

Scottish Legal Aid Board

2017/18 Annual Audit Report



 AUDIT SCOTLAND

Prepared for the Scottish Legal Aid Board and the Auditor General for Scotland

23 July 2018

Who we are

The Auditor General, the Accounts Commission and Audit Scotland work together to deliver public audit in Scotland:

- The Auditor General is an independent crown appointment, made on the recommendation of the Scottish Parliament, to audit the Scottish Government, NHS and other bodies and report to Parliament on their financial health and performance.
- The Accounts Commission is an independent public body appointed by Scottish ministers to hold local government to account. The Controller of Audit is an independent post established by statute, with powers to report directly to the Commission on the audit of local government.
- Audit Scotland is governed by a board, consisting of the Auditor General, the chair of the Accounts Commission, a non-executive board chair, and two non-executive members appointed by the Scottish Commission for Public Audit, a commission of the Scottish Parliament.



About us

Our vision is to be a world-class audit organisation that improves the use of public money.

Through our work for the Auditor General and the Accounts Commission, we provide independent assurance to the people of Scotland that public money is spent properly and provides value. We aim to achieve this by:

- carrying out relevant and timely audits of the way the public sector manages and spends money
- reporting our findings and conclusions in public
- identifying risks, making clear and relevant recommendations.

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Key messages

2017/18 annual report and accounts

- 1 In our opinion the financial statements of the Scottish Legal Aid Board give a true and fair view of the financial position and their expenditure and income; the expenditure and income in the financial statements were incurred or applied in accordance with any applicable enactments and guidance; and the other information in the annual report and accounts was consistent with the financial statements and prepared in accordance with legal requirements.

Financial management

- 2 We concluded that the Scottish Legal Aid Board has effective arrangements in place for financial management.
- 3 Systems of internal control operated effectively in 2017/18 with scope for improvements in some areas.

Financial sustainability

- 4 We concluded that the Scottish Legal Aid Board has adequate financial planning arrangements in place.
- 5 There are no concerns about the overall financial position of the Scottish Legal Aid Board. The Scottish Government has provided written assurance that they will continue to meet the future funding obligations relating to legal aid and pension fund payments.

Governance and transparency

- 6 We concluded that the Scottish Legal Aid Board has effective governance arrangements with some areas for further development.
- 7 The Scottish Legal Aid Board is open and transparent. It is currently considering the scope to further enhance transparency in the reporting of Board papers and the development of public performance reporting.

Value for money

- 8 The Scottish Legal Aid Board continues to develop its performance management framework and key performance indicators.
- 9 The annual review of performance against the Best Value characteristics is an effective tool in supporting continuous improvement.

Introduction

1. This report summarises the findings from our 2017/18 audit of Scottish Legal Aid Board (SLAB).

2. The scope of our audit was set out in our Annual Audit Plan presented to the meeting of the Audit Committee on 5 February 2018. This report comprises the findings from:

- an audit of the Scottish Legal Aid Board's annual report and accounts
- consideration of the four audit dimensions that frame the wider scope of public audit set out in the [Code of Audit Practice 2016](#) as illustrated in [Exhibit 1](#).

Exhibit 1

Audit dimensions



Source: *Code of Audit Practice 2016*

3. The main elements of our audit work in 2017/18 have been:

- a review of SLAB's main financial systems
- a review of SLAB's 2017/18 annual report and accounts including the issue of an independent auditor's report setting out our opinions
- consideration of the four audit dimensions

4. Scottish Legal Aid Board has primary responsibility for ensuring the proper financial stewardship of public funds. This includes preparing an annual report and accounts that are in accordance with the accounts direction from the Scottish

Ministers. The Scottish Legal Aid Board's annual report and accounts includes the following:

- a Performance Report
- an Accountability Report (which includes the Corporate Governance Report, Remuneration and Staff Report and Parliamentary and Accountability Report)
- Financial statements and supporting notes.

5. SLAB is also responsible for establishing effective arrangements for governance, propriety and regularity that enable the board to successfully deliver its objectives.

6. Our responsibilities as independent auditor is outlined in the Public Finance and Accountability (Scotland) Act 2000 and the [Code of Audit Practice 2016](#) and supplementary guidance, and International Standards on Auditing in the UK.

7. As public-sector auditors we give independent opinions on the annual report and accounts. We also review and provide conclusions on the effectiveness of the performance management arrangements, suitability and effectiveness of corporate governance arrangements, and financial position and arrangements for securing financial sustainability. In doing this we aim to support improvement and accountability. Further details of the respective responsibilities of management and the auditor can be found in the [Code of Audit Practice 2016](#) and supplementary guidance.

8. This report raises matters from the audit of the annual report and accounts and consideration of the audit dimensions. Weaknesses or risks identified are only those which have come to our attention during our normal audit work, and may not be all that exist. Communicating these does not absolve management from its responsibility to address the issues we raise and to maintain adequate systems of control.

9. Our annual audit report contains an agreed action plan at [Appendix 1](#). It sets out specific recommendations, responsible officers and dates for implementation. It also includes outstanding actions from last year and the steps being taken to implement them.

