

# Scottish Information Commissioner

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## Annual Report and Accounts 2020-21

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FOI during the Covid-19 Pandemic



Scottish Information  
Commissioner

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## Commissioner's statement

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### FOI during the Covid-19 Pandemic

When writing my statement for last year's Annual Report and Accounts in the summer of 2020, it was clear that the disruption caused by the Covid-19 pandemic would continue for some time. However, the duration of the pandemic has been greater than any of us would have hoped.

With its false horizons, new variants and further periods of lockdown, the pandemic has had a profound impact on individuals, families, work, and society as a whole. It has been a time of disruption, worry, fear, stress, and personal loss for so many, and resultant emergency powers and lockdowns have seen civil liberties and the exercise of our human rights restricted in a way not seen since the last war. While at the time of writing the impressive implementation of the vaccine programme across the UK is providing hope that the worst is over, it will no doubt continue to affect our lives for some time to come.

In such an environment the right of access to information has never been more relevant. Transparency, enabled by FOI, has been an important part of the response to the public health crisis. The pushing out of information to the public has been key to governments' attempts to provide transparency and help to control and mitigate the impact of the pandemic, with a realisation that the sharing of information can help save lives.

In addition to proactive publication, the public's right to access information relating to the Covid-19 pandemic is of critical importance for providing confidence in, and transparency around, decision-making at all levels of public authorities during the crisis, especially when those decisions relate to public health, or impact jobs and personal liberties. FOI is an essential part of an effective response to the pandemic, and must remain a priority.

I also stated in last year's report that it was inevitable that the pandemic would have an impact on our work and performance. In line with government guidance, like many other public authorities, our office premises have been temporarily closed since 23 March 2020. This necessitated a substantial change to how we work as an office, including a digital transformation of our IT and procedures to enable remote working. This was a massive undertaking for my small team, who worked through the initial shock period of the pandemic to extend access to systems, provide new equipment and develop new procedures in a number of tranches to ensure system stability and secure remote working. Inevitably, while these new systems were being set up, limitations on access to office systems and remote working capacity have impacted our performance, particularly in the first quarter of the year.

The combination of high numbers of appeal cases from the previous year, disruption caused by closure of the office premises, and high numbers of appeals in the third and fourth quarters have substantially impacted our enforcement work performance. However, despite this, the hard work of my team and streamlining of procedures have helped in improving performance as the year has progressed. While we have a particularly high caseload going into 2021-22, the efforts of the



team and our more agile ways of working should stand us in good stead to improve performance further as we move forward.

The continued pandemic has also made us look at other ways of working. In addition to remote working with less reliance on paper, we have adapted to remote meetings enabling larger numbers of participants, and relied on new laws allowing us to issue decisions and other legal notices by email. In addition, importantly, we created a Covid-19 information hub on our website to provide clear and reliable information to requesters and authorities on changes to the law, and key information to enable the essential provision of information from Scottish public authorities to the people they serve to continue.

Other developments have included the launching of our email newsletter covering the latest news, updates and key decisions in FOI. We have researched and reported on the impact of the rollout of FOI legislation to Registered Social Landlords, one year on from its implementation. We have also examined the initial impact of the pandemic on freedom of information in Scotland, resulting in the publication of my first Special Report for the Scottish Parliament. The emergency legislation which temporarily extended FOI response times was also examined to assess the extent to which it had been used.

Looking forward, we will continue to assess the effect of Covid-19 on FOI as the pandemic continues, learning lessons and helping authorities improve their FOI performance. We also look forward to the Scottish Government taking forward the recommendations of the Scottish Parliament's Public Audit and Post-Legislative Scrutiny Committee report on the Freedom of Information (Scotland) Act. We are ready to provide our input in helping make changes to improve and develop Scotland's FOI system, keeping it up to date and relevant in the post-pandemic world.

**Daren Fitzhenry**

Scottish Information Commissioner

## Performance Overview

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This Overview provides essential information about the Scottish Information Commissioner's organisation, its purpose, the key risks to the achievement of its objectives and how it has performed during 2020-21. The related detail on these matters is set out in the remainder of this Annual Report.

### Commissioner's role and function

The Commissioner promotes and enforces the public's right to access the information held by Scottish public authorities. His powers and duties are set out in Parts 3 and 4 of the Freedom of Information (Scotland) Act 2002 (FOISA, or the FOI Act). This contains powers and duties to:

- enforce the FOI Act, the Environmental Information (Scotland) Regulations 2004 (the EIRs) and the Codes of Practice which may be issued under sections 60, 61 and 62 of the FOI Act and regulation 18 of the EIRs;
- provide guidance on the FOI Act and the EIRs to the public and promote the following of good practice by Scottish public authorities; and
- give advice to any person on these matters.

The Commissioner's statutory functions include:

- approving Scottish public authorities' publication schemes;
- investigating and deciding applications (appeals) and enforcing decisions in relation to authorities' handling of information requests;
- assessing, promoting and monitoring practice;
- giving advice and assistance about access to information under FOI legislation; and
- investigating and deciding complaints made under the INSPIRE (Scotland) Regulations 2009 involving refusal to grant full public access to a spatial data set or service.

The openness and transparency enabled by FOI are core values in the National Performance Framework. As such, FOI permeates through and actively contributes to the National Outcomes. The Commissioner's office also directly contributes to these outcomes in our work to increase awareness of and improve access to freedom of information. This helps enable empowered individuals and communities and responsive public services.

Due to the impact of the Covid-19 pandemic, the Coronavirus (Scotland) Act 2020 made temporary amendments to a range of legislation, including the FOI Act. The Coronavirus (Scotland) Act 2020 initially increased the maximum timescales within which Scottish public authorities must respond to requests for information and requests for review from 20 to 60 working days. However, this change was later removed by the Coronavirus (Scotland) (No.2) Act 2020. The Commissioner has been given the power to determine that the FOI Act has not been breached if a Scottish public authority fails to respond within the statutory timelines in certain limited circumstances related to the pandemic. The provisions in these Coronavirus Acts are temporary. They were initially due to expire on 30 September 2020, but have since been extended (as permitted by the original Acts) and, at the time of writing, remain in force until 31 March 2022, albeit in amended form, further restricting the cases in which the Commissioner can excuse non-compliance with the statutory timelines.

## Organisational structure

The Scottish Information Commissioner has a team of 25 people based in St Andrews, Fife. During the reporting year, the office premises have been temporarily closed in line with Scottish Government guidance and all staff have been working remotely, using technology provided by the Commissioner and in accordance with remote working guidance. The Senior Management Team (SMT) is led by the Commissioner and includes the heads of three departments:

- Corporate Services: provides a range of corporate services (e.g. finance, HR, IT, records management). The Head of Corporate Services provides assurance to the Commissioner as Accountable Officer
- Enforcement: investigates appeals made under FOI law, ensuring that authorities comply. The Head of Enforcement is in-house legal adviser to the Commissioner
- Policy and Information: carries out research and FOI policy development, and delivers strategies to improve authorities' FOI practice and promote FOI rights to the public.

More information is available at [www.itspublicknowledge.info/AboutUs](http://www.itspublicknowledge.info/AboutUs).

## Financial performance

The Commissioner receives funding through the Scottish Parliamentary Corporate Body (SPCB) and the SPCB approves the Commissioner's annual budget. The Commissioner's financial performance is set out in full in the Accountability Report and Financial Statements which are published as part of the Annual Report 2020-21. In summary, for the year ended 31 March 2021:

- net operating costs totalled £1,945,000 (2019-20: £1,774,000) – including non-cash transactions totalling £47,000 (2019-20: £40,000)
- capital expenditure totalled £78,000 (2019-20: £33,000)
- total net expenditure amounted to £2,023,000 (2019-20: £1,807,000). Cash funding from the SPCB of £1,961,000 (2019-20: £1,771,000) was within the agreed cash budget for the financial year of £1,965,000 (2019-20: £1,797,000). We met our target of achieving no more than a 5% variance in spend against budget.

More information is available at [www.itspublicknowledge.info/FinancialPerformance](http://www.itspublicknowledge.info/FinancialPerformance).

## Objectives and strategies

### *Strategic Plan 2020-24*

The Strategic Plan 2020-24 sets out how the Commissioner proposes to perform his functions over this period. Through this plan, the Commissioner aims to increase public knowledge and understanding of the right to request and obtain information from Scottish public authorities, enabling people to use the right more effectively to obtain the information that matters to them.

### **VISION:**

**The impact of Freedom of Information is increased, being recognised and valued as the key enabler of openness and transparency of public functions in Scotland, enhancing people's right to access the information that matters to them.**

**STRATEGIC OBJECTIVE 1:** increase knowledge and understanding of FOI rights

**STRATEGIC OBJECTIVE 2:** enable and support high standards of FOI policy and practice

**STRATEGIC OBJECTIVE 3:** develop Scottish public sector culture and practice where the proactive disclosure of information is routine and valued

**STRATEGIC OBJECTIVE 4:** influence and support the development and strengthening of Scottish FOI law and practice

**STRATEGIC OBJECTIVE 5:** contribute to Scotland being respected as a world-leader in openness and transparency

**STRATEGIC OBJECTIVE 6:** be recognised as an organisation of independent and trusted experts that is run efficiently, governed effectively and is open and transparent

The 2020-24 Strategic Plan can be viewed at [www.itspublicknowledge.info/StrategicPlan](http://www.itspublicknowledge.info/StrategicPlan).

### *Operational Plan 2020-21*

The Commissioner publishes an annual Operational Plan linked to the Strategic Plan, monitoring and publishing progress every two months. Each planned action is cross referenced to the relevant strategic aims. The section on “Corporate Performance” below provides more detail about the Operational Plan 2020-21.

The Performance and Quality Framework 2020-21 (P&QF) is the performance management system against which we measured, reported on and achieved continuous improvement in the quality of our work and, also, by which we monitored and reported on organisational outcomes. The P&QF is supported by internal systems to ensure we are able to identify and monitor how performance contributes to organisational outputs.

The Performance Analysis section provides commentary on our performance against Key Performance Indicators (KPIs) and the targets for 2020-21.

### *Operational Performance*

Over the past year we have operated as a virtual organisation. The wellbeing and safety of our staff has been a priority and we have worked to support all our members of staff in their physical and mental health, and we have ensured that they have been able to do their jobs by assessing their remote working arrangements and providing them with the equipment needed to work safely.

As a large part of our operational output is demand driven, our operational performance has been impacted by the number, complexity and timing of appeals to us. We have maintained operational output, as far as possible, within the constraints imposed by limitations on access to our office premises and office systems.

The Performance Analysis section provides commentary on our operational performance in 2020-21.

## **Covid-19 pandemic**

The Covid-19 pandemic is a global challenge which has underlined the crucial importance of public services and the people who deliver them, and which continues to have an impact on Scotland's people and public services. While significant advances have been made in vaccinating people throughout the UK, the emergence of new strains and the longer-term implications still make the full impact of the pandemic unclear.

Our priority as an organisation has been to continue to provide our services and guidance within available resources while safeguarding the health, safety and wellbeing of our members of staff.

Since temporarily closing our office premises and putting in place our business continuity arrangements, we have worked to maintain operational output within the constraints imposed by limitations on access to office systems. This included prioritising publication of information in the light of the pandemic, including the creation of our Covid-19 and FOI Info Hub, responding to requests for information and enquiries and dealing with appeals, albeit with an initially limited capability in Q1 due to restricted access to our remote working systems.

We expanded our remote working capabilities in two tranches, to safeguard the connectivity and security of our digital network. All members of staff have been able to work remotely with remote access to our systems since Q2 of the reporting year.

We have worked to support all our members of staff in their physical and mental health, ensuring they are able to do their jobs and regularly signposting to physical and mental wellbeing resources. We have also ensured that we have strong governance in place, can demonstrate sound and transparent decision-making and ensured that our finance processes and procedures are maintained and secure.

Working remotely, we have ensured that as many of our services as possible can be provided and have been able to respond to enquiries received by email and in writing, respond to requests for information and provide updated advice on our website. We are able to be contacted for advice, and appeals can continue to be submitted to us by email, by post and through the online portal.

As a regulator, our aim is to be flexible and proportionate while safeguarding the transparency, consistency, quality and integrity of the work we do. Throughout the reporting year we reviewed our work programme to ensure its relevance, and made changes to how we have carried on our regulatory work in this new operating environment; for example, we have taken full advantage of the new legal power to issue decisions and other notices electronically, reducing time and staff resource; used Microsoft Teams to conduct our meetings, reaching increased numbers in our public sector network meetings; and used remote training as a provider, participant, and audience.

We have also examined the initial impact of Covid-19 and emergency changes to FOI law on FOI practice and performance, publishing our findings, insights and reflections in our Special Report on the Impact of Covid-19 on Freedom of Information in Scotland, which can be found at [www.itspublicknowledge.info/CovidReport](http://www.itspublicknowledge.info/CovidReport).



## Key issues and risks

The Commissioner has internal control systems which include embedded arrangements for identifying, assessing, addressing, reviewing and reporting on risk. These systems are integrated into management systems and closely linked to the business planning process.

Risk is actively managed and regularly reviewed through an appropriate and proportionate framework which covers both strategic and operational risks and which identifies the key risks facing the organisation, analyses the likelihood and impact of risks crystallising, captures the active and monitoring controls in place to mitigate the risk and enables the Commissioner to make a considered choice about the desired risk appetite and the risk profile. Operational risks are aligned to our strategic objectives and strategic risks and are assigned to an owner (SMT or head of department) who has responsibility for ensuring that the risk is managed and monitored appropriately.

During 2020-21, risks were regularly reviewed by the Commissioner and the SMT, and the Advisory Audit Board (AAB) carried out its annual review of the strategic risks.

In 2020-21, eight strategic risks were identified which covered the following:

- continued utility of, awareness of, and support for FOI
- the allocation and maintenance of sufficient resources to FOI
- the practice, governance and performance of the office of the Scottish Information Commissioner
- the impact of the United Kingdom's decision to leave the European Union

The Covid-19 pandemic has had an impact on the work we do. When considering both strategic and operational risks in 2020-21, we took account of the impact of the Covid-19 pandemic in our risk assessments, considering and assessing risks in the light of the changing environment and this resulted in the residual risk assessments, relating to both strategic and operational risks, being increased. We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff – we managed this risk by temporarily closing the office premises in line with government guidance, and the SMT have regularly reviewed the closure in the light of this guidance. We put in place systems to enable essential office work to take place to ensure that the office premises were safe and secure. We also took account of health and safety requirements and emergency legislation requirements to ensure that that the risk to the members of staff carrying out essential work was assessed and mitigated as far as possible.
- having sufficient resources to enable us to carry out our regulatory role, including physical resources – we initially managed this risk by using the remote working facilities that were in place, setting up the Covid-19 FOI Info Hub, inputting into the emergency Coronavirus legislation and maintaining contact with our stakeholders. Expanding remote working (with remote access to our office systems) to all staff and obtaining the additional funding to put this in place for all staff meant that we could work as a “virtual regulator”.
- our appeal caseload and case journey times – we have fluctuating volumes of work and it is not possible to estimate accurately how many appeals we may have to deal with in any one year, or how the demand will vary over any given year. The impact of even short periods of very high appeal numbers can affect KPIs throughout the appeal

system as any backlog moves through this system. We managed this risk by actively monitoring and managing the volume of cases, revising decision-making levels and procedures.

- having appropriate and relevant governance, including operational governance, human resource governance and information governance – initially interim policies and procedures were put in place and these were revised and amended to take account of the expansion of remote working and virtual working. As we moved through the year, we were able to ensure that sound governance continued to be in place.

The section in the Performance Analysis titled “Risk Management” provides a further explanation and more detail on the management of risk in 2020-21.

## Performance summary

- 65% of our decisions found wholly or partially in favour of the requester.
- We carried out 260 interventions, monitoring and assessing Scottish public authority practice. Most were non-compliance notifications or Level 1 interventions.
- We received 486 appeals this year, a similar number compared to 494 last year, but against the backdrop of the Covid-19 pandemic.
- 81% of appeals came to us from members of the public, and 23% of valid appeals were about an authority's failure to respond. 14% of new appeals related to the EIRs.
- 61% of cases were closed within 4 months, and the average closure time of all appeals was 4.37 months. We did not meet our target of closing 70% of cases in 4 months in this challenging year.
- The Commissioner developed a 'Covid-19 and FOI Information Hub' providing detailed information and guidance for authorities and the public on temporary changes made to the FOI Act as a result of the Covid-19 pandemic, actively informing and promoting the proactive dissemination of information.
- We carried out a range of communication and engagement activities, in line with our 2015-20 Communications Strategy. We did not meet three targets: percentage of appeals made via the appeal portal (35% compared to 40% target); increase in website views (18.9% compared to 20% target); and increasing Twitter impressions (177,091 compared to 450,000 target). We did achieve an increase in the number of subscribers to email updates, via the launch of a new newsletter, with 356 subscribers by March 2021.
- All 7 of the new bodies which notified the Commissioner of adoption of a publication scheme during 2020-21 did so within three months of their due date, meeting our KPI of 100% of notifications or enforcement action within 3 months.
- We responded to 860 enquiries, the majority of which related to requests for advice on making and responding to information requests and requests for review. All our enquiries KPIs were met.
- We received 62 information requests and 9 requests for review. We met our KPI for review requests but as the responses to 2 information requests took longer than 20 working days, we did not meet our KPI of responding to 100% of information requests within this time limit.
- We responded to each of the 20 subject access requests we received within one month.
- 15 complaints were received and we met all of our response time KPIs and, also, the KPI that fewer than 20% of complaints be upheld in part or in full.
- 100 compliments were recorded, a 25% rise from the previous year, mainly relating to case handling.
- There were no cases of suspected fraud.

- An approved Operational Plan 2020-21 was monitored every 2 months in Q2, Q3 and Q4. Work undertaken as a result of the Covid-19 pandemic had an effect on both business as usual and projects as resources had to be diverted to business continuity.
- As the office premises were temporarily closed, revised governance procedures were put in place. Of the 42 governance reporting requirements, 38 were met in full, 2 were partially met as the related reporting mechanisms are currently under review, 1 was not met and 1 was carried forward to 2021-22.
- We complied with all of our statutory reporting requirements.
- We met our target of having a compliant publication scheme and Guide to Information and publishing as much information as possible.
- At 18.36 tonnes of CO2e used, we were significantly below our target of 40.5 tonnes.

