

Scottish Information Commissioner

Annual Report and Accounts 2021-22

Meeting challenges and improving for the future



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
AAB	Advisory Audit Board
ARA	Annual Report and Accounts
BAU	Business as usual
CHP	Complaints Handling Procedures
EIRs	The Environmental Information (Scotland) Regulations 2004
FOI	Freedom of information
FOI Act	The Freedom of Information (Scotland) Act 2002
GA	Governance Arrangements
GRA	Governance Reporting Arrangements
ICIC	International Conference of Information Commissioners
KPI	Key performance indicator, against which our performance in key areas is measured and assessed
MSMTM	Monthly Senior Management Team Meeting
P and QF	The Commissioner's Performance and Quality Framework 2021-22
PSRA	Public Services Reform (Scotland) Act 2010
QSMTM	Quarterly Senior Management Team Meeting
SMT	Senior Management Team
SPCB	Scottish Parliamentary Corporate Body
SPIF	Scottish Public Information Forum
UK GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

PERFORMANCE REPORT 2021-22

PERFORMANCE OVERVIEW

The Scottish Information Commissioner (the Commissioner) promotes and enforces the public's right to access the information held by Scottish public authorities.

This performance overview provides information about the Commissioner's organisation, its purpose, the key risks to the achievement of its objectives and how it has performed during 2021-22. The related detail on these matters is set out in the rest of the Annual Report.

Commissioner's statement

2021-22: Meeting challenges and improving for the future

One of the most welcome features of 2021-22 was finally seeing promising signs of the beginning of the end of the Covid-19 pandemic. From the roll out of the vaccine programme, to the reopening of schools and the removal of 'stay at home' restrictions, 2021-22 saw significant steps towards the return to a far more normal way of life for many.

However, the 'long tail' of the Covid-19 pandemic continues to be felt in a number of ways, and its impact is likely to last for some time to come.

For my own office, one key impact was a significant rise in number of appeals we received: a pattern familiar to many of my fellow regulators. The appeals received during 2021-22 rose by 29% on the previous year, as those who had used their FOI rights to access information sought certainty on the accuracy of the responses received (or, in some cases, challenged a failure to respond).

In total 626 appeals were received across the year – the highest made since 2005-06. Appeal subjects reflected a wide range of issues of personal and public interest: from discharges from hospitals to care homes to a review of the Curriculum for Excellence; from planning for future Covid-19 waves to neighbourhood noise complaints.

This increased exercise of rights inevitably created challenges for my small team, exacerbated by the high caseload carried forward from the previous, pandemic-disrupted, year. This has unfortunately contributed to some delays being experienced by those who use our service. We have, however, been working hard to manage these delays: keeping applicants informed of the progression of cases - including by increasing the information we publish about our live caseload on our website; working to streamline and improve our processes; and planning towards the recruitment of new staff.

Across the year my team worked extremely hard in difficult circumstances, closing almost 550 appeal cases: the highest number since 2013-14. While rising case numbers mean that the current financial year will continue to pose challenges, I am confident that the recruitment of new staff and the continued development of our procedures will leave us in a strong position to address these challenges as we move forward.

It has also been extremely important that my team remain proactive and "future-focussed"; not just "fighting the fire" of rising appeals. To this end, our work to improve authority performance through targeted and proportionate interventions has continued; helping to nip problems in the bud, while supporting authorities to implement solutions that benefit all requesters, not just those making single-issue appeals. This year, for example, I reported on the outcomes from a detailed assessment of Scottish Government practice and performance, identifying both significant improvements and further work required. An intervention with the University of Edinburgh also resulted in demonstrable improvement, following engagement with senior management.

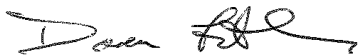
2021-22 also saw the development of our new, improved website: a fast, modern, and accessible site for the future, enabling both the public authorities covered by FOI and those who may wish to request information to access timely and clear guidance on FOI rights and responsibilities. This major piece of work which significantly improved our main external communication channel was launched in April 2022.

Other work has included engagement with the Scottish Government and campaigners on potential improvements to FOI legislation, together with a second Special Report on the impact of the pandemic on FOI in Scotland. We also published research into public awareness of FOI and carried out a survey of FOI practitioners, all of which is set to support and inform our future work.

Internationally, I supported FOI campaigners and regulators in Hungary and the Philippines as they worked to improve their systems, while also learning from their experiences and approaches. I also continued my engagement with the international community of Information Commissioners; sharing resources and contributing to discussions on a wide range of topics, including widening understanding of FOI rights and improving the openness of public bodies.

Further information on all this work (and more) is detailed throughout this report.

Despite the pressures of the past year, I am confident that the work done leaves us in a stronger position to face the challenges of the future. The experience of recent years has only served to underline the vital role that FOI plays in improving the transparency of public bodies and supporting informed participation by individuals. Looking towards future challenges, including the significant challenges posed by the cost of living crisis, it is clear that a strong and effective FOI regime and the openness and transparency it creates remains key in supporting accountability, strengthening participation and building trust in our public services.

A handwritten signature in black ink, appearing to read 'Daren Fitzhenry', with a stylized flourish at the end.

