



Cabinet Office

# TRIENNIAL REVIEW OF THE SECURITY VETTING APPEALS PANEL

# Triennial Review Report: Security Vetting Appeals Panel

*Reviewing the function, form and governance of the Security Vetting Appeals Panel*

## Executive Summary

1. This review was carried out by Sir Alex Allan as part of the Cabinet Office's triennial review programme for non-departmental public bodies (NDPBs). It was announced by the Minister for the Cabinet Office by written ministerial statement on 4 July 2013. The review's terms of reference can be summarised as follows:

- to challenge the continuing need for SVAP, both in its function and its form; and
- if it is agreed that SVAP should continue as an NDPB, to review its control and governance arrangements.

I should like to thank the chairman, the secretariat and all those I interviewed during the course of my review for their help and for the information they provided.

2. The Security Vetting Appeals Panel (SVAP) was set up in 1997 to hear appeals against refusal or withdrawal of security clearance. It is available to all those in the public and private sectors and in the Armed Forces who have exhausted internal appeal processes and remain dissatisfied with the outcome. It is chaired by a retired High Court judge, with two Deputy Chairs who are serving High Court judges and eight lay members. It conducts hearings and makes non-binding recommendations to Heads of organisations (or equivalent). Cases are normally heard by a panel of three, consisting of the Chair or one of the Deputies supported by two lay members.

### Stage 1

3. My conclusion is that SVAP should continue in largely its current form, and as an NDPB. I considered the case for abolition, instead relying solely on departments' and other organisations' internal processes for deciding and hearing appeals on vetting decisions. On balance, however, I conclude that natural justice requires an independent process to review decisions that may affect an individual's career or continuing employment. I heard evidence that showed the challenge provided by SVAP's function had led departments to review and modify their processes.

4. I also considered whether it would be possible to rely instead on appeals to an Employment Tribunal to review departments' decisions on security clearance. While cases may be brought to an Employment Tribunal where refusal or withdrawal of clearance leads to dismissal or is challenged on grounds of discrimination, this will not apply to all the cases where appeals lie to SVAP, and their roles are fundamentally different. An Employment Tribunal's ability to examine sensitive national security information was more limited than SVAP's until the enactment of the Justice and Security Act 2013. And Departments in any event value the relatively informal process followed by SVAP and the specific expertise it has developed in considering vetting decisions. For the Employment Tribunal to extend its jurisdiction in this way would require primary legislation. My conclusion is that this would not be a satisfactory alternative. But I do see advantage in clarifying their respective roles. I recommend that the Chairman of SVAP should discuss this with the President of the Employment Tribunals, for example to see whether it is possible to produce guidance on how far a

Tribunal will normally take into account an SVAP recommendation in judging whether an employer acted reasonably or proportionately.

5. I considered the case for merging SVAP into the Investigatory Powers Tribunal (IPT), which is the body which deals with appeals on vetting decisions from members (and contractors) of the Intelligence and Security Agencies. The IPT adopts a very different approach to SVAP, with appeals heard *ex parte* and *in camera*. Transferring all SVAP's cases to the IPT would also require primary legislation, and I do not recommend this option.

6. I do not consider that bringing SVAP in-house within the Cabinet Office would satisfy the need for its scrutiny to be seen to be independent. Nor do I consider that transforming it into a statutory tribunal would bring any advantages. Hence my conclusion that it should remain an NDPB.

## Stage 2

7. On governance, I believe SVAP follows the guidance on corporate governance arrangements for advisory NDPBs, allowing for its small size and limited functions. I make a number of recommendations:

- a. Arrangements should be put in place to stagger the appointment periods for members of the Panel;
- b. The Secretariat should review with the Chair the appropriate number of lay members of the Panel;
- c. The Cabinet Office should consider, in consultation with the Chairman and the Lord Chief Justice, whether it would be more appropriate for one of the Deputy Chairs to be a retired, rather than a serving, judge;
- d. The Cabinet Office should discuss with SVAP the setting of specific targets for the length of time for the various stages of the process, and should report annually to the Deputy National Security Adviser on how far those targets have been met;
- e. The Cabinet Office should resume publication of restricted and anonymised case summaries bringing out the key issues addressed by SVAP;
- f. The Cabinet Office should ensure that the Security Policy Framework is updated regularly to take account of emerging recommendations from SVAP;
- g. The Cabinet Office should consider arrangements for providing feedback to Panel members on departments' responses to Panel recommendations.

