

Crofting Commission

Report to the Audit and Finance Committee on the 'Audit Dimensions and Best Value' for the year ended 31 March 2021

Issued on 28 May for the meeting on 1 June 2021

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Introduction

The key messages in this report

As set out in our Audit Plan, the Code of Audit Practice sets out four audit dimensions which set a common framework for all public sector audits in Scotland.

Our audit work has considered how the Commission is addressing these and our conclusions are set out within this report.

Scope of audit

Our audit work was risk based and proportionate, covering the audit dimensions as follows:

- Financial sustainability; and
- Governance and transparency.

No significant risks were identified in relation to financial management or value for money, with no detailed procedures performed in these areas.

We have pleasure in presenting our report to the Audit and Finance Committee ('the Committee') of the Crofting Commission ('the Commission') as part of our 2020/21 audit responsibilities. The preparation of this report was not envisaged when we presented our Audit Plan to the Committee in January 2021. Consequently, we have set out the background to and context within which this report should be viewed. This is followed by our overall conclusions, with the detailed conclusions included within the body of the report.

Background

In 2018/19 and 2019/20, we applied the 'full' wider scope and considered all four audit dimensions (shown in the diagram below). The findings from our work in these years are available on the [Audit Scotland website](#).

We presented our 2020/21 Audit Plan to the Committee in January 2021. Due to the improvements identified in our 2019/20 audit, coupled with the relative size and scale of the functions delivered by the Commission, we concluded that the 'full' wider scope was no longer appropriate. We consequently decided to apply the 'small body' exemption and restrict our work to the appropriateness of the Governance Statement and financial sustainability.

Shortly after the presentation of our Audit Plan, we became aware through our regular communication with the Commission that not all of the assurances we had received in 2019/20 were correct. In addition, we became aware that risks which we commented upon in our 2019/20 audit and which we expected to be addressed through the Commission's internal self-assessment and improvement processes had instead increased significantly in the intervening period.

Having received this new information, we reviewed our risk assessment and our planned audit procedures and concluded that it would be appropriate to expand the scope of our audit to specifically consider the 'governance and transparency' audit dimension. This approach was agreed with the Commission and Audit Scotland.



Introduction (continued)

The key messages in this report (continued)

Acknowledgements

The extended audit scope arose from proactive communication between the Commission and ourselves as the Commission's auditor. The Commission has seen the value of engaging proactively with us to consider the concerns which the Board and management have, identifying weaknesses where they exist and making recommendations for improvement. This constructive approach to external scrutiny is to be welcomed.

Our audit work was carried out over the period from early March to mid-April 2021. In this period, extensive work was carried out, including:

- Obtaining and reviewing approximately 200 pieces of documentary evidence;
- Obtaining and reviewing all Senior Management Team ('SMT') meetings from September – December 2020, and all Committee and Board meetings for the year;
- Conducting numerous meetings with the Board, Committee, SMT and Sponsor Division as a group and with individuals separately; and
- Benchmarking the Commission against the other Executive Non-Departmental Public Bodies ('NDPBs') in Scotland.

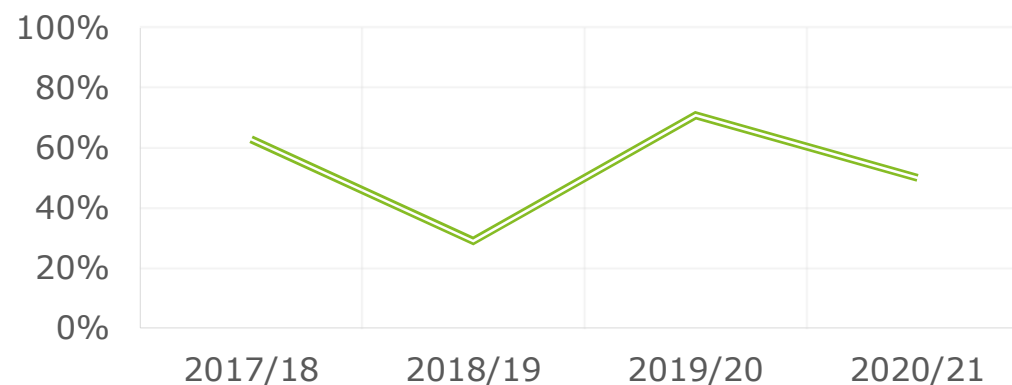
Commissioners, Commission staff and the Sponsor Division provided all of the information which we requested in advance of the agreed deadlines, which enabled us to carry out our work efficiently. We would like to express our thanks to everyone involved for this.

It is also important to recognise that in the documentary evidence provided and in our meetings, everyone involved was open, candid and proactively engaged with us. This supported a collaborative approach to our audit work and ensured that a quality audit could be completed in an efficient manner.

Context

In 2019/20, we noted that the Commission's performance against its Key Performance Indicators ('KPIs') had fluctuated in recent years. In 2020/21, the performance again declined. The decline in performance in 2020/21 needs to be viewed in the context of the COVID-19 pandemic. From our review of performance reports and our knowledge of the Commission, we are satisfied that the decline in performance is primarily in areas particularly badly hit by the pandemic, rather than due to the issues identified in our report.

KPI ACHIEVEMENT



From Q1 – Q3 of 2020/21, the Commission received 20 complaints. This compares to 30 for the same period in 2019/20, and to 74 in 2018/19. This demonstrates that the issues identified in our work have not had a significant negative impact on the Commission's customers and stakeholders.

In addition, the results from the Commission's staff surveys (discussed further on page 14) have improved from 2018/19 to 2019/20, and again from 2019/20 to 2020/21. Further improvements are necessary, but this does indicate that the issues identified have not significantly impacted on the Commission's workforce. This is also borne out by the Commission's sickness absence and staff turnover rates.

Introduction (continued)

The key messages in this report (continued)

Context (continued)

The issues which we have identified through our work have occurred quickly, with weaknesses in governance and leadership being exposed early in 2020/21 and declining throughout the year. Due to the proactive and open communication between ourselves and the Commission, these weaknesses have been identified at an early stage before they have had a significant impact on the Commission's performance, workforce, customers and stakeholders. The Commission is to be commended, as we said earlier, for its proactive approach to the audit.

While it is important to note that the issues identified have not had a significant impact on the Commission's operational performance to date, if the issues identified are not remedied quickly, there is a significant risk that the Commission's operational performance will be negatively impacted by the weaknesses in governance and leadership identified.

Conclusion on audit dimensions

Financial sustainability – The Commission has underspent by a historically large amount in 2020/21, due to insufficient forewarning of additional funding from the Scottish Government, followed by delays in the use of this funding. The Commission has therefore achieved financial balance in 2020/21, and expects to do so again in 2021/22.

Over the medium-to-longer term, the position facing the Commission is more difficult. In our view, the Commission's planning for this period – including financial, workforce and succession planning – is flawed by design, ineffective in implementation and needs to be significantly overhauled. Improvements recommended in previous audits have not yet been implemented. These weaknesses were identified by both management and the Board, yet the Medium-Term Financial Plan ('MTFP') and Workforce Plan were approved nonetheless, which indicates that insufficient scrutiny and challenge has occurred over these key strategic documents.

The Commission does not have clear plans to achieve a sustainable position over the medium-term. This position has not improved since the concerns we raised in our 2019/20 audit. Consequently, we are unable to conclude that the Commission is in a financially sustainable position over the medium-to-longer-term.

Governance and transparency – Our audit work has identified significant weaknesses in the Commission's leadership, governance and sponsorship arrangements. These weaknesses were exposed by unexpected challenges in 2020/21, including the COVID-19 pandemic and additional funding with an expanded role for the Commission. Key parties in the governance framework did not observe their roles and responsibilities and the other parties in the governance framework did not constructively challenge these behaviours. The Board and SMT actively failed to observe the strategic and operational split in their roles. The relationship between the Board, CEO, SMT and Sponsor Division – which was strained at the start of 2020/21 – continued to deteriorate and there is evidence that some parties tried to inappropriately use their relationships to override the objections of others in the governance framework. All of these issues indicate an unhealthy culture at the top of the Commission, which undermined the appropriateness and effectiveness of leadership provided to the Commission throughout the year.

The checks and balances within the Commission's governance framework should have prevented or corrected these weaknesses at an early stage. These checks and balances failed at every stage and the weaknesses identified rapidly escalated from being relatively isolated incidents to representing a significant risk to the Commission.

Every failure in governance and leadership that we have identified in our work by one party was enabled by another, either through actively supporting the actions taken, by implementing the actions despite their concerns or by simply failing to speak up against them.

Introduction (continued)

The key messages in this report (continued)

Next steps

Management has accepted that the audit has highlighted a range of interconnected issues that need to be addressed. While accepting the factual accuracy of the report, they disagree with the wording of some of the judgements contained within it.

We have included an Action Plan on pages 43 to 47 of this report. Management have provided the following response to the Action Plan:

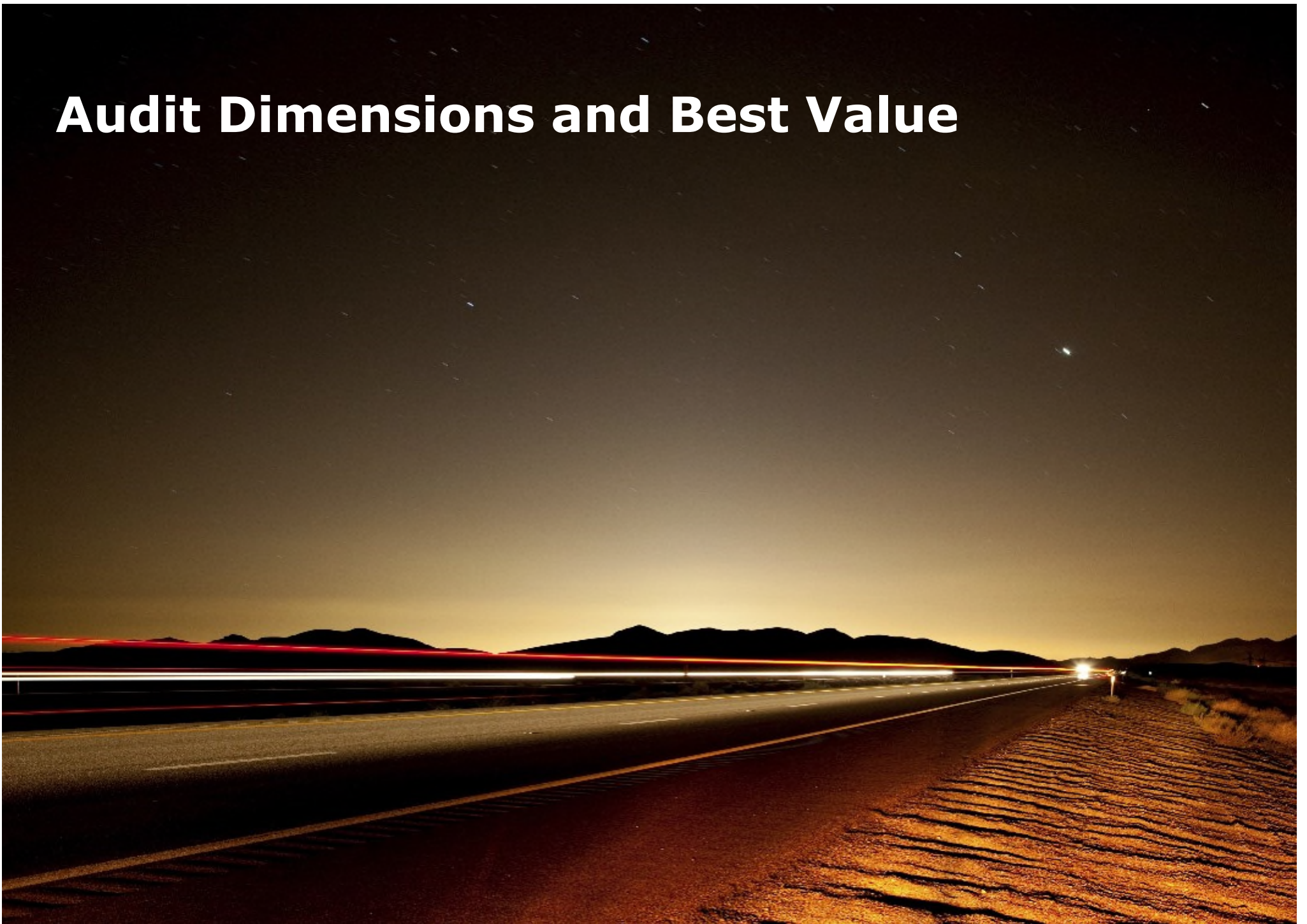
“The Crofting Commission accepts the recommendations as a package. A detailed action plan, and associated prioritisation, will be agreed by the Board following discussions by the Audit and Finance Committee.”

Added value

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

Pat Kenny
Audit Director

Audit Dimensions and Best Value



Financial sustainability

Overview and short-term financial balance

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.

Areas considered

Within our audit plan we confirmed that the audit risk identified was:

- o The lack of certainty surrounding additional funding and the unknown overall impact that COVID-19 will have on the Commission's funding and cost base, means that there is still an overall risk regarding the Commission's medium-term financial sustainability.

Short-term financial balance

2019/20 Conclusion: We were satisfied that the Commission could achieve short-term financial balance in 2020/21. The short-term challenges that faced the Commission in 2020/21 have been alleviated by the allocation of additional funding from the Scottish Government. We noted that the Commission should see this as a reprieve and as providing the Commission with more time to make savings against staff costs. It did not address the longer-term financial sustainability problems facing the Commission. The difficulties initially faced by the Commission in 2020/21 underlined the need for effective medium-term forecasting and scenario planning to identify and manage required savings over a realistic timeframe. Our underlying concerns regarding the financial sustainability of the Commission remained.

2020/21 Update: In 2020/21, the Commission underspent and carried forward a more significant amount than has historically been the case. This has arisen due to additional funding being made available to the Commission during 2020/21 with that funding to be used for crofting development, including the recruitment to a number of new positions. Due to timing differences between when the funding was announced, when recruitment took place and when the new positions were taken up, not all of the funding made available in 2020/21 could be used in the year.

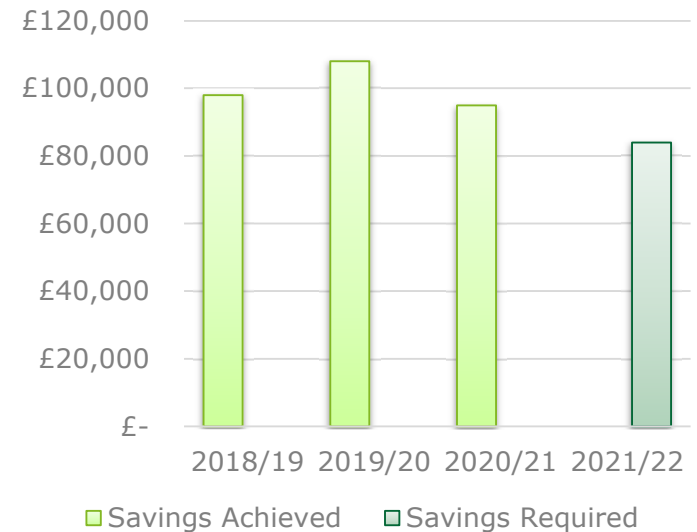
Can short-term (current and next year) financial balance be achieved?

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

Is investment effective?

Financial Sustainability

Savings Targets



The 2021/22 budget identifies the savings required to achieve financial balance in the year. Given the level of savings to be achieved – 2.6% of the budget, totalling £84k – there are not separate, detailed plans in place to support the savings required. The level of savings required in 2021/22 is less than the level of savings achieved in 2018/19 (£98k), 2019/20 (£108k) or 2020/21 (£95k).