Daren Fitzhenry
Scottish Information Commissioner

Statutory background

The Commissioner's powers and duties are set out in Parts 3 and 4 of the Freedom of Information (Scotland) Act 2002 (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 Coronavirus (Scotland) Act 2020 made temporary amendments to a range of legislation, including the FOI Act. Amongst other things, the Commissioner was given the temporary power to determine that the FOI Act had not been breached if a Scottish public authority failed to respond within the statutory timelines in certain limited circumstances related to the Covid-19 pandemic. On 1 October 2021, the Coronavirus (Extension and Expiry) (Scotland) Act 2021 came into force which, in relation to FOI, had the effect of phasing out the Commissioner's ability to consider the impact of the Covid-19 pandemic when deciding if an authority failed to comply with FOI timescales. This "discretion" could only be applied in relation to FOI requests that were made on or before 30 September 2021.

The Commissioner is also able to continue to issue decisions and other formal notices solely via email (rather than having to post hard copies).

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.

Organisational structure

During the reporting year, the Commissioner's team of 25 people worked remotely with only essential work taking place in the office premises. The office premises, based in St Andrews, Fife, continued to be temporarily closed in line with Scottish Government guidance and public health advice. The office premises re-opened on 3 May 2022 and a trial period of hybrid working is taking place.

The Senior Management Team (SMT) led by the Commissioner includes the heads of three departments:

Corporate Services	Enforcement	Policy and Information
<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• investigates appeals made under FOI law, ensuring that authorities comply• the Head of Enforcement is in-house legal adviser to the Commissioner	<ul style="list-style-type: none">• carries out research and FOI policy development and delivers strategies to improve authorities' FOI practice and promote FOI rights to the public• the Head of Policy and Information has management responsibility for the website

More information is available at: www.itspublicknowledge.info/about-us.

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 2021-22. In summary, for the year ended 31 March 2022:

- net operating costs totalled £1,926,000 (2020-21: £1,945,000) – including non-cash transactions totalling £39,000 (2020-21: £47,000)
- capital expenditure totalled £16,000 (2020-21: £78,000)
- total net expenditure amounted to £1,942,000 (2020-21: £2,203,000). Cash funding from the SPCB of £1,942,000 (2020-21: £1,961,000) was within the agreed cash budget for the financial year of £2,030,000 (2020-21: £1,965,000). We met our target of achieving no more than a 5% variance in spend against budget.

More information is available at: www.itspublicknowledge.info/governance-and-finance.

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/strategic-and-operational-plans.

Operational Plan 2021-22

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 2021-22.

The Performance and Quality Framework 2021-22 (P and 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 and 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 2021-22.

Operational Performance

Over the past year we have operated as a virtual organisation, with all staff working remotely and only essential work being carried out in the office premises. 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. The hard work of my team, combined with improvements to our procedures significantly increased operational output from the reporting previous year, but the sheer quantity of appeals in 2021-22 has increased ongoing caseload which will continue to have an impact on our performance moving forward to the next reporting year.

The Performance Analysis section provides commentary on our operational performance in 2021-22.

Covid-19 pandemic

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.

During the reporting year, we have maintained operational output and, whilst working remotely, we have ensured that as many of our services as possible can be provided. We have maintained our Covid-19 and FOI Info Hub, responded to requests for information and enquiries (received by email and in writing), provided advice and guidance and decided appeals which have been submitted to us by email, by post and through the online portal. Due to technical issues the online portal was closed in August 2021.

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 continued to develop how we have carried on our regulatory work in the remote working environment. For example, we have continued to use the 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 continued to monitor the impact of the Covid-19 pandemic on FOI in Scotland and our second Special Report relating to this was published in January 2022. This report analysed the key impacts across 2020 and 2021, reflected on the lessons to learn in order to strengthen FOI practice, performance and culture and can be found at:

www.itspublicknowledge.info/covid-19-special-reports.

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. Further detail on the risk management and internal control system is provided in the Accountability Report.

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. 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 2021-22, 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. Eight strategic risks were identified which covered the following areas:

- the allocation and maintenance of sufficient resources to FOI
- challenges to the economy and public sector funding
- the practice, governance and performance of the office of the Scottish Information Commissioner

When considering both strategic and operational risks in 2021-22, 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. This resulted in the residual risk assessments, relating to both strategic and operational risks, being varied at times. We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff – we mitigated this risk by continuing the temporary closure of the office premises and regularly reviewing the temporary closure taking account of relevant government guidance and public health advice. We had systems in place to enable essential work in the office premises so that the premises continued to be 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 – we mitigated this risk by using the remote working facilities that were put in place in 2020, actively monitoring and managing the volume of cases, revising decision-making levels and procedures.
- having a reliable and up to date website with current and well managed content – we mitigated this by implementing a specific project to provide a new website and the new “live” website was in place in early April 2022.
- having appropriate and relevant governance, including operational governance, human resource governance and information governance – we mitigated this risk by monitoring and regularly reviewing our policies and procedures to ensure that they continued to be relevant and effective.

The section in the Performance Analysis titled “Risk Management” provides a further explanation and more detail on the management of risk in 2021-22.