## Introduction

### Aims of the review

8. This review was carried out as part of the Cabinet Office's programme of triennial reviews of non-departmental public bodies (NDPBs). The aim of the programme is to provide a challenge for the continuing need for the NDPB, and, if the conclusion is that it should remain an NDPB, to review the control and governance arrangements.

9. The Cabinet Office guidance for triennial reviews sets out a number of points that have been followed in conducting this review. The guidance says that reviews should be:

- a. *Proportionate*: the Security Vetting Appeals Panel is a very small NDPB, with annual costs to the Cabinet Office of £60-85,000 (though, as discussed below, departments also incur costs in handling appeals). So the review has been thorough but lightly-resourced.
- b. *Timely*: the review was announced in July and both stages have been completed by December.
- c. *Challenging*: the review has considered options ranging from abolishing SVAP to merging it with another body.
- d. *Inclusive*: both members of SVAP and a wide range of stakeholders have been consulted as part of the methodology of the review.
- e. *Transparent*: this report of the outcome of the review is being published.
- f. *Value for Money*: the review has been carried out at no additional cost to the taxpayer beyond the time of those who were consulted.

### Background on SVAP

10. The establishment of the Security Vetting Appeals Panel (SVAP) was announced by the Prime Minister (Mr Blair) in July 1997. It is an independent body, which has thus far been chaired by a senior serving or retired member of the judiciary, and hears appeals against refusal or withdrawal of security vetting clearance. It was originally required to deal with vetting cases at Security Check (SC) and Developed Vetting (DV) levels, but this was extended in 2000 to include Counter-Terrorist Check (CTC). The Panel is available to all those in the public and private sectors and in the Armed Forces who are subject to security vetting and have exhausted existing appeals mechanisms within their own organisations and remain dissatisfied with the results. It is also available to contractors, but not to candidates for recruitment. Staff, contractors and recruits of the Security and Intelligence Agencies have separate arrangements via the Investigatory Powers Tribunal. SVAP replaced the role of the Three Advisers who, since 1948, had been available to consider cases where security clearance was refused or withdrawn on the grounds of subversion.

11. The arrangement was confirmed by the new Prime Minister (Mr Cameron) following the change of government in 2010. He published a new document, "HMG Personnel Security Controls", in July 2010 which replaced the previous Statement of Vetting Policy issued in 1994. It was backed up by more detailed guidance with restricted circulation. The document set out the process for reviewing decisions to refuse or withdraw vetting clearance. It requires organisations to have an internal

appeals process against an initial decision. This internal process must follow natural justice principles, with individuals who hear appeals having had no prior involvement in the case. The arbiter is enjoined to operate as transparently as possible, and to consider (i) the decision (including scrutinising the information on which it was based); (ii) the decision-making process; and (iii) the level of disclosure provided to the applicant.

12. Where an individual has exhausted the internal appeals process, he or she can bring an appeal to SVAP. The Panel will seek a statement from the appellant and from the organisation and will arrange a hearing. The appellant may be accompanied by a “friend” who can help them present their case. Since the issues considered by the Panel are not matters of law, formal legal representation is not generally permitted. Where the vetting decision turns on sensitive, national security, information which cannot be shared with the appellant, the Panel may offer the appellant the opportunity to request the appointment of a special advocate, who can represent the appellant at the closed parts of the proceedings.

13. Where vetting decisions result in someone losing or being refused security clearance at a particular level, that may or may not mean that their employment in the department or organisation is terminated. Where, for example, Developed Vetting (DV) clearance is refused, there may be other work within the department where this level of clearance is not required. On the other hand, there may be a minimum requirement of holding CTC or SC clearance to work in a department, so the loss of that clearance would mean dismissal.

14. The statement in HMG Personal Security Controls sets out the other review and appeal mechanisms that may be open to individuals. These include recourse to an Employment Tribunal if an individual believes they have been unlawfully discriminated against, or unfairly dismissed or to seek judicial review if other remedies have been exhausted.

15. When SVAP hears a case, it reviews the decision to refuse or withdraw security clearance and the process involved. It follows an informal procedure, with hearings confidential to the parties concerned. It makes an ‘open’ report of its findings with recommendations to the head of the department or organisation involved and copies the report to the appellant. Where the case involves sensitive information, the Panel endeavours to provide the appellant with a gist of the information, but the need to protect such information means that in such cases a separate ‘closed’ report will be made to the head of the department or organisation. The Panel can recommend that the vetting decision stand, or that the security clearance should be given or restored. It can also comment on the process followed, and can recommend that it be re-run. SVAP recommendations are not binding on departments and organisations, though in practice they are almost invariably followed.