2020/21 Conclusion: The Commission has achieved financial balance in 2020/21. The Commission is in a position to achieve short-term financial balance in 2021/22, with a higher than normal carry-forward from 2020/21 (£55k), a comparatively low efficiency target, with identified and assumed savings clearly set out to achieve that target.

Financial sustainability (continued)

Budgeting

Budgeting

2019/20 Conclusion: In the 2020/21 budget, we were pleased to note improvements from the prior year, for example that the Commission had moved away from 'over budgeting' and had set out clearly what its anticipated funding gap was, building in reasonable assumptions. We noted an effective level of challenge and scrutiny from the Committee. Further improvements were necessary, setting out required savings (split between those identified and those to be identified), responsible officers for achieving those savings, and 'RAG' rating the savings to clearly set out in the budget those which are the highest risk. An increased focus on medium-term financial and workforce planning would aid the Commission in this regard.

2020/21 Update: The draft 2021/22 budget was presented to the Committee on 27 January 2021. The budget included an uplift in funding from £3.022m in 2020/21 to £3.197m in 2021/22.

The budget paper notes that in setting the budget, meetings were held between the CEO, SMT, Finance Team and Sponsor Division. In our discussions with various stakeholders, we noted the following:

- The Committee does not 'input' into the budget setting process, with it being presented as a fait accompli;
- There is no wider Board involvement;
- There is no wider stakeholder engagement; and
- Involvement of the SMT beyond the CEO and Head of Finance is minimal.

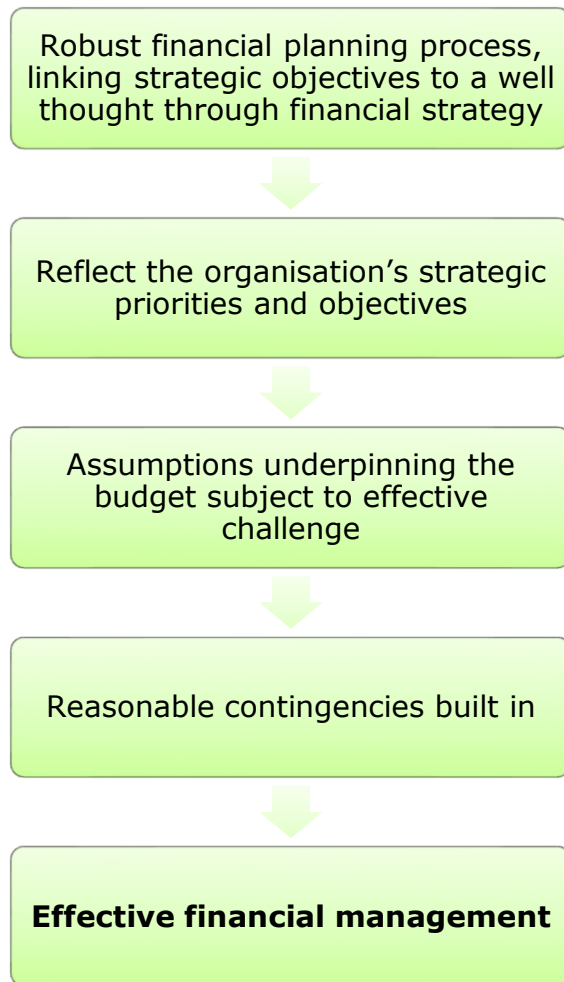
The budget for 2021/22 includes specific information on savings targets against budget lines. From reading the budget, it is relatively clear which savings have been identified and which are assumed but to be specifically identified, although this could be made more explicit.

While our interviews and attendance at Committee and Board meetings did not identify any impact from COVID-19 on the budget setting process itself, the impact of COVID-19 on the cost pressures and potential savings for the Commission are clearly identified in the budget. Given the nature of the Commission's costs – being 80% salaries – there has been limited impact from COVID-19 on the options discussed and decisions taken.

In our 2019/20 audit report, we noted that the Commission is strong at reporting on its use of resources against outcomes in its Annual Report and Accounts. In line with this, the draft budget prepared by the Commission is aligned with the Commission's Corporate Plan

2020/21 Conclusions: We have considered the budgeting process from three angles, as follows:

- Board, Committee and stakeholder involvement;
- Focus on outcomes; and
- Recognition of risk.



Financial sustainability (continued)

Budgeting (continued)

Budgeting (continued)

Board, Committee and stakeholder involvement

The 2021/22 budget document presented to the Committee noted that there had been discussions between the CEO, SMT, Finance Team and Sponsor Division in drafting the budget. Reference to discussions with the Committee or the Board are conspicuous by their absence, as is any reference to engagement with wider stakeholders. The Committee should have an opportunity to input at the budget drafting stage (for example, discussion and challenge on proposed savings and linkage between the proposals and the Commission's priorities). This input could be achieved through the use of seminars or workshops. This would be preferable to the current situation whereby the Committee are seeing the budget for the first time when it is presented to them for approval, which given the timelines involved, limits involvement to signing off on what is essentially a fait accompli.

We note that reference has been made to delays in confirmation from the Scottish Government on the 'funding package' for the Commission being an underlying reason for the lack of involvement. The delay in confirmation from the Scottish Government on the funding package for the Commission should not impact on the Commission's ability to involve key stakeholders, for the following reasons:

1. Other public bodies have such involvement at an earlier stage – often in October/November – based on assumed funding, without it being confirmed.
2. There has historically not been significant Committee involvement, it is not limited to the 2021/22 delay in the Scottish Government budget.
3. The Commission – through its regular dialogue with the Sponsor Division – was sufficiently certain of its funding allocation to enable reasonable discussions far in advance of the January 2021 Scottish Government budget being formally announced.

From our interviews, there is an inconsistency between the SMT about their level of involvement in the budget setting process, and the budget paper presented to the Committee is itself vague on the level of involvement and influence each body spoken to has on the process, and at what stage.

In conjunction with the Committee, management should review and formalise the budget-setting process, including setting out those involved and their stage of involvement. In carrying out this review, there should be sufficient opportunity for the Committee to contribute to the budget setting process at the 'input' stage, rather than only at the 'approval' stage. **(Recommendation 1.6)**

Focus on outcomes

While our 2019/20 audit report noted that the Commission is strong at reporting on its use of resources against outcomes in its Annual Report and Accounts, we found that the budget papers presented to the Committee do not make reference to outcomes at all, or to how the budget specifically aligns with and drives forward the Commission's Corporate Plan and Board priorities. We subsequently received evidence that showed how the budget aligns to outcomes which was shared with the Committee outwith the committee papers.

In the budget, we noted that the level of detail provided on the workforce structure is extensive and technical, but there is insufficient summarisation and linkage with the Workforce Plan, Corporate Plan and Board priorities. By providing detailed information on individual staff grades throughout the Commission, the budget invites an unhealthy focus on individual posts and grades, rather than a consideration of whether the allocation of resources across the workforce – linked to the outcomes separate elements of the workforce are expected to achieve – is optimal.

The level of detail provided on staff costs in the budget should be reconsidered, with less focus on staff grades and a shift to considering at a high level how the budget drives progress to the optimal staffing structure in line with the Workforce Plan. **(Recommendation 1.1)**

Financial sustainability (continued)

Budgeting and medium-term financial planning

Budgeting (continued)

Recognition of risk

No significant risks were identified by the Commission in setting the budget. The budget for 2021/22 includes specific information on savings targets against budget lines. From reading the budget, it is relatively clear which savings have been identified and which are assumed but to be specifically identified, although this could be made more explicit. A significant amount of savings are 'assumed', and it would be useful to use a 'RAG' rating system to clearly mark out those which the Commission sees as being high-risk and potentially impacting on the Commission's ability to break-even in the year. Given the Commission's financial position in 2021/22, this is not a significant issue, but would be good practice to embed ahead of anticipated more difficult financial years in the medium-term. **(Recommendation 1.7)**

Medium-term financial planning

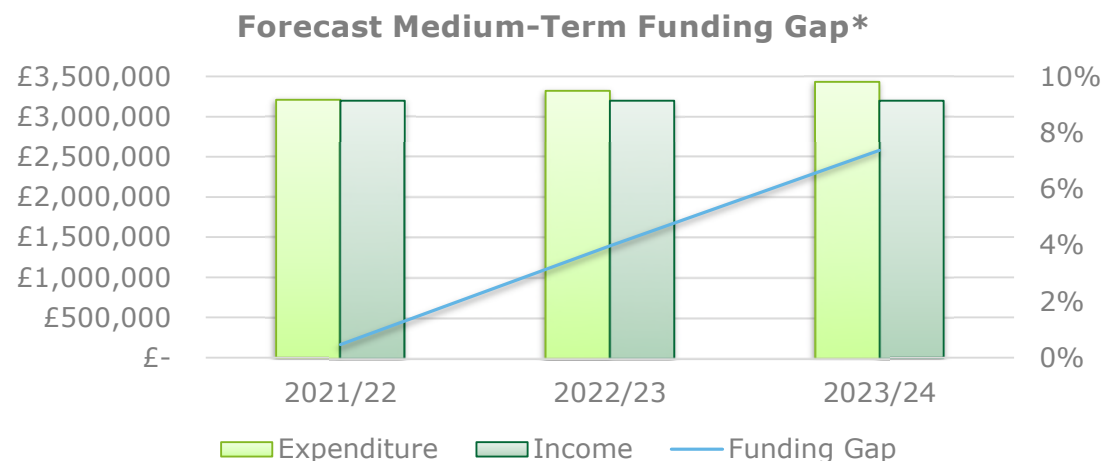
2019/20 Conclusion: Due to the lack of clarity surrounding the additional funding from the Scottish Government - the extent to which it will be recurring and the additional costs the Commission will be expected to incur - it was not possible to conclude with any certainty as to whether the Commission was in a financially sustainable position. Given the significant changes since the draft MTFP was prepared - both the COVID-19 pandemic and the additional funding from the Scottish Government - the MTFP needed to be significantly revised within 2020/21.

2020/21 Update: The Commission revised its MTFP in January 2021, which considers the period to 2023/24. The MTFP focuses heavily on previous years and the year underway, with the 'medium-term financial outlook' limited to half a page. The figures included in the outlook and which underpin the MTFP itself are based on an assumption that the Commission will maintain the same complement of staff as in post at March 2021 over the following three years.

Discussion of the future workforce structure – pivotal to the MTFP given that 80% of Commission costs are related to the workforce – does not identify any actual changes in the workforce over the medium-term. The MTFP does not link in with the Corporate Plan and the Board's priorities, other than mentioning that they exist.

Scenario planning on an assumed 'worst case' scenario of a 10% reduction in funding is included within the plan, although there is no 'expected' position or 'best case' scenario. The limited scenario planning which is included within the MTFP focuses on the potential for a reduction in income and considers alternative pay inflation assumptions, although these are not consolidated. From reviewing the MTFP, it is not clear what the projected funding gap over the medium-term is, nor is it clear what progress has been made in reducing the gap or whether there are sufficient plans in place to address any gaps identified.

The impact of COVID-19 has been built into the MTFP, although it is not clear what financial impact it is expected to have on the Commission itself (if any), with the focus in the MTFP being on the impact it will have on the environment within which the Commission operates.



*Assumes median of expenditure in MTFP and assumes flat funding in cash terms.

Financial sustainability (continued)

Medium-term financial planning and workforce planning

Medium-term financial planning (continued)

2020/21 Conclusion: It is positive that the Commission revised its MTFP in the year to take into account the updated context within which it operates – both the COVID-19 pandemic and additional funding from the Scottish Government. However, it is unclear how useful the current approach to the MTFP is in providing a platform for the Board to make informed medium-term financial decisions. The MTFP, in its current format, does not set out where the Commission needs to be over the medium-term, where it currently expects to be, or how it plans to bridge any gap that exists between the two.

We note that the MTFP was prepared by the CEO which is, in our experience, unusual. The MTFP is normally prepared by the finance function, with input from SMT where necessary. The Committee should consider whether such key strategic documents are being prepared by the appropriate functions within the Commission.

There are various areas which should be improved in the MTFP, including:

- It covers the period to 2023/24 only, which is at the lower end of what would be expected for a medium-term plan;
- The plan does not quantify the funding gap (if any) in the period covered in the 'most likely' scenario;
- The plan does not quantify the funding gap (if any) in the period covered using reasonable best case and reasonable worst case scenarios;
- The plan focuses very heavily on historical performance and references to future performance are limited and vague, for example the 'medium term financial outlook' does not actually quantify the outlook, and the 'future workforce structure' does not set out what the future structure should look like;
- There is no clear link to the Corporate Plan or to how the resources and workforce of the organisation will be used over the medium-term to drive progress against the Board's priorities;
- Assumptions are dispersed throughout the text of the plan, with it being unclear what all the assumptions underpinning the plan are, how they interlink and their impact on the medium-term position;
- Links with the budget and Workforce Plan are unclear; and
- It is unclear how, through revising the MTFP, management have considered the performance of the previous iteration of the MTFP and how this has impacted on management's assumptions for the revised version. **(Recommendation 1.2)**

Workforce planning

2019/20 Conclusion: The Commission's workforce is critical not only to its ability to deliver its services, but also to its ability to achieve financial sustainability. Given this, we would expect stronger links between the MTFP and the Workforce Plan, and vice versa. The Workforce Plan makes no reference to the MTFP and similarly does not set out what the Commission expects its future workforce needs to be and how it plans to manage the change from its current workforce to its future workforce. The plans usefulness, therefore, is limited to addressing current workforce issues and not for addressing the financial sustainability issues facing the Commission.

2020/21 Update: The Commission revised its Workforce Plan in January 2021, at the same time as revising the MTFP and preparing the budget. The Workforce Plan is comprehensive in that it considers the challenges the Commission faces, the Commission's priorities for workforce development, and considerations in relation to resilience. However, the Workforce Plan still does not actually identify the current workforce structure, nor does it identify the future workforce the Commission needs or how the Commission gets from the former to the latter over the length of the plan, despite this being flagged in our 2019/20 report.

From our interviews with SMT, the CEO and Board, we noted that workforce and succession planning is seen as a weakness within the Commission. Across these interviews, there was a general acceptance that the workforce situation in the Commission is fragile, that there are skill and capacity gaps, and that it is unclear whether the Commission has the workforce, skills and capacity needed to deliver the change it needs to deliver over the medium-term.

From our attendance at a Board meeting in March 2021, we noted that the Board suggested a review of the structure of the workforce should be carried out to identify the necessary workforce for the Commission. This is in line with comments we made in our 2018/19 and 2019/20 audits.

Financial sustainability (continued)

Workforce planning

Workforce planning (continued)

2020/21 Conclusion: As with the MTFP, it is positive that the Commission revised the Workforce Plan in the year. However, similar to the MTFP, the format of the Workforce Plan is suboptimal. The Workforce Plan does not identify the current workforce, nor does it identify the future workforce the Commission needs or how the Commission gets from the former to the latter over the length of the plan. That is fundamentally what a Workforce Plan ought to be.

