

# **Commissioner for Ethical Standards in Public Life In Scotland**

Report to the Commissioner's Office and the Auditor General for Scotland on  
the 2021/22 audit

Issued on 2 November for the meeting on 9 November 2022

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# Introduction

## The key messages in this report

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

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

I have pleasure in presenting our final report to the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner’s Office”) for the year ending 31 March 2022 audit. The scope of our audit was set out within our planning report presented to the Advisory Audit Board (AAB) in March 2022.

This report summarises our findings and conclusions in relation to:

- The audit of the **annual report and accounts**; and
- Consideration of the **wider scope requirements** of public sector audit. As set out in our plan, as a result of the significant issues identified in our 2020/21 report in relation to financial sustainability, governance and transparency and value for money, and the resulting report by the Auditor General for Scotland to the Scottish Parliament’s Public Audit Committee under section 22 of the Public Finance and Accountability (Scotland) Act 2000, we concluded that it remained appropriate to apply expanded wider scope requirements to specifically follow-up on the recommendations made in 2020/21.

### Conclusions from our testing

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

The Performance Report and Accountability Report comply with the statutory guidance and proper practice and are consistent with the financial statements and our knowledge of the Commissioner’s Office .

The auditable parts of the Remuneration and Staff Report have been prepared in accordance with the relevant regulations.

A summary of our work on the significant risks is provided in the dashboard on page 8.

We have identified no misstatements above our reporting threshold.

# Introduction (continued)

## The key messages in this report (continued)

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

### Conclusions from our testing

**Financial sustainability** - The Commissioners Office achieved a balanced budget for 2021/22 and has an approved balanced budget for 2022/23, therefore is financially sustainable in the short term. We are also pleased to note that all vacant posts, including those approved by the SPCB in the year have been filled, with the exception of the Public Appointment Officer. However, the continued lack of a medium term financial plan means that the Commissioner's Office is unable to demonstrate that it is financially sustainable in the medium term.

**Governance and transparency** – During the year, the Commissioner was on an extended period of leave and as a result, the SPCB has appointed an Acting Commissioner and an Accountable Officer.

In the prior year there was a breakdown in the key relationships between the Commissioner, Standards Commission and AAB resulting in a lack of scrutiny and challenge. As a result of recommendations in our 2020/21 report and the s22 report a review of governance has been undertaken resulting in the appointment of an internal auditor. A corporate governance review was prioritised resulting in an internal audit report being published on the Corporate Governance of CFES in September 2022. The reports overall conclusion was that substantial assurance could be provided over the Commissioner's Office governance arrangements.

### Next steps

An agreed Action Plan is included on page 24 - 34 of this report, including a follow-up of progress against prior year actions including those raised as part of the auditor general's section 22 report.

### Added value

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

### Managing transition to 2022/23 audits

2021/22 is the final year of the current audit appointments. We will minimise disruption to all parties, and maximise the transfer of knowledge of the Commissioner, by working in partnership with Audit Scotland and the incoming auditors.

We would like to put on record our thanks to the AAB, management and staff for the good working relationship over the period of our appointment.






















# Annual Report and Accounts Audit



# Quality Indicators

## Impact on the execution of our audit

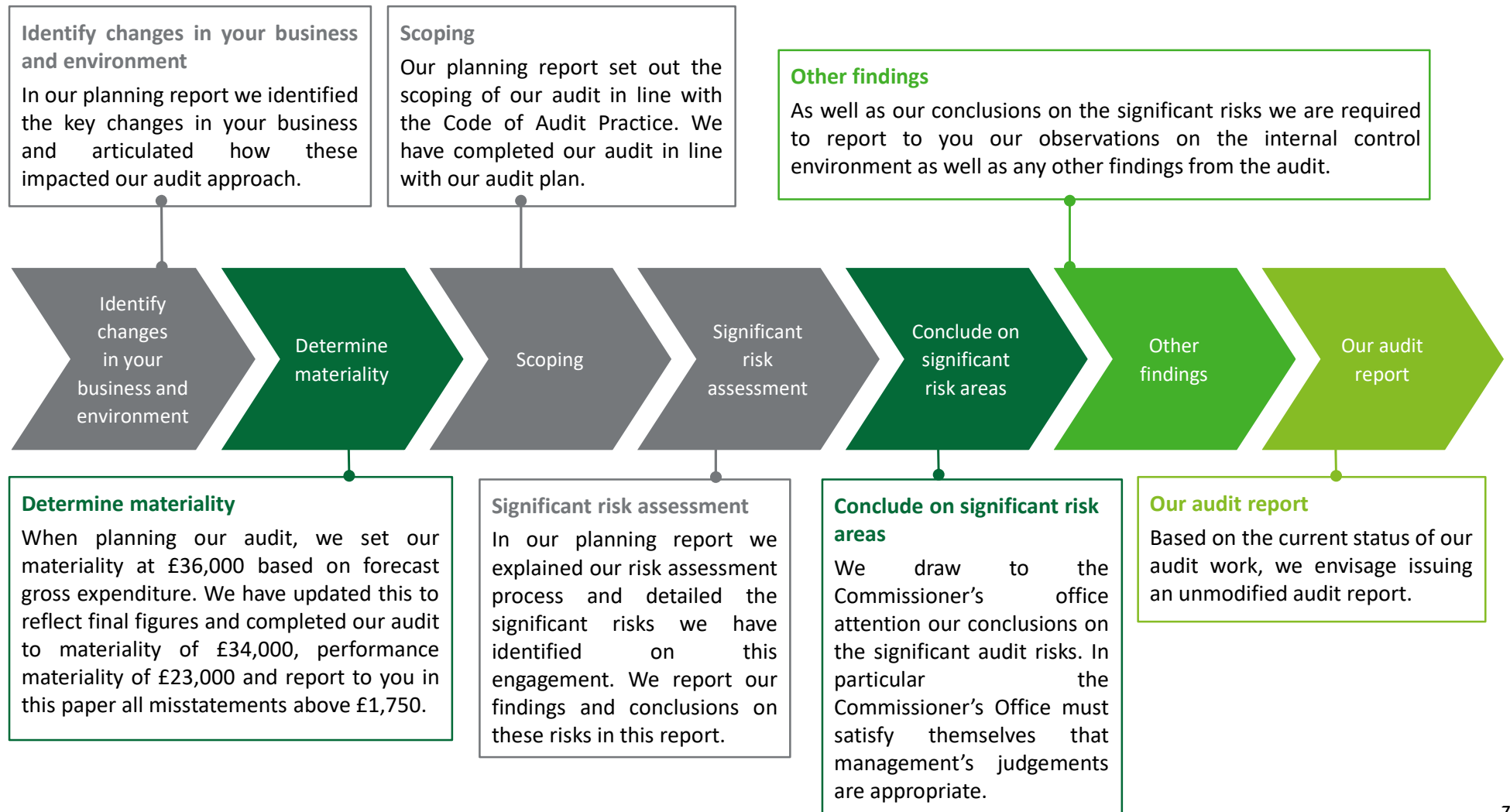
Management and those charged with governance are in a position to influence the effectiveness of our audit, through timely formulation of judgements, provision of accurate information, and responsiveness to issues identified in the course of the audit. This slide summarises some key metrics related to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

