the accountable officer and the commissioner. We are approaching the end of the 2022-23 financial year, so the commissioner's office will be preparing its annual report and accounts, as well as its governance statement, which is the section of the annual accounts where the accountable officer sets out their view on how effective the governance has been.

My report includes extracts from the 2021-22 governance statement. In this year's accounts, the accountable officer will want to provide an update and give their view on the progress that has been made on the audit recommendations. The auditor will form a view on that and, depending on progress, I will report either through a section 22 report or perhaps through correspondence with the committee, so you will have a clear audit judgment on progress.

Sharon Doweey: The section 22 report says, at paragraph 17, that directions were issued by the Standards Commission for Scotland. Do you have any information about how long they are likely to remain in place?

Stephen Boyle: I am not sure that I do. I will bring in Pat Kenny in a second.

The history leading up to the statutory direction was difficult. The issue was, in part, caused by the previous breakdown in relationships between the

commissioner's office and the Standards Commission. As we have reported, the judgment of the commissioner's office is that it has complied with all the requirements of the statutory direction, which remained in place up to 2021-22.

I turn to my colleagues for further detail on progress.

Pat Kenny: Some of the directions will be in place for another two years. There are three or four distinct directions. It is encouraging that the key or main direction—which is to investigate every complaint—will be in place only for the next six months before being looked at again. It is encouraging news that there is such a short window for that direction, but I think that several of the other directions will be in place for two years.

The Convener: Before I bring in Colin Beattie, I want to go back to the question that Sharon Doweey asked about the governance arrangements and the relationship between the SPCB and the office of the Commissioner for Ethical Standards in Public Life in Scotland. Pat Kenny talked about the new whistleblowing arrangements, and Richard Robinson mentioned the threshold and internal outlets for people inside the organisation to raise concerns. That is right.

However, there were other warning signs, were there not, that some things were not happening as they ought to be happening? We should not have simply relied on staff working in the organisation to point those out. In last year's section 22 report, you documented that, in 2016-17, 43 per cent of complaints against councillors and board members "were not pursued further", but by the time we get to 2020-21, 84 per cent of the cases that were lodged were not pursued. It was not just a matter of the people who worked day in, day out at the organisation having some concerns about the culture; presumably, there ought to have been some external monitoring of the quite big change in the way in which complaints were being processed. It comes back to the root point: this is about public trust and confidence in the whole system.

Stephen Boyle: There are a number of points to cover. I spoke about trying to strike the right balance. In the corporate body's correspondence with the Finance and Public Administration Committee and with this committee, evidence was given about the overall accountability arrangements for independent commissioners. It was said that the Parliament and its committees should have a clearer opportunity to exercise oversight and accountability while not impinging on the commissioners' independence.

You are quite right that some of the statistics ought to have rung alarm bells and been warning signs that led to queries and challenges from the

Parliament and the corporate body. We welcome the progress that has been made with regard to the intended wider and stronger arrangements to support parliamentary oversight of commissioners.

Inevitably, it will be a matter of balance. Commissioners should be independent and feel able to exercise their statutory functions appropriately, but if there are evident signs from whatever suite of measures are in place—performance indicators or staff whistleblowing arrangements—those should all serve as appropriate checks and balances.

I agree with you that, as last year's report showed, there were clear signs of the organisation being under stress.

The Convener: We will come on to the outstanding cases that are sitting with the commissioner's office, but I will bring in Colin Beattie first.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Auditor general, I would like to expand on what the convener has been saying about governance and so on.

Exhibit 1 in your report shows some reporting lines. According to the exhibit, the ethical standards commissioner reports to two bodies, depending on the source of a complaint—either to the Standards Commission for Scotland or to the Standards, Procedures and Public Appointments Committee. What oversight of the Commissioner for Ethical Standards in Public Life in Scotland do those bodies have?