# PERFORMANCE ANALYSIS

## Interventions

The Commissioner and his staff carry out interventions in cases where a Scottish public authority is failing to meet the requirement and standards set out in legislation and the Scottish Ministers' Codes of Practice.

### Intervention levels

Level and Issue	Action
<b>Non-compliance notification</b> Minor failure to follow good practice	A member of the Commissioner's staff alerts the authority to the issue and <i>recommends</i> remedial action
<b>Level 1</b> Failure to follow good practice	A member of the Commissioner's staff alerts the authority to the issue and <i>requires</i> remedial action
<b>Level 2</b> Practice failure	A member of the Commissioner's staff raises the issue with the authority, initially at Chief Executive level or equivalent, and requires steps to be taken to resolve the issue and achieve a target outcome
<b>Level 3</b> Serious systemic practice failure	A member of the Commissioner's Senior Management Team raises the issue with the authority's Chief Executive or equivalent, and requires a detailed action plan to be put in place to address the failure and achieve a required outcome
<b>Level 4</b> Consistent, ongoing failure to comply with FOI law and guidance	The Commissioner uses his statutory powers to address the problem, which may include practice recommendations or enforcement action

### Intervention caseload

As with interventions data in previous annual reports, the following figures reflect intervention activity in the year, rather than only those opened in the year. Therefore, it is possible for a single intervention case (Level 1-4) to be counted in more than one year. Each non-compliance notification is counted only once.

Intervention level	2018-19*	2019-20*	2020-21
Non-compliance notification	201	217	229
Level 1	38	16	24
Level 2	10	15	6
Level 3	3	3	1
Level 4	0	0	0
<b>TOTAL</b>	<b>252</b>	<b>251</b>	<b>260</b>

\* Please note: These figures represent the same data that was reported in previous annual reports, but the figures are presented differently, in line with the revised Intervention Procedures approved in February 2021.

Interventions activity was broadly on par with previous years, albeit with more non-compliance notifications and Level 1 interventions, and fewer cases at Levels 2 and 3. The fall in Level 2 case numbers is largely because interventions relating to submission of FOI statistics have been reclassified from Level 2 to Level 1 in accordance with the new Procedures.

Also, for resource management reasons, the Commissioner opened a number of interventions at Level 1 which might ordinarily be raised at Level 2, allowing for authorities to resolve the issue swiftly while reserving the ability to escalate the intervention to a higher level if required.

More information is available at [www.itspublicknowledge.info/Interventions](http://www.itspublicknowledge.info/Interventions).

## **Intervention cases**

The implementation phase of the Level 3 Scottish Government intervention continues. The Commissioner published his second annual Progress Report in September 2020, which considered the Scottish Government's actions and performance between 1 April 2019 and 31 May 2020. The report found that, up to March 2020, significant progress was made towards delivering on the agreed improvement action plan, but performance then fell as resources were diverted in response to the Covid-19 pandemic.

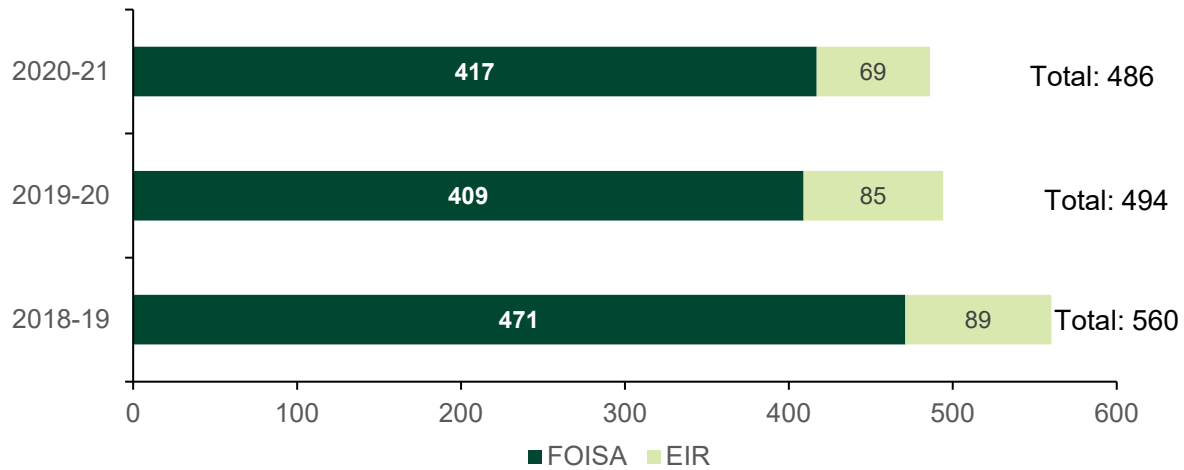
The Covid-19 pandemic also caused a delay to our planned detailed assessment, originally scheduled for summer 2020, and which was rescheduled to be carried out remotely commencing in summer 2021. We will report on this in due course as well as continuing to monitor progress as the Scottish Government's FOI function is restored and the benefits of the improvements that have been made are realised.

There were no other Level 3 interventions open in 2020-21, but a number of Level 2 cases were ongoing during the year, in response to significant long-term trends of high rates of late responses to requests (starting before the periods of disruption caused as a result of the Covid-19 pandemic). These interventions were with: City of Edinburgh Council, Highland Council, Scottish Ambulance Service Board, Scottish Police Authority, and University of Edinburgh.

## Appeals

Anyone who is unhappy with an authority's response to an information request has an enforceable right of appeal to the Commissioner under FOI law.

### Number of appeals received \*



### Reason for appeals

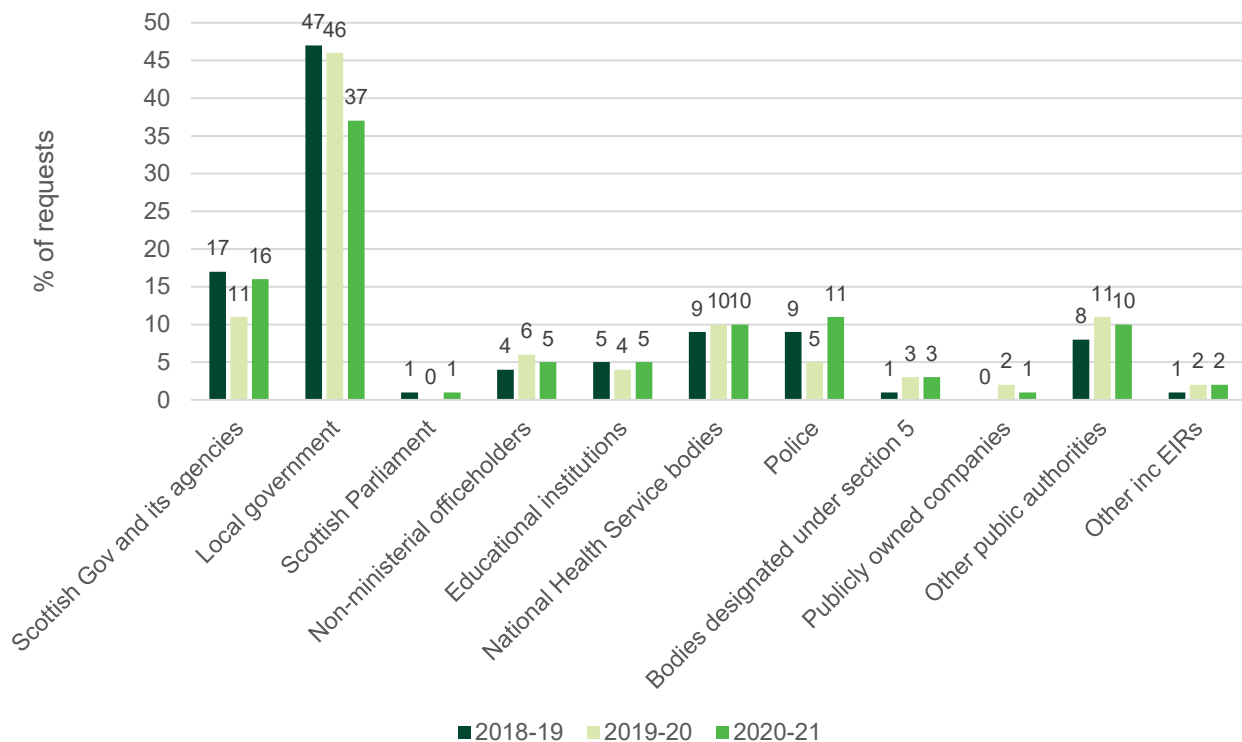
	2018-19 (%)*	2019-20 (%)*	2020-21 (%)*
Information was withheld under an exemption	32%	36%	29%
"Not held" response disputed	12%	15%	24%
Failure to respond (no response sent)	28%	23%	23%
Request not responded to in full	13%	12%	8%
Request refused on grounds of excessive cost	5%	4%	6%
Request deemed "vexatious" or "manifestly unreasonable"	4%	4%	3%
Refusal to confirm or deny whether information was held	2%	1%	2%
Fee or charge disputed	1%	1%	1%
Inadequate advice and assistance from authority	1%	1%	1%
Request deemed "repeated"	1%	1%	2%

\*Percentages are rounded to whole figures, so do not always total 100

## Who appeals?

	Top three applicant types
<b>2017-18</b>	<ul style="list-style-type: none"> <li>Public and other (75%)</li> <li>Media (11%)</li> <li>Voluntary/campaign organisation (4%)</li> </ul>
<b>2018-19</b>	<ul style="list-style-type: none"> <li>Public and other (75%)</li> <li>Media (7%)</li> <li>Voluntary/campaign organisation (5%)</li> </ul>
<b>2019-20</b>	<ul style="list-style-type: none"> <li>Public and other (75%)</li> <li>Media (15%)</li> <li>Private/commercial enterprise (3%)</li> </ul>
<b>2020-21</b>	<ul style="list-style-type: none"> <li>Public and other (81%)</li> <li>Media (8%)</li> <li>Private/commercial enterprise (5%)</li> </ul>

## Which authority types are the appeals about?



\*Percentages are rounded to whole figures, so do not always total 100



## Validation

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The Commissioner can only investigate “valid” appeals that meet specific legal criteria. Common reasons for appeals being invalid include the appeal not providing the legally required details (e.g. the full name of the requester), a request for review not being made or the timescales for appeals not being met.

	2018-19	2019-20*	2020-21
<b>Total appeals received</b>	<b>560</b>	<b>494</b>	<b>486</b>
Invalid appeals	167	159	118
Valid appeals	393	335	368
Failure to respond appeals	94	70	80
Substantive appeals	299	265	288

### Online appeal service

Our appeal portal helps requesters make a valid appeal online. It’s available around the clock and provides advice about making an appeal. It also alerts users to common problems and explains how to resolve them. This year, 34% of all appeals were made via the online appeal portal (2019-20 38% and 2018-19 39%). Appeals made through the appeal portal were more likely to be valid than appeals made by other means: 84% as opposed to 71%.

More information is available at [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal).

### “Failure to respond” appeals

A Scottish public authority is required by law to provide a response promptly (as soon as possible) and within no more than 20 working days<sup>1</sup> (although for a short period – 7 April 2020 until 26 May 2020 inclusive – this was extended to a maximum period of 60 working days by the Coronavirus (Scotland) Act 2020). If an authority has failed to respond to a request for review within these timescales, or at all, it has breached a statutory duty and requesters have a right to appeal to us.

There was an increase in the number of appeals received about authorities’ failures to respond, after a welcome reduction last year (80 in 2020-21, 70 in 2019-20\*). We suspect that the pandemic and its impact on authorities’ FOI performance is likely to be a contributing factor to this increase.

\*Data for 2019-20 listed here has been updated since the publication of the 2019-20 annual report, to reflect that at the time the 2019-20 report was published, some appeals had not been categorised as valid or invalid.

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<sup>1</sup> For requests made under EIRs, no more than 20 working days, or 40 working days if the volume and complexity of the information make it impractical to comply with the 20 working day timeline as set out in Regulation 7.

## Investigations and enforcement action

### Investigations

If a requester is dissatisfied with the way a Scottish public authority handled their request for review, they can appeal to the Commissioner. In all valid appeals (unless the appeal is frivolous, vexatious, withdrawn or abandoned), the Commissioner will investigate whether the authority complied with the law.

#### *Investigations over four months*

The FOI Act requires the Commissioner to report the number of cases taking longer than four months. We aim to resolve the majority of our cases within this period, although more complex cases will often take longer.

More information is available at [www.itspublicknowledge.info/OperationalPerformance](http://www.itspublicknowledge.info/OperationalPerformance).

	2018-19	2019-20	2020-21
<b>Cases closed without investigation</b>			
4 months or less	169	163	117
More than 4 months	3	2	1
Subtotal	172	165	118
<b>Cases closed during investigation</b>			
4 months or less	95	106	89
More than 4 months	39	50	40
Subtotal	134	156	129
<b>Cases closed with decision</b>			
4 months or less	112	64	42
More than 4 months	111	132	118
Subtotal	223	196	160
<b>All cases</b>			
Total 4 months or less	376	333	248
Total more than 4 months	153	184	159
<b>Total cases closed</b>	<b>529</b>	<b>517</b>	<b>407</b>

#### *Case closure times*

	Target (%)	Performance* (%)
<b>“Failure to respond” appeals</b>		
1.5 months	60%	49% (not met)
4 months or less	100%	93% (not met)
<b>Substantive appeals</b>		
4 months or less	50%	27% (not met)
6 months or less	75%	42% (not met)
12 months or less	95%	86% (not met)
<b>All appeals</b>		
4 months or less	70%	61% (not met)
6 months or less	85%	70% (not met)
12 months or less	97%	93% (not met)

\* Percentages have been rounded up/ down to the nearest whole number.

The average closure time of all appeals was 4.37 months (2019-20: 3.37 months; 2018-19: 3.10 months).

Last year's annual report commented that it was difficult to know just how much of an effect the Covid-19 pandemic would have on our investigation work in 2020-21. The impact has been greater than we would have hoped, particularly due to the requirement to temporarily close the office premises in accordance with Scottish government guidance and the limitations on access to our case management system until the expanded remote working systems were put in place.

Remote working, with remote access to our systems, was expanded in two tranches and this work was completed in Q2. This meant that for the majority of Q1 and part of Q2, only limited numbers of the investigations team were able to work remotely. By August 2021, the team was back up and running and was working hard to deal with the backlog of cases which had built up.

Quarters 3 and 4 then saw an unexpectedly high number of new applications. We suspect this was as a result of responses which had been delayed during the early stages of the Covid-19 pandemic being appealed to us.

Despite the hard work put in by the team – including updating procedures to reflect remote working and changes made by the Coronavirus (Scotland) Act, and further streamlining of investigations to move the backlog of cases along as quickly as possible – none of the appeals KPIs were met this year. In some cases, the variance was small, reflecting the streamlined processes as well as the considerable efforts of the team. Some of the delays were also caused or exacerbated by external factors – for example, many authorities took longer than usual to respond to us, because staff had been moved to cover other duties during the pandemic, or because they were unable to access their systems or premises, which in turn delayed our appeal turn-around times.

However, despite these considerable challenges and overall annual performance, 2020-21 has seen a notable improvement in our performance against KPIs as the year has progressed and remote working has bedded in. We expect this to continue throughout 2021-22, but acknowledge that we start the new financial year with a particularly large caseload.

#### *Enforcement action*

The Commissioner can take action if an authority has not complied with the FOI Act, the EIRs or the Codes of Practice. This includes the power to issue Enforcement Notices, Information Notices and Practice Recommendations.

More information is available at [www.itspublicknowledge.info/Enforcement](http://www.itspublicknowledge.info/Enforcement).

#### *Appeals to the courts*

The Commissioner's decisions can be appealed to the Court of Session on a point of law. There was one appeal in 2020-21. The Scottish Government appealed a decision ordering it to disclose details of contact between the First Minister and Mr Alex Salmond. The appeal was restricted to one paragraph in a document. The Commissioner chose not to defend the appeal after being satisfied that (following information being provided to him after the decision was issued), disclosing the paragraph could, as a result of jigsaw identification, identify a complainer in the criminal case against Mr Salmond. This would have constituted a contempt of court.