Area	Grading			Reason
	FY22	FY21	FY20	
Timing of key accounting judgements				All information and supporting documentation for judgements was made available on request.
Adherence to deliverables timetable				The majority of key deliverables were provided on time ahead of our final fieldwork and the draft Annual Report and Accounts were provided in line with the timetable set out.
Access to finance team and other key personnel				Deloitte, the finance staff and the wider SMT have worked together to facilitate remote communication during the audit which has been successful.
Quality and accuracy of management accounting papers				We did not identify any issues with the quality or accuracy of management accounting papers which were reviewed by the audit team.
Quality of draft financial statements				A full draft of the Annual Accounts, including the narrative, was received for audit on 27 July 2022 in line with the agreed timescales. Whilst generally compliant with the reporting requirements, some minor amendments were required. These are discussed further on page 14.
Response to control deficiencies identified				We have not identified any significant control deficiencies in relation to the annual accounts process.
Volume and magnitude of identified errors				We have not identified any adjustments above our reporting threshold.

 Lagging
  Developing
  Mature







# Our Audit Explained

We tailor our audit to your business and your strategy



# Significant Risks

## Dashboard

Risk	Material	Fraud risk	Planned approach to controls testing	Controls testing conclusion	Consistency of judgements with Deloitte's expectations	Comments	Page no.
Operating within expenditure resource limits			D+I	Satisfactory		Satisfactory	9
Management override of controls			D+I	Satisfactory		Satisfactory	10

Overly prudent, likely to lead to future credit      Overly optimistic, likely to lead to future debit.

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



# Significant Risks (continued)

## Operating within expenditure resource limits



### Risk identified and key judgements

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

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

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



### Deloitte response and challenge

We have evaluated the results of our audit testing in the context of the achievement of the limits set by the SPCB. Our work in this area included the following:

- Evaluated the design and implementation of controls around monthly monitoring of financial performance;
- Obtained independent confirmation of the resource limits allocated to Commissioner's Office by the SPCB;
- Performed focused testing of accruals and prepayments made at the year end; and
- Performed focused cut-off testing of invoices received and paid around the year end.

#### Deloitte view

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

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

# Significant Risks (continued)

## Management override of controls



### Risk identified

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

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



### Deloitte response and challenge

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

#### Journals

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

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

### Accounting estimates and judgements

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

- Evaluated whether the judgments and decisions made by management in making the accounting estimates included in the Annual Report and Accounts, even if they are individually reasonable, indicate a possible bias on the part of the entity's management that may represent a risk of material misstatement due to fraud. From our testing we did not identify any indications of bias. A summary of the key estimates and judgements considered is provided on the next page; and
- Performed a retrospective review of management judgements and assumptions related to significant accounting estimates reflected in the Annual Report and Accounts of the prior year.

### Significant and unusual transactions

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

#### Deloitte view

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

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

# Significant Risks (continued)

## Management override of controls (continued)

**Key estimates and judgements** The key judgement in the Annual Report and Accounts is that which we have selected to be the significant audit risk around the recognition of accrual liabilities. This is inherently the area in which management has the potential to use their judgement to influence the financial statements. As part of our work on this risk, we reviewed and challenge management’s key estimates and judgements including:

Estimate / judgement	Details of management’s position	Deloitte Challenge and conclusions
Accruals	Management accrue their costs based on estimates of work done. Management are satisfied that this is a reliable measure.	<p>We have assessed this estimate through the performance of detailed testing, sample testing accruals as a significant risk, with further sample testing on potential unrecorded liabilities performed at a significant risk level to assess the completeness of the amount recorded.</p> <p>Based on the procedures performed, we are satisfied that the amount recorded is reasonable.</p>

# Other Significant Findings

## Financial reporting findings

Below, we set out the findings from our audit surrounding your financial reporting process.

### **Qualitative aspects of your accounting practices:**

The Commissioners Office's accounts have been prepared in accordance with the Government Financial Reporting Manual (FReM).

### **Significant matters discussed with management:**

Significant matters discussed with management related primarily to the impact of COVID-19 on the organization, the basis of assessment relation to the going concern assumption and the assessment of significant judgements and estimates, specifically accruals.

### **Regulatory change**

IFRS 16, Leases, comes into effect on 1 April 2022, therefore will be first implemented in financial year 2022/23. This will require adjustments to recognise on balance sheet arrangements currently treated as operating leases. We have considered the preparatory work carried out by management and the disclosures made in the 2021/22 Annual Report and Accounts and are satisfied that the new standard has been appropriately considered.