Stephen Boyle: Exhibit 1 sets out the relationship between the office of the Commissioner for Ethical Standards in Public Life in Scotland and its key stakeholders. I will come to your oversight question in a moment, Mr Beattie. The exhibit illustrates the complexity of the reporting lines. It depends on the subject matter—if a complaint relates to MSPs, lobbyists or public appointment processes, it goes through to the Standards, Procedures and Public Appointments Committee of Parliament; if it relates to members of public boards or local authority councillors, it goes to the Standards Commission for Scotland.

One of the clear judgments that we can make from last year's report is that oversight and reporting did not work effectively, and, although we welcome the progress this year, those issues still require careful consideration. We welcome the fact that the Presiding Officer herself is taking an interest in this alongside the chief executive of the Parliament. I will continue to use the word "balance", if I may, Mr Beattie, in relation to the independence of the commissioners. They must be able to carry out their functions as intended, but with sufficient checks and balances alongside that work.

From what I have read of the correspondence, some of the issues go beyond the need for a consideration of the office of the Commissioner for Ethical Standards in Public Life in Scotland to a wider consideration of all the independent commissioners who are appointed by Parliament. It is clear from reading the *Official Report* of the Finance and Public Administration Committee meeting at which the Scottish Parliamentary Corporate Body gave evidence that more commissioners could be coming into the Parliament's arrangements. Therefore, this is an opportune moment to say that the Parliament must be satisfied with the balance of independence and oversight. The split of the oversight is set out and those arrangements have been tested.

To finish on that, one example that we set out in last year's report could not be resolved by the Standards Commission, because it related to local authority members and public boards, other than by issuing a statutory direction. That falls at one end of a spectrum of interventions that a key stakeholder could make. There ought to have been other opportunities for oversight, especially by Parliament.

Colin Beattie: Do we know what the Standards Commission for Scotland and the Standards, Procedures and Public Appointments Committee understand by "oversight"? Is it the same as what we understand by "oversight" or are they just passively receiving reports from the Commissioner for Ethical Standards in Public Life in Scotland as and when?

Stephen Boyle: There is a limit to my understanding, and it is probably not appropriate for me to speak on behalf of the Standards Commission for Scotland or the Parliament's SPPA Committee. However, I do not think that they are passive recipients—certainly not the Standards Commission for Scotland. As we set out in last year's report and have updated the committee on today, those relationships broke down and, rather than being passive about the situation, the SCS issued that statutory direction to safeguard its interests in relation to its own statutory functions. The committee may wish to explore that point further with those two organisations.

Colin Beattie: Still looking at exhibit 1, under the SPCB, you have an advisory audit board. Can you describe what that is and what it does?

Stephen Boyle: The advisory audit board of the corporate body is akin to an audit committee. It will receive reports from the internal and external auditors but its primary purpose is to advise the principal accountable officer of the clerk to the Scottish Parliament to support approval and consideration of the annual report and accounts. The advisory audit board's business goes wider

than that—it will also consider risk management arrangements and, as mentioned, audit reports. I think that the best description is that it is the audit committee of the SPCB.

Colin Beattie: In exhibit 1, there is a dotted line from the advisory audit board, with the comment,

“Members drawn from the SPCB’s own Advisory Audit Board”.

Does that mean that the individuals who are appointed to do all the investigations and so on are also members of the advisory board?

Stephen Boyle: No, there is a slight nuance to that, and I will bring in Pat Kenny to say a bit more about some of the details.

Ultimately, the re-established advisory audit board of the commissioner’s office, while sharing membership with that of the SPCB’s AAB, is not tasked with investigations. It is concerned with the internal governance and running of the commissioner’s office rather than having a direct operational function to consider, if I have understood your question correctly, Mr Beattie, about—

09:30

Colin Beattie: [*Inaudible.*]—members are doing in the office of the Commissioner for Ethical Standards in Public Life in Scotland?

Stephen Boyle: Ultimately, you would describe them as non-executives—they are non-executive members that the Parliament appoints to support the principal accountable officer in respect of audit risk and internal audit matters. Their work is not about the day-to-day running of the organisation; rather, it is about effective governance.

