



ACCIDENTAL WITNESS

Foreword

This is the story of how far the SNP Government has been prepared to go in imposing its will on the people of Scotland.

My name is Keith Howell. Some may know me for my blog at www.nupateer.com , or my regular

letters to the press seeking to shine a light on the shortcomings of the SNP Government and the divisiveness of Scottish nationalism. Before I became involved in any of that, I have had a career in the business world, latterly involving me in a sequence of non-executive governance roles across the Scottish private, public and voluntary sectors.

This paper sets out my personal view of the approach taken by SNP Ministers when preparing and disseminating the Scotland's Future White Paper.

What went wrong in the referendum?

In the early preparations for the Scottish referendum campaign, the leadership of the SNP Government, perhaps convinced they would otherwise lose, decided to go further than ever before - stretching the bounds of what could be done within the rules and then going beyond that. The preparation of the Scotland's Future White Paper, with its misleading and highly politicised content, involved breaches of the Civil Service Code and consequent breaches of the Ministerial Code. Such breaches would mean there had been a misuse of public funds and abuse of the levers of power. This was not supposed to be possible, in a British democracy that prides itself on keeping wrong-doing out of the corridors of Government. Under the Civil Service Code¹, Civil Servants are not only required to provide impartial support for the Government of the day, they are equally intended to always be honest and above reproach. Allowing misleading material to appear in a White Paper without proper clarification or explanation, is a clear breach of the Code.

Most of those with the power to shine a light on this wrong doing in a variety of public bodies and across the political spectrum, concluded that they would instead turn a blind eye to it. Amongst other things, pursuing the matter would involve admitting to the people of Scotland that the normal checks and balances of government had failed us. It was perhaps felt that allowing the SNP wrong-doing to go unchecked was not too high a price to pay, if the ultimate result of the referendum secured victory for the Union.

Subsequent events suggest the nationalist leadership and the wide spectrum of fellow travellers that they have managed to draw into their net, have only been buoyed up by their success so far, no matter how it has been achieved. They now seem ever more determined to impose the will of the minority on the majority who simply wanted to keep their country together.

This is the story of how here in 21st century Britain, a democratically elected Government in the shape of the Scottish nationalists, used the full force of the machinery of Government to set out to mislead and manipulate its own people. Arguably, this has been made all the worse by the subsequent tendency for the SNP leadership to ignore the commonly held view - encouraged by themselves during the referendum campaign - that the referendum would be a once in a generation, or even in a once in a lifetime opportunity. Now, less than a year later, there is widespread talk within the SNP of a second referendum during the next term of the Scottish Parliament. That commences in 2016, allowing for a possible referendum date as late as 2021 now that the SNP have said they plan to opt for a 5 year term.

Effectively, the SNP seems content to ignore the democratic will of the people of Scotland that it has for so long claimed to champion, simply on the basis that they do not like the result that the September 2014 referendum produced.

The title of this paper?

‘Accidental Witness’ is a reference to those not directly involved in the process of preparation and dissemination of the White Paper, who have unwittingly found themselves as witness to this wrong-doing within the Scottish Government. While everyone living in Scotland over the course of the last two to three years has had an opportunity to see elements of the open abuse of

power by the nationalist Government, there are those who have seen more than they ever wanted to and who in turn are finding it difficult to live with that knowledge. They have perhaps tried to speak out, but in a variety of ways have been silenced. Nationalism has always been good at seeking to cower its opponents into keeping quiet, and this current variant of Scottish nationalism is no exception.

I fear I am such a witness. I say 'fear' because I have been warned of the consequences of speaking out. While I have lived in Scotland for some 25 years and it has become as much my home as any place can be, still I have learned over the last couple of years of campaigning that my English accent is now considered out of place by some and that I should in their words 'go back to where you came from'.

But I have nowhere else to go. This is my home. I now consider myself Scottish as well as British, and while that might upset some, nevertheless Scotland is where I believe I belong. And because of that I do not have the option of saying nothing. I have to speak out. Indeed, I consider it my duty to do so.

Why me?

As for why me, there are a number of reasons. I have viewed it as a personal responsibility to not shy away from making public what I am convinced has occurred. I do not consider I am in any way special or important, but rather in all the various ways this might be judged, I am a rather ordinary man, which of course makes me as prone to being wrong as the next person. Or right for that matter.

While I do not claim any particular or special insight or position for what is revealed here - and there are certainly hundreds of people who could have chosen to raise these matters publicly - I do have some relevant experience and background² that has some applicability to these matters. I mention this only to try to demonstrate a degree of seriousness in my intent and to mitigate against those who might feel that what I have to say is purely politically motivated, or indeed a reflection of self delusion. Nevertheless, I accept that for some that is exactly the conclusion they will reach and this will enable them to readily dismiss what I have to say.

In my previous position in the public sector, which I resigned from to allow me to criticise the SNP Government during the course of the referendum campaign, I had a governance role, which although on the fringes of the overall public sector controlled by the SNP Government, nevertheless gave me some insight into the operation of the Civil Service.

I have somewhat taken it upon myself to consider that I have a continuing responsibility to highlight what I have become aware of. Some will think that considering the rights and wrongs of the government and how it operates is way above my pay-grade, and beyond the scope of my real experience. There is some truth in that, but nevertheless, if the leadership of those who ultimately employed me to oversee governance in a small part of the public sector, were themselves guilty of serious breaches of proper public sector governance, I believe I have a duty to expose that.

And why now?

On timing, going public with this in autumn 2015, sees us midway between election campaigns, which is in part a conscious attempt to avoid accusations that I am primarily seeking to affect the outcome of a vote. Again, however, there will be those for whom that will cut little ice.

Secondly on timing, while as you will see I have tried to raise my concerns with a number of authorities in the past, most of that could be done without undue public profile. The full extent of the criticisms detailed here could if they are taken seriously create something of a public stir and trigger some degree of nationalist 'backlash'. This of course was the experience of some much more high profile figures than me who took a stand during the referendum campaign and found not just themselves, but also organisations that they were associated with, coming under attack, whether by general abuse and intimidation or more specifically through threatened business boycotts. As a precaution against that outcome, and to protect those who have nothing to do with any of this, I have taken time to extract myself from all positions with organisations that might in any way suffer from being associated with me.

I now have no business links, formal or otherwise, with any enterprises, other than my own small company, which is in any case a 'virtual' business, just now

having no employees, customers or suppliers, so only I can be at risk in that regard.

A third factor on timing, has been that I needed to complete a Freedom of Information request process which took some time, particularly as there was a degree of subsequent research and analysis to get behind the rather limited information that revealed. Indeed, arguably the significance of that exercise was more in what the Scottish Government chose not to reveal, than in anything that they did disclose. Delays in the FOI process meant any prospect of an earlier version of this paper being published before this year's General Election fell away as I ran out of time.

Finally, there is a fourth and increasingly urgent imperative regarding timing. The SNP October conference is looming and the First Minister has now made clear her intention to include reference to the potential for a second referendum in their manifesto for 2016, albeit, in all likelihood with sufficient flexibility to effectively give Nicola Sturgeon complete discretion over when a referendum re-run is called. It is critical that the misuse of public funds and resources in the Scotland's Future White Paper is not repeated if we do have another referendum campaign.

We have often heard the Scottish Government spokesman's line saying "the timing of any future referendum is a matter for the people of Scotland to decide", but in effect the First Minister can judge that condition has been met with the SNP's widely predicted re-election in 2016, just as long as there is some reference to a second referendum in their manifesto. We now know that a series of potential referendum 'triggers' will also be included and these will give the scope for the First Minister to judge her most favoured timing. As a result the threat of another divisive referendum campaign could hang over the people of Scotland for 4 to 5 years.

If the wrong doing that I have set out here, is a true reflection of how the SNP Government acted in the previous referendum, then if nothing of substance is done in advance, a second referendum campaign could see the SMP deploy all the same tactics, again compromising the Scottish Civil Service in the process, expecting them to carry out work which in a normal election would be considered absolutely out of bounds. The precedent set in the previous

referendum campaign generally and specifically in regards to the preparation of the White Paper, could effectively shape the approach of the SNP Government in a re-run. Having discovered how much they can get away with, they are unlikely to accept anything less on the second time around.



While there are those who will happily walk the road of nationalism, without concern for the prejudice and divisiveness that it can foster, I am still a great believer in the people of Scotland. I am convinced that the vast majority of the fundamentally good people of this wonderful country will, once the full truth is known, turn their backs on those who have so surely betrayed them. But first the story must be told.

I say 'story' because for anyone not actually in the room when some of the more critical discussions and decisions took place, it is impossible to be absolutely sure what transpired. But anyone with a reasonable understanding of how Civil Servants operate and who has a knowledge of the Civil Service Code they operate under, can take an educated view as to what occurred at key points in the process. The passages of that nature in what follows are in italics, emphasising this is my opinion of what most likely happened, with only the politicians and Civil Servants in the room at the time, knowing for sure. Indeed, all of this report is my personal opinion of the events I describe. I believe there is sufficient public and circumstantial evidence here for all to take their own view of what most likely occurred during 2011-14, as the Scottish Government set out to mislead its own people.

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Accidental Witness – what happened?

Part of what I have to speak of here relates to the Scottish Government acting against the advice of their Civil Servants during the Scottish referendum. Some will think there is nothing intrinsically wrong with that. Governments can make decisions based on political calculations rather than follow the advice of Civil Servants who as a profession tend to be very cautious. But ignoring Civil Service advice can be much more questionable if it potentially puts the government in conflict with the rule of law, or the codes of conduct which are intended to ensure proper conduct of government. Certainly there is a serious issue whenever the route the Government chooses involves compromising the integrity of the Civil Servants themselves.

Civil Servants would generally take pride in the fact that such conflicts do not actually arise in practice. Part of the skill of the senior Civil Servant is to keep their Ministerial masters within the bounds of what is both allowable and conscionable, ensuring appropriate and proper compromises are found whenever disagreements arise over the approach to be taken.

2011 to 2013 - the preparation of the White Paper

At the start of the development of the Scotland's Future White Paper the leadership of the SNP Government, in particular Nicola Sturgeon who took a lead role on the referendum for the SNP, and of course the then First Minister, Alex Salmond, who had the final say on all key matters, were offered a number of options as to how to proceed by their senior Civil Servants.

One option was to keep a clear separation between those elements of the information that they wanted to communicate that was of the style and substance of political manifesto, and that which would normally be suitable for inclusion in a White Paper. The former could be produced independently by the SNP, with no Civil Servant involvement. The latter would be primarily the output of Civil Servants and would be largely about factual and process matters.

A second riskier and more complicated option was to merge these into one document, but clarify and differentiate the alternate purposes, at each point in the document. Critical to making this work, particularly in justifying the use of public money for its production and dissemination, would be the need to provide balancing views alongside the SNP Government's preferred position, particularly regarding any assumptions that future plans were to be dependent upon.