10. We can confirm that we comply with the Financial Reporting Council's Ethical Standard. We can also confirm that we have not undertaken any non-audit related services and therefore the 2017/18 audit fee of £42,690 as set out in our Annual Audit Plan remains unchanged. We are not aware of any relationships that could compromise our objectivity and independence.

Adding value through the audit

11. Our aim is to add value to the Scottish Legal Aid Board by increasing insight into, and offering foresight on, financial sustainability, risk and performance, by identifying areas of improvement and by recommending and encouraging good practice. In so doing, we aim to help the board promote improved standards of governance, better management and decision making and more effective use of resources.

12. This report is addressed to both the board and the Auditor General for Scotland and will be published on Audit Scotland's website www.audit-scotland.gov.uk in due course.

13. We would like to thank all management and staff who have been involved in our work for their cooperation and assistance during the audit.

Part 1

Audit of 2017/18 annual report and accounts



Main judgements

The financial statements of Scottish Legal Aid Board for 2017/18 give a true and fair view of the state of the body's affairs and of its net expenditure for the year.

Expenditure and income were in accordance with applicable enactments and guidance.

The audited part of the remuneration and staff report, performance report and governance statement were all consistent with the financial statements and properly prepared in accordance with the accounts direction.

Audit opinions on the annual report and accounts

14. The annual report and accounts for the year ended 31 March 2018 were approved by the Board on 23/07/2018. We reported within our independent auditor's report that in our opinion:

- the financial statements give a true and fair view and were properly prepared
- expenditure and income were regular and in accordance with applicable enactments and guidance
- the audited part of the remuneration and staff report, performance report and governance statement were all consistent with the financial statements and properly prepared in accordance with the accounts direction.

15. Additionally, we have nothing to report in respect of misstatements in the financial statements, the adequacy of accounting records and the information and explanations we received.

Submission of annual report and accounts for audit

16. We received the unaudited financial statements on 11/06/2018 in line with our agreed audit timetable.

17. The working papers provided with the unaudited financial statements were of a good standard and finance staff provided good support to the audit team which helped ensure the final accounts audit process ran smoothly.

Whole of Government Accounts

18. In accordance with the WGA guidance the required assurance statement will be submitted to the National Audit Office (NAO) by the 30 September 2018 deadline.

The annual report and accounts are the principal means of accounting for the stewardship of its resources and its performance in the use of those resources.

Risk of material misstatement

19. [Appendix 2](#) provides a description of those assessed risks of material misstatement that were identified during the planning process. These risks had the greatest effect on the overall audit strategy, the allocation of staff resources to the audit and directing the efforts of the audit team. Also included within the appendix are wider audit dimension risks, how we addressed these and conclusions.

Materiality

20. Misstatements are material if they could reasonably be expected to influence the economic decisions of users taken based on the financial statements. The assessment of what is material is a matter of professional judgement. It involves considering both the amount and nature of the misstatement. It is affected by our perception of the financial information needs of users of the financial statements.

21. Our initial assessment of materiality for the annual report and accounts was carried out during the planning phase of the audit and is summarised in [Exhibit 2](#). Specifically, regarding the annual report and accounts we assess the materiality of uncorrected misstatements, both individually and collectively.

22. On receipt of the annual report and accounts we reviewed our materiality calculations to reflect the actual figures, however the underlying assumptions used to determine materiality remain unchanged but have been updated to reflect actual figures.

Exhibit 2

Materiality values

Materiality level	Amount
Fund overall materiality	£1.340 million
Fund Performance materiality	£1.005 million
Fund Reporting threshold	£13 thousand
Board overall materiality	£0.177million
Board Performance materiality	£0.133 million
Board Reporting threshold	£2 thousand

Source: Annual Audit Plan 2017/18

How we evaluate misstatements

23. It is our responsibility to request that all misstatements other than those below the reporting threshold are corrected. The final decision on this lies with those charged with governance considering advice from senior officers and materiality.

24. There were no monetary errors in the unaudited financial statements identified from our audit.

Significant findings from the audit in accordance with ISA 260


25. International Standard on Auditing (UK) 260 requires us to communicate significant findings from the audit to those charged with governance. These are summarised in [Exhibit 3](#). Where a finding has resulted in a recommendation to management, a cross reference to the Action Plan in [Appendix 1](#) has been included.


26. These findings include our views about significant qualitative aspects of the Scottish Legal Aid Board's accounting practices including:

- | | |
|---|---|
| • Accounting policies | • Accounting estimates and judgements |
| • Significant financial statements disclosures | • Timing of transactions and the period in which they are recorded |
| • The impact on the financial statements of any uncertainties | • The effect of any unusual transactions on the financial statements |
| • Misstatements in the annual report and accounts | • Disagreement over any accounting treatment or financial statements disclosure |