Performance summary

- We received 626 appeals in 2021-22, a 29% increase on the previous year, and the highest number of appeals received since 2005-06.
- We received 98 appeals in relation to the EIRs (69 in 2020-21), the highest number received to date. Appeals relating to environmental information accounted for 16% of our appeal total.
- We carried out 257 interventions to support improvements in public authority FOI practice. While most were relatively straightforward 'non-compliance' notifications, we also carried out 46 interventions at level one and above – a 48% increase on 2020-21.
- 72% of appeals to the Commissioner were made by members of the public (81% in 2020-21).
- 18% of valid appeals were about an authority's failure to respond (22% in 2020-21).
- 55% of our decisions found wholly or partially in the requesters' favour (65% in 2020-21).
- 52% of cases were closed within 4 months, and the average closure time of all appeals was 4.48 months. Increasing appeal volumes and resource challenges meant that we fell short of our target of closing 70% of cases within 4 months.
- Our 2021-22 communication and engagement activity were measured against our 2015-20 Communications Strategy, the lifespan of this strategy having been extended due to a pandemic-related delay in the development of its successor. We met two of our three active targets, increasing website page views by 59% from our 2015 baseline and increasing subscribers to our email newsletter by 38% over the course of 2021-22. We did not meet our ambitious target to increase our annual Twitter impressions to 450,000, achieving 121,042 impressions during 2021-22. A fourth target, relating to our appeal portal, was discontinued following the deactivation of the portal.
- We responded to 683 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 72 information requests and 9 requests for review. We met our KPIs for requests and review requests.
- We received 23 right to access requests under data protection law and responded to all within the statutory timescale of one month.
- 6 complaints were received, down from 15 in 2020-21. We met our KPI that fewer than 20% of complaints be upheld in part or in full.
- 92 compliments were recorded, mainly relating to case handling and enquiries.
- There were no cases of suspected fraud.
- An approved Operational Plan 2021-22 was monitored every 2 months.
- Of the 42 governance reporting requirements, 39 were met in full, 1 was partially met and 2 were not met
- 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 21.02 tonnes of CO₂e used, we were significantly below our target of 40.5 tonnes.

PERFORMANCE ANALYSIS

Below we provide a detailed analysis of the Commissioner's performance during 2021-22 which details performance across the following key areas:

- **Enforcement performance**
Including information on our targeted interventions to improve public authority performance, the appeals we receive, our investigation of appeals, and our enforcement performance outcomes.
- **Policy and information performance**
Including information on our collection of public authority FOI statistics, our work to monitor and support public authority practice and our activity to raise awareness of FOI rights.
- **Corporate services performance**
Including information on our performance in relation to enquiries and information requests, our work to improve our environmental performance, our operational performance and our work to prevent fraud and corruption.

Enforcement Performance

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
Non-compliance notification 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
Level 1 Failure to follow good practice	A member of the Commissioner's staff alerts the authority to the issue and <i>requires</i> remedial action
Level 2 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
Level 3 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
Level 4 Consistent, ongoing failure to comply with FOI law and guidance	The Commissioner uses 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 all intervention activity in the year, rather than only those cases 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	2019-20	2020-21	2021-22
Non-compliance notification	217	229	211
Level 1	16	24	37
Level 2	15	6	7
Level 3	3	1	1
Level 4	0	0	1
TOTAL	251	260	257

Although the total number of intervention actions is similar to 2020-21, we carried out many more interventions at level one and above in 2021-22 than in the previous two years - 46, compared to 31 in 2020-21 and 34 in 2019-20.

The number and proportion of interventions carried out at Level 1 also increased: this was caused by two factors:

- A number of Level 1 interventions being initiated to improve publication scheme compliance following an examination of performance in this area.
- An approach, during the pandemic, of initiating Level 1 interventions following high rates of late responses, in order to establish whether and how particular circumstances had contributed to poor performance.

More information is available at: www.itspublicknowledge.info/interventions-procedures.

Intervention cases

Level 3 intervention: The Scottish Ministers

Our Level 3 intervention to support improvement in the Scottish Government's FOI practice and performance continued during 2021-22. We carried out a second in-depth assessment in order to determine the extent to which the revisions made to organisational systems and procedures were contributing to improvements in day-to-day practice. This work involved the detailed review of case-handling practice within a sample of more than 70 FOI and EIR cases, along with a wider review and analysis of available statistical data.

Our assessment found that, while significant improvement had been made in a number of areas, further work is required if FOI performance is to be raised and sustained. In particular, the assessment found evidence of widespread failures to comply with records management requirements and issues with the organisation's ability to track, monitor and report on key elements of FOI performance.

Our report on the assessment was published during May 2022, and we will continue to support the Scottish Government as it works to improve FOI practice.

Full details of our intervention with the Scottish Ministers can be found at: www.itspublicknowledge.info/scottish-government-intervention.

Level 4 intervention: Aberdeenshire Council

We carried out a Level 4 intervention with Aberdeenshire Council, after concerns were raised about an incident in which the council had failed to handle a request in a way that was 'requester blind' - that is, not influenced by who made the request - and had inappropriately shared a requester's identity with another organisation.