Before I bring in Pat Kenny, who can say a bit more about this, I will add that one of the fundamental points of last year’s report was that the AAB was not operating. In effect, this was an organisation that did not have an audit committee—which is at the core of good governance—to support the commissioner and the accountable officer to discharge their functions. We welcome the fact that it is back in place and operating as intended now, but that illustrates the scale of the breakdown of governance. It is almost unheard of for a public body to operate without an audit committee or an advisory board. Pat Kenny can go into that in a bit more depth.

Pat Kenny: Typically, the advisory board would, for example, approve the internal audit plan—the areas of the internal audit function that we are looking at. It would review internal and external audit reports to assess whether they were fit for purpose and make observations and suggestions. That is the typical role of an advisory board, and the auditors would be accountable to the advisory

board members. However, as the auditor general mentioned, the key issue that was a root cause of a lot of other issues was the breakdown of the relationship. The advisory board simply did not meet under the previous commissioner, and that was a major cause of the failure.

Going back a bit, I had six years of audit appointments for all the commissioners in Scotland and my feeling, as I leave that role, is that the role of the commissioner is very distinctive. The advisory board has some similarities with an audit committee, as the auditor general mentioned. However, in my experience, it does not have the full power of an audit committee such as you would see in other parts of the public sector.

I was struck by something when I took over the audit appointments for the commissioners. Because of the independence dimension, I had never fully experienced anything quite like it before, despite wide public-sector experience. The commissioners were keen to emphasise their independence to me and that took on several manifestations. They are smaller bodies, but they are high-profile bodies and they are different and distinctive. My feeling as I leave the role is that it could be worth having an independent review of the governance model end-to-end between the commissioners and the SPCB because of that distinctiveness—that difference, which you do not see in other parts of the public sector.

Colin Beattie: Did the SPCB receive reports from the advisory audit board? I understand that the AAB within the office of the Commissioner for Ethical Standards in Public Life in Scotland failed to meet and did not do its job, but presumably the advisory audit board that is linked to the SPCB was still functioning and the SPCB was receiving reports. What kind of reports was it receiving?

Stephen Boyle: Pat, do you want to pick that up?

Pat Kenny: In the year in which they were not functioning, there was no formal reporting link between the ethical standards advisory board and the SPCB, and that was part of the issue. That was one of the red flags for me in that year of audit. I can double check exactly what happened there, Mr Beattie, but I do not think that there was any reporting, in that sense, in that particular year.

Colin Beattie: What reporting would you have expected?

Stephen Boyle: Given that they have shared membership—or ought to have—there should have been an escalation arrangement. A member sitting on the AAB of the commissioner’s office should have had the opportunity to highlight to the SPCB’s AAB that there were issues of concern. This goes back to the conversation with the

convener about the need for the parliamentary corporate body to take its own view about what checks, balances and oversight arrangements it wants from its commissioners.

It perhaps speaks to the wider point that Pat Kenny is making that these are unusual governance arrangements—although the committee will be interested to know that the Scottish Government also has such an arrangement through its audit and assurance committee. It, too, is advisory to support the principal accountable officer, so it is not quite what you would recognise as a more traditional audit committee. However, there should be an opportunity for escalation to the parliamentary corporate body's own AAB—and beyond, if necessary—for the commissioners' advisory audit boards.

Colin Beattie: Has that been put in place now?

Stephen Boyle: Those arrangements are being proposed along with the suggestion to the Conveners Group that there is wider oversight. We would need to explore further with Parliament that those are the precise requirements, but it is clear that this matter is being taken seriously and that governance is now in a stronger position. I have a slight caveat in that we have not yet encountered an example of where things have been tested to that extent with scenario and stress testing to make sure that all parties are clear about roles and responsibilities.

Colin Beattie: In your report, you talked about

“The dual task of meeting core business demands alongside progressing the remaining auditor recommendations means that significant pressures on the Commissioner's Office are likely to continue in the coming year.”

