



Scottish Information Commissioner

Report on the 2007-08 Audit

11 July 2008

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1 Executive Summary

Introduction

We have audited the financial statements of the Scottish Information Commissioner (the Commissioner) for the 2007/08 financial year and examined aspects of the Commissioner's performance and governance arrangements. This report sets out our key findings.

Financial Statements

We have given an unqualified opinion on both the financial statements of the Commissioner for 2007/08 and on the regularity of transactions undertaken during the financial year. During the year, the Commissioner incurred resource expenditure of £1.613 million. The Commissioner manages his budget on a cash basis, however, and cash spending of £1.525 million during the year, matched the funding received from the Scottish Parliamentary Corporate Body (SPCB).

Staff costs are the main area of the Commissioner's expenditure and account for 65% of total costs during the year. Other areas of expenditure are legal costs (12%), depreciation costs (4%) and administrative costs (19%).

The Commissioner's draft financial statements and supporting working papers were presented for audit on 21 May 2008 and were of a high standard. This meant that few audit adjustments were required to be made to the accounts.

The key issue highlighted during the audit related to the accounting treatment for costs associated with ongoing court action for cases where public bodies have contested decisions made by the Commissioner. During 2007/08, the House of Lords remitted a case back to the Commissioner and this event may lead to the Commissioner becoming liable for additional costs. A number of other cases are currently in progress, but it is too early at this stage to determine likely outcomes and any related cost implications.

Governance

Overall, we found that the Commissioner's governance arrangements continue to operate well. The Advisory Audit Board and Management Team meetings are used to monitor the organisational risk register, financial performance and progress against the Strategic and Operational Plans.

Our review of the internal audit function confirmed that it complied with Government Internal Audit Standards and, as a result, we have been able to place reliance on their work for the purposes of our audit. The Commissioner is conducting a tendering exercise to select internal auditors for 2008/09. This exercise should be completed as quickly as possible to allow the new internal auditors to provide assurance on internal controls for the full 2008/09 financial year.

Performance

Progress has been made to improve performance management arrangements at the Commissioner's office during the financial year. The Commissioner's Strategic and Operational Plans have been developed and provide a good basis to assess performance in the future. The Commissioner has also adopted a more systematic approach to performance management which provides improved performance management information the Management Team. Much of this information is also made available to members of the public on the Commissioner's website.

The Commissioner has acknowledged that further improvements could be made by adopting a more formal approach to reviewing organisational performance. The Operational Plan for 2008/09 includes a requirement to conduct a structured review of economy, efficiency and effectiveness and incorporate any actions emerging from findings within planning. The Commissioner has undertaken to ensure that this review addresses the nine of the characteristics of best value identified in the updated guidance to Accountable Officers issued in May 2006.

The Way Forward

Our findings and recommendations are summarised in an Action Plan (Appendix A) that accompanies this report. The Action Plan has been agreed with the Commissioner and incorporates the Management Team's response to audit recommendations.

The report includes some specific recommendations to strengthen internal controls. It is the responsibility of the Commissioner to decide the extent of the internal control system appropriate to the organisation.

Acknowledgements

We would like to take this opportunity to thank the Commissioner's staff who have been involved in the audit for their assistance and co-operation.

This report is part of a continuing dialogue between the Commissioner and Grant Thornton and is not, therefore, intended to cover every matter which came to our attention. Our procedures are designed to support our audit opinion and they cannot be expected to identify all weaknesses or inefficiencies in the Commissioner's systems and work practices.

The report is not intended for use by third parties and we do not accept responsibility for any reliance that third parties may place on it. The report will be submitted to the Auditor General for Scotland and will be published by him on his website at www.audit-scotland.gov.uk.