### **Other matters relevant to financial reporting:**

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

We will obtain written representations from the Commissioner on matters material to the Annual Report and Accounts when other sufficient appropriate audit evidence cannot reasonably be expected to exist. A copy of the draft representations letter has been circulated separately.

# Our Audit Report

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

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



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

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



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

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

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



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

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

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



### **Other reporting responsibilities**

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

### **Opinion on regularity**

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

Our opinion on matters prescribed by the Auditor General for Scotland are discussed further on page 14.

# Your Annual Report

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

	Requirement	Deloitte response
The Performance Report	The report outlines the Commissioner's performance, both financial and non-financial. It also sets out the key risks and uncertainty as set out in the Annual Operating Plan.	<p>We have assessed whether the performance report has been prepared in accordance with the accounts direction. No exceptions noted.</p> <p>We have also read the performance report and confirmed that the information contained within is materially correct and consistent with our knowledge acquired during the course of performing the audit, and is not otherwise misleading. We provided management with comments and suggested changes and have received an updated version reflecting these changes.</p>
The Accountability Report	Management have ensured that the accountability report meets the requirements of the FReM, comprising the governance statement, remuneration and staff report and the parliamentary accountability report.	<p>We have assessed whether the information given in the governance statement is consistent with the financial statements and has been prepared in accordance with the accounts direction. No exceptions noted.</p> <p>We have also read the accountability report and confirmed that the information contained within is materially correct and consistent with our knowledge acquired during the course of performing the audit, and is not otherwise misleading. We provided management with comments and suggested changes and have received an updated version reflecting these changes.</p> <p>We have also audited the auditable parts of the remuneration and staff report and confirmed that, following minor changes, it has been prepared in accordance with the accounts direction.</p>
Going Concern	Management has made appropriate disclosure relating to Going Concern matters.	The 2022/23 budget was approved by the SPCB with expenditure totalling £1,143,000. We have concluded that the plan is sufficiently robust to demonstrate that Commissioner's Office will be a going concern for 12 months from signing the accounts. We have also assessed the going concern disclosure in the financial statements and have concluded that it is appropriate and consistent with our knowledge acquired during the course of performing the audit, and is not otherwise misleading.

# Audit Dimensions



# Audit dimensions

## Overview

As set out in our Audit Plan, the Code of Audit Practice sets out four audit dimensions that frame the wider scope of the audit of the accounts. The audit dimensions provide a common framework for all the audit work conducted for the Auditor General and for the Accounts Commission.

As set out in our plan, as a result of the significant issues identified in our 2020/21 report in relation to financial sustainability, governance and transparency and value for money, and the resulting report by the Auditor General for Scotland to the Scottish Parliament's Public Audit Committee under section 22 of the Public Finance and Accountability (Scotland) Act 2000, we concluded that it remained appropriate to apply expanded wider scope requirements to specifically follow-up on the recommendations made in 2020/21.

We have carried out a detailed follow up of all recommendations made in our 2020/21 report and are pleased to note that out of the 22 recommendations made, 10 have been fully implemented, 10 partially implemented (3 of which require SPCB input), one is no longer required and one remains outstanding. The key actions are summarised on the following pages with the full action plan included within the Appendices at pages 24 to 34 of the report.

In addition to the above, we have reviewed the Commissioner's Office arrangements for the prevention and detection of fraud and irregularities. Overall we found the Commissioner's Office's arrangements to be effectively designed and appropriately implemented.



The internal audit function has independent responsibility for examining, evaluating and reporting on the adequacy of internal controls. In our 2020/21 audit report we highlighted that the Commissioner's Office still had no internal audit function, despite a commitment being given by the Commissioner in the Annual Report and Accounts in October 2019.

We are pleased to note that following a tender exercise, an internal auditor has been appointed and has developed a comprehensive Audit Needs Assessment and Audit Plan for the three year period 2022/23 to 2024/25.



# Financial sustainability

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**

## Significant risks identified in our Audit Plan

In our 2020/21 audit report, we concluded that while the Commissioner's Office had set a balanced budget for 2021/22, given the lack of business planning in place, there was a risk to short term financial balance. We also reported that there was no medium or long-term financial planning in place, or a comprehensive workforce plan. This therefore remained a significant risk and a key area of focus for our audit work, incorporating a follow-up on the recommendations made in our 2020/21 audit report.

## Short term financial planning

The 2021/22 budget of £946,000 was approved by the SPCB on 25 March 2021. In addition, four contingency funding awards were made in relation to internal audit services, the costs associated with an expansion of remit, costs for additional staffing and costs to cover payments of previously accrued pension contributions. The revised budget was therefore £1.093m, of which £1.086m was drawn down, resulting in a small underspend of £6,900 against the revised budget. Regular reporting is provided to SMT to monitor the actual expenditure and estimated outturn against the approved budget.

The 2022/23 budget of £1.143m, was approved by the SPCB on 03 March 2022. The increase in comparison with the original 2021/22 budget was clearly set out by the Acting Commissioner within the budget bid, including the following key assumptions:

- The increase in headcount from 11 (10.3 FTEs) to 13 (12.6 FTEs) and revised staff structure, based on the approved business case, has resulted in additional staff costs of £103,200.
- Increase in Commissioner's salary and associated costs (£9,000) as a result moving up the salary scale, with associated increased employer National Insurance and pension contributions.
- An assumed 2% cost of living increase in 2021/22 and 3.1% in 2022/23 as well as the impact of staff moving up pay scales has resulted in additional staff cost of £20,300.
- An increase in Employer National Insurance contributions (£5,600) as a result of the increase of 1.25% to the rates introduced by the UK government from April 2022.

Based on the above, we are satisfied that the Commissioner's Office can achieve short term financial balance.