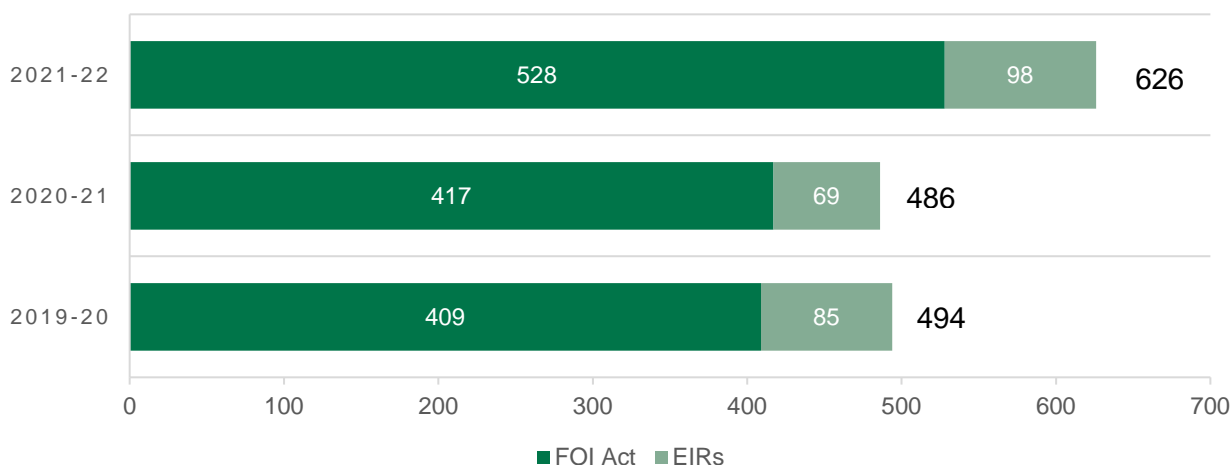
This intervention led to the issuing of a formal Practice Recommendation, only the third to be issued under FOI law. This required the council to ensure that all staff are trained in understanding the 'requester blind' principle, while also emphasising to senior managers the leadership expected of them in all aspects of managing FOI.

Read our Practice Recommendation at: www.itspublicknowledge.info/practice-recommendations.

Appeals received

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

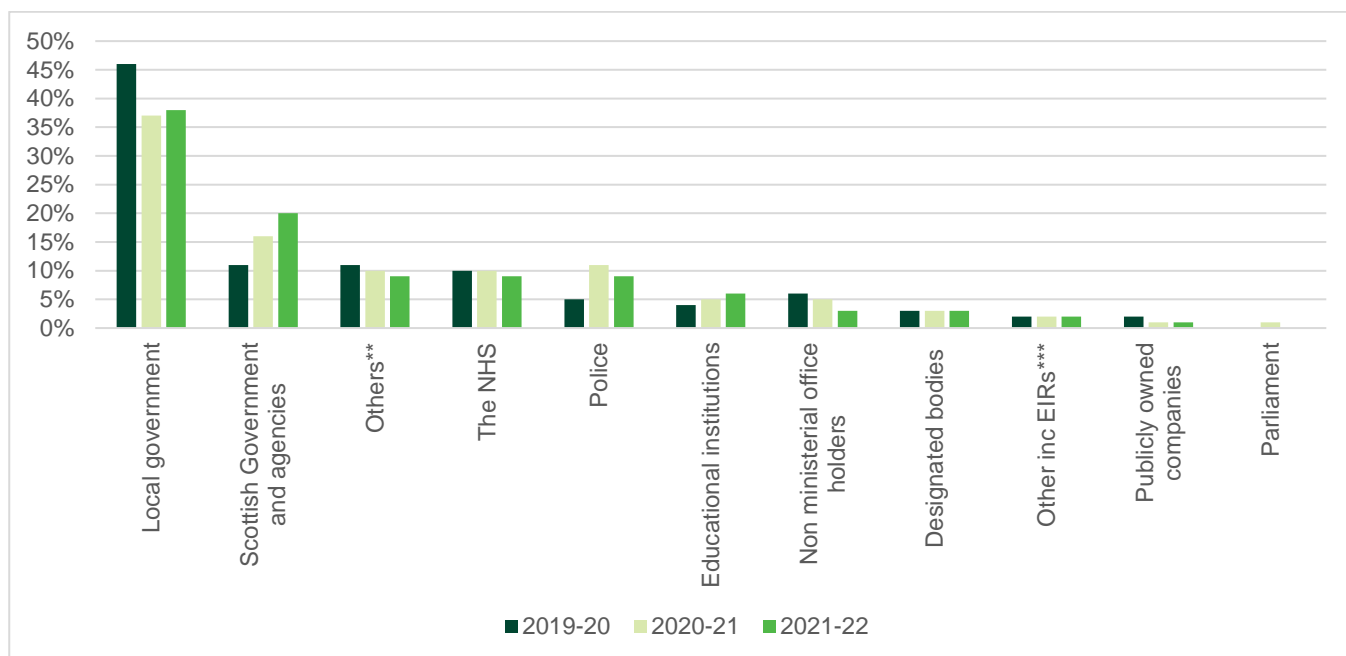
	2019-20 (%) [*]	2020-21 (%) [*]	2021-22 (%) [*]
Information was withheld under an exemption	36%	29%	36%
Failure to respond (no response sent)	23%	23%	24%
“Not held” response disputed	15%	24%	16%
Request not responded to in full	12%	8%	10%
Request refused on grounds of excessive cost	4%	6%	3%
Request deemed “vexatious” or “manifestly unreasonable”	4%	3%	2%
Refusal to confirm or deny whether information was held	1%	2%	2%
Fee or charge disputed	1%	1%	2%
Request deemed “repeated”	1%	2%	1%
Request deemed “invalid”	1%	1%	1%
Publication scheme concern	0%	0%	1%
Inadequate advice and assistance from authority	1%	1%	0%

^{*}Percentages are rounded to whole figures, so do not always total 100%

Who appeals?

