

Framework Document – Scottish Pubs Code Adjudicator

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Introduction

1. This framework document is agreed between the Scottish Pubs Code Adjudicator (SPCA) and the Scottish Ministers. It summarises how SPCA and Scottish Government (SG) will work together, and the key roles and responsibilities of:

- the Adjudicator and Accountable Officer of Scottish Pubs Code Adjudicator;
- the Scottish Ministers; and
- the Portfolio Accountable Officer within the SG whose remit includes the SPCA.

While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and as a live document it should be reviewed by SG and SPCA regularly. Any significant changes will be agreed between the SPCA and the Scottish Ministers.

2. Any question regarding the interpretation of the document will be determined by the SG after consultation with SPCA. Legislative provisions take precedence over any part of the document.

3. The Adjudicator is not permitted to establish any subsidiaries or enter joint ventures without express approval from Scottish Ministers

4. Copies of the document will be published on the SPCA web pages.

Purpose

5. The Scottish Pubs Code Adjudicator is established under the Tied Pubs (Scotland) Act 2021 - [Tied Pubs \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk).

6. The Scottish Pubs Code governs the relationship between pub-owning business and tied pub tenants. The Act establishes a Scottish Pubs Code Adjudicator to oversee and enforce the Code. The aim of the Code is to improve the position of tied pubs tenants. The Adjudicator must use their best endeavours to carry out their functions consistently with the regulatory principles, as described in section 3(3) of the Act.

Governance and Accountability

7. This section summarises the specific responsibilities and accountabilities of the key people involved in governance of SPCA.

The Adjudicator

8. The Adjudicator is appointed by the Scottish Ministers. The Adjudicator role is to provide operational leadership to staff working for SPCA and to ensure that its aims and objectives are met, its functions are delivered, and its targets are met through effective and properly controlled executive action.

9. The Adjudicator will:

- a. Lead and manage the staff of SPCA, ensuring their wellbeing, learning and development are prioritised, and ensuring that the NDPB staff management responsibilities set out in the section below are addressed.
- b. Manage the budget for SPCA in line with Scottish Government Finance guidance, policies and procedures, including the Scottish Public Finance Manual, ensuring that appropriate financial appraisal and evaluation techniques are followed (see the [Appraisal and Evaluation](#) section of the SPFM).
- c. Agree with the Portfolio PO or Senior Sponsor what information is required to enable the SG to scrutinise the performance of SPCA and progress against overall strategic and business plan aims and objectives and ensure that the agreed information is provided and that it is both accurate and timely.
- d. The Adjudicator retains accountability but may delegate responsibility for the management of the day-to-day relationship with the Senior Sponsor and/or Sponsor Team, with other SG

officials who have an interest in the work of SPCA and other key stakeholders, including staff of other public bodies.

The Accountable Officer

10. The Principal Accountable Officer for the Scottish Administration designated the Adjudicator as Accountable Officer for the SPCA. The Accountable Officer is personally responsible for the propriety and regularity of the public finances of SPCA and ensuring that its resources are used economically, efficiently and effectively, as required by section 15 of the Public Finance and Accountability (Scotland) Act 2000 and may be called to give evidence to the Public Audit Committee of the Scottish Parliament. The responsibilities of the Accountable Officer are set out in full in the [Memorandum to Accountable Officers for Other Public Bodies](#) in the Scottish Public Finance Manual.

The Scottish Ministers

11. The Scottish Ministers appoint the Adjudicator. The Parliament will scrutinise the performance of SPCA directly as it does with all public sector bodies. The Scottish Ministers are not directly responsible for the operation of SPCA.

12. The Scottish Ministers:

- a. will create regulations to establish a Scottish Pubs Code
- b. may consent to imposition of an industry levy
- c. will appoint the Scottish Pubs Code Adjudicator, subject to parliamentary consent
- d. will prepare a report, following each review period, reviewing the operation of the Code and the Adjudicator's performance
- e. as a result of a review, may provide guidance to the Adjudicator about any matter relating to the functions of the Adjudicator
- f. may provide loans, staff, premises, facilities or other assistance to the Adjudicator
- g. will lay the Adjudicator's annual report before Parliament.

SG Portfolio Accountable Officer

13. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the SG) has designated the Director General for Net Zero as the Portfolio Accountable Officer (AO) for the SG portfolio budget which will provide the initial funding for the SPCA.