Grant Thornton

11th July 2008

2 Financial Statements

Our Responsibilities

We audit the financial statements and give an opinion on whether:

- they give a true and fair view, in accordance with the Public Finance and Accountability (Scotland) Act 2000 and directions made thereunder by the Scottish Ministers, on the state of affairs of the Scottish Information Commissioner as at 31 March 2008 and of the net expenditure, recognised gains and losses and cash flows for the year then ended;
- they, and the part of the Remuneration Report to be audited, have been properly prepared in accordance with the Government Financial Reporting Manual (FRoM) and directions made thereunder by the Scottish Ministers; and
- in all material respects the expenditure and receipts shown in the financial statements were incurred or applied in accordance with any applicable enactments and guidance issued by the Scottish Ministers.

We also review the Statement on Internal Control by:

- considering compliance with Scottish Government guidance;
- considering the adequacy of the process put in place by the Accountable Officer to obtain assurances on systems of internal control; and

assessing whether disclosures in the Statement are consistent with the information emerging from our normal audit work.

Overall Conclusion

We are able to conclude that the Commissioner's financial statements give a true and fair view of the financial position for the period from 1 April 2007 to 31 March 2008 and that, in all material respects, the expenditure and receipts shown in the accounts were incurred or applied in accordance with applicable enactments and relevant guidance.

Standard of accounts and supporting papers

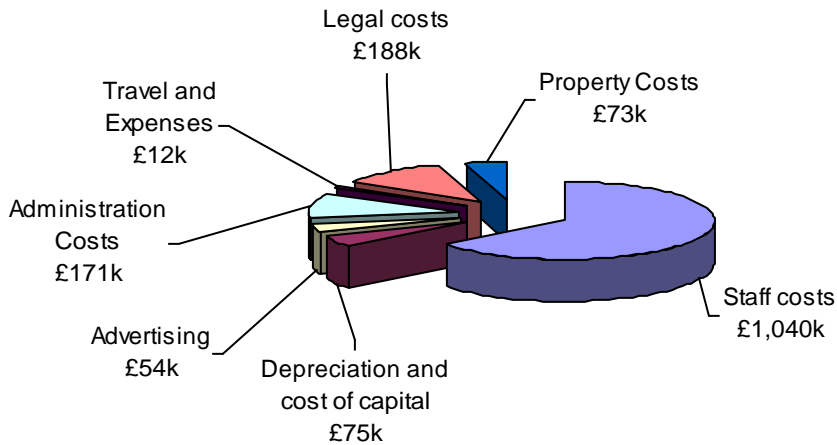
The Commissioner's draft financial statements and supporting working papers were presented for audit on 21 May 2008 and were of a high standard. This meant that few audit adjustments were required to be made to the accounts.

Financial Performance

The Commissioner receives cash funding from the Scottish Parliamentary Corporate Body (SPCB) for his annual budget. This year, the Commissioner drew on the Officeholder's Contingency Fund to meet costs associated with defending cases taken to the Court of Session on Appeal. The cash budget of £1.525 million included £90,000 from the Contingency Fund. Cash expenditure in the year matched the annual budget.

Staff costs are the main area of the Commissioner's expenditure and accounted for 65% of total expenditure. Other areas of expenditure are legal costs (12%), depreciation costs (4%) and administrative costs (19%). A more detailed analysis of the Commissioner's 2007-08 expenditure is shown in figure 1 below:

Figure 1 - Analysis of the Commissioner's expenditure



The Commissioner incurred capital expenditure of £23,000 against a budget of £6,000, mainly to replace obsolete equipment and to meet the IT requirements of the five new members of staff recruited in 2007/08. This additional expenditure was financed from savings made in other areas, for example staff costs, training and recruitment. Expenditure on publicity, research and promotion was also lower than expected as projects were completed in 2006/07.

Classification of Fixed Assets

The Commissioner purchased artwork with a value of £15,000 when setting up his office as part of an overall capital programme of refurbishment. This artwork is classified as a separate category of tangible fixed assets at Note 6 to the Accounts. The Commissioner has not depreciated artwork on the basis that it will sustain its value, however, this approach does not comply with the requirements of FRS15 - *Accounting for Tangible Fixed Assets*. The value of any depreciation on artwork is not material, however, we recommend that the Commissioner revises his accounting policy for artwork for the 2008/09 accounts.