Exhibit 3

Significant findings from the audit of financial statements


Issue	Resolution
<p>1. Provision for Legal Aid</p> <p>The 2017/18 financial statements include a provision for unbilled live legal aid cases of £50.818million (£57.130 million 2016/17). During 2017/18, SLAB changed the way in which this provision was calculated, with the computer programme applied in the new estimation model being more transparent to management. The calculation of the provision is based on estimates of the duration of ongoing cases and average costs. These estimates are determined by officers taking into account historical experience and trends. While we concur with the estimation technique and the value of the provision in the accounts, there was a lack of documentation to fully support all of the criteria applied in determining the average duration calculation.</p> <p>Because the future value of legal aid payable cannot be determined with certainty, actual results could be materially different from the applied assumptions and estimates. The unaudited financial statements did not fully disclose how changes in the estimation criteria could impact on the financial statements.</p>	<p>An additional accounting policy note has been added to provide greater transparency to allow the reader of the financial statements to understand the impact of the changes in the average length of the cases on the value of the provision. This includes a sensitivity analysis which shows the changes in the value of the provision resulting from the application of different average durations.</p> <p>Management has agreed to keep under review the accuracy of the criteria used to calculate the provision taking into account the actual results of finalised legal aid cases and to maintain full supporting documentation to support the estimation technique.</p> <p> Recommendation 1 (refer appendix 1, action plan)</p>
<p>2. Pension Scheme Governance arrangements</p> <p>Scottish Legal Aid Board operates the Legal Aid (Scotland) Pension Scheme. This is an unfunded</p>	<p>The Governance Statement in the 2017/18 Annual Report and Accounts has been expanded to also relate to the Legal Aid (Scotland) Pension Scheme.</p>

Issue	Resolution
<p>defined benefit scheme set up under paragraph 8(3) of Schedule 1 to the Legal Aid (Scotland) Act 1986 and is administered on behalf of SLAB by the Scottish Public Pensions Agency. The value of the pension fund liability included in the 2017/18 financial statements is £ 115.651m.</p> <p>The Legal Aid (Scotland) Pension Scheme is a standing agenda item at every meeting of the Remuneration and Appointments Committee. However, the governance arrangements for the pension scheme, including the role and responsibilities of pension fund trustees, have not been formally documented and it is unclear when these were last approved by the Board. This is of particular concern in the light of the significant net pension liability and the possibility of future reforms to the pension scheme.</p> <p>In addition, the Governance Statement included in the unaudited annual report and accounts made no reference to the Legal Aid (Scotland) Pension Scheme.</p>	<p>The governance arrangements for the Legal Aid (Scotland) Pension Scheme, are to be formally documented and approved by the Board.</p> <p> Recommendation 2 (refer appendix 1, action plan)</p>

3. Accounting Policies and Disclosure Notes

There were a number of key accounting policies which were required by the FReM and which had not been included in the unaudited accounts. These related to new standards not yet issued, income recognition government grants and the bad debt provision. Fuller disclosure notes were also required relating to the critical judgements and estimates included in the accounts.

In order to fully comply with the requirements of the FReM and enhance transparency, additional accounting policies and disclosure notes have been added to the financial statements.

 [Recommendation 3](#) (refer appendix 1, action plan)

Source: Audit Scotland's Review of Financial Statements

Other findings

27. Our audit identified a number of more minor presentational and disclosure issues which were discussed with management. These were adjusted and reflected in the audited financial statements.

Follow up of prior year recommendations

28. Our follow up of the actions agreed in our 2016/17 Annual Audit Report found that all actions have been fully implemented.

Part 2

Financial management



Main judgements

Scottish Legal Aid Board had effective overall management of the 2017/18 budget.

Systems of internal control operated effectively in 2017/18 with scope for improvements in some areas.

Financial performance in 2017/18

29. The Scottish Legal Aid Fund is a non-cash limited fund. This means that Scottish Government has a statutory obligation to provide funding for any amounts due to be paid to any solicitor or counsel out of the fund. Therefore, while the Scottish Government sets an annual budget which it monitors throughout the year, there is no limit on what will be due for payment during the year.

30. Scottish Government set a funding provision for the legal aid fund of £ 126.86 million for 2017/18. The cash spend for the year was £124.410 million.

31. The legal aid board is funded by Grant in Aid (GIA) for the administration costs of the organisation. The financial target is to operate within this GIA funding allocation. The financial performance against Departmental Expenditure Limits (DEL) for the legal aid board is shown in [Exhibit 4](#). The overspend against the Resource DEL of £0.204 million is made up from an overspend against depreciation of £0.126 million and an overspend of £0.078 million against staff and administration costs which was funded by opening 2017/18 cash balances.

Exhibit 4

Performance against DEL in 2017/18

Performance	Final budget £m	Actual outturn £m	Overspend/ (underspend) £m
Resource DEL	11.220	11.424	0.204
Capital DEL	0.100	0.074	(0.026)
Total DEL	11.320	11.498	0.178

Source: Scottish Legal Aid Board

Budgetary processes

32. We reviewed SLAB's budgetary processes and budget monitoring arrangements. From our review of budget monitoring reports, review of committee papers and attendance at committees we confirmed that senior management and members receive regular, timely and up to date financial information on the financial position.

33. We concluded that SLAB has sound budget monitoring and control arrangements that allow members and officers to carry out effective scrutiny of its finances.

Systems of internal control

34. As part of our audit we identify and inspect the key internal controls in those accounting systems which we regard as significant to produce the financial statements. Our objective is to gain assurance that SLAB has systems of recording and processing transactions which provide a sound basis for the preparation of the financial statements.

35. Our findings were included in the management report presented to the Audit Committee on 21/05/2018. We concluded that the controls tested were operating effectively with scope for strengthening some processes. No significant internal control weaknesses were identified during the audit which could affect Scottish Legal Aid Board's ability to record, process, summarise and report financial and other relevant data to result in a material misstatement in the financial statements.