# Financial sustainability (continued)

## Short term financial planning (continued)

In our 2020/21 audit report we highlighted the risk to short term financial balance as a result of the lack of clear business plans. We are pleased to confirm that during 2021/22, the following plans were approved and published:

- **Strategic Plan 2021-2024** – This clearly sets out the Commissioners’ Office’s purpose, values and strategic objectives, the key changes that it plans to deliver and how it will report on progress. This also incorporates a high level estimate of the projected expenditure over the plan.
- **Biennial Business Plan 2021-2023** – This sets out the work that the Commissioner’s Office will undertake over the period towards achieving its three over-arching strategic objectives. This is provided through key milestones and timelines, with appointed leads for each action.

## Medium-to long-term financial planning

Our 2020/21 audit report made a number of recommendations in relation to the medium-to-long term planning arrangements. In addition to approving an updated Strategic Plan and Biennial Business Plan, as discussed above, we are pleased to note the following key actions:

- We had highlighted that the Commissioner had implemented two phases of a restructure which was approved by the SPCB in July 2019, based on anticipated savings of £450,000. We recommended that monitoring of the achievement of these savings should be incorporated into the monthly financial monitoring reports to demonstrate that plans are in place. This has been implemented during the year.
- In view of the recruitment and retention issues and the high turnover of staff during 2019/20 and 2020/21, the Acting Commissioner presented a business case to the SPCB effectively reversing the restructure, which was approved. As a result, it was agreed as part of the 2022/23 budget bid process that the savings would no longer be achieved.

- All vacant posts, including those approved through the business case, were subsequently filled, with the exception of the Public Appointments Officer.
- A “return to the office survey” was completed
- A workforce planning exercise conducted by the Commissioner’s Office identified that it would be unable to meet its statutory functions and address our 2020/21 recommendations around the rebuilding of the organisation without additional funding. In May 2022, the Commissioner's Office submitted emergency proposals to the SPCB, followed by a strategic submission in July, to address these issues. Permission for both was granted in October 2022. We expect this will enable the Commissioner’s Office to move forward in terms of completing actions that have not yet been fully implemented and embed those which have, as well as delivering the statutory functions to a reasonable level of stakeholder satisfaction.

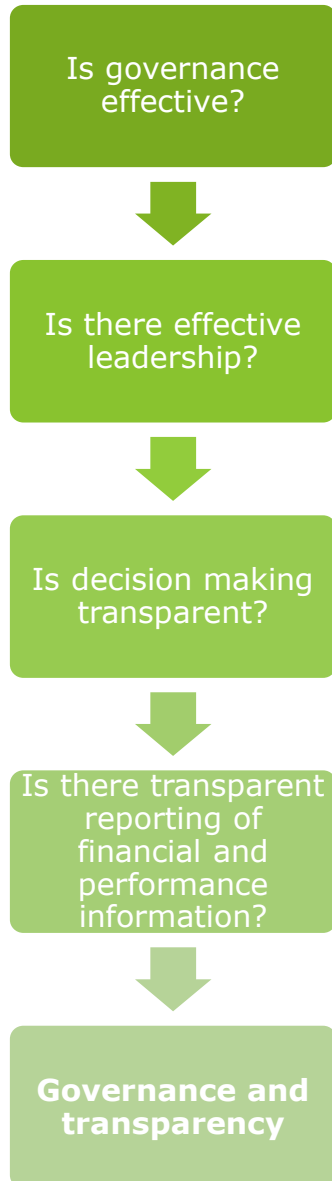
The following key actions remain ongoing:

- Development of a medium term financial plan
- Wellbeing staff survey to be completed following probationary periods for new starts.

### Deloitte view – Financial sustainability

The Commissioners Office achieved a balanced budget for 2021/22 and has an approved balanced budget for 2022/23, therefore is financially sustainable in the short term. We are also pleased to note that all vacant posts, including those approved by the SPCB in the year have been filled, with the exception of the Public Appointment Officer. However, the continued lack of a medium term financial plan means that the Commissioner’s Office is unable to demonstrate that it is financially sustainable in the medium term.

# Governance and transparency, value for money



## Significant risks identified in our Audit Plan

In our 2020/21 audit report, we identified significant weaknesses in the governance and scrutiny and value for money arrangements in place. This was also highlighted in the Auditor General for Scotland's report to the PAC, published in December 2021 and considered by PAC in January 2022. The most specific risks include the following:

- A breakdown in the key relationships between the Commissioner, Standards Commission and AAB;
- A lack of a comprehensive and compliant investigations manual;
- An ineffective risk management framework;
- A lack of an internal audit function;
- A lack of openness and transparency;
- A lack of a performance management framework;
- A lack of a formal training programme for staff;
- A lack of clarity with regard to the whistleblowing policy and reporting routes for concerns about a Commissioner.

As reported in our 2020/21 annual audit report and from our early planning discussions as part of the 2021/22 audit, management accepted all of the recommendations and were actively taking these forward as a matter of priority. There does, however, remain a significant risk given the significance of the issues reported and the need for input from the Scottish Parliamentary Corporate Body and the Parliament to address some of them. We have assessed the progress made by the Commissioner's Office on each of the recommendations made in our 2020/21 audit report.

# Governance and transparency, value for money (continued)

## Status of recommendations

Recommendations made in our 2020/21 report relating to governance and transparency and value for money have been followed-up on pages 24 – 34. In particular, we are pleased to note the following progress:

### **Leadership:**

- A preliminary internal review of the restructure was completed, resulting in the SPCB approving increased staffing complement. No independent review has been conducted as this is contingent on funding being made available from the SPCB for this purpose.
- Performance management reviews have been reinstated for all staff with all having action plans aligned to the biennial business plan.
- An extensive programme of induction has taken place for all new staff and training programmes are in place for all staff.