16. SVAP is currently chaired by a retired High Court judge, with two Deputy Chairs who are serving High Court judges. Though these posts are subject to open competition, they do require current or recent judicial experience and appointments are generally made after consultation with the Lord Chief Justice. There are eight lay members of the Panel, who are also appointed through open competition. Cases are normally heard by a panel of three, consisting of the Chair or one of the Deputy Chairs supported by two lay members.

17. SVAP has heard 82 cases between 1998 and 2012: 14 between 1998 and 2002; 19 between 2003 and 2007; and 49 between 2008 and 2012. The average length of time between the Secretariat receiving the case and the Panel hearing was 5 months. Of the cases heard, the largest number were from the Defence Business Services – National Security Vetting (formerly the Defence Vetting Agency) and from the Ministry of Defence; other cases were from the Metropolitan Police Service,

the Police Service of Northern Ireland and other police forces; from the Foreign and Commonwealth Office; and from central government departments (including the Home Office). Reasons in these cases for refusal or withdrawal of vetting clearance included: criminal activity or convictions; behavioural or lifestyle issues; withholding or falsifying information; and financial issues. Sensitive national security issues were the reason in a minority of cases involving refusal of vetting clearance, although this figure was higher for cases involving withdrawal of existing vetting clearance.

18. Of the appeals to the Panel over this period, the appeal was upheld in 22% of the cases and not upheld in 63% of the cases. In 15% of the cases, the organisation was advised to re-examine the case or to undertake the vetting process again, or decided to do so itself.

19. The costs incurred by the Cabinet Office in supporting and administering SVAP are as follows:

	2010/11	2011/12	2012/13
Fees and expenses	£10,000	£15,000	£35,000
Belfast costs	£1,000	£1,000	£2,500
CO Staff costs (*)	£50,000	£50,000	£50,000
<b>Total</b>	<b>£61,000</b>	<b>£66,000</b>	<b>£87,500</b>

(\*) calculated as 1 x Band A @ 50%; 1 x Band B2 @ 50%; 1 x Band B1 @ 30%

20. Departments will also incur costs, depending on the type and complexity of the case. One department explained to me that a typical case involving closed proceedings and special advocates cost around £25,000 in fees for Treasury Solicitor's Department and special advocates, though a few cases which had protracted elements due to legal challenges or complicated disclosure processes cost rather more. Cases which do not require closed proceedings or special advocates cost very much less. There will also be salary costs incurred where an organisation opts to suspend an individual pending the outcome of an SVAP appeal.

## The Review: Stage One

### Process

21. The review was carried out by Sir Alex Allan. Administrative support was provided by the SVAP secretariat team in the Cabinet Office. The review was announced by written ministerial statement which is attached at Annex 1. The full terms of reference for the review are attached at Annex 2.

### Evidence and Stakeholder Engagement

22. The review was carried out by interviewing the Chair and members of the Panel, the members of the secretariat, and a wide range of stakeholders (list attached at Annex 3). Written background material was provided by the secretariat.

### SVAP's Functions and Alternatives

23. SVAP's function is to provide a means of appeal from a decision by a department or other body to refuse or withdraw security vetting clearance from an individual. The review considered whether it was necessary to provide for an appeal and what alternatives existed.

#### *a) Abolition*

24. The first option considered was to abolish SVAP. There were two overlapping arguments considered for doing this. The first was that the internal processes for decisions on vetting were adequate in themselves, so that the extra step of an appeal to SVAP was unnecessary. The second was that, where refusal or withdrawal of vetting clearance leads to dismissal, or is challenged on the grounds of discrimination, an appeal can be made to an Employment Tribunal. It could be argued therefore that what may be an intermediate step of an appeal to SVAP is unnecessary, and potentially duplicative.

25. A few in departments would support the first argument. They feel that the internal processes have proved adequate and that an appeal to SVAP adds an unnecessary step to an already complex process. They argue that a decision to refuse or withdraw security vetting is already subject to careful scrutiny within departments, including both the initial decision and then an appeal to the Permanent Secretary or equivalent senior official, who considers the case afresh. Those holding this view argue that the Permanent Secretary is well-placed to take a decision, whereas SVAP will know less about the department's business. They are concerned that SVAP may exhibit a greater risk appetite than the department is willing to assume, potentially leading to SVAP making recommendations that someone should be given security clearance when the department is unwilling to take the risk of employing the individual on sensitive work.