But the SNP leadership did not accept either of these options. Rather they chose a third way. It is not clear if this happened as a result of a gradual wearing down of Civil Servant opposition, or if right from the start, Alex Salmond and Nicola Sturgeon took the hardest possible line, cajoling their Civil Servants to do their will. Some have speculated that senior Civil Servants chose early on to be as amenable as possible to their masters wishes. These were after all exceptional circumstances. There was the real potential of the creation of new independent country. For a senior Civil Servant the prospect of playing a significant part in that was a very enticing prospect.

Yet many middle ranking Civil Servants were shocked at what they were being asked to do. The final document would make next to no attempt to distinguish between the stuff of political manifesto and that which could have been expected of a typical White Paper. Expecting Civil Servants to fully engage with the process of production of the Scotland's Future White Paper was considered by many of them as tantamount to imposing a breach of their own Civil Service Code. With Ministers playing their part in encouraging, if not enforcing the approach that was taken, renders them responsible for those breaches of the Civil Service Code, and in so doing they breached their own Ministerial Code of Practice.

October 2013 - the launch of the White Paper

On the 14th October 2013, when Alex Salmond and Nicola Sturgeon jointly launched the Scotland's Future White Paper, some in the media commented on the almost low key style of presentation. There was an explanation for what they were seeing. These two senior and experienced politicians were uncharacteristically nervous about the

reception they would receive and were concerned not to overplay their hand. They hoped that the sheer scale of the White Paper would create such a task for the press in terms of digesting and analysing its contents - it was 650 pages long - that they would get through the initial period after its launch without problems.

In particular, they did not want the early story to be about accusations of it being a nationalist manifesto for independence that was simply masquerading as an official White Paper. That would of course have implied misuse of public funds and resources. If on the launch that story had dominated thinking in the media, the game would have been up. The document would have been discredited from the start. The SNP would in all likelihood have had to repay its cost to the public purse. Alex Salmond and Nicola Sturgeon would both have had their reputations undermined and some senior Civil Servants would have had serious questions to answer.

But in the event, the press was almost overwhelmed by the task of considering and communicating the major points of the extensive content of the White Paper. Serious criticisms of whether it should ever have been produced came into the public domain much later and never really gained any traction. By then the SNP leadership was confident of their momentum, having got through the dangerous period when they feared full exposure might have occurred. Once a few days passed, the general acceptance of the 'credentials' of the White Paper became something of a *fait accompli*, implied by the initial commentary and analysis focused on its content rather than the process by which it had been produced and promoted. In the main, this attitude was shared by the press, politicians of all colours, as well as the UK Civil Service and the establishment figures that might have been expected to have blown a whistle. It was then all too late.

Some might have considered that the breaches of the Civil Service Code were really only technical in the circumstances of the referendum. After all the UK Government was using the full weight of its Civil Service to make the case in favour of retaining the Union. Indeed this would have

been argued by the SNP leadership when Scottish Civil Servants raised concerns over the planned approach.

There are however a number of flaws in that line of argument. First, no one is suggesting that the material from the UK Government was actively seeking to mislead the people of Scotland, whereas that view is now widespread regarding the Scottish Government's Scotland's Future White Paper. Not just from their opponents, but also now some of their own supporters have accepted a more honest approach would be needed in the future. The obvious shortcomings ranged from: the assumptions upon which economic projections were to be based, such as the blatantly over optimistic oil price; the ill judged childcare plans that subsequent research³ showed depended upon nearly twice as many mothers with young children going back to work than are currently inactive in Scotland; and the exaggerated descriptions and figures attached to continued membership of the UK – such as the very un-White Paper like language relating to Trident renewal and the use of the misleading £100 billion costing without proper explanation of how this was arrived at versus the mid £20 billions quoted by the UK government. None of these examples would normally have appeared in a formal White Paper without proper analysis and explanation of the range of alternate figures that could be used and the implications of these.

September 2015

The Scottish National Party is riding high. The nationalists might not have won the referendum in September 2014, but subsequently they seem set to secure a series of victories on the back of that defeat. Over the last year so much has worked to the SNP's benefit. With many of the SNP's high profile opponents during the referendum now back in their traditional party groupings, those against separation have faced an uphill battle to maintain a cohesive opposition. 'Politics as usual' and the first past the post system, favoured the nationalist cause in the General Election, like never before. While tactical voting did occur across Scotland, it was not sufficient to hold back the nationalist surge. Scottish nationalism has reached previously unimagined levels of popularity, with an enormous growth in membership, and a landslide

General Election victory that delivered 56 of the available 59 seats in Westminster. They also have a new First Minister in Nicola Sturgeon who is a most able presenter of the new 'progressive' face of Scottish Nationalism, and is arguably more generally acceptable than her predecessor.

The core SNP support are again fired up at the prospect of an early re-run of the independence question. There will be some mention of it in the SNP's manifesto for the 2016 Scottish elections along with 'triggers' to enable the First Minister to hold it at a time of her choosing. It almost seems as though the leadership of Scottish nationalism can do no wrong. The trajectory has been at times astonishing.

Yet how is it in an age in which politicians' actions seem to be critically analysed at every step, that to date, the SNP leadership have not been properly called to account for the approach they chose to take in relation to the Scotland's Future White Paper?

Accidental Witness – what have I done about it?

Over the course of the last 18 months I have tried to draw people's attention to the wrong-doing of the Scottish Government in relation to the Scotland's Future White Paper, but seemingly with little or no impact.

Sadly, it seems many have been taken in by a nationalist government and ideology accustomed to abusing and misusing power and appearing to get away with it, often on the strength of implying erroneously that the SNP and Scotland are one and the same thing. I have tried many times to raise much of this with the 'powers that be'. That is, those with the authority, and indeed the responsibility, to look seriously at wrong-doing of the sort I am detailing here. Those in such positions of power have had many chances to take up the cause I have been promoting, but have chosen not to.

If the wrong-doing I detail here is as bad as I claim, then numbers of people at the heart of the Establishment here in Scotland as well as elsewhere in the UK have been aware of what has gone on and chosen to say little or nothing. There may be various reasons for that, but one possibility is that they simply do not agree with me. That I am the one in the wrong.

In resigning from public office over the wrong-doing of the Scottish Nationalist Government during the referendum campaign, I am in a very small minority. Indeed quite possibly there is just me. There may be others, but just as my resignation caused not so much as a ripple, for all I know, others have quietly resigned too. Those in public office who know me, or are aware of what I have done, might well consider me as something of an eccentric. An obsessive, not prepared to leave these issues alone, when so many in senior office have denied any wrong doing, and when it appears that the Establishment have decided to let it be.

Am I trying to make something of nothing? Have I become so caught up in all the rancour of the Scottish referendum debate that I have lost all sense of a reasonable perspective? If I am honest, I must concede this as being a possibility.

While in confessional mood, I should also own up to having become, over the course of the last couple of years, rather biased against the nationalist ideology that underpins the approach of the SNP Government. For me it is clear that this modern version of Scottish nationalism is just as prejudiced and divisive as its predecessor versions. No matter that they put words like ‘civic’ or ‘progressive’ in front of their nationalism to try to make it sound more socially acceptable. At its core this ideology is still a nationalism that will stop at nothing to get its way, to impose the will of the minority on the majority, including serious abuse of public office.

In an age where more than ever before people need to see their common humanity and draw closer together, this Scottish nationalism is a doctrine that instead stirs false and exaggerated grievance against the UK in general, and the English⁴ in particular. Above all else, it sets out to separate the peoples of the UK, no matter the consequences for all of us.

So yes, I might be misguided, eccentric, obsessed, biased and plain wrong. You have been warned...

November 2013

As a Board member working at the Scottish Government’s skills agency⁵, in common with all the non-executive positions I have held across the private, public and voluntary sectors over the last 15 years, I was focused on all aspects of corporate governance. The agency I worked for had a key part to play in implementing Scottish Government policy in relation to skills and training, and I felt privileged to play my admittedly modest part in this. The aim was a laudable one, to support the development of people, young and old, who want to do the best with their lives. I was proud to be a part of the team who sought to convert this objective into reality, and I felt those I worked with did an excellent job.

In November 2013, the Scottish Government published their Scotland’s Future White Paper. It was an enormous disappointment for me, to realise that people at the top of the Government that employed me and

so many others in these governance roles had, with this White Paper, breached their own codes of conduct in a blatant misuse of public funds and a clear abuse of power. Effectively, the White Paper was a cynical attempt to mislead the people of Scotland.

As the White Paper was published I assumed initially that the press would quickly pick up on the misleading nature of much of its content, and the shallow political prejudice that ensured it lacked any sense of balance or proportion. Also I felt sure they would pursue the serious breaches that must have occurred in the White Paper's development, production and promotion. That is, breaches of the various codes of conduct that set out standards of behavior for Scottish Government Ministers and their Civil Servants. However, the sheer scale of the White Paper meant there was an immediate challenge for the media to summarise and analyse its content. This was where most of the initial focus went.

Subsequently, while some commentators referred to the political manifesto style of the White Paper, and various opponents started to pick apart the more standout examples of the misleading nature of much of its content, the serious breaches of codes of conduct that had enabled such a document to see the light of day, never seemed to draw sustained attention. Arguments about specific issues such as currency or the oil price assumptions dominated the public debate. The question as to whether the Scotland's Future document should ever have been produced under the guise of a White Paper seemed to get lost along the way.

There are various explanations for why there has been such a lack of interest in the wrong-doing implicit in the approach taken by the Scottish Government in the production of the White Paper. One possibility is that it was another example of various misguided 'concessions' made during negotiations of the terms of the referendum. It seemed as if in London the view was that if you gave the nationalists pretty much all that they asked for, then they could not blame the process for the ultimate result, which UK politicians initially were extremely confident would be clear cut, and in favour of retaining the Union.

What we have all learned since, is that the leadership of the SNP will always take every concession as a sign of weakness, and a stepping stone to taking even more. If there was any doubt before, we now know that nothing is ever considered enough by the leadership of the SNP. The drive to break up the UK is unrelenting, and justifies all manner of liberties being taken along the way.

By March of 2014, I had concluded I must act personally to draw more attention to the code breaches in the White Paper's production and the implications of these. So many of the nationalist leadership's subsequent assertions built on the content of the White Paper, leading to a serious manipulation of public opinion. It seemed critical to me to ensure as many people as possible understood the nationalist Government's abuse of their powers of office, and the serious undermining of the Scottish Civil Service that had occurred in the process.

On publication of the White Paper the Scottish Government disingenuously made it known to the Boards of public agencies that individual Board members could engage in the referendum process but that they should not criticise the Scottish Government. I resented such a blatant attempt to stifle public debate on this most critical of issues.

