

## Commissioner for Ethical Standards in Public Life in Scotland

Report to the Commissioner's Office and the Auditor General for Scotland on the  
2020/21 audit

Issued on 4 October for the meeting on 7 October 2021

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# Introduction

## The key messages in this report

Audit quality is our number one priority. We plan our audit to focus on audit quality and have set the following audit quality objectives for this audit:

- A robust challenge of the key judgements taken in the preparation of the financial statements.
- A strong understanding of your internal control environment.
- A well planned and delivered audit that raises findings early with those charged with governance.

I have pleasure in presenting our final report to the Commissioner for Ethical Standards in Public Life in Scotland ('the Commissioner's Office') for the year ending 31 March 2021. The scope of our audit was set out within our planning report issued in March 2021.

This report summarises our findings and conclusions in relation to:

- The audit of the **annual report and accounts**; and
- Consideration of the **four audit dimensions** that frame the wider scope of public sector audit requirements as illustrated in the following diagram. This includes our consideration of the Accountable Officer's duty to secure best value. As set out within our planning report, in carrying out our risk assessment, we considered the arrangements in place for each dimension, building on our knowledge from previous years' audits, changes within the Commissioner's Office during the year as well as planning guidance published by Audit Scotland. As a result of that risk assessment, we concluded that the full application of wider scope was appropriate for our 2020/21 audit.



# Introduction (continued)

## The key messages in this report (continued)

I would like to draw your attention to the key messages of this paper:

### **Conclusions from our testing**

Based on our audit work completed to date we expect to issue an unmodified audit opinion.

The performance report and accountability report comply with the statutory guidance and proper practice and are consistent with the annual report and accounts and our knowledge of the Commissioner's Office.

Following updates made by management, the auditable parts of the remuneration and staff report have been prepared in accordance with the relevant regulation.

A summary of our work on the significant risks is provided in the dashboard on page 10.

We have identified one adjustment above our reporting threshold. Details of this is included on page 29.

### **Status of the annual report and accounts audit**

Our audit work is complete.

### **Conclusions on audit dimensions**

As set out on page 3, our audit work covered the four audit dimensions. Our separate detailed draft report to management was considered by the Advisory Audit Board (AAB) in June 2021, which set out our findings and conclusions on each dimension. This was subsequently shared with the Auditor General for Scotland who has decided that, given the issues identified, a statutory report will be prepared under section 22 of the Public Finance and Accountability (Scotland) Act 2000 for the Scottish Parliament's Public Audit Committee.

An Action Plan was agreed with management following the AAB meeting in June 2021, and included within this report on pages 31 to 37. We are pleased to note that management has accepted all of the recommendations and are actively taking these forward as a matter of priority.

A number of the issues identified from our audit have a wider reach than the Commissioner's Office and would need input from the Scottish Parliamentary Corporate Body (SPCB) and the Parliament to address. We have included these wider recommendations for improvement separately within the Action Plan on page 38.

In accordance with the Code of Audit Practice, we have included our conclusions within this report on pages 17 to 24. Key highlights include:

**Financial Management** - The Commissioner's Office reported an overspend of £67,000 against its original 2020/21 budget. Contingency funding of £92,500 was received with the full amount not required. Regular financial monitoring reporting has been maintained throughout the year.

# Introduction (continued)

## The key messages in this report (continued)

### Conclusions on audit dimensions (continued)

The Commissioner's Office still has no internal audit function to provide assurance over the internal controls and governance arrangements. This has been disclosed within the Annual Governance Statement.

**Financial sustainability** - The Commissioner's Office has set a balanced budget for 2021/22. However, given the lack of business planning in place, there is a risk to short-term financial balance in 2021/22. There is currently no medium or long-term financial planning in place. While the Commissioner has implemented two phases of restructure, there is no comprehensive workforce plan in place and there has not been an effective assessment carried out to determine if the restructure has achieved its intended aims.

**Governance and transparency** - The Commissioner is currently on an extended period of leave and as a result, the SPCB has appointed an Acting Commissioner and an Acting Accountable Officer.

The SMT has provided good leadership to staff. However, there was a breakdown in the key relationships between the Commissioner, Standards Commission and AAB resulting in a lack of scrutiny and challenge during 2020/21. The current risk management framework is ineffective and has not had independent oversight from the AAB during 2020/21 given the relationship issues identified. We are pleased to note that Acting Commissioner and Acting Accountable Officer has re-engaged the AAB from May 2021.

The governance and scrutiny arrangements were ineffective during 2020/21 and there was a clear lack of openness and transparency.

**Value for money** - There is no defined performance management framework in place. During 2020/21, the Commissioner received weekly update reports from each department on activity showing the current case load.

The number of complaints outstanding at March 2020 had increased by 33% compared with March 2019. This was despite the Commissioner restructuring the organisation and appointing full-time investigating officers during 2019/20. It is unusual that there has not been any complex or contentious complaints for the Commissioner to refer to the Standards Commission.

The real life impact of this is that complaints which are dismissed prematurely without investigation mean that the Councillor concerned remains in their position with no action taken.

**Best value** - Weaknesses in governance and key relationships identified in 2020/21 have demonstrated that the Commissioner's Office arrangements as they stand are not sufficient to deliver Best Value.

# Introduction (continued)

## The key messages in this report (continued)

### **Emerging issues**

Deloitte's wider public sector team prepare a number of publications to share research, informed perspective and best practice across different sectors. We have provided a summary of those most relevant to the Commissioner's Office as an Appendix on page 27 of this report.

### **Next steps**

An agreed Action Plan is included in the Appendix on page 31 - 38 of this report. We will consider progress with the agreed actions as part of our 2021/22 audit.

Given the issues identified, the Auditor General for Scotland has decided that a statutory report will be prepared under section 22 of the Public Finance and Accountability (Scotland) Act 2000 for the Scottish Parliament's Public Audit Committee.

### **Acknowledgements**

Our audit work, in particular the work on the audit dimensions, involved a significant amount of additional work in comparison with previous years. SMT, staff and external stakeholders provided all of the information which we requested in advance of the agreed deadlines, which enabled us to carry out our work efficiently. We would like to express our thanks to everyone involved in the audit process.

### **Added value**

Our aim is to add value to the Commissioner's Office by providing insight into, and offering foresight on, financial sustainability, risk and performance by identifying areas for improvement and recommending and encouraging good practice. In so doing, we aim to help the Commissioner's Office promote improved standards of governance, better management and decision making, and more effective use of resources.

This is provided throughout the report including the detailed Action Plan agreed with management. In addition we have provided technical support on a number of areas throughout the year, such as around the new going concern standard.

