

Scottish Legal Aid Board

2018/19 Annual Audit Report



 AUDIT SCOTLAND

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

12 August 2019

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

2018/19 annual report and accounts

- 1** The financial statements of Scottish Legal Aid Board give a true and fair view of the state of the affairs of the Scottish Legal Aid Board as at 31 March 2019 and of the net expenditure for the year then ended; and have been properly prepared in accordance with the financial reporting framework.
- 2** 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.
- 3** 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 relevant legislation and directions made by Scottish Ministers.

Financial management

- 4** The Scottish Legal Aid Board has appropriate and effective arrangements in place for financial management.
- 5** Systems of internal control operated appropriately and effectively in 2018/19 with scope for improvements in some areas.

Financial sustainability

- 6** Scottish Legal Aid Board has appropriate and effective financial planning arrangements in place.
- 7** The 2019/20 budget for the Scottish Legal Aid Board has a funding gap of £0.090 million which is anticipated to be met from in year savings and bank balances. Going forward, the implementation of the Scottish Government Pay Policy will be a considerable financial challenge.

Governance and transparency

- 8** We concluded that SLAB has effective governance arrangements in place that support the scrutiny of decisions
- 9** SLAB demonstrates a commitment to transparency in the way it conducts its business.

Value for money

- 10** Improvements have been made to the format of the Operational Performance Overview Report (SOPOR) which is reported to the Board and further refinements are planned to the setting of performance benchmarks including those relating to corporate activities.

- 11** Operational performance in assessing applications is reported as good and is more mixed in accounts processing and payment. Levels of accuracy are very good with typical levels of compliance being above 95% of applications checked
- 12** There are aspects of the Annual Report which should be improved to enhance public performance reporting
- 13** A People Strategy for 2018-2022 was approved for the first time in 2018/19 and is to be developed further to produce a workforce plan

Introduction

1. This report summarises the findings from our 2018/19 audit of the Scottish Legal Aid Board (SLAB).
2. The scope of our audit was set out in our Annual Audit Plan presented to the 28/01/19 meeting of the Audit Committee. This report comprises the findings from:
 - an audit of SLAB'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 2018/19 have been:
 - a review of SLAB's main financial systems
 - an audit of SLAB's 2018/19 annual report and accounts including the issue of an independent auditor's report setting out my opinions
 - consideration of the four audit dimensions of public audit

Adding value through the audit

4. We add value to SLAB through the audit by:

- identifying and providing insight on significant risks, and making clear and relevant recommendations for improvements that have been accepted by management
- reporting our findings and conclusions in public
- sharing intelligence and good practice through our national reports ([Appendix 4](#)) and good practice guides
- providing clear and focused conclusions on the appropriateness, effectiveness and impact of corporate governance, performance management arrangements and financial sustainability

5. In so doing, we aim to help SLAB promote improved standards of governance, better management and decision making and more effective use of resources.

Responsibilities and reporting

6. SLAB 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. SLAB's annual report and accounts includes the following:

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

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

8. Our responsibilities as independent auditor are established by 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.

9. As public sector auditors we give independent opinions on the annual report and accounts. Additionally, we conclude on:

- the appropriateness and effectiveness of the performance management arrangements,
- the suitability and effectiveness of corporate governance arrangements,
- the financial position and arrangements for securing financial sustainability.

10. 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.

11. 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.

- 12.** 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 any outstanding actions from last year and progress against these.
- 13.** 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 2018/19 audit fee of £43,540 as set out in our Annual Audit Plan remains unchanged. We are not aware of any relationships that could compromise our objectivity and independence.
- 14.** This report is addressed to both the Scottish Legal Aid Board and the Auditor General for Scotland and will be published on Audit Scotland's website www.audit-scotland.gov.uk in due course.
- 15.** We would like to thank all management and staff for their cooperation and assistance during the audit.

Part 1

Audit of 2018/19 annual report and accounts



Main judgements

The financial statements of Scottish Legal Aid Board give a true and fair view of the state of the affairs of the Scottish Legal Aid Board as at 31 March 2019 and of the net expenditure for the year then ended; and have been properly prepared in accordance with the financial reporting framework.