Yet, there were other limits on what I could say. As I contemplated speaking out against the Scottish Nationalist Government, I was aware that under the terms of the Code of Conduct for members of devolved Public Bodies⁶ and related guidance under which Board members like myself were expected to operate, there was reference to not engaging in activities that could be construed as politically motivated or otherwise could be considered contentious or controversial. Before I spoke out I therefore offered in advance to resign if that was required. In the event when in March 2014 I published material on my website www.nupateer.com , on the day it appeared I was told my offer would have to be taken up, so I resigned.

Subsequently, as well as a series of articles on my website, I wrote to a number of public officials and agencies as well as the Scottish Government themselves, with details of a form of complaint regarding the breaches of the Ministerial and Civil Service Codes⁷.

One of those bodies was the House of Commons Public Administration Select Committee (PASC) who have now published their conclusions. This included a reference to points I had made along with a link to my full submission⁸.

Most of the Public Bodies that I contacted did not consider the detail of my complaint, instead simply gave reasons why they did not consider it within their remit to consider such concerns or that otherwise that they could only pursue these matters if others in authority first agreed that the breaches had occurred rather than it being merely a statement of opinion from a member of the public.

Along the way, some of those I wrote to gave some guidance as to what would be needed if the form of complaint was to be considered, in particular, that it would not be enough to simply refer to general breaches of the Ministerial and Civil Service Codes, but rather specific reference would be needed to the clauses of the Codes that had been breached. The final version of my complaint⁹ submitted to the Office of the First Minister was therefore presented in this fashion - a full copy is appended to this article, along with the rejection of the complaint by the First Minister's Principal Private Secretary.

The document sent to the Office of the First Minister on the 21st June 2014 includes the following extract summary of the Complaint:

COMPLAINT

My complaint is in three parts and these can be summarised as:

- 1) There has been a serious breach of good public sector governance at the highest levels of Scottish Government in the production of the 'Scotland's Future' document and its subsequent misrepresentation as an official White Paper. Much of the White Paper's content can reasonably be described as political manifesto, being selective and biased at best and wilfully misleading at worst.
This breach of good public sector governance is reflected in a number of breaches of the Ministerial Code. The proper purpose of the White Paper could have been approached in a variety of ways without breaching the requirements of good public sector governance. Instead the document has been prepared and presented in a style that seeks to mislead the people of Scotland.
- 2) One of the breaches of the Ministerial Code relates to a number of inter-related breaches of the Civil Service Code through the involvement of the Scottish Civil Service in the production and presentation of the 'Scotland's Future' White Paper and its content.

- 3) One of the breaches of the Ministerial Code relates to a misuse of public funds (of £1.3m or more) and Civil Service resources in the production and distribution of the 'Scotland's Future' White Paper.

During the summer of 2014 I had run out of steam, or rather people to write to. And that might have been that. With so little apparent interest in taking this matter further on the part of those in authority, or those who have a role in bringing those in authority to account, I might well have just left it there, considering that I had done my 'bit'. There was a nagging concern however that many, if not all, of those I had written to had not really addressed the detail of the complaint at all, but had rather rejected it on principle concluding that if no other official body had raised such concerns then why should they consider the matter when raised by an individual member of the public.

We then had the referendum and the result that clearly favoured remaining in the UK. Given indications of this being a once in a generation or even a once in a lifetime opportunity, intended to absolutely maximize the nationalist vote, you could be forgiven for imagining the constitutional question would subsequently go away. If that were so, then perhaps after so much rancour throughout the referendum campaign, it would indeed be sensible for me to forget about continuing to draw people's attention to the SNP leadership's wrong-doing in relation to the Scotland's Future White Paper.

Yet of course the nationalist surge continued, buoyed up by a huge increase in new members, the SNP bandwagon rolled on into the 2015 General Elections with great gusto. To have re-raised all this during that period would probably have seen it fall on deaf ears, and encourage criticisms of simply seeking to influence the election outcome.

The Freedom of Information request

I did submit a freedom of Information request to the Scottish Government in October 2014, but by the time the very late response came some three months later, the next round of campaigning was already underway, and in any case the response was neither complete or clear in terms of the conclusions that could be drawn from it.

The reply I received to my Freedom of Information request in mid January 2015 was a fairly typical example of how government's now deal with awkward questions in areas they would rather not shine a light on. It is tempting to wonder if the long delays in answering my straight forward questions about the true cost of the Scotland's Future White Paper, and the extent to which there had been Civil Servant resistance to participating in the exercise, was some reflection of the concern over the proper answers and the effort that then had to be taken to ensure the actual answer, did not reveal too much.

Many people had tried to get to a proper total cost for the preparation and dissemination of the White Paper. Latterly, you will find various references to a total of £1.3m. Over time it became a tactic of the Scottish Civil Service to list a string of internet links to sources of previous material used in reply to earlier requests requiring these to be reviewed, analysed and aggregated. Some of the links actually just took you to a long list of costings and events and dates, again requiring detailed review to derive the totals that the Civil Service were well aware of.

I have analysed the costs that were included in the response¹⁰. That analysis suggests a figure of £1.9m, but that is itself an incomplete figure because the Scottish Government still chose in their reply to my clear FOI request to not provide the cost of the Civil Servants working on the project.

There is not by the way a defence for this approach along the lines of how these Civil Servants would have been employed in any case. In practice their previous roles needed to be covered at a cost when they were engaged with work on the White Paper. For my own estimate, given the refusal of the Scottish Government to reveal the information that they know, or at least could certainly establish with a reasonable degree of accuracy in just a few hours work, I have taken an indicative cost of 12 months of 30 people equivalents at an annual rate of £36,000¹¹. This suggests the likely order of magnitude of the cost of the Civil Servants involved in the White paper's production and dissemination of just over £1m. Taking this together with the Scottish

Government's revealed figure for costs spent with third parties, gives a grand total in the order of £3m. I suspect each of my assumptions underestimate the true position, but of course the Scottish Government know the actual position. My estimate is intended to cover the actual cost and opportunity cost of all full-time and part-time Civil Servant input to the Scotland's Future White Paper over the 2 to 3 years of its development, production, and dissemination.

This is where my grand total of in the order of £3million comes from. If my figure is correct it is very difficult to not conclude that the Scottish Government through its replies to numerous FOI requests and Parliamentary questions, consciously set-out to mislead the Scottish Parliament, the media and the public at large.

What next?

So what will happen next? Quite possibly nothing. I am just one of millions of people living in Scotland, so I do not have any particular right to have my concerns considered. The Scottish Government have dismissed my 'complaint' – without I believe giving it any serious consideration. Equally, a number of other public bodies have chosen to not really get involved, taking the view that unless another official body or someone in authority recognises there is a potential issue to consider, then there is no need for them to be drawn in.

Everything hinges on whether there has been a breach of the Civil Service Code. If I am right and there has been, then there has also been a breach of the Ministerial Code because it would have been senior Ministers in the Scottish Government that had pressured or cajoled the Scottish Civil Service to do their bidding in this regard. And significant public funds will have been misspent, somewhere in the region of £3m.

That figure by the way is of no consequence if there was not a breach of the two Codes. If the Scotland's Future White Paper and its contents did not involve any breach of the Civil Service Code then it does not really matter how much they spent on it. If as I believe there was a breach, then the figure is hugely significant, because these public funds would presumably need to be repaid by those that tried to benefit from the way

they were used. I assume the SNP would need to reimburse the public purse.

Yet, from the exchanges I have had with the Scottish Government, whether politicians or Civil Servants, and various other public authorities, it appears these matters will only be taken seriously if the people involved admit there was indeed a breach of the Civil Service Code, and as a consequence, of the Ministerial Code. It has always been unlikely that would ever happen.

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I believe there was a serious abuse of power on the part of the Scottish Government during the course of the Scottish referendum campaign. There are those with the authority to take this matter up properly. There are also others in a position to potentially confirm what I have said has happened. However, they would be putting their careers on the line to do so, and I can understand people's reluctance to jeopardize their livelihoods over this.

Those who understand the Ministerial and Civil Service Code breaches described here will also appreciate the public funding implications of this and consequent issues around proper reporting of election expenditure. In essence, I am saying that somewhere in the region of £3million of public funds have been improperly used in the preparation and distribution of what was very largely a nationalist manifesto for independence masquerading as an official White Paper.

I have described myself as an 'Accidental Witness' to all of this. In some ways we all are. No one wanted to think we were being governed by people actively seeking to mislead us. None of us wanted to imagine that the democratically elected Government of Scotland would so blatantly undermine the checks and balances that are intended to protect us all. Yet equally, too many have turned a blind eye to all of this.

The evidence is there for all to see. Much of it in plain sight. Yet more is capable of being exposed if those with the authority to do so, decide to investigate properly.

No matter how we voted in the Scottish referendum or which party we normally vote for, the abuses of power that I have described here potentially undermine our democracy. Simply put, we must not accept that which is unacceptable. When a government sets out to mislead its own people, it is time for ordinary people to speak out.

*Keith Howell*

*September 2015*

[www.nupateer.com](http://www.nupateer.com)

## Notes:

(1) **The Scottish Civil Service Code** – for a full copy see

<http://www.gov.scot/About/People/Directorates/Services-Groups/HR/HR/policies-guidance/conduct/Civil-Service-Code>

- in particular note item 8. 'You must set out facts and relevant issues truthfully..' and item 9. 'You must not deceive or knowingly mislead Ministers, Parliament, or others..'

(2) **Who am I?**

- the full copy of the final version of the formal complaint that I submitted to the Office of the First Minister includes some relevant background material about my experience. (see page 38 of this document).

Now another 18 months on from that, all I would is that of the 25 years I have lived and worked in Scotland, the last 15 years have seen me selected to undertake a series of governance roles as a non-executive director or Chairman for organisations across the private, public and voluntary sectors in Scotland. That perhaps explains why I feel particularly determined to draw people's attention to the shortcomings in the approach taken by the Scottish Government to the Scotland's Future White Paper. I take corporate governance seriously, and do not think turning a blind eye to what is not politically convenient is ever a good idea.

Equally, in producing a likely cost of the White Paper and its dissemination, I have produced an estimate based on the somewhat partial information released by the Scottish Government. Some might question my credentials for doing this. While I am not an accountant, I have acted as a Finance Director of quoted companies and indeed was awarded Scottish Finance Director of the year in 1997.

Of course, having been a non-executive director and a finance director does not preclude the possibility that I am wrong or unduly biased in my thinking to be properly impartial when giving a view. I hope I have provided sufficient detail in the content of this paper for others to take their own view of these matters.

(3) Scottish Parliament Information Centre (SPICE) research into White Paper childcare figures.

See news report here

<http://news.stv.tv/scotland-decides/news/270420-scottish-parliament-experts-question-white-paper-policy-on-childcare/>

SPICE concluded that the Scottish Government would need to get nearly twice as many mothers with young children out to work than are currently inactive in order to meet the economic projections in its Scotland's Future White Paper.