## Enforcement performance outcomes

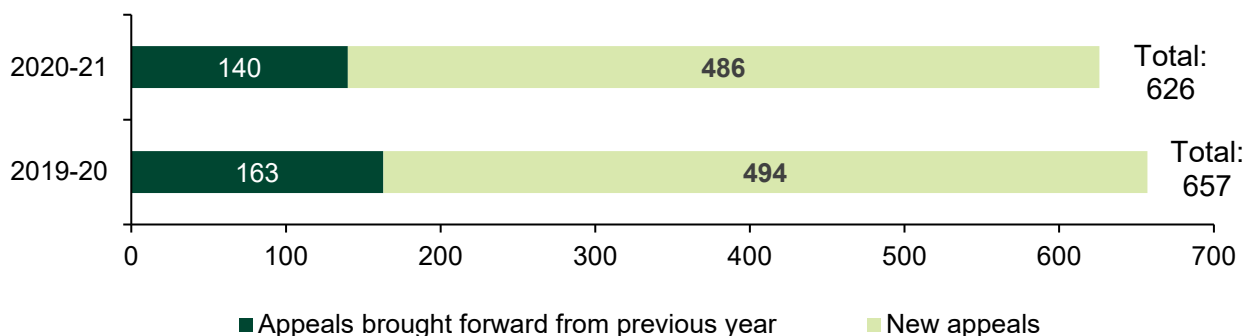
### Appeal outcomes

There are three possible points at which appeals to the Commissioner can be closed:

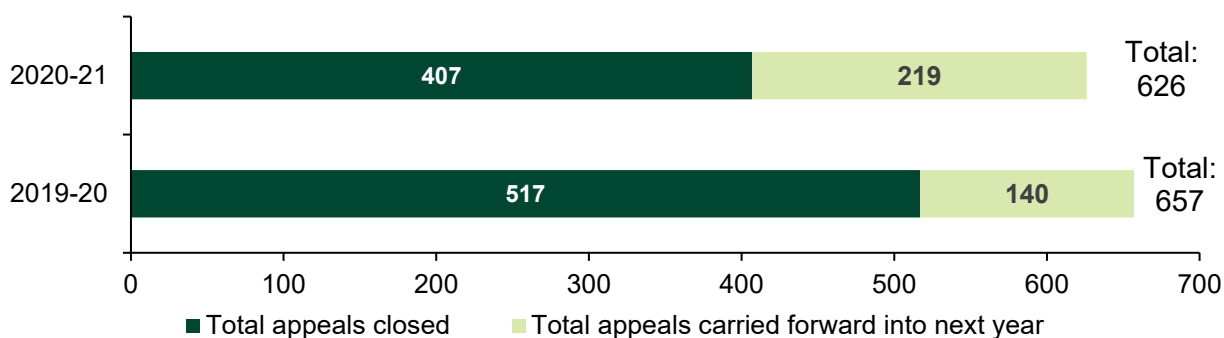
- closure without investigation, for example, where the appeal is not valid
- closure during investigation, for example, where the matter is resolved to the satisfaction of the requester during the investigation
- the Commissioner issues a Decision Notice

Reason for closure	2019-20	2020-21	2020-21 (FOISA)	2020-21 (EIRs)
<b>Closed without investigation</b>				
Premature or "out of time"	21	16	10	6
Withdrawn or abandoned	18	0	0	0
Resolved	0	0	0	0
Excluded – Lord Advocate or Procurator Fiscal (FOISA)	11	9	9	0
Format invalid	49	23	20	3
Body not subject to FOI	5	6	6	0
No request for review made	38	46	41	5
No request to public authority	22	5	4	1
Frivolous or vexatious/other	0	0	0	0
Other	1	13	10	3
Subtotal	165	118	100	18
<b>Closed during investigation</b>				
Withdrawn or abandoned	10	8	8	0
Resolved	135	121	109	12
Frivolous or vexatious/invalid	11	0	0	0
Subtotal	156	129	117	12
<b>Closed with a Decision Notice</b>				
For requester	70	62	52	10
For authority	63	56	44	12
Partially upheld	63	42	30	12
Subtotal	196	160	126	34

### New appeals in 2020-21 and appeals brought forward from previous years



### Appeals closed in 2020-21 and appeals carried forward into following year



### Commissioner's decisions

Anyone who is unhappy with an authority's response to an information request has an enforceable right of appeal to the Commissioner under FOI law.

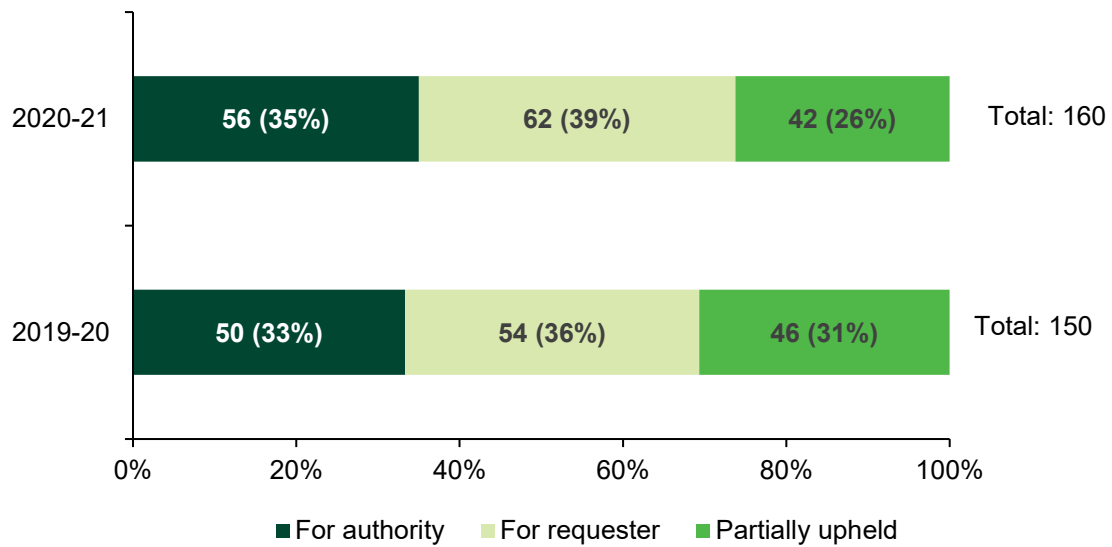
As ever, the appeals considered this year covered a wide range of high-profile topics, including:

- Cryptococcus outbreak at the Queen Elizabeth University Hospital (NHS Greater Glasgow and Clyde: 064/2020)
- Report by the Scottish Professional Football League (SPFL) on fan behaviour at football matches provided to the Scottish Ministers (Scottish Ministers: 087/2020)
- Correspondence between the First Minister and Alex Salmond (Scottish Ministers: 102/2020)
- Handling of Covid-19 (Scottish Ministers:158/2020)
- The use of azamethiphos (a pesticide) in fish farms (Scottish Environment Protection Agency: 019/2021)
- Minutes of the First Minister's meeting with Michel Barnier (Scottish Ministers: 029/2021)
- Confirmation that Abellio ScotRail is a public authority for the purposes of the EIRs (Abellio ScotRail Ltd: 044/2021)

These, and the other decisions issued in 2020-21, are available at [www.itspublicknowledge.info/Decisions](http://www.itspublicknowledge.info/Decisions).

### Outcome types

65% of our decisions found wholly or partially in favour of the requester.



Further information on this area of performance can be found in the committee report considered by the SMT on 29 April 2021, available at [www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512\\_QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512_QSMTM.aspx).

## Authorities' FOI statistics

Scottish public authorities provide the Scottish Information Commissioner with regular data about the information requests they receive via a statistics portal.

Data from 2020-21 shows a 14% decrease in total requests compared to 2019-20 (17% decrease when compared to 2018-19). As noted in our Special Report on the Impact of Covid-19 on Freedom of Information in Scotland<sup>2</sup>, the reduction in requests in the first quarter of the year was particularly noticeable. It is also noteworthy that failures to respond to requests have more than doubled (1,803 in 2020-21 compared to 812 in 2019-20), and that the percentage of all requests resulting in full or partial disclosure of information has fallen slightly from 76% to 73%.

	2018-19	2019-20*	2020-21
<b>Total requests*</b>	<b>83,963</b>	<b>81,061</b>	<b>69,519</b>
- FOI requests	75,325	70,829	61,217
- EIRs requests	8,638	10,232	8,302
- EIRs as a percentage of total requests	10.3%	12.6%	11.9%
<b>FOI cost refusals</b>	<b>2,295</b>	<b>2,062</b>	<b>1,790</b>
- as a percentage of total FOI requests	3.0%	2.9%	2.9%
<b>Vexatious, repeated or manifestly unreasonably refusals</b>	<b>425</b>	<b>298</b>	<b>392</b>
- as a percentage of total requests	0.5%	0.4%	0.6%
<b>Failure to respond (to initial request)</b>	<b>940</b>	<b>812</b>	<b>1,803</b>
- as a percentage of total requests	1.1%	1%	2.6%
<b>Response: full disclosure</b>	<b>47,294</b>	<b>45,711</b>	<b>37,021</b>
<b>Response: partial disclosure</b>	<b>15,659</b>	<b>15,749</b>	<b>13,363</b>
- % full or partial disclosure as a percentage of total requests	75%	76%	73%
<b>Response: information withheld</b>	<b>7,787</b>	<b>7,269</b>	<b>6,348</b>
<b>Response: information not held</b>	<b>9,348</b>	<b>8,571</b>	<b>7,334</b>
<b>Total reviews</b>	<b>2,297</b>	<b>1,960</b>	<b>1,961</b>
- as a percentage of total requests	2.7%	2.4%	2.8%
<b>Appeals to the Commissioner</b>	<b>560</b>	<b>494</b>	<b>486</b>
- as a percentage of total requests	0.7%	0.6%	0.7%

\*As noted in the 2019-20 annual report, submission of data for final quarter of 2019-20 by some authorities was affected by the Covid-19 pandemic, meaning some submissions were still outstanding at the time the report was finalised. The figures listed in this table for 2019-20 have since been updated with final statistics and therefore differ to those listed in the 2019-20 report.

<sup>2</sup> Available at [www.itspublicknowledge.info/CovidReport](http://www.itspublicknowledge.info/CovidReport)

## Monitoring and improving authority practice

The Commissioner provides practical support and learning tools to help authorities improve their FOI practice.

### Communications, guidance and briefings to authorities

Communication tool	Description
<b>Covid-19 Info Hub</b>	In April 2020 we launched a pandemic-related 'Info Hub' to provide accessible advice and guidance to public authorities and the public on the impact of Covid-19 on FOI law and practice. This included regular updates on the practical effect of changes to FOI law arising from Coronavirus legislation, along with advice, support and answers to common questions.
<b>Newsletter</b>	We launched a new email newsletter, Open Update, in December 2020, sending 3 issues to our growing subscriber list between December 2020 and March 2021.
<b>Email</b>	We issued a number of formal updates to authorities – including updates regarding changes to FOI law as a result of the pandemic.
<b>Social media</b>	We issued more than 150 tweets across the year, highlighting practitioner guidance, key developments, new resources and information on FOI rights. During 2020-21 our Twitter following grew to over 1,000 followers.
<b>Network meetings</b>	While meetings of FOI network groups for public authority staff were significantly disrupted by recent events, we continued to support those that took place virtually. This included regular participation in virtual meetings for health sector FOI staff, and the facilitation of a meeting to explore the business use of Microsoft Teams with a group of NDPBs and regulators.
<b>Events and conferences</b>	We supported the first virtual Holyrood FOI conference in December 2020. Our annual Centre for FOI Practitioners' Conference, scheduled for May 2020, was cancelled as a result of the pandemic, but a virtual event took place in August 2021. We also delivered regular updates at the Scottish Public Information Forum, a forum bringing together stakeholders across Scotland to discuss FOI and related issues.
<b>Surveys</b>	We surveyed public authorities to examine the impact of Covid-19 and emergency changes to FOI law on FOI practice and performance, to inform a Special Report on the issue. We also surveyed registered social landlords and reported on their experiences over their first year of coverage under FOI.
<b>FOI practitioner training</b>	We supported a small number of training and awareness-raising sessions for public bodies across the year, including delivering input into training for Social Security Scotland staff. We also discussed the FOI experience of Scottish housing associations with staff from similar bodies in the rest of the UK, to inform their own journey towards greater openness and transparency.
<b>Self-assessment toolkit</b>	We added a sixth module to our public authority self-assessment toolkit during the year, aimed at supporting improvement in FOI management and reporting. We also updated and streamlined our toolkit guidance, to ensure that our toolkit resources are as practical and easy-to-use as possible.
<b>Interventions &amp; enquiries</b>	We provided one-to-one support and advice to individual public authorities and staff through our programme of interventions and enquiries service.



**More information:**

Covid-19 & FOI Info Hub: [www.itspublicknowledge.info/Covid-19](http://www.itspublicknowledge.info/Covid-19)

Self-assessment Toolkit: <https://www.itspublicknowledge.info/Toolkit>

Our briefings and guidance: [www.itspublicknowledge.info/Briefings](http://www.itspublicknowledge.info/Briefings)

Reports informed by our survey activity: [www.itspublicknowledge.info/Reports](http://www.itspublicknowledge.info/Reports)

Open Update newsletter: [www.itspublicknowledge.info/Newsletter](http://www.itspublicknowledge.info/Newsletter)

Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

**Publishing information and adoption of publication schemes**

The FOI Act requires authorities to publish information as well as respond to requests. This is called the “publication scheme” duty. They must make information accessible to the public without having to ask for it, and publish a “Guide to Information” to enable people to locate the information. The EIRs also carry a similar duty.

A total of 7 authorities notified the Commissioner of adoption of a publication scheme during 2020-21, and all did so within three months of their due date: Public Health Scotland, South of Scotland Enterprise, Wheatley Care, Ferguson Marine Ltd, Scottish Animal Welfare Commission, Scottish National Investment Bank, and Parkhead Development Company. This number was a large decrease on 2019-2020 (when 200 authorities notified us about adoption of publication schemes), for the most part due to RSLs becoming subject to FOI law in 2019.

More information is available at [www.itspublicknowledge.info/MPS](http://www.itspublicknowledge.info/MPS).

## Raising awareness and improving access to FOI

The Commissioner has a statutory duty to promote freedom of information rights, ensuring people know they have rights and know how to use them to access the information they want to see.

### Communications strategy

Development of the Commissioner's 2021-2024 Communication & Engagement Framework was delayed due to the impact of the Covid-19 pandemic. As a result of this delay, measures from the Commissioner's 2015-2020 Communications Strategy were used to measure and guide communications activity in 2020-21.

The Commissioner's main communication tools are the website, social media, events and email communication.

2015-20 strategy measures	2020-21 performance against the measure
A minimum of 40% of all appeals to be received via the online application portal	35% of applications were made through the portal, compared to 38% in 2019-20. It is anticipated, however, that this measure would have been met or exceeded in 2020-21 had it not been for a need to direct people towards alternate appeal routes between June 2020 and January 2021, in circumstances where their appeal may have been affected by the Coronavirus-related temporary extension of FOI timescales.
A 20% increase in the number of annual unique website page views (from 54,000 to 64,800)	In 2020-21 there were 64,231 unique visits, an 18.9% increase from the 54,000 baseline. The development of a new website is currently being explored.
Increase in the number of subscribers to emails	This target was revised in 2019, following the discontinuation of our subscription model that year, and the development of a new email service during 2020. Our new email newsletter was launched in December 2020, and by March 2021 had 356 registered subscribers. We will continue to grow subscriptions to the newsletter over the coming year.
Increase in number of annual impressions on Twitter (to 450,000 in 2020)	While 502,600 annual impressions were achieved in 2019-20, this fell to 177,091 across 2020-21. Significantly fewer tweets were issued during 2020-21, as a result of a number of factors including temporary office closure, reduced access to IT, reduced public sector activity generally, and reduced staff capacity.

During 2020-21 we developed a new communications and engagement framework which aligns with the Commissioner's Strategic Plan 2020-24. The new framework, which includes a range of new goals and measures, will be implemented in 2021-22. Progress against this framework will be reported in our next report.

Further information on this area of performance can be found in the committee report considered by the SMT on 12 May 2021, available at [www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512\\_QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512_QSMTM.aspx)

## **Civil society communications**

Our activities to promote FOI rights to civil society groups during 2020-21 were, like activity across the public sector and beyond, significantly disrupted by the events of the last year.

Our planned activity to promote FOI rights to housing association tenant groups was disrupted through the cancellation of in-person events and conferences, while disruption to university teaching programmes meant that we were unable to deliver training to journalism students.

We were, however, able to deliver some training and resources to civil society groups, adjusting our services to meet the restrictions and requirements of a 'locked-down' society. We delivered an online FOI awareness raising session for housing association tenants, in partnership with the Tenants Participation Advisory Service (TPAS) Scotland, and created FOI introductory resources for circulation amongst tenants and inclusion in newsletters. We plan further activity to promote FOI rights to tenant groups in 2021-22.

We worked in partnership with Young Scot to develop and deliver a short campaign to promote FOI rights to young people, including refreshed website content and an interactive quiz, promoted through Young Scot's website and social media channels. Again, further work to develop FOI resources for young people is planned.

We continued to actively support the Scottish Public Information Forum, a regular forum where campaigners, regulators, authorities and requesters are brought together to explore issues relating to access to information in Scotland and beyond. We continued our active contribution to the work of Scotland's Open Government Partnership as a contributor to Commitment 4, and a standing observer in the Steering Group, chairing its Open Government Partnership Scotland Reporting Mechanism Working Group.

## **Policy and legislation highlights**

### *Temporary changes to the FOI Act*

We assisted the Scottish Parliament in its consideration of the draft Coronavirus (Scotland) Bill by producing a briefing for MSPs on the FOI provisions in the Bill to an extremely demanding 24-hour turn-around.

Soon after the amended Bill was passed, we launched our Covid-19 and FOI Information Hub, which included our new guidance for both public authorities and the general public on the changes brought about by the new legislation, as well as our briefing for MSPs and other resources about the operation of FOI and our own services. We later updated the guidance in time for the Coronavirus (Scotland) (No.2) Act taking effect on 27 May 2020 which substantially amended the FOI provisions of the first Act.

The Covid-19 and FOI Information Hub is available at [www.itspublicknowledge.info/Covid-19](http://www.itspublicknowledge.info/Covid-19).

The guidance we issued included information on how the Commissioner would use the discretion to find that an authority did not fail to comply with the FOI Act by failing to respond to a request within the relevant maximum timescale, where the delay was reasonable and due to the impact of the Covid-19 pandemic. This provision remained in force for the remainder of 2020-21, although it was considered relatively infrequently.

Finally, the provision in the Coronavirus Acts allowing us to issue decisions and other notices electronically, rather than requiring a hardcopy notice to be sent, has been essential during the pandemic and would continue to ensure efficiency in the future. We have been in discussion with the Scottish Government about the potential for making this provision permanent.

Throughout this period of legislative change – which coincided with the capacity of our office being substantially constrained by the transition to remote working – we were in regular contact with all Scottish public authorities. During 2020, we conducted research into the impact of the Covid-19 pandemic on FOI practice, and in particular the extent to which the increased maximum timescales had been utilised and had been sufficient to support authorities' compliance, resulting in the publishing of a Special Report on the matter in December 2020, which is available at [www.itspublicknowledge.info/CovidReport](http://www.itspublicknowledge.info/CovidReport).

#### *Post-legislative scrutiny of the FOI Act*

Following the publication of the report on the Post-legislative Scrutiny of the FOI Act in May 2020, we have:

- undertaken research regarding current practice in and potential future approaches to proactive publication,
- resumed producing learning points from decisions including in relation to managing new forms of information and communication, and
- begun work to improve the guidance we provide to authorities and the public on various aspects of FOI law and rights.