You mentioned that point in your opening remarks as well. Could you expand on some of those pressures and what action needs to be taken to address them?

Stephen Boyle: I am happy to do that. It is all well and good for us to recognise those pressures, but it is also welcome that the commissioner's office is reporting—I refer back to the “in flight” analogy that I mentioned a few minutes ago. It has taken a lot for the organisation to recover to the position where it is rebuilding its relationships with external parties and with its staff and discharging its statutory functions as intended.

The organisation has work to do, as we set out in exhibit 2 in relation to the scale of complaints that have been received, together with its reported backlog. Our report sets out that there is a nine-month backlog for an initial complaint to be assessed. The commissioner's website is reporting some progress, saying that it is now taking eight months for an initial assessment.

However, that still contrasts with a wait of a number of weeks, which was the case before the pandemic and the other organisational challenges.

On progress, it is important to stress that the organisation has undertaken a strategic workforce review, which led to the conclusion that it was under-resourced and understaffed in relation to being able to discharge its functions. It needed an operating staff of around 20 people and, at that point, it was 7.4 whole-time equivalent staff short of that number. That formed the fundamentals of its budget submission to the SPCB, which has since been approved by Parliament. It still needs to recruit to the new posts and provide training and engagement for new colleagues to deliver on-going statutory work and, at the same time, claw back some of the backlog that has been growing.

Colin Beattie: To some extent, you have addressed my second question, which is about staffing and capacity concerns that were evident in 2021-22. Are you satisfied that the workforce capacity has now been resolved?

Stephen Boyle: That is as much a question for the commissioner's office as it is for me. Those concerns were the basis of the budget submission for the Scottish Parliamentary Corporate Body's and Parliament's consideration. The staffing cohort has grown by almost 50 per cent, which is hugely significant and quite at odds with what one would expect, given current budgetary constraints. Clearly that was judged to be needed in order for the commission to operate effectively, to discharge statutory functions and to make inroads into the backlog. From an auditor's perspective, we will continue to monitor and assess progress over the year ahead.

Sharon Dowey: You mentioned the workforce planning exercise in your reply about the workforce to Colin Beattie. That revealed that the commissioner's office would not be able to meet the statutory functions or to address the recommendations that were made in your 2022-21 audit report. Emergency proposals for additional funding were submitted to the SPCB in May 2022 and funding was granted in October 2022, which is quite a long time for something that is described as an emergency proposal. Do you have a view on that?

Stephen Boyle: I am not familiar with the reasons why there was a gap between the proposals coming from the commissioner's office and the SPCB's consideration and approval of them. I can only assume that it was deemed to be appropriate that the proposals sat within Parliament's overall consideration of the corporate body's budget submission for 2023-24.

There are two elements to the workforce component. First, as we set out in the report, the

commissioner's office had recruited to vacancies in the staffing structure and so had gone some way towards achieving full staff complement. The second element will be more substantial. It might be that the SPCB is better placed to answer questions about its consideration and why it felt that it was better to wait for the annual budget-setting process than to address the proposal in the autumn budget review.

Sharon Dowey: The delay in confirming the funding would have had an impact on actioning the recommendations in the report.

Stephen Boyle: It is fair to say that there is a correlation between the two things. The commissioner's office noted the scale of the challenge that it has been dealing with in the current year, in delivering the statutory function while also addressing audit recommendations. We expect to see in 2023-24 significant inroads being made in terms of compliance and addressing the backlog, as the office recruits into the new staffing structure.

The Convener: You mentioned exhibit 2 in one of your answers. Craig Hoy has questions on that.

Craig Hoy (South Scotland) (Con): I want to get a sense of whether we are turning the corner on the backlog. Exhibit 2 on page 7 of the report provides information about the increase in complaints that were still open at year-end in 2020-21 and 2021-22. It shows an increase of 122 in the number of complaints that were still open that related to local councils and boards, and an increase of 22 in cases relating to MSPs. You just mentioned the 2022-23 figures. Those backlogs relate to 31 March 2022. What is your impression of whether the backlog is falling now?