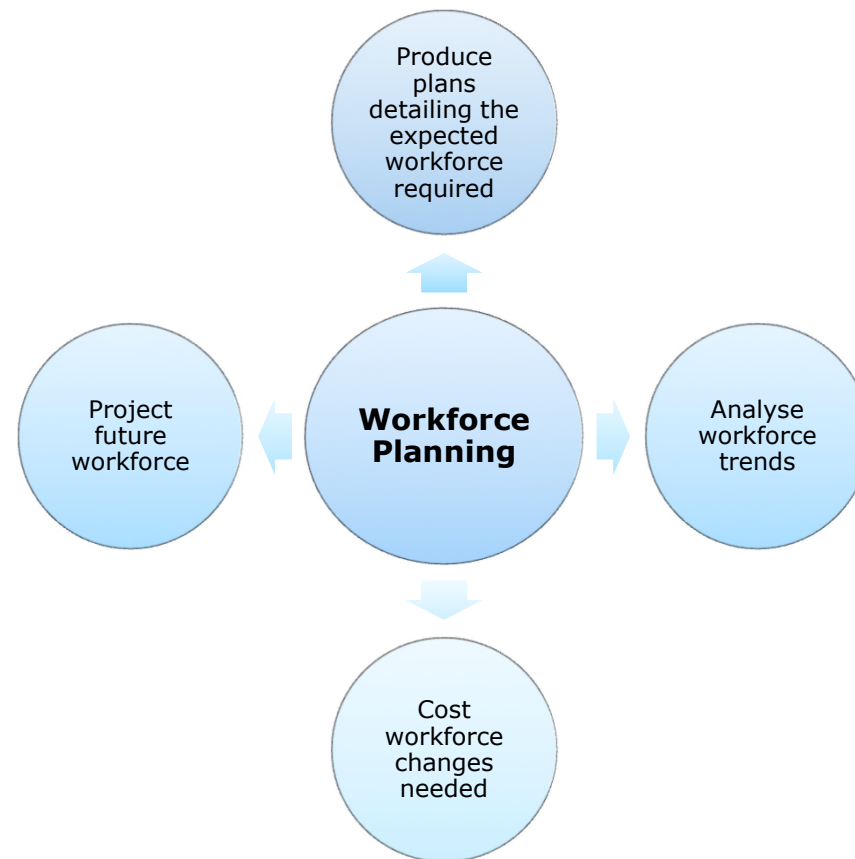
From our interviews, there was a general lack of awareness of what a Workforce Plan is and the purpose it is meant to serve. Our work identified that Commissioners were apparently unaware of the fact that the Commission can employ staff in their own right, rather than through seconding staff from the Scottish Government. This suggests a lack of engagement with workforce planning, given that this ability is explicitly set out within the Workforce Plan.

Without the overriding goal of what the future workforce should look like, the extensive detail contained within the plan is difficult to appropriately scrutinise and assess whether the Commission's plans for workforce development, retention, and succession planning are actually sufficient to achieve what the Commission needs to achieve with regards to its workforce over the medium-term.

Across all our interviews, there was a general acceptance that there are fragilities within the Commission's workforce, skill and capacity issues and that these present a risk to the Commission. It is surprising that despite this widespread view, there still has been no identification of the actual workforce needs of the Commission. We note that the Board itself suggested a review of the workforce structure should be carried out in a meeting in March 2021. It is important that any such review takes into account the Commission's Corporate Plan, the Board's priorities, the National Development Plan for Crofting, and engages with the Board, management and staff.

Given that this has been an issue which has been raised in audits for a number of years and given the aforementioned gap in understanding of workforce planning within the Commission, the Commission should engage an independent review of the workforce needs of the Commission. **(Recommendation 1.3)**

Once the Commission has identified its future workforce needs, the Workforce Plan should be revised to clearly set out how the Commission plans to transition from its current structure to the optimal structure identified. **(Recommendation 1.4)**



Source: NHS Workforce Planning, Audit Scotland

Financial sustainability (continued)

Staffing structure

Staffing structure

2019/20 Conclusion: Changes noted in the year suggested that the Commission was actively considering its workforce structure, which was welcome. However, these changes did not appear to be systematically planned and were regularly reactive. As set out in the 2018/19 report and in our review of workforce planning, the Commission should consider its current structure and anticipated future structure, and put a plan in place to manage the necessary transition over a realistic period.

2020/21 Update: We have not reviewed the staffing structure of the entire organisation given our conclusions on workforce planning (page 13). In the current year, we have focussed on the structure of the SMT.

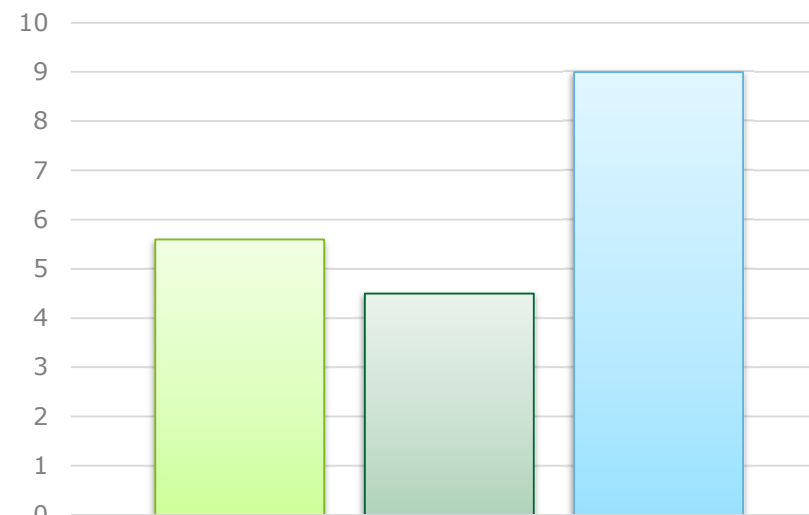
In late 2020, the CEO began discussions with the Scottish Government to appoint a Deputy CEO, thereby expanding the SMT. A subsequent paper was presented to the Board in March 2021 on potential revisions to the SMT structure. The Workforce Plan sets out that a revision to the SMT would have advantages, although these are not covered in any detail. Following a meeting between the CEO and Chair of the Audit and Finance Committee in early April 2021, it was confirmed that a paper on revisions to the SMT structure would be prepared in 2021/22.

From our review of SMT structures across NDPBs in Scotland, we noted that the Commission's SMT structure is larger than average. Across NDPBs, the average SMT is 5.6 personnel. For organisations with less than £10m of expenditure or less than 100 whole-time equivalent staff, the average SMT consists of 4.5 personnel. This contrasts with the Commission, which currently has 9 members in its SMT.

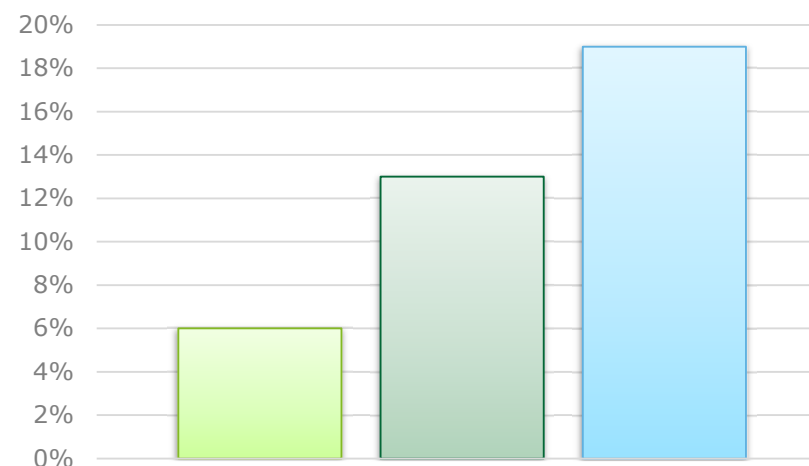
From our interviews, there was a frequent opinion on the structure and capacity of the leadership team, namely that:

- The organisation is top-heavy;
- The structure of SMT is not optimal in terms of size and hierarchy;
- The SMT is not used effectively due to these structural issues; and
- The SMT is not appropriately trained to ensure it has the necessary skills to operate effectively.

Size of SMT



Number of people



% of workforce in SMT

■ All NDPBs ■ Comparable-size NDPBs* ■ Crofting Commission

*NDPBs with <£10m of expenditure or <100 whole-time equivalent staff deemed to be 'comparable-size'

Financial sustainability (continued)

Staffing structure and COVID-19 staff impact

Staffing structure (continued)

2020/21 Conclusion: In recent years, the structure of the Commission's SMT has changed following the departure of the Deputy CEO in 2019. The changes made were ad-hoc and resulted in additional roles being added to the SMT. Throughout 2020/21, there have been discussions between the CEO and Sponsor Division and subsequently between the CEO and the Board about further expanding or making changes to the SMT.

Across our interviews, there was a prevailing opinion that the structure of the SMT is not appropriate for the Commission. Despite this, there has been limited consideration of what the structure actually should be.

From our analysis of NDPBs across Scotland, the Commission's SMT is comparatively large. This does not mean that the Commission's structure is inappropriate, but it does suggest that making ad-hoc changes and expansions to the SMT without considering the overall structure is not a reasonable course of action to take.

Management, in conjunction with the Board, should carry out a review into the optimal SMT structure for the organisation. Following appropriate staff consultation, restructuring plans should be prepared to implement this structure, subject to approval by the Board. **(Recommendation 1.5)**

COVID-19 staff impact

2020/21 Update: Throughout 2020/21, there have been a number of short surveys of staff to identify issues with remote working and plans put in place to resolve those, as well as to identify staff preferences for working.

Commission staff also took part in both a Commission and a Civil Service staff survey in the year. In these surveys, there were generally improvements across the board, continuing the trend of recent years, although management accept that further improvements are necessary.

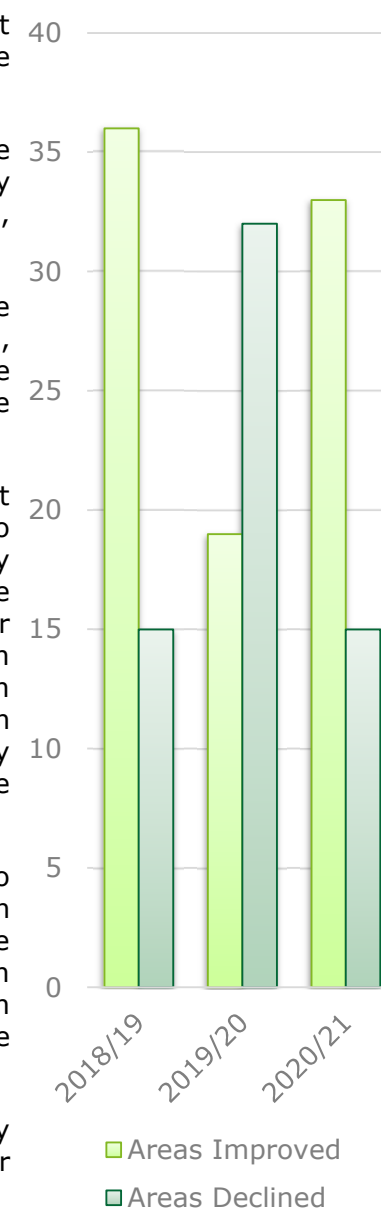
From our interviews, we noted that management have not identified the impact of the pandemic and remote working on productivity, team-building, etc. and that this was felt to be a key weakness for the Commission. Despite there being a general presumption in the interviews conducted that there has been an impact on productivity, measuring this has not been attempted.

2020/21 Conclusion: Commission staff have worked remotely throughout the pandemic, with the Commission responding by providing equipment to better enable home working and making improved use of technology to carry out its work. However, despite a number of surveys carried out to assess the impact of remote working and the pandemic, as well as staff preferences for the future, the Commission has not quantified the impact of these on productivity, nor has it gathered sufficient data to attempt such quantification. We are aware that management plan to address this in 2021/22. The findings from such an exercise need to be built in to any revision to the Workforce Plan to ensure that it appropriately reflects the anticipated 'new normal' for the Commission.

There have been a number of initiatives carried out by management to address staff concerns raised in previous staff surveys, as highlighted in audit reports from 2018/19 and 2019/20. There have been welcome improvements in the Commission's staff survey scores in 2020/21, although the pace of improvement needs to be addressed – the improvement in scores from 2018/19 through to 2020/21 amounts to an average improvement of less than 1% per year per question.

It is of note, however, that the biggest decline in the 2020/21 staff survey was in the confidence have in how the Commission deals with poor performance, which is an issue we have identified throughout our audit.

Staff Surveys



Financial sustainability (continued)

Deloitte view

Deloitte view – Financial sustainability

As discussed on page 8, the Commission achieved financial balance in 2020/21 and we are satisfied that it can achieve financial balance in 2021/22, due to a significant uplift in funding from the Scottish Government, a historically large carry forward from 2020/21 and a comparatively low efficiency savings target. Going forward, the Commission needs to re-evaluate the level of involvement of key stakeholders in the development of the budget to ensure that the Board's priorities are appropriately considered in drafting the budget. The budget setting process should be formalised to set out the process and the involvement of key stakeholders.

It is positive that the Commission revised its MTFP in the year. However, the MTFP is suboptimal in providing a platform for the Board to make informed medium-term financial decisions. The MTFP, in its current format, fails to serve the primary purpose of any MTFP: it does not set out the Commission's expected position, the current trajectory or actions needed to bridge any funding gaps, which themselves are not quantified in the MTFP. Significant improvements are needed to the MTFP to ensure that it is an effective strategic document.

As with the MTFP, it is positive that the Commission revised the Workforce Plan in the year, although the structure of the Workforce Plan is also suboptimal. The Workforce Plan does not cover the fundamentals which any Workforce Plan should. Without the overriding goal of what the future workforce should look like, the usability of the Workforce Plan is undermined significantly. Given that this has been an issue which has been raised in audits for a number of years and given the gap in understanding of workforce planning within the Commission, the Commission should engage an independent review of the workforce needs of the Commission. In addition to considering the workforce needs of the Commission, there needs to be a holistic consideration of the structure of the SMT.

Governance and transparency

Overview

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

Is governance effective?

Is there effective leadership?

Is decision making transparent?

Is there transparent reporting of financial and performance information?

Governance and transparency

Areas considered

When we determined it was necessary to expand the scope of our work on the audit dimensions, we communicated the identified risks to the Committee as follows:

- **Leadership:** Given the concerns raised by the Board, recent changes to the SMT and proposed further changes to the structure of the SMT, there is a risk that leadership is not robust, that it is inappropriately resourced, and/or that it does not have the appropriate capacity and competence to undertake its responsibilities properly. There is a concurrent risk given the issues identified, that if a change to the structure of the SMT is progressed, that roles and responsibilities of the leadership team are not clear or not adhered to.
- **Governance:** Given concerns raised that there has been inappropriate decision making which has occurred outwith the Board structure over the past year, there is a risk that scrutiny by the Board is not appropriate and seen as a 'tick box' exercise, after decisions have been made and implemented. There is a risk that the employment structure of the Commission undermines the ability of the Board to hold the CEO, SMT and organisation as a whole to account.
- **Openness and transparency:** There is a risk that insufficient information is presented to the Board to support transparent decision making and scrutiny.
- **Relationships:** There is a risk that the relationships between the Board and the Sponsor Division, and between the Board and the CEO, will be damaged by the above risks, which will undermine the ability of the Commission to achieve its objectives. There is a risk that this will result in further decision making occurring outwith the Board structure, exacerbating the above concerns. There is a risk that the Board, CEO and Sponsor Division roles and responsibilities are unclear, not being adhered to, or not in line with good practice.

Governance and transparency (continued)

Leadership

2019/20 Conclusion: The length of time between the staff survey and communication with staff regarding actions being taken was excessive and had a negative impact on staff perception of how management are responding to their concerns.

Given issues identified in relation to performance management, we reiterated our view on the importance of effectively using the appraisal process, ensuring it is applied consistently to measure performance against agreed behaviours.

We considered issues regarding the provision and monitoring of training to be noticeable weaknesses in the systems in place at the Commission that undermined the ability of the Commission to effectively allocate its training budget to drive continuous improvement. The Commission should develop systems to capture all training provided, systematically collect feedback and analyse the effectiveness and value of training based on this.