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.

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 relevant legislation and directions made by Scottish Ministers.

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

Audit opinions on the annual report and accounts

16. The annual report and accounts for the year ended 31 March 2019 was approved by the Board on 12/08/2019. We reported within the independent auditor's report that:
- 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 issued by Scottish Ministers
 - 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 relevant legislation and directions made by Scottish Ministers.
17. Additionally, we have nothing to report in respect of misstatements in information other than the financial statements, the adequacy of accounting records and the information and explanations we received.

Submission of annual report and accounts for audit

18. We received the unaudited annual report and accounts on 10 June 2019 in line with our agreed audit timetable.
19. The working papers provided with the unaudited financial statements were of a high 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 (WGA)

20. In accordance with the WGA guidance we are required to complete the assurance statement and this will be submitted to the National Audit Office (NAO) by the 28 September 2019 deadline.

Risk of material misstatement

21. [Appendix 2](#) provides a description of those assessed risks of material misstatement in the annual report and accounts and any wider audit dimension risks that were identified during the audit planning process. It also summarises the work we have done to gain assurance over the outcome of these risks.

22. We have no issues to report from our work on the risks of material misstatement highlighted in our 2018/19 Annual Audit Plan other than the need to continue to improve the Annual Report to enhance public performance reporting.

Materiality

23. 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 and involves considering both the amount and nature of the misstatement.

24. 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](#). With regards to the annual accounts, we assess the materiality of uncorrected misstatements both individually and collectively.

25. On receipt of the unaudited annual report and accounts we reviewed our materiality calculations and concluded that they remained appropriate.

Exhibit 2

Materiality values

| Materiality level | Amount |
|-------------------------|---|
| Overall materiality | Scottish Legal Aid Fund £1.340 million Scottish Legal Aid Board £0.177 million |
| Performance materiality | Scottish Legal Aid Fund £1.005 million Scottish Legal Aid Board £0.133 million |
| Reporting threshold | Scottish Legal Aid Fund |

| Materiality level | Amount |
|-------------------|----------------|
| | £13 thousand |
| | Scottish Legal |
| | Aid Board |
| | £2 thousand |


Source: SLAB Annual Audit Plan 2018/19

Significant findings from the audit in accordance with ISA 260

- 26.** International Standard on Auditing (UK) 260 requires us to communicate significant findings from the audit to those charged with governance, including our view about the qualitative aspects of the body's accounting practices covering accounting policies, accounting estimates and financial statements disclosures.
- 27.** We identified one significant finding in relation to the qualitative aspects of accounting practices and this is highlighted in [Exhibit 3](#). This has resulted in recommendation 1 in the Action Plan at [Appendix 1](#).

Exhibit 3

Significant findings from the audit of financial statements

| Issue | Resolution |
|--|--|
| <p>1. Annual Performance Report</p> <p>The purpose of a performance report is to provide information on a body, its main objectives and strategies, and the principal risks that it faces. They are required to provide a fair, balanced and understandable analysis of a body's performance and are essential in helping stakeholders understand the financial statements.</p> <p>Central government bodies are required to prepare their annual report and accounts in accordance with the Government financial reporting manual (FReM)</p> <p>The performance report included in the unaudited 2018/19 accounts contained a considerable number of omissions from the requirements of the FReM. These related to areas such as:</p> <ul style="list-style-type: none"> • description of the business model and environment, organisational structure and strategies • key issues and risks that could affect the delivery of objectives • critical judgements made in the process of applying accounting policies • details on anti-corruption or anti-bribery strategies • the performance report should also be forward looking | <p>The Performance Report was redrafted to improve the content and quality of performance reporting and fuller compliance with the requirements of the FReM.</p> <p> Recommendation 1 (refer appendix 1, action plan)Appendix 1</p> |

Source: Audit Scotland

How we evaluate misstatements

- 28.** It is our responsibility to request that all misstatements, other than those below the reporting threshold, are corrected although the final decision on making the correction lies with those charged with governance considering advice from senior officers and materiality. There were no misstatements in the annual report and accounts which have not been adjusted.