Stephen Boyle: That the backlog is falling is certainly what the commissioner's office is reporting on its website. The backlog that we reported was nine months; the office is now advising the public that it has fallen to eight months.

09:45

Clearly, there has been some progress made, but there is still a way to go. I mentioned in my introductory remarks that while a backlog of that extent remains, it risks challenging the trust and confidence in the process of people who make complaints and those who are the subject of complaints. There is a small sense that there has been progress, but clearly we all want the corporate body's investment in the organisation for increasing the staff complement to address the backlog more quickly over the course of 2023

Craig Hoy: You have talked quite extensively about staffing restrictions and budgets, but I want

to reflect on paragraph 22 of the report, which states that all vacancies bar one have now been filled. However, when discussing the complaints backlog, paragraph 25 states that

"While additional recruitment will help, it will take time for this to be completed".

Does that mean that more additional posts have been created. If so, how many, and is a recruitment exercise currently under way?

Stephen Boyle: Those are separate things. Paragraph 22 refers to the previously agreed staffing structure and vacancies that had arisen, which was one of the factors that contributed to the issues in the organisation. All the posts under the previous structure have now been filled. On the emergency budget proposal that the deputy convener referred to, the SPCB and Parliament have agreed to increase the staffing cohort of the commissioner's office by 7.4 additional whole-time equivalents. That represents significant growth in the organisation; the recruitment to fill those vacancies is currently under way.

Craig Hoy: For the public, elected members and board members to have confidence in the system, we must see sustained improvements in performance. Your report states that the commissioner's office is planning to introduce performance indicators to track complaints handling, which will be introduced by March this year. Is that work going according to plan; will the deadline of March 2023 be met?

Stephen Boyle: I will ask Pat Kenny to pick that question up, if he has more detail.

Pat Kenny: I am pleased to confirm that the KPIs are part of the new investigations manual that will be finalised this month. It has been the subject of intensive consultation. There are clear KPIs for stage 1 and stage 2 assessments, with targets that will be implemented from this month having been set for each stage of the investigation process.

Craig Hoy: I have a final question that, again, asks for a somewhat crystal-ball projection. What would be an acceptable level of backlog, when the commission is compared with similar institutions?

Stephen Boyle: I need to take that question away and get back to the committee in writing on how the commission compares with standards commissions other parts of the UK and in jurisdictions more widely. I am happy to do that.

As for the commission's own performance, I mentioned already this morning that, before the organisational issues that were documented last year, and on which you have been updated today, the backlog was a number of weeks as opposed to the current eight to nine months.

In the report that we are considering today there is a foundation for progress to re-establish the commissioner's office. It has done well to address the audit recommendations. We expect to see the investment that the SPCB has made in additional staff making inroads into the backlog quickly over the course of this year.

The Convener: I want to cover a couple of areas before we close. One is in the table in exhibit 2 that tells us about the rates of complaints. I must say that one of the things that struck me was about the 1,227 elected councillors in Scotland. That number does not include board members, who can be added to that category. They are facing 146 complaints. However, the 129 MSPs are facing 760 complaints. Why is there that difference?

Stephen Boyle: I can only speculate about the rationale that draws members of the public to raise complaints about members of the Scottish Parliament or elected members of local authorities and public boards. I assume that the profile and the reach of members of the Scottish Parliament are such that they bring more attention than those of elected members of local authorities and public boards. My speculation is possibly not very helpful.

The Convener: Yes—I understand that you do not, as an auditor, want to speculate. We are very flattered by what you have just told us about our profiles.

However, the serious point is one that I made earlier: when the organisation appeared to be in some kind of crisis, one of the measures of that was the extent to which cases were not pursued. I have cited the example of complaints against councillors, 84 per cent of which were not pursued. Do you have an up-to-date figure for cases that are not being pursued?

Stephen Boyle: The KPIs are set out in the report. Pat Kenny might have more detail, so I will turn to him in a moment.