2020/21 Update and Conclusions: In assessing the leadership of the Commission in 2020/21, we have considered the following:

1. The structure of SMT;
2. SMT training;
3. The CEO's secondment to the Scottish Government;
4. The performance of the CEO;
5. The performance of the Board;
6. The performance of the Convener; and
7. The overall culture within the Commission.

The structure of SMT – Update: We considered the structure of SMT from a financial sustainability point of view on page 13. We consider it here from the point of view of how it interlinks with the effectiveness of governance and leadership. The current SMT structure has not come into being as the result of a holistic review of the needs of the Commission. Recent and proposed changes have been ad-hoc, taken largely based on the perceived needs of the Commission by the CEO.

The CEO had discussions with the Sponsor Division on this in June 2020, subsequently making some – but not all – of SMT aware of his thinking throughout July (at different stages). In the e-mail sent to some members of the SMT, the CEO advised them to delete the e-mail once they had read it. It has never explicitly been included on an SMT agenda for discussion (although may have been captured in the general 'recruitment' point which appears to be a recurring item).

Further discussions with the Sponsor Division were had in October 2020, who noted that they agreed with the CEO that the current arrangements in terms of leadership in the Commission are not sustainable. This was following a request by the CEO for support from the Sponsor Division should he encounter opposition from the Board in implementing changes to the structure of SMT, which we consider to be an inappropriate request.

The Convener and Vice Convener were informally made aware of proposed changes in February 2021, with the Board being made formally aware of the thinking at the Board meeting in March 2021. These proposed changes differed from the CEO's proposed changes following the announcement of additional funding in June 2020, which themselves differed from what the CEO had discussed with the Sponsor Division and members of SMT. The CEO had drafted an e-mail to the Convener and Vice Convener on the proposed changes in early August 2020 – showing he was aware that they should be informed of them – but opted not to send it, and so the Board remained unaware of his thinking for a further 6 months.

Despite these considerations, there have been no actual changes made to the top-tier of staff in the previous year. What the above shows – and as came across consistently in our interviews – is that there is an acknowledged need for there to be changes. However, rather than a debate about what changes are needed, time has been spent instead debating who gets to decide what changes are made.

Governance and transparency (continued)

Leadership (continued)

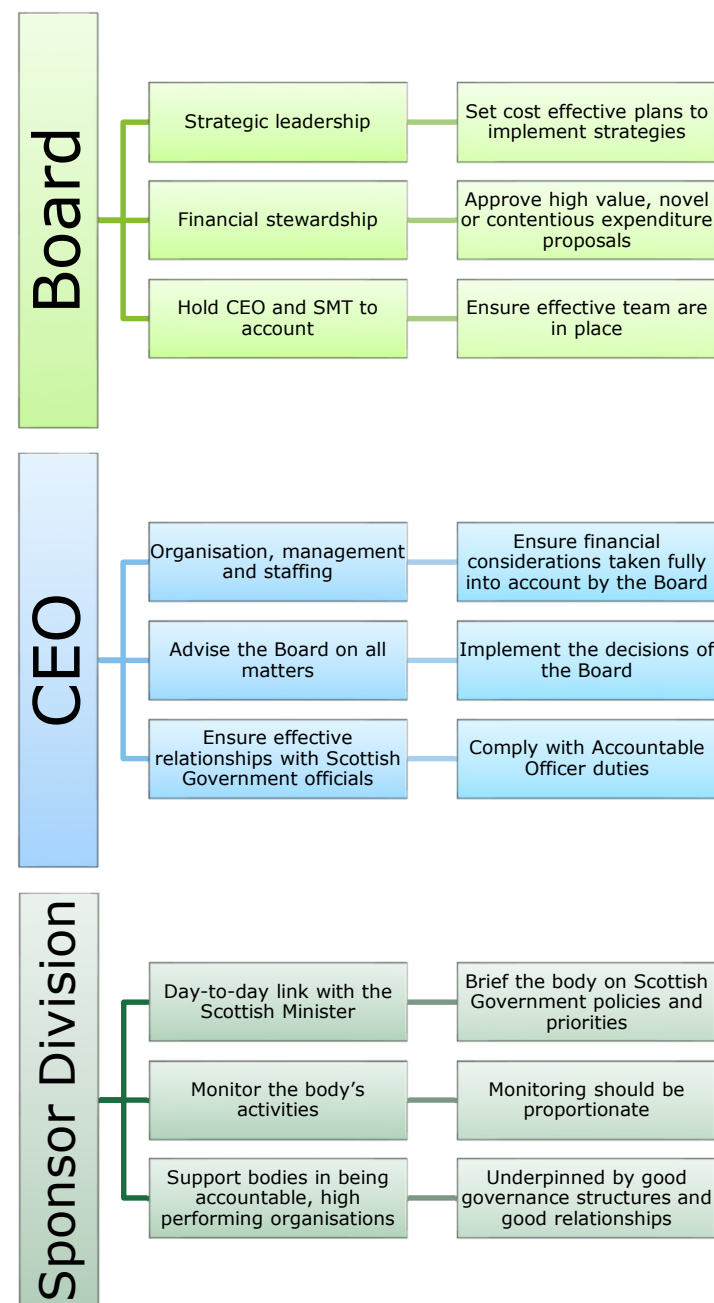
The structure of SMT – Conclusion: The current SMT structure has arisen from ad-hoc changes over a number of years. Proposed changes to the SMT in 2020/21 were first discussed with the Sponsor Division while discussing future funding needs – before the CEO had made either the SMT or Board aware of such considerations. Given that this is not related to the Sponsor Division’s role, it is unusual that they were aware of the proposed changes half a year before the Board were aware. When the CEO informed members of SMT of proposed changes that he advised that the e-mail be deleted when read. Further, the CEO asked the Sponsor Division for backing against anticipated Board opposition. These issues are indicative of secrecy and mistrust at senior levels in the Commission, and an inappropriate use of the relationship with the Sponsor Division.

While the CEO has autonomy to decide staffing matters as an operational matter, he was aware that he should inform the Board of proposed changes to the structure of SMT as he had drafted an e-mail to that effect in early August 2020. The fact that that e-mail was not sent is unfortunate. While the CEO has this autonomy, we note that it is standard practice across other bodies which we audit – central government, health and local government – that where there are proposed changes to the structure of the SMT, these changes are submitted to the Board (or equivalent) for approval as the SMT is pivotal to the delivery of the Board’s strategic aims.

For the avoidance of doubt, we disagree strongly with the advice which the Sponsor Division provided to the CEO, suggesting that he should proceed to implement staffing changes as he sees fit regardless of the Board’s view, insofar as it relates to the structure of the SMT. Adopting this approach would further damage relationships between the Board, CEO and the Sponsor Division. The advice provided by the Sponsor Division does not demonstrate the necessary respect for the Board’s role and the importance of oversight and scrutiny for key decisions.

We are also clear that it is not appropriate for the CEO and Sponsor Division to think that they should work together drive change through despite Board opposition. This undermines the role of the Board, overstates the role of the Sponsor Division, damages scrutiny and confidence in governance arrangements and overall risks creating a negative culture within the Commission.

The Board, CEO and SMT should undertake joint training to understand and appreciate each other’s roles. The Sponsor Division should be invited to this. This training should focus on specific areas of perceived ambiguity in the On Board guidance, Framework Document and other key governance documents within the Commission. **(Recommendation 2.6)**



Governance and transparency (continued)

Leadership (continued)

SMT training – Update: Although there have been no changes to the SMT in the year, there is still a need to consider whether the SMT has the right knowledge, skills and support to perform their functions effectively. We requested an analysis of training undertaken by the Commission and, specifically, the SMT. Over the past three years – 2018/19 to 2020/21 – training undertaken by the SMT has been as follows:

- 2018/19: Two members of SMT attended a total of 3 courses
- 2019/20: One member of SMT attended a total of 1 course
- 2020/21: No members of SMT attended any courses

In our 2018/19 and 2019/20 audits, we noted that there was no evidence of a consistent and effective use of performance appraisals at an SMT level. In 2020/21, this remains the case. We requested a copy of the objectives of SMT. When provided these, the CEO noted that he had been sent them following our request and briefly checked over them, noting that they seem reasonably fit for purpose, although there was wide variance in the extent of and detail in objectives set. These were not updated during the year, resulting in them needing some of what was described as creative comment writing to reflect performance in the year. Given that this was on 30 March 2021, the timeliness of such considerations for the 2020/21 performance year is obviously in doubt.

SMT training – Conclusion: It is not clear that the SMT receives sufficient training to ensure that it has the appropriate skills and knowledge to discharge its functions effectively. The fact that only one third of SMT have attended any Commission-sponsored training in the past three years is clearly inappropriate. The SMT have used 3.4% of the Commission's training budget in 2018/19, 8% in 2019/20 and 0% in 2020/21. For context, the SMT accounted for between 15%-20% of the workforce in those years, so have not been using a proportionate share of the budget. This is not indicative of a culture of continuous improvement at the senior leadership level.

The fact that SMT do not receive effective appraisals – also evidenced in our 2018/19 and 2019/20 audits – means it is not possible for us to conclude with any certainty as to the effectiveness of individuals within SMT, or their development needs. It is also not possible for us to conclude on whether the Commission is making effective use of the talent that exists within the workforce. As the CEO and SMT do not set an appropriate 'tone from the top' with regards to performance appraisals, there is a risk that the wider Commission workforce does not benefit from appropriate performance management.

A training plan should be developed for members of SMT, informed by their role, objectives and identified development needs from their performance appraisal. The CEO should ensure that individual training plans address any perceived cross-SMT weaknesses identified either by the SMT themselves or the Board. **(Recommendation 2.4)**

CEO's secondment – Update: At the start of the COVID-19 pandemic, the CEO accepted a secondment to the Scottish Government to provide assistance in responding to the crisis, without formal Board approval. In our 2019/20 audit, we concluded that while there was no deliberate attempt to circumvent the Board's oversight role, the situation highlighted that lessons can be learned to improve communication and understanding of and respect for the roles and responsibilities of the CEO, Board and Sponsor Division. We concluded that the situation strained the relationship between the Board, SMT and the Sponsor Division and that it was unusual that effective interim arrangements providing clarity on leadership had not been agreed prior to the secondment.

The CEO was first contacted about potential a secondment to the Scottish Government on 15 April 2020. This was by way of phone call, and there is no documentation of what was discussed. One matter that is documented though is that, when questioned by the CEO, the Sponsor Division suggested the secondment could be for the duration of the emergency. This was apparently later clarified to being for 3.5 weeks before the CEO accepted the secondment, although there is no documentation of this. In the end, the secondment was for 6.5 weeks. The documentary evidence suggests that it was at least reasonably foreseeable that the secondment could last for longer than the 3.5 weeks agreed.

Governance and transparency (continued)

Leadership (continued)

CEO's secondment – Update (continued): The CEO notes that he informed the Convener of the potential secondment and received his approval for it before accepting, although there is no documentation of this. However, there is an e-mail from the Convener on 17 April 2020 that the CEO would have his full support whatever decision he made. While this evidences that the Convener was told something, it is not clear the specifics of what was discussed between the CEO and the Convener, or of their respective understandings of the potential secondment. The request for a secondment was confirmed on 20 April 2020 and the secondment commenced the same day. The CEO informed the Convener of the specifics of the secondment on the day it commenced, and communicated this to the Board the following day. On 14 May 2020, the CEO informed the Board that he intended to accept an extension to the secondment for a further month, with a limited amount of time each week reserved to deal with Commission matters.

At the point of the CEO commencing the secondment, the Board was unclear on who would provide the leadership that the CEO/Accountable Officer normally would, as they had not been advised as to whether an interim postholder was needed, and who that would be. The interim arrangements proved to be a significant issue for the Board in May 2020 when the CEO wished to extend his secondment to the Scottish Government from the 3.5 weeks previously agreed. In June 2019, the Scottish Government advised that it is good practice to have a Deputy Accountable Officer nominated. Despite this, no such appointment was made and the issues which such a nomination are clearly designed to avoid subsequently came to pass less than a year later.

CEO's secondment – Conclusion: We remain of the view that lessons on communication need to be learned from the CEO's secondment in early 2020/21. It is clear from the issues that have arisen later in the same year that these lessons have not been learned. **(Recommendation 2.8)**

For matters of such importance as the CEO being seconded to the Scottish Government during an emergency period, it is self-evident that discussions should be documented. The Board should have been officially informed. While the CEO may have informed the Convener, who may have fully supported a secondment, the lack of documentation means it is not possible to be clear about what was actually communicated and what was actually being supported. **(Recommendation 2.5)**

A particular concern we have is that management were informed in July 2019 of good practice in nominating a Deputy Accountable Officer. Despite this, no such nomination was made, which meant there was a vacuum of clarity when the Commission needed it the most. We note that the Commission still does not have a nominated Deputy Accountable Officer. **(Recommendation 2.7)**

Governance and transparency (continued)

Leadership (continued)

Performance of the CEO – Update: In November 2020, the Convener sent a letter to the Scottish Minister – on behalf of the Board – explicitly communicating that the Board had no confidence in the abilities of their CEO to discharge his duties. Specific concerns raised included a lack of leadership, indecisiveness, procrastination, a lack of communication, and poor personnel management. This letter was passed by the Scottish Minister to the Sponsor Division. The Board did not inform the CEO or SMT about this letter. The Sponsor Division privately and confidentially informed the CEO of the existence of the letter, but did not inform the Board that it did so. At the time of writing our report, the Board has not received a response to the letter.

It is important to note that scores from the staff survey indicate that the workforce has an increasing level of confidence in the CEO/SMT – although this is from a low base. We have not identified any issues through our work with regards to a lack of confidence by the SMT in the CEO, which again contrasts with the Board's view.

Given the issues identified with the structure of the SMT, which everyone consulted agrees is not optimal, in addition to the lack of any actual review of the structure, ineffective performance management and assessment of development needs and insufficient provision of training, we cannot conclude that the SMT provide appropriate and effective leadership to the Commission. This is not a comment on any individuals within the SMT, rather the structure and processes in place. Responsibility for these structures and processes rests with the CEO.

Our consideration of the performance of the CEO is informed largely by the matters we have brought out in other sections of our audit report.

Performance of the CEO – Conclusion: While we do not question the resilience or dedication of the CEO, there is insufficient evidence for us to conclude that he has provided appropriate and effective leadership to the Commission throughout the year. This is underpinned by the CEO:

1. Failing to appropriately consider the risk of his secondment to the Scottish Government at the start of the COVID-19 pandemic exceeding 3.5 weeks and failing to fully consider the impact on the Commission;
2. Failing to nominate a Deputy Accountable Officer prior to the secondment to the Scottish Government despite being made aware of this being an issue a year in advance of the secondment;
3. Failing to appropriately document key communications with the Convener and Sponsor Division;
4. Failing to learn lessons from the communication failures identified following the secondment to the Scottish Government and as set out in our 2019/20 audit, with these issues recurring throughout the year;
5. Failing to carry out documented, effective performance management of members of SMT;
6. Failing to effectively consider, or to consult the Board on, the effectiveness of the SMT structure despite widespread acceptance that the current structure is inappropriate;
7. Failing to ensure that the SMT receive appropriate training;
8. Failing to keep the Board appropriately informed of his views on potential changes to the structure of SMT;
9. Seeking to use his relationship with the Sponsor Division to get their backing to drive change in the management structure despite anticipated Board opposition; and
10. Advising members of SMT who he did discuss planned changes to SMT with to delete the communication, presumably in an effort to minimise the risk of others becoming aware of his considerations. Our work has identified that this was not an isolated incident.