# Annual report and accounts audit



# Quality indicators

## Impact on the execution of our audit

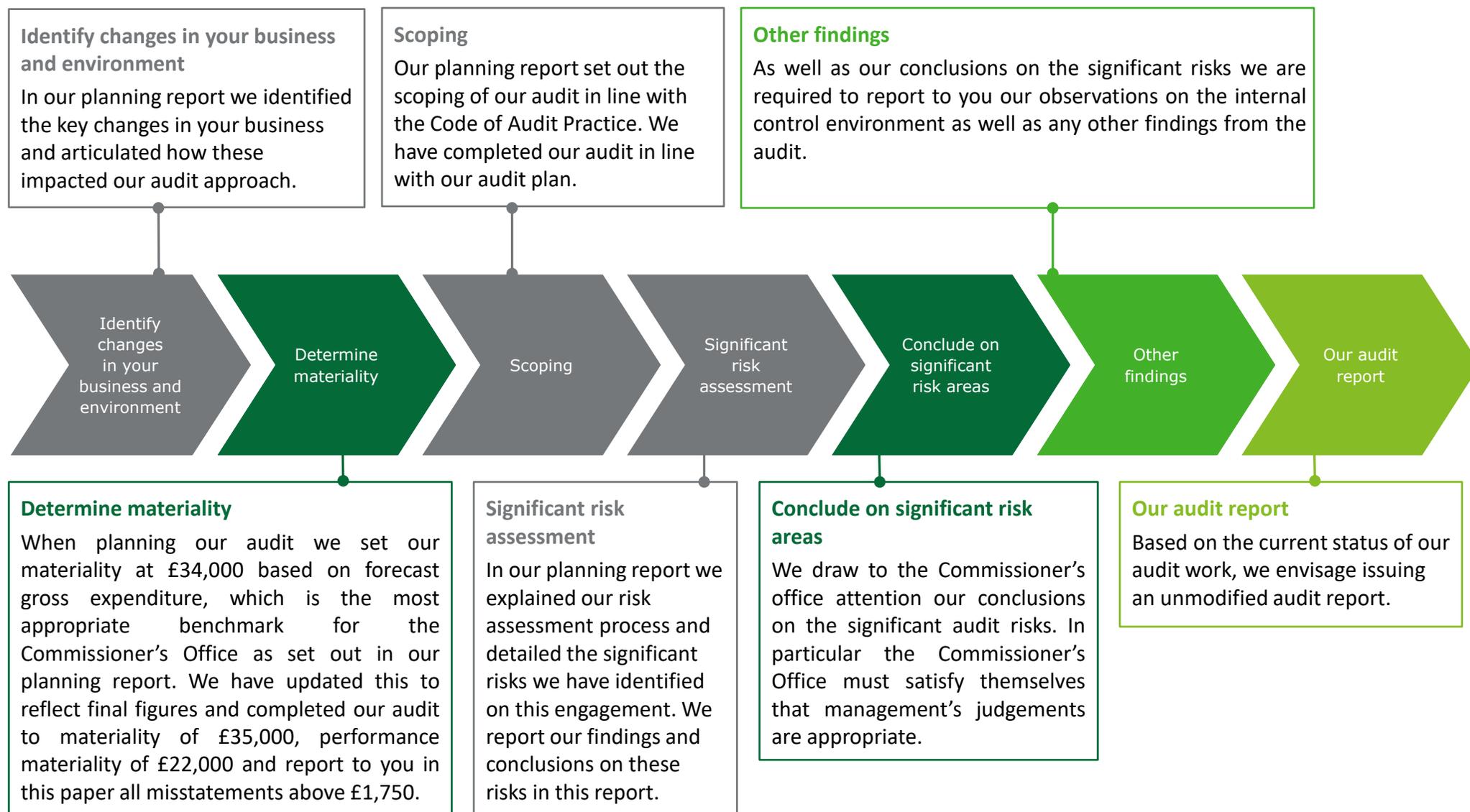
Management and those charged with governance are in a position to influence the effectiveness of our audit, through timely formulation of judgements, provision of accurate information, and responsiveness to issues identified in the course of the audit. This slide summarises some key metrics related to your control environment which can significantly impact the execution of the audit. We consider these metrics important in assessing the reliability of your financial reporting and provide context for other messages in this report.

Area	Grading	Reason
Timing of key accounting judgements		All information and supporting documentation for judgements was made available on request.
Adherence to deliverables timetable		The majority of key deliverables were provided on time ahead of our final fieldwork. 93% of requests were submitted on time and the draft Annual Report and Accounts were provided in line with the timetable set out.
Access to finance team and other key personnel		Deloitte, the finance team and the wider SMT have worked together to facilitate remote communication during the audit which has been successful.
Quality and accuracy of management accounting papers		We did not identify any issues with the quality or accuracy of management accounting papers which were reviewed by the audit team. This is reflected in the low resubmission rate on requests of 5%.
Quality of draft financial statements		A full draft of the Annual Accounts was received for audit on the 2 July 2021, with the narrative Annual Report received on 23 August 2021 in line with the revised agreed timelines. Whilst generally compliant with the reporting requirements, some minor amendments were required. These are discussed further on page 30.
Response to control deficiencies identified		We have not identified any significant control deficiencies in relation to the annual accounts process.
Volume and magnitude of identified errors		We have identified one adjustment above our reporting threshold which is discussed on page 29.

 Lagging  Developing  Mature

# Our audit explained

## We tailor our audit to your business and your strategy



# Significant risks Dashboard

Risk	Material	Fraud risk	Planned approach to controls testing	Controls testing conclusion	Consistency of judgements with Deloitte's expectations	Comments	Page no.
Operating within the expenditure resource limits			D+I	Satisfactory		Satisfactory	11
Management override of controls			D+I	Satisfactory		Satisfactory	12

Overly prudent, likely to lead to future credit



Overly optimistic, likely to lead to future debit.

**D+I:** Testing of the design and implementation of key controls

# Significant risks (continued)

## Operating within the expenditure resource limits



### Risk identified and key judgements

Under Auditing Standards there is a rebuttable presumption that the fraud risk from revenue recognition is a significant risk. In line with previous years, we do not consider this to be a significant risk for the Commissioner's Office as there is little incentive to manipulate revenue recognition with the majority of revenue being from the SPCB which can be agreed to confirmations supplied.

We therefore considered the fraud risk to be focused on how management operate within the expenditure resource limits set by the SPCB. There is a risk that the Commissioner's Office could materially misstate expenditure in relation to year end transactions, in an attempt to align with its tolerance target or achieve a breakeven position.

The significant risk is therefore pinpointed to the completeness of accruals and the existence of prepayments made by management at the year end and invoices processed around the year end as this is the area where there is scope to manipulate the final results. Given the financial pressures across the whole of the public sector, there is an inherent fraud risk associated with the recording of accruals and prepayments around year end.

### Deloitte view

We have concluded that expenditure and receipts were incurred or applied in accordance with the applicable enactments and guidance issued by the Scottish Ministers.

Based on our testing to date, we confirm that the Commissioner's Office has performed within the limits set by SPCB and has achieved a small underspend in the year. This was following additional contingency funding received in the year.

