Dear Mr McNulty

Accountability and Governance Inquiry

Thank you for your letter of 7 June and for the opportunity to provide supplementary information to the Committee as part of its inquiry.

In the oral evidence session on 6 June members of the Committee explored the question of the appropriate balance between accountability and independence. For clarity it might be helpful if I summarise my approach to this issue as it affects my role as Ombudsman and Accountable Officer.

There should be no ambiguity about my accountability in terms of budgetary control and the management of public resources. As Accountable Officer I have specific responsibilities that are subject to external audit and the Scottish Public Services Ombudsman Act 2002 sets out my financial accountability. In my written evidence I outlined the way in which this operates at present. I re-emphasised the points about financial accountability when giving oral evidence.

However, I also pointed out that accountability can and should be demonstrated in other ways. I have a duty to lay an Annual Report and reports of my investigations before Parliament. My office has also sought additional methods of providing feedback to Parliament on the lessons that can be learned from investigating complaints, for example through giving evidence to Parliamentary Committees and in the monthly Commentaries on our investigation reports. In addition, I publish both our strategic objectives and our current Business Plan in my Annual Report and these form the basis for budget submissions to the SPCB.

While welcoming ways of enhancing these different aspects of accountability, I am also mindful that a key principle underpinning the role of an Ombudsman is that of independence. In its submission to the Committee, the British and Irish Ombudsman Association (BIOA) drew attention to the criteria for the use of the term ‘Ombudsman’, stating ‘those criteria are the full operational independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness; and public accountability’. The SPSO Act protects such operational independence as detailed in Schedule 1, Section 2(2):

‘The Ombudsman, in the exercise of that officer’s functions, is not subject to the direction or control of:

(a) any member of the Parliament,
(b) any member of the Scottish Executive,
(c) the Parliamentary corporation.’

The principle of independence is, therefore, fundamental in terms of carrying out the functions of the role of Ombudsman and in making judgements on individual cases. It is at the heart of why the office of Ombudsman was first created. The office provides a route for members of the public to raise complaints about public bodies when they feel they have suffered an injustice as a result of poor administration or service failure without having to take their grievance to court. An Ombudsman attempts to level the
playing field in this respect while at the same time not being on the side of the complainant or the body complained about in arriving at a judgement. In this sense the role is quasi-judicial and part of the administrative justice system. It is crucial that such independence and impartiality can be demonstrated so that public confidence and the confidence of bodies under jurisdiction can be maintained.

In summary I believe that it is possible to achieve appropriate accountability without threatening the jurisdictional independence of my office. The Committee's inquiry has afforded the opportunity to outline ways in which the processes can be more explicit and transparent and I welcome the options that are being put forward to strengthen existing arrangements.

As I have made clear in my written and oral evidence the issues of accountability and independence have to be considered too within the wider governance framework in Scotland. The lack of a design framework in the past has given rise to some of the concerns expressed by the Committee. In moving forward there has to be a better understanding of the respective roles of different offices and the way in which they should inter-relate. Further, there is a need to build accountability into the process of setting up new offices from the beginning. In this regard, I would like to suggest six 'design principles' for the Committee, and others, to consider:

1. **Clarity of Remit:** a clear understanding of the office-holder's specific remit
2. **Distinction between functions:** a clear distinction between different functions, roles and responsibilities including audit, inspection, regulation, complaint handling, advocacy
3. **Complementarity:** a dovetailing of jurisdictions creating a coherent system with appropriate linkages with no gaps, overlaps or duplication
4. **Simplicity and Accessibility:** simplicity and access for the public to maximise the 'single gateway'/one-stop-shop' approach
5. **Shared Services:** shared services and organisational efficiencies built in from the outset
6. **Accountability:** the establishment of clear, simple, robust and transparent lines of accountability appropriate to the nature of the office

These design principles could be used by the Executive when considering the establishment of new bodies or changes to the remit of existing organisations. They could be applied also by the Parliament in their scrutiny of Executive proposals. It can be argued that the first design principle is the most crucial in that the first question to be asked is whether the remit proposed for any new office-holder is specific or whether it is or could be carried out by another body. It is important too to consider whether any new functions could be added to an existing office. If it is decided that an office-holder is required the next stage is to ask whether that also necessitates a new office. In this way issues of shared services and co-location can be built into and integral to the design of the governance framework from the outset.

In my evidence to the Finance Committee and Justice 1 and 2 Committees, I have suggested how these principles might be applied in considering the creation of a Human Rights Commission and a Police Complaints Commission and in moving towards a more coherent governance landscape for Scotland. I would be happy to expand on any of the issues raised if this was considered to be of help to the Committee.

Yours sincerely

Professor Alice Brown
Ombudsman