



The Scottish Parliament  
Pàrlamaid na h-Alba

## Public Audit Committee

Alan Sutherland

2 October 2024

Dear Mr Sutherland

### The 2022/23 audit of the Water Industry Commission for Scotland

The Public Audit Committee is currently undertaking scrutiny of the Auditor General for Scotland's section 22 report, [The 2022/23 audit of the Water Industry Commission for Scotland](#) (WICS).

At its meeting on 25 September 2024, the Committee agreed to write to you in your capacity as the former Chief Executive / Accountable Officer of WICS, to seek your response to a wide range of issues arising from its scrutiny of the section 22 report. A list of questions from the Committee can be found in the **Annexe** to this letter.

In preparing your response, you may wish to refer to the written and oral evidence the Committee has gathered to date in relation to the section 22 report, which [can be found on its webpage](#).

Should there be any further information you wish to make the Committee aware of, that cannot be included as part of your response to the questions set out in the Annexe, please feel free to include this in your response to this letter.

I would also add that following consideration of your response, it remains open to the Committee to write to you again to seek clarification of any points raised in your response.

I would be grateful if you could respond to this letter by **6 November 2024**.

Yours sincerely,

**Richard Leonard MSP**

**Convener**

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Email: [publicaudit.committee@parliament.scot](mailto:publicaudit.committee@parliament.scot). We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

## Annexe

1. The Auditor General for Scotland (AGS) published his section 22 report on 20 December 2023.

**Q1: Do you accept the findings of the section 22 report, if not, can you set out your reason(s) why?**

### Expenditure

2. During oral evidence on [21 March 2024](#), the Chair of WICS Audit and Risk Committee (ARC) commented that he had regular conversations with you “about public reaction to excessive spend, so there were challenges at the time.”

**Q2: What are your recollections of these discussions and the challenge by the Chair of WICS ARC, in respect of expenditure?**

**Q3: Did anyone else in WICS challenge you regarding expenditure? If so, what was your response? If not, why do you think that might be?**

3. The Committee is aware that senior staff attended management courses that incurred substantial costs, for example courses at the Harvard Business School the London Business School and Columbia University. The Committee is also aware from the [Grant Thornton report on Governance and financial arrangements](#) and [WICS’s internal review of transactions](#) that significant expenditure occurred in relation to meals, such as those that took place at L’Escargot Blanc and The Witchery in Edinburgh.

**Q4: Can you explain why this type of expenditure occurred, and on reflection, do you consider that this type of expenditure could be considered as “excessive spend” for a public body?**

4. In the [section 22 report](#), the AGS states—

“Unusually for a public body, the Commission’s existing policies do not explicitly prohibit the purchase of alcohol as a business expense.”

**Q5: Why did WICS not have a policy that prohibited the purchase of alcohol as a business expense? Was this something that was ever challenged by the Board or by the Scottish Government’s sponsor team?**

5. In relation to the approval of expenditure for the Chief Operating Officer’s participation in an advanced management course, as set out in the section 22 report, the Director-General Net Zero stated during [oral evidence](#)—

“From what I can see, there was a failure in the policies and their application. The framework was pretty clear about the responsibilities of the board, the chair, the chief executive and the sponsor team. In this case, the delegated authorities were breached and the proper process was not followed.”

6. When asked, during the same evidence session why the internal audit team had not picked up expenditure relating to the Harvard Business School course, the Chair of WICS ARC stated—

“The challenge there is that the CEO had chosen to interpret the rules in a way that suggested that he did not need to refer the matter to anyone, to take anyone’s advice or to run it by anyone”.

**Q6: To what extent do you agree with the above statements made by the Director-General Net Zero and the Chair of WICS ARC?**

7. In his [letter of 27 February 2024](#), the AGS provided a copy of correspondence between the Scottish Government and you in respect of the two areas identified in the section 22 report where Scottish Government approval should have been obtained for expenditure relating to gift vouchers for staff and a training course.
8. In your email to the Scottish Government of 2 November 2023, you describe the expenditure relating to gift vouchers as being “an oversight on our part.” Regarding the training course, you stated that it “reflects a different interpretation of appropriate rules – but, on reflection, we should have alerted you to the expenditure.” You go on to explain that—

“Our procurement policy requires expenditure over £100k to be approved by the Scottish Government, and over £20k if it is a single supplier purchase. We did not seek approval for this purchase since it was below £100k and it wasn’t the type of purchase that could be competitively tendered. Audit Scotland believe we should have sought approval”.