#### (4) Anti-English sentiment

To be fair the leadership of the SNP are now very careful to no longer directly refer to the 'English' in a derogatory way, as some of their predecessors will have done. Instead they use alternates like 'Westminster', 'London and the south', and the 'Tories', in a very similar way, often meaning the same thing as when their hard core supporters refer to the 'English', as if these alternate names get round awkward issues of political correctness.

In my experience, for the great bulk of the quarter of a century I have lived in Scotland, I have not suffered any significant ill-feeling as a result of being English until I became involved in the referendum campaign. Ironically in the midst of that campaign when sometimes my English accent led to some on the nationalist side of the debate telling me to go back to where I came from, I had come to consider myself as very much both Scottish and British.

(5) Keith Howell worked for the Scottish Government's skills agency, Skills Development Scotland, as a non-executive Board member from 1<sup>st</sup> August 2010 to 6<sup>th</sup> March 2014. In his role he chaired both the Finance & Operational Performance Committee, and the Remuneration and HR Committee, and was a member of the Audit & Risk Committee.

#### (6) Model Code of Conduct for members of Devolved Public Bodies

The Ethical Standards in Public Life etc (Scotland) Act 2000, provided Codes of Conduct for members of relevant public bodies. A revised version of the Model Code was approved by the Scottish Parliament in December 2013

For full details see:

<http://www.gov.scot/Publications/2014/02/4841>

(7) Public officials and agencies approached by Keith Howell regarding the Scottish Government's approach to the Scotland's Future White Paper include:  
The Head of the UK Civil Service; the Auditor General for Scotland; the Electoral Commission; The House of Commons Public Administration Select Committee (see note 8 below), The Civil Service Commission; and the Scottish Public Services Ombudsman.

Details of Keith Howell's complaint submissions:

16th April 2014 – a formal complaint submitted to the head of the Scottish Civil Service in relation to the preparation and presentation of the 'Scotland's Future' White Paper, also copied in to (amongst others) the Auditor General for Scotland, The Scottish Public Services Ombudsman and the Electoral Commission.

21st May 2014 – reply received from Sir Peter Housden, Permanent Secretary to the Scottish Government dismissing the complaint.

23rd May 2014 – complaint regarding the 'White Paper' raised again with the Scottish Public Services Ombudsman following completion of the complaints procedure of the Scottish Government, also copied in to the Chair of the Public Administration Select Committee.

21<sup>st</sup> June 2014 – revised complaint detailing specific breaches of Ministerial and Civil Service Codes submitted to the Office of the First Minister, with rejection received 19<sup>th</sup> August with no response to any specific elements of complaint, and no decision to refer the



First Minister to the Independent Panel for consideration of potential breaches of the Ministerial Code.

30<sup>th</sup> June 2014 – submission to the Civil Service Commission but they explained in their replies of the 22 July and 26<sup>th</sup> August (following a further letter 1<sup>st</sup> August as an addendum to the earlier submission) that the Commission does not have the legal power to investigate breaches of the Civil Service Code unless the complaint is from a serving Civil Servant.

21<sup>st</sup> August 2014 – submission to Scottish Public Services Ombudsman following completion of the complaints procedure through the Office of the First Minister. The SPSO responded on the 17<sup>th</sup> September saying that there is no clear specific administration or procedural failure evidenced in my complaint for them to consider. Effectively their position is that while it might be my opinion that there have been breaches of the Ministerial and Civil Service Codes it is not their role to adjudicate on matters of opinion.

That final response seemed to exhaust the lines of complaint open to ordinary members of the public.

(8) House of Commons Public Administration Select Committee (PASC) report ‘Lessons for Civil Service impartiality from the Scottish independence referendum’ published 23 March 2015 - <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/111/111.pdf>  
- see para. 34 for a reference to Keith Howell’s evidence to the committee, and in-turn click on footnote 40 to view a full copy of Keith Howell’s evidence  
- the final conclusions of PASC were critical of both the Scottish Government’s White Paper saying

‘We conclude that parts of the White Paper should not have been included in a government publication. Civil servants should not be required to carry out ministers’ wishes, if they are being asked to use public funds to promote the agenda of a political party, as was evident in this case.’

and the publication of the opinion letter by the senior Civil Servant at the Treasury

‘We further conclude that Sir Nicholas Macpherson’s advice should not have been published. Its publication compromised the perceived impartiality of one of the UK’s most senior civil servants.’

In giving fairly even coverage to both in its findings the report arguably clearly demonstrates it has tried hard to walk a line of impartiality itself in that the two issues are rather different. Equally, as regards the White Paper the Scottish Government is principally criticised for including material that was itself dependent upon the SNP winning the 2016 Scottish Elections. Again, arguably the Committee is here trying hard to not appear overly critical of the ‘Scots’, avoiding more direct and serious criticism of the legislative and executive arms of the Scottish Government knowingly conspiring to mislead the people of Scotland in the White Paper. Such a direct criticism of the Scottish Civil Service would have been very damning, and could not have avoided pointing the primary finger of blame at the main political leaders most closely involved, namely the previous and current Scottish First Ministers as well as the Finance Secretary.

(9) Keith Howell’s final complaint to the Office of the First Minister and rejection from First Minister’s Executive Assistant – full copies attached  
This is a copy of the most developed version of Keith Howell’s complaint – which

responding to previous responses from the SPSO now included detailed references to the specific breaches of the Ministerial and Civil Service Codes. This is the same version as that sent to the SPSO as the final step in the process detailed above, save for one re-edit. This amendment relates to the reference to the White Paper's treatment of the issue of Trident and its cost. The original wording suggested that the amount quoted was wrong whereas the amendment more correctly stresses that the main concern was that it was misleading in the manner in which it was quoted.

(10) Freedom of Information request response in full – attached

On the 18<sup>th</sup> October 2014 Keith Howell submitted a Freedom of Information request to the Scottish Government, asking for confirmation of:

(i) What was the final total cost of the production and dissemination of the Scotland's Future White Paper, from its initial design through to its physical production, distribution and promotion throughout the Referendum campaign?

(ii) Did this cost include the cost of the Civil Servants who contributed to the process of producing, disseminating and promoting the Scotland's Future White Paper and if not what additional total cost relates to the Civil Servant resources used on the White Paper?

(iii) How many Civil Servants involved or asked to be involved in the production and dissemination of the Scotland's Future White Paper expressed reservations or concerns about potential breaches of the Civil Service Code in this regard?

12 weeks later, and after a chase up to them for a response, a 5 page reply was received dated the 12 January 2015. In summary the responses given were:

(i) No new information needs to be provided – instead references were given to the answers to 6 Parliamentary questions by then Deputy First Minister, quoting various statements of the Scottish Government's spend on the Referendum materials namely. Research of those links provides detail that can be summarized as:

(1) 11.3.14 answer £800,000 costs to date of production, print and distribution of Scotland's Future plus £60,000 for 44 page summary

(2) 18.12.14 answer additional costs detailed for production, print and distribution of £407,020. This would take the total to date to £860,000 + £407,020= £1,267,020 for direct production, print and distribution of Scotland's Future

(3) 18.12.13 answer Costs of launch event for Scotland's Future £12,432.76

(4) 22.5.14 costs of local Scotland's Future events in January to March 2014 total of £49,855.12

(5) 18.12.14 further Scotland's Future local events costs plus some national events from April to August'14 a total of £68,376.04

(6) 20.08.14 cost of Scotland's Future – What Independence means to you' leaflet production, print and distribution £525,300

With the total of all the above production, distribution and promotion costs being £1,922,983. However, this total ignores the costs of Civil Servants working on production, promotion etc of Scotland's Future – see answer to Question (ii.)

(ii) While the reply said they did not record the time of Civil Servants spent on the Scotland's Future White Paper, the reality is that a fairly accurate estimate could be easily arrived at.

Freedom of Information legislation does allow for public bodies to not reveal information that they do not have, in practice this wording is often used as a device to avoid revealing information that could be readily produced. For my own estimate, having studied information about likely numbers of staff used on the project and the likely salaries of these, I would use 1 year of 30 staff at £36,000, giving a figure of £1,080,000. This would give a grand total of £3,002,983. See further details in note (11) below.

(iii) The shortest reply provided was to the question about the number of Civil Servants that had expressed reservations or concerns about breaches of the Civil Service Code, simply saying that no one had raised such concerns with the 'Nominated Officer for the Civil Service Code in connection with the production or dissemination of Scotland's Future'. Of course what this does not address is how many such reservations or concerns were raised with the relevant members of staff's line managers. Frankly, for anyone who knows the Civil Service and the generally very 'proper' approach they take to their work, it seems unlikely in the extreme that no such reservations or concerns were actually raised during the process.

(11.) Civil Servant input to Scotland's Future White Paper.

The Scottish Government chose to not give a full answer to the relatively simple request for quantifying the cost of all Civil Servant input to the Scotland's Future White Paper. A fairly accurate estimate would have probably taken about an afternoon's work but the request can be avoided by simply saying that the information is not directly to hand.

In arriving at my estimate of just over £1m I have used the equivalent of 30 staff for one year at an average cost of £36,000. The reality was that variable numbers of staff were involved in the project over the course of a 2 to 3 year period. So for example my staff numbers figure would be the equivalent of 10 over 3 years. Based on partial information provided in the FOI request my figure is likely to significantly underestimate the position. Equally on staff salaries I have looked at average bands of salaries of Civil Servants of lower, middle and senior staff in arriving at what I suspect is again an under estimate. All in all therefore I suspect my approximate £1m cost for Civil Servant input understates the position significantly, so I also expect that the total cost I have provided above of in the order of £3m, is itself an understatement of the true total cost.

### **Attachments**

- (i) Final version of Keith Howell's formal complaint – submitted to the Scottish Parliamentary Ombudsman (21<sup>st</sup> August 2014) including full copy of final complaint submitted to Office of the First Minister (21<sup>st</sup> June 2014.)
- (ii) Rejection from Office of First Minister from Joe Griffin, Principal Private Secretary to the First Minister (15<sup>th</sup> August 2014)
- (iii) Dismissal of the complaint by the SPSO (17<sup>th</sup> September 2014) and my final reply to that letter (23<sup>rd</sup> September 2014)
- (iv) Freedom of Information request formal response (12<sup>th</sup> January 2015)

The Scottish Public Services Ombudsman  
4 Melville Street  
EDINBURGH  
EH3 7NS

21<sup>st</sup> August 2014

Dear Sirs,

**Complaint against the First Minister/Scottish Government regarding the Scotland's Future White Paper**

I wrote to you in April, May and June, seeking to progress a complaint against the Scottish Government in relation to the production of the Scotland's Future White Paper. I had raised my complaint with the Permanent Secretary in the first instance and had come to you when he rejected it, as this appeared to exhaust the Scottish Civil Service's consideration of the issues I had raised.