Financial management is about financial capacity, sound budgetary processes and whether the control environment and internal controls are operating effectively.

Part 3

Financial sustainability



Main judgements

Scottish Legal Aid Board has adequate financial planning arrangements in place.

There are no concerns about the overall financial position of Scottish Legal Aid Board. The Scottish Government has provided SLAB with written assurance that they will continue to meet the future funding obligations relating to legal aid and pension fund payments.

Financial planning

36. SLAB approved its 2018/19 administration budget in March 2018 with a resource allocation of £11.163 million which is £0.068 million above the initial 2018/19 budget approved by Scottish Government of £11.095 million (both budget figures exclude the additional monies due from the Scottish Government for pension costs). The £0.068 million is expected to be funded by unfilled staff vacancies during 2018/19.

37. The majority of the board's running costs relate to staff expenditure and these are expected to increase over time as a result of pay progression and Scottish Government pay policy. This is likely to reduce the ability of SLAB to create future savings.

38. Although actual legal aid is demand led expenditure, SLAB applies a forecasts model based on a range of assumptions and estimates relating to historic trends and current data on volumes and average case costs. This model is updated throughout the year. The Scottish Government has approved an initial 2018/19 budget for the fund of £126.1 million (2017/18 final approved Scottish Government budget £126.86 million).

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.

2017/18 financial position

39. The Statement of Financial Position summarises what is owned and owed by Scottish Legal Aid Board. This shows taxpayers' equity – an accounting measurement of the amount invested that has continuing public benefit. It shows how much of this has arisen from the application of revenues and that which has resulted through changes over time in the value of physical assets.

40. The financial statements show that:

- the Scottish Legal Aid Fund had net liabilities of £53.591 million, a decrease of £1.640 million from 2016/17. This is largely attributable to a decrease in the provision for granted legal aid cases

- the Scottish Legal Aid Board had net liabilities of £90.982 million, an increase of £9.245 million from 2016/17. This is attributable to an increase in the pension liability
- the total pension liability for both the fund and the board was £115.651 million an increase of £10.601 million from 2016/17.

Going Concern

41. Due to the net liability position of the Scottish Legal Aid Board and the Scottish Legal Aid Fund, the Scottish Government provide written assurance that they will continue to meet the statutory obligation to provide funding for future sums due out of the legal aid fund and the pensions obligations arising for the pension scheme. The Accountable Officer has considered the financial position at 31 March 2018 and deemed it appropriate to prepare the annual accounts on a going concern basis and we concur with this assessment.

Medium to long term financial planning

42. We reviewed the financial planning systems and assessed how effective they are in identifying and addressing risks to financial sustainability across the medium and long term.

43. SLAB is mainly funded from Scottish Government (SG) budget allocation through Grant-in-aid and this is determined on an annual basis by the SG. In line with good practise, medium to long term financial plans for legal aid board expenditure are prepared using sensitivity analysis and scenario planning for possible budget changes. Reports on trend analysis in relation to applications for legal aid are also prepared and these help inform predicted spending levels on legal aid to be met by the fund.

Ending of public sector pay cap

44. SLAB has reviewed the impact of the ending of the public sector pay gap and it is considered that this can be met from the current budget settlement. This is likely to be a financial pressure going forward which should be factored into the budget process.

EU withdrawal

45. There remains significant uncertainty about the detailed implications of EU withdrawal (i.e. Brexit). It is critical that public sector bodies are working to understand, assess and prepare for the impact on their business in three broad areas:

- Workforce – the extent to which changes to migration and trade policies are likely to affect the availability of skilled and unskilled labour.
- Funding – the extent to which potential changes to funding flows are likely to affect the finances of the organisation and the activity that such funding supports.
- Regulation – the extent to which potential changes to regulation across a broad range of areas overseen at an EU level are likely to affect the activities of the organisation.

46. SLAB has considered the potential impact of Brexit on its main activities and the Scottish legal aid statutory and regulatory framework. Reports were put to the Board in September 2017 and March 2018 outlining the results of these initial assessments. These will be kept under ongoing review as and when final arrangements become clearer for the withdrawal from the EU.

Legal Aid Review

47. In February 2018, the outcome of the independent review of Legal Aid commissioned by the Scottish Government was published. SLAB was involved in this review by providing evidence and assistance to the review panel. A formal response to the review's findings is not expected from the Scottish Government until September 2018. The Board have been provided with ongoing updates throughout the review process.

48. Regular updates are also given to the Board on other significant legislative changes such as the implementation of the Criminal Justice (Scotland) Act 2016. It is important that the potential financial consequences of the current reviews and changes to legislation be reflected wherever possible in SLAB's medium term financial plans.

Part 4

Governance and transparency



Main judgements

Scottish Legal Aid Board has effective governance arrangements in place but with some scope for improvement.

Scottish Legal Aid Board is open and transparent in the way it conducts its business and has been proactive in considering the scope to enhance transparency in the reporting of Board papers and the ongoing development of public performance reporting.