9. In his section 22 report, the AGS is quite clear that “Scottish Government approval is required for any service above £20,000 that has not been awarded via a competitive tender exercise”.

**Q7: On reflection, do you still consider that your interpretation of the rules in the procurement policy, as you have set out in your email of 2 November 2023, is correct?**

10. The WICS submission of [10 June 2024](#), set out that WICS’s internal review of transactions identified the provision of legal advice through a King’s Counsel (KC). The WICS submission of [31 July 2024](#) stated that—

“A retainer has been in place to secure the services of a member of the King’s Counsel with specialist regulatory knowledge for more than a decade...In the months following my appointment I have since removed the retainer for the services of this KC.”

11. The issue of the KC retainer was discussed during the oral evidence session on [19 September 2024](#), where the Interim Chief Executive of WICS confirmed that the KC contract had been terminated and provided information on how specialist legal advice could be obtained going forwards.

**Q8: In respect of the KC retainer, the Committee is keen to establish—**

- **Your reasons for having a KC on retainer for over a decade.**
- **Whether this arrangement was ever reviewed.**
- **Your views on the new approach that is now being taken by WICS to seek specialist legal advice.**

12. Both the WICS internal review of transactions and the Grant Thornton report identified instances where WICS’s policies relating to the booking of travel had been breached. The Grant Thornton report highlighted two flights which had been booked on a credit card, where the travel provider had not been used for booking. These flights were to Brasilia (£6,753.25, 10/7/2023) and Kigali (£4,600.15, 1/11/2023).

13. During oral evidence, the Interim Chief Executive of WICS stated—

“Both those particular trips were for the former chief executive officer. The one to Rwanda was for an International Water Association conference; the other was for a peer review exercise that he was undertaking in Brasília, which had been commissioned by the Organisation for Economic Co-operation and Development. Both trips were booked by the former CEO himself, using his own credit card. That was not in line with the applicable policy at the time, which was to utilise Corporate Travel Management, the Government-approved travel provider, unless it could be demonstrated that better value could be achieved elsewhere.

**Q9: Can you explain your decision to book these flights on your credit card rather than following the policy of booking travel through the Government-approved travel provider?**

### **Staff training**

14. In a written submission to the Committee of [24 April 2024](#), WICS’s Chief Operating Officer stated that when preparing her development plan—

“My plan included courses at the Said Business School in Oxford and Edinburgh Business School at costs of less than £10k. Over the course of the next few months and several conversations, Alan insisted that I focus on

schools in North America, suggesting Harvard, Yale and Stanford, as he considered these to be much more appropriate for my development.”

15. During oral evidence on [21 March 2024](#) (col 19) and [19 September 2024](#) (col 26), the WICS Chair also stated that you had a preference for staff to attend training courses in the United States.

**Q10: Do you agree with the above comments regarding your preference for these courses and if so, can you explain why?**

16. We understand from the [Director-General Net Zero's response of 10 June 2024](#) and [WICS's submission of 31 July 2024](#) that WICS had an MBA policy in place to help retain senior staff.

**Q11: Can you explain the particular difficulties WICS faced in retaining staff and whether any alternative options were considered or implemented to help improve staff retention?**

### Dual role

17. The Chair of WICS ARC stated during oral evidence on 21 March that “There is a lot of tension in terms of approach between running a domestic regulator—a small body—and an international consultancy” and that clear guidance was required in this area. This subject was also discussed during the oral evidence session on 19 September 2024, where the Chair of the Board stated—

“I still suggest that we need to continue to undertake hydro nation-related activity, but in a way that allows us to separate the functions, as you suggest. There is a grey area, and it is quite difficult to combine the two, as you just outlined—I accept that conclusion. That is under review, in discussion with the Scottish Government, which the Government witnesses can confirm. The issue is on our horizon, and it is very important to have greater clarity.”

**Q12: What challenges and difficulties did you face in leading an organisation with a dual role as a public body regulator and an income stream generator?**

**Q13: What advice, if any, was sought and received from the Scottish Government Sponsorship Team on how to balance the requirements of an income stream generating organisation against the requirements it was required to adhere to as a public body, such as those set out in the SPFM?**

**Q14: What clarity, if any, do you feel would benefit a public body such as WICS which is trying to manage a dual role?**

### Culture and behaviour

18. In his section 22 report, the AGS stated that—

“I am concerned that the current culture within the Commission does not have sufficient focus on ensuring the achievement of value for money in the use of public funds.”