Follow up of prior year recommendations

- 29.** SLAB has made good progress in implementing our prior year audit recommendations. Those actions not yet implemented relate to the performance report benchmarking as noted in paragraph 71 and a review of the governance arrangements for the Scottish Legal Aid pension fund. Revised responses and timescales have been agreed with management for these actions as set out in [Appendix 1](#).

Part 2

Financial management



Main judgements

The Scottish Legal Aid Board has appropriate and effective arrangements in place for financial management

Systems of internal control operated appropriately and effectively in 2018/19 with scope for improvements in some areas.

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

Financial performance in 2018/19

30. The Scottish Legal Aid Fund is a non-cash limited fund. This means that Scottish Government has a statutory obligation to provide funding for the amounts paid to solicitors or counsel out of the fund. Therefore, while the Scottish Government sets an annual budget which it monitors throughout the year, the level of funding for the payments of legal aid is very much demand led.
31. At the Spring Budget Revision, the Scottish Government set a funding provision for the legal aid fund of £127.2 million for 2018/19. The actual cash spend for the year was £123.7 million. This is a reduction of 0.6% from actual cash expenditure on legal aid in 2017/18. Trends in the level of legal aid expenditure is analysed in detail and closely monitored by management.
32. 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 at [Exhibit 4](#)
33. The overspend against the Scottish Government allocation of £0.061 million was funded by cash balances and was made up from an underspend against depreciation of £0.097 million and an overspend of £0.158 million against staff and administration costs. The main reason for the overspends in staff and administration relates to pension costs.

Exhibit 4 Performance against Budget in 2018/19

| Performance | Initial budget £m | Final budget £m | Outturn £m | Over (under) spend £m |
|----------------------|----------------------|--------------------|---------------|-----------------------------|
| SG budget allocation | 11.220 | 17.295 | 17.356 | 0.061 |

| Performance | Initial budget £m | Final budget £m | Outturn £m | Over (under) spend £m |
|------------------|----------------------|--------------------|---------------|-----------------------------|
| Capital DEL | 0.100 | 0.100 | 0.0520 | (0.048) |
| Total DEL | 11.320 | 17.395 | 17.408 | 0.013 |

Source: Scottish Legal Aid Board 2018/19 Annual Report and Accounts

2018/19 financial position

- 34.** The Statement of Financial Position summarises what is owned and owed by SLAB. 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.
- 35.** The financial statements show at 31 March 2019 that:
- The fund had net liabilities of £45.5 million, This mainly reflects the value of the pension liability and the provision for the future payments of legal aid on incomplete cases
 - The board had net liabilities of £87million which is also due to the value of the pension liability.
- 36.** 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.

Budgetary processes

- 37.** We reviewed SLAB's budget setting and 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.
- 38.** We concluded that SLAB has effective budgetary processes that allow members and officers to carry out effective scrutiny of its finances.

Systems of internal control

- 39.** 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.
- 40.** Our findings from the review of systems of internal controls were included in our management report presented to the Audit Committee on 27 May 2019. We concluded that the controls tested were operating effectively. No significant internal control weaknesses were identified during the audit which could affect SLAB's ability to record, process, summarise and report financial and other relevant data to result in a material misstatement in the financial statements.

Internal audit

41. We reviewed SLAB's internal audit arrangements in accordance International Standard on Auditing (UK) 610 (Using the Work of Internal Auditors) to determine the extent to which we could use the work of internal audit. We concluded that internal audit complies with the main requirements of the Public Sector Internal Audit Standards and we have been able to take assurance from the work of internal audit as set out in our 2018/19 Annual Audit Plan. It is noted that the arrangements for an external review of Internal Audit's compliance with PSIAS, which is required every 5 years, are currently being considered. As the last external review of Internal Audit was completed in 2014, it is important that full compliance against the PSIAS be externally assessed during 2019.