Governance arrangements

49. SLAB is governed by a board that is accountable to Scottish Ministers. At 31 March 2018, the board consisted of the chairman and eleven non-executive members. In 2017/18, there were eight board meetings. The Board has six sub-committees: Audit committee, Remuneration & Appointments Committee, Legal Services Policy Committee, Legal Services Cases Committee, Section 31 Committee and Review Committee

50. The Audit Committee met 4 times in 2017/18. Agendas follow a standard format and papers are circulated to members in advance, allowing adequate time for members to review. From attendance at the Audit Committee, we are satisfied that members provide appropriate scrutiny of submitted reports.

51. One of the strategic objectives included in SLAB's Corporate Plan 2017-2020 is to review elements of its corporate governance framework. Work on this has been ongoing and a rolling programme of reviews has been developed. As reported to the Board in July 2017, these have highlighted some areas requiring further improvement, such as improving communication with members, clarifying delegated authorities and publishing the corporate governance framework on SLAB's website. We will keep the progress in further developing these areas under review.

Transparency

52. Transparency means that the public have access to understandable, relevant and timely information about how the Board is taking decisions and how it is using resources such as money, people and assets.

53. Currently SLAB publishes the minutes from meetings of the Board and the Legal Services Policy Committee. Meetings of the Board and Committees are not open to the public.

54. SLAB recognises the importance of ensuring the transparency of its operations and have reviewed their approach to publishing information under its Publication Scheme. They have also carried out a detailed assessment of the options for the publication of Board papers. Due to the sensitive nature of much of the Board's

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.

business it would be inappropriate to publish all papers and a pilot project for the publication of appropriate Board papers is ongoing. The results of this pilot are to be reported back to the Board in September 2018.

55. An important aspect of effective transparency is the public reporting of performance. SLAB currently publish limited performance information and have recognised the need to improve this aspect as part of the development of its performance management framework. A key part of this should be the production of a clear Public Performance Reporting Strategy covering areas such as the nature of information to be published, target stakeholders and the most effective means of reporting information.



[Recommendation 7](#) (refer appendix 1, action plan)

Internal audit

56. SLAB's internal audit function is carried out by an internal department. Each year we consider whether we can rely on internal audit work to avoid duplication of effort. When we plan to place reliance on internal audit work we carry out an assessment of the internal audit function to ensure that it is sufficient in terms of documentation standards, reporting procedures, quality, and is performed in accordance with Public Sector Internal Audit Standards (PSIAS). Internal assessments of compliance with PSIAS are carried out annually and a formal external quality assessment of internal audit's compliance with the PSIAS is required at least once every five years. The last review was undertaken in 2014 and plans are currently being developed for an external review in 2019.

57. We found from our review of the adequacy of Internal Audit a need to ensure fuller compliance with the Public Sector Internal Auditing Standards, including the need for at least annual audit plans to be reported to the Audit Committee.

58. We included in our 2017/18 Annual Audit plan our intention to place reliance on aspects of internal audit work covering the transfer of balances between the old and new financial ledger systems. However due to the absence of a documented review of the work done and the lack of supporting audit evidence, we were unable to rely on the findings of this work. We carried out additional testing on the transfer of balances to gain positive assurance for our financial statements audit.

Governance Statement

59. HM Treasury's Financial Reporting Manual (the FReM) states that Scottish Legal Aid Board must prepare an annual governance statement within the annual report and accounts. Guidance is set out within the Scottish Public Finance Manual (SPFM) for the content of the governance statement and provides assurances around the achievement of the organisation's strategic objectives.

60. We concluded that the 2017/18 governance statement complies with the guidance issued by the Scottish Ministers and, based on our knowledge and work performed, presents a comprehensive picture of governance arrangements and matters.

61. We consider there is scope to improve the timing of the formal reporting to the Audit Committee of the results of the various sources of governance assurance. While the draft governance statement was provided to the Audit Committee in May 2018, the supporting assurances from Directors and Internal Audit won't be reported until the July meeting of the Audit Committee. This is the same meeting to which the unaudited annual report and accounts and our proposed independent auditors report and annual audit report are reported. This timetable could limit the time available to the Audit Committee for scrutinising the governance assurances

and the unaudited annual report and accounts before the Board meeting at which the annual accounts are approved for signing.



[Recommendation 4](#) (refer appendix 1, action plan)

National Fraud Initiative

62. The National Fraud Initiative (NFI) in Scotland is a counter-fraud exercise coordinated by Audit Scotland. It uses computerised techniques to compare information about individuals held by different public bodies, and on different financial systems, to identify 'matches' that might suggest the existence of fraud or irregularity.

63. NFI activity is summarised in [Exhibit 5](#)

Exhibit 5

NFI activity



66

Matches



7

**Recommended
for investigation**



65

**Completed/closed
investigations**

Source: NFI secure website: www.nfi.gov.uk

64. The outcome of the NFI exercise were reported to the Executive Team. We were satisfied with the arrangements in place for the NFI exercise.

Standards of conduct for prevention and detection of fraud and error

65. We have reviewed the arrangements in place to maintain standards of conduct including the Staff Handbook and Civil Service and Members' Codes of Conduct. There are established procedures for preventing and detecting any breaches of these standards including any instances of corruption.