A point that is aligned with that—it is perhaps worth reiterating something that came up in evidence last year—is that the commission sought legal advice to test whether cases that had previously been adjudicated on could be revisited. The advice was that, under statute, they could not be revisited. It matters that, as we go forward, the process is right in order to re-establish the trust and confidence of the public in the totality of the process. If Pat Kenny has more details, he can share them with you. If not, we can get back to you in writing.

Pat Kenny: We can get back to you with the specifics, but my understanding is that the figure is now more in line with what one would expect

based on historical percentages. There has been a change back to the norm.

The Convener: Okay. That is helpful.

You mentioned a situation that I certainly raised last year; other members of the committee raised it as well, I think. It is our concern about what I think is referred to in the audit report as “*functus officio*”, which is a Latin legal term used in reference to people whose cases were discarded—maybe they were part of that 84 per cent—not having the right to resurrect their claims: those complaints are dead. Does that not raise wider questions about public confidence in the system and whether justice was served on those people? Can you comment on that?

Stephen Boyle: My judgment, on receipt of Pat Kenny's audit report last year, to raise a section 22 report was made primarily on the basis that Parliament and the public would be made aware of the situation, and was in order to restore trust and confidence that an important function that is undertaken on behalf of the people of Scotland exists for a reason. The office was not operating effectively.

There is perhaps some regret that the commissioner's office is not able to revisit those cases, because undoubtedly it takes a lot for a member of the public to raise a concern, whether it is about a member of a public board, a councillor, and MSP or a lobbyist. For people to have confidence that their complaint either was or was not one of the ones that were deemed to be handled properly will, no doubt, require effective communication from the commissioner's office to reassure the public that arrangements are now operating as intended.

The Convener: Those people may, indeed, seek their own legal advice on that interpretation.

Another thing that rang a bit of an alarm bell with me was the fact that the management update on the recommendations in this area included the excerpt:

“We took our own legal advice and concluded that we could not re-open investigations on the basis of the legal principle ‘*functus officio*’. We also concluded that there would be no value in conducting a lessons learned process.”

Why was that conclusion arrived at?

Stephen Boyle: Do you have a page reference?

The Convener: I am looking at recommendation 3.4 in the action plan.

Stephen Boyle: I see it. The legal advice is as noted. Pat Kenny might want to say a bit more about the auditor's judgment in respect of that. My take on it is that the organisation has changed

fundamentally since its period of challenge. There is a new commissioner and a new acting accountable officer, and governance arrangements that were not in place have been re-established. I could go on—there are also new business and strategic plans.

The organisation has a very clear direction of travel in complying with its statutory functions and addressing the issues at hand. Overall, given that relationships are being rebuilt and the oversight that we have talked about this morning is being carried out by the SPCB, many of the components of learning lessons are happening, even if the management judgment is that an exercise labelled as such is not necessary. It is clear to see that all the evidence before the committee shows that there has been a response to the events that took place. Although it is not being called “a lessons learned process”, it is clear to see that, in the round, that is what has been happening.

That is my take. I will pass over to Pat Kenny for more detail.

Pat Kenny: I agree totally with the Auditor General. We made that recommendation on lessons learned before we fully understood the degree of change within the organisation under the new commissioner. I am satisfied with how the organisation has taken the recommendations on board and with the progress that has been made. As the Auditor General said, in effect, the lessons have been learned.

The Convener: One of the issues that arose last year concerned the separation of the commissioner from the position of accountable officer. What is the current status on that?

Stephen Boyle: Those arrangements have continued. I am sure that the committee will know that a permanent commissioner, Ian Bruce, was appointed in January. He had been acting commissioner. Pat Kenny might be able to help me here, as I have forgotten the previous job holder’s title; one of the senior officers in the commissioner’s office had been acting as accountable officer.

As for forward arrangements, I understand that the roles will continue to be separate, but I will check that with colleagues.

Pat Kenny: That is my understanding.