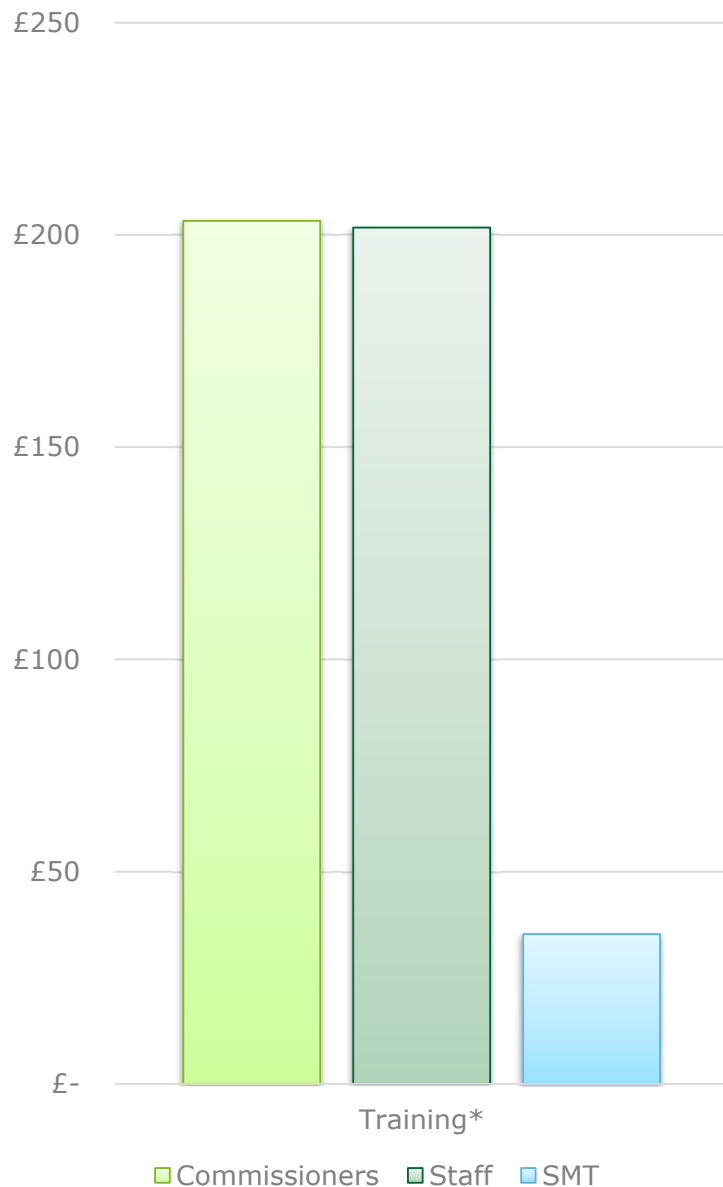
We do not express any view on the appropriateness or otherwise of the Board expressing no confidence in the CEO. It is unclear to us from reviewing legislation, Scottish Government guidance and the Commission's governance documents what impact that has in practice. However, it does evidently suggest that the Board is not satisfied that that Commission has appropriate and effective leadership in place.

The Commission should consider whether the CEO can reasonably expect to deliver his functions effectively in light of the Board expressing no confidence in his abilities to do so. This will need to be in consultation with the Scottish Minister. The conclusion reached should be formally communicated to the Board. **(Recommendation 2.1)**

Governance and transparency (continued)

Leadership (continued)

Training spend per year per person



*Average over past three years.

Performance of the Board – Update: There have been no changes to the Board since March 2017. Prior to the appointment/election of the current Board, the Commission underwent a tumultuous period, which resulted in an external review of governance arrangements being undertaken at the request of the Scottish Government. While the individual incidents that led to the Scottish Government review and those that led to this review are very different, the conclusions of the two reviews are similar, in that there had been “notable failures in governance”, due to “strong personalities, differences of opinion and apparent incongruent individual objectives and priorities”, that there was a “breakdown of some relationships which are crucial to good governance”, and that “documentation and robustness of records management has also been an issue”.

In our 2018/19 and 2019/20 audits, we noted that there was no personal training plan for Commissioners. From 2018/19 to 2020/21, the Board has received training each year on ‘On Board’, with a further workshop on diversity and unconscious bias in 2020/21.

We are pleased to note that a training plan was developed in mid-2020/21, with 9 sessions planned throughout 2020/21 and into 2021/22. In 2020/21, there were 4 training sessions held:

- For two events, the Commission does not have a record of who actually attended;
- For ‘media training’, 5 Commissioners attended training; and
- For ‘personal development and confidence’, 3 Commissioners attended training.

The training plan was not considered at either a Committee or Board meeting. While the draft plan was shared with Commissioners by e-mail for feedback, it is not clear how it was informed other than by the Head of Compliance. It is unclear if individual Commissioner appraisals were carried out and informed the training plan, or whether the training plan was tailored to take account of Committee and Board self-assessments. It is equally unclear if the SMT, Committee or Board actually signed off as being satisfied with the plan.

In 2018/19 and 2019/20, we noted that the Convener did not carry out appraisals of Commissioners, despite this being a clearly defined responsibility for his role. We were assured when drafting our 2019/20 audit report that the Convener would carry out appraisals in early 2020/21 in respect of the 2019/20 year. This did not occur. There have similarly been no appraisals in respect of the 2020/21 year. The Convener has asked that management in the Commission undertake these appraisals instead.

When the CEO was seconded to the Scottish Government, the Convener attended SMT meetings, and instructed the SMT on items to be added to SMT meeting agendas. The Convener did not understand why he subsequently had to stop attending and attempted to reinstitute the practice later in the year.

Governance and transparency (continued)

Leadership (continued)

Performance of the Board – Conclusion: The Board has remained consistent from March 2017 and provided strategic leadership for the Commission throughout that period. In our view, the underlying issues identified in the Scottish Government report were resolved following the publication of that report and the installation of the new Board. However, the issues which arose in 2020/21 – as detailed throughout our audit report – have resulted in the situation declining quickly in the year. The fact that there have been two reviews which have concluded over a relatively short period that there have been notable governance failures suggests that the systems in place within the Commission are not designed or operating effectively.

Similar to the SMT, it is not clear that the Board receives sufficient training to deliver its functions effectively. While a training plan was developed in 2020/21 in response to our recommendation in 2019/20, monitoring of the plan and effectiveness of training needs to be improved as management were unable to confirm who attended half of the courses organised in the year. From the documentation available, there is only evidence of half of Commissioners attending any training in 2020/21. Across the previous three years, Commissioners received very limited training. **(Recommendations 2.9 and 2.10)**

Since 2018/19, we have raised concerns about the Convener not carrying out appraisals of Commissioners. This is not a 'nice to have'. It is a fundamental requirement of the role. This requirement is set out in the terms and conditions of acceptance of the role, the Commission's Framework Document, the Scottish Public Finance Manual, and in On Board guidance. Despite this, the Convener has still not carried out appraisals of fellow Commissioners and has instead asked that management perform this role. It is unacceptable that the Convener continues to fail to perform these appraisals, and it is equally unacceptable that he suggest that management perform a function which is a key part of his role. **(Recommendation 2.3)**

Performance of the Convener – Update and Conclusion: It is important to note that the Convener has a key role insofar as leadership of the Commission is concerned. In addition to our concerns about the appropriateness and effectiveness of leadership offered by the CEO and SMT, we have serious concerns about the leadership provided by the Convener. This is underpinned by the following:

1. Failing to discharge key responsibilities of the role, despite the requirement being clearly explained both in previous audit reports and by management;
2. Failing to appreciate the distinction of his role from operational management, with repeated requests to regularly attend SMT meetings;
3. Failing to appropriately document key communications with the CEO and make the Board appropriately aware of relevant matters;
4. Failing to ensure that appropriate succession planning arrangements are in place for senior staff in the organisation;
5. Failing to ensure that there is appropriate development and training of the Board;
6. Using language in communications with the CEO with all Commissioners copied in which unnecessarily risked damaging the Commissioners' view of the CEO;
7. Failing to appropriately chair meetings of the Board, which has allowed them to move into areas which are clearly outwith the remit of the Board (e.g. individual staffing decisions and discussion of staff grades);
8. Arranging ad-hoc, unminuted, unofficial, private meetings of the Board to make Board decisions, which clearly goes against the Commission's Standing Orders;
9. While delivering home working equipment to staff, overstepping the role of the Convener by carrying out what he called a 'staff survey' to gain support for his viewpoint and to put pressure on management with regards to his personal views on the Commission's use of office space; and
10. Failing to ensure that Board meetings – private and public – and communications between the Board and management are respectful, professional and constructive.

The Board should consider whether the Convener can deliver his functions effectively in light of the issues highlighted through our audit. This will need to be in consultation with the Scottish Minister. The conclusion reached should be formally recorded. **(Recommendation 2.2)**

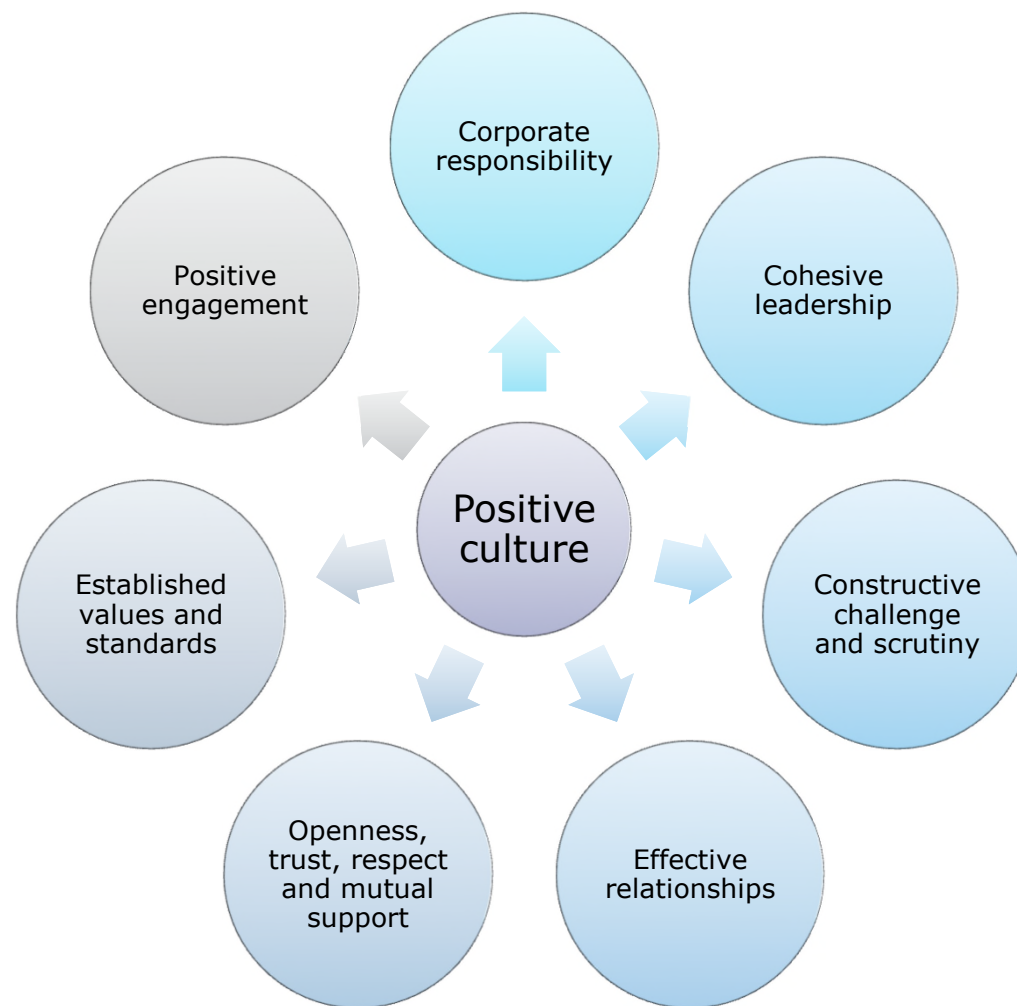
Governance and transparency (continued)

Leadership (continued)

Culture – Update and Conclusion: It is difficult to conclude on the culture within an organisation, given its nebulous and subjective nature. However, there are a number of issues which have occurred in 2020/21 which have suggested that the culture within the Commission is not a positive one:

- The CEO feeling the need for backing from the Sponsor Division against what he perceived to be Board opposition;
- The CEO suggesting that communications should be deleted;
- The CEO not informing the Board of his views on matters in a timely manner due to anticipated opposition and assumptions that the Board would consider his views controversial;
- The Sponsor Division suggesting the CEO ignore the Board's opposition and proceed as he sees fit;
- The increasingly tense e-mail communication between the Board and the CEO on his secondment, plans for using additional funding from the Scottish Government, and plans for restructuring the SMT;
- Occasionally disrespectful references to the CEO and Commissioners in e-mail communications and meetings;
- The Board arranging ad-hoc, unminuted, unofficial, private meetings without the awareness of the Commission to make Board decisions, against the Standing Orders;
- The Board failing to inform the CEO that it has no confidence in him; the Sponsor Division doing so without first checking with the Board; the CEO not making the Board aware that he is aware of the letter sent; and the Scottish Minister failing to respond to the letter;
- The SMT noting that they were collectively concerned by the level of tension between the CEO, management and the Board as far back as August 2020; and
- An inappropriately tense private Board meeting in February 2021.

The above are symptoms of an unhealthy culture. The root causes of this are, in our view, the issues identified elsewhere in our audit report. Addressing those issues by implementing the recommendations set out in our Action Plan on pages 43 – 47 will hopefully address these symptoms and ensure that the Commission has a positive culture.



Source: On Board, A guide for members of statutory boards

Governance and transparency (continued)

Governance

2019/20 Conclusion: From review of the Board and Committee self-assessments, we did not identify any areas of concern.

As the COVID-19 pandemic took hold, the Commissioners undertook a far more active role in operational matters (such as responding to phone calls and dealing with physical mail which was sent to the Commission). While this approach was not appropriate in the long term, we were satisfied that in the circumstances it was an appropriate response and evidenced a positive team culture.

From April to June 2020, the CEO was seconded to the Scottish Government to help with the COVID-19 response and during this time there was a noticeable increase in the level of challenge by the Board of the SMT.

2020/21 Update and Conclusions: In assessing the effectiveness of governance within the Commission in 2020/21, we have considered the following:

1. The employment structure of the Commission;
2. Clarity of governance arrangements;
3. The strategic and operational split; and
4. The effectiveness of scrutiny and challenge.

Employment structure of the Commission – Update: The Commission can source its staff either through seconding staff from the Scottish Government, or recruiting its own staff. The Commission has always chosen to do the former. Through our work, we became aware of an apparent lack of awareness amongst Commissioners that the Commission could recruit staff in their own right. This is despite the fact that this is clearly set out in the Commission’s establishing legislation and is explicitly set out in the Commission’s Workforce Plan, which has been reviewed and approved by the Commissioners recently.

We have considered whether the Commission’s situation is the norm in Scotland. We have reviewed the establishing legislation of other NDPBs in Scotland, and noted that in every instance where the legislation specifically comments on the matter, that the Board appoints the CEO with approval of the Scottish Minister and the Board appoints their own staff.

This position is in line with what On Board guidance considers to be the norm. The Scottish Government’s own ‘Public bodies in Scotland: guide’ notes that Executive NDPBs (of which the Commission is one) “employ their own staff [...] and are accountable to a Board”. This contrasts with the Commission, whereby the legislation notes that the Scottish Minister appoints the CEO, in consultation with the Convener. Similarly, the Scottish Minister has the explicit power to provide staff to the Commission if the Commission considers this appropriate. The Commission is the only NDPB in Scotland where we can see that this is the case.