### **Governance and transparency:**

- The Commissioner's Office re-engaged with the Advisory Audit Board and has had regular meetings from May 2021.
- The Standing Orders were last reviewed in November 2020, however, the Scheme of Delegation was updated in March 2022, taking on board our recommendation that decisions are dealt with in a collaborative way with key items being decided by the SMT. Input is still required by the SPCB to ensure that the Commissioner appointee's terms and conditions are consistent with the governance documents.

- The Whistleblowing policy has been updated in June 2021. The Commissioner's Office has entered into discussions about the governance of the office and its oversight with the SPCB in order to identify reporting routes in cases in which the threshold for protected disclosures is not met which remains ongoing at the time of writing this report.
- Risk Registers were re-introduced in 2021/22, the Risk Management policy was reviewed in December 2021 and Internal Audit plan to review the risk management arrangements as part of its 2022/23 plan.
- SMT meetings are now formalised, with minutes published on the Commissioner's Office website.
- All HR related policies have been reviewed and published in June 2021. A review of all other policy documents was planned for September 2022 as well as a review of the publication scheme alongside the entire website. 8 policies remain to be reviewed. Two will be completed in 2022; three will be reviewed in 2023 (once new staff in post) and the remaining three in 2023/24.

# Governance and transparency, value for money (continued)

## Status of recommendations (continued)

### *Value for money*

- A draft Investigations Manual has been produced, with the assessment criteria agreed with the Standards Commission for Scotland in May 2021 to ensure that they are compatible with the directions. We note the independent legal advice obtained by the Commissioner's Office in relation to recommendation 3.4 that decisions taken by a previous Commissioner cannot be overturned. However, the advice also states that a lessons learned review could be undertaken, including an independent review of relevant cases. The SMT has considered whether learning lessons from the ESC's complaints handling would be worthwhile and concluded it would not.
- A performance management framework is now in place where progress is tracked against the business plan, which is reviewed by the SMT regularly. This is also provided to all staff to feed into their individual plans. The Commissioner's Office intends to enhance this further through the introduction of KPIs that will track its complaints handling function.

### **Deloitte view – Governance and transparency value for money**

The Commissioner's Office has worked quickly to implement a number of the recommendations raised in our 2020/21 audit. We note the SPCB's recent approval of additional resource requested by the Commissioner's Office which will allow further staff investment to progress with a return to delivering statutory functions to the standard expected and embed improvements. There remain areas where the SPCB and CFES need to work together to address some of the specific governance issues identified.

# Purpose of our Report and Responsibility Statement

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

### What we report

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

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

### The scope of our work

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

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

### Use of this report

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

### What we don't report

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

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

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

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



**Pat Kenny, CPFA**

**For and on behalf of Deloitte LLP**

Glasgow | 2 November 2022

# Appendices



# Action Plan

We have followed up the recommendations made in our previous years audits. We are pleased to note that 10 recommendations have been fully implemented, 10 partially implemented (3 of which require SPCB input), one is no longer required and one remains outstanding.

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>1.1</b> The Commissioner’s Office should include the monitoring of the actual savings achieved against targets in the monthly financial monitoring reports.</p>	<p>No longer required. Analysis of restructure costs/savings completed and reported to SPCB as part of budget bid 2022-23. Savings will not be achieved.</p> <p><b>Responsible Person:</b> Accountable Officer (‘AO’)  <b>Target Date:</b> September 2021</p>	Low	<p>N/A – see management response</p> <p><b>No longer required</b></p>
<p><b>1.2</b> An independent internal audit function should be appointed via an open and transparent tender process as a matter of urgency to provide challenge and scrutiny of the Commissioner’s Office.</p>	<p>Agreed. Will proceed to tender once external audit findings published. Internal auditor appointed.</p> <p><b>Responsible Person:</b> Acting Ethical Standards Commissioner(‘AESC’)/AO  <b>Target Date:</b> February 2022</p>	High	<p>Tendering commenced December 2021. Interviews scheduled for January with appointment made in February. IAs now producing an audit plan with a focus on our governance. AAB involved throughout the process.</p> <p><b>Fully Implemented</b></p>
<p><b>2.1</b> The budget process should be reviewed and formalised to have greater involvement from SMT as a whole including recommending the budget for submission to the SPCB. Wider staff engagement should also be carried out through business and financial planning to enable them to understand how they contribute to the objectives of the organisation and how their actions could affect the budget.</p>	<p>Agreed in respect of SMT. Staff engagement in planning to be achieved via monthly meetings and individual action plans based on our business plan.</p> <p><b>Responsible Person:</b> AESC/Senior Management Team (‘SMT’)  <b>Target Date:</b> May 2021 then ongoing.</p>	Medium	<p>All achieved in accordance with management response.</p> <p><b>Fully Implemented</b></p>



## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>2.2</b> Financial monitoring arrangements should be utilised to identify and respond to unexpected variances as a result of the lack of business planning. A business plan should be put in place for 2021/22 as a matter of priority.</p>	<p>Monthly monitoring of spend against each budget line (nominal code) is already undertaken. Records of monthly assessment will be retained. Draft plan for 2021-23. Finalised plan for 2021-23.</p> <p><b>Responsible Person:</b> AESC <b>Target Date:</b> June 2021</p>	High	<p>All achieved in accordance with management response.</p> <p><b>Fully Implemented</b></p>
<p><b>2.3</b> A medium-term financial plan should be prepared, including, but not limited to, alternative scenarios of expected income and expenditure in future years, associated assumptions for each scenario, quantifying the funding gap, to then be able to plan effectively for the medium to longer term. Through these plans, we would expect to see consideration of the impact of leaving the EU, the Covid-19 pandemic and other expected changes.</p>	<p>Agreed. Will be tied to budget plan for the year set out in the target date.</p> <p><b>Responsible Person:</b> AO <b>Target Date:</b> August 2022</p>	Medium	<p>Outstanding. This recommendation is scheduled for completion in 2022/23. Due to capacity issues and concerns about the value of a medium-term plan, this is considered a low priority.</p> <p><b>Not Implemented</b> <b>Revised target date: March 2023</b></p>
<p><b>2.4</b> Workforce planning should outline the current workforce, the future workforce and how the organisation can achieve its required future workforce. It should also include workforce statistics covering not just the headcount but also the skills required. Audit Scotland has produced reports on workforce planning in the NHS in Scotland, identifying key areas which need to be considered for effective workforce planning. Although not directly applicable, the overarching principles here should be used to guide the Commissioner's Office workforce planning.</p>	<p>Interim plan already in place based on medium term needs (see also response to 2.6): PAM post filled for one year from June 2021 via temporary promotion. Case made to SPCB for additional Investigating Officer (IO) post and additional Corporate Services Officer (CSO) post.</p> <p><b>Responsible Person:</b> AESC/ SMT <b>Target Date:</b> June 2021. March 2022 – interim assessment of new staff model 2022-23 –workforce planning</p>	High	<p>In May 2022, the Commissioner's Office submitted emergency proposals to the SPCB, followed by a strategic submission in July to address these issues. Permission for both was granted in October 2022.</p> <p><b>Partially Implemented</b> <b>Revised target date: March 2023</b></p>

## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>2.5</b> We recommend that a formal staff survey is held both in response to the Covid-19 pandemic, including the future of work, but also on a regular basis. This would allow employees to submit responses anonymously which could have an impact on engagement and responses given the small nature of the organisation. It also allows comparisons using trend data over time.</p>	<p>Agreed other than in respect of anonymity as this would not make sense due to staff numbers and would not actually allow individual staff preferences to be taken into account. Willing to consider anonymous surveys about staff views on the work of the organisation, particularly in respect of engagement and culture. We first have to get new starts through their probationary period which will be from August 2021.</p> <p><b>Responsible Person:</b> Public Appointments Manager (PAM)  <b>Target Date:</b> July 2021 - initial survey on work preferences. Formal survey six months after return to office and annually thereafter.</p>	High	<p>Future of work survey completed. Wellbeing survey will be run following probationary period for new starts.</p> <p><b>Partially Implemented</b>  <b>Revised target date: January 2023</b></p>
<p><b>2.6</b> The Commissioner's Office should recruit into current vacant roles as a matter of priority and begin cross skilling teams to ensure resilience, particularly within the investigations team. It should also consider whether temporary resource is required to support the SMT in the Commissioner's absence.</p>	<p>See also 2.4. PAM post filled for one year from June 2021 via temporary promotion. PAO post backfilled for same period via recruitment. Case made to SPCB for additional IO post and additional CSO post. Two to three vacant IO posts currently advertised. One may be filled earlier using recruitment consultants.</p> <p><b>Responsible Person:</b> AESC/ SMT  <b>Target Date:</b> August 2021</p>	High	<p>Case was made to SPCB and granted. All posts filled, including PAO appointed in July 2022 and in post from October 2022.</p> <p><b>Fully implemented</b></p>

## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>3.1</b> An independent review of the implementation of the restructure should be carried out to assess whether the current structure is fit for purpose. This should include the scheme of delegation and standing orders to ensure operations can continue in the absence of the Commissioner. These governance documents should be updated to reflect the expectation that all decisions are dealt with in a collaborative way with key items being decided by the SMT group.</p>	<p>Agreed. Preliminary internal review completed resulting in SPCB approving increased staffing complement. An independent review is contingent on funding for this purpose from the SPCB. Legislative mechanism in place for ESC absence is SPCB appointment of Acting Commissioner. Revised governance documents would not preclude a reoccurrence of the issues that have arisen in the absence of reciprocity on the part of any ESC appointee's terms and conditions. Require SPCB input to full review of Scheme of Delegation and Standing Orders.</p>	High	<p>Those actions that could be taken have been. Review of Standing Orders took place in October 2022. Following internal audit's review of governance report, the Commissioner's Office will also produce a Governance Framework in 2023.</p> <p><b><i>Partially Implemented</i></b>  <b><i>Revised target date: March 2023</i></b></p>
	<p><b><i>Responsible Person:</i></b> AESC/ AO/ SPCB  <b><i>Target Date:</i></b> June 2021 –preliminary internal review            TBC – independent review            March 2022 and onwards– review of Governance Documents</p>		

## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>3.2</b> The Commissioner’s Office should introduce a formal training programme for all staff varying by role. This should include a combination of internal and external training. This should be considered in conjunction with the review and updating of all policies and procedures.</p>	<p>Agreed. This will be arranged via the reinstatement of proper performance management reviews.</p> <p><b>Responsible Person:</b> AESC/ SMT  <b>Target Date:</b> September 2021 (current staff)</p> <p>March 2022 (new staff following probationary period)</p>	<p>High</p>	<p>Proper performance management reviews have been reinstated for all staff. All individual staff action plans are aligned with our biennial business plan.</p> <p>An extensive programme of induction for new staff was completed following their appointment. The following training has already been provided to all staff in this financial year by a mix of internal/ external providers:</p> <ul style="list-style-type: none"> <li>• Engaging with survivors of sexual abuse</li> <li>• Attention to detail</li> <li>• Clear English</li> <li>• Resilience</li> <li>• Presentation skills</li> <li>• Handling complaints about us</li> <li>• Conduct complaint handling, including MSP complaints.</li> </ul> <p>Members of the SMT received training on governance and management. Staff engaged in investigations also received training in advocacy skills in order to present ESC’s case at hearings.</p> <p>All staff participated in an MBTI workshop.</p> <p>Training on investigating complaints of sexual harassment had been diarised to take place prior to year end. Training on EDI with a focus on trans issues has been commissioned.</p>
			<p><b>Fully Implemented</b></p>

## Action Plan (continued)

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### Recommendation

3.3 The whistleblowing policy should be reviewed to make it fit for purpose. It must then be communicated to all staff members to improve awareness.