	Top three applicant types
2019-20	<ul style="list-style-type: none"> Public and other (75%) Media (15%) Private/commercial enterprise (3%)
2020-21	<ul style="list-style-type: none"> Public and other (81%) Media (8%) Private/commercial enterprise (5%)
2021-22	<ul style="list-style-type: none"> Public and other (72%) Media (12%) Private/commercial enterprise (5%)

Which authority types are the appeals about?*



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

** "Others" comprises all bodies listed as "Other" bodies in Part 7 of Schedule 1 to the FOI Act

*** "Other inc EIRs" comprises bodies which are subject to the EIRs only, and appeals received in relation to bodies which are not covered by either the FOI Act or the EIRs

Validation

The Commissioner can only investigate appeals that meet specific legal criteria. We refer to the process of checking these criteria as “validation”. 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.

Validity of appeals received

	2019-20	2020-21	2021-22
Total appeals received	494	486	626
Invalid appeals	159	118	183
Valid appeals	335	368	443
<i>Failure to respond appeals</i>	<i>70</i>	<i>80</i>	<i>81</i>
<i>Substantive appeals</i>	<i>265</i>	<i>288</i>	<i>362</i>

Assessing validity: our performance

Decision made on validity	Target (%)	Performance* (%)
1 month or less	70%	67% (not met)
2 months or less	90%	96% (met)
3 months or less	97%	99% (met)

Online appeal service closure

Our online appeal service was closed in August 2021 as a result of technical issues. Before the closure, around one-third of our appeals were typically received via the online service. Following closure, appellants were directed towards our other appeal routes, including our downloadable application form. We will be considering a new online appeal service as part of the future development of our new website.

More information on making an appeal is available at: www.itspublicknowledge.info/appeal.

“Failure to respond” appeals

A Scottish public authority must provide a response promptly (as soon as possible) and within no more than 20 working days¹. If an authority fails to respond to a request for review on time - or fails to respond at all - it has broken the law and requesters have a right to appeal to us.

The proportion of “failure to respond” appeals we received fell to the lowest level since 2015-16, with 18% of our appeals relating to this issue, compared to 22% last year and down from a high of 26% in 2018-19. While it is not fully clear whether this decline has arisen from a reduction in public authority “failures to respond” generally, or simply from a reduction in related cases being taken forward for appeal, it should nevertheless be stressed that timely responses to FOI requests are important for all parties: supporting both the prompt disclosure of information to the public and reducing the likelihood of FOI reviews, appeals or wider reputational damage for public authorities.

¹ Response times for requests made under EIRs can be extended to 40 working days in limited circumstances, where the volume and complexity of the information make it impractical to comply with the 20 working day timeline (Regulation 7 of the EIRs).

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 must 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/operational-performance.

	2019-20	2020-21	2021-22
Cases closed without investigation			
4 months or less	163	117	181
More than 4 months	2	1	4
Subtotal	165	118	185
Cases closed during investigation			
4 months or less	106	89	79
More than 4 months	50	40	68
Subtotal	156	129	147
Cases closed with decision			
4 months or less	64	42	24
More than 4 months	132	118	193
Subtotal	196	160	217
All cases			
Total 4 months or less	333	248	284
Total more than 4 months	184	159	265
Total cases closed	517	407	549

Case closure times

	Target (%)	Performance* (%)
“Failure to respond” appeals		
1.5 months	60%	56% (not met)
4 months or less	100%	91% (not met)
Substantive appeals		
4 months or less	50%	11% (not met)
6 months or less	75%	37% (not met)
12 months or less	95%	89% (not met)
All appeals		
4 months or less	70%	52% (not met)
6 months or less	85%	67% (not met)
12 months or less	97%	94% (not met)

* Percentages have been rounded to the nearest whole number.

The average closure time of all appeals was 4.48 months (2020-21: 4.37 months; 2019-20: 3.37 months).

In last year's annual report, we reported that the Covid-19 pandemic had a greater impact on our investigations work than we would have hoped and that, as a result, we were starting 2021-22 with a particularly large caseload.

In 2021-22, we received 626 new applications, the highest number received since 2005-06 (the first full financial year after the FOI Act and the EIRs came into effect) and a 29% increase on the number received in 2020-21.

The size of our caseload impacted on our ability to meet our KPIs. We were unable to allocate new cases to investigators as quickly as we would have liked and this has adversely affected performance against our KPIs – and, in particular, the “substantive appeals” KPIs as, in many cases, when the case is allocated to an investigator, the 4-month KPI has already been passed.

This was despite the fact that we closed 549 cases in 2021-22, the highest number of cases closed since 2013-14. We continue to find ways of streamlining our procedures in order to ensure that cases are allocated and dealt with as quickly as possible. We are also recruiting enforcement team freedom of information officers to assist with the 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.

While we rarely have cause to take direct enforcement action, we did issue one Practice Recommendation during 2021-22. This was only the third to be issued under Scotland's FOI regime, and required Aberdeenshire Council to improve its practice in relation to the FOI Act's 'requester-blind' principle. The issue of this Practice Recommendation is discussed further in the **Interventions** section above.