Action plan point 1

Ongoing House of Lords Appeal

The Commissioner draws attention to the outcomes from a recent decision which had been appealed to the House of Lords. The House of Lords has chosen to remit the case back to the Commissioner and, as a result, the Commissioner is unlikely to be able to recover costs relating to the case and may be liable to meet the costs of the appellant. The Commissioner's accounts were adjusted to record the legal costs relevant to this case. The Commissioner is, however, unable at this time to determine

the likely exposure of his Office to additional costs relating to this matter and further disclosure is made in a contingent liability note to the accounts.

Statement on Internal Control

The Statement on Internal Control sets out the arrangements established and operated for risk identification and management, proposed future development of arrangements, and review of effectiveness of the system of internal control.

We are satisfied that the Statement complies with Scottish Executive guidance, that the processes put in place by the Accountable Officer (the Commissioner) to obtain assurances on systems of internal control are adequate and that the contents of the Statement are consistent with the information emerging from our normal audit work.

ISA 260: Communication of Audit Matters to Those Charged with Governance

Our responsibilities in relation to the communication of audit matters to those charged with governance are covered in the International Standard on Auditing 260. Outcomes against the requirements of the Standard are reported in Appendix B to this report.

3 Governance

Introduction

Sound corporate governance is central to demonstrating Best Value, and incorporates the way in which an organisation manages its business, determines strategy and objectives and goes about achieving those objectives. It is concerned with structures and processes for decision-making, accountability, control and behaviour at the upper levels of the organisation. Good governance means:

- focusing on the organisation's purpose and on outcomes for citizens and service users;
- performing effectively in clearly defined functions and roles;
- promoting values for the whole organisation and demonstrating the values of good governance through behaviour;
- taking informed, transparent decisions and managing risk;
- developing the capacity and capability of the governing body to be effective; and
- engaging stakeholders and making accountability real.

As part of our 2006-07 audit we reviewed the Commissioner's corporate governance arrangements against best practice within the Scottish Public Finance Manual. We concluded that the Commissioner's governance arrangements worked well within a generally sound system of internal control. However, the review highlighted concerns regarding the Commissioner's personal liability status and noted that there was scope for further clarification of the role of the SPCB in the budget approval and authorisation process.

We revisited these areas in 2007-08 and assessed the adequacy of the budgetary control procedures.

Overall Conclusion from our 2007-08 audit

Overall, we found that the Commissioner's governance arrangements continue to operate well. The Advisory Audit Board and Management Team meetings are used to monitor the organisational risk register, financial performance and progress against the operational plan.

Internal Audit

The internal audit function is a key component of the internal control framework. Each year, we review the work of internal audit to assess whether the scope of the work was sufficient and whether it was conducted in accordance with approved internal audit standards. Our review concluded that we were able to place reliance on the work of the Commissioner's internal audit function. To avoid duplication of effort and ensure an efficient audit process, we have made use of internal audit work on financial controls and risk management.

This was the last year that Scottish Enterprise will be able to provide internal audit services to the Commissioner. A tendering exercise has therefore begun to select a new internal audit provider and a timetable has been established. It is important that the new internal auditors are in place as soon as possible to allow them to provide assurance to the Commissioner on internal controls for the full financial year.

Budgetary Control

We noted that the Commissioner has continued to strengthen arrangements for budgetary control. Spend against the budget is closely monitored on a monthly basis at Management Team Meetings. The financial reports prepared monitor committed spend as well as the bank balance at each month end.