66. A register of interests is completed by all Board members and is available online. A recommendation was made in the management report regarding a similar annual declaration of interests for staff members involved in processing and approving legal aid. This was accepted by management

67. Based on our review of the evidence, we concluded that SLAB has appropriate arrangements in place for the prevention and detection of bribery corruption. We are not aware of any specific issues that we need to bring to your attention.

Cyber security

68. The Scottish Government issued a Public Sector Action Plan on Cyber Resilience in November 2017. This requires all public-sector bodies to carry out a review to ensure their cyber security arrangements are appropriate.

69. SLAB completed its Cyber Essentials pre-assessment by the required date of March 2018 and is aiming to be fully compliant with Cyber Essentials (OR Cyber Essentials Plus) by the target date of October 2018.

General Data Protection Regulation

70. The new General Data Protection Regulation (GDPR) came into force on 25 May 2018. This replaced the UK Data Protection Act 1998. As a Regulation, all EU member states must implement it in the same way. GDPR sets out more requirements than the DPA and has introduced new and significantly changed data protection concepts.

71. GDPR introduces a wide range of new rights for individuals in respect of their personal data. These include the right to be forgotten, the right to object to certain processing activities and to decisions taken by automated processes. Failure to comply with new GDPR data handling arrangements could result in reputational damage to SLAB as well as incurring financial penalties.

72. SLAB has been proactive in planning for the implementation of GDPR and has developed an action plan for ensuring full compliance which is regularly reviewed by an internal cross-department working group. They have recently appointed a new Data Protection Officer. An external service provider is currently being sought to provide an independent assessment of compliance with the requirements of GDPR along with the provisions of ongoing support and expertise. A report on the progress against GDPR is due to go to Audit Committee in November 2018.



[Recommendation 5](#) (refer appendix 1, action plan)

Part 5

Value for money



Main judgements

Scottish Legal Aid Board continues to develop its performance management framework and key performance indicators

The annual review of performance against the Best Value characteristics is an effective tool in supporting continuous improvement.

Performance management

73. Accountable officers have a specific responsibility to ensure that arrangements have been made to secure Best Value. The Auditor General may require that we consider whether accountable officers have put in place appropriate arrangements to satisfy their corresponding duty of Best Value.

74. The performance of SLAB is monitored by the Board across all areas of activity and responsibility. Updates on performance and the business plan along with reports on finance and resources are provided to each Board meeting.

75. Operational performance is reported quarterly to the Board as part of the SLAB Operational Performance Overview Report. This provides a detailed analysis of performance over time and covers key activities such as performance in processing claims for legal aid, the time taken to process legal aid payments and the duration periods for legal aid decisions.

76. The Corporate Plan 2017-2020 highlights the critical role that its employees play in the success of the organisation and in achieving its strategic objectives. It has identified as a priority the need to introduce the first People Strategy with a target date of March 2019. This will be a core part of SLAB's overall performance arrangements and we will keep progress in workforce planning and management under review as part of our 2018/19 audit.



[Recommendation 6](#) (refer appendix 1, action plan)

77. One of SLAB's strategic corporate objectives is the development of a new performance management and reporting system. This has been an extensive project and has been managed over the last 18 months by a specific Project Board. SLAB recognises that there is still some way to go to develop a full range of performance measures. No targets for performance have been reported in the annual report. This was a deliberate decision to allow the key performance indicators to be developed towards a balanced scorecard approach and developing a "getting it right first time" focus on first decisions.

78. An effective performance management framework is one of the fundamental requirements for achieving and demonstrating best value and it is noted that SLAB has prioritised the resourcing of this project to ensure the maximum progress in 2018/19.

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

79. We will continue to monitor SLAB's progress in developing its performance management framework and the agreement and monitoring of key performance indicators.



[Recommendation 7](#) (refer appendix 1, action plan)

Best Value

80. SLAB's Internal Audit section carry out an annual review of the achievement of Best Value. This is based on Audit Scotland's Best Value toolkits. The latest review was completed in April 2018 and reported to the Board in May 2018. The overall assessment by Internal Audit in relation to the Best Value characteristics is "better" the definition of which is "meets the requirements with some elements of good practise."

81. This annual assessment of performance against the Best Value characteristics should support continuous improvement and is an effective tool in embedding best value into SLAB's processes and procedures.

National performance audit reports

82. Audit Scotland carries out a national performance audit programme on behalf of the Accounts Commission and the Auditor General for Scotland. In 2017/18 several reports were published which are of direct interest to the Scottish Legal Aid Board. These are outlined in [Appendix 3](#).

83. SLAB has well established arrangements for considering national reports issued by Audit Scotland. A regular update is provided to the Audit Committee on recent reports with the latest update being reported to members was in May 2018.

Good practice

84. The annual assessment by Internal Audit of SLAB's compliance with the characteristics of Best Value is regarded as good practice and is an effective tool in supporting continuous improvement.