We also issued six Information Notices during the year. Information Notices impose a legal requirement on public authorities to provide us with information. The notices can be appealed to the Court of Session by the authority. Five of the notices were issued to the Scottish Ministers, the other being served on Scottish Water. All were issued where the authorities were concerned that disclosing information to us in the absence of an Information Notice could constitute either a contempt of court or a criminal offence. In all six cases, the authorities complied in full with the Information Notice.

More information on enforcement action taken by the Commissioner is available at: 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. In 2021-22, two appeals were lodged against a decision of the Commissioner, both by the same applicant. Neither case has proceeded to a hearing yet.

Enforcement performance outcomes

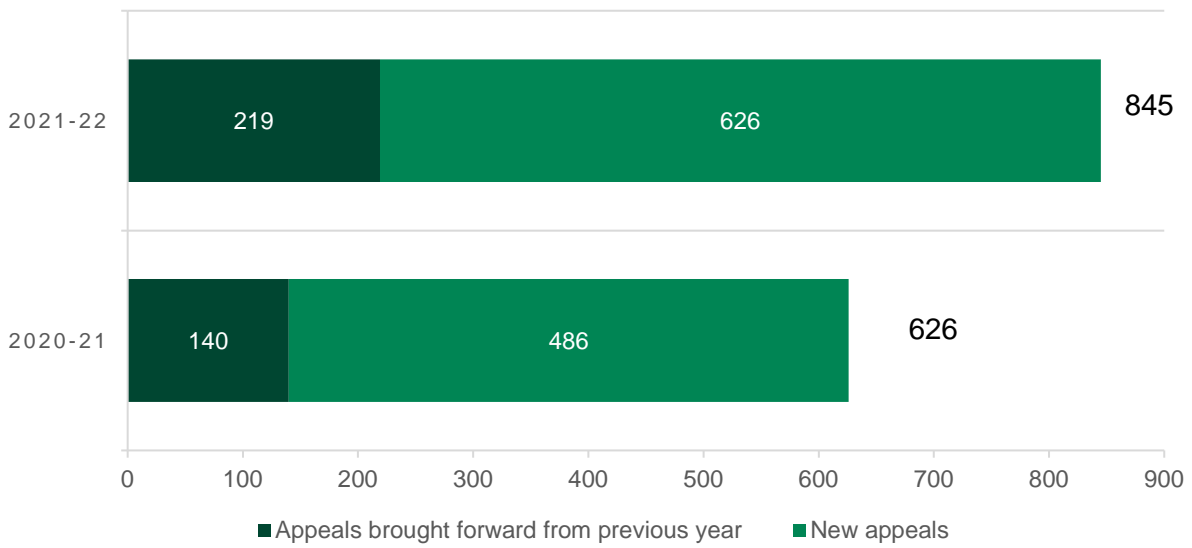
Appeal outcomes

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

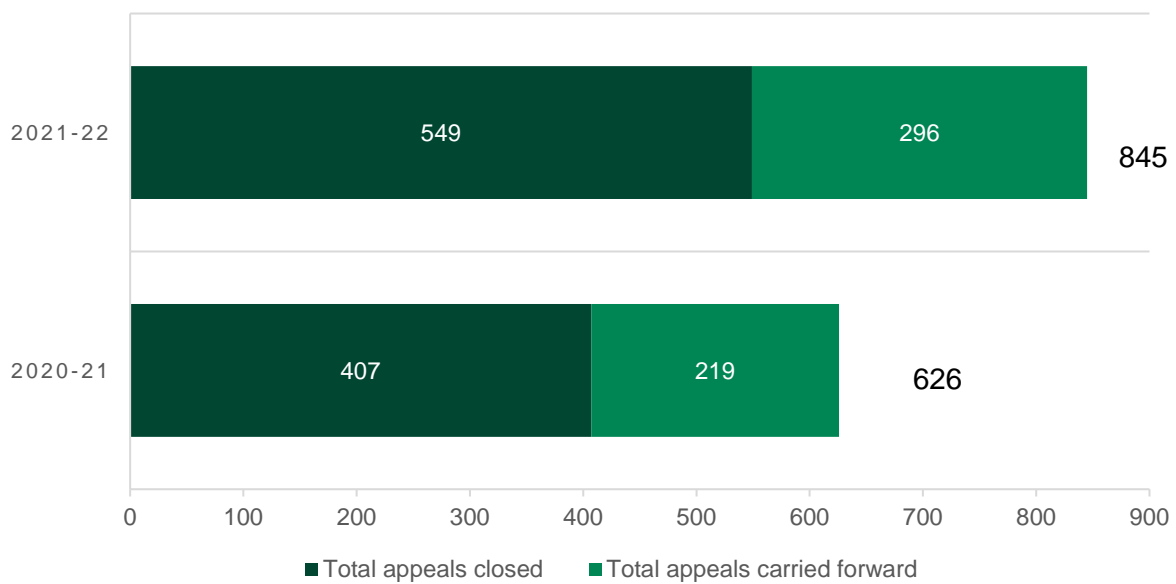
- closure without investigation -for example, where the appeal is not valid
- closure during investigation - for example, where the matter is resolved to the satisfaction of the requester during the investigation
- the Commissioner issues a Decision Notice.