26. The great majority, however, believe that SVAP adds value. They feel that SVAP provides a useful independent check on what would otherwise be purely internal departmental procedures and decisions. An independent process was necessary to guard against "group think". A number of cases were cited to me where questions and challenges raised by SVAP had usefully identified concerns about departmental practices, which had been modified as a result, and had uncovered new key and relevant facts. These departments feel that the original reasons for setting up SVAP remain valid – "if SVAP didn't exist, we would have to invent it" as one put it. They feel that natural justice requires someone from outside the department to be able to review a decision that can have a serious impact on an individual's career. They also point out the risk that, without SVAP,

individuals might seek to challenge vetting decisions by seeking judicial review, with added costs to departments.

27. On the point about different risk appetites of SVAP and departments, the department's position is protected by the fact that SVAP is only empowered to make recommendations. If a department is unwilling to accept a recommendation, it is free not to do so. In practice, departments almost invariably do accept SVAP's recommendations (which are normally underpinned by clear reasons) – and there is no evidence that security has been compromised as a result of doing so.

28. Some argued that, rather than abolishing SVAP completely, its scope should be reduced by confining it to cases where national security considerations arose. The argument is that the departments and other bodies concerned have well-established vetting units and processes and are applying the criteria appropriate for their organisation to cases where the issues relate to honesty or character. They argue, on similar grounds to those advocating abolition, that there is no need for SVAP to be there to “second guess” these decisions, whereas they do accept a role for SVAP in examining national security issues. A related argument is that SVAP was necessary in the early days of the new arrangements, but these have now bedded down and the appropriate lessons learnt.

29. These points run up against the same counter-arguments as those for complete abolition. There remains a case on grounds of natural justice for having independent scrutiny of departments' decisions, including to identify inconsistencies between the practices of different departments and agencies. And, while lessons have been learnt from earlier cases, new issues continue to arise.

30. The second leg of the argument for abolition of SVAP is that there is an overlap between the roles of SVAP and the Employment Tribunal. Where the refusal or withdrawal of security clearance leads to the individual being dismissed, an appeal may lie to an Employment Tribunal on the grounds of unfair dismissal. The same may be true where a refusal or withdrawal is challenged on the grounds of discrimination – for example on the basis of race or religion. The parallel was drawn with the Civil Service Appeal Board, which no longer hears appeals against dismissal from the civil service, with any further action following dismissal being for an Employment Tribunal.

31. It is indeed the case that some individuals whose appeals to SVAP are not upheld do bring a case to an Employment Tribunal, either following their appeal to SVAP or in parallel. And a few choose not to pursue an appeal to SVAP but instead to bring a case directly before an Employment Tribunal. But these are very much the minority, and in most cases individuals do not seek a further appeal from an SVAP decision.

32. By no means all cases considered by SVAP could, in any event, give rise to a case before an Employment Tribunal. The refusal or withdrawal of security vetting may not, for example, lead to dismissal. It may simply lead to the individual being unable to work in a particular section of the department or agency, but being able to continue working elsewhere in the department. And issues of alleged discrimination may not arise, or may not be supportable.

33. This reflects a fundamental difference between SVAP and the Employment Tribunals. SVAP is a non-statutory body set up to review and advise on vetting decisions, whereas Employment Tribunals are statutory bodies set up to determine an employee's statutory rights not to be unfairly dismissed and not to be discriminated against. In national security cases, SVAP is able to consider the merits of a vetting decision, whereas Employment Tribunals are restricted to judging whether the employer's actions were proportionate. In terms of remedies, SVAP can recommend reversing a decision to refuse or withdraw vetting, whereas Employment Tribunals can only find that an employee was unfairly dismissed or discriminated against.



34. The general view of departments and others interviewed was that where cases did go to an Employment Tribunal following an SVAP appeal, the Tribunal was able to take account of the fact that SVAP had reviewed the case rather than revisiting the issue from scratch. This was particularly true in national security cases where, before the enactment of the Justice and Security Act 2013, the Employment Tribunal was limited in the nature of the sensitive information it could consider, even in a closed hearing.

35. More generally, it was argued that SVAP by its very nature has built up a level of expertise on security vetting issues that Employment Tribunals would not have the opportunity to develop. This was particularly true in their familiarity with handling sensitive material. The fact that they worked closely with the Cabinet Office meant that they had greater influence over policy developments. The point was also made that SVAP's relatively informal processes kept costs low.