The Convener: Pat, you have shared your experience of dealing with commissioners’ offices over many years. Is it usual for there to be a split between the roles of commissioner and accountable officer?

Pat Kenny: It is not the norm. I think that it was applied in this case because of the very specific issues that were relevant to the organisation. However, I think that it might be worth

reconsidering that and looking at what happens with other commissioners. I can definitely see the argument for the commissioner and the accountable officer being the same person.

The Convener: Auditor General, do you have anything to say about that?

Stephen Boyle: There are pros and cons, convener. Outside the realms of commissioners, there are one or two other examples of such separation in public bodies in Scotland. For example, although the keeper of the registers of Scotland is, in effect, the chief executive of the organisation, they are not the accountable officer by virtue of statute, because they are part of the Scottish Administration. That is in order to manage what could be perceived to be conflicts of interest. There are isolated examples of the most senior official not being the accountable officer.

In this case, I do not think that separation is an unhelpful consequence, particularly given that there are statutory functions. I am here to offer advice, and the issue of whether the new model is operating as intended will be kept under review.

The Convener: If anyone were to take up Pat Kenny’s recommendation of an end-to-end review, that issue might be worth considering. From the committee’s point of view, it might be useful if we were able to get data on the accountable officer/commissioner role in the various commissions that are accountable to Parliament. It would be useful for us to have sight of that, because the position of accountable officer is in the Scottish public finance manual as a designated position and is, invariably, I think, the person who is the most senior official in the organisation.

10:00

Stephen Boyle: That is right. Of course, they are personally accountable for the effective operation of the organisation and the effective discharge of public funds. We would be very happy to work with the committee, to share further details on the commissioner’s arrangements and, indeed, to engage further with the SPCB on its intentions.

The Convener: Thank you.

My final question is about an issue that Pat Kenny mentioned earlier on. We were a bit concerned about the medium-term financial planning arrangements. We were told in the action plan report that action on that was outstanding. We were struck by the expression that, in the management’s view,

“this is considered a low priority”,

to which our response was, by whom? To us, medium-term financial planning seems pretty important in ensuring the sustainability of an organisation such as a commissioner's office.

Stephen Boyle: I will say a word about that before bringing in Pat Kenny.

Yes, medium-term financial planning is important. In our section 22 report, we have noted the need for a medium-term financial plan to feature prominently in the actions of the commissioner's office in the year ahead. We are not querying the organisation's financial sustainability in the short term, but it matters—you would expect to hear this from us—for all public bodies to have a medium-term financial plan so that they can explore scenarios and look at how they will resolve them, and to ensure that the plan is appropriately connected to their workforce and wider business planning arrangements.

With regard to the phrase "low priority", I think that I am right in saying—although Pat Kenny can correct me if I am not—that that is sometimes the audit view of the prioritisation of recommendations. Pat Kenny can say as much as he wishes about that.

Pat Kenny: I think that the organisation is making progress and that it is looking for templates from similar organisations in other parts of the public sector with a view to developing a medium-term financial plan.

As I said, I have six years' experience of commissioners' offices and, to be frank, there is often not a great deal of enthusiasm for medium-term financial planning. Typically, you would get the response, "Oh, we only get one-year budget settlements, so what is the point of this?" I have tried to emphasise to commissioners that I think that it is very important from a governance point of view that they engage in creating a medium-term financial plan.

However, across the public sector, it is sometimes difficult to convince smaller organisations with a limited financial planning horizon of the merits of medium-term financial planning. That is part of the role that, as auditors, we must continue to undertake, to make sure that they get over the line in completing a medium-term financial plan.

The Convener: Thank you. I think that it is right that we leave the last word to you, Pat, because it has felt a bit like an exit interview, given the candour with which you have shared your honest assessment of what is going on out there. I found that extremely useful.

I thank the Auditor General, Richard Robinson and Pat Kenny for their evidence. We have found it a very useful session. As a committee, we will

consider our next steps. Thank you for your contributions this morning.

10:04

Meeting continued in private until 11:39.

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