National Fraud Initiative

42. 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.
43. SLAB has been proactive in following up all identified NFI matches with the latest activity summarised in [Exhibit 5](#). SLAB has taken the positive step of agreeing to take part during 2019/20 in a NFI pilot project whereby records will be matched with HMRC. The pilot aims to bring SLAB and HMRC together to identify if it is possible to quickly share data to help identify potential fraud and error in the application process for legal aid.

Exhibit 5

NFI activity



99

Matches



6

Recommended for
investigation

99

Completed/closed
investigations

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

Part 3

Financial sustainability



Main judgements

Scottish Legal Aid Board has appropriate and effective financial planning arrangements in place

The 2019/20 budget for the Scottish Legal Aid Board has a funding gap of £0.090 million which is anticipated to be met from in year savings and bank balances. Going forward, the implementation of the Scottish Government Pay Policy will be a considerable financial challenge.

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.

Financial planning

44. We reviewed the financial planning systems of SLAB and assessed how effective they are in identifying and addressing risks to financial sustainability across the medium and long term. During 2018/19, SLAB undertook a scenario planning exercise based on a number of funding scenarios and very detailed trend analyses of levels of legal aid payments.
45. SLAB approved its 2019/20 draft budget in March 2019 with a resource allocation of £11.620 million which is £0.3 million (2.65%) more than the 2018/19 budget allocation. This extra money has been provided by the Scottish Government for the impact on SLAB of the ongoing Legal Aid Review.
46. The 2019/20 budget shows a challenging position reflecting the impact of financial pressures such as the Scottish Government pay policy. The approved budget includes a funding gap of £0.090 m. It is anticipated that the funding gap will be met by in year savings and utilising the brought forward bank balance.
47. Savings of £0.265 million from staff vacancies have been built into the 2019/20 budget. The comparative amount in 2018/19 was £0.4 million. With 80% of SLAB's GIA budget relating to staff costs, the impact of future pay settlements is likely to be significant and there is limited scope for making savings in other areas of spend. The use of vacancy management to address funding gaps is not sustainable over the long term and may adversely impact on the capacity of the workforce and the quality of services.
48. Following the introduction of the People Strategy in November 2018, SLAB has identified objectives to take forward, one of which is the development of a workforce plan to ensure that the workforce is of the right size, has the right skills and reflects the long-term financial plans, the Scottish Government's response to the Legal Aid Review and projected trends in legal aid.

Recommendation 2

A workforce plan should be prepared as a priority to support future strategic and financial planning.

Going Concern

49. As noted at paragraph 36, SLAB has a net liability position at 31 March 2019. The Scottish Government has provided 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 2019 and deemed it appropriate to prepare the annual accounts on a going concern basis and we concur with this assessment.

EU Withdrawal

50. There remains significant uncertainty surrounding the terms of the UK's withdrawal from the European Union (EU). EU withdrawal will inevitably have implications for devolved government in Scotland and for audited bodies. It is critical that public sector bodies are working to understand, assess and prepare for the impact on their business in the three broad areas of workforce, funding and regulation.
51. SLAB has reviewed the potential impact of the withdrawal from the European Union on all areas of its activities including the potential for changes to its statutory and regulatory framework. The results were reported to the Board and it was concluded that no specific action was required other than to keep the outcomes of the EU withdrawal process under review.

Legal Aid Review

52. 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 was issued by the Scottish Government in November 2018. This response noted the need for a 10-year reform strategy although the Scottish Government has not yet concluded on how best to deliver the longer term aims of the review. The Scottish Government has recently issued a public consultation that will inform any changes to be made to the statutory framework of Legal Aid. The most immediate impact will be the implementation of a 3% increase in fees paid to solicitors for legal aid work. This was implemented by SLAB from April 2019.
53. It is important that the potential financial consequences of the current reviews and changes to legislation be reflected wherever possible in SLAB's long-term financial plans.

Part 4

Governance and transparency



Main judgements

SLAB has effective governance arrangements in place that support the scrutiny of decisions

SLAB demonstrates a commitment to transparency in the way it conducts its business

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.