Personal Liability

The Commissioner sought advice from his legal advisors in 2007 regarding the legal status of the officeholder, and therefore his personal liability. The advice received from Brodies, Solicitors is summarised below:

- | | |
|-----|--|
| 1.1 | “The Scottish Information Commissioner” has no legal personality separate from that of the individual who holds that office. Accordingly, there is no separate legal capacity to hold property or incur liabilities separate from the office-holder’s personal capacity. |
| 1.2 | The “office of the Scottish Information Commissioner” is not a separate legal entity. That term should therefore only be used as a description of the Commissioner’s administrative support structure. |

This advice confirms that there is no distinction between the person who holds the office and the role of Commissioner. The Commissioner is, therefore, the personal employer of his staff and acts on a personal basis when entering contracts such as the lease of the office building. This has implications for the effective working of the Commissioner's office should the Commissioner resign or otherwise be prevented from exercising the duties of his office.

This matters may reflect a weakness in the original legislation which set up the Commissioner's office and further legislative change may be required to fully resolve the matter. We note that the SPCB is responsible for addressing many of the administrative and funding arrangements for the Commissioner and has undertaken to underwrite all reasonable costs incurred by Commissioners in undertaking the duties of his office. This assurance, to some extent, limits any personal liability which the Commissioner may face.

The advice that the Commissioner has received is similar to that obtained by other Commissioners in Scotland. Some of the Commissioners in Scotland, together with the Scottish Public Services Ombudsman have collectively agreed to contact the SPCB to discuss and resolve the matter. We will continue to monitor progress in this issue.

Action plan point 2

4 Performance

Introduction

Public audit is more wide-ranging than in the private sector and covers the examination of, and reporting on, performance and value for money issues. As part of our annual audit we are required to plan reviews of aspects of the arrangements to manage performance, as they relate to economy, efficiency and effectiveness in the use of resources.

As Accountable Officer, the Commissioner has a duty to ensure public resources are used economically, efficiently and effectively. Since April 2002 there has also been a duty on Accountable Officers "to ensure arrangements are in place to secure Best Value."

Strategic Planning

In May 2008, the Commissioner published his Strategic Plan to cover his second period in office, from 2008-12. The Plan covers 6 key strategic themes and associated outcomes across the following aspects of his operations

- Case closure;
- Compliance;
- Awareness;
- Practice;
- Development; and
- Reference.

The Strategic Plan sets out a new direction for the Commissioner's office. Additional staff in 2007/08 allowed the Commissioner to clear the backlog of investigation cases. New applications have now begun to level out at around 400 cases per year. This will allow the Commissioner to focus on improving the level of service to applicants, and also provides the opportunity to better address his other statutory duties such as promoting good practice and raising awareness of the right to public information among less-represented groups of the population.

Performance Management

The Commissioner's Operational Plan translates the Strategic Plan into specific actions and expected outcomes for the current year. Management Team meetings are used to ensure that the annual budget is allocated as effectively as possible. Staff planning arrangements are the key mechanism used to match resources to the plans.

Good progress was made in developing performance management during 2007/08. A revised staff performance management system has been adopted and is being used to ensure that high levels of staff competency are maintained and developed, and staff turnover levels remain low. The Commissioner has also introduced a "Dashboard" system which provides information on performance against the Strategic and Operational Plans. The Dashboard is reviewed on a monthly basis at each Management Team meeting, but is also available to members of the public on the Commissioner's website.

In 2007/08 one of the key objectives was to reduce the backlog of cases. At the start of the financial year there were almost 120 backlog cases and the Commissioner set an objective to clear this caseload. By March 2008 this objective had been achieved and the number of backlog cases had reduced to zero. Key to the successful eradication of the excess caseload was the creation of two