The Scottish Government has indicated that it intends to consult on many of the report's findings in 2021-22, and we look forward to participating in that process in order to help achieve the aim of further strengthening the FOI Act.

#### *International Conference of Information Commissioners (ICIC)*

We continued to contribute actively to the furtherance of international cooperation among information rights regulators as a member of the ICIC's Governance Working Group, and Chair of its Strategic Priorities Working Group.

## Enquiries

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The Commissioner has a duty to promote good practice and a power to give advice on the operation of FOI. We use this power to provide an enquiries service to the public and public authorities. Anyone with a question about FOI can contact us for advice and most of our enquiries are from the public. This service is also one of the main points of contact with us and we have answered more than 25,600 enquiries since FOI was introduced in 2005.

As a result of the impact of the Covid-19 pandemic, the office premises temporarily closed on 23 March 2020 and an interim enquiries procedure has been operated from that date. This meant that we were still able to continue to consider and respond to enquiries by email and in writing during this time.

The numbers of enquiries received in 2020-21 as a whole and in each quarter, with comparative figures for 2019-20 and 2018-19, are:

	2018-19	2019-20	2020-21
<b>Q1</b>	351	341	<b>177</b>
<b>Q2</b>	360	344	<b>317</b>
<b>Q3</b>	338	336	<b>172</b>
<b>Q4</b>	330	262	<b>194</b>
<b>Total</b>	1,379	1,283	<b>860</b>

In 2020-21, the majority of enquiries related to requests for advice on making and responding to information requests and requests for reviews or appeals. We also provided information on the referral of matters to the UK Information Commissioner's Office. Although there was a decrease in the total number of enquiries compared to the previous year (423), there was an increase in the number of statistics portal enquiries (162) (2019-20: 21). The main factors resulting in this increase were public authority staff working remotely and not having access to portal login details, and queries relating to a Covid-19 supplementary questionnaire which we had issued to public authorities for response.

Type of enquirer	%
Public and other <sup>3</sup>	48%
Public authority <sup>4</sup>	37%
Media	5%
Commercial / private enterprise	3%
Voluntary / campaign organisation	2%
Academic / student	2%
Elected representative (MP, MEP, MSP, Councillor)	1%
Solicitor	1%
Categories <1%	1%

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<sup>3</sup> "Public and other" represents all individual members of the public with no identified affiliation to an organisation or group.

<sup>4</sup> Includes prospective public authorities falling within the Commissioner's jurisdiction & UK public authorities.

We recognise the importance of good performance and quality in the delivery of the enquiries service. Of all the compliments we received in 2020-21, 38% were about our response to enquiries.

### Response times

Five enquiries were open at the end of 2019-20 and responded to in 2020-21. Of the enquiries closed in 2020-21, 834 were responded to within five working days, 27 within 20 working days and three responses were issued beyond 20 working days. One enquiry was open at the end of 2020-21.

We were able to respond to 99.6% of enquiries within 20 working days despite initially having limited access to our office systems and a reduced number of staff able to work remotely between April and August 2020.

Both of the enquiry KPIs were met in 2020-21.

Performance measure 2020-21		Target %	Actual %
answered in 5 days		90%	96.5%
answered in 20 days		95%	99.6%

More detail on the Commissioner's Enquiries performance in 2020-21 is set out in the committee report considered by the SMT on 29 April 2021, available at

[www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512\\_QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512_QSMTM.aspx).

## The Commissioner's FOI and subject access performance

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### Information requests

As a Scottish public authority, we are subject to FOI law and must respond to the requests for information we receive. In 2020-21, we received 62 information requests (2019-20: 68) and 9 requests for review (2019-20: 6).

If we don't hold information, we will advise the requester and point them to where they might get it (if we know) or tell them about relevant information we do hold.

### Covid-19 pandemic

Changes to FOISA were made as a result of the Coronavirus Acts. As a regulator, we issued guidance on how FOI duties were impacted by the emergency legislation and the amendments made to it – including a new separate guidance document on requests for information or review which were responded to between 7 April and 26 May 2020.

The latest guidance can be found at

[www.itspublicknowledge.info/ScottishPublicAuthorities/Covid-19AuthorityGuidance.aspx](http://www.itspublicknowledge.info/ScottishPublicAuthorities/Covid-19AuthorityGuidance.aspx).

We maintained operational output within the constraints imposed by limitations on access to our office premises and office systems and this included responding to requests for information.

Our interim policy "Covid-19: How the Commissioner will respond to FOI requests during the temporary office closure due to the impact of the Covid-19 pandemic" sets out how the Commissioner complies with FOISA and EIRs requests and review requests during the temporary closure of the office premises. This revised guidance can be found at [www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=13593&SID=105](http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=13593&SID=105).

### Requests for information

Received	2019-20	2020-21
Brought forward from previous year	3	3
Requests received	68	62
- FOI requests	67	61
- EIRs requests	1	1
<b>Request caseload</b>	<b>71</b>	<b>65</b>

Closed	2019-20	2020-21
<b>Total requests closed</b>	<b>68</b>	<b>64</b>
Information provided in full	16	7
Information partially supplied	21	14
Information not held	18	28
Information not supplied	13	15
- Clarification not provided	0	2
- Request withdrawn	0	5

- Exempt	8	5
- Neither confirm nor deny	1	0
- Excessive costs	0	1
- Information request invalid	4	2
Fee charged	0	0
<b>Requests open at end of year</b>	<b>3</b>	<b>1</b>

### Requests for review

Requests for review	2019-20	2020-21
Brought forward from previous year	0	0
Review requests received	6	9
<b>Review caseload</b>	<b>6</b>	<b>9</b>

Closed	2019-20	2020-21
<b>Total reviews closed</b>	<b>6</b>	<b>7</b>
Internal review upholds original decision in full	4	6
Internal review partially upholds original decision	0	1
Internal review substituted a different decision	0	0
Request for review invalid	2	0
<b>Requests for review open at end of year</b>	<b>0</b>	<b>2</b>

### Response times

We met one of our two KPI targets in responding to information requests and review requests.

The 100% targets for responding to requests for information and requests for review are targets that we aim to meet at all times. However, we were not able to meet our target for responding to requests for information in 2020-21. Although this is disappointing, the reasons for this were related to the impact of the COVID-19 pandemic on our organisation.

In the first quarter, 2 requests for information took longer than 20 working days to respond to:

- (i) 1 request was received during the period where, legally, we had a maximum of 60 working days to respond. However, despite this extension, our target was not changed from 20 days, and, as the response took longer than 20 working days, this was recorded as missing the target of 20 working days
- (ii) By the time we were able to access our systems to locate the information for another request, the 60 working days maximum had reverted to 20 days and, as the response took longer than 20 working days, this was recorded as missing the target of 20 working days.



Performance measure 2020-21	Target %	Actual %
% requests answered within 20 working days	100%	97% (not met)
% requests for review answered within 20 working days	100%	100% (met)

More detail on the Commissioner's FOI performance in 2020-21 is set out in the committee report considered by the SMT on 29 April 2021, available at [www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512\\_QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512_QSMTM.aspx).

### **Subject access**

The data protection right commonly referred to as subject access gives individuals the right to obtain a copy of their personal data as well as other supplementary information. We are also subject to data protection law and must respond to subject access requests. This helps individuals to understand how and why we are using their data and also enables them to check we are doing this lawfully. Requests are forwarded, on receipt, to the most appropriate member of staff for a response. We maintain a record of all subject access requests in our case management system.

In 2020-21, we received 20 subject access requests (2019-20: 18).

#### *Response times*

We have a target to meet 100% of subject access requests within a calendar month and this target was met in 2020-21.

More detail on the Commissioner's subject access performance in 2020-21 is set out in the committee report considered by the SMT on 29 April 2021, available at [www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512\\_QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512_QSMTM.aspx).

## Service standards

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Each financial year we review the way we have provided our service by looking at the compliments received and complaints made and the outcomes of those complaints.

### Compliments recorded

In 2020-21, we recorded 100 compliments (2019-20: 75).

The majority of compliments were related to case handling, came from applicants, enquirers and public authorities, and thanked us for helpful, prompt, professional responses.

There were also compliments received relating to events and training that we took part in and the resources we provided in 2020-21.

### Complaints about our services

Our Complaint Handling Procedures (CHP) set out how we manage and respond to complaints. The CHP is currently under review to take account of the updated Model Complaint Handling Procedures published by the Scottish Public Services Ombudsman (SPSO) on 31 January 2020.

In 2020-21, there were 15 complaints (2019-20: 12), the majority of which related to an aspect of our working practices. Even though the number of complaints is small, we are committed to improving our service as a result of learning from these and addressing any systematic issues that may be identified.

The complaints were dealt with as follows:

- (i) 3 were closed at Frontline Resolution
- (ii) 11 were closed following an Investigation
  - (a) 10 were not upheld
  - (b) 1 was partially upheld

Our KPI that fewer than 20% of complaints be upheld in part or full was met.

One complaint was open as at 31 March 2021.

### Response times

We also have KPIs relating to the timescales for handling complaints and in 2020-21 we met these targets.

Performance measure	Number	Target %	Actual %
Complaints received	12		
Resolved at frontline	5	90% resolved in 5 days 95% resolved in 10 days	100% resolved in 5 days (met)
Investigated	7	80% answered in 30 days 85% answered in 40 days	100% answered in 30 days (met)

## Environment and sustainable development

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We are committed to improving the environmental performance of our organisation, which involves protecting biodiversity and reducing pollution and carbon emissions. We have not identified any specific aim or risk relating to climate change. However, improving our environmental performance will contribute towards wider efforts to mitigate climate change.

### Environment

Our Environmental Policy details a number of objectives through which we aim to manage, and where possible reduce any impacts on the environment that are due to our activities. We also continue to be committed to improving efficiency in how we function as an organisation and in how the office is managed. In 2020-21 we aimed to:

- Minimise carbon dioxide and other greenhouse gas emissions
- Reduce the impact of travel and transport to and from the office
- Recycle as much as possible
- Select the most environmentally friendly products for cleaning where possible.

Due to the COVID-19 pandemic, we also implemented:

- a no-paper policy
- encouraged all meetings to be held via telephone or video conferencing software.

Our Environmental Policy can be found at

[www.itspublicknowledge.info/home/SICPublicationScheme/PSGuidetoInfo.aspx#class5](http://www.itspublicknowledge.info/home/SICPublicationScheme/PSGuidetoInfo.aspx#class5).

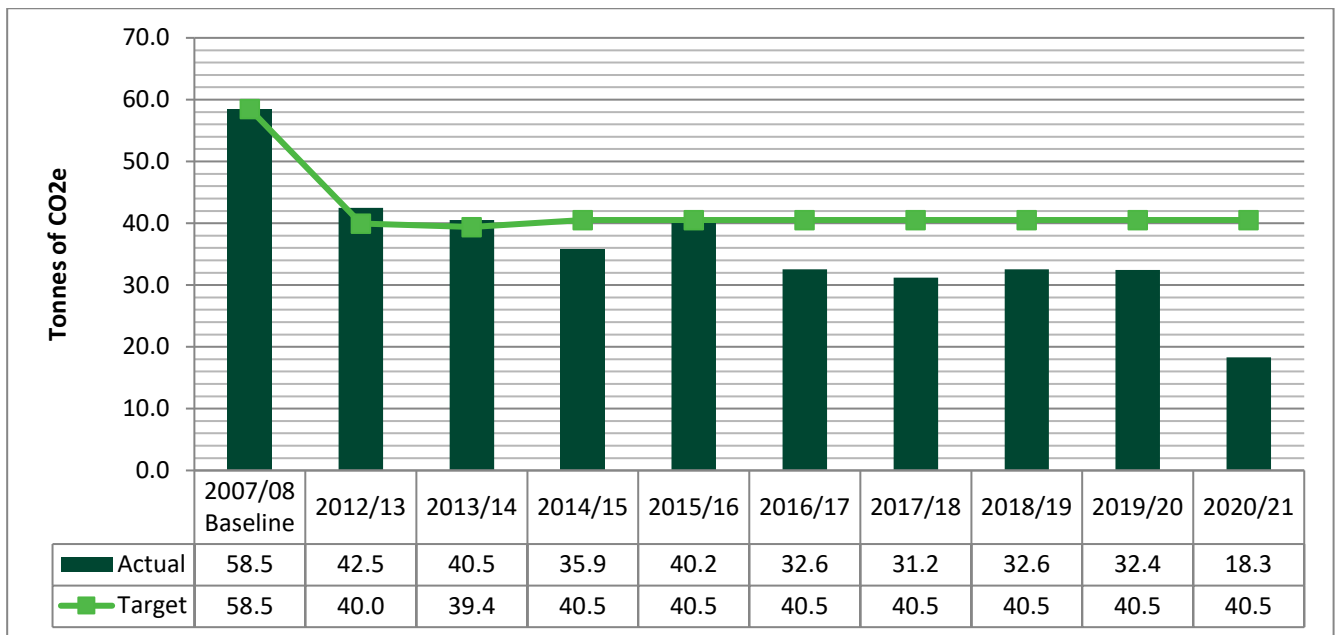
### Sustainability

The Commissioner's primary function is to enforce and promote Scotland's freedom of information legislation. Promoting and increasing sustainability is a challenge as we are a small, single site organisation. However, our office can make a direct contribution to sustainability through the management of its carbon footprint. We remain committed to managing and, where possible, reducing further our carbon footprint and will continue to seek ways to do so.

The Commissioner's Statement on Sustainable Growth for 2020-21 has been published and can be found at [www.itspublicknowledge.info/StatutoryReporting](http://www.itspublicknowledge.info/StatutoryReporting).

#### *Carbon footprint*

For 2020-21, the total organisation CO<sub>2</sub>e is 18.36 (2019-20: 32.4 CO<sub>2</sub>e) – this is significantly less than our annual target to be below 40.5 CO<sub>2</sub>e. The decrease this year has resulted mainly from an almost 100% reduction in travel nationally and worldwide. In addition, there has been an 82% decrease in energy consumption (electricity and gas) in the office. This has been due to staff not being in the office throughout the whole year.



## Community, social and human rights

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We remain committed to conducting our work to the highest standards and building positive relationships with communities across Scotland. There is an established connection between the right to access to information and equality and human rights. People often use their FOI rights to access information to help them participate in social and community engagement, particularly with the public sector. Where they are dissatisfied with the response to an information request they may appeal the case to the Commissioner.

We regularly see social and community engagement issues in appeals and enquiries to our office. We monitor public awareness of the right to information and promote effective use of FOI rights to the public and civil society organisations.

We do not have a corporate charity and were unable to support our staff's charitable activities in the usual way as a result of the temporary closure of our office premises due to the Covid-19 pandemic

## Fraud and bribery

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We are committed to preventing fraud and corruption in our organisation and have appropriate systems in place to maintain an anti-fraud culture. These systems include:

- assessing and reviewing the organisation's overall vulnerability to fraud and the specific areas which are most vulnerable
- developing and maintaining effective controls to prevent fraud
- ensuring that if fraud occurs a vigorous and prompt investigation will take place
- taking appropriate action in all cases, where justified
- recording and reporting all cases of fraud and bribery.

There have been no fraud or bribery cases in 2020-21.

## Payment to suppliers

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We are committed to the CBI Prompt Payment Code for the payment of invoices for goods and services. This Code is a voluntary initiative to improve performance and support businesses, the aim of which is to ensure suppliers are paid within 10 days of the receipt of the invoice received.

We have KPI performance measures for payment to suppliers and met these in 2020-21:

Performance Measure	Target %	Actual %
Settled undisputed targets within 10 days	95%	98.9% (exceeded)
Settled undisputed invoices within 30 days	100%	100% (met)

Further information on this area of performance can be found in the committee report considered by the SMT on 12 May 2021, available at

[www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512\\_QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512_QSMTM.aspx).

## Operational performance

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### Corporate performance

Over the past year we have operated as a virtual organisation. From the start we made it clear that the wellbeing and safety of our staff were the priority. We have worked to support all members of staff in their physical and mental health, and have ensured that they have been able to do their jobs by assessing their remote working arrangements and providing them with the equipment needed to work safely.

An Operational Plan (linked to the Strategic Plan 2020-24) was agreed for 2020-21 and published on our website. The Operational Plan 2020-21 is laid out as a programme of actions listed under types of operational activity with cross references to the relevant strategic aim(s) each action supports. It is a working document which forms the basis of ongoing monitoring and assessment. The actions are listed as business as usual (BAU) and one-off projects.

It was not possible to monitor progress against the Operational Plan 2020-21 in Q1, but in Q2, Q3 and Q4, the SMT were able to do so every two months using the Operational Plan Monitoring Report 2020-21 and the updated report was published on the website.

The Covid-19 pandemic had an impact on both BAU and projects in 2020-21 as resources had to be diverted to business continuity and implementation.

More information is available at [www.itspublicknowledge.info/StrategicPlan](http://www.itspublicknowledge.info/StrategicPlan).

## **Governance**

The Key Document C1 Governance Arrangements (GA) sets out the Commissioner's governance arrangements and monitoring and reporting systems that are in place to ensure that strategic objectives are delivered and that there is an appropriate level of accountability and control.

The GA are formally reviewed each financial year to take account of any changes in the strategic objectives and reporting requirements.

Revised delegation arrangements were in place during the Commissioner's absence from the office due to ill health in Q1.

As a result of the Covid-19 pandemic and the temporary closure of the office, interim and proportionate governance arrangements were put in place to ensure that decision making could continue in as open, transparent and accountable a way as possible. In Q3, the GA was amended to incorporate the revised arrangements.

More information is available at [www.itspublicknowledge.info/Governance](http://www.itspublicknowledge.info/Governance).

## **Governance reporting**

The current Governance Reporting Arrangements (GRA) include 42 reporting measures and more information is available at [www.itspublicknowledge.info/Governance](http://www.itspublicknowledge.info/Governance).

In 2020-21, out of the 42 GRA reporting measures, 38 were met in full, two were partially met as the related reporting mechanisms are currently under review, one was not met and one was carried forward into 2021-22 Q1.