Governance arrangements

54. SLAB is governed by a board that is accountable to Scottish Ministers. At 31 March 2019, the Board consisted of the chairman and eleven non-executive members. 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. Board papers are clearly laid out and link the subject matter of the paper to relevant strategic objectives and also provide a summary of previous considerations by the Board. Each report includes a standard template which summarises the subject of the Board paper to the various aspects of governance such as risk, finance and resources; legal and compliance etc.
55. The Audit Committee met 4 times in 2018/19. 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. Until recently meetings of the Audit Committee and the Board were held on the same day and as such limited the time available for Board members to consider any issues reported by the Audit Committee. It is noted that the timetable for these meetings have now changed and the time difference of a week or so between meetings should provide better time for members to fully consider any Audit Committee issues.
56. SLAB has been proactive in ensuring the continued suitability and effectiveness of its corporate governance arrangements. Specific aspects of the corporate governance framework are reviewed annually including committee remits, member induction and training, and the introduction of a Board members skills.

Openness and transparency

57. There is an increasing focus on how public money is used and what is achieved. In that regard, openness and transparency supports understanding and scrutiny. 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.

- 58.** It is clear that SLAB is committed to the principles of openness and transparency and has considered ways of enhancing the transparency of its operations. One of the specific Corporate Values approved by the Board in November 2018 was transparency, meaning that SLAB will be clear about the rules and criteria that apply to any work they do and take responsibility for making sure it is understandable. The Board has considered the results of the pilot on the publication of papers and going forward have formally agreed the types of reports which should be published or due to their sensitive nature, should remain private. In addition, the Board will carry out an annual review of the private papers to reassess whether publication would now be appropriate.
- 59.** It is noted that some of the documents which have been approved to be published by the Board have yet to be published on SLAB's website. Additionally, where performance information has been published, this has not always been updated for the latest results. At the time of our review in June 2019, the latest Operational Performance Overview Report on SLAB's website referred to the 3 months to September 2018.

Recommendation 3

SLAB should ensure that performance information on the website is always kept up to date.

Standards of conduct for prevention and detection of fraud and error

- 60.** Audited bodies are responsible for establishing arrangements for the prevention and detection of fraud, error and irregularities, bribery and corruption and to ensure that their affairs are managed in accordance with proper standards of conduct by putting proper arrangements in place.
- 61.** 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.
- 62.** We have concluded that SLAB has appropriate arrangements in place for the prevention and detection of fraud, error and irregularities, bribery and corruption. We are not aware of any specific issues that we need to bring to your attention.

General Data Protection Regulations (GDPR)

- 63.** An external consultant was appointed by SLAB during 2018/19 to provide an initial healthcheck of arrangements for GDPR which came into force in May 2018. The initial report of the consultants reported to the Audit Committee on 5 November 2018, highlighted areas in which further work was needed to ensure compliance with the regulations. As noted in the Annual Governance Statement, a number of data breaches took place during 2018/19 for which SLAB did report themselves to the Information Commissioner. No actions resulted from this.

64. A follow up healthcheck by the consultants has recently been completed and notes good progress in addressing the areas identified and there are no significant actions that remain to be addressed.

Part 5

Value for money



Main judgements

Improvements have been made to the format of the Operational Performance Overview Report (SOPOR) which is reported to the Board and further refinements are planned to the setting of performance benchmarks including those relating corporate activities.

Operational performance in assessing applications is reported as good and is more mixed in accounts processing and payment. Levels of accuracy are very good with typical levels of compliance being above 95% of applications checked

There are aspects of the Annual Report which should be improved to enhance public performance reporting

A People Strategy for 2018-2022 was approved for the first time in 2018/19 and is to be developed further to produce a workforce plan

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

Best value

65. *Ministerial guidance to Accountable Officers* for public bodies and the *Scottish Public Finance Manual* (SPFM) sets out the accountable officer's duty to ensure that arrangements are in place to secure best value. SLAB takes the positive step of carrying out an annual assessment of the processes in place to meet the key themes of Best Value, the results of which are formally reported to the Audit Committee. The results of the assessment in 2018/19 were favourable and balanced, noting the established processes in areas such as setting strategic objectives, partnership working and governance and the need to continue to develop aspects of the performance management framework.