36. My conclusions are that simply abolishing SVAP would not be an acceptable way forward. There is a need for an independent review of security vetting decisions in support of HMG's national security vetting policy, and relying on the backstop of the Employment Tribunal would not address all the issues, or as effectively. For the Employment Tribunal to extend its jurisdiction to the consideration of national security vetting cases would in any case require amendment to its remit and regulations by way of primary legislation.

37. Nonetheless, I feel there would be advantages in clarifying the respective roles of SVAP and Employment Tribunals. I recommend that the Chairman of SVAP should discuss this with the President of the Employment Tribunals, for example to see whether it is possible to produce guidance on how far a Tribunal will normally take into account an SVAP recommendation in judging whether an employer acted reasonably or proportionately. Depending on this, one option to consider would be to change SVAP's procedures to allow an employer to seek an SVAP view on a vetting decision in the few cases where it becomes aware that an employee is intending to take a case direct to an Employment Tribunal without appealing to SVAP.

*b) Using/merging with the Investigatory Powers Tribunal*

38. While appeals against vetting decisions by the main government departments lie to SVAP, appeals by current or prospective members of the Security and Intelligence Agencies lie to the Investigatory Powers Tribunal (IPT). Another option considered therefore was whether the IPT might take over the role of SVAP for appeals by members of the departments and other bodies who currently have access to SVAP.

39. The nature and operation of the IPT is very different from that of SVAP. The norm in the IPT is for cases to be considered *ex parte* and *in camera*. Only very brief conclusions are promulgated. This is in marked contrast to SVAP, with its open hearings and reasoned recommendations. It would seem a retrograde step to move to the much more closed IPT procedures. In any event, primary legislation would be needed to allow the IPT to deal with the much wider range of vetting decisions within SVAP's remit, and I cannot see that as likely or necessary.

*c) Other options*

40. I have considered the other options suggested for a triennial review of public bodies. I do not see what bringing the operation of SVAP in-house would imply or would achieve. It needs to maintain its independence in order to provide credibility in reviewing decisions taken by departments and other bodies. A review carried out by Cabinet Office civil servants would not be

seen as carrying the same credibility, nor would it provide the judicial expertise required in examining certain issues.

41. In the other direction, it would in principle be possible to reconstitute SVAP as a formal tribunal, under the Courts and Tribunal Service. That would, however, inevitably change the nature of the body, and its operation. It would be likely to lose some of its informality and flexibility, and there would be issues around whether it would make decisions rather than, as now, non-binding recommendations. There would also be issues over whether it could continue to have access to all the information it is currently able to see.

### Conclusions on Stage One

42. My conclusion is that the Security Vetting Appeals Panel should continue as a non-departmental public body under the aegis of the Cabinet Office. I am satisfied that it passes all three of the Government's "three tests":

- Hearing appeals on vetting decisions (and dealing with related legal challenges and questions) is a technical function which needs external expertise - in this case, judicial input.
- It is a function which needs to be, and be seen to be, delivered with absolute political impartiality.
- And it needs to be delivered independently of ministers to establish facts.

43. I now turn in Stage 2 to some issues around governance and other recommendations.

## The Review: Stage Two

### Corporate Governance and other issues

44. The Security Vetting Appeals Panel is a very small NDPB and, as such, not all of the principles of corporate governance are applicable. Annex 4 lists the principles and sets out the extent to which SVAP meets them.

### Appointments

45. On appointments, there is a need to put in place more suitable arrangements for the timing of the appointment and renewal of members of the Panel. At present, the members of the Panel have all had their appointments extended to the end of March 2014. This was done pending the outcome of this review, but it would clearly not be satisfactory to replace all the Panel members at once. A system needs to be put in place whereby the appointments are staggered, so that Panel members are appointed and retire at different times. This will require extending the appointment of most existing members for varying time periods. I recommend that the secretariat work with the chair to organise this appropriately.

46. The Panel members I interviewed indicated to me that they would be willing to sit on more cases than they were currently asked to. I have therefore considered whether the number of lay Panel members might be reduced, so that individual members were called on more frequently. I am told, however, that the secretariat sometimes has difficulty arranging hearings because of limits on Panel members' availability. There would be no continuing cost savings from a smaller panel since Panel members are only remunerated when they actually hear a case – though there would be some cost savings on recruitment and some benefits from Panel members' greater familiarity with the issues from hearing more cases. I recommend that the secretariat, with the Chair, keep the size of the Panel under review and consider the practicalities of reducing it.