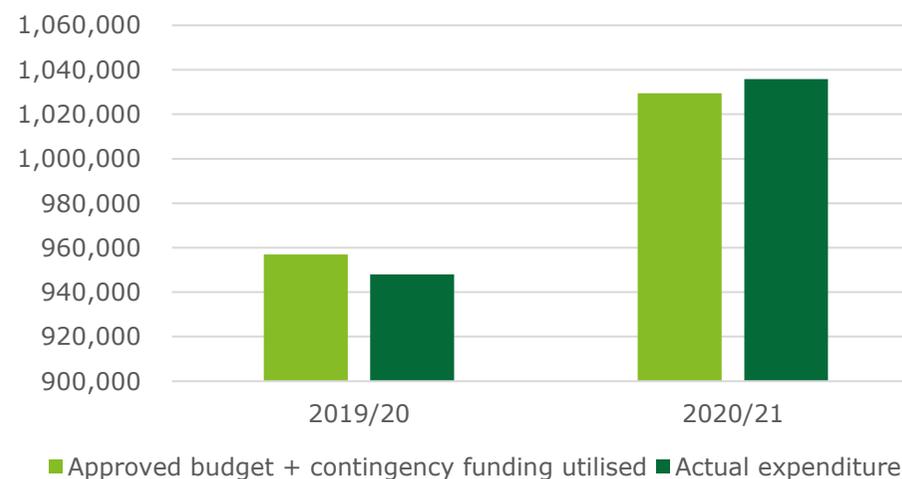


### Deloitte response and challenge

We have evaluated the results of our audit testing in the context of the achievement of the limits set by the SPCB (which are illustrated in the graph below). Our work in this area included the following:

- Testing the design and implementation of controls over journal entry processing;
- Making inquiries of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments;
- Selecting journal entries and other adjustments made at the end of a reporting period; and
- Considering the need to test journal entries and other adjustments throughout the period.

Budget performance (£)



# Significant risks (continued)

## Management override of controls



### Risk identified

Management is in a unique position to perpetrate fraud because of their ability to manipulate accounting records and prepare fraudulent financial statements by overriding controls that otherwise appear to be operating effectively.

Although management is responsible for safeguarding the assets of the entity, we planned our audit so that we had a reasonable expectation of detecting material misstatements to the annual report and accounts and accounting records.



### Deloitte response and challenge

In considering the risk of management override, we have performed the following audit procedures that directly address this risk:

#### Journals

We have tested the appropriateness of journal entries recorded in the general ledger and other adjustments made in the preparation of the annual report and accounts. In designing and performing audit procedures for such tests, we have:

- Tested the design and implementation of controls over journal entry processing;
- Made inquiries of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments;
- Selected journal entries and other adjustments made at the end of a reporting period; and
- Considered the need to test journal entries and other adjustments throughout the period.

### Accounting estimates and judgements

We have reviewed accounting estimates for biases and evaluated whether the circumstances producing the bias, if any, represent a risk of material misstatement due to fraud. In performing this review, we have:

- Evaluated whether the judgments and decisions made by management in making the accounting estimates included in the annual report and accounts, even if they are individually reasonable, indicate a possible bias on the part of the entity's management that may represent a risk of material misstatement due to fraud. From our testing we did not identify any indications of bias. Estimates include prepayments and accruals.
- Performed a retrospective review of management judgements and estimates related to significant accounting estimates reflected in the annual report and accounts of the prior year.

### Significant and unusual transactions

We did not identify any significant transactions outside the normal course of business or any transactions where the business rationale was not clear.

### Deloitte view

We have not identified any significant bias in the key judgements and estimates made by management.

We have not identified any instances of management override of controls in relation to the specific transactions tested.

# Other significant findings

## Financial reporting findings

Below are the findings from our audit surrounding your financial reporting process.

### Qualitative aspects of your accounting practices:

Following updates made by management, the Commissioner's Annual Report and Accounts have been prepared in accordance with the Government Financial Reporting Manual (FRM).

### Other matters relevant to financial reporting:

We have not identified other matters arising from the audit that, in the auditor's professional judgement, are significant to the oversight of the financial reporting process.

### Significant matters discussed with management:

Significant matters discussed with management related primarily to the impact of COVID-19 on the organisation. We have also discussed the Remuneration Report approach, legal confirmation and management's assessment of going concern.

We will obtain written representations from the Commissioner's Office on matters material to the financial statements when other sufficient appropriate audit evidence cannot reasonably be expected to exist. A copy of the draft representations letter has been circulated separately.

# Our audit report

## Other matters relating to the form and content of our report

Here we discuss how the results of the audit impact on other significant sections of our audit report.



### **Our opinion on the financial statements**

Our opinion on the financial statements is expected to be unmodified.



### **Material uncertainty related to going concern**

We have not identified a material uncertainty related to going concern and will report by exception regarding the appropriateness of the use of the going concern basis of accounting.

Practice Note 10 provides guidance on applying ISA (UK) 570 Going Concern to the audit of public sector bodies. The anticipated continued provision of the service is more relevant to the assessment than the continued existence of a particular body.



### **Emphasis of matter and other matter paragraphs**

There are no matters we judge to be of fundamental importance in the financial statements that we consider it necessary to draw attention to in an emphasis of matter paragraph.

There are no matters relevant to users' understanding of the audit that we consider necessary to communicate in an other matter paragraph.



### **Other reporting responsibilities**

The Annual Report is reviewed in its entirety for material consistency with the financial statements and the audit work performance and to ensure that they are fair, balanced and reasonable.

### **Opinion on regularity**

In our opinion in all material respects the expenditure and income in the financial statements were incurred or applied in accordance with any applicable enactments and guidance issued by the Scottish Ministers.

Our opinion on matters prescribed by the Auditor General for Scotland are discussed further on page 15.

# Your annual report

We are required to provide an opinion on the auditable parts of the remuneration and staff report, the annual governance statement and whether the performance report are consistent with the disclosures in the accounts.

	Requirement	Deloitte response
The Performance Report	The report outlines the Commissioner's performance, both financial and non-financial. It also sets out the key risks and uncertainty as set out in the Annual Operating Plan.	<p>We have assessed whether the performance report has been prepared in accordance with the accounts direction. No exceptions noted.</p> <p>We have also read the performance report and confirmed that the information contained within is materially correct and consistent with our knowledge acquired during the course of performing the audit, and is not otherwise misleading. We provided management with comments and suggested changes and have received an updated version reflecting these changes.</p>
The Accountability Report	Management have ensured that the accountability report meets the requirements of the FReM, comprising the governance statement, remuneration and staff report and the parliamentary accountability report.	<p>We have assessed whether the information given in the governance statement is consistent with the financial statements and has been prepared in accordance with the accounts direction. No exceptions noted.</p> <p>We have also read the accountability report and confirmed that the information contained within is materially correct and consistent with our knowledge acquired during the course of performing the audit, and is not otherwise misleading. We provided management with comments and suggested changes and have received an updated version reflecting these changes.</p> <p>We have also audited the auditable parts of the remuneration and staff report and confirmed that, following minor changes discussed on page 30, it has been prepared in accordance with the accounts direction.</p>
Going Concern	Management has made appropriate disclosure relating to Going Concern matters.	The 2021/22 budget of £946,000 was approved by the SPCB, with a further £104,900 in contingency funding. We have concluded that the plan is sufficiently robust to demonstrate that Commissioner's Office will be a going concern for 12 months from signing the accounts. We have also assessed the going concern disclosure in the financial statements and have concluded that it is appropriate and consistent with our knowledge acquired during the course of performing the audit, and is not otherwise misleading.