The Model Framework Document for Executive NDPBs in Scotland notes that “The Chair, in consultation with the Board as a whole, is also responsible for undertaking an annual appraisals of the performance of the Chief Executive.” This responsibility is not included in the Commission’s Framework Document, presumably because the Chief Executive is a Scottish Government (rather than Commission) employee. Of the 25 NDPBs in Scotland for which we could locate Framework Documents, the Commission’s Framework Document is the only one which did not include this responsibility. In the ‘job description’ of the Commissioners and Convener, there is no responsibility for holding the CEO accountable for their performance. Despite this, in the Commission’s Framework Document, it notes that the CEO is “accountable to the Board”.

Employment structure of the Commission – Conclusion: The responsibility for appointing the CEO of the Commission, the possibility of the Scottish Government directly appointing Commission staff, and the Commission’s Framework Document are all an anomaly in comparison to other NDPBs in Scotland.

The employment structure operated – specifically related to the senior leadership of the organisation – within the Crofting Commission is negatively impacting on the effectiveness of governance and it is clear that the Commission’s structures are not in line with best practice across similar bodies. The Board, in consultation with staff and management, should formally agree the Commission’s prospective approach to the appointment of employees in terms of appointing their own employees or using Scottish Government staff. **(Recommendation 3.2)**

Governance and transparency (continued)

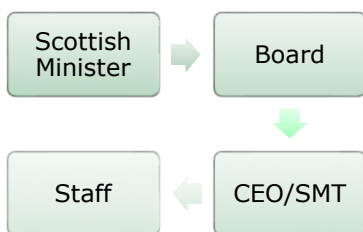
Governance (continued)

Employment structure of the Commission – Conclusion (continued): It is illogical that the Commission’s Framework Document notes that the CEO of the Commission is “accountable to the Board” when that Board has no formal role to play in the appraisal of the CEO, and holding the CEO accountable is not in the Commission’s other governance documents, the legislation or the job descriptions of the Board. The Commission’s Framework Document should be revised to explicitly set out that, where the CEO is an employee of the Scottish Government rather than the Commission, the Board is jointly responsible with the Sponsor Division for performing an appraisal of the CEO. **(Recommendation 3.1)**

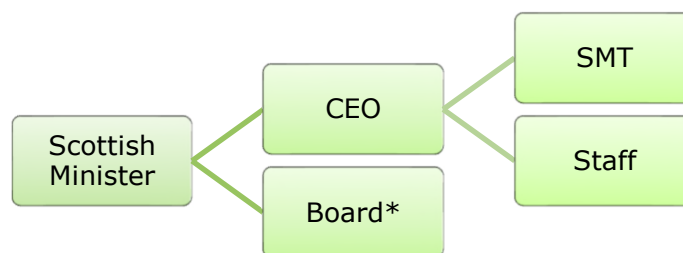
We noted earlier that it is unclear what impact a ‘vote of no confidence’ by the Board in the CEO has in practice, given that the Board is not the employer of the CEO, in contrast to other NDPBs in Scotland. This is clearly an unsatisfactory situation and there needs to be much greater clarity on such key matters. As far as the Crofting Commission is concerned, the CEO is accountable to the Board in name only – there are no formal levers that the Board has to effect this accountability in practice. The Board, in conjunction with management and the Sponsor Division, should ensure there is an agreed protocol for ensuring the Board has the necessary levers to effect accountability of the CEO where the CEO is an employee of the Scottish Government. **(Recommendation 3.3)**

There is a general perception amongst Commissioners that as a majority of them are elected, that they are elected to represent crofters. This may be the perception amongst crofters, too, although evidence on this is anecdotal. On Board guidance sets out that regardless of whether Board members are appointed or elected, they are expected to comply with the guidance, including the operational and strategic split. The National Development Plan for Crofting sets out that “elected Commissioners are not there to represent individual constituents’ interests but to bring their knowledge of local crofting issues from their respective constituency areas and use this knowledge to better inform Board considerations of regulatory matters.” The Commission should consider how to address the expectation gap between what the role of the elected Commissioners is and what it is perceived to be, in advance of elections in 2022. **(Recommendation 3.11)**

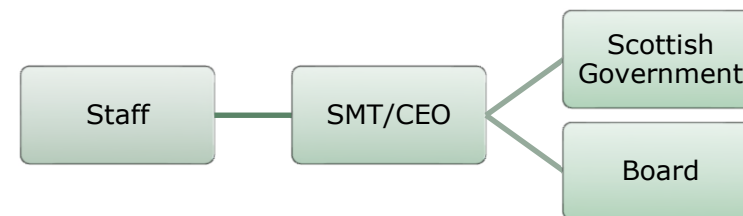
Standard appointment process



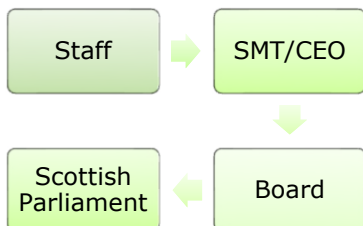
Commission’s appointment process



Commission’s accountability structure



Standard accountability structure



*Note that the Scottish Minister appoints 3 Commissioners, with 6 Commissioners elected by electors from the crofting counties.

Governance and transparency (continued)

Governance (continued)

Clarity of governance arrangements – Update: The Commission does not have an overriding ‘Code of Corporate Governance’ or equivalent. It has enacting legislation, the Framework Document, general Scottish Government guidance and Terms of Reference for the Committee. These set out, in general terms, the governance arrangements in force in the Commission.

The Scottish Minister can give directions to the Commission setting out their priorities, which the Commission must follow. Other than the Accounts Direction and the conditions attached to the Grant in Aid, we are not aware of directions issued to the Commission. From review of the minutes of meetings between the Commission and Sponsor Division, it is clear that informal priorities are set out and pressure put on the Commission to implement these, rather than following the formal directions route.

Throughout 2020/21, there is evidence of the CEO asking the Sponsor Division for advice on the application of the governance arrangements in the Commission, primarily when he and the Board disagreed on their respective roles and responsibilities. These disputes have also centred on the CEO’s dual responsibilities as the Commission’s Chief Executive as well as being an Accountable Officer.

There has also been apparent confusion over what the Board needs to be informed about, and when. Examples we have been provided where this confusion has arisen include the CEO’s secondment to the Scottish Government, proposed changes to the structure of the SMT, the potential receipt of significant additional funding from the Scottish Government (with conditions) and the application of that funding.

We note that in relation to the additional funding from the Scottish Government, the CEO explained on the day the announcement was made that he was not allowed to consult SMT or the Commissioners and so previous discussions were in ‘hypotheticals’ – although there is no documentary evidence of why this is the case.

Clarity of governance arrangements – Conclusion: The Commission’s governance documents, their enacting legislation and general Scottish Government guidance are sufficiently clear on how governance arrangements within the Commission should work. Where there is any ambiguity, this is, in our view, perceived rather than actual. This perceived ambiguity has arisen primarily when dealing with matters where the Board, management and Sponsor Division have declared opposing views.

It is not possible nor should the Commission attempt to formally agree a protocol to deal with every eventuality that may arise in terms of governance. The arrangements have to have a level of flexibility and function to a degree on the knowledge and strength of relationships between key parties in interpreting the governance framework in place. Where there is a potentially ambiguous matter to be dealt with, the clear consideration is one of reasonableness by reference to the guidance and framework in place. We can apply this to the situations that have arisen in 2020/21, as shown on page 29. **(Recommendations 3.4 and 3.6)**

In each instance, when we take a step back and consider whether it would have been ‘reasonable’ to come to a different conclusion, we do not think it would have been. Consequently, we are of the view that the perceived ambiguities in the governance arrangements which arose in 2020/21 arose not because the relevant parties considered what they *should* have done, but what they *could* do by using these perceived ambiguities or by in some cases simply ignoring the arrangements as they stood. In each case where this was the case, there was a benefit to the party using the perceived ambiguities or ignoring the arrangements – namely, it allowed that party to continue to pursue their preferred outcome despite actual or anticipated opposition by another party. **(Recommendation 3.5)**

In our interviews, such behaviours were justified by the relevant parties as being necessary because other parties were failing to properly observe their roles. For clarity, one party failing to fulfil their role in the expected manner does not justify another party actively doing the same. **(Recommendation 3.7)**

Governance and transparency (continued)

Governance (continued)

Perceived ambiguities and the reasonable course of action

1. Would it have been reasonable for the Board to have been made aware, in a private meeting, of the potential for the possibility of roles in the Western Isles being tied to additional funding following a meeting between the Commission and Sponsor Division in February 2020? Yes. Dealing with the matter in a private meeting would have respected the Scottish Government's wish for the matter to remain out of the public domain for the time being, while respecting the Board's right to information about increasingly likely changes in the Commission's remit and the Board's role in approving novel expenditure, as set out in On Board guidance.
2. Would it have been reasonable for the Board to be expected to formally agree to the secondment of the CEO to another body prior to that secondment taking place? Yes. We can think of no other situation where a person could accept a secondment from their substantive post without the approval of the person or body to which they are theoretically accountable per their governing documents.
3. Would it have been reasonable for the Scottish Government to ask the Board to formally agree to review an expanded role in grazings before this was included in the National Development Plan for Crofting? Yes. Publishing the plan on the same date that a paper asking for Board approval of that expanded role rendered that request redundant.
4. Is it reasonable for the CEO and SMT to make staffing decisions, including the grades of staff, without seeking the views of the Board? Yes. Individual recruitment and grading are self-evidently operational matters that do not require Board approval.
5. Is it reasonable for the SMT to expect to conduct operational management without interference by the Board? Yes. This is clearly set out in numerous guidance documents and it follows from this that members of the Board should not attend and take part in operational decision making meetings or dictate what is discussed at those meetings.
6. Is it reasonable for the Board to expect to be asked to approve restructuring of the SMT? Yes. This is evident from an understanding of the role of the Board, which includes ensuring there is an effective management team in place. It is also standard practice as evidenced in various Best Value Assurance Reports, and through restructurings across other central government, health and local government bodies. This focuses on the structure of SMT, not the individuals who fill those roles or the grades they are at. The reason for this is relatively obvious: the structure of SMT is pivotal to the delivery of the Board's priorities and the Board needs to be satisfied that the structure is appropriately designed to achieve that.
7. Is it reasonable for the Board to take decisions in unofficial, private meetings and effect those decisions? No. It is clearly set out in legislation and guidance that all decisions must be taken in accordance with the Commission's Standing Orders.
8. Is it reasonable for the Scottish Minister to not reply to a letter expressing no confidence in the CEO by the Board? No. Regardless of the impact of such a letter in practice, the Scottish Minister should have responded to the concerns raised, and the Sponsor Division should have effected good communication with the Convener on the matter, rather than covertly passing the matters raised in the letter to the CEO before the Scottish Minister responded to the Board.

Governance and transparency (continued)

Governance (continued)

The strategic and operational split – Update: From our interviews, there is a general view amongst management that the Board does not respect their 'strategic' role and the 'operational' role of management. In discussions with the Committee and Board, there was an acceptance that in 2020/21 in particular, the Board had become more heavily involved in operational matters. This initially occurred in response to COVID-19, with Commissioners responding to phone calls and dealing with physical mail in the initial 'crisis' phase. In our audit report for 2019/20, we concluded that in the initial response to the COVID-19 pandemic this was understandable, but was not appropriate in the longer-term. This warning has not been heeded.

From our review of minutes and attendance at meetings, we have observed the Board spending a large amount of time discussing individual grades that new staff positions should be at within the organisation – including for junior positions. Other examples of moving into the 'operational' space are set out elsewhere in our audit report, for example the Convener's attendance at SMT meetings and performing a 'staff survey'.

In 2020/21, there were two new and key strategic matters for the Board to consider: firstly, how to effect the new development role of the Commission, and secondly, how to align the Commission with the aims of the National Development Plan for Crofting. In the former, the ability of the Board to set a strategic vision was impacted by informal discussions between the Sponsor Division and management which were never communicated to the Board prior to the Scottish Government taking a decision and announcing that the Board would implement it. Similarly, in publishing the National Development Plan for Crofting which included a commitment that the Crofting Commission would review expanding its role in grazings, the ability of the Board to set a strategic vision in that area was hamstrung.

In September 2020, management sought training from the Public Bodies Unit of the Scottish Government for management and the Board on the strategic and operational split in roles. This training was ultimately not pursued because the Public Bodies Unit suggested that the training be delivered by the Sponsor Division, and management felt that the Board would not engage with training provided by them. Management reached this decision without consulting the Board, and the training was not pursued despite the clear accepted need for it.

The strategic and operational split – Conclusion: The Board does not respect the boundaries of its role, increasingly actively venturing into matters which it knows to be operational. When this occurs, other Commissioners often do not challenge the behaviour, nor, in many cases, do management. This enables the deliberate blurring of the roles.

The Board should not be focussing on the individual grades that staff should be recruited at. That decision should be made by management following a job evaluation exercise. The Board's views on the workforce should be captured in the Workforce Plan. However, the extent to which the Board engages with this more 'high level' view of the workforce is questionable given that Commissioners were apparently unaware that the Commission could recruit staff in its own right, despite that being made clear in the introduction to the Workforce Plan which the Board has recently approved.

On matters which are strategic in nature, management should ensure that it does not commit or be seen to commit in any way in discussions with the Sponsor Division on matters which the Board should be making a final decision on. Doing so undermines the ability of the Board to provide the strategic role it is meant to provide as it can fundamentally alter the choices which the Board can realistically choose from.

The Commission should arrange training for both the Board and SMT, specifically covering the strategic and operational split in public sector organisations. **(Recommendation 3.8)**

Governance and transparency (continued)

Governance (continued)

Effectiveness of scrutiny and challenge – Update:
Our conclusions are informed by earlier discussions on:

- The Board's focus on operational matters (page 30);
- The weaknesses identified in the MTFP and Workforce Plan (page 11 - 13);
- The various deficiencies identified in the CEO's and Convener's performance (page 22 - 24);
- The training provided to the Board (page 23);
- The tense nature of communications between the Board and CEO (page 22);
- The Board and management both failing to adhere to their roles and failing to appropriately challenge when these are blurred (page 28);
- Perceived ambiguities in the governance arrangements (page 29); and
- Changes throughout the year due to the COVID-19 pandemic.

The Committee and Board undertake self-assessments each year. In both 2019/20 and 2020/21, these self-assessments were largely positive. We do note, however, that the 'average time to complete' of the Board self-assessment – which is 47 questions long – is 4 minutes and 26 seconds, which suggests that less than 6 seconds is spent considering each question. Significant declines and improvements in scores from this self-assessment are shown across adjacent to the red and green arrows, respectively.

We also noted that there was unanimous agreement – either partial or strong – within the self-assessment that "the performance of Board members is captured within a formal annual review process". This is despite the fact that as set out earlier, we know this is not the case and has not been for a number of years as has been flagged in numerous audit reports.

Crofting Commission Board self-assessment: Significant movements 2019/20 – 2020/21



- The Board and CEO understand their respective roles
- Management regularly report to the Board on key outcomes and targets
- The Board gets early-warning signals on problems ahead
- The Board receives full reports whenever the Convener or CEO meets with Ministers and other key stakeholders
- Belief that the Board was made aware of all substantial problems in a timely manner
- Perception of the relationship between the Convener and CEO



- The Board knows when to stay out of the day-to-day running of the Commission
- The Board monitors the political environment for potential changes to its remit

The Commission has the Board and the Committee, with no other committees. The Board does not challenge performance information, with minutes from throughout 2020/21 noting that there were no comments or questions on the performance information presented. Information on KPIs is presented to the Committee, despite this not being within the Committee's Terms of Reference.