47. At present, while the chair is a retired judge, the deputy chairs are serving judges. This can create problems over their availability – the President of the Queen's Bench Division requires three months notice to release them from sittings. On the other hand, there is value in having a serving judge, with current knowledge and experience, available to the Panel. I recommend that the Cabinet Office should consult with the chair and with the Lord Chief Justice to see whether it might be more appropriate for one of the deputy chairs also to be retired rather than serving judges.

### Closed Hearings and Special Advocates

48. A number of those I saw raised or discussed the issue of closed hearings and the use of special advocates. Several argued that this process was unsatisfactory, and did not provide adequate opportunity for someone to refute allegations against him or her. Others welcomed the pressure from the chair in such cases to release as much information to the applicant as possible given the need to protect national security.

49. I do not regard the principle of using closed hearings as within the scope of my review. It is part of a much wider issue on the use of national security material, and one that has been – and is being – tested before the courts.

## Delays

50. The issue of closed hearings has, however, been a factor behind delays in SVAP cases being completed. There was a hiatus while the Cabinet Office discussed and agreed procedures for using special advocates in such cases, and a number of cases were effectively put on hold while that was being resolved. Now that it has been, the backlog is being eliminated and cases should in future be dealt with more promptly.

51. Nonetheless, many of those I saw were concerned about the slow pace of SVAP cases, especially where Special Advocates are involved. There were complaints about delays in getting the process underway and about delays of many months in some cases between a hearing and the promulgation of the SVAP recommendations - though there was praise for the way cases were pushed through to a hearing once the process had started.

52. I recommend that the Cabinet Office should discuss with SVAP setting explicit targets for the various stages of the process, and then reporting annually to the Deputy National Security Adviser on how far those targets have been met. I recognise that the process can be complex, but in many cases the individual concerned is suspended on full pay until the outcome of the SVAP hearing is known. So delay is both unwelcome to the appellant and costly for the department.

## Publications

53. SVAP does not publish the texts of its recommendations – these would inevitably contain personal and often sensitive information. But it used to publish cases studies, classified Restricted, which provided anonymised accounts of significant cases. These were valued by departments and helped to spread a wider understanding of the issues being addressed by SVAP and the emerging guidance on best practice. These case summaries have not been produced since 2005, largely as I understand it because of pressure of work on the secretariat. I recommend that the Cabinet Office should resume the production, aiming for an edition every two or three years.

54. On a related issue, several departments told me that the Security Policy Framework was not updated regularly to take account of issues arising from SVAP recommendations. I recommend that the Cabinet Office should ensure that this is done in future.

## Feedback

55. Some Panel members put it to me that there was no feedback from departments about whether SVAP recommendations had been accepted or not. I recommend that the secretariat consider how such feedback might be developed.

## Conclusions

56. Annex 4 indicates that the governance of SVAP meets the Cabinet Office guidelines insofar as they are appropriate for a body of the small size and specialist functions of SVAP. But a number of recommendations for improvements have been set out above.

**Alex Allan**  
January 2014

## WRITTEN MINISTERIAL STATEMENT

*Thursday 4 July 2013*

### **Security Vetting Appeals Panel (Triennial Review)**

**The Minister for the Cabinet Office and Paymaster General (Mr Francis Maude):** I am today announcing the triennial review of the Security Vetting Appeals Panel (SVAP). Triennial reviews of non-departmental public bodies (NDPBs) are part of the Government's commitment to ensuring that NDPBs continue to have regular independent challenge on their remit and governance arrangements.

The review will be undertaken by an independent external reviewer, Sir Alex Allan. The review will challenge the continuing need for the function of the Panel and its form. If it is agreed that it should remain as an NDPB, the review will consider its control and governance arrangements to ensure that it is operating in line with the recognised principles of good corporate governance.

The aim will be to complete the review in September.

## TERMS OF REFERENCE FOR THE TRIENNIAL REVIEW OF THE SECURITY VETTING APPEALS PANEL

- To challenge the continuing need for SVAP, both its function and form, employing the following 'three tests' discipline:
  - Does it perform a technical function (likely to contain expertise which makes it more effective at arm's length from ministers)?
  - Do its activities require political impartiality (requires freedom from political interference)?
  - Does it need to act independently to establish facts (performs functions that require the collection and impartial analysis of data)?
- If it is agreed that SVAP should remain as a NDPB, to review its control and governance arrangements to ensure that it is complying with recognised principles of good corporate governance.
- To produce a written report of the review and its recommendations for approval by the Minister for the Cabinet Office.