# Audit dimensions and best value



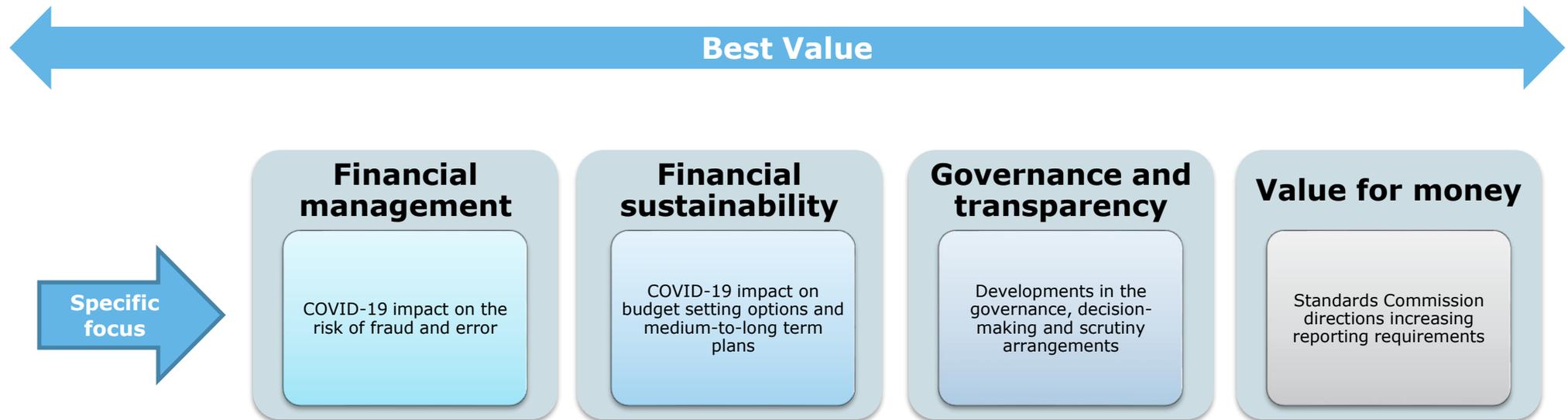
# Audit dimensions and best value

## Overview

As set out in our audit plan, public audit in Scotland is wider in scope than financial audits. In carrying out our risk assessment, we considered the arrangements in place for each dimension, building on our knowledge from previous years' audits, changes within the Commissioner's Office during the year as well as planning guidance published by Audit Scotland. As a result of that risk assessment, we concluded that the full application of wider scope was appropriate for our 2020/21 audit and identified a number of significant risks within our audit plan.

The risk profile of public bodies for the 2020/21 audits is also significantly affected by the COVID-19 pandemic. Our audit work across each dimension has therefore also considered how the Commissioner's Office has responded to these risks.

A detailed draft report was shared with management in June 2021, which set our detailed findings and conclusions on the audit work carried on each audit dimension. This was subsequently considered by the AAB in June 2021 and a detailed Action Plan agreed with management, which is replicated on pages 31 to 38. In accordance with the Code of Audit Practice, our overall conclusions on each audit dimension and best value are summarised on the following pages.



# Audit dimensions and best value (continued)

## Financial management

**Financial Management** is concerned with financial capacity, sound budgetary processes and whether the control environment and internal controls are operating effectively

Is financial management effective?

Are budget setting and monitoring processes operating effectively?

Is there sufficient capacity?

**Financial Management**

### Financial reporting and current year financial performance

The Commissioner's Office reported an overspend of £67,000 against its original 2020/21 budget. Contingency funding of £92,500 was received but the full amount was not required. Regular financial monitoring reporting has been maintained throughout the year. This could be improved by incorporating the monitoring of restructuring savings into the monthly financial monitoring reports to demonstrate that plans are in place and on track. **[Recommendation 1.1]**

### Finance Capacity

The Commissioner's Office continues to have a sufficiently qualified and experienced corporate services team to support the financial management of the organisation. Capacity constraints have increased during 2020/21 given the competing priorities of SMT members. This has been considered further in "Governance and Transparency" on page 21.

### Internal Audit

The Commissioner's Office still has no internal audit function, despite a commitment being given by the Commissioner in the Annual Report and Accounts in October 2019. The issues identified during our audit could have been identified earlier by having an independent internal audit function offering challenge and scrutiny. An internal audit function should be appointed as a matter of urgency, with an annual risk based programme put in place **[Recommendation 1.2]**

### Fraud

We have reviewed the Commissioner's Office arrangements for the prevention and detection of fraud and irregularities. Overall, we found the Commissioner's Office arrangements to be designed and implemented appropriately. However, in line with policies in other areas of the organisation, this policy has not been reviewed in line with the published review date.

# Audit dimensions and best value (continued)

## Financial sustainability

**Financial sustainability** looks forward to the medium and longer term to consider whether the body is planning effectively to continue to deliver its services or the way in which they should be delivered.

Can short-term (current and next year) financial balance be achieved?

Is there a long-term (5-10 years) financial strategy?

Is investment effective?

**Financial Sustainability**

### Short-term financial balance and budgeting

The Commissioner's Office has set a balanced budget for 2021/22. However, given the lack of business planning in place and other issues highlighted during our audit, there is a risk to short-term financial balance in 2021/22. No business plan was in place for 2020/21 or 2021/22 and there was no staff engagement on the budget, with the budget compilation restricted in the main to the corporate Services team and the Commissioner. The budget process should be reviewed and formalised to have greater involvement from SMT and wider staff engagement. Financial monitoring arrangements should also be used to monitor the impact of the expansion in remit for MSP complaints and other unforeseen variances arising from the lack of business planning. **[Recommendations 2.1 and 2.2]**

### Medium-to-long term planning

Strategic planning, financial planning and workforce planning are intrinsically linked and critical to the future success of any organisation. Given staff and staff related costs account for over 85% of the overall annual budget, planning and managing workforce is essential to the overall process.

The **Strategic Plan 2020-24** was published in April 2020. The plan includes a clear link to national outcomes which is considered good practice. It also set out the actions to achieve each strategic objective and the overall anticipated resources required to achieve these which is also good practice. The Acting Commissioner has consulted on a revised Strategic Plan for 2021-2024 which was published in October 2021.

There was no whole office annual business plan in place to help to inform the short term priorities and budget setting process. The Public Appointments department of the Commissioner's Office did have its own business plan which has allowed them to contribute fully to the budget setting process for 2021/22. However, this was not the case for other departments. Alongside the consultation of the revised Strategic Plan, the Acting Commissioner has produced a biennial business plan to meet the objectives of the strategic plan.