More information on this can be found in the related committee report submitted to the SMT on 12 May 2021, available at

[www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429\\_20210512QSMTM.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/QSMTMpapers/20210429_20210512QSMTM.aspx).

## **Risk management**

The Commissioner actively manages risk through an appropriate and proportionate framework which identifies, assesses, addresses, reviews and reports on risk, in the context of its risk appetite and environment. The aim of the framework is to:

- provide the Commissioner and others with assurance that threats are constrained and managed and that opportunities are appropriately exploited to the benefit of the organisation.
- enable the organisation to take informed decisions across all its functions.
- give confidence to those that scrutinise the organisation in the robustness of corporate governance arrangements.

In 2020-21:

- the Commissioner ensured that risk management was embedded into corporate decision-making processes so that the impact of policy decisions on risk was considered when a strategic or operationally significant decision was taken or policy and procedures were approved
- the SMT reviewed and approved the Risk Management Policy 2020-21

- the Head of Corporate Services provided assurance that risk was, and continued to be, managed effectively
- the SMT reviewed and approved the Risk Management Policy 2020-21 without any significant change

### Strategic risk

- the Commissioner defined strategic risks as those which relate to the organisation's ability to deliver long-term and strategic aims and which derive from the relationship with the external environment and legislative context.
- the strategic risk register was considered and reviewed by the SMT at the Quarterly Senior Management Team Meeting (QSMTM)
- the strategic risk register was submitted to the Advisory Audit Board (AAB) for comment and advice.

### Operational risk

- the Commissioner defined operational risks as those relating to issues which impacted directly on day-to-day activity and which impacted on the operational delivery of the annual operational plan
- the operational risk register was considered every 2 months
- individual risks were owned by Heads of Department.

### Risk appetite, tolerance, risk control and risk score

Our Risk Management Policy 2020-21 provided details on how risk appetite, tolerance, control and scoring are managed within the Commissioner's risk framework.

### Risk profile

In 2020-21, the risk profile of the organisation, that is the risks we faced, how the risks affected the achievement of objectives, how the risks were mitigated and how this affects future plans and performance, changed throughout the course of the year.

In 2020-21, eight strategic risks were identified which covered the following areas:

- continued utility of, awareness of, and support for FOI
- the allocation and maintenance of sufficient resources to FOI
- the practice, governance and performance of the office of the Scottish Information Commissioner
- the impact of the United Kingdom's decision to leave the European Union

The Covid-19 pandemic has had an impact on the work we do. When considering both strategic and operational risks in 2020-21, we took account of this impact of the Covid-19 pandemic and this resulted in the residual risk assessments, relating to both strategic and operational risks, being increased.

The risk relating to the impact of the United Kingdom's decision to leave the European Union reduced throughout the reporting year as we were able to conclude with more certainty that this decision would not have a significant effect on our organisation.

We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff – this risk was treated as a threat and we constrained the risk by implementing business continuity plans and limiting the possible exposure of our staff to Covid-19 in the office premises. The management of this risk continues to have a significant impact on the organisation and this has been taken account of in the Operational Plan 2021-22 (see below Future Plans and Performance).
  - we managed this risk by temporarily closing the office premises in line with government guidance, and the SMT regularly reviewing the closure in the light of this guidance. We put in place systems to enable essential office work to take place to ensure that the office premises were safe and secure. We also took account of health and safety requirements and emergency legislation requirements to ensure that the risk to the members of staff carrying out essential work was assessed and mitigated as far as possible.
- having sufficient resources to enable us to carry out our regulatory role, including physical resources – at the start of the year this risk was treated as a threat which we initially mitigated by implementing business continuity plans and limited remote working. We then used the risk as an opportunity to enhance our working practices and expand remote working and enable virtual working.
  - we initially managed this risk by using the remote working facilities that were in place, setting up the Covid-19 FOI Info Hub, inputting into the emergency Coronavirus legislation and maintaining contact with our stakeholders. Expanding remote working (with remote access to our office systems) to all staff and obtaining the additional funding to put this in place for all staff meant that we could significantly enhance our ability to operate despite the temporary closure of our office premises. This has provided added flexibility as well as resilience in the way we work.
- our appeal caseload and case journey times – we could not transfer this risk to another body or organisation and therefore managed this risk as a threat that was tolerable in the shorter term but became less tolerable as case numbers rose. The risk was partly treated by the expansion of remote working and revision of working practices but will continue into 2021-22 (see below Future plans and performance).
  - we have fluctuating volumes of work and it is not possible to estimate accurately how many appeals we may have to deal with in any one year or how the demand will vary over any given year. The impact of even short periods of very high appeal numbers can affect KPIs throughout the appeal system as any backlog moves through this system – we managed this risk by actively monitoring and managing the volume of cases, and revising decision-making levels and procedures.
- having appropriate and relevant governance, including operational governance, human resource governance and information governance – as we had limited remote working in place, we treated this risk as a threat and mitigated it by ensuring that interim policies and procedures were agreed by the SMT and put in place by Heads of Department. As we moved through the year, this risk has become less significant, however, if we move to hybrid working in 2021-22 we will need to ensure that all relevant governance is in place (see below Future Plans and Performance).



- initially we managed this risk by ensuring that interim policies and procedures were put in place and these were revised and amended to take account of the expansion of remote working and virtual working. As we moved through the year, we were able to ensure that sound governance continued to be in place.

## **Future plans and performance**

As we enter 2021-22 we are faced with a number of challenges and continue to consider and assess the associated risks in the light of the changing environment. Consideration of challenges such as the continued temporary closure of the office premises and the move back to re-opening of the office, the potential opportunities and challenges of hybrid working and the management of high appeal casework numbers as part of our consideration of risk have allowed us to start putting in place and planning mitigating actions. The development of our Operational Plan 2021-22 has been informed by these considerations both in relation to the inclusion of particular projects as part of our management of risks, and in considering what our priorities are in managing our finite resources against a background of high levels of workload across the organisation. The impact of the Covid-19 pandemic in particular will continue to be assessed as we move forward.

## **Statutory reporting**

In 2020-21 we complied with our statutory reporting duties by:

- laying our Annual Report and Accounts 2020-21 before the Scottish Parliament
- publishing our report under the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017
- publishing information on our website on specific expenditure areas under the Public Services Reform Act 2011 (PSRA).

The PSRA also requires the Commissioner to report on the measures taken to:

- improve efficiency, effectiveness and economy in the exercise of his functions – the work undertaken to meet these requirements is described throughout this report
- promote and increase sustainable growth – our statement on Sustainable Growth has been published.

More information is available at [www.itspublicknowledge.info/StatutoryReporting](http://www.itspublicknowledge.info/StatutoryReporting).

The Nature Conservation (Scotland) Act 2004 places a statutory duty on all public sector bodies in Scotland to further the conservation of biodiversity and the Wildlife and Natural Environment (Scotland) Act 2011 introduced a requirement for all public bodies to make a report publicly available on their compliance with the biodiversity duty. Biodiversity duty reports are required every three years. Our Biodiversity Report 2018-21 was published in March 2021 and can be found at [www.itspublicknowledge.info/StatutoryReporting](http://www.itspublicknowledge.info/StatutoryReporting).

## Information and records management

The Commissioner recognises and promotes good records management. The efficient and secure management of information is an ongoing priority. During 2020-21, we:

- managed records effectively in line with our Information and Records Management Policy and Information and Records Management Handbook
- issued guidance to staff working remotely covering:
  - information security, including data protection
  - records management
  - data incident procedure
  - using Microsoft Teams
- updated our procedures to ensure that our data handling is compliant with the UK General Data Protection Regulation and the Data Protection Act 2018
- enhanced the security of our information
- met our target to maintain a compliant publication scheme and Guide to Information – we ensured that we published and made accessible as much information as possible and in addition to the agendas and minutes of the SMT meetings we also published the committee reports (and related papers) where we did not need to withhold information on the basis of the relevant exemptions either in the FOI Act or the EIRs.

More information is available at [www.itspublicknowledge.info/GuideToInfo](http://www.itspublicknowledge.info/GuideToInfo).

## Re-use of public sector information

The Commissioner continues to comply with the Re-use of Public Sector Information Regulations 2015 by:

- publishing our public task statement
- publishing our re-use statement
- making all of the information published on the Commissioner's website subject to the Open Government Licence, which gives the right to re-use the information subject to conditions
- issuing guidance on how to make re-use requests and complaints
- publishing our information asset register.

We received no re-use requests in 2020-21.

## Daren Fitzhenry Accountable Officer

**Date: 30 September 2021**

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# Scottish Information Commissioner

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## Accountability Report and Financial Statements 2020-21

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Scottish Information  
Commissioner

# ACCOUNTABILITY REPORT 2020-21

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For 2020-21, the Accountability Report includes the following sections:

**Parliamentary Accountability and Audit Report** – this explains how the Commissioner is accountable to the Scottish Parliament.

**Corporate Governance Report** – this explains the composition and organisation of the Commissioner’s governance structures and how they support the attainment of the Commissioner’s objectives.

This report contains the following:

- **Commissioner’s Report** – this provides information about the Commissioner and his Senior Management Team (SMT), staff information and data incidents in 2020-21
- **Statement of the Accountable Officer’s Responsibilities** – this gives details of the duties of the Accountable Officer and how these duties have been met in 2020-21
- **Governance Statement** – this explains the systems by which the organisation is directed and controlled, sets out the governance framework and includes details on the management of risk

**Remuneration and Staff Report** – this includes details of the remuneration and pension benefits of the Commissioner and the SMT and the staff report.

## Parliamentary Accountability and Audit Report

1. The Commissioner is held to account by the Scottish Parliament (Parliament) through statutory arrangements put in place by the Freedom of Information (Scotland) Act 2002 (the FOI Act).
2. The Commissioner is appointed by Her Majesty the Queen, on the nomination of the Scottish Parliament, and the Scottish Parliamentary Corporate Body (SPCB) determines the Commissioner’s salary and the terms and conditions upon which they hold office. The SPCB approves the Commissioner’s annual budget.
3. The Commissioner must send a copy of the annual accounts to the Auditor General for Scotland for auditing. The Auditor General for Scotland has appointed Deloitte LLP to carry out the external audit on their behalf.
4. For each financial year, the Commissioner’s Annual Report must be laid before Parliament before 31 October.

## **Governance Report**

### **Commissioner's Report**

#### *Background*

5. Our financial statements have been prepared in accordance with the Freedom of Information (Scotland) Act 2002 (the FOI Act) Schedule 2, paragraph 5(1).
6. On 16 October 2017, Daren Fitzhenry took up his appointment as Commissioner, for a fixed term of six years, and is the designated Accountable Officer accountable to the Scottish Parliament for the finances of the Commissioner). However, as the Commissioner was unable to discharge his duties for a period of more than 4 weeks in early 2020 due to ill health, the SPCB formally appointed an interim Accountable Officer pending his return. Therefore, for 2020-21:
  - (i) for the period 1 April 2020 – 29 April 2020 (inclusive) – the appointed Accountable Officer was Margaret Keyse
  - (ii) for the period 30 April 2020 – 31 March 2021 (Inclusive) - the appointed Accountable Officer was Daren Fitzhenry
7. The Commissioner receives funding through the SPCB which has the power to approve the Commissioner's budget.

#### *Senior Management Team*

8. For the financial year ended 31 March 2021, the Commissioner's SMT comprised:
  - Daren Fitzhenry, Scottish Information Commissioner
  - Helen Gardner-Swift, Head of Corporate Services
  - Margaret Keyse, Head of Enforcement
  - Erin Gray, Head of Policy and Information

#### *Register of interests*

9. Declarations of Interest for the SMT are published on the website with their biographies and updated each year. Declarations of Interest of other staff are obtained and held when required.
10. The declarations of interest can be found at [www.itspublicknowledge.info/home/SICPublicationScheme/PSGuidetoInfo.aspx#class1](http://www.itspublicknowledge.info/home/SICPublicationScheme/PSGuidetoInfo.aspx#class1)

#### *Personal data related incidents*

11. The appropriate technical and organisational measures are in place to meet data protection and accountability requirements and to ensure that personal information is safeguarded including:
  - a comprehensive data protection policy
  - a data protection officer (DPO)
  - Privacy Notice

- Information and Records Management Policy
  - Information and Records Management Handbook
12. Training on data protection and information security is included in the induction process for all new members of staff. All members of staff received refresher training and were provided with data protection and GDPR updates.
  13. When working remotely, all members of staff are still bound by our requirements regarding the security of information and are required to adopt the same information security measures that they would take if working in the office premises.
  14. There were no significant personal data related incidents in 2020-21. One data incident was reported to the Information Commissioner's Office (ICO) and the ICO confirmed that no enforcement action was required.

#### *Provision of information to employees*

15. We have adopted the principles of openness and participation in our organisation and place a high level of importance on both informing and consulting staff. We do so by routinely publishing minutes of meetings, providing access to management papers, through oral and written briefings and by staff meetings and events. Information is only withheld where the relevant exemption(s) in the FOI Act or the Environmental Information (Scotland) Regulations 2004 (EIRs) would apply if a request were to be made for the information or where a duty of confidence is owed to a third party.

#### *Pension costs*

16. The Commissioner and his staff are eligible to participate in the Civil Service pension arrangements (Civil Service and Others Pension Scheme (CSOPS) or the Principal Civil Service Pension Scheme (PCSPS)) and for 2020-21, under these arrangements, employer's contributions were payable at one of four rates, in the range 26.6% to 27.9% of pensionable pay, based on defined salary bands. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme. Employees can also opt for a partnership pension with a private sector pension scheme into which the Commissioner makes an employer contribution.

#### *Audit*

17. The Commissioner's financial statements are audited in accordance with paragraph 5(2) of Schedule 2 to the FOI Act by auditors appointed by the Auditor General for Scotland. Deloitte LLP have been appointed as the Commissioner's auditors for a six-year period from 2017-22 and have received no fees in relation to non-audit work.

#### **Statement of Accountable Officer's Responsibilities**

18. Under paragraph 5(1) of Schedule 2 to the FOI Act, the Commissioner is required to keep accounts and prepare annual financial statements in respect of each financial year, in accordance with the directions of the Scottish Ministers. The financial statements are prepared on an accruals basis and must give a true and fair view of the state of affairs and application of resources of the Commissioner and cash flows for the financial year.

19. In preparing the financial statements, the Accountable Officer is required to comply with the requirements of the Government Financial Reporting Manual (FReM) and in particular to:
- (i) observe the Accounts Direction including, the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
  - (ii) make judgements and estimates on a reasonable basis
  - (iii) state whether applicable accounting standards, as set out in the FReM, have been followed, and disclose and explain any material departures in the financial statements
  - (iv) prepare the financial statements on a going concern basis
  - (v) confirm that the Annual Report and Accounts as a whole is a fair, balanced and understandable and take personal responsibility for the Annual Report and Accounts and the judgements required for determining that it is fair, balanced and understandable.
20. The SPCB has appointed me as Accountable Officer. The responsibilities of the Accountable Officer (including responsibility for the propriety and regularity of the public finances) for keeping proper records and for safeguarding the Scottish Information Commissioner's assets, are set in the Memorandum to the Accountable Officer of the Scottish Information Commissioner which was provided to me on my appointment.
21. As Accountable Officer, I have taken all steps that I ought to have taken to make myself aware of any relevant audit information and to establish that the Scottish Information Commissioner's auditor is aware of that information. So far as I am aware, there is no relevant audit information of which the auditors are unaware
22. As Accountable Officer, I confirm the Annual Report and Financial Statements are, as a whole, fair, balanced and understandable and, also, that I am personally responsible for these documents and the judgements required in reaching that conclusion.

## **Governance Statement**

### *Governance Framework: Scheme of Control*

23. As Accountable Officer, I am responsible for maintaining a sound system of governance. Governance systems must ensure appropriate levels of internal control and support the achievement of the organisation's aims and objectives, while safeguarding assets and the funds approved by the SPCB for which I am responsible.
24. A scheme of control is in place, the key features of which are:
- (i) The Commissioner holds the role of Accountable Officer.
  - (ii) The Commissioner leads a SMT whose membership is the Commissioner and the three Heads of Department and who have overall responsibility for the operation and

development of the organisation (Corporate Services, Enforcement and Policy and Information). Each member of the SMT has delegated authority to make decisions as set out in the Commissioner's Scheme of Delegation. All decisions should be authorised in line with the Scheme of Delegation and approved policies and procedures.

- (iii) Day-to-day operational management is the responsibility of the individual Heads of Department (HOD), their deputies and staff. The individual HOD are responsible for delivering the functions and business of office of the Commissioner to achieve the aims of the Strategic Plan 2020-24.
- (iv) The SMT has formal meetings each quarter which focus on governance reporting and meets monthly to discuss operational matters and required additional items. The key document C1 Governance Reporting Arrangements sets out the matters to be considered at each of these meetings. The agendas, minutes and papers considered at the SMT meetings are published on our website at:

[www.itspublicknowledge.info/home/AboutSIC/Governance/ManagingOSIC.asp](http://www.itspublicknowledge.info/home/AboutSIC/Governance/ManagingOSIC.asp)

- (v) Information from the agendas, minutes and papers is only withheld where the relevant exemption(s) in the FOI Act or the EIRs would apply if a request were to be made for the information.
- (vi) An Operational Plan is approved for each financial year which sets out how the Commissioner's vision and strategic objectives are to be realised in that year. Progress against the plan is regularly reviewed by the SMT which enables the monitoring of outcomes and the management of resources. The plan is laid out as a programme of actions listed under types of operational activity, with cross references to which strategic objective(s) each action supports and the HOD are accountable for their identified actions. The actions listed are a mixture of "business as usual" and one-off projects. Day-to-day operational management is the responsibility of individual HOD, their deputies and/or managers and their teams and the HOD report on operational performance and issues to the SMT.
- (vii) The established and approved governance arrangements are set out in the key document C1 Governance Arrangements which, together with the supporting key document C1 Governance Reporting Arrangements, is published on the Commissioner's website at:

[www.itspublicknowledge.info/home/AboutSIC/Governance/GovernanceFinance.aspx](http://www.itspublicknowledge.info/home/AboutSIC/Governance/GovernanceFinance.aspx)

- (viii) External scrutiny is provided by
  - (a) external auditors appointed by the Auditor General for Scotland
  - (b) the Commissioner's Advisory Audit Board (AAB) as set out in its purpose and objectives at:

[www.itspublicknowledge.info/home/AboutSIC/Governance/AdvisoryAuditBoard.asp](http://www.itspublicknowledge.info/home/AboutSIC/Governance/AdvisoryAuditBoard.asp).