**LIST OF THOSE CONSULTED DURING THE REVIEW**

The Chair of SVAP  
Members of SVAP  
The SVAP Secretariat  
The Cabinet Office  
The Home Office  
The Foreign and Commonwealth Office  
The Ministry of Defence  
The Serious and Organised Crime Agency  
The Metropolitan Police Service  
The Police Service of Northern Ireland  
The Intelligence and Security Agencies  
The Secretariat to the Investigatory Powers Tribunal  
The Secretariat to the Intelligence and Security Committee  
The Employment Tribunal  
The Treasury Solicitor's Department  
Counsel representing departments  
The Special Advocates' Support Office and a special advocate  
Slater and Gordon solicitors

## CORPORATE GOVERNANCE ARRANGEMENTS FOR ADVISORY NDPBS

### ACCOUNTABILITY

#### *Principle*

*The minister is ultimately accountable to Parliament and the public for the overall performance, and continued existence, of the advisory NDPB.*

The Prime Minister is ultimately accountable for the work of SVAP.

#### *Supporting provisions*

*The minister and sponsoring department should exercise appropriate scrutiny and oversight of the advisory NDPB. This includes oversight of any public monies spent by, or on behalf of, the body.*

The Cabinet Office exercises scrutiny and oversight of SVAP.

*Appointments to the advisory NDPB should be made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments.*

Appointments are made in line with the Code of Practice of the Commissioner for Public Appointments.

*The minister will normally appoint the chair and all board members of the advisory NDPB and be able to remove individuals whose performance or conduct is unsatisfactory.*

The Chair and Deputy Chairs are appointed with the agreement of the Lord Chief Justice. Other members are appointed by the minister.

*The minister should meet the chair on a regular basis.*

The cases considered by SVAP are not normally ones which would attract Ministerial interest, and the limited scale and cost of SVAP's operations are not such as to require close ministerial scrutiny. The option remains for the minister to meet the chair if any significant policy issues arose, but this has not in practice proved necessary.

*There should be a requirement to inform Parliament and the public of the work of the advisory NDPB in an annual report (or equivalent publication) proportionate to its role.*

It is noted in Public Bodies 2013 that for small bodies such as this, an annual report may be included as part of the Departmental Annual Report. I have considered whether to recommend that it should produce one of its own, but feel that this should not be a requirement. I do, however, recommend that the production of anonymised case summaries should be re-started.

*The advisory NDPB must be compliant with Data Protection legislation.*

It is.



*The advisory NDPB should be subject to the Public Records Acts 1958 and 1967.*

It follows standard Cabinet Office procedures and is compliant with the Public Records Act.

## **ROLES AND RESPONSIBILITIES**

### ***Role of the sponsoring department***

#### *Principles*

*The departmental board ensures that there are appropriate governance arrangements in place with the advisory NDPB.*

The Cabinet Office Board is responsible for overseeing this.

*There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the advisory NDPB.*

The Cabinet Office fulfils this function.

#### *Supporting provisions*

*Depending on the risks to the department's wider objectives and/or the size of the advisory body, the following arrangements may need to be put in place:*

*The departmental board's agenda should include scrutiny of the performance of the advisory NDPB proportionate to its size and role.*

The very small size and specialist function of SVAP means that the Cabinet Office Board has not scrutinised its operation, but the option remains for it to do so if it judged in necessary and proportionate.

*There should be a document in place which sets out clearly the terms of reference of the advisory NDPB. It should be accessible and understood by the sponsoring department and by the chair and members of the advisory NDPB. It should be regularly reviewed and updated.*

This is in place.

*There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined.*

This is in place.

*There should be regular and ongoing dialogue between the sponsoring department and the advisory NDPB.*

This is in place.

*There should be an annual evaluation of the performance of the advisory NDPB and any supporting committees – and of the Chair and individual members*

The Chair has carried out appraisals of the individual Panel members to confirm that they are fully competent in their roles. The appraisal of the Chair has been carried out by the Director of Security and Intelligence in the Cabinet Office.

### *Role of the chair*

#### *Principle*

*The chair is responsible for leadership of the advisory NDPB and for ensuring its overall effectiveness.*

#### *Supporting provisions*

*The advisory NDPB should be led by a non-executive chair.*

SVAP makes recommendations, rather than taking decisions, so its chair is non-executive.