There is currently no medium or long-term **financial planning** in place for the Commissioner's Office, which is seen as an important tool to plan effectively for the medium to longer term, regardless of the funding model or set up of statutory functions. The Commissioner's Office is therefore unable to demonstrate that it is financially sustainable in the medium-to-long term. **[Recommendation 2.3]**

# Audit dimensions and best value (continued)

## Financial sustainability (continued)

### Medium-to-long term planning (continued)

The Commissioner has implemented two phases of a restructure, however, has no *workforce planning* in place. There has been no effective assessment carried out to determine whether the restructure has achieved its intended aims. Given the small headcount and risks currently identified from high levels of sickness absence in 2019/20 and high turnover of staff, the development of a comprehensive workforce plan should be introduced as a matter of priority. In addition, recruitment should be progressed for current vacant roles and consideration given to cross skilling teams to ensure resilience, particularly within the investigations team. It should also consider whether temporary resource is required to support the SMT in the Commissioner's absence. ***[Recommendations 2.4, 2.6 and 2.7]***

The Commissioner's Office has adapted well to remote working due to IT infrastructure being refreshed in 2019. While informal feedback from staff has been received, this could be improved by introducing a more formal staff feedback process. ***[Recommendations 2.5]***

# Audit dimensions and best value (continued)

## Governance and transparency

### **Governance and transparency**

is concerned with the effectiveness of scrutiny and governance arrangements, leadership and decision making, and transparent reporting of financial and performance information

Is governance effective?

Is there effective leadership?

Is decision making transparent?

Is there transparent reporting of financial and performance information?

**Governance and transparency**

### **Leadership**

The Commissioner is currently on an extended period of leave and as a result, the SPCB has appointed an Acting Commissioner and an Acting Accountable Officer. Due to the timing of the Commissioner's absence, we were unable to interview her during the course of our audit work.

The SMT have provided support and challenge but this has not been effective due to the issues identified throughout the audit. The SMT has provided good leadership to staff. However, this has had a detrimental impact on the SMT and its capacity.

There have been a number of changes in the management team and structure during 2020/21. At March 2021, the Commissioner's Office has one vacancy which is an improvement compared with the vacancy levels held over the previous two years. However, there is a clear capacity issue with high levels of annual leave outstanding particularly at senior level. All SMT member and the Commissioner have greater than 15 days outstanding with the highest being 34 days at 31 March 2021.

The decision made to restructure the complaints handling function appears to have realised benefits for the organisation. However, we cannot confirm this as no effective review has been carried out to see if it has achieved its aims. **[Recommendation 3.1]**

Due to the size of the organisation, there is no formal training programme in place. Appraisals for the SMT were carried out at different intervals with some not receiving an appraisal for 18 months. Training suggested by individuals arising from these were not entered into the training record. We have therefore recommended that a formal training programme for all staff be introduced. **[Recommendation 3.2]**

Our audit identified with the process for reporting of concerns and a lack of clarity within the organisation. We have therefore recommended that the whistleblowing policy be reviewed to make it fit for purpose. It must then be communicated to all staff members to improve awareness. **[Recommendation 3.3]**. The Commissioner's Office should also engage with the SPCB and Parliament to determine the reporting route for concerns about a Commissioner where that person is not responsive. **[Recommendation 5.1]**

# Audit dimensions and best value (continued)

## Governance and transparency (continued)

### Leadership (continued)

There had been a breakdown in the key relationships between the Commissioner, Standards Commission and the AAB during 2020/21.

The Standards Commission for Scotland has issued statutory directions for the first time during 2020/21. These were intended to provide assurances to the Standards Commission and others that the Commissioner's office was carrying out its functions in accordance with its founding legislation.

Based on legal advice obtained by the Commissioner's Office, the current operation of the investigation process (as amended in August 2020) and in particular the assessment process does not comply with the required legislation.

We have recommended that a full investigations manual is constructed to ensure consistency and compliance across all cases. Following this, all eligibility decisions and investigations carried out since August 2020 should be reviewed by an appropriate external investigator. Once this review has been undertaken, we recommend that all statistics produced and reporting made in relation to investigations is redrafted and submitted to the relevant stakeholder including but not limited to the Standards Commission and Parliamentary committee's using information directly from the CMS system. **[Recommendation 3.4]**

### Governance and scrutiny arrangements

The Commissioner's Office did not have any effective scrutiny and challenge during 2020/21. The processes and functions previously in place including the AAB, SPCB and Parliamentary Committees have failed to adequately scrutinise and challenge the organisation and its Commissioner. Had these been in place or operated effectively, issues identified from our audit work may have been identified earlier.

We recommended that the AAB be re-engaged and that there is engagement on a regular basis. We are pleased to note that this was acted upon promptly and the AAB were re-engaged from May 2021. We also recommend that the governance structures in place for this type of organisation are reviewed. The Commissioner's Office needs to engage with the SPCB and Parliament to identify improvements. This should include improved communications between the different organisations who are involved in the governance of the organisation and stakeholders. **[Recommendation 3.6, 5.2 and 5.3]**

The current risk management framework is ineffective and has not had independent oversight from the AAB given the relationship issues identified. The organisation should re-introduce a risk management policy and risk register in line with best practice. The risk management policy should then be reviewed annually and the risk register quarterly. Engagement should be made on a regular basis with AAB members to review the risk management approach and risk register. We would recommend that internal auditors (once appointed) also perform a review in this area. **[Recommendation 3.6]**

### Openness and transparency

The Commissioner's Office is not open and transparent, with decisions made not being communicated effectively to staff and a lack of formal recording of decisions made. It therefore needs to urgently review all policies and procedures in place. Although the organisation is aware of this, we highlighted that this should be treated with a higher priority level and we are pleased to note from management response to the action plan that this has already been implemented. It also needs to review its compliance with its own publication scheme. All information that can be published online should be to enable openness and transparency for the public, staff and stakeholders. **[Recommendation 3.7, 3.8 and 3.9]**

# Audit dimensions and best value (continued)

## Value for Money

**Value for Money** is concerned with using resources effectively and continually improving services.

Are resources being used effectively?

Are services improving?

Is Best Value demonstrated?

**Value for Money**

### Performance Management Framework

There is no defined performance management framework in place. In previous years an update report had been submitted to SMT meetings from each department. There was no such ongoing discussion of performance by the SMT during 2020/21. Instead, the Commissioner received weekly update reports from each department on activity showing the current case load. A performance management framework should be implemented to include processes to monitor the organisations performance against key performance indicators. **[Recommendation 4.1]**

### Performance data

The number of complaints outstanding at March 2020 had increased by 33% compared with March 2019. This is despite the Commissioner restructuring the organisation and appointing full-time investigating officers during 2019/20. It is unusual that there have not been any complex or contentious complaints for the Commissioner to refer to the Standards Commission. From statistics within the 2019/20 Annual Report 85% of complaints were not taken further. More recently statistics provided to the Standards Commission have declared a rate >80% for ineligible complaints not proceeding to investigation.

The real life impact of this is that complaints which are dismissed prematurely without investigation mean that the Councillor concerned remains in their position without action.

Eligibility statistics should be monitored and compared with other similar complaints investigation bodies (where possible) on a regular basis to identify the impact of changes in processes. **[Recommendation 4.2]**

Period	% complaints dismissed without investigation
2020/21	82%
2019/20	85%
2018/19	69%
2017/18	69%
2016/17	47%

# Audit dimensions and best value (continued)

The Scottish Public Finance Manual (SPFM) explains that Accountable Officers have a specific responsibility to ensure that arrangements have been made to secure **Best Value (BV)**.

## The duty of Best Value, as set out in the SPFM

- To make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance.
- To have regard to economy, efficiency, effectiveness, the equal opportunities requirement and to contribute to the achievement of sustainable development.