- (c) an internal audit service provided by an independent firm, when required and possible
  - (d) other audits carried out by external experts, for example, health and safety, Cyber Essentials and Cyber Essentials Plus
25. In 2015-16 an internal audit of the corporate governance arrangements was carried out by an independent firm of auditors. The report found that the control environment over corporate governance and risk management arrangements is robust. A similar internal audit will be undertaken in 2021-22.
26. The scheme of control is designed to manage rather than eliminate the risk of failure to achieve aims and objectives and, therefore, can provide only a reasonable and not an absolute assurance of effectiveness. Systems are in place and will continue to be developed to identify and evaluate risks and manage them efficiently, effectively, economically and proportionately.
27. The scheme of control has been in place for the year 2020-21 and up to the date of the approval of the annual report and accounts.

*Scheme of Control - Review and assessment of effectiveness*

28. As Accountable Officer, I am responsible for reviewing the effectiveness of the scheme of control. My review has been informed by:
- (i) reports and comments made by the external auditors
  - (ii) the work of the SMT
    - checking implementation and progress through regular reporting of achievement against the Commissioner's Strategic Plan, the Operational Plan and risk registers
    - periodic review of the appropriateness of measures and policies in place
    - statements of assurance from delegated officers (as set out in the Governance Reporting Arrangements)
  - (iii) the strategic direction of the organisation
  - (iv) the advice of the AAB in relation to the Commissioner's governance arrangements
  - (v) internal audit – although some internal audit activity took place there is no internal audit opinion for 2020-21. The internal audit relating to the website project was carried out by an external expert and the internal audit of governance arrangements will now take place in 2021-22. The review of the Commissioner's information and records management systems, including the review of the Commissioner's Records Management Plan (external assessment by the Keeper of the Records), commenced in 2020-21 and has been carried forward into 2021-22.
29. Compliance with generally accepted best practice principles and relevant guidance on corporate governance has been assessed using an internal control checklist completed by the Head of Corporate Services (HOCS). The checklist is based on that provided within the

Scottish Public Finance Manual (SPFM) and a proportionate approach has been adopted, reflecting the relatively small size and modest structure of the Commissioner's office whilst recognising the wide impact of the Commissioner's duties.

30. The internal control checklist and the statements of assurance provided by the HODs (as set out in the key document C1 Governance Reporting Arrangements) and the HOCS assurance on the compliance with governance reporting arrangements have confirmed that effective controls and systems are in place.

#### *Governance Framework: Management of risk*

31. The Commissioner's risk appetite is set out in the Risk Management Policy and this is set at two levels, reflecting the differing natures of the Commissioner's duties and powers. Statutory duties impose functions which must be carried out, or carried out in a particular way, or to achieve a particular outcome. Statutory powers give the ability to carry out functions but they are not prescriptive about approach or outcomes.
  - **Statutory functions:** the risk appetite is cautious to open. This risk appetite is assessed using appropriate caution to ensure the Commissioner meets statutory requirements, but the aim to push the boundaries to achieve an acceptable level of reward, particularly in relation to our interpretation of FOI legislation.
  - **Statutory powers:** the risk appetite is open, that is, willing to consider all potential delivery options and choose the one that is most likely to result in successful delivery while also providing an acceptable level of reward (and value for money). In setting the risk appetite in this way, the Commissioner recognises that the appetite for some categories of risk will be more cautious or hungry depending on what they are and what type of impact they have.
32. The risk appetite helps the Commissioner and the SMT to prioritise risk mitigations, and therefore resources, on those risks outside of our agreed acceptable limits to actively monitor risk assessment and the use of target scoring within each of the risk registers ensure that the risk appetite is reflected in the register, supporting effective discussion when current scores are beyond the target or risk appetite and when risks are close or proximate
33. The management of risk provides an ongoing system which identifies key risks and evaluates their potential impact on the achievement of strategic and operational objectives and the control measures in place or needed either to eliminate or mitigate the impact and/or reduce the likelihood of occurrence. Our systematic approach to risk ensures that there is a complete risk profile in place for each financial year. The evaluation of risk involves assessing its nature and extent so that effective and affordable control measures can be implemented.
34. The systems are designed to manage rather than eliminate the risk of failure to achieve the Commissioner's policies, aims and objectives and can only provide a reasonable and not absolute measure of effectiveness.

35. In 2020-21:
- (i) risk was reviewed regularly to monitor whether or not the risk profile was changing, to gain assurance that risk management was effective and to identify when further action was necessary
  - (ii) the overall risk management process was reviewed by the SMT to ensure that it was appropriate and effective. The Risk Management Policy 2020-21 and strategic risks were reviewed by the AAB and their guidance sought on a change to these risks. The risk assessment process took account of the cost, feasibility, probability, risk appetite and potential impact and action was planned and undertaken to address and mitigate risks.
  - (iii) a Strategic Risk Register was agreed and reviewed and updated by the SMT on a quarterly basis.
  - (iv) a comprehensive Operational Risk Register was also agreed for each financial year and is reviewed and updated by the SMT every two months.
36. The Performance Report explains the key risks considered by the SMT in 2020-21 – see pages 9-10.
37. The risk management systems have been in place for the year 2020-21 and up to the date of the approval of the annual report and accounts.

*Review of effectiveness of risk management*

38. As Accountable Officer, I have reviewed the risk management arrangements. My review has been informed by:
- (i) reports and comments made by the external auditors
  - (ii) the work of the SMT
  - (iii) the management of risk by the organisation
  - (iv) the strategic direction of the organisation
  - (v) the advice of the AAB in relation to the Commissioner's Risk Management Policy and strategic risks.
39. Compliance with generally accepted best practice principles and relevant guidance on risk management has been assessed using an internal control checklist completed by the Head of Corporate Services. The checklist is based on that provided within the SPFM and a proportionate approach has been adopted, reflecting the relatively small size and modest structure of the Commissioner's office whilst recognising the wide impact of the Commissioner's duties.

40. The Risk Management Policy 2020-21 and the risk registers have been effective in enabling the SMT to manage the organisation's risk profile and include target risks which inform priorities when formulating and carrying out the annual Operational Plan.
41. All matters requiring a formal decision by the SMT have included an assessment of the impact on risk. This, combined with the SMT's active management of the risk registers and the implementation of the governance arrangements, has been effective in embedding risk management in decision making and planning practices.

*Significant issues*

42. During the financial year to 31 March 2021 and to the date of this statement, no significant control weaknesses or issues have arisen and no significant failures have arisen in the expected standards for good governance, risk management and internal control.
43. As Accountable Officer, I authorised the Financial Statements 2020-21 for issue on 30 September 2021.

**Daren Fitzhenry Accountable Officer**

**Date: 30 September 2021**

## Remuneration and Staff Report

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### Remuneration Report

#### *Remuneration<sup>5</sup> policy*

44. The Commissioner's remuneration is determined by the SPCB. The Commissioner's salary is reviewed on an annual basis and, where appropriate, uprated in line with the Review Body's recommendations for the senior civil service pay award.
45. The SMT remuneration is determined by the Commissioner subject to the approval of the SPCB.
46. In determining levels of remuneration, account is taken of the need for pay to be set at a level which will ensure the recruitment, retention and motivation of staff, together with the need to ensure affordability and value for money.
47. In practice, the terms and conditions of employment (including remuneration) of the SMT are modelled on those of the SPCB.

#### *Service contracts*

48. The SMT holds appointments which are open-ended. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the Civil Service Compensation Scheme.
49. The members of the SMT are not classified as civil servants but pension benefits are provided through the Civil Service pension arrangements.

#### *Remuneration (including salary) and pension entitlements*

50. The following sections provide details of the remuneration and pension interests of the Commissioner and the SMT. The information relating to salary<sup>6</sup> and pension entitlements, fair pay disclosures and the analysis of staff numbers and costs are subject to audit.

Name and title	Salary: full year equivalent	
	2020-21 (£)	2019-20 (£)
Daren Fitzhenry Scottish Information Commissioner	78,042 <sup>7</sup>	76,258

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<sup>5</sup> Total remuneration includes salary, non-consolidated performance-related pay and benefits-in-kind. It does not include severance payments, employer pension contributions and the cash equivalent transfer value of pensions.

<sup>6</sup> Salary and allowances cover both pensionable and non-pensionable amounts and includes, but may not necessarily be confined to: gross salaries, overtime, recruitment and retention allowances and any other allowances to the extent that they are subject to UK taxation and any severance or ex-gratia payments.

<sup>7</sup> Salary has not been adjusted to account for any required holiday accrual.

Single total figure of remuneration								
Name and title	Salary: full year equivalent		Pension benefits accrued during the year <sup>8</sup>		Bonus Payment		Total	
	2020-21 £'000	2019-20 £'000	2020-21 £'000	2019-20 £'000	2020-21 £'000	2019-20 £'000	2020-21 £'000	2019-20 £'000
Daren Fitzhenry <b>Scottish Information Commissioner</b>	<b>75-80</b>	75-80	<b>30</b>	30	<b>0</b>	0	<b>105-110</b>	105-110
Margaret Keyse <b>Head of Enforcement</b>	<b>70-75</b>	65-70	<b>33</b>	30	<b>0-5<sup>9</sup></b>	0	<b>100-105</b>	95-100
Helen Gardner-Swift <b>Head of Corporate Services</b>	<b>70-75</b>	60-65	<b>28</b>	25	<b>0</b>	0	<b>100-105</b>	85-90
Erin Gray <b>Head of Policy and Information</b>	<b>55-60</b>	50-55	<b>22</b>	4	<b>0</b>	0	<b>75-80</b>	55-60

#### *Fair pay disclosure*

51. Reporting bodies are required to disclose with prior year comparatives:

- the median remuneration of the Commissioner's staff which is based on the annualised, full-time equivalent remuneration of all staff (including temporary and agency staff) as at the reporting date
- the range of staff remuneration
- the relationship between the remuneration of the highest-paid senior member of staff in their organisation and the median remuneration of the Commissioner's workforce and provide an explanation of any significant changes in this relationship between the current and prior year

52. In 2020-21 no employee received remuneration in excess of the Commissioner.

53. In 2020-21, the banded remuneration of the highest paid senior member of staff (the Commissioner) was £75,000 -80,000 (gross p.a.). This was 1.7 times the median remuneration of the Commissioner's workforce, which was £44,322. The banded remuneration of the lowest paid member of staff was £19,000 - 22,000 (gross p.a.). There was no significant change in the salary multiple from 2019-20 to 2020-21.

<sup>8</sup> The value of pension benefits accrued during the year is calculated as (the real increase in pension multiplied by 20) plus (the real increase in any lump sum) less (contributions made by the individual). The real increases exclude increases due to inflation or any increase or decrease due to a transfer of pension rights.

<sup>9</sup> Allowance paid in respect of interim Accountable Officer appointment (see Commissioner's report, paragraph 6).

54. The highest paid banded remuneration, the median remuneration, the salary multiple and the lowest paid banded remuneration with comparative year amounts for 2019-20 are also set out in the table below:

	2020-21	2019-20
Highest paid staff member (the Commissioner). Salary band £'000:	<b>75-80</b>	75-80
Lowest paid member of staff Salary band £,000	<b>19-22</b>	15-20
Median total remuneration (£)	<b>44,322</b>	43,031
Salary multiple	<b>1.7</b>	1.8

55. No benefits in kind<sup>10</sup> were paid in either 2020-21 or 2019 -20.

56. One allowance was paid in respect of the interim Accountable Officer appointment in 2020-21. There were no bonus payments<sup>11</sup> made in 2020-21 and 2019-20.

#### *Pension benefits*

- 57.

	Total accrued pension at pension age as at 31 March 2021	Real increase in pension at pension age	CETV at 31 March 2021	CETV at 31 March 2020	Real increase in CETV as funded by employer
	£'000	£'000	£'000	£'000	£'000
Daren Fitzhenry <b>Scottish Information Commissioner</b>	<b>5-10</b>	<b>0-2.5</b>	<b>74</b>	<b>51</b>	<b>16</b>
Margaret Keyse <b>Head of Enforcement</b>	<b>30-35</b>	<b>0-2.5</b>	<b>556</b>	<b>514</b>	<b>21</b>
Helen Gardner-Swift <b>Head of Corporate Services</b>	<b>5-10</b>	<b>0-2.5</b>	<b>79</b>	<b>54</b>	<b>18</b>
Erin Gray (from 27/01/2020) <b>Head of Policy and Information</b>	<b>0-5</b>	<b>0-2.5</b>	<b>14</b>	<b>2</b>	<b>8</b>

58. All the above are members of the Civil Service and Others Pension Scheme (CSOPS) or the Principal Civil Service Pension Scheme (PCSPS). Under these Schemes there is no automatic lump sum on retirement.

#### *The Cash Equivalent Transfer Value (CETV)*

59. A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The

<sup>10</sup> The monetary value of benefits in kind covers any benefits provided by the Scottish Information Commissioner and treated by HM Revenue and Customs as a taxable emolument.

<sup>11</sup> Bonuses are generally based on performance levels attained and relate to the performance in the year in which they become payable to the individual.

benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which the disclosure applies.

60. The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

*The real increase in CETV*

61. This reflects the increase in accrued pension funded by the employer. It excludes increases in accrued pension due to inflation and contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement). It is worked out using common market valuation factors for the start and end of the period.
62. The following are covered by the audit opinion: single figure of remuneration, pension tables, fair pay disclosures, exit packages, staff costs and numbers and this information is set out in the tables on pages 54 to 57.

**Staff Report**

*Staff numbers*

63. The number of full time equivalent (FTE) persons employed by the Commissioner during the year was as follows:

	2020-21			2019-20		
	Permanent	Temporary	Total	Permanent	Temporary	Total
	FTE No.	FTE No.	FTE No.	FTE No.	FTE No.	FTE No.
Commissioner	1	0	1	1	0	1
Senior Managers	3	0	3	2.6	0	2.6
Staff	20.6	0	20.6	20.2	0	20.2
<b>TOTAL</b>	<b>24.6</b>	<b>0</b>	<b>24.6</b>	<b>23.8</b>	<b>0</b>	<b>23.8</b>



### Staff costs

#### 64. Staff costs

	Commissioner	Senior Management Team	Staff	TOTAL	TOTAL
	2020-21	2020-21	2020-21	2020-21	2019-20
	£'000	£'000	£'000	£'000	£'000
Salary/Wages	77	212	835	1,124	993
ERNIC	9	24	83	116	106
Pension costs	22	55	215	292	267
<b>TOTAL</b>	<b>108</b>	<b>291</b>	<b>1,133</b>	<b>1,532</b>	<b>1,366</b>

### Staff composition

#### 65. Analysis by gender of the organisation as at 31 March 2021.

Category	2020-21			2019-20		
	Female	Male	Total	Female	Male	Total
Scottish Information Commissioner	0	1	1	0	1	1
Senior Managers	3	0	3	3	0	3
Other Staff	17	5	22	18	5	23
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>26</b>	<b>21</b>	<b>6</b>	<b>27</b>

### Temporary staff

66. As at 31 March 2021, all members of staff had a permanent employment contract and there was no member of staff on a temporary contract of employment.

### Ill health absence data

67. Following the temporary closure of the office premises on 23 March 2020, not all members of staff were able to work remotely until August 2020. Additional procedures were put in place and guidance provided to all members of staff and line managers on the reporting of ill health absence so that the reporting of ill health absence could continue.

68. Working hours and days per FTE and any changes in work patterns have been taken account of in the calculation of the statistics referred to below. Where sickness absence continued over a weekend/weekends, only working hours lost have been included.

69. For 2020-21:

- 39.38 days were lost to ill health absence – a decrease of 155.89 days when compared to the previous year (2019-20 195.27)
- the total days lost to ill health absence per FTE member of staff is 1.62, a decrease of 6.83 days when compared to the previous year (2019-20 8.45).

- the total days lost to ill health absence per FTE member of staff is 1.98 days lower than the ONS benchmark of 3.6.

### *Staff turnover*

70. For 2020-21:

- 1 member of staff resigned
- no new member of staff was employed
- the staff turnover percentage was 4%
- no exit packages have been used

### *Human Resources Strategy and staff policies*

71. The key document C5 Human Resources Strategy (HRS) sets out what the Commissioner aims to achieve with, and for, staff at all levels and, in doing so, provides a framework for the focus and setting of how the organisation manages human resources and sets operational objectives and activity to develop people and talent. In 2020-21, following a delayed review of the actions under the HRS, it was noted that progress against the HRS may be affected by the impact of the COVID-19 pandemic and that human resources would continue to be managed, as far as possible, in line with the HRS.
72. Due to the temporary closure of the office premises, interim human resource policies have been approved, are kept under review and updated as required. A revised Performance and Development system was also put in place which was operational from 1 November 2020 which allowed ongoing performance management discussions to continue (as far as is reasonably possible) and personal objectives updated. Monthly performance management discussions reflect the challenges that members of staff may be experiencing when working remotely.

### *Staff surveys*

73. Reporting bodies are required to provide survey scores from staff surveys, including an explanation, context and trend data.
74. There are no staff survey details and results to report as no staff surveys were undertaken in 2020-21.

### *Health, safety and wellbeing*

75. The office premises were temporarily closed in March 2020 and have remained closed. All members of staff were able to work remotely, with remote access to our systems, from August 2020. The health, safety and wellbeing of all our staff has been paramount. There has been a consistent message about the importance of all members of staff staying safe, doing their personal and sustainable best in the circumstances and caring for their physical and emotional health.
76. Practical support has been provided to employees and assistance has been offered to those with additional caring needs. The Commissioner has followed Scotland's public health measures and guidance.