Reason for closure	2019-20	2020-21	2021-22	2021-22 (FOI Act)	2021-22 (EIRs)
Closed without investigation					
Premature or “out of time”	21	16	46	36	10
Withdrawn or abandoned	18	0	6	5	1
Resolved	0	0	2	2	0
Excluded – Lord Advocate or Procurator Fiscal (FOI Act only)	11	9	6	6	0
Format invalid	49	23	46	45	1
Body not subject to FOI	5	6	3	2	1
No request for review made	38	46	41	36	5
No request to public authority	22	5	5	3	2
Frivolous or vexatious	0	0	0	0	0
Other	1	13	30	28	2
Subtotal	165	118	185	163	22
Closed during investigation					
Withdrawn or abandoned	10	8	25	21	4
Resolved	135	121	122	101	21
Frivolous, vexatious or invalid	11	0	0	0	0
Subtotal	156	129	147	122	25
Closed with a Decision Notice					
For requester	70	62	77	57	20
For authority	63	56	98	88	10
Partially upheld	63	42	42	31	11
Subtotal	196	160	217	176	41

New appeals in 2021-22 and appeals brought forward from previous years



Appeals closed in 2021-22 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:

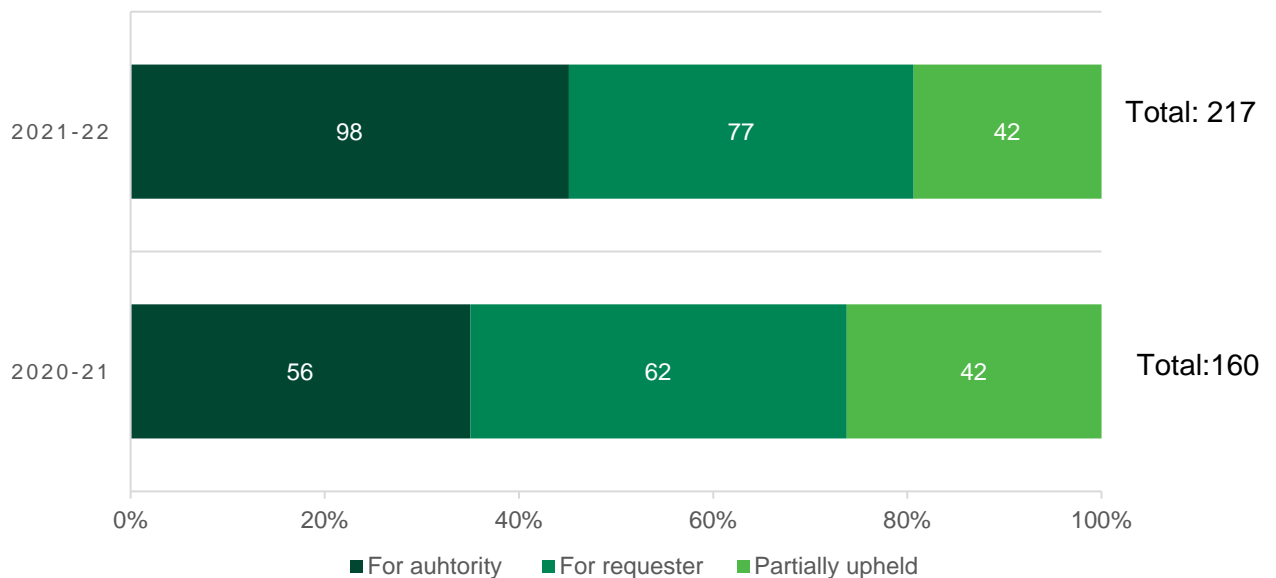
- Discharges from hospitals to care homes (Public Health Scotland: 138/2021)
- Number of deaths in care homes (Registrar of Births, Deaths and Marriages for Scotland: 079/2021)
- Handling of harassment complaints involving current or former ministers (Scottish Ministers: 083/2021)
- Ethnicity of passengers stopped under the Terrorism Act 2000 (Police Scotland: 032/2022)
- Curriculum for Excellence Review 2020/21 (Scottish Ministers: 077/2021)
- Contingencies for a second wave of Covid-19 (City of Edinburgh Council: 094/2021)
- Licences to disturb or injure marine protected species (Scottish Ministers: 176/2021)

These, and the other decisions issued in 2021-22, are available at:

www.itspublicknowledge.info/decisions.

Outcome types

55% 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 11 May 2022, available at:

www.itspublicknowledge.info/governance-and-finance.

Policy and Information Performance

Authorities' FOI statistics

Each quarter, around 500 Scottish public authorities submit statistics to the Scottish Information Commissioner detailing the information requests they receive and the responses they issue.

Data submitted provides a valuable insight into how FOI is operating in Scotland, with each submission being subject to detailed analysis; examining trends at a national, sectoral and authority level and informing our work to promote and enforce FOI law.

The collation and publication of this data by the Commissioner is also recognised internationally as a good practice model of FOI regulation².

Data submitted for 2021-22 shows an increase in the number of requests received compared to the previous year - however, the total volume is still some way below the level seen for the two years prior to the Covid-19 pandemic (there were 83,963 requests recorded in 2018-19, compared to 73,983 for the current year).

The number of responses on time as a proportion of requests received rose to 86% after a drop from 88% to 82% between 2019-20 and 2020-21, while the proportion of requests that resulted in full or partial disclosure of information remained at 73% (down from 76% in 2019-20). Our appeal numbers as a proportion of requests increased from 0.7% to 0.8%, but there was a more significant rise in appeals as a proportion of review requests - from 25% to 27%.