In my exchanges with SPSO, you indicated I needed to clarify which specific laws, regulations or codes I was claiming had been breached before you could consider the complaint. I then provided that detail alongside the original complaint and re-submitted it to you. In your final letter to me on the 16<sup>th</sup> June you explained you were not able to consider my complaint in the revised version detailing specific breaches, as it would first need to be resubmitted to the start of the relevant complaints process. You also helpfully clarified that given the Code breaches related to the Ministerial Code and the Civil Service Code I should not return to the Permanent Secretary's office but rather as regard the Ministerial Code breaches to the Office of the First Minister, and in regard to the Civil Service Code breaches, the Civil Service Commission.

You explained further in regards to the Civil Service Commission, that under the terms of the Civil Service Code the Civil Service Commission only considered complaints from serving Civil Servants. Subsequently I did write to them explaining why in the special circumstances of this case the Commission might at least look at the principles involved. However, they decided not to consider the detail of my complaint.

**Complaint against the First Minister**

This letter is to ask you to consider my complaint to the First Minister dated 21<sup>st</sup> June 2014 (copy enclosed) and the reply dated 15<sup>th</sup> August 2014 (also enclosed) which I take as an end to the process of complaint with the First Minister's Office. You will note that my complaint includes specific reference to the detailed breaches of the Ministerial Code (and related Civil Service Code breaches). You will also note that in his reply the First Minister's Principal Private Secretary makes no attempt to address the detailed matters that I have raised but rather relies completely (as indeed the Permanent Secretary did previously) on a broad statement of how it is the role of the civil service to support the elected government of the day and implement its policies, without care for its political persuasion (see section 14 of the Civil Service Code). It is my contention that this in no way justifies breaches of other aspects of the Civil Service Code as detailed in my complaint (sections 6,7,8,9,10,11, 12 and 13), and most certainly cannot be used as a defence for breaches I have identified in the Ministerial Code (sections 1.2 (i), 1.2 (j) and 2 of the seven principles of public life, namely: selflessness, and openness).

I would understand that you might be concerned about references here to the Civil Service Code given that you have previously indicated the Civil Service Commission are responsible for dealing with complaints under this code, but as you will see in my complaint, all such breaches are referenced in order to evidence the breach of the relevant Ministerial code (clause 1.2j).

You might also wonder if you are really the correct body for considering my complaint now that it has been rejected by the Office of the First Minister. I fully accept that it is indeed a very difficult issue. I am just an ordinary member of the public raising a complaint of the most serious breaches of the Ministerial Code and breaches of good public sector governance at the top levels of the Scottish Government. The relevant authorities of the Permanent Secretary and now the Office of the First minister are rejecting my complaint by effectively saying there is no case to answer. The latest reply I have had lists the various bodies I have written to, presumably to imply that if there were any grounds in what I was complaining of, then surely one of these authorities would have supported my case by now.

In addition to the content of my complaint itself, I would emphasise the following 5 points to try to encourage you to take my case seriously, and not simply dismiss it without properly considering the detail, as others seem to have done:

1) **Why has the First Minister not referred himself?**

The First Minister has on a number of previous occasions referred himself to the panel of Independent Advisers on the Ministerial Code in relation to complaints brought against him on matters which arguably appeared to be far less serious than the matters I am raising and with far less material evidence (see item 5 below), yet has not done so in regards to my complaint of a series of Ministerial Code breaches on the Scotland's Future White Paper

2) **Why have none of the authorities I have approached upheld my complaint?**

While I have raised my complaints with numerous public bodies, to be fair some, such as the Electoral Commission and the Auditor General for Scotland, have only been copied in on my complaint for information, without expecting them to consider the detail. For the rest, the only ones that have taken any view as to the rights and wrongs of my complaint have been the First Minister and the Permanent Secretary, who are of course the two individuals most directly involved in the matters I am complaining of. They have both chosen to not respond to any of the detail of the complaints I have raised but just used a generalised line of response. Effectively they are saying Civil Servants do what they need to in support of the Government of the day, implying any apparent breaches of Codes can be justified on this basis.

3) **Is my complaint frivolous? Am I being obsessive in not accepting its dismissal by the First Minister's Office?**

You might wonder if this complaint is being raised frivolously by me, without real concern about its true merit or the consequences of its consideration. However, I would point out that in order to pursue this complaint I resigned my role in the public sector working as a Board member on the Government's NDPB skills agency. I am under no illusions that I will ever again be able to work in the public sector now that I am pursuing not just the SNP Government but also senior civil servants for the matters I am complaining of in regards to the Scotland's Future White paper. Also I have tried hard to identify breaches in material and demonstrable terms.

4) **Does it really matter?**

UK Government departments have themselves published material regarding the Independence Referendum that could be argued to be just as partial as that from the Scottish Government. Also with the Scottish Independence Referendum vote very nearly upon us, once the result is known will the matters I am complaining of here have any real significance? My complaint paper clearly addresses the issue of the UK Government contributions to the debate, and under the section entitled 'Other matters & information' I have explained 3 reasons why this does not negate the complaints I have raised. As for what happens after the result of the Referendum is known, I would point out that if I am correct then the Scottish Government has acted improperly in regards to the Scotland's Future White Paper and there are serious matters that must then be addressed including the misuse of public funds. Also I am raising serious issues of abuse of power, which if correct are directly relevant in the circumstances of the same people - both senior politicians and civil servants - overseeing the planned Scottish Constitution process.

5) **Does my complaint rely on purely opinion?**

With the specific breaches of Codes now detailed in my Complaint, I contend it is capable of being independently and objectively assessed. In addition the SPSO can like everyone else look again at the 650 pages of the Scotland's Future White Paper and consider themselves if it does really reflect as the First Minister's Principal Private Secretary says in the final sentence of his letter that 'Scotland's Future has addressed the issues raised in an *objective* yet accessible form'.

Thank you for your time in considering this matter. I look forward to hearing from you.  
Yours faithfully,

Keith Howell

Office of the First Minister  
St Andrew's House  
Regent Street  
EDINBURGH  
EH3 7NS

21<sup>st</sup> June 2014

Dear Sirs,

**Breaches of the Ministerial Code in relation to the 'Scotland's Future' White Paper**

**SUMMARY**

I write to pursue a complaint against the Scottish Government for Breaches of the Ministerial Code in relation to the production and distribution of the 'Scotland's Future' White paper. These relate to the misleading content and misrepresentation of the White Paper, and the misuse of public funds and resources in its production and distribution. In summary I am highlighting breaches that relate to sections 1.2 (i) and (j) of the Ministerial Code as well as a failure in regards to two principles of the seven principles of public life included as an Annex to the Ministerial Code, namely 'Selflessness' and 'Openness'. Further details are included below.

**BACKGROUND**

As I have been pursuing these matters for some time it might be helpful to give a brief overview of the steps and processes I have been through so far, although as I will explain this current complaint is nevertheless complete in its own right and can be taken as a fresh start in seeking to have these matters properly addressed.

I initially started to speak out publically on this matter on the 6<sup>th</sup> March 2014 when I launched a website - [www.nupateer.com](http://www.nupateer.com) - setting out my concerns about the way that the SNP Government has been seeking to mislead the people of Scotland in its general tactics in the Independence Referendum campaign and specifically with the misleading content of the White Paper. On the same day I stepped down from a role as a Board member of a non-departmental public body\* in order that I would be able to speak freely.

Subsequently, given that I was not aware that any formal complaint regarding the White Paper has been raised by a more competent body or individual, I decided to submit a formal complaint to Sir Peter Housden, Permanent Secretary to the Scottish Government on the 16<sup>th</sup> April. For your convenience I enclose a copy of his eventual reply dated the 21<sup>st</sup> May. I have not included a copy of my own original complaint for it will in any case all need to be restated here as a new complaint\*\*. In essence I claimed there had been 'a serious breach of public sector governance at the highest levels of Scottish Government in the production of the Scotland's Future document and its subsequent misrepresentation as an official White paper'. I went on to explain how I thought there had been a breach of the Civil Service Code through the involvement of the Scottish Civil Service with the White Paper and a misuse of public funds of £1.3m or more and a misuse of Civil Service resources in its production and distribution.

\* Skills Development Scotland, as a Board member for 4 years - but my complaint does not relate to my work at SDS

\*\* A full copy of the original complaint can be forwarded if required - it is not included here for the sake of brevity.

Sir Peter's reply does not respond in any detail to the specifics of my complaint, but rather sets out the role of the Civil Service in supporting their respective Governments. This is all in line with Sir Peter's evidence to the Public Administration Select Committee (PASC) on this subject. Overall that evidence, confirmed by Sir Bob Kerslake, the Head of the UK Civil Service, at the same evidence session, focussed on how under the political impartiality clauses of the Civil Service Code the Civil Service must serve its Government whatever its political persuasion to the best of their ability. Sir

Peter made clear in his evidence, that any shortcomings of the White Paper in terms of its content were in his opinion a matter for the Government and how it decided to present its policies. The Civil Service could not be found at fault for providing support in the process of preparation and distribution of the White Paper. The Civil Service were simply doing what the Government asked of them. Again Sir Bob Kerslake seemed to confirm his agreement with this interpretation of the Civil Service Code.

With such experienced and senior Civil Servants making clear that in their view there have been no breaches of the Civil Service Code in the production and distribution of 'Scotland's Future' White Paper, it would seem almost pointless pursuing a complaint based on there being breaches of the Code. However, in earlier evidence sessions at the Public Administration Select Committee, two eminent Professors - Professor Gallagher and Professor Keating - revealed some interesting points about the Civil Service Code in replying to questions. Neither could remember there ever having been a successful claim of a breach of the Code, nor were they aware of any mechanism for dealing with any claimed breaches of the code beyond Civil Servants raising them with their superiors. They expressed the view that any Civil Servant raising such a complaint would likely not do much good for their careers. Reflecting on all of this it would appear that while as the Heads of the UK and Scottish Civil Service stated, the Civil Service Code sets out the framework upon which all their day to day work is pursued, it is not at all clear that anyone in the Civil Service would ever raise a claim of a breach of the Code or that any breach would ever be recognised. It is as though the Civil Servants take the view that the Code not only sets out how they should behave but that since they all follow it there cannot be a breach of it. I am not therefore convinced that Civil Servants - particularly very senior ones - are properly open to the possibility that the Code could be broken, as they would view this as a failure of their whole profession, a failure that they would not want to contemplate.

My next step was on the 23<sup>rd</sup> May to forward a copy of my original complaint with a covering letter to the Scottish Public Services Ombudsman (SPSO). I had written to them previously but they had said that I must exhaust the Scottish Government's complaints procedure first. With my letter of the 23<sup>rd</sup> May I included a copy of Sir Peter Housden's response to my complaint and asked if the SPSO would now consider my complaint. They did this and in due course gave me some initial feedback. This emphasised the importance of being able to identify the specific elements of any Regulation or Legislation that had been breached. I responded in detail identifying the specific clauses in the Civil Service Code and Ministerial Code that I believed had been breached. This did not involve any new elements to my Complaint but rather a simple linking of the elements of Complaint to breaches of specific clauses of the relevant Codes.