77. In 2021-22 the Commissioner will continue to support all members of staff through the uncertainty due to the impact of the Covid-19 pandemic and, as far as possible, will invest resources in making sure the work experience is positive.
78. For the year ended 31 March 2021, corporate processes regarding attendance management, conduct and performance management were followed as far as reasonably possible.
79. There are relevant employment policies and an updated Employee Handbook in place.
80. There were no reportable health and safety incidents during 2020-21.
81. There was a decrease in staff ill health absence rates in 2020-21.
82. We publish expenditure on consultancy on our website relating to the specific expenditure areas under the Public Services Reform Act 2011 (PSRA)<sup>12</sup>.
83. An employee assistance programme continues to be provided signposting staff to wellbeing guidance and access to confidential advice.

*Temporary closure of the office premises due to the impact of the Covid-19 pandemic and remote working*

84. As a result of the impact of the Covid-19 pandemic, from February 2020, business continuity measures and arrangements were considered and the SMT met regularly to discuss and agree the required actions. Regular guidance was issued to all members of staff relating to the symptoms of the Covid-19 virus, social distancing, isolation, health and safety, working arrangements and wellbeing.
85. The SMT decided to temporarily close the office premises from 23 March 2020 and remote working arrangements (for a small team) were put in place. Throughout 2020-21, all members of staff have been regularly updated on the temporary closure of the office premises and provided with wellbeing resources.
86. Throughout 2020-21, the organisation has operated as a virtual organisation, remotely working and communicating through video meetings, phone calls and emails. For many, this new way of working came alongside home-schooling and increased caring responsibilities
87. Our priority as an organisation has been to continue to provide our services and guidance within available resource while safeguarding the health, safety and wellbeing of our members of staff.
88. We expanded our remote working capabilities in two tranches, to safeguard the connectivity and security of our digital network. Since August 2020, all members of staff are able to work remotely with remote access to our systems since using IT equipment supplied by the Commissioner and regular remote working assessments have been carried out.

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<sup>12</sup> More information is available at [www.itspublicknowledge.info/StatutoryReporting](http://www.itspublicknowledge.info/StatutoryReporting)

### *Staff relations*

89. We recognise the importance of good staff relations and effective communication with staff. The quarterly all staff meetings resumed in November 2020 and regular team meetings have taken place. All members of staff can access the agendas, papers and minutes of meetings of the SMT (information is only withheld from staff where the relevant exemption(s) in the FOI Act or the EIRs would apply if a request were to be made for the information or where a duty of confidence is owed to a third party). All members of staff have been provided with updates following each review by the SMT of the temporary closure of the office premises.

### *Diversity and inclusion*

90. In the work of the organisation, the Commissioner has due regard to the three aims of the public sector equality duty under the Equality Act 2010 which are:

- to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- to advance the equality of opportunity between people who share a protected characteristic and people who do not share it; and
- to foster good relations between people who share a protected characteristic and people who do not share it.

91. All committee reports or proposals submitted to the to SMT and project plans must include a section on the impact of the project or proposal on equalities and the protected characteristics.

92. All staff receive mandatory equalities and diversity training annually. In 2020-21, training on equality and diversity was provided to line managers<sup>13</sup>.

93. The Commissioner is committed to eliminating discrimination, valuing and promoting equality, diversity and inclusion among our workforce. The Commissioner is working to increase diversity, supporting flexible approaches to work and it is the Commissioner's policy to treat all job applicants and employees equitably regardless of age, disability, gender, gender reassignment status, marriage or civil partnership status, maternity or pregnancy, race, religion or belief or sexual orientation. A further review of recruitment procedures is due to be conducted in 2021-22.

94. Where appropriate, we have implemented reasonable adjustments to enable staff to fulfil their potential.

### *Learning and development*

95. A revised Learning and Development Plan 2020-21 was put in place and training, where undertaken, was carried out online using approved training providers and platforms.

96. Mandatory training in data protection and UK GDPR requirements was undertaken by all members of staff in December 2020.

97. During 2020-21, the Commissioner increased the focus on remote working training. Training for all staff was provided on working from home effectively and guidance notes on

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<sup>13</sup> For practical reasons it was not possible to carry out the all staff training by 31 March 2021, however, this was carried out by the 30 April 2021.

managing various aspects of our IT systems and Microsoft Teams were provided to all members of staff. All managers undertook training on managing employees working remotely and on mental health in the workplace.

**Daren Fitzhenry, Accountable Officer**

**Date: 30 September 2021**

# INDEPENDENT AUDITOR'S REPORT

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## **Independent auditor's report to the members of Scottish Information Commissioner, the Auditor General for Scotland and the Scottish Parliament Reporting on the audit of the financial statements**

### *Opinion on financial statements*

We have audited the financial statements in the annual report and accounts of Scottish Information Commissioner for the year ended 31 March 2021 under the Freedom of Information (Scotland) Act 2002. The financial statements comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity and notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and International Financial Reporting Standards (IFRSs) as adopted by the European Union, and as interpreted and adapted by the 2020/21 Government Financial Reporting Manual (the 2020/21 FReM).

In our opinion the accompanying financial statements:

- give a true and fair view in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers of the state of the body's affairs as at 31 March 2021 and of its net expenditure for the year then ended;
- have been properly prepared in accordance with IFRSs as adopted by the European Union, as interpreted and adapted by the 2020/21 FReM; and
- have been prepared in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

### *Basis of opinion*

We conducted our audit in accordance with applicable law and International Standards on Auditing (UK) (ISAs (UK)), as required by the [Code of Audit Practice](#) approved by the Auditor General for Scotland. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report. We were appointed by the Auditor General on 31 May 2016. The period of total uninterrupted appointment is 5 years. We are independent of the body in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK including the Financial Reporting Council's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. Non-audit services prohibited by the Ethical Standard were not provided to the body. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### *Conclusions relating to going concern basis of accounting*

We have concluded that the use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work we have performed, we have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the body's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from when the financial statements are authorised for issue.

### *Risks of material misstatement*

We report in a separate Annual Audit Report, available from the [Audit Scotland website](#), the most significant assessed risks of material misstatement that we identified and our judgements thereon.

### *Responsibilities of the Accountable Officer for the financial statements*

As explained more fully in the Statement of Accountable Officer's Responsibilities, the Accountable Officer is responsible for the preparation of financial statements that give a true and fair view in accordance with the financial reporting framework, and for such internal control as the Accountable Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Accountable Officer is responsible for assessing the body's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless deemed inappropriate.

### *Auditor's responsibilities for the audit of the financial statements*

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of our auditor's report.

### *Extent to which the audit was considered capable of detecting irregularities, including fraud*

Irregularities, including fraud, are instances of non-compliance with laws and regulations. We design procedures in line with our responsibilities outlined above to detect material misstatements in respect of irregularities, including fraud. Procedures include:

- considering the nature of the body's control environment and reviewing the body's documentation of their policies and procedures relating to fraud and compliance with laws and regulations. We also enquired with management, and those charged with governance about their own identification and assessment of the risks of irregularities;
- obtaining an understanding of the applicable legal and regulatory framework and how the body is complying with that framework;
- identifying which laws and regulations are significant in the context of the body;
- assessing the susceptibility of the financial statements to material misstatement, including how fraud might occur; and
- considering whether the audit team collectively has the appropriate competence and capabilities to identify or recognise non-compliance with laws and regulations.

We obtained an understanding of the legal and regulatory framework that the body operates in, and identified the key laws and regulations that:

- had a direct effect on the determination of material amounts and disclosures in the financial statements. This included the Freedom of Information (Scotland) Act 2002.
- do not have a direct effect on the financial statements but compliance with which may be fundamental to the body's ability to operate or to avoid a material penalty. These included the Data Protection Act 2018 and relevant employment legislation.

We discussed among the audit engagement team regarding the opportunities and incentives that may exist within the organisation for fraud and how and where fraud might occur in the financial statements.

As a result of the performing the above, we identified the greatest potential for fraud was in relation to the requirement to operate within the expenditure resource limits set by the Scottish Parliamentary Corporate Body. The risk is that the expenditure in relation to year-end transactions may be subject to potential manipulation in an attempt to align with its tolerance target or achieve a breakeven position. In response to this risk, we obtained independent confirmation of the resource limits allocated by the Scottish Parliamentary Corporate Body and, tested a sample of accruals, prepayments and invoices received around the year-end to assess whether they have been recorded in the correct period.

In common with all audits under ISAs (UK), we are also required to perform specific procedures to respond to the risk of management override. In addressing the risk of fraud through management override of controls, we tested the appropriateness of journal entries and other adjustments; assessed whether the judgements made in making accounting estimates are indicative of a potential bias; and evaluated the business rationale of any significant transactions that are unusual or outside the normal course of business.

In addition to the above, our procedures to respond to the risks identified included the following:



- reviewing financial statement disclosures by testing to supporting documentation to assess compliance with provisions of relevant laws and regulations described as having a direct effect on the financial statements;
- performing analytical procedures to identify any unusual or unexpected relationships that may indicate risks of material misstatement due to fraud;
- enquiring of management, concerning actual and potential litigation and claims, and instances of non-compliance with laws and regulations; and
- reading minutes of meetings of those charged with governance.

The extent to which our procedures are capable of detecting irregularities, including fraud, is affected by the inherent difficulty in detecting irregularities, the effectiveness of the body's controls, and the nature, timing and extent of the audit procedures performed.

Irregularities that result from fraud are inherently more difficult to detect than irregularities that result from error as fraud may involve collusion, intentional omissions, misrepresentations, or the override of internal control. The capability of the audit to detect fraud and other irregularities depends on factors such as the skillfulness of the perpetrator, the frequency and extent of manipulation, the degree of collusion involved, the relative size of individual amounts manipulated, and the seniority of those individuals involved.

## **Reporting on regularity of expenditure and income**

### *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.

### *Responsibilities for regularity*

The Accountable Officer is responsible for ensuring the regularity of expenditure and income. In addition to our responsibilities to detect material misstatements in the financial statements in respect of irregularities, we are responsible for expressing an opinion on the regularity of expenditure and income in accordance with the Public Finance and Accountability (Scotland) Act 2000.

## **Reporting on other requirements**

### *Opinion prescribed by the Auditor General for Scotland on audited part of the Remuneration and Staff Report*

We have audited the parts of the Remuneration and Staff Report described as audited. In our opinion, the audited part of the Remuneration and Staff Report has been properly prepared in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

### *Statutory other information*

The Accountable Officer is responsible for the statutory other information in the annual report and accounts. The statutory other information comprises the Performance Report and the Accountability Report excluding the audited part of the Remuneration and Staff Report.

Our responsibility is to read all the statutory other information and, in doing so, consider whether the statutory other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work we have performed, we conclude that there is a material misstatement of this statutory other information, we are required to report that fact. We have nothing to report in this regard.

Our opinion on the financial statements does not cover the statutory other information and we do not express any form of assurance conclusion thereon except on the Performance Report and Governance Statement to the extent explicitly stated in the following opinions prescribed by the Auditor General for Scotland.

### *Opinions prescribed by the Auditor General for Scotland on Performance Report and Governance Statement*

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the Performance Report for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers; and
- the information given in the Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

### *Matters on which we are required to report by exception*

We are required by the Auditor General for Scotland to report to you if, in our opinion:

- adequate accounting records have not been kept; or
- the financial statements and the audited part of the Remuneration and Staff Report are not in agreement with the accounting records; or
- we have not received all the information and explanations we require for our audit.

We have nothing to report in respect of these matters.

### *Conclusions on wider scope responsibilities*

In addition to our responsibilities for the annual report and accounts, our conclusions on the wider scope responsibilities specified in the Code of Audit Practice are set out in our Annual Audit Report.

### **Use of our report**

This report is made solely to the parties to whom it is addressed in accordance with the Public Finance and Accountability (Scotland) Act 2000 and for no other purpose. In accordance with paragraph 120 of the Code of Audit Practice, we do not undertake to have responsibilities to members or officers, in their individual capacities, or to third parties.

**Pat Kenny, CPFA**

**Date: 30 September 2021**

Pat Kenny, CPFA (for and on behalf of Deloitte LLP)  
110 Queen Street  
Glasgow  
G1 3BX  
United Kingdom

# Scottish Information Commissioner

## FINANCIAL STATEMENTS 2020-21

### Financial Statements and notes

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#### Statement of comprehensive net expenditure for the year ended 31 March 2021

	Notes	2020-21 £'000	2019-20 £'000
<b>Income</b>			
Other income	4	0	(1)
<b>Expenditure</b>			
Staff costs	5,6	1,532	1,366
Other administration costs	7	366	369
Depreciation and amortisation	8,9	47	40
<b>Net administration costs</b>		<b>1,945</b>	<b>1,775</b>
<b>Net operating costs</b>		<b>1,945</b>	<b>1,774</b>

All amounts relate to continuing activities.

There have been no gains or losses other than those recognised in the Statement of Comprehensive Net Expenditure above.

The accompanying notes on pages 71 to 81 form an integral part of these accounts.

## Statement of Financial Position as at 31 March 2021

	Note	2020-21 £'000	2019-20 £'000
<b>Non-current assets</b>			
Property, plant and equipment	8	99	87
Intangible assets	9	28	5
<b>Non-current assets</b>		<b>127</b>	<b>92</b>
<b>Current assets</b>			
Trade and other receivables	10	29	24
Cash and cash equivalents	11	215	178
<b>Current assets</b>		<b>244</b>	<b>202</b>
<b>Total assets</b>		<b>371</b>	<b>294</b>
<b>Current liabilities</b>			
Trade and other payables	12	(122)	(65)
<b>Current liabilities</b>		<b>(122)</b>	<b>(65)</b>
<b>Assets less liabilities</b>		<b>249</b>	<b>229</b>
<b>Taxpayers Equity</b>			
General Fund	13	222	206
Revaluation reserve	13	27	23
<b>Taxpayers Equity</b>		<b>249</b>	<b>229</b>

The accompanying notes on pages 71 to 81 form an integral part of these accounts.

As Accountable Officer, I authorised the Financial Statements 2020-21 for issue on 30 September 2021.

**Daren Fitzhenry Accountable Officer**

**Date: 30 September 2021**

## Statement of cash flows for the period ended 31 March 2021

	Note	2020-21 £'000	2019-20 £'000
<b>Cash flows from operating activities</b>			
Operating cost		(1,945)	(1,775)
Adjustments for non-cash transactions			
Depreciation and amortisation	8,9	47	40
Movements in working capital			
(Increase)/Decrease in trade and other receivables	10	(5)	0
Increase/(Decrease) in trade and other payables	12	57	14
<b>Net cash outflow from operating activities</b>		<b>(1,846)</b>	<b>(1,721)</b>
<b>Cash flows from investing activities</b>			
Bank interest received	4	0	1
Purchase of property, plant and equipment	8	(45)	(31)
Purchase of intangible assets	9	(33)	(2)
<b>Net cash outflow from investing activities</b>		<b>(78)</b>	<b>(32)</b>
Total cash outflows from operating and investing activities		(1,924)	(1,753)
Cash inflows from SPCB financing activities	3	1,961	1,771
<b>Net increase in cash and cash equivalents</b>		<b>37</b>	<b>18</b>
Cash and cash equivalents at beginning of period	11	178	160
Cash and cash equivalents at end of period	11	215	178
<b>Net increase in cash and cash equivalents</b>		<b>37</b>	<b>18</b>

The accompanying notes on pages 71 to 81 form an integral part of these accounts.

## Statement of changes in taxpayers' equity for the year ended 31 March 2021

	General Fund		Revaluation Reserve		Total Reserves	
	2020-21 £'000	2019-20 £'000	2020-21 £'000	2019-20 £'000	2020-21 £'000	2019-20 £'000
<b>Balance at 1 April</b>	<b>206</b>	209	<b>23</b>	23	<b>229</b>	232
Net operating cost for year	(1,945)	(1,774)	0	0	(1,945)	(1,774)
Net funding	1,961	1,771	0	0	1,961	1,771
Revaluation of artwork			4	0	4	0
<b>Balance at 31 March</b>	<b>222</b>	206	<b>27</b>	23	<b>249</b>	229

## Notes to the Financial Statements

### 1. Accounting policies

These financial statements have been prepared in accordance with the accounts direction issued by Scottish Ministers under Section 19(4) of the Public Finance and Accountability (Scotland) Act 2000 and also in compliance with the financial reporting framework required by the applicable law and International Financial Reporting Standards (IFRSs) as adopted by the European Union, and as interpreted and adapted by the 2020-21 Government Financial Reporting Manual (the 2020-21 FReM). Where the 2020-21 FReM permits a choice of accounting policy, the accounting policy judged to be the most appropriate to the circumstances of the Scottish Information Commissioner in order to provide a true and fair view has been selected. The particular accounting policies adopted by the Commissioner are described below. They have been applied consistently in dealing with items considered material in relation to the financial statements.

#### 1.1. Accounting convention

These financial statements have been prepared under the historical cost convention modified to account for the revaluation of property and plant and equipment, at their value to the organisation by reference to their current costs.

#### 1.2. Critical Judgements in Applying Accounting Policies

In applying the accounting policies set out in these Notes, the Commissioner has had to make judgements about financial transactions or those involving uncertainty about future events. The critical judgement made in the Financial Statements is that the organisation will continue as a going concern and will be appropriately funded by the SPCB.

#### 1.3. Critical Accounting Estimates

The Financial Statements contain estimated figures that are based on assumptions about the future or that are otherwise uncertain. These estimates relate to the value of tangible and intangible assets. Estimates are made taking account of historical experience, current trends and other relevant factors but cannot be determined with certainty. Actual results could be different from the assumptions and estimates, but are unlikely to be material.

#### 1.4. Property, Plant and Equipment (PPE)

##### 1.4.1. Recognition

All PPE assets will be accounted for as non-current assets.