Performance management

66. It is clear that SLAB regards the monitoring and reporting of performance as one of its key priorities. Wide ranging performance reports are regularly prepared and reported to members, including progress reports against the annual Business Plans, operational performance in areas such as the time taken to assess and make payments against applications for legal aid and the standards of accuracy in legal aid assessments. The report on operational performance at 31 March 2019 notes that performance in assessing applications is good but is more mixed in accounts processing and payment. The levels of accuracy were very good with typical levels of compliance being above 95% of applications checked.

- 67.** Effective performance management is essential to both demonstrate the achievement of corporate objectives as well as demonstrate best value and continuous improvement. One of the main corporate priorities for SLAB has been the development of a performance management framework. This has been an ongoing project which will continue to develop in 2019/20. Improvements have been made to the format of the Operational Performance Overview Report (SOPOR) which is reported to the Board and further refinements are planned to the setting of performance benchmarks. It has been recognised that there's now a need to identify performance indicators for more corporate activities such as Human Resources, Finance and ICT to better demonstrate the effective use of resources.
- 68.** A key achievement in 2018/19 has been the approval of SLAB's People Strategy 2018-22. This highlights the crucial role that employees play in ensuring the successful operation and continuous improvement of the legal aid system and sets out high level objectives and aims for SLAB's employees. One of the first priorities in implementing the strategy will be the assessment of any skills gap to inform the development of a workforce plan. This has been included in SLABs' Business Plan for 2019/20.

Public Performance Reporting

- 69.** Achieving best value requires an organisation to be accountable for the use of its resources and to ensure effective public reporting of performance. The annual report is one of the main mechanisms by which SLAB demonstrates performance and the ways in which it is achieving improvements in line with its strategic objectives.
- 70.** Central government bodies are required to prepare their annual report and accounts in accordance with an accounts direction which generally requires compliance with the Government financial reporting manual (the FReM). The FReM requires a performance report to be included within the annual report and accounts and sets out the following required content:
- An overview of the purpose and activities of the body, key issues and risks, and a performance summary.
 - Information on how the body measures performance and a detailed analysis of performance during the year.
 - Information on environmental matters.
 - Information on social matters, respect for human rights, anti-corruption and anti-bribery
- 71.** In addition to the opinion on the performance report covered in Part 1 of this report, we also consider the qualitative aspects of the performance report included in the annual report and accounts. As part of our audit we assessed SLAB's 2018/19 Annual Performance Report against the requirements of the FReM and as noted in Exhibit 3, this resulted in a number of changes to improve the quality of the performance report. Going forward, further action should be taken to ensure:
- the performance report describes progress against the target outcomes included in the Corporate Plan
 - progress in delivering the objectives is clearly reported

- performance levels should be compared against the newly developed agreed benchmarks

Recommendation 1

Performance information in the annual report should include performance against agreed benchmarks and report progress in delivering corporate objectives and outcomes.

National performance audit reports

- 72.** Audit Scotland carries out a national performance audit programme on behalf of the Accounts Commission and the Auditor General for Scotland. In 2018/19 the reports published are outlined in [Appendix 4](#).
- 73.** 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 in May 2019.