The SPFM sets out nine characteristics of Best Value which public bodies are expected to demonstrate. The refreshed guidance issued by the Scottish Government in 2011 focused on five generic themes and two cross-cutting themes, which now define the expectations placed on Accountable Officers by the duty of Best Value.

Five themes:

1. Vision and Leadership
2. Effective Partnerships
3. Governance and Accountability
4. Use of Resources
5. Performance Management

Cross-cutting themes:

1. Equality
2. Sustainability

## BV arrangements

In 2020/21, these arrangements did not operate effectively. As noted in our report, significant weaknesses within the Commissioner's Office governance framework have been identified.

In response to these issues, key parties to the Commissioner's Office failed to adhere to good practice and began to undertake actions on the instruction of the Commissioner, which actively went against the Commissioner's Office governance documents, guidance and good practice. The Commissioner's Office internal arrangements were insufficient to prevent or correct these issues.

## Deloitte view – Best Value

Weaknesses in governance and key relationships identified in 2020/21 have demonstrated that the Commissioner's Office arrangements as they stand are not sufficient to secure Best Value. Addressing the issues identified in our report – by implementing the recommendations in the Action Plan on pages 31 – 38 – should provide assurance that the revised arrangements of the Commissioner are appropriate to deliver Best Value.

# Purpose of our report and responsibility statement

## Our report is designed to help you meet your governance duties

### What we report

Our report is designed to help the Commissioner discharge their governance duties. It also represents one way in which we fulfil our obligations under ISA (UK) 260 to communicate with you regarding your oversight of the financial reporting process and your governance requirements. Our report includes:

- Results of our work on key audit judgements and our observations on the quality of your Annual Report;
- Our internal control observations; and
- Other insights we have identified from our audit.

### The scope of our work

Our observations are developed in the context of our audit of the financial statements.

We described the scope of our work in our audit plan.

### Use of this report

This report has been prepared for the Commissioner, as a body, and we therefore accept responsibility to you alone for its contents. We accept no duty, responsibility or liability to any other parties, since this report has not been prepared, and is not intended, for any other purpose.

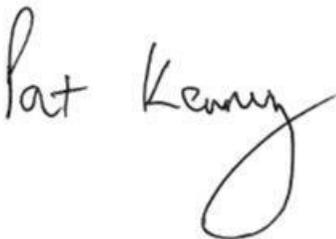
### What we don't report

As you will be aware, our audit was not designed to identify all matters that may be relevant to the Commissioner .

Also, there will be further information you need to discharge your governance responsibilities, such as matters reported on by management or by other specialist advisers.

Finally, our views on internal controls and business risk assessment should not be taken as comprehensive or as an opinion on effectiveness since they have been based solely on the audit procedures performed in the procedures performed in fulfilling our audit plan.

We welcome the opportunity to discuss our report with you and receive your feedback.



**Pat Kenny, CPFA**  
**For and on behalf of Deloitte LLP**  
Glasgow | 5 October 2021

# Sector developments



# Scottish Futures Trust - New Frontiers for Smarter Working, Work and Workplace post COVID-19

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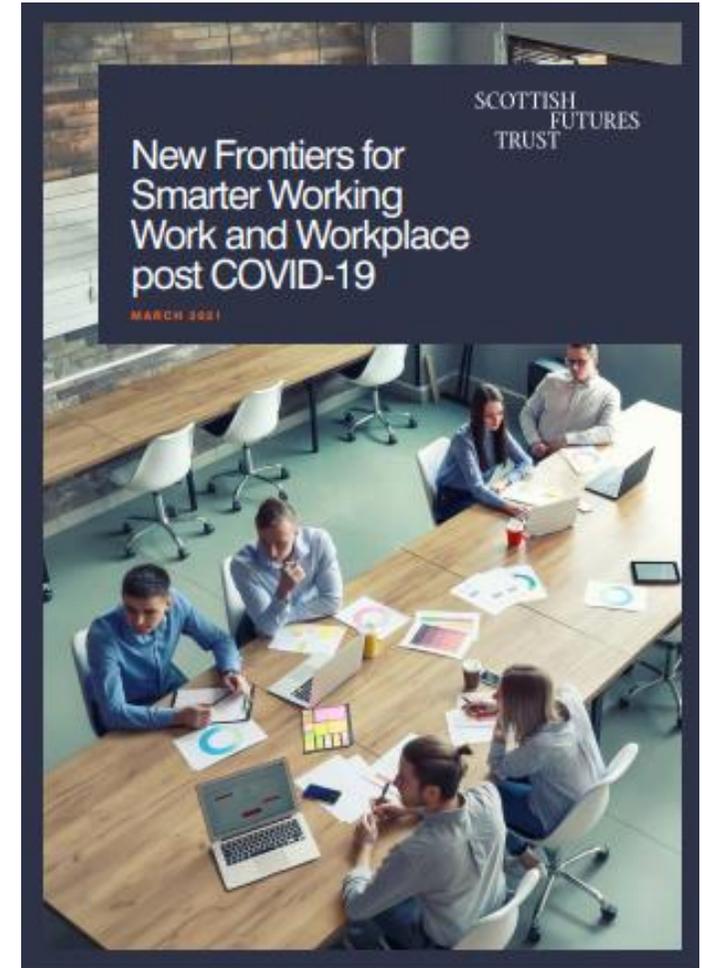
## Background and overview

**COVID-19 has fast-tracked a social revolution where a wider range of working choices could be on the horizon for hundreds of thousands of workers.**

A new report by infrastructure experts, the Scottish Futures Trust (SFT) reveals that the workforce of the future - predominantly those who have been office based - will want to make informed choices of where and how to work most productively and more beneficially for their wellbeing.

Post the pandemic, organisations should consider the three 'Hs' of working - from Home, a nearby hub or local location, where employees can meet clients or have time to concentrate on projects, or the HQ and head office, where people can gather to socialise, brainstorm ideas or collaborate face-to-face.

The "New Frontiers for Smarter Working, Work and Workplace Report also finds that this new blended future will depend on how employers gauge the benefits from the improved working set up while ensuring the wellbeing of employees.



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## Next steps

The report reveals a new future for best work, productivity and wellbeing. The full report is available at [Scottish Futures Trust](https://www.scottishfuturestrust.com/).

# Appendices



# Audit adjustments

## Corrected misstatements

The following misstatements have been identified up to the date of this report which have been corrected by management. We nonetheless communicate them to you to assist you in fulfilling your governance responsibilities, including reviewing the effectiveness of the system of internal control.

		Debit/ (credit) Statement of Comprehensive Net Expenditure £	Debit/ (credit) in net assets £	Debit/ (credit) prior year Taxpayers equity £	Debit/ (credit) Taxpayers equity £	If applicable, control deficiency identified
Supplier invoices, received post year-end, was not included in the 2020/21 accruals	[1]	6,600	(6,600)	-	-	N/A

[1] Three invoices, for work relating to public appointments that were carried out in 2020/21, were not identified until 26 May 2021 and not recorded within 2020/21 accruals.

# Audit adjustments (continued)

## Disclosures

### Disclosure misstatements

The following disclosure misstatements have been identified up to the date of this report which have been corrected by management. We nonetheless communicate them to you to assist you in fulfilling your governance responsibilities, including reviewing the effectiveness of the system of internal control.

