



The Scottish Parliament  
Pàrlamaid na h-Alba

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Dear Stuart,

**CONSIDERATION OF PETITION PE1489**

Thank you for your letter of 6 November 2013 seeking the SPCB's views on the above petition about the Scottish Public Services Ombudsman.

Please find attached as an annex to this letter the views of the SPCB on the points raised by the Committee which we hope will enable the Committee to reach a view on the petition.

Yours sincerely

**Judith Proudfoot**  
**Secretary to the Scottish Parliamentary Corporate Body**

**Q1 – what are your views on what the petition seeks and the discussions that took place at the meeting on 29 October?**

1. The SPCB and its officials have corresponded on numerous occasions with the petitioner. It is clear from the correspondence that the petitioner's interpretation of the provisions of the Scottish Public Services Ombudsman Act 2002 relating to governance and the role of the SPCB differ from those of the SPCB.
2. The Committee may wish to be aware, by way of background, that the issue of corporate governance of the Ombudsman and other officeholders was considered by Audit Scotland in 2006<sup>1</sup>, the Finance Committee in 2006 (Inquiry into Accountability and Governance<sup>2</sup>) and the Review of SPCB Supported Bodies Committee (RSSB Committee) in 2009<sup>3</sup>. The recommendations of the RSSB Committee were legislated for by the Scottish Parliamentary Commissions, Commissioners etc. Act 2010<sup>4</sup>.
3. The 2010 Act increased the SPCB's powers in relation to a number of governance issues, including funding, staffing, office location and commenting on draft strategic plans. None of these impacts on the functional independence of the Ombudsman. As the Committee will be aware, legislation provides that the Ombudsman in the exercise of his functions is not under the direction or control of any member of the Parliament, any member of the Scottish Government or any member of the SPCB.
4. The Ombudsman accounts to the Parliament through the publication of a 4 year Strategic Plan and the laying of an Annual Reports, which provide information on the exercise of the Ombudsman's functions in the previous 12 months, and his investigation reports. Committees can take evidence on these.
5. The RSSB Committee recommended that the Ombudsman should be seen to be accountable to the committees of the Parliament. However, given the Ombudsman's statutory, functional independence, this does not mean that committees can consider decisions taken by the Ombudsman on individual cases. Committees are not adjudication bodies. Any challenge to the SPSO's decisions can therefore only be through the Courts.
6. Members of the Committee may have noticed that in recent months the Ombudsman has started to issue subject related reports. These contain key messages, information and analysis of complaints about individual sectors, for example covering local government, health, and prisons.
7. Given the wide range of public authorities covered within the Ombudsman's remit this enables parliamentary committees to seek evidence from the Ombudsman specifically on matters that fall within the committee's remit. We are aware that the

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<sup>1</sup> <http://archive.scottish.parliament.uk/business/committees/finance/reports-06/fir06-07-Vol02-03.htm#asocssas>

<sup>2</sup> <http://archive.scottish.parliament.uk/business/committees/finance/reports-06/fir06-07-Vol01-00.htm>

<sup>3</sup> <http://archive.scottish.parliament.uk/s3/committees/rssb/reports-09/rssb09-01.htm>

<sup>4</sup> [http://www.legislation.gov.uk/asp/2010/11/pdfs/asp\\_20100011\\_en.pdf](http://www.legislation.gov.uk/asp/2010/11/pdfs/asp_20100011_en.pdf)

Ombudsman will shortly be appearing before the Local Government and Regeneration Committee and on a date still to be agreed, the Health and Sport Committee.

8. These sessions provide Committees with an opportunity to be informed at first-hand about trends that are emerging and to comment on progress towards public services reform in general. It is recognised that the Ombudsman will have considerable insight into how public services are performing and improving, through his investigatory work and consideration of complaints.