### Management Response

Partially agreed. The policy has been updated but we cannot change the underpinning legislation. Agreed on ensuring policy highlighted again with all staff. Will consider whether issues below the bar for whistleblowing require to be set out in this or in another document (see below re SPCB engagement).

**Responsible Person:** AO

**Target Date:** November 2021

### Priority

High

### Management update 2021/22

We have made no further progress in this area as we remain of the view that the legal definition of whistleblowing would not have been engaged in respect of many of the failings in the office that did not represent either a criminal offence or a breach of a legal obligation.

We have entered into discussions about the governance of the office and its oversight with the SPCB in order to identify reporting routes in cases in which the threshold for protected disclosures is not met.

**Partially Implemented**

**Revised target date: November 2022**

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## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p>3.4 a) We recommend that a full investigations manual is constructed and the assessment criteria are removed so that the process complies with the legislation.</p> <p>b) Following this, all eligibility decisions and investigations carried out since August 2020 should be reviewed by an appropriate external investigator.</p> <p>c) Once this review has been undertaken, we recommend that all statistics produced and reporting made in relation to investigations is redrafted and submitted to the relevant stakeholder including but not limited to the Standards Commission and Parliamentary Committee's using information directly from the CMS system.</p>	<p>a) Part done as at May 2021. August 2021 draft in development. December 2021 for full manual.</p> <p>b) Contingent on funding from SPCB. Plan to audit internally first.</p> <p>c) Contingent on b), agreed. Internal review undertaken and complete at Aug21 and published in annual report 2020-21. Revisit following review at b).</p> <p><b>Responsible Person:</b> a) Senior Investigating Officer (SIO)</p> <p>b) AESC/AO, c) AO</p> <p><b>Target Date:</b> a) Part done as at May 21. Aug21 draft in development Dec-21 for full manual.</p> <p>b) TBC as contingent on agreement and funding from SPCB</p> <p>c) October 2021 for internal review. TBC following further review as contingent on agreement and funding from SPCB at b)</p>	High	<p>a) The assessment criteria were agreed with the SCS in May 2021 to ensure that they were compatible with the directions. Our Senior Investigating Officer produced, in consultation with the staff, version 5 of the investigations manual. It is with the SCS for pre-consultation. Many of the procedures set out in it have been adopted incrementally as they have been developed during the course of the year. We still intend to publish a draft for consultation, to include appendices showing template letters for correspondence, guidance and policies relating to complaint handling alongside new KPIs, to ensure stakeholder understanding and transparency.</p> <p>b) We took our own legal advice and concluded that we could not re-open investigations on the basis of the legal principle "functus officio". We also concluded that there would be no value in conducting a lessons learned process.</p> <p>c) see answer to "b" immediately above. We have however conducted our own review of statistical information and reverted to the reporting arrangements in place under the prior Commissioner. This is as reported in our Annual Report for 2020/21.</p>
			<p><b>Partially Implemented</b>  <b>Revised target date: January 2023</b></p>

## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>3.5</b> We recommend that the AAB is re-engaged and that there is engagement on a regular basis.</p>	<p>Agreed and already underway</p> <p><b>Responsible Person:</b> AESC/ AO/ SMT <b>Target Date:</b> May 2021 then ongoing</p>	High	<p>AAB engagement is meaningful and continues.</p> <p><b>Fully Implemented</b></p>
<p><b>3.6</b> We recommend that the Commissioner's Office returns to the previous methods of managing risk by reintroducing a risk register and risk management policy. The risk management policy should then be reviewed annually and the risk register quarterly. Engagement should be made on a regular basis with AAB members to review the risk management approach and risk register. We would recommend that internal auditors (once appointed) also perform review in this area.</p>	<p>Agreed</p> <p><b>Responsible Person:</b> AESC/ SMT <b>Target Date:</b> October 2021</p>	High	<p>All completed in line with the recommendation. Our revised policy and register were produced in February 2022 following consultation with staff. The policy and register was developed with AAB input. Internal auditors appointed in February. Audit plans have been agreed with review of governance and risk management being priorities. Audits underway.</p> <p><b>Fully Implemented</b></p>
<p><b>3.7</b> SMT meetings should be formalised with an agenda and formal minutes taken to record both the discussions undertaken and the decisions made. Any decisions made outside of these meetings should be recorded within the minute. Minutes should be made available to staff and be published on the website in line with the publication scheme.</p>	<p>Agreed and already underway. Plan to be introduced to ensure cyclical items for SMT consideration are captured.</p> <p><b>Responsible Person:</b> AESC/ SMT <b>Target Date:</b> June 2021 adoption, October 2021 for cyclical items.</p>	High	<p>Monthly SMT meetings are ongoing. Minutes are all published on our website. Staff have been advised that they are welcome to suggest items for SMT meeting consideration and to offer views on any decisions made. They are also welcome to be present at the meetings.</p> <p>Cyclical items have been captured in a separate spreadsheet for consideration by SMT at monthly meetings and staff at the subsequent meeting.</p> <p><b>Fully Implemented</b></p>

## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>3.8</b> Given the direction of travel and the expectation for public sector organisations to demonstrate continuous improvement on openness and transparency we recommend that the Commissioner’s Office considers holding public meetings.</p>	<p>We will consider this specific recommendation at a future SMT meeting.</p> <p><b>Responsible Person:</b> AESC/ SMT <b>Target Date:</b> December 2021</p>	<p>Low</p>	<p>We considered this recommendation in January 2022, one month later than originally scheduled. We concluded that it would be inappropriate given the size of the organisation and the nature of the work that it carries out.</p> <p><b>Fully Implemented</b></p>
<p><b>3.9</b> a) The Commissioners’ Office need to urgently review all policies and procedures in place. Although the organisation is aware of this it should be treated with a higher priority level.</p> <p>b) It also needs to review its compliance with its own publication scheme. All information that can be published online should be to enable openness and transparency for the public, staff and stakeholders. The Commissioner’s Office should use the openness and transparency guidance available from Audit Scotland.</p>	<p>a) Agreed priority in respect of all HR related policies. These have all been redrafted and staff consulted on them with publication due in June. All other policies are lower priority in comparison with other recommended actions. We will put a plan in place for review, having consulted the AAB and the auditors on those that require to be prioritised.</p> <p>b) Agreed.</p> <p><b>Responsible Person:</b> a) PAM /AESC/AO, b) AO <b>Target Date:</b> a) June 2021 for HR related policies. Others by September 2022. b) March 2022</p>		<p>a) i. All HR related policies were redrafted, consulted on and subsequently published in June 2021. We continue to review these and revise them as necessary.</p> <p>ii. A review of all other policy documents was scheduled in our biennial business plan for September 2022. 8 policies remain to be reviewed. Two will be completed in 2022; three will be reviewed in 2023 (once new staff in post) and the remaining three in 2023/24.</p> <p>b) A review of the publication scheme, alongside the entire website to ensure this is current, is currently underway.</p> <p><b>Partially Implemented</b> <b>Revised target date: March 2023</b></p>



## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>4.1</b> A performance management framework should be implemented to include processes to monitor the organisations performance against key performance indicators. The targets should be set in order to achieve the outcomes in the strategic and business plans. This information should be monitored on a quarterly basis and shared widely with staff so that they understand how they contribute to the performance of the organisation.</p>	<p>Agreed</p> <p><b>Responsible Person:</b> AESC/ SMT</p> <p><b>Target Date:</b> August 2022 then ongoing</p>	<p>High</p>	<p>We produced a spreadsheet to track progress against our business plan and this is reviewed by the SMT regularly. It was also provided to all staff alongside instructions for its review and an explanation of how it relates to their individual action plans. [NOTE: all staff meetings are held monthly in the week following SMT meetings to ensure that they are both engaged in and informed about decisions affecting the organisation.]</p> <p>We plan to go further by introducing KPIs that will track our complaint handling functions (see response to recommendation 3.4).</p> <p><b>Partially Implemented</b></p> <p><b>Revised target date: March 2023</b></p>
<p><b>4.2</b> a) Eligibility statistics should be monitored and compared with other similar complaints investigation bodies or historic ESC statistics on a regular basis to identify the impact of changes in processes.</p>	<p>a) No comparable investigation bodies. To reinstate monitoring against prior years of ESC statistics.</p> <p>b) Already addressed. See above.</p>		<p>See management response of October 2021. Monitoring was reinstated (see response to recommendation 3.4).</p> <p><b>Fully Implemented</b></p>
<p>b) See also recommendation on removing the assessment criteria process from eligibility.</p>	<p><b>Responsible Person:</b> a) AO,</p> <p>b) N/A – already addressed – see above.</p> <p><b>Target Date:</b> September 2021 then ongoing</p>		

## Action Plan (continued)

Recommendation	Management Response	Priority	Management update 2021/22
<p><b>5.1</b> The Commissioner’s Office should engage with the SPCB and Parliament to determine the reporting route for concerns about a Commissioner.</p>	<p>Agreed although all we can do is engage with the SPCB following the publication of this report. We have no locus to prevent/preclude a reoccurrence.</p> <p><b>Responsible Person:</b> AESC <b>Target Date:</b> October 2021</p>	High	<p>We have had both informal and now formal discussions with the SPCB. It should be noted that the S.22 report and this report were not published until December 2021, precluding earlier substantive engagement.</p> <p>We note that the AGS, and not the SPCB, is the prescribed person for protected disclosures.</p> <p><b>Partially Implemented</b> <b>Revised target date: TBC (Requires input from SPCB)</b></p>
<p><b>5.2</b> We recommend that the governance structures in place for this type of organisation are reviewed the Commissioner’s Office needs to engage with the SPCB and Parliament to identify improvements. This should include improved communications between the different organisations who are involved in the governance of the organisation and stakeholders.</p>	<p>Agreed although all we can do is engage with the SPCB following the publication of this report. We have no locus to prevent/preclude a reoccurrence.</p> <p><b>Responsible Person:</b> AESC <b>Target Date:</b> October 2021</p>	High	<p>See management response of October 2021 as well as response to recommendation 5.1.</p> <p><b>Partially Implemented</b> <b>Revised target date: TBC (Requires input from SPCB)</b></p>
<p><b>5.3</b> In view of the wider governance issues identified in this report, we recommend that the SPCB, in consultation with the Commissioner and other Officeholders, review whether the governance structure in place remains sufficient and appropriate.</p>	<p>We are happy to contribute to any consultation on this issue whilst noting that this action is not for the AESC to respond to.</p> <p><b>Responsible Person:</b> N/A (SPCB) <b>Target Date:</b> TBC</p>	High	<p>See management response of October 2021.</p> <p><b>Partially Implemented</b> <b>Revised target date: TBC (Requires input from SPCB)</b></p>

# Our Other Responsibilities Explained

## Fraud responsibilities and representations



### Responsibilities:

The primary responsibility for the prevention and detection of fraud rests with management and those charged with governance, including establishing and maintaining internal controls over the reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations.

As auditor, we obtain reasonable, but not absolute, assurance that the financial statements as a whole are free from material misstatement, whether caused by fraud or error.



### Audit work performed:

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

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

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



### Required representations:

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

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

# Independence and Fees

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

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## Independence confirmation

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

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## Fees

The audit fee for 2021/22, in line with the expected fee range provided by Audit Scotland, is £15,784, as analysed below:

	£
Auditor remuneration	12,804
Audit Scotland fixed charges:	
Pooled costs	2,470
Audit support costs	510
<b>Total fee</b>	<b>15,784</b>

No non-audit services fees have been charged for the period. We are in discussion with management relating to additional fees relating to the wider dimensions audit.

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## Non-audit services

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

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## Relationships

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

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

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