19. The section 22 report concluded that—

“Value for money should be a key consideration for all expenditure incurred by public bodies and the findings of the auditor highlight unacceptable behaviour, by senior officials within the Commission, in the use of public funds”

20. The Committee has explored these issues in the written and oral evidence that it has received. During oral evidence on 19 September 2024, the Chair of WICS ARC stated—

“I received the letter from Audit Scotland before it finalised and published its audit. It highlighted not only that issue but a whole series of other concerns about behaviour, and that is what got me and the board fired up. A lot of those things were unknown to us and quite surprising, and we jumped into action based on that... That said, the behaviours and the pattern of behaviour that were highlighted caused us real concern.”

**Q15: Do you agree with the written and oral evidence the Committee has received in relation to the concerns raised about the culture and behaviours at WICS?**

### **Relationship with Scottish Government sponsor team**

21. During oral evidence on 19 September, the Committee sought clarity on the relationship between WICS and the Scottish Government Sponsorship Team. The Scottish Government’s Director of Energy and Climate Change stated—

“I think that we all have lessons to learn from what has happened. There were shortcomings in the way in which we carried out our sponsorship function in relation to WICS. Part of the sponsorship function is to provide support to the organisation, but part of it is also to provide constructive challenge, and there were instances where we did not do that.

The Director of Energy and Climate Change went on to add—

“I have some personal reflections. As the director who is responsible for the area, I recognise that I should have provided more assurance and oversight to WICS”.

**Q16: The Committee is interested to hear your reflections of the nature of your relationship with the Scottish Government Sponsorship Team and whether you considered it sufficient during your tenure as Chief Executive.**

**Q17: What was the frequency of your contact with the Scottish Government Sponsorship Team, and how was this contact made?**

22. During oral evidence on 19 September 2024, the Committee sought clarity on when WICS first made the Scottish Government aware that a section 22 report was going to be published. The Interim Chief Executive told the Committee that—

“I think that the email that had appended the section 22 report was to inform the sponsor division of the section 22 report. I think that it was on the Monday, Mr Greene, and I can remember phoning the then deputy director on the Friday to make clear of the section 22 report, having realised that there was no correspondence between the former CEO and the sponsor team. That was in early December, but I would have to get the exact date for you”.

**Q18: Can you recall when you notified the Scottish Government’s Sponsorship Team that a section 22 report was going to be published?**

**Q19: What ongoing training that was available to you in your role as an Accountable Officer? For example, was specific training on changes or updates to the [Scottish Public Finance Manual ever provided by the Scottish Government](#)?**

**Relationship with the Board**

23. During the oral evidence session on 19 September, the Chair of the Board stated—

“The relationship between the board and the executive, including the chief executive, is vital for good governance.”

**Q20: The Committee is interested to hear any reflections that you may have on the relationship between the Board and the executive during your tenure as Chief Executive.**

24. WICS’s Governance Framework, page 7 paragraph 13, states that—

“The chair, in consultation with the Board as a whole, is also responsible for undertaking an annual appraisal of the performance of the Chief Executive”.

**Q21: Can you confirm if annual performance appraisals were held by the Chair as per WICS’s Governance Framework?**

**Departure arrangements**

25. The Committee has explored the arrangements that were in put in place for your departure from WICS through oral and written evidence. WICS’s written submission of 31 July provides information on these arrangements.

26. The Committee also explored during oral evidence whether your departure was directly linked to the section 22 report. The Committee heard from the Chair of the Board that—

“The former CEO resigned, stating that he felt that he had set up WICS and had worked there for 24 years, and that he had outlived all that he could do for WICS, and that he therefore tendered his resignation. There was no specific linkage to the section 22 report.”

and

“The board decided to accept his resignation after extensive discussion of all the options”

27. The Chair of WICS ARC also told the Committee during oral evidence that—

“His reaction to the section 22 was, “I am going to choose to resign.” We thought, “Okay, let’s talk through that,” and Donald MacRae and the board navigated through that process.”

**Q22: To what extent do you agree with the above statements made by the Chair of the Board and the Chair of WICS ARC with regard to your departure arrangements?**

**Q23: The Committee is keen to establish the options that were discussed by you and the Board in relation to your departure from WICS. Apart from your offer to resign, what other options, if any, were suggested, either by you or the Board?**

**Q24: Did you feel that you had no choice but to leave the organisation following the section 22 report?**

28. Should there be any further information you feel would assist the Committee in its scrutiny of the section 22 report, please feel free to include this in your response.