We are aware that the Commission is currently making significant changes to its ICT systems. Despite this, there has been no scheduled reporting to the Committee or Board on progress with upgrades to the system. This has only been captured in the 'oral' updates provided by SMT to the Board.

Governance and transparency (continued)

Governance (continued)

Effectiveness of scrutiny and challenge – Conclusion: While the Board has self-assessment arrangements in place, we place limited reliance on these. This is for two primary reasons:

1. The average respondent spent less than 6 seconds on each question, which suggests that the self-assessment is not considered in detail; and
2. There was unanimous agreement that there is a formal annual review process for Board members, despite there not being one as highlighted earlier in this report and in our audit reports in both 2018/19 and 2019/20.

Despite placing this limited reliance on the self-assessment, it is noteworthy that there is an awareness amongst the Board of numerous issues highlighted throughout our report – a lack of understanding of roles, communication between management, the Sponsor Division and the Board. The views expressed that “strategy is always the first to suffer” and that matters are becoming “increasingly dysfunctional” are also noteworthy given the conclusions of our work. Given the timing of the self-assessments and when our work was carried out, an action plan to address the issues identified has not yet been prepared.

The effectiveness of scrutiny and challenge by the Board is inconsistent. While there may be a lot of scrutiny in certain areas – such as individual staff grades – this is not effective scrutiny or challenge because it diverts the Board’s attention from matters that it should be focusing on. It is important not to confuse ‘a lot’ of scrutiny with ‘effective’ scrutiny.

Weaknesses in the scrutiny and challenge provided by the Board is evident by the weaknesses we have identified in the MTFP and Workforce Plan, both of which the Board accepted. Despite these weaknesses – for example, the Board identifying significant weaknesses in succession planning – it has nonetheless approved the documents when presented with them.

The fact that the Board was apparently unaware of a key matter which is explicitly set out in the Workforce Plan also supports the conclusion that scrutiny of key strategic documents is not as robust as it should be. In our view, this is because the Board chooses instead to spend its time challenging management on operational matters, with a particularly unhealthy focus on staff grades.

We would also question the effectiveness of challenge by the Board. While there is certainly evidence of challenge, it is again important to differentiate between ‘a lot’ of and ‘effective’ challenge. The tenseness and style of challenge in 2020/21 has undermined its effectiveness, instead pitting the matter as one of the Board *versus* management.

As explained on page 24, there have been no appraisals carried out by the Convener and the Board has accepted this despite numerous concerns raised both by audit and management, and despite this being a key role of the Convener, the Board has not addressed this. This suggests that the Board is inconsistent in how it views management and the importance of them adhering to their roles against how it views the importance of the Board and Convener adhering to theirs.

Over the past decade, there have been numerous reports by auditors of public bodies in Scotland on governance of digital projects. This has also included numerous Section 22 reports issued which identify the lack of Board oversight as a key issue. This was also picked up in the ‘lessons learned’ guidance issued by Audit Scotland in 2017. The fact that, despite this, the Commission is currently undertaking a significant update to its ICT systems and that there have been no written reports on this to the Committee or Board suggests there is ineffective scrutiny and challenge and that governance arrangements are not operating effectively.

The governance structure within the Commission should be reviewed to ensure that the Committee is considering matters in line with its Terms of Reference, that the Board considers appropriate matters and that there is a structure in place to provide appropriate scrutiny of performance. **(Recommendation 3.9)**

Addressing the above issues and implementing the wider recommendations throughout our audit report will help to ensure that the Board is consistent in applying effective scrutiny and challenge of the Commission, which is in turn pivotal to ensuring that the Commission benefits from effective governance arrangements.

Governance and transparency (continued)

Openness and transparency

2019/20 Conclusion: We were satisfied that the Commission continued to see openness and transparency as a journey, and had the ability and desire to seek continuous improvement in this area.

2020/21 Update and Conclusions: In assessing the Commission's culture of openness and structures to ensure transparency, we have considered:

1. Holding public meetings;
2. Information provided to the Board;
3. Risk registers;
4. Case progression statistics; and
5. Board updates and actions.



Source: Openness and transparency, Audit Scotland

Holding public meetings – Update:

In response to the COVID-19 pandemic, the Board moved to holding online meetings. In order to ensure that it remained possible for the public to access Board meetings, the Commission included information on its website on how the public can 'sit in' on Board meetings. Anecdotally, attendance at Board meetings by the public and staff within the Commission has increased in 2020/21 compared to previous years.

In 2020/21, the Commission also began publishing all Board papers on its website, in addition to the minutes of meetings which it had published previously.

We are aware of the Board having 'informal' meetings throughout 2020/21. Management advised the Board that such meetings should be organised by the Commissioners themselves, without an agenda and without notes, otherwise they felt it becomes difficult to explain to the public that they are not meeting as a Board. When a member of management attended one of these 'informal' meetings, they followed up with a note they had taken of the meeting, including apparent decisions which had essentially been taken but which they noted need to be ratified at a public Board meeting later. Another member of management noted that it was not appropriate for officers to be taking a note, and that officers should have no formal role in the meetings.

Holding public meetings – Conclusion:

We are pleased to note that the Commission has seized the opportunities to improve access to Board meetings as a result of the COVID-19 pandemic. The improved accessibility of the Board meetings, in addition to the publishing of Board papers on the Commission's website in advance of meetings, clearly demonstrates a focus on improving openness and transparency in how Board meetings are conducted.

The practice of the Board holding 'informal' meetings which occurred regularly in 2020/21 is not inherently unusual or against good practice. However, the fact that there has been a lack of clarity over the purpose of these meetings and how they should be operated undermines openness and transparency. It is also inappropriate that decisions essentially are taken at these informal meetings and simply "ratified" at public meetings later, as it suggests that the scrutiny and challenge by the Board is occurring in informal, private settings rather than the public meetings.

The Standing Orders should clearly set out how informal, private meetings of the Board can be called, how they should be conducted, any records which should be kept and emphasise the importance of the Board not using these meetings to in essence take Board decisions. **(Recommendation 4.10)**

Governance and transparency (continued)

Openness and transparency (continued)

Information provided to the Board – Update: Between September and December 2020, there were 23 meetings of the SMT. Across these 23 meetings, the SMT considered – per their agendas – a total of 29 different topics. Of these 29 topics, 13 were subsequently considered by either the Committee or Board. Of the 16 topics that were not, we are satisfied that these were largely operational matters which were appropriate to not report to the Committee or Board. However, there are a number of instances where this is less clear, for example:

1. Considering the 'new normal' for working, including the use (or otherwise) of Great Glen House;
2. Considering the Internal Communications Strategy;
3. Sponsor Division meeting preparation and debrief;
4. Staff attendance/sickness absence;
5. Review of Assurance Framework; and
6. Business cases.

In the period from October 2020 - March 2021, the Committee and Board considered – per their agendas – a total of 23 and 21 different topics each. Of the 23 topics which were considered by the Committee, 11 of these were not considered by the SMT before presentation to the Committee. For the Board, 8 of 21 were not considered by the SMT before presentation to the Board. The items which were not considered on an SMT agenda prior to presentation to the Committee and Board include:

1. Scheme of Financial Delegation;
2. Anti-Fraud and Whistleblowing Policies;
3. Business Continuity Plan;
4. Medium-Term Financial Plan;
5. Key Performance Indicators;
6. Complaints Handling Report;
7. Accounting Policies;
8. Annual Improvement Plan;
9. Self-Assessment;
10. Updates from Heads of Teams;
11. Crofting and Climate Change;
12. National Development Plan;
13. RALUT Priorities;
14. Next steps on grazings; and
15. Cyber Resilience.

Information provided to the Board – Conclusion: From our review of the items considered by the SMT, we are generally satisfied that information considered by the SMT is appropriately presented to the Committee or Board for consideration. However, there are items which the SMT has considered which should have subsequently been considered by the Committee or the Board which were not – this may be due to timing, or it may be due to a misunderstanding of what needs to be considered at a Committee or Board level. Going forward, the SMT should explicitly consider at their meetings whether each item on their agenda should be reported to the Committee or Board and if it should, when that expects to be done. **(Recommendation 4.9)**

The SMT meetings focus very heavily on low-level operational matters. It is not good practice that key strategic documents that are presented to the Committee and Board – such as policies on fraud, whistleblowing, medium-term financial planning, key performance indicators, etc. – are not checked by the SMT prior to their presentation to the Committee or Board. It is unclear from the structures in place how the SMT are satisfied that items that are presented to the Committee or Board are complete and contain sufficient information to enable the Committee and Board to discharge their duties if these key documents are not being considered by the SMT prior to their presentation. The SMT should review the process through which papers are submitted to the Committee and Board to ensure there is an appropriate review prior to the presentation. **(Recommendation 4.1)**

Governance and transparency (continued)

Openness and transparency (continued)

Risk Registers – Update: The Crofting Commission has two risk registers – the Operational Risk Register is presented to each Committee meeting, with the Strategic Risk Register presented to each Board meeting.

In 2020/21, there were five strategic risks in place throughout the year, with an additional three added as a result of COVID-19 following the May 2020 Board meeting. Two risks, linked to COVID-19, were marked as 'high' following the May meeting. Over the same period, there were a total of 26 operational risks – two dropped off in the year, three were added. Throughout the year, the number of 'high' risks ranged from three to six.

Risk Registers – Conclusion: The Commission's strategic risks are relatively static – the new risks in the year were due to COVID-19. It is unclear how much consideration the Board give to the Strategic Risk Register, as Board agendas list the matter as "For Info" rather than for discussion, and there is no covering paper. It is also unclear how much challenge the SMT demonstrate over the Strategic Risk Register. For example, it was not considered at an SMT meeting in advance of each Board meeting. None of the issues we have identified in our work were captured by the Strategic Risk Register. **(Recommendations 4.2 and 4.8)**

As with the Strategic Risk Register, risks and associated responses on the Operational Risk Register are relatively static. Some risks are very detailed and others are high level. As with the Strategic Risk Register, there is no documented evidence that the Operational Risk Register is always considered by the SMT prior to the Committee meetings. Management confirmed that the risk registers are reviewed as standard practice at the SMT before the Committee/Board, just that there is not always documentation of this.

Despite some of the relatively small-scale risks included on the Operational Risk Register, some of the larger issues of which SMT, Committee and Board are aware – such as training, performance management, perceived ambiguities of governance arrangements, relationships at a senior level, the structure of the SMT, etc. – had not been captured by the Operational or Strategic Risk Register.

This suggests that the risk registers are seen as a 'tick box' exercise rather than one which is actually capturing the risks facing the organisation, either at an operational or a strategic level, and what the Commission is doing to address those risks. This approach also undermines the Commission's approach to openness and transparency because the information which is discussed in public and which is publicly available is not reflective of the risks which both management and the Board know to be the real risks facing the organisation. A good benchmark to consider is 'what keeps management and the Board awake at night' – that is what should make it into the Operational and Strategic Risk Registers, respectively. **(Recommendation 4.3)**

Case progression statistics – Update: A large proportion of the Commission's workload is reviewing applications of various types from crofters and their representatives. On a monthly basis, the Commissioners are e-mailed statistics on casework – how many applications have been received, the type of application, the applications discharged and the outstanding workload. Despite being associated with one of the outcomes in the Commission's Corporate Plan, this information is not captured in any reporting presented to Committee or Board meetings.

The provision of this information was initiated following concerns by Commissioners about the level of performance information that they receive. A report on KPIs is included on each Committee agenda, which notes that it then goes to the Board – although Board minutes throughout 2020/21 noted that there were no questions or comments in this area.

Case progression statistics – Conclusion: The information provided to the full Board on a monthly basis regarding performance against the Commission's caseload should be captured in Board papers and presented as a report to ensure there is appropriate scrutiny, and that matters are dealt with in an open and transparent manner.

(Recommendation 4.7)

The concerns raised by the Board about the lack of performance information received indicates that there is a weakness in the KPIs if reporting against those does not provide the Committee or Board with sufficient information on performance. The Commission should review its key performance indicators to ensure they provide performance information not only against the Corporate Plan outcomes, but also against key operational performance matters which may have a strategic impact. **(Recommendation 4.4)**

Governance and transparency (continued)

Openness and transparency (continued)

Board updates and actions – Update: A significant proportion of Board agenda items are “oral” rather than papers. In 2020/21, 47% of all Board agenda items were noted as being “oral”. This includes updates from the Commissioners, reports from the Heads of Teams, reports from Short-Term Working Groups, and discussions on key strategic matters such as the National Development Plan.

This contrasts starkly with the Committee, whereby there are minimal items on the agenda without an accompanying paper. We also noted that the Board does not consider and monitor an ‘action log’ in the same way that the Committee does. We have been provided with evidence that such an action log is prepared by management following Board meetings, it is simply not reviewed or monitored by the Board.

Board updates and actions – Conclusion: Having almost half of the items considered by the Board as being ‘oral’ updates can serve to undermine the openness and transparency of decision making and scrutiny within the Commission. It also risks the Board receiving insufficient or incorrect information, or either management or the Board failing to properly consider and adhere to their respective roles. **(Recommendation 4.6)**

The fact that the action log of points arising from Board meetings is not approved by the Board nor is progress on actions monitored by them is also unusual, and undermines the effectiveness of governance as points raised by the Board could be lost and not actioned. **(Recommendation 4.5)**



Source: Openness and transparency, Audit Scotland

Governance and transparency (continued)

Relationships

2019/20 Conclusion: The secondment of the CEO from the Commission to the Scottish Government in April 2020 strained relationships between the Board, SMT and Sponsor Division. We accepted that it was an unprecedented situation and that there was a need to make important and difficult decisions at short notice. The Commission should ensure that lessons are learned to improve communication with the Board, in addition to improving understanding of and respect for the roles and responsibilities of the CEO, Board and Sponsor Division.

2020/21 Update and Conclusions: The relationship between the SMT, CEO and Board has been considered throughout our audit report. There is evidence, as discussed earlier, of an unhealthy culture, inappropriate behaviours, lack of respect and inappropriately tense communications. This has resulted in decision making occurring outwith the prescribed process, a breakdown in openness, and ineffective leadership, scrutiny and challenge. The other key relationship to consider is between the Commission and the Scottish Government, which we set out in this section of our report.

Relationship with the Scottish Government – Update: The Commission’s first point of contact with the Scottish Government is the Sponsor Division. Per the Framework Document, which in turn refers to the ‘Strategic Engagement between the Scottish Government and Scotland’s NDPBs’ guide, the primary role of the Sponsor Division is to provide advice, help and support to the Commission.

‘On Board’ guidance notes, “mutual investment in a constructive relationship between the Chair and the sponsor directorate is important to supporting the effective performance and delivery of the public body”. Despite this, in the Sponsor Division meeting with SMT in September 2020 – at which no Commissioners attended – the minutes note that it was “agreed that going forward it may be beneficial for attendance to be limited to SMT, and SMT can then report back to the Board.” At a Sponsor Division meeting with the Commission (attended by the Convener, CEO and members of SMT), there was discussion on various short-term working groups set up by the Commission. An invite was extended to the Sponsor Division to attend these – and they accepted this invite. This, and the Sponsor Division’s current practice of attending Board meetings, goes against ‘On Board’ guidance, which notes that the Sponsor Division “will not normally attend Board meetings of the public body”.

The Framework Document notes that the Sponsor Division should carry out ‘proportionate monitoring of the Crofting Commission’s activities’. In 2020/21, there were 5 scheduled meetings between the Commission and the Sponsor Division, compared to 7 scheduled meetings of the Board.