##### 1.4.2. Capitalisation

The minimum levels for capitalisation of a PPE asset are:

Leasehold improvements	£10,000 inclusive of irrecoverable VAT
Artwork, Fixtures, fittings and equipment and IT equipment	£500 inclusive of irrecoverable VAT

### **1.4.3. Depreciation**

Depreciation is provided at rates calculated to write off the valuation of buildings and other PPE assets by equal instalments over their estimated useful lives which are normally in the following ranges:

Leasehold improvements	Over the initial period of the lease
Furniture and equipment	5 years
Fixtures, fittings	5 years
IT equipment	3 years

### **1.4.4. Valuation**

Assets other than artwork are held at depreciated historic value. Artwork is held at open market value and is revalued every 3 years. Open market value has been used as a proxy for fair value.

### **1.4.5. Intangible non-current assets**

Software and licences are capitalised as intangible non-current assets and amortised on a straight-line basis over the expected life of the asset (3 years).

## **1.5. Financial instruments**

Financial instruments are classified and accounted for according to the substance of the contractual agreement as either financial assets or financial liabilities. The Commissioner has classified its financial instruments as follows:

### **1.5.1. Financial assets**

Cash and cash equivalents, trade receivables, accrued income and amounts receivable are reported in the "current assets" category.

### **1.5.2. Financial liabilities**

Trade payables, accruals and creditors are classified as "current liabilities".

## **1.6. Funding receivable**

Funding received from the SPCB is credited directly to a prescribed income account in the year to which it relates.

## **1.7. Value Added Tax (VAT)**

The Commissioner is not registered for VAT. All amounts are recorded inclusive of VAT.

## **1.8. Leases**

The Commissioner holds no finance leases. Costs in respect of operating leases are charged to the Statement of Comprehensive Net Expenditure as they fall due.

## **1.9. Pension costs**

The Commissioner is paid through the SPCB's payroll and is a member of the Civil Servants and Others Pension Scheme (CSOPS).

Pension benefits for the Commissioner's staff are provided through the Civil Service Pension arrangements and a partnership pension with a private sector pension scheme.



## Civil Service pension arrangements

The Civil Service Pension schemes are unfunded multi-employer defined benefit schemes. The Commissioner is unable to identify its share of the underlying assets and liabilities and therefore, pension assets and liabilities have not been recognised on the Statement of Financial Position. As a result, the schemes are accounted for as defined contribution plans.

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015 a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or **alpha**, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date all newly appointed civil servants and the majority of those already in service joined **alpha**. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS). The PCSPS has four sections: three providing benefits on a final salary basis (**classic**, **premium** or **classic plus**) with a normal pension age of 60; and one providing benefits on a whole career basis (**nuvos**) with a normal pension age of 65.

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under **classic**, **premium**, **classic plus**, **nuvos** and **alpha** are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012 remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 switch into **alpha** sometime between 1 June 2015 and 1 February 2022. Because the Government plans to remove discrimination identified by the courts in the way that the 2015 pension reforms were introduced for some members, it is expected that, in due course, eligible members with relevant service between 1 April 2015 and 31 March 2022 may be entitled to different pension benefits in relation to that period (and this may affect the Cash Equivalent Transfer Values shown in this report). All members who switch to **alpha** have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave **alpha**. (The pension figures quoted for the SMT show pension earned in PCSPS or **alpha** – as appropriate. Where the staff member has benefits in both the PCSPS and **alpha** the figure quoted is the combined value of their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a defined contribution (money purchase) pension with an employer contribution (**partnership** pension account).

Employee contributions are salary-related and range between 4.6% and 8.05% for members of **classic**, **premium**, **classic plus**, **nuvos** and **alpha**. Benefits in **classic** accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For **premium**, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike **classic**, there is no automatic lump sum. **Classic plus** is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per **classic** and benefits for service from October 2002 worked out as in **premium**. In **nuvos** a member builds up a pension based on his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. Benefits in **alpha** build up in a similar way to **nuvos**, except that the accrual rate is 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The **partnership** pension account is an occupational defined contribution pension arrangement which is part of the Legal & General Mastertrust. The employer makes a basic contribution of between 8% and 14.75% (depending on the age of the member). The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.5% of pensionable salary to cover the cost of centrally-provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of **classic**, **premium** and **classic plus**, 65 for members of **nuvos**, and the higher of 65 or State Pension Age for members of **alpha**. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha the figure quoted is the combined value of their benefits in the two schemes, but note that part of that pension may be payable from different ages.)

- Further details about the Civil Service pension arrangements can be found at the website [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

## **1.10. International Financial Reporting Standards (IFRS)**

### **Adoption of new and revised Standards**

#### **a) Standards, amendments and interpretations effective in the current year**

In the current year, the Commissioner has applied a number of amendments to IFRS Standards and Interpretations that are effective for an annual period that begins on or after 1 January 2020. Their adoption has not had any material impact on the disclosures or on the amounts reported in these financial statements:

- Amendments to References to the Conceptual Framework in IFRS Standards.
- **Amendment to IFRS 9:** Applying IFRS 9 with IFRS 4.
- **Amendment to IFRS 3:** Definition of a Business.
- **Amendments to IAS 1 and IAS 8:** Definition of Material.
- **Amendments to IAS 39, IFRS 4, IFRS 7 and IFRS 9:** Interest Rate Benchmark Reform (Phase 1).

**Annual Improvements to IFRS Standards 2015-2017 Cycle.**

#### **b) Standards, amendments and interpretations early adopted this year**

There are no new standards, amendments or interpretations early adopted this year.

#### **c) Standards, amendments and interpretations issued but not adopted this year**

At the date of authorisation of these financial statements, the Commissioner has not applied the following new and revised IFRS Standards that have been issued but are not yet effective:

- **IFRS 16:** Leases. HM Treasury have agreed to defer implementation until 1 April 2022.
- **IFRS 17:** Insurance Contracts. Applicable for periods beginning on or after 1 January 2023.

- **Amendment to IAS 1:** Classification of Liabilities as Current or Non-Current. Applicable for periods beginning on or after 1 January 2023.
- **Amendment to IAS 1:** Disclosure of Accounting Policies. Applicable for periods beginning on or after 1 January 2023.
- **Amendment to IAS 8:** Definition of Accounting Estimates. Applicable for periods beginning on or after 1 January 2023.
- **Amendments to IAS 16:** Property, Plant and Equipment proceeds before intended use. Applicable for periods beginning on or after 1 January 2022.
- **Amendments to IAS 37:** Onerous Contracts, cost of fulfilling a contract. Applicable for periods beginning on or after 1 January 2022.
- **Amendments to IAS 39, IFRS 4, IFRS 7 and IFRS 9:** Interest Rate Benchmark Reform (Phase 2). Applicable for periods beginning on or after 1 January 2021.
- Annual Improvements to IFRS Standards 2018-2020 Cycle. Applicable for periods beginning on or after 1 January 2022.

The Commissioner does not expect that the adoption of the Standards listed above will have a material impact on the financial statements in future periods, except as noted below.

IFRS 16 Leases supersedes IAS 17 Leases and is being applied by HM Treasury in the Government Financial Reporting Manual (FReM) from 1 April 2022. IFRS 16 introduces a single lessee accounting model that results in a more faithful representation of a lessee's assets and liabilities, and provides enhanced disclosures to improve transparency of reporting on capital employed.

Under IFRS 16, lessees are required to recognise assets and liabilities for leases with a term of more than 12 months, unless the underlying asset is of low value. While no standard definition of "low value" has been mandated, the Commissioner has elected to utilise the capitalisation threshold of £5,000 to determine the assets to be disclosed. The Commissioner expects that its existing finance leases will continue to be classified as leases. All existing operating leases will fall within the scope of IFRS 16 under the 'grandfathering' rules mandated in the FReM for the initial transition to IFRS 16. In future years new contracts and contract renegotiations will be reviewed for consideration under IFRS 16 as implicitly identified right-of-use assets. Assets recognised under IFRS 16 will be held on the Statement of Financial Position as (i) right of-use assets which represent the Commissioner's right to use the underlying leased assets; and (ii) lease liabilities which represent the obligation to make lease payments.

The bringing of leased assets onto the Statement of Financial Position will require depreciation and interest to be charged on the right-of-use asset and lease liability, respectively. Cash repayments will also be recognised in the Statement of Cash Flows, as required by IAS 7.

Due to the need to reassess lease calculations, together with uncertainty on expected leasing activity from April 2021 and beyond, a quantification of the expected impact of applying the standard in 2021/22 is currently impracticable. However, the Commissioner does not expect the implementation of this standard to have a material impact on the financial statements.

## 2. Prior year adjustments

No prior year adjustments have been made.

## 3. Performance against budget

The Commissioner is funded through the SPCB. For the financial year 2020-21 the Commissioner was allocated a funding budget of £1,965,000.

	Budget		Expenditure		Variance	
	2020-21	2019-20	2020-21	2019-20	2020-21	2019-20
	£'000	£'000	£'000	£'000	£'000	£'000
Net operating costs	1,909	1,763	1,945	1,774	(36)	(11)
Capital expenditure	56	34	78	33	(22)	1
<b>Total expenditure</b>	<b>1,965</b>	<b>1,797</b>	<b>2,023</b>	<b>1,807</b>	<b>(58)</b>	<b>(10)</b>
<b>Accruals adjustments</b>						
Non-cash items	-	-	(47)	(40)	47	40
Working capital (including cash)	-	-	(15)	4	15	(4)
<b>Cash funding from the SPCB</b>	<b>1,965</b>	<b>1,797</b>	<b>1,961</b>	<b>1,771</b>	<b>4</b>	<b>26</b>

## 4. Income from all sources

	2020-21	2019-20
	£'000	£'000
Recovery of court costs	0	0
Miscellaneous income	0	0
Bank interest received	0	1
<b>Total</b>	<b>0</b>	<b>1</b>

Any income that is received is credited to the Statement of Comprehensive Net Expenditure.

It is unusual for us to receive income but, where possible, we seek to recover court costs and any court costs received are treated as income.

## 5. Staff costs

	Total 2020-21 £'000	Commissioner 2020-21 £'000	Senior Management Team	Staff 2020-21 £'000	Total 2019-20 £'000
			2020-21		
			£'000		
Salaries / Wages	1,124	77	212	835	993
ERNIC	116	9	24	83	106
Pension Costs	292	22	55	215	267
<b>Total</b>	<b>1,532</b>	<b>108</b>	<b>291</b>	<b>1,133</b>	<b>1,366</b>

Salaries **include** basic salaries and are adjusted for accrued holiday pay. They do not include employee National Insurance or pensions contributions.

## 6. Pension costs

The details of the pension costs are set out in the table shown in Note 5.

For 2020-21, employer's contributions were payable to the Civil Service and Others Pension Scheme (CSOPS) or the Principal Civil Service Pension Scheme (PCSPS) at one of four rates in the range 26.6% to 27.9% of pensionable pay, based on defined salary bands. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.

One employee has opted for a partnership pension with a private sector pension scheme into which the SIC made an employer contribution in 2020-21. For partnership pensions, employer contributions are age-related and range from 8% to 14.75% of pensionable pay.

There were no outstanding scheme contributions as at 31 March 2021 (2019-20: £NIL).

The expected employer contributions rates for 2021-22 are 26.6% to 27.9% and the estimated staff pension costs are £271,000.

## 7. Other administrative costs

	<b>2020-21</b>	<b>2019-20</b>
	£'000	£'000
Property costs	90	87
Research and promotion	21	26
Administration costs	215	184
Legal costs for court of session hearings	23	47
Travel and expenses	0	8
Audit Fees	17	17
<b>Total</b>	<b>366</b>	<b>369</b>

Included within Administration costs is £1,617 (2019-20: £1,617) equipment rental costs and included in property cost is £54,074 (2019-20: £50,811) in association with operating leases (see also note 14).

## 8. Property, plant and equipment

	Lease Improvements		Artwork		Fixtures, fittings and equipment		Information Technology		Total	
	2020-21	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21	2019-20
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
<b>Cost or Valuation</b>										
At 1 April	214	214	38	38	144	135	172	150	568	537
Additions	0	0	0	0	0	9	45	22	45	31
Revaluations	0	0	4	0	0	0	0	0	4	0
Disposals	0	0	0	0	0	0	(28)	0	(28)	0
<b>At 31 March</b>	<b>214</b>	<b>214</b>	<b>42</b>	<b>38</b>	<b>144</b>	<b>144</b>	<b>189</b>	<b>172</b>	<b>589</b>	<b>568</b>
<b>Depreciation</b>										
At 1 April	203	191	0	0	127	120	151	144	481	455
Charge for year	11	12	0	0	7	7	19	7	37	26
Disposals	0	0	0	0	0	0	(28)	0	(28)	0
<b>At 31 March</b>	<b>214</b>	<b>203</b>	<b>0</b>	<b>0</b>	<b>134</b>	<b>127</b>	<b>142</b>	<b>151</b>	<b>490</b>	<b>481</b>
<b>Net book value at 31 March 2021</b>	<b>0</b>	<b>11</b>	<b>42</b>	<b>38</b>	<b>10</b>	<b>17</b>	<b>47</b>	<b>21</b>	<b>99</b>	<b>87</b>
<b>Net book value at 31 March 2020</b>	<b>11</b>	<b>23</b>	<b>38</b>	<b>38</b>	<b>17</b>	<b>15</b>	<b>21</b>	<b>6</b>	<b>87</b>	<b>82</b>

The Commissioner's artwork was valued on 10 May 2021 by scotlandart.com and on 11 May 2021 by David Mach Limited, independent art dealers. The Commissioner considers the valuation to be appropriate as at 31 March 2021. The basis of valuation used was open market value and the unrealised gain was transferred to the revaluation reserve. No other assets have been revalued.

**9. Intangible assets comprise software and licences.**

	<b>2020-21</b>
	£'000
<b>Cost</b>	
As at 1 April 2020	386
Additions	33
Disposals	(3)
<b>At 31 March 2021</b>	<b>416</b>
<b>Amortisation</b>	
As at 1 April 2020	381
Charge for the year	10
Disposals	(3)
<b>At 31 March 2021</b>	<b>388</b>
<b>Net book value at 31 March 2021</b>	<b>28</b>
<b>Net book value at 31 March 2020</b>	<b>5</b>

**10. Trade and other receivables**

	<b>2020-21</b>	2019-20
	£'000	£'000
<b>Amounts falling due within one year</b>		
Prepayments and accrued income	29	24
<b>Receivable within one year</b>	<b>29</b>	24

**11. Cash and cash equivalents**

	<b>2020-21</b>	2019-20
	£'000	£'000
<b>Balance as at 1 April 2020</b>	<b>178</b>	160
Net change in cash and cash equivalent balances	37	18
<b>Balance as at 31 March 2021</b>	<b>215</b>	178
<b>Cash held at commercial banks</b>	<b>215</b>	178

Cash and cash equivalents include cash in hand and deposits held on call at two bank accounts. The funding received from the SPCB is paid into one of the accounts and moneys are transferred to the second account for the payment of invoices.

## 12. Trade and other payables

	2020-21	2019-20
	£'000	£'000
<b>Amounts falling due within one year</b>		
Trade payables	3	4
Accruals and deferred income	119	61
<b>Total</b>	<b>122</b>	<b>65</b>

## 13. Capital and reserves

### 13.1. General fund

	2020-21	2019-20
	£'000	£'000
<b>As at 1 April 2020</b>	<b>206</b>	209
Net expenditure for the year	(1,945)	(1,774)
Funding from the SPCB	1,961	1,771
<b>As at 31 March 2020</b>	<b>222</b>	206

### 13.2. Revaluation reserve

	2020-21	2019-20
	£'000	£'000
<b>As at 1 April 2020</b>	<b>23</b>	23
Increase in valuation	4	-
<b>Revaluation reserve</b>	<b>27</b>	23

## 14. Commitments under leases

### Obligations under operating leases

	2020-21	2019-20
	£'000	£'000
<b>Buildings</b>		
Not later than one year	<b>54</b>	51
Later than one year and not later than 5 years	<b>216</b>	0
Later than 5 years	<b>799</b>	0
<b>Other</b>		
Not later than one year	<b>0</b>	0
Later than one year and not later than 5 years	<b>0</b>	0
Later than 5 years	<b>0</b>	0

The building lease has been renewed for a period of 20 years from 17/01/2021 at an annual rent of £54,000 p.a.



**15. Capital commitments**

There were no contracted capital commitments as at 31 March 2021 (2019-20: £NIL).

**16 Contingent liabilities disclosed under IAS 37**

There are no contingent liabilities as at 31 March 2021.

**17. Related party transactions**

The Commissioner receives funding from the SPCB following an annual Parliamentary budget approval process. The SPCB is regarded as a related party. Neither the Commissioner, nor any of his staff, has undertaken any material transactions with either the SPCB or the Commissioner or the office of the Commissioner during the year.

**18. Post reporting year events**

No event has occurred since the date of the Statement of Financial Position which materially affects the financial statements.

**19. Financial instruments**

Financial assets and liabilities are carried in the Statement of Financial Position at amortised cost.

**Credit risk** - the Commissioner receives funding on a monthly basis and restricts cash holdings to a minimum.

**Liquidity risk** - the Commissioner does not have any external borrowings.

**Market risk** - Changes in market interest rates influence the interest receivable on surplus funds invested. The Commissioner does not rely on interest receivable as its key source of income.



**SCOTTISH INFORMATION COMMISSIONER**

**DIRECTION BY THE SCOTTISH MINISTERS**

1. The Scottish Ministers, in pursuance of paragraph 5 of Schedule 2 of the Freedom of Information (Scotland) 2002, hereby give the following direction.
2. The statement of accounts for the financial year ended 31 March 2006, and subsequent years, shall comply with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FRM) which is in force for the year for which the statement of accounts are prepared.
3. The accounts shall be prepared so as to give a true and fair view of the income and expenditure and cash flows for the financial year, and of the state of affairs as at the end of the financial year.
4. This direction shall be reproduced as an appendix to the statement of accounts. The direction given on 20 April 2004 is hereby revoked.

Signed by the authority of the Scottish Ministers

Dated

*A. J. Staffin*  
1 September 2006.

**Scottish Information Commissioner**

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Laid before the Scottish Parliament in October 2021 in pursuance of section 46 of the Freedom of Information (Scotland) Act 2002 and section 22(5) of the Public Finance and Accountability (Scotland) Act 2000.

SG laying number: SG/2021/24