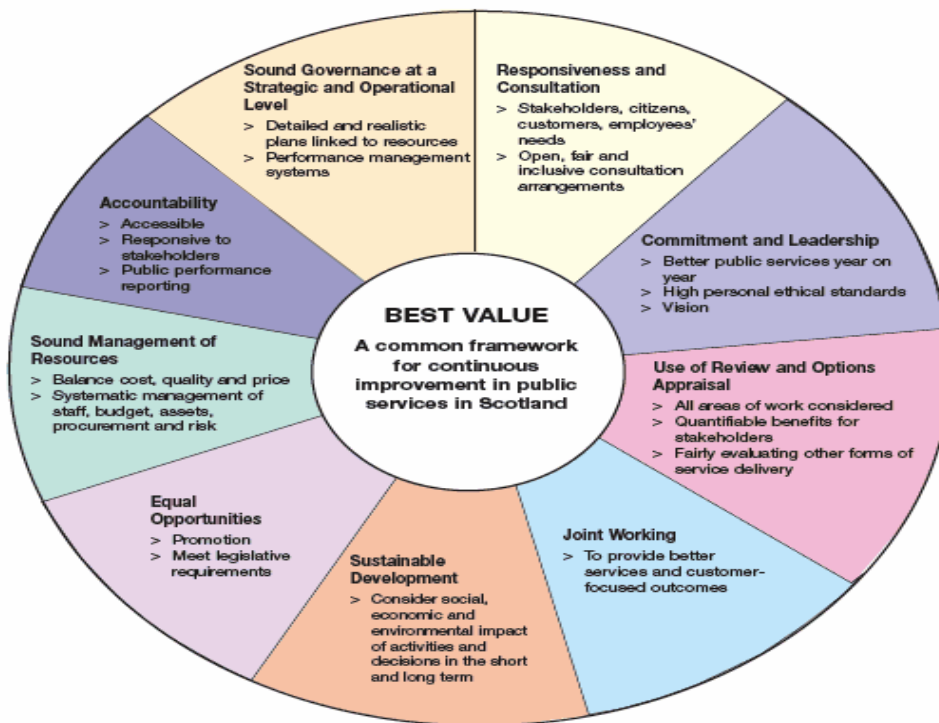
investigative teams, each under a Deputy Head of Investigations, with clear individual and team targets.

Best value

The Commissioner's office is relatively small, with limited management capacity. The Commissioner's current approach to best value is restricted to monitoring efficiency in operations and developing strategic planning and performance management arrangements. This approach is proportionate to the Commissioner's size and scale of operations.

The Commissioner has acknowledged, however, that his office would benefit from a more formal approach to reviewing organisational performance and planned reviews would benefit from a more structured approach, such as that contained in Best Value guidance issued by Scottish Minister and outlined at Figure 2 below:

Figure 2 - Nine Characteristics of Best Value



Action plan point 4

Appendix A - Action Plan

No	Finding	Risk	Recommendation	Management Response	Implementation date
Classification of fixed assets					
1	Artwork is classified as a fixed asset in the accounts but is not subject to depreciation.	Low	The Artwork within the Commissioner's tangible fixed assets should be subject to periodic valuation.	A five-yearly valuation cycle is considered appropriate. The cost of the valuation must be proportionate to the low value of each of the items, all of which were sourced from a specialist dealer. The dealer will be requested to prepare a summary valuation as at 1 April 08 based upon their knowledge of the 25 pieces of Artwork acquired by the Commissioner and the market value of the artists' work.	October 2008
Personal Liability					
2	Legal advice confirms that the Commissioner has personal liability in relation to the conduct of his office.	Medium	The Commissioner should work with the SPCB to put appropriate arrangements in place to address issues relating to his personal liability position.	The Commissioner, along with other officeholders, is in correspondence with the SPCB in this regard.	Ongoing
Best Value					
3	The Commissioner has plans in place to conduct a structured review of the economy, efficiency and effectiveness of his office.	Medium	The Commissioner should incorporate best value principles and guidance when developing arrangements for undertaking the review of economy, efficiency and effectiveness planned for 2008/09.	The Commissioner recognises the value of such a review which is incorporated in the Commissioner's 2008-9 Operational Plan.	September 2008

Appendix B- Communication of audit matters to those charged with governance

ISA 260 – Communication of audit matters to those charged with governance

Under ISA 260, we are required to consider matters of governance interest that arise from the audit of the financial statements and communicate them with those charged with governance. The areas considered are as follows:

- a) Relationships that may bear on Grant Thornton’s independence and the integrity and objectivity of the audit engagement lead and audit staff;
- b) The overall approach to the audit including any limitations thereon, or any additional requirements;
- c) The selection of, or changes in, significant accounting policies and practices that have, or could have a material effect on the entity’s financial statements;
- d) The potential effect on the financial statements of any material risks and exposures, such as pending litigation, that are required to be disclosed in the financial statements;
- e) Audit adjustments, whether recorded or not by the entity that have, or could have a material impact on the entity’s financial statements; and
- f) Those uncorrected misstatements aggregated by the auditor during the audit that were determined by management to be immaterial both individually and in aggregate to the financial statements as a whole.

Key Findings

We summarise our key audit findings in relation to the above areas.

Ref	Area	Key Messages
A	Independence	<p>We are able to confirm our independence and objectivity as auditors and note the following:</p> <ul style="list-style-type: none"> • we are independently appointed by Audit Scotland; • we comply with the Auditing Practices Board’s Ethical Standards; and • we have not performed any non Code of Audit Practice (the Code) or advisory work during the year.

Appendix B- Communication of audit matters to those charged with governance

Ref	Area	Key Messages
B	Approach to the audit	<p>Our approach to the audit was set out in our 2007-08 audit plan. We have planned our audit in accordance with International Auditing Standards and the Code. Other key factors to highlight include:</p> <ul style="list-style-type: none"> • we consider the materiality of items in the financial statements both in determining the approach to audit them and in determining the impact of any errors; • we have been able to place appropriate reliance on the key accounting systems operating at the Commissioner's office for final accounts audit purposes only; and • we have been able to place reliance on the work of internal audit in respect of the key accounting systems.
C	Accounting policies and practices	<p>We consider that the Commissioner has adopted appropriate accounting policies in the areas covered by our testing. Accounting policies adopted were in accordance with the Government Financial Reporting Manual (FRM).</p> <p>The Commissioner has considered and confirmed his office remains a going concern. The Commissioner is asked to confirm this through the Letter of Representation.</p>
D	Material risks and exposures	<p>The Commissioner has considered and confirmed that his office has no material risks and exposures which should be reflected in the financial statements. The Commissioner is asked to confirm this in the Letter of Representation.</p>
E	Audit adjustments and unadjusted errors	<p>We identified several minor disclosure amendments and reclassifications to improve the presentation of the accounts. These are outlined below. There were no material errors that were not adjusted in the accounts.</p>

Appendix B- Communication of audit matters to those charged with governance

Accounting Issues

Classification of Fixed Assets

The Commissioner purchased artwork with a value of £15,000 as part of a capital programme of refurbishment when setting up his office. This artwork is reported as a separate category of tangible fixed assets at Note 6 to the Accounts. Artwork is currently not subject to depreciation on the basis that it will sustain its value, however, this approach does not comply with the requirements of FRS15 - *Accounting for Tangible Fixed Assets*. The value of any depreciation on artwork is not material, however, we recommend that The Commissioner revises his accounting policy for artwork for the 2008/09 accounts.

Indexation of Fixed Assets

The Commissioner's accounting policies require fixed assets to be accounted for at current cost. This requires that assets are indexed in intervening years between valuations. Indexation has not, however, been applied to fixed assets in the year under review and this will understate the valuation of assets in the balance sheet. We do not regard this omission as material.

Error in Calculation of Depreciation

During audit testing, we highlighted that depreciation was miscalculated for some IT hardware assets. This required a small prior year adjustment as well as an adjustment for 2007/08.

Summary of adjusted audit differences

This is a summary of audit differences processed by the Commissioner's office during the course of our audit.

	Income & Expenditure account		Balance Sheet	
	Dr £s	Cr £s	Dr £s	Cr £s
Adjustments affecting reported results				
Adjustment for error in depreciation 07/08	3,865			3,865
Prior period adjustment for depreciation in 06/07	3,319			3,319
Adjustment to reflect accrual relating to legal fees	81,000			81,000

There are no material unadjusted differences to report.