14. The Portfolio AO's duties are to establish a framework for the relationship between SG and a public body, oversee the operation of that framework, ensure the public appointments to the body are made appropriately and ensure that appropriate assurance is provided on the performance and governance of the body. These activities are known collectively as 'sponsorship'. In practice, the Portfolio AO is likely to delegate some or all sponsorship duties to Food and Drink Divisions Deputy Director as Senior Sponsor and the SG officials in the policy and 'Sponsor Team'. The responsibilities of a Portfolio Accountable Officer are set out in detail in the [Memorandum to Accountable Officers for Parts of the Scottish Administration](#).

15. The Portfolio AO will:

- a. make sure the framework document is agreed between the Scottish Ministers and the Adjudicator of SPCA, reviewed regularly and oversee the operation of the roles and responsibilities set out;
- b. ensure that financial and other management controls being applied by SPCA are appropriate and sufficient to safeguard public funds and conform to the requirements both of propriety and of good financial management.
- c. support regular and effective engagement between SPCA and the relevant Scottish Minister(s); and

- d. make sure there is clear, documented delegation of responsibilities to the Sponsor Team and senior officials of SPCA are aware of these delegated responsibilities.
16. The Portfolio AO remains personally answerable to the Scottish Parliament for the effectiveness of sponsorship activity.

Relationship between Scottish Government and SPCA

17. Strategic engagement between the SG and SPCA is essential in order that they work together as effectively as possible to maintain and improve public services and deliver improved outcomes. Specific governance and accountability roles are described in the section above, but more generally, both the SG and SPCA will take all necessary steps to ensure that their relationship is developed and supported in line with the jointly agreed principles set out in the statement on '[Strategic Engagement between the Scottish Government and Scotland's NDPBs](#)'. This emphasises the need for cooperation and good communication, and particularly early warning from either side about any emerging risk or issue with significant implications for the operation or governance of SPCA.

18. The Sponsor Team's primary function is to carry out the responsibilities delegated to it by the Portfolio AO, directly or via the Senior Sponsor, as described above. In addition to ensuring that the arrangements in this framework document operate effectively, managing public appointments and providing assurance to the Portfolio AO, the Sponsor Team will usually be the first point of contact for the body on any issue with SG. As part of the assurance they provide to the Portfolio AO, they must ensure that key actions and decisions agreed are documented and implemented. This includes ensuring that SG teams implement any agreed actions.

19. The Sponsor team will also arrange regular meetings between the Adjudicator and the Deputy Director and will also arrange a yearly meeting with the portfolio Director and Accountable Officer.

Staff management responsibilities

Broad responsibilities for staff

20. The Adjudicator has responsibility for the recruitment, retention and motivation of their staff. The broad responsibilities toward staff are to ensure that:

- HR policies, practices and systems comply with employment and equalities legislation, and standards expected of public sector employers;
- the level and structure of staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness (subject to the [SG Pay Policy for Staff Pay Remits](#));
- the performance of staff at all levels is regularly appraised and performance management systems are reviewed from time to time;
- staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the body's objectives;
- proper consultation with staff takes place on key issues affecting them, as appropriate, including working in partnership with trade unions;
- effective grievance and disciplinary procedures are in place and ensures that staff know where to access and how to use;
- effective whistle-blowing policy and procedures consistent with the Public Interest Disclosure Act 1998 are in place and ensures that staff know where to access and how to use; and
- a code of conduct for staff is in place.

Pay and conditions of service

21. SPCA will comply with SG Pay Policy in relation to staff and the Adjudicator. The Adjudicator will ensure that a pay remit, in line with the SG [Pay Policy for Staff Pay Remits](#), is submitted to the SG for approval in line with the timetable notified and negotiate a pay settlement within the terms of the approved remit. This should normally be done annually, unless a multi-year deal has been agreed. Payment of salaries should also comply with the [Tax Planning and Tax Avoidance](#) section of the SPFM. Proposals on non-salary rewards will comply with the guidance in the [Non-Salary Rewards](#) section of the SPFM.

Redundancy and compensation

22. Any proposal by SPCA to pay any redundancy or compensation for loss of office, requires the prior approval of the Scottish Ministers. Proposals on compensation payments will comply with the [Settlement Agreements, Severance, Early Retirement and Redundancy Terms](#) section of the SPFM. This includes referral to the Scottish Ministers of any proposed severance scheme (for example, a scheme for voluntary exit), business case for a settlement agreement being considered for an individual, or proposal to make any other compensation payment. In all instances, a body should engage with the Sponsor Team prior to proceeding with proposed severance options, and prior to making any offer either orally or in writing.