Appendix 1

Action plan 2018/19



| No. | Issue/risk | Recommendation | Agreed management action/timing |
|-----|--|---|--|
| 1 | <p>Performance Report</p> <p>The performance report included in the unaudited accounts contained a considerable number of omissions when compared against the requirements of the FReM. This was amended in the revised report.</p> <p>Risk</p> <p>There is a risk that future performance reports do not provide a full analysis of SLAB's performance against its corporate objectives and outcomes and operational targets.</p> | <p>SLAB should ensure that the performance report contained in the annual accounts provides full information in line with the requirements of the FReM.</p> <p>It should also describe progress against target objectives and outcomes performance levels should be compared against the agreed benchmarks</p> <p>Exhibit 3</p> | <p>As part of our preparations for 2019/20 Annual Accounts, we will review the FReM and Best Practice guidance to ensure that the performance report provides information in line with the requirements of the FReM</p> <p>Benchmarks have been established for 2019/20 and approved by the Board. These will continue to be reviewed annually and reported on throughout the year</p> <p>Graeme Hill, Director of Corporate Service and Accounts.</p> <p>By 31st March 2020.</p> |
| 2 | <p>Financial Sustainability</p> <p>The 2019/20 budget shows a challenging position reflecting the impact of financial pressures of implementing pay awards. A funding gap of £0.090 million has been identified for 2019/20 and the approved budget highlights vacancy savings of £0.265 million (2018/19 £0.400million)</p> <p>The use of vacancy management to address funding gaps is not sustainable over the long term. A workforce plan has yet to be developed to inform future strategic and financial planning.</p> <p>Risk</p> <p>In the absence of a workforce plan, there is a risk that the over reliance on vacancy management may have an adverse impact on staff</p> | <p>With the recent introduction of the People Strategy, SLAB should develop its workforce plan as a priority to help inform longer term strategic and financial planning.</p> <p>Paragraph 48</p> | <p>Currently SLAB reports and monitors staff statistics by both HR and Finance departments on a quarterly basis and reports this to the Exec Team and in part to the Board.</p> <p>As part of the People Strategy we will further develop this analysis and reporting into a formal workforce plan within our planned work-streams</p> <p>Graeme Hill, Director of Corporate Service and Accounts.</p> <p>By 31st March 2020.</p> |



| No. | Issue/risk | Recommendation | Agreed management action/timing |
|-----|--|---|--|
| | capacity and the quality of services. | | |
| 3 | <p>Public & Performance Reporting</p> <p>Following on from the completion of its openness & transparency pilot, the information approved for publication should be published on the website in a timely manner. Additionally, the performance information currently published is out of date</p> <p>Risk</p> <p>There is a risk that SLAB does not conduct its business in an open and transparent manner.</p> | <p>SLAB should ensure going forward that performance information on the website is always kept up to date</p> <p>Paragraph 59</p> | <p>The format for reporting our performance has changed. A communication is being prepared for sending to the profession explaining the new format but until it is issued we have been publishing the performance figures with our board papers.</p> <p>A new website is being developed and nearing completion. A section for Performance will be created and performance figures will be published within that section.</p> <p>Graeme Hill, Director of Corporate Service and Accounts.</p> <p>By 31st December 2019.</p> |

Follow up of prior year recommendations

| | | | |
|---|---|---|---|
| 4 | <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, has 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>Paragraph 29</p> | <p>A proposal to scope the governance arrangement will be made to the Remuneration and Appointments Committee, followed by;</p> <p>A review of the Scottish Legal Aid Pension Scheme governance will be formally undertaken and presented to the Remuneration and Appointments Committee</p> <p>Graeme Hill, Director of Corporate Service and Accounts.</p> <p>By 31st December 2019.</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 |
|--|---|---|
| Risks of material misstatement in the financial statements | | |
| <p>1</p> <p>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 to change the position disclosed in the financial statements</p> | <p>Detailed testing of journal entries.</p> <ul style="list-style-type: none"> • Review of accounting estimates. • Focused testing of accruals and prepayments. • Evaluation of significant transactions that are outside the normal course of business. | <p>Detailed testing was completed on the accounting estimates used for the legal aid provision.</p> <p>Audit testing was satisfactory with no issues to report</p> |
| <p>2</p> <p>Risk of fraud over income</p> <p>Scottish Legal Aid Board receives a significant amount of income from external sources including income from claimant contributions. The extent and complexity of income means that, in accordance with ISA240, there is an inherent risk of fraud.</p> | <p>Analytical procedures on income streams.</p> <ul style="list-style-type: none"> • Detailed testing of revenue transactions focusing on the areas of greatest risk | <p>Our detailed testing of income transactions found an instance where one contributions letter had been incorrectly issued. This was reported in our management report presented to the Audit Committee on 27 May 2019.</p> <p>SLAB has subsequently reviewed all similar accounts and no further errors were found.</p> |
| <p>3</p> <p>Risk of fraud over expenditure</p> <p>Most public-sector bodies are net expenditure bodies and therefore the risk of fraud is more likely to occur in 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> <ul style="list-style-type: none"> • Testing of expenditure transactions focusing on the areas of greatest risk | <p>Audit testing was satisfactory with no issues to report</p> |