The SPSO then responded - a copy of their letter is not included here as it states it is not to be made publicly available. Again I have not included my own letter\* to the SPSO as all of the relevant material is included here in this revised and completed form of complaint. In their reply

\* a copy of my letter is available if required, simply excluded here for brevity and to avoid repetition

the SPSO started by expressing the view that even with just some additional detail of how the content of my Complaint related to specific breaches it would need to be returned to the start of the process with re-submission to the Scottish Government. However, as they also stated that complaints of a breach of the Civil Service Code should come from serving Civil Servants, there seems no point just now in re-submitting to the Scottish Civil Service. The SPSO did clarify that the Office of the First Minister is the correct place to direct claims of breaches under the Ministerial Code, so I have therefore directed this Complaint to yourselves. While this does include some reference to breaches of the Civil Service Code this is only as is appropriately required to demonstrate some of the specific breaches of the Ministerial Code.

## **COMPLAINT**



My complaint is in three parts and these can be summarised as:

- 4) There has been a serious breach of good public sector governance at the highest levels of Scottish Government in the production of the 'Scotland's Future' document and its subsequent misrepresentation as an official White Paper. Much of the White Paper's content can reasonably be described as political manifesto, being selective and biased at best and wilfully misleading at worst.  
This breach of good public sector governance is reflected in a number of breaches of the Ministerial Code. The proper purpose of the White Paper could have been approached in a variety of ways without breaching the requirements of good public sector governance. Instead the document has been prepared and presented in a style that seeks to mislead the people of Scotland.
- 5) One of the breaches of the Ministerial Code relates to a number of inter-related breaches of the Civil Service Code through the involvement of the Scottish Civil Service in the production and presentation of the 'Scotland's Future' White Paper and its content.
- 6) One of the breaches of the Ministerial Code relates to a misuse of public funds (of £1.3m or more) and Civil Service resources in the production and distribution of the 'Scotland's Future' White Paper.

### **The Content of the 'Scotland's Future' White Paper**

As regards the first element of my complaint (regarding the content of the White Paper), the breach of public sector governance relates to the Ministerial Code in that the senior leadership of the SNP Government, including the First Minister and the Deputy First Minister, have used public resources to produce a document that is biased and misleading for party political purposes. The Scottish Ministerial Code was last updated in 2011 and the areas that are most relevant to my complaint are in section 1.2:

"(i) Ministers must not use public resources for party political purposes;

(j) Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code as set out in the Constitutional Reform and Governance Act 2010."

Also of particular relevance are two principles of the seven principles of public life included as an Annex of the Ministerial Code – namely: 'Selflessness' - my complaint is that political ends have been pursued at the expense of the more balanced approach that would have been required in the public interest; and 'Openness' - my complaint is that the Scottish Government have left out of the White Paper information and analysis that they have access to or could have prepared, but have withheld because it does not suit their political purposes.

To be presented as an official White Paper, the policies and outcomes contained in the document should have reflected a proper rigorous costing of policies and an honest and balanced explanation of the range of possible outcomes, including the risks and sensitivities of these. Instead the document presents an idealised version of what an Independent Scotland might look like, misleadingly suggesting across a very wide range of issues that the SNP's preferred outcome is the most likely or simply inevitable result after Independence. This might be expected of a manifesto but not of an official White Paper. The people of Scotland deserved to have a document that properly considered the feasibility and costs of all the plans set out in the White Paper. The SNP Government and their Civil Servants knew this to be the case, but decided instead to leave these out, presumably because such information was considered potentially unhelpful to the SNP's political ambitions. Two stand out examples of missing information are the set-up costs of Independence - recently publically debated at being anywhere between £200million and £1.5billion - and the likely additional borrowing to enable the growth projections in the White Paper - now being quoted by the SNP Finance Secretary as potentially in the order of £billions of extra borrowing in each of the early years of Independence, perhaps some £8billion over the first 3 years. In addition numbers of independent

economists - such as the Institute of Fiscal Studies - have said that in order to afford the various pledges in the White Paper a newly independent Scotland will need to increase taxes, reduce public spending or both. I suggest all of this information was left out of the White Paper simply because it was inconvenient to the SNP's cause.

In relation to two of the major issues of the Scottish Independence Referendum debate - namely the currency and membership of the European Union - the White Paper presents the SNP Government's preferred outcomes as if they were the inevitable outcomes, without proper consideration of the likelihood or implications of alternate outcomes. In regard to currency the option of a sterling currency under a formal currency union is identified as the most likely by the device of the Fiscal Commission's analysis suggesting this would be in the best interest of not only Scotland but also the rest of the United Kingdom. However, the Fiscal Commission are simply a group of the First Minister's economic advisors and appear to have been used as a device to justify avoiding more detailed consideration of other currency options in the body of the White Paper. Equally in regard to Europe the White Paper focuses on the SNP's preferred outcome, assuming membership is achieved on favourable terms within the timescale required. There is little or no recognition of the risks of either less than ideal terms being available or of a longer timeframe to secure membership, both of which are widely recognised by independent commentators as perfectly possible outcomes.

Apart from the broad shortcomings of misrepresenting a manifesto as a White Paper, and the exclusion of risks and sensitivities as well as costs and feasibilities, there are also numerous specific claims in the White paper that appear to have not had the rigour of analysis and checking of evidence that would normally be expected of a document with Civil Service involvement in its production. Some prime examples are: in the headline childcare policy the perceived benefits seem to have been based on 104,000 women moving from economic inactivity into economic activity whereas independent analysis of this suggests there are only 64,000 mothers of 1 to 5 year olds who are economically inactive (see 2<sup>nd</sup> April'14 SPICE briefing 'Early learning & Childcare'); the cost of Trident being quoted at £100 billion when official figures suggest a £25billion replacement cost; and the critical oil production and price assumptions that appear to be potentially widely at odds with official estimates. These are just a few examples. I am not saying there is no case to be made for the figures quoted by the SNP Government in the White Paper. Rather it is clear on these and numerous other examples that a proper White Paper would have needed to explain the basis upon which these particular numbers are being quoted, recognising the wide variation possible if alternate respected and official numbers were used. Instead a 'manifesto' approach is used, in presenting a preferred and idealised outcome as the inevitable or most likely one.

It is a breach of good public sector governance for such a document to have been misrepresented as an official White Paper, for Scottish Civil Service resources to have been used in its production and subsequent presentation and dissemination, and for public funds to have been used to pay for it all.

I do not believe that the SNP Government can hide behind political expediency in relation to what they have included in, or excluded from, the White Paper. While it is arguably okay for the Scottish National Party or the Yes campaign to be selective and biased in what they present to the people, the leadership of the SNP Government should be held to a higher standard. In this regard it is important to note that they do not have a mandate for Independence. Rather they have a mandate for a Referendum on Independence, and as the devolved Government of Scotland have a responsibility to fairly present information to the people of Scotland.

The purpose served by the White Paper could have been approached in a variety of ways without breaching the requirements of good public sector governance. For example, non-politically biased aspects of the White Paper could have gone in a shorter official document covering aspects such as process and so forth with full Civil Service involvement, while all manifesto type policies and claims

could have been kept in a separate document produced with no Civil Service involvement. Another alternate but much more difficult approach, would have been to have had a document like the one we now have but with careful balanced presentation on each and every issue, proper analysis of costs, and of risks and sensitivities throughout. On each topic the SNP Government's preferred outcome or approach could have been clearly identified but in the context of the range of alternate possible approaches or outcomes, and an honest review of risks and sensitivities. However, no meaningful attempt has been made to follow this approach with the 'Scotland's Future' document. Instead it has been prepared and presented in a style that seeks to mislead the people of Scotland.

### **Breaches of the Civil Service Code**

The Civil Service Code was last updated on the 11<sup>th</sup> November 2010 when it was laid before Parliament giving the terms of the Code a statutory footing. In relation to the second element of my complaint which related to the Civil Service Code the relevant elements of the Code that I am suggesting have been breached are: 'Integrity' (sections 6 & 7) where there is a clear reference to ensuring public money and resources are used properly - my complaint is this was breached due to the political manifesto balance/content of the White Paper ; then 'Honesty' (sections 8 & 9) where there is a clear reference to not only not misleading Ministers and Parliament but also 'others' which surely includes the general public - my complaint is there has been an attempt to mislead the public with the idealised vision set out in the White Paper without proper analysis of feasibility or costs as would normally be included in an official White Paper; 'Objectivity' (sections 10 & 11) where there is clear reference to not ignoring inconvenient facts - my complaint is that there are numerous examples throughout the White Paper where equally possible or arguably more likely outcomes or consequences have been ignored when they should have been explained along with the SNP preferred outcome; 'Impartiality' (sections 12 & 13) clearly sets out that there should not be unjustifiable favouring of particular individuals or interests - my complaint is that given the SNP Government has no mandate for independence but rather a mandate for an independence referendum, then the White paper should have given a more balanced presentation of the potential implications of independence including of course the Scottish Government's preferred and hoped for outcomes but not overwhelmingly ignoring others. All of this was clear in my original complaint but I have spelt out here some of the ways that the specifics of the Civil Service Code have indeed been breached.

The relevance of detailing breaches of the Civil Service Code in this complaint is that this in turn links to a breach of the Ministerial Code in that as noted in the first element of my complaint, under section 1.2(j) of the Ministerial Code "Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code as set out in the Constitutional Reform and Governance Act 2010"

There has been a breach of the Civil Service code through the involvement of the Scottish Civil Service in the production and presentation of the 'Scotland's Future' White Paper and its content. As explained above alternate approaches were available to those involved in the preparation of the White Paper. It is impossible to know from the outside how willingly the Scottish Civil Service have gone along with the selected approach. However, it is difficult to imagine that given the cautious and professional approach normally taken by the Civil Service in circumstances where their impartiality could be under scrutiny, that some concerns were not expressed by at least some of those involved. Presumably such concerns or doubts as there were have been overruled. I do not believe that it is a sufficient excuse to claim that the approach taken to the White Paper was decided by the SNP Government and therefore the Scottish Civil Service was simply acting on the direction of Ministers. Rather I believe the Civil Service Code implies a responsibility on the part of the Scottish Civil Service to prevent such serious breaches of good public sector governance as I have explained above in the first element of my Complaint.