Corporate & Business plans

23. The corporate plan will inform the development of a separate annual business plan for each financial year, which will include key targets and milestones for the year immediately ahead, aligned to the NPF, and be linked to budgeting information so that, where possible, resources allocated to achieve specific objectives can be identified. A copy of the business plan will be provided to the sponsor unit prior to the start of the relevant financial year.

Annual report and accounts

24. SPCA will publish an annual report of its activities together with its audited accounts after the end of each financial year. The annual report and accounts will cover the activities of any corporate, subsidiary or joint ventures under the control of SPCA. It will comply with the Government [Financial Reporting Manual](#) (FReM) and outline the NDPB's main activities and performance against agreed objectives and targets for the previous financial year. It is the responsibility of the Adjudicator, as Accountable Officer, to sign the accounts

25. The accounts will be prepared in accordance with relevant statutes and the specific accounts direction and other relevant guidance issued by the Scottish Ministers. Any financial objectives or targets set by the Scottish Ministers should be reported on in the accounts and will therefore be within the scope of the audit.

26. The SG Sponsor Team should receive a copy of the draft annual report for comment, and a copy of the draft accounts for information. SPCA is responsible for the publication of the annual report which will then be laid before the Scottish Parliament by the Scottish Ministers. Whilst the statutory deadline for laying and publishing accounts audited by the AGS is 31 December after the end of the relevant financial year, the Scottish Ministers expect that accounts will be published as early as possible.

External audit

27. The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, SPCA's annual accounts and passes them to the Scottish Ministers who then lay them before the Scottish Parliament, together with the auditor's report and any report prepared by the AGS. The AGS, or examiners appointed by the AGS, may also carry out examinations into the economy, efficiency and effectiveness with which the body has used its resources in discharging its functions and/or carry out examinations into the arrangements made by SPCA to secure Best Value.

28. The AGS, or the AGS's appointed auditors or examiners, have a statutory right of access to documents and information held by relevant persons, including any contractors to or recipients of grants from SPCA. SPCA will ensure that this right of access to documents and information is made clear in the terms of any contracts issued or conditions of any grants awarded and will also use its best endeavours to secure access to any other information or documents required which are held by other bodies.

Internal audit

29. The SG's Internal Audit and Assurance Directorate has an expectation of cooperation and access to relevant material when required, the parameters for which would be set out in an engagement document before information was shared. SPCA should make it clear on their own Privacy Notice that material may be shared with SG's Internal Audit and Assurance Directorate in certain circumstances

Budget management and delegated authority

30. Schedule 2 of the Tied Pubs (Scotland) Act 2021 allows the SPCA to introduce a levy, the purpose of which is to contribute towards the Adjudicator's expenses. The levy is imposed on all pub-owning businesses with tied pubs. The levy may only be imposed in respect of a financial year if the Scottish Ministers have consented. The rate of levy is to be set by the Adjudicator who may set different rates for different persons. The Adjudicator is required to make publicly available a statement setting out the rates of levy and an explanation of the basis on which the rates were set. In addition Ministers may approve specific, loans, grants and grants in aid to SPCA.

31. Receipts from the sale of goods or services and interest earned by SPCA on cash balances may be used to provide additional spending power subject to them being included in the approved budget.

32. SPCA specific delegated financial authorities - are set out in Annex A. SPCA will obtain the prior written approval from sponsors and SG Finance, via sponsors, before entering into any undertaking to incur any expenditure that falls outside these delegations, and before incurring expenditure for any purpose that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications.

33. Any interest on commercial bank accounts operated by SPCA may be used to provide additional spending power.

Governance and Risk

34. Guidance on governance requirements is available in several documents referred to earlier in this framework document:

- [the Scottish Public Finance Manual \(SPFM\)](#)
- [the Audit and Assurance Committee Handbook](#)

35. If in any doubt about a governance issue, the Adjudicator should consult the Senior Sponsor or Sponsor Team in the first instance, and sponsors may in turn consult the SG Public Bodies Unit, the SG Governance and Risk Branch and/or other teams with relevant expertise.