At these meetings, a large number of items were discussed. This included information which had not necessarily been provided to the Board – for example, updates on an ‘Improvement Project’ (which primarily deals with the upgrades to the Commission’s ICT systems) which, as discussed on page 31, were not presented to the Board. There has also been discussion of matters which are highly operational – such as recruitment to individual positions and training being provided to individual staff. The level of discussion on workload pressures at these meetings with the Sponsor Division appears to be greater than what is discussed with the Board, based on a review of the minutes of their meetings.

From review of the minutes of Sponsor Division meetings with the Commission, there appears to have been more discussion of operational performance of the Commission (in terms of caseload) at those meetings than with the Board. Although this is not evident from a review of the relevant minutes, management have noted that in practice, there is more discussion on caseload with the Board than the Sponsor Division.

At these meetings, we note an acceptance by the Commission that the statistics are “not necessarily accurate and further work is needed to check them”, which raises concerns about whether they should be provided at all, either to the Sponsor Division or to the Board.

At a meeting of the Sponsor Division and Commission, there was discussion about Commissioners taking over operational roles within the Commission. There is no evidence that the Sponsor Division challenged this as being inappropriate or an area to be monitored closely.

Governance and transparency (continued)

Relationships (continued)

Relationship with the Scottish Government – Update (continued): One of the key functions of the Sponsor Division is to facilitate strong relationships between the NDPB and the Scottish Government, characterised by openness, trust, respect and mutual support. It is difficult to see how the Sponsor Division aimed to achieve this without any member of the Board attending their meetings. We also note that the Sponsor Division advised the CEO to proceed as he saw fit in a matter which it knew there was a strong dispute with the Board. In e-mail communication between the CEO and the Sponsor Division, there have been references to the CEO being forbidden from sharing information. The CEO has also asked for Sponsor Division backing in driving change through despite Board opposition, and the Sponsor Division did not challenge this approach.

With regards to relationships, effective engagement is key. It is not clear how consistently this has been implemented in practice. For example, the conditions attached to the additional funding for the Crofting Commission were not flagged in advance to the Board. The Sponsor Division placed pressure on the Commission in their meetings to extend the land matching service, pressuring management into tacit agreement on a matter that should have properly been considered by the Board before any such agreement could be given.

Relationship with the Scottish Government – Conclusion: The relationship between the Commission and the Sponsor Division is not a healthy relationship. The approach to sponsoring undertaken by the Sponsor Division – for example, attending Board meetings and agreeing to attend short-term working group meetings – goes against published guidance. **(Recommendation 5.4)**

The Sponsor Division appear to view their relationship of consequence as being the relationship with SMT, whereas the guidance notes that investment in the relationship with the Convener is key – it is illogical therefore to suggest that the Convener ought not to attend meetings with the Sponsor Division. **(Recommendations 5.1 and 5.2)**

We would question whether the monitoring by the Sponsor Division of the Commission’s activities is proportionate. Our view is underpinned by minutes of meetings of the Sponsor Division suggesting the Sponsor Division more information than the Board about key matters – such as progress on implementing ICT upgrades (although management believe that in practice, this is not the case). We question whether the level of detail discussed – individual staffing decisions, caseloads, and workforce pressures – is proportionate. **(Recommendation 5.3)**

At various points, the Sponsor Division was privy to or involved in situations where poor practice was being displayed by the Commission. For example, the language used in communications from the CEO, or the Board admitting to stepping in to operational roles. These issues were indicative of wider problems and not challenged by the Sponsor Division. It is unclear how the Sponsor Division met its responsibility to address significant problems arising in the Commission given it did not challenge the signs of these problems.

In terms of the letter sent by the Board to the Scottish Minister expressing no confidence in the CEO (page 22), we accept that the responsibility for providing a response to this lays with the Scottish Minister. It is clear that a timely response to a letter of such magnitude is necessary and that no response being provided almost half a year later is not appropriate. However, the Sponsor Division decided to share the outcome of the vote of no confidence with the CEO, without first checking with the Board. The Sponsor Division was clearly aware that the matter was not for sharing, because it provided details from it to the CEO in confidence. Neither the Sponsor Division nor the CEO ever informed the Board of the fact that the CEO had been made aware of the existence of the letter.

Each of the above issues indicates, collectively, that the relationship between the Sponsor Division and the CEO is too close, and the relationship between the Sponsor Division and the Board (through the Convener) is not close enough. The issues we have identified through our work demonstrate that the Sponsor Division has not effectively fulfilled its responsibilities to nurture effective relationships between the Commission and the Scottish Government.

Governance and transparency (continued)

Deloitte view

Deloitte view – Governance and transparency

There is insufficient evidence to demonstrate that the CEO has provided appropriate and effective leadership to the Commission throughout the year. This is for the reasons set out on page 22. Further, we have serious concerns as to the leadership provided by the Convener, in his role on the Board. This is for the reasons set out on page 24.

Given the issues identified with the structure of the SMT, ineffective performance management, insufficient assessment of development needs and inadequate provision of training, we cannot conclude that the Commission has appropriate and effective leadership in place. This is not a comment on any individuals within the SMT, rather the structure and processes in place.

The issues identified throughout our work are indicative of an unhealthy culture operating within the Commission. There has been a breakdown in the key relationships between the Board, CEO and SMT. In addition, the relationship between the Commission and the Scottish Government has deteriorated significantly during the year.

In our view, the Scottish Government and Sponsor Division, the Board, the Convener, the CEO and the SMT all failed to deliver their functions effectively in the year, which has contributed to a rapid escalation in the difficulties facing the Commission. Every failure of governance and leadership we identified by one party could and should have been prevented by other parties within the Commission's governance framework. Instead, these failures were enabled by other parties and in some cases actively encouraged. This resulted in others coming to the – incorrect – view that the correct course of action for them would also be to deviate from their roles to counteract others doing the same. Consequently, the checks and balances built into the Commission's governance framework simply failed to operate.

Best Value

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

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

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

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

Five themes:

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

Cross-cutting themes:

1. Equality
2. Sustainability

BV arrangements

In 2019/20, we noted that the Crofting Commission had a number of arrangements in place to secure Best Value. This was evidenced through the Commission's performance monitoring arrangements and the Commission's established governance framework and leadership. We noted that the Commission recognised that it must deliver services within the financial resources available but that further work was required to achieve medium- to longer-term financial sustainability. Overall, we concluded that the Commission had a clear understanding of areas which require further development.

In 2020/21, these arrangements did not operate effectively. As noted in our report, significant weaknesses within the Commission's governance framework were exposed, deficiencies in leadership were identified and the Commission had not made any significant progress in addressing the financial, workforce and resourcing issues which face the Commission over the medium term.

In response to these issues, key parties within the Commission failed to adhere to good practice and began to undertake actions which went against the Commission's governance documents, guidance and good practice. The Commission's internal arrangements were insufficient to prevent or correct these issues. Consequently, while the Commission was and is aware in many cases of the areas which require improvement, it does not currently have appropriate arrangements in place to actually deliver these improvements.

Deloitte view – Best Value

Weaknesses in governance, leadership and key relationships identified in 2020/21 have demonstrated that the Commission's arrangements as they stand are not sufficient to deliver continuous improvement. Addressing the issues identified in our report – by implementing the recommendations in the Action Plan on pages 43 – 47 – will provide assurance that the revised arrangements of the Commission are appropriate to deliver Best Value.

Appendices



Purpose of our report and responsibility statement

Our report is designed to help you meet your governance duties

What we report

Our report is designed to help the Committee and the Commission discharge their governance duties. Our report includes our work on the following:

- Financial sustainability;
- Governance and transparency; and
- Best Value.

The scope of our work

We described the scope of our work in our audit plan presented to the Committee in January 2021 and expanded this scope as set out on page 3.

Use of this report

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

What we don't report

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

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

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

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



Pat Kenny, CPFA

For and on behalf of Deloitte LLP

Glasgow | 28 May 2021

Action plan

Recommendations for improvement – Financial Sustainability

No.	Recommendation	Priority
1.1	The level of detail provided on staff costs in the budget should be reconsidered, with less focus on staff grades and a shift to considering at a high level how the budget drives progress to the optimal staffing structure in line with the Workforce Plan.	High
1.2	The MTFP should be revised to address the issues identified through our audit, as set out on page 12.	High
1.3	The Commission should engage an independent review into the optimal workforce structure for the organisation.	High
1.4	Subject to the findings of the independent review into the Commission's workforce, the Commission should revise its Workforce Plan to clearly set out how the Commission intends to make any transition from the current structure to the proposed structure.	High
1.5	Management, in conjunction with the Board, should carry out a review into the optimal SMT structure for the organisation, with restructuring plans subsequently prepared following appropriate staff consultation to implement this structure, subject to approval by the Board.	High
1.6	In conjunction with the Board, management should review and formalise the budget-setting process, including setting out those involved and their stage of involvement. In carrying out this review, there should be sufficient opportunity for the Board to contribute to the budget setting process at the 'input' stage, rather than only at the 'approval' stage.	Medium
1.7	For the high-level savings set out in the 'budget summary', management should clearly identify savings which have been specifically identified and those which remain to be identified – including a 'RAG' status to highlight any areas of particular risk to the Commission in terms of the achievability of savings.	Low

Action plan (continued)

Recommendations for improvement – Leadership

No.	Recommendation	Priority
2.1	The Commission should consider whether the CEO can reasonably expect to deliver his functions effectively in light of the Board expressing no confidence in his abilities to do so. This will need to be in consultation with the Scottish Minister. The conclusion reached should be formally communicated to the Board.	High
2.2	The Board should consider whether the Convener can deliver his functions effectively in light of the issues highlighted through our audit. This will need to be in consultation with the Scottish Minister. The conclusion reached should be formally recorded.	High
2.3	The Convener must conduct appraisals of fellow Commissioners. Appraisals for the 2020/21 year just ended should be performed as soon as possible, with plans for future appraisals clearly set out. The other Commissioners should ensure that they hold the Convener accountable for performing this key aspect of his role.	High
2.4	A training plan should be developed for members of SMT, informed by their role, objectives and identified development needs from their performance appraisal. The CEO should ensure that individual training plans address any perceived cross-SMT weaknesses identified either by the SMT themselves or the Board.	High
2.5	Communications between the CEO, Sponsor Division, and Convener, should be documented in a proportionate manner to the importance of the matters being discussed, always capturing key details of what has been communicated and setting out any actions arising.	High
2.6	The Board, CEO and SMT should undertake joint training to understand and appreciate each other's roles. The Sponsor Division should be invited to this. This training should focus on specific areas of perceived ambiguity in the On Board guidance, Framework Document and other key governance documents within the Commission	High
2.7	The Commission should nominate a Deputy Accountable Officer who will officially 'step in' when the designated Accountable Officer is unavailable.	High
2.8	The Board, CEO, and SMT Division should have a facilitated development session to identify the root cause of communication issues highlighted throughout our audit, their implications, and proposed solutions. The Sponsor Division should be invited to this. An action plan should be prepared following this to address these underlying issues, with this being reported to the Board until such time as all parties are satisfied that the underlying issues have been addressed.	High
2.9	The training plan for the Board should be subject to Board approval, and clearly set out how the training plan was informed and decided upon. It should be updated annually.	Medium
2.10	The Commission should ensure that it has systems in place to monitor who attends training and to capture how effective this training is perceived to be.	Medium

Action plan (continued)

Recommendations for improvement – Governance

No.	Recommendation	Priority
3.1	The Commission's should engage with the Sponsor Division to investigate if the Framework Document can be revised to explicitly set out that, where the CEO is an employee of the Scottish Government rather than the Commission, the Board is jointly responsible with the Sponsor Division for performing an appraisal of the CEO.	High
3.2	The Board, in consultation with staff, management and the Sponsor Division, should formally agree the Commission's prospective approach to the appointment of employees in terms of appointing their own employees or using Scottish Government staff.	High
3.3	The Board, in conjunction with management and the Sponsor Division, should ensure there is an agreed protocol for ensuring that the Board has the necessary levels to effect accountability of the CEO where the CEO is an employee of the Scottish Government.	High
3.4	The Commission should consider whether it needs an overriding Code of Corporate Governance, bringing together its interpretation of its governing legislation, Scottish Government guidance as it applies to the Commission, and the Commission's Framework Document.	High
3.5	In developing a Code of Corporate Governance or revising its Framework Document, the Commission should consider including an explicit 'reasonableness' test for communication of matters between management, the Board and the Scottish Government.	High
3.6	The Commission should arrange a joint development session between the Board and SMT on the governance arrangements as they apply across the Commission to ensure mutual understanding of the arrangements as every party expects them to work. The Sponsor Division should be invited to this.	High
3.7	The Commission should arrange training for the Board and SMT on how to effectively challenge inappropriate behaviours where an individual or group is failing to follow the arrangements as they have been agreed.	High
3.8	The Commission should arrange training for both the Board and SMT, specifically covering the strategic and operational split in public sector organisations.	High
3.9	The governance structure within the Commission should be reviewed to ensure that the Audit and Finance Committee is considering matters in line with its Terms of Reference, that the Board considers appropriate matters and that there is a structure in place to provide appropriate scrutiny of performance.	High
3.10	The Commission should consider how to address the expectation gap between what the role of the elected Commissioners is and what it is perceived to be, in advance of elections in 2022.	High

Action plan (continued)

Recommendations for improvement – Openness and transparency

No.	Recommendation	Priority
4.1	The SMT should review the process through which papers are submitted to the Audit and Finance Committee and Board to ensure there is an appropriate review prior to the presentation.	High
4.2	Both the SMT and the Board should receive training on risk management – for example on identifying, understanding, responding to and scrutinising risk.	High
4.3	The risk registers should be reviewed in their totality to ensure that they are reflective of the risks which actually face the organisation.	High
4.4	The Commission should review its key performance indicators to ensure they provide performance information not only against the corporate plan outcomes, but also against key operational performance matters which may have a strategic impact.	High
4.5	Similar to the Audit and Finance Committee, the Board should institute a system of monitoring an Action Log as a standing item.	Medium
4.6	The Commission should review its practice of regularly using 'oral' updates for the Board and ensure that these are only used where a paper would not be appropriate.	Medium
4.7	The Commission should identify the methods through which it provides information to the Audit and Finance Committee and the Board and assess whether it is appropriate to continue to provide that information informally or whether the information should form part of routine reporting at arranged meetings.	Medium
4.8	The Board should consider whether it is appropriate for the Strategic Risk Register to be 'for info' or whether the Board should perform a more in-depth challenge of the risks included and excluded.	Medium
4.9	The SMT should explicitly consider at their meetings whether each item on their agenda should be reported to the AFC or Board and if it should, when that expects to be done.	Medium
4.10	The Standing Orders – or equivalent – should clearly set out how informal, private meetings of the Board can be called, how they should be conducted, any records which should be kept and emphasise the importance of the Board not using these meetings to in essence take Board decisions.	Medium

Action plan (continued)

Recommendations for improvement – Relationships

No.	Recommendation	Priority
5.1	The Commission, in consultation with the Sponsor Division, should agree a protocol for attendance at Sponsor Division meetings, ensuring appropriate attendance to maintain effective relationships at appropriate levels between both parties.	High
5.2	In agreeing a protocol for the meetings between the Commission and Sponsor Division, consideration should be given to how the matters discussed at Sponsor Division meetings are shared with the wider Board.	High
5.3	Similar to SMT meetings, there should be explicit consideration by the Commission as to whether items which are on the agenda at Sponsor Division meetings have been reported to the Committee or Board and if they have not, whether they should be.	High
5.4	The Commission should consider, in consultation with the Sponsor Division, the appropriateness of representatives of the Sponsor Division attending Board or other internal Commission meetings.	High



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