## **Misuse of Public Funds and Resources**

The third element of my complaint relates to the misuse of public sector funds and resources - to the extent of the £1.3m quoted by the Scottish Government as the spend to date on the White Paper plus the cost of Civil Servant input in its production and distribution to the extent that this is not included in this number. This element is of course only relevant if there are grounds for the first two elements of my complaint. If there are then arguably this element of the complaint is the most serious. The only comparable circumstances would be if Civil Servants were asked to help produce a party political manifesto in a general election. This of course would never happen as it would be considered a flagrant breach of the Ministerial and Civil Service codes. While the Referendum is different to an election, there are still major political forces at play in the campaigns and it is difficult to see how on any reasonable view much of content of the White Paper is not considered to be 'political manifesto' in its substance. It is also worth noting in this regard that currently the SNP Government do not have a mandate for independence. Rather they have a mandate to hold an Independence Referendum and given the huge ramifications of the outcome of that Referendum, there is arguably at least as high, if not a higher, requirement for propriety in its conduct as there would be for a General election.

## **REMEDY**

If there are grounds for my Complaint then it is arguably the role of more competent parties than myself to decide what remedies should be applied. However, without proposals here for remedies, some might suggest that this Complaint does not have a clear purpose. To avoid it being rejected on those grounds I would propose the following simple remedies. Firstly, the Scottish Government should be asked to symbolically withdraw the 'Scotland's Future' White Paper. Too many copies are of course already in the public domain for it to be physically recalled, but such symbolic withdrawal would at least demonstrate to the people of Scotland the way that their Government has sought to mislead them. Secondly, there would need to be a recovery of the public funds misused in preparation and distribution of the White Paper. It would require a more competent person than I to judge who this should be recovered from.

## **OTHER MATTERS & INFORMATION**

I am aware that some might seek to counter my complaint by seeking to draw parallels with documents issued by the UK Government and its Civil Servants. While I will not try to get into the detail of that here I will make three brief points.

Firstly, no matter the rights or wrongs of what UK Civil Servants have done, this cannot be used in any way to justify or excuse the serious breach of good public sector governance that I am complaining of in regard to the 'Scotland's Future' White Paper.

Secondly, I believe there is a substantive difference between the nature of the papers produced by the UK Government and the way that they have been presented and the misleading presentation of the 'Scotland's Future' document as a White Paper. Arguably the former are openly seeking to highlight the implications of the break-up of the United Kingdom, while the latter as I have explained in my complaint, is misrepresented as an informative and balanced official White Paper, presenting the case for Independence ahead of the Referendum, but instead uses an idealised and selective manifesto approach that is biased and misleading in terms of its content and what it has purposefully excluded.

Thirdly, while the UK Government have an implied mandate to protect the interests of the whole of the United Kingdom and as such can properly argue the case for the benefits of avoiding its breakup, the Scottish Government only have a mandate for a Referendum on Independence so have a responsibility ahead of the Referendum to inform all of the Scottish public whether they propose to vote Yes, No or are as yet Undecided, as regards all the implications of voting for Independence, in a

balanced and informative manner, which as I have set out in my Complaint they have clearly failed to do.

For your information I have attached a short note regarding my background as the complainant. Copies of earlier correspondence on this matter are available for you if required and are only excluded for now to keep this letter reasonably brief.

**FINALLY**

Copies of my original complaint to the Permanent Secretary of the Scottish Government were also sent to the Head of the UK Civil Service, the Auditor General for Scotland, the Electoral Commission and the SPSO. So far it is not clear that any have given the detail of my Complaint any serious consideration, but instead in the most part reasons have been found to either dismiss the whole out of hand or to side step and leave others to deal with it. My purpose is simply to seek justice for the people of Scotland in this matter.

Thank you for your time in considering this complaint.

I look forward to hearing from you.

## DETAILS OF COMPLAINANT

Keith Howell of White Moss, West Linton, Peeblesshire, EH46 7BS

This complaint is made firstly as a private individual, who has lived and worked in Scotland for 23 years. As a private individual I am just one of millions, and do not claim any more significance than anyone else. I had hoped to see other organisations or individuals in positions of more relevance and importance raising these concerns as formal complaints, but I am not aware that this has happened. One reason might be that it is generally believed that raising concerns in the public sector could be detrimental to career prospects. For those coming from other walks of life, there might be concerns that criticising the Scottish Government in the currently charged atmosphere could result in them being targeted with abuse and intimidation. I have decided to proceed with my own complaint as a private individual to ensure that it cannot be said that no formal complaint has ever been made.

Secondly my complaint is made as someone who has had an involvement in public sector governance. I have resigned from my public sector role to enable me to speak out freely. I should make clear that I am acting in a purely personal capacity, and my complaint does not in any way involve the public agency that I previously worked for. Also I have had no involvement in the production of the White Paper so my complaint does not come from any special vantage point in the process of its preparation.

Over the last 4 years I have had a role as a Board member of a Scottish Non Departmental Public Body - namely Skills Development Scotland. Triggered by my concerns about the misleading nature of the SNP Government's 'Scotland's Future' White Paper, I concluded I should resign from the SDS Board to give me freedom to raise my concerns. These concerns have nothing to do with SDS or any of those on its Board or working in SDS, or indeed the Minister that they report to, all of whom I have the highest regard for. As raising concerns about the SNP Government's Independence Referendum campaign could have had negative implications for SDS, I chose to resign from my role on the day that I started my personal campaign. With this campaign I have sought to draw attention to the way that I believe the SNP Government has set out to mislead the people of Scotland. In particular this applied to the approach they have taken to what they called a White Paper, the 'Scotland's Future' document, published in November 2013.

While like all NDPB Board members my role involved significant governance responsibilities, I would be the first to admit that in the overall context of the Scottish public sector my role was a modest and peripheral one, and I am not therefore especially positioned to comment on these matters. Rather I raise my complaint as a member of the general public and do so on the same publically available evidence that has been open for all to see.

Where I refer to a breach of 'public sector governance' I am referring to a failure on the part of public officials, whether they be elected or appointed, to act properly in carrying out their responsibilities. There are of course extensive codes of conduct for Ministers and Civil Servants on this subject. I do not suggest I am any expert on these but believe the content of my complaint is clear enough and I have tried my best to link the breaches that I have highlighted to specific sections and clauses of the Ministerial Code or the Civil Service Code.

Mr Keith Howell  
Whitemoss  
West Linton  
EH46 7BS

In 2014 Scotland Welcomes the World



Our ref: 2014/0021865

AS August 2014

Dear Mr Howell,

Thank you for your letter of 21 June 2014 to the First Minister's Office concerning *Scotland's Future*, the Scottish Government's guide to an independent Scotland.

You have already received a response dated 21 May from the Permanent Secretary to your letters of 16 April and 8 May regarding the provisions of the Civil Service Code, and you have also written to the Head of the UK Civil Service, the Auditor General for Scotland, the Electoral Commission and the Scottish Public Services Ombudsman.

Your letter of 21 June cites the Scottish Ministerial Code, and in particular paragraph 1.2 (j) which requires Ministers to uphold the political impartiality of the Civil Service and not to do anything which might cause civil servants to breach the Civil Service Code. You also cite paragraph 1.2(i) which requires that Ministers do not use public resources for party political purposes.

As the Permanent Secretary outlined in his response to you of 21 May, it is the role of the civil service to support the elected government of the day and implement its policies. *Scotland's Future* is a statement of the elected government of Scotland, not of a political party and, while the referendum is politically contentious, it is appropriate that civil servants carry out their duties on this issue as they would any other government policy.

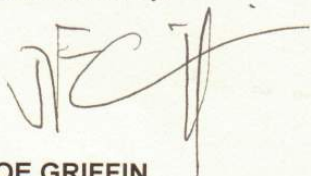
It is clear therefore that civil service resources can legitimately be deployed to develop, describe and explain the Scottish Government's proposals and implement their policies in relation to independence.

This is in line with the Civil Service Code and, as such, we can find no basis for your further complaint to the First Minister citing the related provisions of the Ministerial Code. We are therefore unable to pursue the points you raise further.



I can reassure you that Scottish Ministers value the high level of public interest and engagement in the debate on Scotland's future and have been keen to ensure that everyone in Scotland has the information they need to make an informed decision in the referendum. As the Permanent Secretary indicated in his response, there is a clear appetite in Scotland for information and debate on the independence proposition, and we remain of the view that *Scotland's Future* has addressed the issues raised in an objective yet accessible form.

Yours sincerely,



**JOE GRIFFIN**

Principal Private Secretary to the First Minister



17 September 2014

4 Melville Street  
Edinburgh  
EH3 7NS  
Tel 0800 377 7330  
Fax 0800 377 7331  
Web [www.spsso.org.uk](http://www.spsso.org.uk)

**CONFIDENTIAL**

Mr Keith Howell  
Whitemoss  
WEST LINTON  
Peeblesshire  
EH46 7BS

Our ref: 201400382

Dear Mr Howell

**Complaint about Scottish Government**

I write to advise you of my decision in relation to the complaints you raised with this office in your letter of 21 August 2014. As you will see, I have given careful consideration to your complaints but have decided that these are not matters that this office can consider further. In this letter I will explain the reasons for my decision.

**Your complaints**

You have complained that :

1. the Scottish Government breached the Scottish Ministerial Code in the production of the white paper, "Scotland's Future", and
2. the Scottish Government use of civil servants in the production of the white paper breached the Civil Service Code.

You have cited sections 1.2(i) and (j) of the Scottish Ministerial Code as having been breached. Section 1.2(i) states that Ministers must not use public resources for party political purposes. Section 1.2(j) states that Ministers must not ask civil servants to act in any way which would conflict with the Civil Service Code. You have also said that you consider the Scottish Government's actions are contrary to two of the Principles of Public Life that make up an annex to the Scottish Ministerial Code; specifically selflessness (Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.) and openness (Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.)

As I understand it, your view is that the white paper is a party political document because you consider that it omits information and analysis that does not suit the Scottish Government's political purposes.

**The Scottish Government's responses**

In responding to your complaints numbered 1 and 2 above, the Scottish Government have said :

1. the white paper is a statement of the elected government of Scotland, not of a political party, and

2. civil service resources can legitimately be deployed to develop, describe and explain the Scottish Government's proposals and implement their policies in relation to independence.

### **My consideration of your complaints**

Section 7(1) of the Scottish Public Services Ombudsman Act 2002 states that we are not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority. This means that we are not entitled to question a decision taken by the Scottish Government that they are entitled to take unless there is evidence of their failure to follow the relevant processes and procedures leading up to that decision. The Scottish Government have discretion to decide to produce white papers to outline their proposals or policies, to decide what to include in those white papers and to decide to use civil service resources in the production of those white papers. In the absence of any unambiguous or objective evidence of maladministration in the taking of those decisions, this office cannot investigate complaints about those decisions and the fact that someone disagrees with those decisions does not, in itself, give this office the grounds to investigate such complaints.

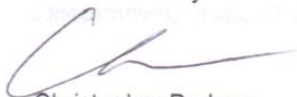
The Scottish Government have considered your complaints and, in their response, set out their position on the matters you complained of. I understand that you disagree with the Scottish Government's position but that disagreement is not, in itself, evidence of maladministration or a breach of the Scottish Ministerial Code. No allegation of clear, specific administrative or procedural failure in the taking of the Scottish Government's discretionary decisions has been made and, therefore, my view is that there are no grounds for this office to consider the complaints that you have raised.