36. The Adjudicator is advised to pay particular attention to guidance on the following issues:

Risk management

37. SPCA must develop an approach to risk management consistent with the Risk Management section of the Scottish Public Finance Manual and establish reporting and escalation arrangements with the Portfolio AO or Senior Sponsor.

38. The Adjudicator should have a clear understanding of the key risks, threats and hazards it may face in the personnel, accommodation and cyber domains, and take action to ensure appropriate organisational resilience, in line with the guidance in: [Having and Promoting Business Resilience](#) (part of the Preparing Scotland suite of guidance) and the [Public Sector Cyber Resilience Framework](#).

Internal control

39. The Adjudicator should establish clear internal [delegated authorities](#), who may in turn delegate responsibilities to other members of staff and establish an assurance framework consistent with the [internal control framework](#) in the SPFM and their obligations as AO if there is an extended period of absence.

40. Counter-fraud policies and practices should be adopted to safeguard against fraud and theft - see the [Fraud](#) section of the SPFM.

41. Any major investment programmes or projects undertaken should be subject to the guidance in the [Major Investment Projects](#) section of the SPFM and in line with delegated authorities. The Sponsor Team must be kept informed of progress on such programmes and projects and Ministers must be alerted to any developments that could undermine their viability. ICT investment plans must be reported to the SG's Office of the Chief Information Officer.

42. SPCA must comply with the requirements of the Freedom of Information (Scotland) Act 2002 and ensure that information is provided to members of the public in a spirit of openness and transparency. SPCA must also register with [Information Commissioners Office](#) and ensure that it complies with the Data Protection Act 2018 and the General Data Protection Regulations, commonly known as GDPR.

Budget and finance

43. Unless covered by a specific delegated authority, financial investments are not permitted without the prior approval of sponsors and SG Finance. This includes equity shares in ventures which further a body's objectives. Public bodies should not invest in any venture of a speculative nature.

44. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the Portfolio AO and SG Finance. Relevant guidance is provided in the [Tax Planning and Tax Avoidance](#) section of the SPFM. SPCA must comply with all relevant rules on taxation, including VAT, recover input tax where it is entitled to do so.

45. Optimising income (not including grant-in-aid) from all sources should be a priority, and sponsors should be kept informed about any significant projected changes in income. Novel or contentious proposals for new sources of income or methods of fundraising must be approved by sponsors and SG Finance. Fees or charges for any services supplied must be determined in accordance with the [Fees & Charges](#) section of the SPFM.

46. Gifts, bequests or donations received score as income and should be provided for in the agreed resource DEL and capital DEL budgets, but should not fund activities or assets normally covered by SG grant-in-aid, trading or fee income, and conflicts of interest must be considered – see the principles in the [Gifts](#) section of the SPFM. Note that this relates to gifts to the body - gifts to individuals are covered in the Model Code of Conduct.

47. Borrowing cannot be used to increase SPCA's spending power. All borrowing - excluding agreed overdrafts - must be from the Scottish Ministers in accordance with guidance in the [Borrowing, Lending & Investment](#) section of the SPFM.

48. Any lending must be in line with the guidance in the [Borrowing, Lending & Investment](#) section of the SPFM on undertaking due diligence and seeking to establish a security. Unless covered by a specific delegated limit SPCA must not lend money, charge any asset, give any guarantee or indemnity or letter of comfort, or incur any other contingent liability (as defined in the [Contingent Liabilities](#) section of the SPFM), whether or not in a legally binding form, without the prior approval of sponsors and SG Finance. Guarantees, indemnities and letters of comfort of a standard type given in the normal course of business are excluded from this requirement.

49. An accurate and up-to-date record of current and non-current assets should be maintained, consistent with the [Property: Acquisition, Disposal & Management](#) section of the SPFM. SPCA is also subject to the [SG Asset Management Policy](#), including the requirement for acquisition of a new lease, continuation of an existing lease, decision not to exercise a break option in a lease or purchase of

property for accommodation / operational purposes, to be approved in advance by Scottish Ministers. The Property Controls Team should be consulted as early as possible in this process.

50. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. When an asset (including any investment) suffers impairment, when there is significant movement in existing provisions and/or where a new provision needs to be created, this should be communicated to sponsors and SG Finance as soon as possible to determine the implications for the NDPB's budget.

51. Any funding for expenditure on assets by a third party should be subject to appropriate arrangements to ensure that they are not disposed of without prior consent and that a due share of the proceeds can be secured on disposal or when they cease to be used by the third party for the intended purpose, in line with the [Clawback](#) guidance in the SPFM.