*There should be a formal, rigorous and transparent process for the appointment of the chair. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments. The chair should have a clearly defined role in the appointment of non-executive board members.*

The appointment process for the chair is OCPA compliant. The chair is consulted about the appointment of other members of the Panel.

*The duties, role and responsibilities, terms of office and remuneration (if only expenses) of the chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the chair will normally include:*

- *representing the advisory NDPB in any discussions with ministers;*
- *advising the sponsoring department and ministers about member appointments and the performance of members ;*
- *ensuring that the members have a proper knowledge and understanding of their role and responsibilities. The chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive board members' performance;*
- *ensuring that the advisory NDPB, in reaching decisions, takes proper account of guidance provided by the sponsoring department or ministers;*
- *ensuring that the advisory NDPB carries out its business efficiently and effectively; and*
- *representing the views of the advisory NDPB to the general public, when required.*

To the extent that these points are relevant to SVAP, they are followed. As noted above, there have not been discussions with ministers. The chair does advise the Cabinet Office about appointment and performance of members, and ensures they have proper knowledge and understanding of their roles and have proper induction. He ensures that SVAP takes account of Cabinet Office guidance, and that it carries out its business efficiently and effectively. There has been no call for representing SVAP views to the public.

## **Role of other members**

### *Principle*

*The members should provide independent, expert advice.*

### *Supporting provisions*

*There should be a formal, rigorous and transparent process for the appointment of members to the advisory NDPB. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments.*

This is the case for SVAP.

*Members should be properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity).*

This is the case.

*Members should be drawn from a wide range of diverse backgrounds, but should have knowledge and expertise in the field within which the body has been set up to advise ministers. The advisory NDPBs as a whole should have an appropriate balance of skills, experience, independence and knowledge.*

The recruitment process seeks to achieve this. The Panel members are recruited by open competition and have a wide range of skills, expertise and backgrounds. The chair and deputy chairs are serving or retired judges, and have knowledge and expertise in the law. All are independent of government.

*The duties, role and responsibilities, terms of office and remuneration of members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements.*

This is done.

*All members must allocate sufficient time to the advisory NDPBs to discharge their responsibilities effectively.*

This is the case.

*There should be a proper induction process for new members. This should be led by the chair. There should be regular reviews by the chair of individual members' training and development needs.*

Induction arrangements are in place.

*All members should ensure that high standards of corporate governance are observed at all times. This should include ensuring that the advisory NDPB operates in an open, accountable and responsive way.*

This is the case.

## COMMUNICATIONS

### *Principle*

*The advisory NDPB should be open, transparent, accountable and responsive.*

### *Supporting provisions*

*The advisory NDPB should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000.*

The proceedings of SVAP are exempt under s23 of the Freedom of Information Act.

*The advisory NDPB should make an explicit commitment to openness in all its activities. Where appropriate, it should establish clear and effective channels of communication with key stakeholders. It should engage and consult with the public on issues of real public interest or concern. This might include holding open meetings or annual public meetings. The results of reviews or inquiries should be published.*

SVAP maintains a dialogue with all its key stakeholders, including running workshops for government departments. Open meetings or annual public meetings would not be appropriate given the nature of its business. One of the recommendations of this report is to resume the production of anonymised case summaries, for circulation to the relevant stakeholders.

*The advisory NDPB should proactively publish agendas and minutes of its meetings.*

This is not appropriate given the nature of SVAP's business.

*There should be robust and effective systems in place to ensure that the advisory NDPB is not, and is not perceived to be, engaging in political lobbying. There should also be restrictions on members attending Party Conferences in a professional capacity*

There are no issues on which SVAP would be likely to engage in political lobbying. The guidance provided to members is in any case clear about the need to avoid this. Members do not attend Party Conferences in a professional capacity.

## CONDUCT AND BEHAVIOUR

### *Principle*

*Members should work to the highest personal and professional standards. They should promote the values of the advisory NDPB and of good governance through their conduct and behaviour.*

### *Supporting provisions*

*A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment.*

This is in place.

*There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for members.*

These are in place.

*There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules.*

These are in place.

*There are clear rules and guidelines in place on political activity for members and that there are effective systems in place to ensure compliance with any restrictions.*

These are in place.

*There are rules in place for members on the acceptance of appointments or employment after resignation or retirement. These are enforced effectively.*

There are no such rules in place for SVAP, and given the limited and specialised nature of its work, I do not believe it would be appropriate to impose them.