Appendix 1

Action plan 2017/18

2017/18 recommendations for improvement

No.	Issue/risk	Recommendation	Agreed management action/timing
1	<p>Legal Aid Provision</p> <p>The model used in the calculation of the legal aid provision has changed in 2017/18. The calculation of the provision is based on estimates determined by officers based on past experience and trends.</p> <p>This is the first year of applying the new estimation model and there was a lack of documentation available to fully support the estimate of the average duration of a case.</p> <p>Risk</p> <p>There is a risk that the reasoning behind some of the criteria used to calculate the provision is unclear and cannot be assessed against supporting records.</p>	<p>Full documentation should be maintained to support all elements of the legal aid provision.</p> <p>The accuracy of the bases used in calculating the provision should be kept under taking into account actual results in 2018/19.</p> <p>Exhibit 3 Paragraph 1</p>	<p>All estimates will be fully documented as part of the provision 2018/19 process, and then ongoing.</p> <p>We will keep the key parameters under review for accuracy throughout the year</p> <p>Financial Controller.</p> <p>March 2019.</p>
2	<p>Scottish Legal Aid Pension Scheme Governance</p> <p>The governance arrangements for the Scottish Legal Aid Pension Scheme, including the role and responsibilities of pension fund trustees, have not been formally documented and it is unclear when these were last approved by the Board.</p> <p>Risk</p> <p>There is a risk that the formal arrangements for the governance of the Legal Aid Pension Scheme are unclear and not fully understood by stakeholders.</p>	<p>The governance arrangements for the Scottish Legal Aid Pension Scheme should be formally documented and approved by the Board.</p> <p>Exhibit 3 Paragraph 2</p>	<p>A review of the Scottish Legal Aid Pension Scheme governance will be formally undertaken and initially presented to the Remuneration and Appointments Committee</p> <p>Director of Corporate Services and Accounts</p> <p>November 2018.</p>



No.	Issue/risk	Recommendation	Agreed management action/timing
3	<p>Accounting Policies and disclosure notes</p> <p>The audit of the 2017/18 Annual Report and Accounts highlighted the need for the fuller disclosure of a number of accounting policies and notes in order to fully reflect the requirements of the FReM and enhance the transparency of the Annual Report and Accounts.</p> <p>Risk</p> <p>There is a risk that the requirements of the FReM are not met.</p>	<p>SLAB should make use of the FReM disclosure checklist to ensure that all necessary accounting policies are included.</p> <p>Exhibit 3 Paragraph 3</p>	<p>SLAB does review the FReM disclosure checklist; however, a plan will put in place to ensure that all changes are implemented pre- audit in future years.</p> <p>Financial Controller</p> <p>March 2019</p>
4	<p>Governance Statement Assurances</p> <p>Both the unaudited annual report and accounts and the results of the various sources of governance assurance, are reported to the Audit Committee at the same meeting as the proposed audit opinion and our draft Annual Audit. This takes place immediately before the Board meeting at which the annual report and accounts are approved for signing by the Chief Executive.</p> <p>Risk</p> <p>There is a risk that the opportunity for the Audit Committee to fully review and scrutinise the draft financial statements and the supporting assurances is limited.</p>	<p>The timetable for the review of the unaudited annual report and accounts and results of the governance assurance statements should be reviewed in order to maximise the time available for scrutiny and challenge by the Audit Committee.</p> <p>Paragraph 61</p>	<p>A review of the timing of the unaudited annual report and accounts and results of the governance assurance statements will be undertaken prior next year's Annual Accounts planning.</p> <p>Director of Corporate Services and Accounts</p> <p>January 2019</p>
5	<p>General Data Protection Regulation (GDPR)</p> <p>The new General Data Protection Regulations came into force on 25 May 2018. An action plan has been developed by SLAB to ensure compliance with GDPR. In addition, there are plans to appoint an external supplier to initially undertake a review of</p>	<p>Action should continue to ensure full compliance with all aspects of the GDPR</p> <p>Paragraph 72</p>	<p>We will continue to follow our plan and contract an external specialist resource to support the Data Controller</p> <p>Director of Corporate Services and Accounts</p> <p>Ongoing</p>



No.	Issue/risk	Recommendation	Agreed management action/timing
	<p>compliance and provide ongoing support.</p> <p>Risk</p> <p>There is a risk that there are delays in securing full compliance with the requirements of the GDPR.</p>		
6.	<p>People Strategy</p> <p>There have been delays in developing SLAB's first People Strategy.</p> <p>Risk</p> <p>In the absence of a corporate strategy for workforce planning and management, there is a risk that best use is not made of employees and there is a lack of management information to inform any future decisions.</p>	<p>Priority should be given to completing and implementing a formal People Strategy.</p> <p>Paragraph 76</p>	<p>Draft People Strategy will be presented to the Board, and once approved a detailed plan of activities will be introduced</p> <p>Director of Corporate Services and Accounts</p> <p>Initial Draft People Strategy - August 2018 and then ongoing across 4 years of the Strategy</p>
7.	<p>Performance Management Framework</p> <p>A performance management framework is still under development and there is still some way to go to introduce a full range of performance measures. No targets for performance were included in the 2017/18 annual report and accounts.</p> <p>Risk</p> <p>The lack of a fully developed performance management framework and key performance indicators could adversely impact on achieving and demonstrating best value and the achievement of SLAB's corporate objectives.</p>	<p>A full suite of key performance indicators and targets should be introduced and a formal framework for managing and reporting performance put in place. This should also include the arrangements for public performance reporting.</p> <p>Paragraphs 55 and 79</p>	<p>Continued development of our performance measures will be progressed throughout 2018 and beyond.</p> <p>We will publish our performance measures during 2018</p> <p>Executive Team</p> <p>ongoing</p>

Appendix 2

Significant audit risks identified during planning

The table below sets out the audit risks we identified during our planning of the audit and how we addressed each risk in arriving at our conclusion. The risks are categorised between those where there is a risk of material misstatement in the annual report and accounts and those relating our wider responsibility under the [Code of Audit Practice 2016](#).