| Audit Risk | Assurance procedure | Results and conclusions |
|---|--|--|
| <p>4 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 uses an internally developed model which includes a significant degree of estimation in the range of data used in valuing cases. In 2017/18 we reported on insufficient supporting evidence being provided on key variables used within the model.</p> <p>The value of the provision is material and as such represents an increased risk of misstatement in the financial statements.</p> | <p>A review of the process for calculating the provision.</p> <ul style="list-style-type: none"> • Assess the reasonableness and accuracy of the assumptions and data used. • A full review of all key variables within the model and agreement to supporting documentation • Focused substantive testing of key areas. • A review of the disclosures made to support the provision. | <p>We have no issues to raise from our testing of the legal aid provision at 31 March 2019 and the disclosure in the financial statements.</p> |
| <p>5 New payroll system</p> <p>SLAB is due to complete the introduction of a new payroll system during 2018/19.</p> <p>As the new system will be used for the production of the 2018/19 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 payroll system.</p> <ul style="list-style-type: none"> • Confirm the completeness and accuracy of balances transferred from the old to the new payroll system | <p>The new payroll system was not implemented as planned during 2018/19 and as such had no impact on our audit.</p> <p>We will consider the implementation of the new payroll system as part of our 2019/20 audit.</p> |

Risks identified from the auditor's wider responsibility under the Code of Audit Practice

| | | |
|--|---|--|
| <p>6 Annual performance report</p> <p>SLAB's performance management remains under development in 2018/19. A key purpose of the performance report is to provide an analysis of past performance and without the updated performance framework there is a risk that the performance report will not achieve this objective and Scottish Legal Aid Board are unable to demonstrate improvements or best value and the achievement of SLAB's corporate objectives.</p> | <p>Review reports to the Board on performance management</p> <ul style="list-style-type: none"> • Monitor the progress made in implementing a full performance management and reporting system | <p>The performance report contained in the financial statements does not contain any benchmark data. The board has approved benchmarks to be used from 2019/20 onwards.</p> <p>Our review of the performance report provided in the unaudited accounts highlighted aspects of the report which did not meet the requirements of the FReM.</p> <p>Recommendation 1 Appendix 1</p> |
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Appendix 3

Summary of national performance reports 2018/19

| | |  2018/19 Reports | |
|---|---|--|---|
| Local government in Scotland: Challenges and performance 2018 |  | Apr | |
| Councils' use of arm's-length organisations |  | May |  Scottish Fire and Rescue Service: an update |
| Scotland's colleges 2018 |  | Jun | |
| | | Jul |  The National Fraud Initiative in Scotland 2016/17 |
| Forth Replacement Crossing |  | Aug |  Major project and procurement lessons |
| Children and young people's mental health |  | Sept |  Superfast broadband for Scotland: further progress update |
| NHS in Scotland 2018 |  | Oct | |
| Health and social care integration: update on progress |  | Nov |  Local government in Scotland: Financial overview 2017/18 |
| | | Dec | |
| | | Jan | |
| | | Feb | |
| | | Mar |  Local government in Scotland: Challenges and performance 2019 |

Central Government relevant reports

[Scottish Fire and Rescue Service: an update](#) – May 2018

[Scotland's colleges 2018](#) – June 2018

[The National Fraud Initiative in Scotland 2016/17](#) – July 2018

[Forth Replacement Crossing](#) – August 2018

[Major project and procurement lessons](#) – August 2018

[Superfast broadband for Scotland: further progress update](#) – September 2018

Scottish Legal Aid Board

2018/19 Annual Audit Report

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