I realise that this is not the outcome you had hoped for in raising your complaints with us but I hope that the contents of this letter reassure you that I have considered the matter carefully and fully and help you to understand the reasons I have reached my decision.

I have closed our file on your complaint and, in line with our duties under the Scottish Public Services Ombudsman Act 2002, advised the Scottish Government of my decision. If you have any questions about this letter please feel free to contact me on the number below.

We do have a decision review process. The grounds on which you can ask us to review a decision are limited as certain criteria must be met. Review requests must also be made within three weeks of the decision having been received. However, when the decision reached is that we cannot investigate the complaint further, we encourage complainants to contact the complaints reviewer by phone in the first instance so that the decision can be discussed and explained further. This will also allow you to advise me of any new information I may not have considered in reaching my decision, or of any special circumstances that may be relevant.

Yours sincerely



Christopher Barbour  
Complaints Reviewer

Telephone: 01312408848

Email:

CBarbour@spso.org.uk

Investigations by the Scottish Public Services Ombudsman are to be carried out in private, in terms of the Scottish Public Services Ombudsman Act 2002. Accordingly, this correspondence must not be made publicly available. This does not affect the rights of recipients to seek legal advice in relation to this complaint. Where appropriate, recipients are also reminded of their obligations under the Data Protection Act 1998 in relation to the processing of personal and sensitive personal data.



Keith Howell  
White Moss, West Linton, Peeblesshire, EH46 7BS

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The Scottish Public Services Ombudsman  
4 Melville Street  
EDINBURGH  
EH3 7NS

23<sup>rd</sup> September 2014

Dear Mr Barbour,

Complaint against the Scottish Government – your ref. 201400382

Thank you for your letter dated 17<sup>th</sup> September 2014.

In your consideration of my complaint you refer to how you are not entitled to question the merits of a decision taken without maladministration by the relevant authority – in this case the Scottish Government led by the First Minister Alex Salmond. I do not think though that you are implying the matters set out in my complaint if proven would not represent maladministration. After all I am suggesting there have been multiple breaches of Ministerial and Civil Service Codes including misuse of public funds and resources. It is hard to imagine more serious maladministration than that.

You then proceed to explain that without “any unambiguous or objective evidence of maladministration” in the taking of the decisions in preparation and dissemination of the White paper, then SPSO cannot investigate complaints about those decisions. As you know I have gone into great detail in my complaint, explaining the specifics of particular breaches of Ministerial and Civil Service codes. You appear to be saying that merely because I disagree with the Scottish Government’s rejection of my complaint that of itself is not reason to consider the content of my complaint. However you seem to be ignoring the substantive and tangible public evidence of the White Paper itself, a document signed and launched by the First Minister along with his deputy Nicola Sturgeon. The evidence of the matters I am complaining about is in that document, there for you and anyone to consider and to take a fair and objective view of. It seems you are saying that SPSO prefer not to look into the detail of my complaint because the Scottish Government have rejected it. Surely the SPSO would rarely need to consider any complaints if they use the fact that those accused of improper behaviour deny it as a reason for not looking into matters further.

Anyway, you have made your decision. I understand I have just 3 weeks to consider coming back to the SPSO under your decision review process. I do not accept that you have given this matter a full and proper review, rather as your letter reveals, you have found reasons for simply not considering it. However, given the seriousness of this matter, I am sure you will have checked your decision with others before issuing it, and have therefore effectively delivered the SPSO view, so there is no doubt little chance of an alternate view being taken. I will consider the position further and will get back to you before the end of the 3 weeks if I have anything further to add.

Yours sincerely,

  
Keith Howell

Strategy and Constitution Directorate  
Elections and Constitution Division

T: 0300-244-4000  
E: nicola.thomson@scotland.gsi.gov.uk



Mr Keith Howell  
White Moss  
West Linton  
Peeblesshire  
EH46 7BS

Our ref: Fol/14/01679  
12 January 2015

Dear Mr Howell

Thank you for your request dated 18 October 2014 under the Freedom of Information (Scotland) Act 2002 (FOISA). Please accept my apologies for the delay in responding to your request.

Your request

You have asked for the following information:

1. What was the final total cost of the production and dissemination of the Scotland's Future Paper, from its initial design through to its physical production, distribution and promotion throughout the Referendum campaign?
2. Did the cost include the cost of the Civil Servants who contributed to the process of producing, disseminating and promoting the Scotland's Future White Paper and if not what additional cost relates to the Civil Servant resources used on the White Paper?
3. How many Civil Servants involved or asked to be involved in the production and dissemination of the Scotland's Future White Paper expressed reservations or concerns about potential breaches of the Civil Service Code in this regard?

Response to your request

**1. Cost of the production and dissemination of Scotland's Future**

Scotland's Future was published on 26 November 2013. The cost of producing, printing and distributing the first 50,000 copies of the document was published by the then Deputy First Minister on 11 March 2014 in response to Parliamentary Question S4W-20080 asked by Fiona McLeod. The text of the response is available on the Scottish Parliament's website at:



<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-20080&ResultsPerPage=10>

On 18 December 2014 in response to Parliamentary Question S4W-23717 asked by Mark McDonald MSP the Deputy First Minister updated the Scottish Parliament on additional costs of the White Paper and associated documents. The text of the response is available on the Scottish Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-23717&DateTo=12/22/2014 11:59:59 PM&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10>

Under section 25(1) of FOISA, we do not have to provide you with information if it is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website listed, then please contact me again and I will send you a paper copy.

You have also asked about the promotion of this work. The cost of the launch of Scotland's Future on 26 November 2013 was announced by the then Deputy First Minister on 18 December 2013 in response to parliamentary question S4W-18196 from Gavin Brown MSP. The text of the response is available at the Scottish Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-18195&DateTo=11/6/2014 11:59:59 PM&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10>

Under section 25(1) of FOISA, we do not have to provide you with information if it is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website listed, then please contact me again and I will send you a paper copy.

To support Ministers in setting out their policy on independence, the Scottish Government hosted a number of public engagement events on Scotland's Future.

On 22 May 2014 in answer to parliamentary question S4W-21284 from Bruce Crawford MSP the then Deputy First Minister provided a breakdown of costs associated with Scotland's Future. The full answer can be found at the Scottish Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-21284&DateTo=11/5/2014 11:59:59 PM&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10>

On 18 December 2014 in response to Parliamentary Question S4W-23720 asked by Mark McDonald MSP, the Deputy First Minister updated the Scottish Parliament on additional costs of these events. The text of the response is available on the Scottish Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-23720&DateTo=12/22/2014 11:59:59 PM&SortBy=DateSubmitted&Answers=All&SearchFor=All&ResultsPerPage=10>

Under section 25(1) of FOISA, we do not have to provide you with information if it is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website listed, then please contact me again and I will send you a paper copy.

In addition to these costs the Scottish Government distributed a 12-page guide to every household in Scotland which outlined the opportunities of independence. The cost of



production, print and distribution of Scotland's Future - What Independence Means for you was announced by the then Deputy First Minister on 20 August 2014 in response to Parliamentary Question S4W-22236 from Gavin Brown MSP. The text of the response can be found at the Scottish Parliament's website at <http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-22236&ResultsPerPage=10>

Under section 25(1) of FOISA, we do not have to provide you with information if it is already reasonably accessible to you. If, however, you do not have internet access to obtain this information from the website listed, then please contact me again and I will send you a paper copy.

## **2. Cost of civil servants to contribute to the process of producing, disseminating and promoting Scotland's Future**

The White Paper and other work related to delivering the Scottish Government's policy on independence was taken forward by civil servants. Officials from across the Scottish Government have contributed to the development of the current Government's policy on constitutional reform, which included preparations for the referendum and the publication of the White Paper, as part of their normal duties. There is no business need to record the time or cost of civil servants in completing their normal business. Under the terms of section 17(1) of FOISA (information not held), the Scottish Government is not required to provide information which it does not have.

However, I hope you find the following information helpful.

The Elections and Constitution Division in the Strategy and Constitution Directorate supports constitutional reform work and the number of staff working on constitutional policy and the referendum on constitutional change is available from our website: <http://www.scotland.gov.uk/Topics/constitution/About/constitution-SG-staffing>.

However, as with any other policy, Ministers can look to the Civil Service to support the development and communication of their programme. Officials from across the Scottish Government contributed to this work. Many did not work full time on this and the time spent on this policy was not recorded as there is no business need for it.

A number of workstreams support constitutional reform including implementation of Scotland Act provisions. Details of these workstreams can be found at <http://www.scotland.gov.uk/topics/constitution/About/Workstreams>

While our aim is to provide information whenever possible, in relation to your request for the cost of civil servants to contribute to the process of producing, disseminating and promoting Scotland's Future, the Scottish Government does not have full information. Under the terms of section 17(1) of FOISA (information not held), the Scottish Government is not required to provide information which it does not have and we have provided the information available to us.

## **3. How many civil servants expressed reservations or concerns about potential breaches of the Civil Service Code during this work**

With regard to your request for information on the number of civil servants who expressed reservations or concerns about potential breaches of the Civil Service Code during this work, we have now completed our search for the information.

No reservations or concerns were raised by civil servants with the Scottish Government Nominated Officer for the Civil Service Code in connection with the production or dissemination of Scotland's Future.

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to David Rogers, Director of Strategy & Constitution, 4N.04, St Andrew's House, Edinburgh, EH1 3DG – e-mail [david.rogers@scotland.gsi.gov.uk](mailto:david.rogers@scotland.gsi.gov.uk). Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your rights is available on the Commissioner's website at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Yours sincerely



**NICOLA THOMSON**  
Policy Officer

## Appendix A - Background information

The financial memorandum mentioned above estimated that the cost of delivering and regulating the referendum would be around £13.3m. In addition, the Scottish Government estimated that the cost of extending the franchise to 16 and 17 year olds would be around £440,000.

The Scottish Government's consultation, Your Scotland, Your Referendum (January 2012) had estimated that the cost of running the referendum would come to around £10 million in total (it did not provide a breakdown of costs). This figure was based on previous estimates, which had been calculated in preparation for the 2010 draft Referendum (Scotland) Bill on the basis of known costs at that time. These costs were subsequently revised (for the financial memorandum) to take account of changes to the referendum proposals since the 2012 consultation draft of the Bill, the Electoral Commission's report on the cost of delivering the Parliamentary Voting System (PVS) referendum in 2011, and the updated estimates provided by key stakeholders.

The Scottish Independence Referendum (Chief Counting Officer and Counting Officer Charges and Expenses) Order 2014 sets out the amount to be paid to Counting Officers for running the referendum: this totals £9,318,650. This figure is slightly higher than the equivalent figure given in the financial memorandum, due to revised estimates provided by electoral administrators.