52. Unless covered by a specific delegated authority, prior approval from sponsors and SG Finance is required before making gifts or special payments or writing off losses. Special payments and losses are subject to the guidance in the [Losses and Special Payments](#) section of the SPFM. Gifts by management to staff are subject to the guidance in the [Non-Salary Rewards](#) section of the SPFM.

53. Unless covered by a specific delegated authority SPCA must not enter any finance, property or accommodation related lease arrangement – including the extension of an existing lease or the non-exercise of a tenant's lease break - without prior approval from sponsors. Before entering/ continuing such arrangements the NDPB must be able to demonstrate that the lease offers better value for money than purchase and that all options of sharing existing public sector space have been explored. Non-property / accommodation related operating leases are subject to a specific delegated authority. There must be capital DEL provision in the budget allocation for finance leases and other transactions which are in substance borrowing.

54. Procurement policies should reflect relevant guidance in the [Procurement](#) section of the SPFM and any other relevant guidance issued by the SG's Procurement and Property Directorate. The SG's directory of [SG Framework Agreements](#), is available to support organisations but they should check the Framework Agreement's 'buyer's guide' before proceeding to ensure they are eligible to use the Framework.

55. All matured and properly authorised invoices relating to transactions with suppliers should be paid in accordance with the [Expenditure and Payments](#) section of the SPFM wherever possible and appropriate within Scottish Ministers' target of payment within 10 working days of their receipt.

56. Unless covered by a specific delegated authority SPCA must not provide grant funding to a third party without prior agreement from sponsors and SG Finance. Guidance on a framework for the control of third party grants is provided as an annex to the [Grant & Grant in Aid](#) section of the SPFM. Subsidy control requirements for any such funding are discussed below.

57. The EU State aid regime was effectively revoked from UK law from 1 January 2021. Following this, subsidy control provisions were covered by the UK-EU Trade and Cooperation Agreement (TCA) and the UK's international obligations, including various Free Trade Agreements and those arising because of World Trade Organisation membership. However, a new UK subsidy control regime came into force on 4 January 2023 because of UK Government's Subsidy Control Act 2022. Currently, any activity that a public body undertakes itself, or funds other bodies to undertake, that can be offered on a commercial market for goods and services, is subject to the regulations set out in the Subsidy Control Act 2022. A full assessment is required prior to disbursing any funding, subject to the guidance in the subsidy control section of the SPFM.

58. The SPCA has permissions to carry over its own income across financial years and is not required to divest any surplus money it is holding to the Scottish Government sponsor at year end.

Remuneration

59. Remuneration, allowances and any expenses paid to the Adjudicator and their staff must comply with the latest SG Pay Policy for Senior Appointments, Public Sector Pay Policy and any specific guidance on such matters issued by the Scottish Ministers.

60. Staff pay, pensions and any severance payments must be in line with the requirements of Public Sector Pay Policy and the responsibilities described in the section on NDPB Staff Management Responsibilities.

61. All individuals who would qualify as employees for tax purposes should be paid through the payroll system with tax deducted at source.

Banking and cash management

62. Banking arrangements must comply with the [Banking](#) section of the SPFM.

63. Cash management arrangements need to be addressed as well as overall budget management. Any [grant in aid](#) (i.e. the cash provided to SPCA by the SG to support the allocated budget) for the year in question will be authorised by the Scottish Parliament in the annual Budget Act. SPCA will normally receive monthly instalments based on updated profiles and information on unrestricted cash reserves and will not seek any payment in advance of need. SPCA will keep its unrestricted cash reserves held during the year to the minimum level needed for efficient operation and any relevant liabilities which must be met at the year-end. Grant-in-aid not drawn down by the end of the financial year will lapse. SPCA will not pay Grant-in-Aid into any restricted reserve it holds.

Helpful information

64. The Public Bodies Support Unit has produced a register of reporting requirements for devolved public bodies which will help regarding compliance with certain legislative asks. Copies of the register can be obtained from the [PBSU mailbox](#).

Annex A: Specific Delegated Financial Authorities

		Delegated Limit
Gifts		£75 per gift purchased
Special payments		£10,000
Claims waived or abandoned		£10,000
Write-off of bad debt and/or losses		£10,000
Acquisition of assets		£100,000
Single-tender contracts		£20,000