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Disclosure	Summary of disclosure requirement	Quantitative or qualitative consideration
Remuneration Report – The draft financial statements did not fully incorporate the requirements in relation to disclosures of full year equivalent alongside actual remuneration.	FReM 6.5.16	Qualitatively material

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# Action plan

## Recommendations for improvement for management

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
1.1	The Commissioner's Office should include the monitoring of the actual savings achieved against targets in the monthly financial monitoring reports.	No longer required. Analysis of restructure costs/savings completed and reported to SPCB as part of budget bid 2022-23. Savings will not be achieved.	Acting Accountable Officer (AAO)	September 2021	Low
1.2	An independent internal audit function should be appointed via an open and transparent tender process as a matter of urgency to provide challenge and scrutiny of the Commissioner's Office.	Agreed. Will proceed to tender once external audit findings published. Internal auditor appointed	Acting Ethical Standards Commissioner (AESC)/AAO	November 2021 February 2022	High
2.1	The budget process should be reviewed and formalised to have greater involvement from SMT as a whole including recommending the budget for submission to the SPCB. Wider staff engagement should also be carried out through business and financial planning to enable them to understand how they contribute to the objectives of the organisation and how their actions could affect the budget.	Agreed in respect of SMT.  Staff engagement in planning to be achieved via monthly meetings and individual action plans based on our business plan.	AESC/SMT	May 2021 then ongoing.  May 2021 – business planning March 2021 – financial planning	Medium
2.2	Financial monitoring arrangements should be utilised to identify and respond to unexpected variances as a result of the lack of business planning. A business plan should be put in place for 2021/22 as a matter of priority.	Monthly monitoring of spend against each budget line (nominal code) is already undertaken. Records of monthly assessment will be retained.  Draft plan for 2021-23. Finalised plan for 2021-23.	AESC	June 2021 onwards  June 2021 October 2021	High

## Action plan (continued)

### Recommendations for improvement for management (continued)

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
2.3	A medium-term financial plan should be prepared, including, but not limited to, alternative scenarios of expected income and expenditure in future years, associated assumptions for each scenario, quantifying the funding gap, to then be able to plan effectively for the medium to longer term. Through these plans, we would expect to see consideration of the impact of leaving the EU, the Covid-19 pandemic and other expected changes.	Agreed. Will be tied to budget plan for the year set out in the target date.	AO	August 2022	Medium
2.4	Workforce planning should outline the current workforce, the future workforce and how the organisation can achieve its required future workforce. It should also include workforce statistics covering not just the headcount but also the skills required. Audit Scotland has produced reports on workforce planning in the NHS in Scotland, identifying key areas which need to be considered for effective workforce planning. Although not directly applicable, the overarching principles here should be used to guide the Commissioner's Office workforce planning.	Interim plan already in place based on medium term needs (see also response to 2.6): PAM post filled for one year from June 2021 via temporary promotion. Case made to SPCB for additional Investigating Officer (IO) post and additional Corporate Services Officer (CSO) post.	AESC/SMT	June 2021. March 2022 – interim assessment of new staff model 2022-23 – workforce planning	High

## Action plan (continued)

### Recommendations for improvement for management (continued)

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
2.5	We recommend that a formal staff survey is held both in response to the Covid-19 pandemic, including the future of work, but also on a regular basis. This would allow employees to submit responses anonymously which could have an impact on engagement and responses given the small nature of the organisation. It also allows comparisons using trend data over time.	<p>Agreed other than in respect of anonymity as this would not make sense due to staff numbers and would not actually allow individual staff preferences to be taken into account.</p> <p>Willing to consider anonymous surveys about staff views on the work of the organisation, particularly in respect of engagement and culture. We first have to get new starts through their probationary period which will be from August 2021.</p>	Public Appointments Manager (PAM)	<p>July 2021 - initial survey on work preferences.</p> <p>Formal survey six months after return to office and annually thereafter.</p>	High
2.6	The Commissioner's Office should recruit into current vacant roles as a matter of priority and begin cross skilling teams to ensure resilience, particularly within the investigations team. It should also consider whether temporary resource is required to support the SMT in the Commissioner's absence.	<p>See also 2.4. PAM post filled for one year from June 2021 via temporary promotion. PAO post backfilled for same period via recruitment. Case made to SPCB for additional IO post and additional CSO post. Two to three vacant IO posts currently advertised. One may be filled earlier using recruitment consultants.</p>	AESC/SMT	August 2021	High

## Action plan (continued)

### Recommendations for improvement for management (continued)

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
3.1	An independent review of the implementation of the restructure should be carried out to assess whether the current structure is fit for purpose. This should include the scheme of delegation and standing orders to ensure operations can continue in the absence of the Commissioner. These governance documents should be updated to reflect the expectation that all decisions are dealt with in a collaborative way with key items being decided by the SMT group.	<p>Agreed. Preliminary internal review completed resulting in SPCB approving increased staffing complement. An independent review is contingent on funding for this purpose from the SPCB.</p> <p>Legislative mechanism in place for ESC absence is SPCB appointment of acting commissioner.</p> <p>Revised governance documents would not preclude a reoccurrence of the issues that have arisen in the absence of reciprocity on the part of any ESC appointee's terms and conditions.</p> <p>Require SPCB input to full review of Scheme of Delegation and Standing Orders.</p>	<p>AESC/AO</p> <p>SPCB</p>	<p>June 2021 – preliminary internal review</p> <p>TBC – independent review</p> <p>March 2022 and onwards– review of governance documents</p>	High
3.2	The Commissioner's Office should introduce a formal training programme for all staff varying by role. This should include a combination of internal and external training. This should be considered in conjunction with the review and updating of all policies and procedures.	Agreed. This will be arranged via the reinstatement of proper performance management reviews.	AESC/SMT	<p>September 2021 (current staff)</p> <p>March 2022 (new staff following probationary period)</p>	High

## Action plan (continued)

### Recommendations for improvement for management (continued)

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
3.3	The whistleblowing policy should be reviewed to make it fit for purpose. It must then be communicated to all staff members to improve awareness.	Partially agreed. The policy has been updated but we cannot change the underpinning legislation.  Agreed on ensuring policy highlighted again with all staff. Will consider whether issues below the bar for whistleblowing require to be set out in this or in another document (see below re SPCB engagement).	AO	November 2021	High
3.4	<ul style="list-style-type: none"> <li>a) We recommend that a full investigations manual is constructed and the assessment criteria are removed so that the process complies with the legislation.</li> <li>b) Following this, all eligibility decisions and investigations carried out since August 2020 should be reviewed by an appropriate external investigator.</li> <li>c) Once this review has been undertaken, we recommend that all statistics produced and reporting made in relation to investigations is redrafted and submitted to the relevant stakeholder including but not limited to the Standards Commission and Parliamentary committee's using information directly from the CMS system.</li> </ul>	<ul style="list-style-type: none"> <li>a) Part done as at May 2021. August 2021 draft in development. December 2021 for full manual.</li> <li>b) Contingent on funding from SPCB. Plan to audit internally first.</li> <li>c) Contingent on b), agreed. Internal review undertaken and complete at Aug21 and published in annual report 2020-21. Revisit following review at b).</li> </ul>	<ul style="list-style-type: none"> <li>a) Senior Investigating Officer (SIO)</li> <li>b) AESC/AO</li> <li>c) AO</li> </ul>	<ul style="list-style-type: none"> <li>a) Part done as at May 21. Aug21 draft in development Dec-21 for full manual.</li> <li>b) TBC as contingent on agreement and funding from SPCB</li> <li>c) October 2021 for internal review. TBC following further review as contingent on agreement and funding from SPCB at b)</li> </ul>	High