Audit Risk	Assurance procedure	Results and conclusions
<p>Risks of material misstatement in the financial statements</p> <p>1 Risk of management override of controls</p> <p>ISA 240 requires that audit work is planned to consider the risk of fraud, which is presumed to be a significant risk in any audit. This includes consideration of the risk of management override of controls in order to change the position disclosed in the financial statements.</p>	<p>Detailed testing of journal entries.</p> <p>Review of accounting estimates.</p> <p>Focused testing of accruals and prepayments.</p> <p>Evaluation of significant transactions that are outside the normal course of business.</p>	<p>Audit testing was satisfactory with no issues to report.</p> <p>Additional disclosures to be made in the annual report and accounts on accounting estimates for the legal aid provision</p> <p>Refer Appendix 1 action point 1</p>
<p>2 Risk of fraud over expenditure</p> <p>In public sector audit, there is a risk of fraud over aspects of expenditure due to most public-sector bodies are net expenditure bodies and therefore the risk of fraud is more likely to occur in expenditure. The Code of Audit Practice requires auditors to consider the risk of fraud over certain types of public sector expenditure.</p> <p>The majority of expenditure by SLAB relates to the payment to solicitors to cover the costs of legal aid billing and the provision of advice. This is an area of potential fraud by solicitors and claimants.</p>	<p>Review of the work of SLAB's Compliance Audit and Assisted Persons Investigations Teams.</p> <p>Testing of expenditure transactions focusing on the areas of greatest risk.</p>	<p>Audit testing was satisfactory with no issues to report</p>
<p>3. Estimation of legal aid provision</p> <p>The financial statements include a provision for unbilled live legal aid cases. The calculation of the provision figure involves a</p>	<p>A review of the process for calculating the provision.</p> <p>Assess the reasonableness and accuracy of the assumptions and data used.</p>	<p>We have no issues to raise about the estimation technique and the valuation of the provision. There is a need for fuller documentation of the reasoning behind some criteria</p>

Audit Risk	Assurance procedure	Results and conclusions
<p>significant degree of estimation in measurement and valuation and is based on a model which uses a range of data. The value of the provision is material and as such represents an increased risk of misstatement in the financial statements.</p>	<p>Focused substantive testing of key areas</p>	<p>used in the final level of average case durations. Refer Appendix 1 action point 1</p>
<p>4. New finance system</p> <p>SLAB is due to complete the introduction of a new main accounting system in February 2018. The first stage of implementing the system went live in December 2017</p> <p>As the new system will be used for the production of the 2017/18 financial statements, there is an increased risk of misstatement in the figures and balances.</p>	<p>Review and testing of the controls in place within the new finance system.</p> <p>Confirm the completeness and accuracy of the balances transferred from the old to the new finance system.</p>	<p>System was introduced as planned. Issues relating to access controls on the new system were reported in our 2017/18 Management Report</p> <p>Audit testing was completed on balances transferred and no issues to report</p>
<p>Risks identified from the auditor's wider responsibility under the Code of Audit Practice</p>		
<p>5 Information and Cyber Security</p> <p>In the past year, public sector organisations in Scotland were subject to an increasing number of cyber-attacks. Successful cyber-attacks can result in significant disruptions to operations, loss of data and reputational damage.</p> <p>In addition, the new General Data Protection Regulation (GDPR) becomes effective from 25 May 2018 and is more extensive in scope than the current requirements of the Data Protection Act. Significant progress has been made in preparation of the deadline. However, the member of staff leading the preparations has recently left the organisation. Non-compliance with the GDPR may result in financial penalties.</p>	<p>A consideration of SLAB's arrangements in relation to cyber-security.</p> <p>Monitor and assess preparedness for complying with the requirements of the new General Data Protection Regulation.</p>	<p>SLAB has reviewed its arrangements for cyber security and compliance with GDPR. Progress is ongoing in finalising arrangements to ensure full compliance.</p> <p>Refer Appendix 2 action point 5</p>

Appendix 3

Summary of national performance reports 2017/18



		2017/18 Reports	
		Apr	
		May	
Common Agricultural Policy Futures programme: further update		Jun	 Scotland's colleges 2017
		Jul	 NHS workforce planning
Self-directed support: 2017 progress report		Aug	
Equal pay in Scottish councils		Sept	
Transport Scotland's ferry services		Oct	 NHS in Scotland 2017
Local government in Scotland: Financial overview 2016/17		Nov	
		Dec	
		Jan	
Early learning and childcare		Feb	
Managing the implementation of the Scotland Acts		Mar	

Central Government relevant reports

[Common Agricultural Policy Futures programme: further update](#) – June 2017

[Transport Scotland's ferry services](#) – October 2017

[Early learning and childcare](#) – February 2018

[Managing the implementation of the Scotland Acts](#) – March 2018

Scottish Legal Aid Board

2017/18 Annual Audit Report

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