9. The Ombudsman's first 4-year Strategic Plan covers the period 1 April 2012 to 31 March 2016. It sets out how he proposes to perform his functions, his objectives and priorities, and a timetable and estimates of the costs of doing so. Information about performance in relation to the 5 objectives for the first year (April 2012 to March 2013) are included in the Ombudsman's latest Annual Report. As this is a relatively new process, it will take some time for the gathering of information to demonstrate trends in performance.

10. We note that the petition calls for action that will ensure compliance by the Ombudsman with his parliamentary remit. The SPCB's view is that the Ombudsman meets his statutory duties in relation to accountability to the Parliament by publishing his 4-year Strategic Plan, laying reports (annual and investigation), and by submitting his budget bid to the SPCB for approval. We would suggest that no further action is required to ensure compliance by the Ombudsman with his parliamentary remit.

11. The SPCB's role in considering the Ombudsman's budget submission forms part of the wider SPCB budget bidding process which is examined annually by the Finance Committee. The Ombudsman's budget was considered by the SPCB in October and further information was sought from the Ombudsman about the work he was undertaking in an effort to reduce the number of complaints coming to his office.

12. This is an example of the SPCB's challenge role in relation to funding. Given the economic climate, the SPCB has been working with the Ombudsman to secure budget reductions in line with other public sector bodies. Since 2010, funding to the Ombudsman has been reduced by 15%.

13. The SPCB takes seriously its statutory duty in relation to officeholders, including the Ombudsman, and disagrees with the petitioner's findings of "*delinquent parliamentary governance*".

**Q2 - What is your response to Angus MacDonald MSP's suggestion for a body similar to the Scottish Commission for Public Audit to oversee the SPSO?**

14. This issue was considered in 2009 when the Parliament established the Review of SPCB Supported Bodies Committee (RSSB Committee) whose remit was to consider the governance arrangements for bodies such as the SPSO. The Committee specifically considered the suggestion of a role for the SCPA as part of its review and reached the conclusion that the SPCB should retain its overall governance role in respect of the Officeholders and increased the SPCB's powers in relation to various administrative issues including budgetary approval powers.

15. These recommendations were enacted as part of the Scottish Parliamentary Commissions, Commissioners etc. Act 2010. In reaching its conclusions, the RSSB Committee noted the evidence that had been gathered as part of earlier inquiries and reports undertaken by the Finance Committee and Audit Scotland on the arrangements for supporting officeholders such as the SPSO. In its inquiry the Finance Committee noted:

*“Given that transferring responsibility for commissioners to a body other than the SPCB would require changes to legislation, then on a practical level, scrutiny should remain with the SPCB at least in the short to medium term. However, the Committee has also taken into account the experience built up by the SPCB and concerns about diluting the focus of the SCPA. Therefore while there might be some potential advantages in transferring responsibility to the SCPA, the Committee felt, on balance, that responsibility for commissioners and ombudsman should also remain with the SPCB in the longer term.”*

16. The Finance Committee also noted a number of structural, legislative and reporting issues that would arise as well as a concern that adding these new responsibilities could dilute the SCPA's original focus as set out in the Public Finance and Accountability Act 2000.

17. We consider that there has already been significant parliamentary scrutiny and consideration of the role of the SPCB and in these circumstances it is our view that the current arrangements should continue.

**Q3 - What is your view on the petitioners' suggestion of a sub-committee to report to the Local Government and Regeneration Committee or to the Scottish Parliamentary Corporate Body?**

18. The SPCB would not support such a move. Under the Scottish Public Services Ombudsman Act 2002 and the Scottish Parliamentary Commissions, Commissioners etc. Act 2010 the SPCB has statutory functions to undertake in respect of the Ombudsman. These functions have been given to the SPCB by the Parliament and there is no mechanism to delegate these functions to another body or sub-committee.

19. We are also aware from the petitioner's evidence that he envisages a sub-committee with non-elected members. That would be a new form of parliamentary institution and would not sit very well with the Ombudsman being accountable to the Parliament.