## Action plan (continued)

### Recommendations for improvement for management (continued)

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
3.5	We recommend that the AAB is re-engaged and that there is engagement on a regular basis.	Agreed and already underway	AESC/AO/SMT	May 2021 then ongoing	High
3.6	We recommend that the Commissioner's Office returns to the previous methods of managing risk by reintroducing a risk register and risk management policy. The risk management policy should then be reviewed annually and the risk register quarterly. Engagement should be made on a regular basis with AAB members to review the risk management approach and risk register. We would recommend that internal auditors (once appointed) also perform a review in this area.	Agreed	AESC/SMT	October 2021	High
3.7	SMT meetings should be formalised with an agenda and formal minutes taken to record both the discussions undertaken and the decisions made. Any decisions made outside of these meetings should be recorded within the minute. Minutes should be made available to staff and be published on the website in line with the publication scheme.	Agreed and already underway. Plan to be introduced to ensure cyclical items for SMT consideration are captured.	AESC/SMT	June 2021 adoption. October 2021 for cyclical items.	High
3.8	Given the direction of travel and the expectation for public sector organisations to demonstrate continuous improvement on openness and transparency we recommend that the Commissioner's Office considers holding public meetings.	We will consider this specific recommendation at a future SMT meeting.	AESC/SMT	December 2021	Low

# Action plan (continued)

## Recommendations for improvement for management (continued)

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
3.9	<p>a) The Commissioners' Office need to urgently review all policies and procedures in place. Although the organisation is aware of this it should be treated with a higher priority level.</p> <p>b) It also needs to review its compliance with its own publication scheme. All information that can be published online should be to enable openness and transparency for the public, staff and stakeholders. The Commissioner's Office should use the openness and transparency guidance available from Audit Scotland.</p>	<p>a) Agreed priority in respect of all HR related policies. These have all been redrafted and staff consulted on them with publication due in June.</p> <p>All other policies are lower priority in comparison with other recommended actions. We will put a plan in place for review, having consulted the AAB and the auditors on those that require to be prioritised.</p> <p>b) Agreed.</p>	<p>a) PAM /AESC /AO</p> <p>b) AO</p>	<p>a) June 2021 for HR related policies.</p> <p>Others by September 2022.</p> <p>b) March 2022</p>	High
4.1	<p>A performance management framework should be implemented to include processes to monitor the organisations performance against key performance indicators. The targets should be set in order to achieve the outcomes in the strategic and business plans. This information should be monitored on a quarterly basis and shared widely with staff so that they understand how they contribute to the performance of the organisation.</p>	Agreed	AESC/SMT	August 2022 then ongoing	High
4.2	<p>a) Eligibility statistics should be monitored and compared with other similar complaints investigation bodies or historic ESC statistics on a regular basis to identify the impact of changes in processes.</p> <p>b) See also recommendation on removing the assessment criteria process from eligibility.</p>	<p>a) No comparable investigation bodies. To reinstate monitoring against prior years of ESC statistics.</p> <p>b)Already addressed. See above.</p>	<p>a) AO</p> <p>b) N/A – already addressed – see above.</p>	a) September 2021 then ongoing.	High

# Action plan (continued)

## Wider recommendations for improvement

No.	Recommendation	Management Response (October 2021)	Responsible person	Target Date	Priority
5.1	The Commissioner's Office should engage with the SPCB and Parliament to determine the reporting route for concerns about a Commissioner.	Agreed although all we can do is engage with the SPCB following the publication of this report. We have no locus to prevent/preclude a reoccurrence.	AESC	October 2021	High
5.2	We recommend that the governance structures in place for this type of organisation are reviewed the Commissioner's Office needs to engage with the SPCB and Parliament to identify improvements. This should include improved communications between the different organisations who are involved in the governance of the organisation and stakeholders.	Agreed although all we can do is engage with the SPCB following the publication of this report. We have no locus to prevent/preclude a reoccurrence.	AESC	October 2021	High
5.3	In view of the wider governance issues identified in this report, we recommend that the SPCB, in consultation with the Commissioner and other Officeholders, review whether the governance structure in place remains sufficient and appropriate.	We are happy to contribute to any consultation on this issue whilst noting that this action is not for the AESC to respond to.	N/A (SPCB)	TBC	High

# Our other responsibilities explained

## Fraud responsibilities and representations



### Responsibilities:

The primary responsibility for the prevention and detection of fraud rests with management and those charged with governance, including establishing and maintaining internal controls over the reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations. As auditors, we obtain reasonable, but not absolute, assurance that the financial statements are, as a whole, free from material misstatement, whether caused by fraud or error.



### Required representations:

We have asked the Commissioner to confirm in writing that you have disclosed to us the results of your own assessment of the risk that the financial statements may be materially misstated as a result of fraud and that you have disclosed to us all information in relation to fraud or suspected fraud that you are aware of and that affects the entity.

We have also asked the Commissioner to confirm in writing their responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud and error.



### Audit work performed:

In our planning we identified the risk of fraud in relation to operating within the expenditure resource limit and management override of controls as a key audit risk for your organisation.

During course of our audit, we have had discussions with management and those charged with governance.

In addition, we have reviewed management's own documented procedures regarding fraud and error in the financial statements.

# Independence and fees

As part of our obligations under International Standards on Auditing (UK), we are required to report to you on the matters listed below:

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## Independence confirmation

We confirm the audit engagement team, and others in the firm as appropriate, Deloitte LLP and, where applicable, all Deloitte network firms are independent of the Commissioner and our objectivity is not compromised.

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## Fees

The proposed audit fee for 2020/21, as set out in our Audit Plan was £30,868, as analysed below:

	£
Auditor remuneration *	27,928
Audit Scotland fixed charges:	
Pooled costs	2,410
Audit support costs	530
<b>Total fee</b>	<b>30,868</b>

\* As a result of the application of the full wider scope and following discussion with Audit Scotland, the above fee includes an additional £18,000 to reflect the increased work.

No non-audit services fees have been charged for the period.

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## Non-audit services

In our opinion there are no inconsistencies between the FRC's Ethical Standard and the company's policy for the supply of non-audit services or any apparent breach of that policy. We continue to review our independence and ensure that appropriate safeguards are in place including, but not limited to, the rotation of senior partners and professional staff and the involvement of additional partners and professional staff to carry out reviews of the work performed and to otherwise advise as necessary.

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## Relationships

We are required to provide written details of all relationships (including the provision of non-audit services) between us and the organisation, and senior management and its affiliates, including all services provided by us and the DTTL network to the audited entity, and senior management and its affiliates, and other services provided to other known connected parties that we consider may reasonably be thought to bear on our objectivity and independence.

We are not aware of any relationships which are required to be disclosed.

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