² See Parsons, A (2022) *Improving Oversight of Access to Information* mySociety Research: <https://research.mysociety.org/publications/improving-oversight>

Authorities' FOI statistics

	2019-20	2020-21	2021-22
Total requests	81,061	69,519	73,983
- FOI requests	70,829	61,217	64,469
- EIRs requests	10,232	8,302	9,514
- EIRs as a percentage of total requests	13%	12%	13%
Total responses on time	71,155	57,121	63,833
- responses on time as a percentage of total requests	88%	82%	86%
Total late responses	7,035	8,229	7,616
- late responses as a percentage of total requests	9%	12%	10%
Failures to respond	812	1,803	1,657
- failures to respond as a percentage of total requests	1%	3%	2%
Response: full disclosure	45,711	37,021	38,702
Response: partial disclosure	15,749	13,636	15,488
- full/partial disclosure as a percentage of total requests	76%	73%	73%
Response: information withheld	7,269	6,348	7,045
Response: information not held	8,571	7,334	8,484
Refused: excessive cost, or manifestly unreasonable for cost reasons	2,151	1,893	2,030
- cost refusals as a percentage of total requests	3%	3%	3%
Refused: vexatious, repeated, or manifestly unreasonable for non-cost reasons	298	392	377
- vexatious/similar refusals as percentage of total requests	0.4%	0.6%	0.5%
Total review requests	1,960	1,961	2,292
- total review requests as a percentage of total requests	2%	3%	3%
Appeals to the Commissioner	494	486	626
- appeals as a percentage of total requests	0.6%	0.7%	0.8%
- appeals as a percentage of total review requests	25%	25%	27%

During 2021-22 we revised the route through which public authority statistics are gathered; introducing a temporary submission method in advance of the April 2022 launch of our new website. We will be considering the development of a new, improved tool for statistics collection as part of the next phase of our website development.

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
Website	We worked on the development of a new, improved website, with a more user-friendly layout, easier navigation, more accessible resources and faster performance. The website was developed throughout 2021-22, going live in April 2022.
Newsletter	We issued 9 editions of Open Update, our new email newsletter providing FOI news, advice and guidance to Scotland's FOI community. This included learning on 'hot-topics' arising from our decisions, such as the use of the FOI 'neither confirm nor deny' provision; disclosure in the public interest; and the FOI status of communications made through WhatsApp. We ended the year with more than 500 newsletter subscribers, a 38% increase on the preceding year.
Email	We issued a number of formal communications to authorities. This included updates on the falling away of the changes made to FOI law as a result of the pandemic and changes made to our FOI statistics and FOI appeal portals.
Social media	We tweeted 229 times across the year, providing our 1,120+ followers with updates on key developments, new resources, forthcoming events and FOI rights.
Network meetings	Our staff supported virtual network meetings of staff from across the public sector, including groups of FOI practitioners from the health and local government sectors, along with staff from non-departmental public bodies and regulatory organisations.
Events and conferences	We supported a number of virtual conferences and events, including the annual Centre for FOI Practitioners' Conference and the 2021 Holyrood FOI conference. We also took part in an FOI conference for housing association staff, participated in a series of free UK-wide training events for FOI staff, and delivered regular updates at the Scottish Public Information Forum (SPIF), which brings together a wide range of stakeholders to discuss the development of FOI in Scotland. Our staff also spoke at an event for UK housing associations on the FOI experience of their Scottish counterparts, to inform the development of their own access to information regime.
Surveys	We undertook a survey of FOI practitioners from public bodies across Scotland to gather details of their experience of FOI and help support the development of our tools and resources and inform our future work. The report was published in Summer 2022.
Self-assessment toolkit	We published an updated version of our FOI toolkit to help authorities assess and improve FOI performance. The toolkit was streamlined and simplified to ensure it is as user-friendly as possible.
Reports	We prepared and published our second Special Report exploring the impact of Covid-19 on FOI law and practice. The report made a number of recommendations designed to help authorities learn from the experiences of the pandemic and ensure that FOI services are customer-focussed, effective and resilient.

Communication tool	Description
Comment, guidance and analysis	During 2021-22 we increasingly used our website as a platform for the sharing of comment, guidance, learning and analysis, helping to bring this content to as wide an audience as possible. This included, for example, the sharing of learning from a conference masterclass on avoiding FOI pitfalls; consideration of the future of proactive publication by public bodies; an overview of a SPIF discussion of potential changes to FOI law; and a review of the uses to which Scotland's rights to environmental information have been put in the run up to COP26.
Covid-19 Info Hub	We continued to update our Covid-19 Info Hub with guidance to public authorities and the public on the impact of Covid-19 on FOI. This included regular updates on the falling away of changes made to FOI law by Scotland's emergency coronavirus legislation.
Interventions & enquiries	We provided one-to-one support, guidance and advice to public authority staff through our programme of interventions and our enquiries service.

More information:

Our new website: www.itspublicknowledge.info

News, comment and analysis: www.itspublicknowledge.info/news

Self-assessment toolkit: www.itspublicknowledge.info/self-assessment-toolkit

Briefings and guidance: www.itspublicknowledge.info/briefings-and-guidance

Reports informed by our survey activity: www.itspublicknowledge.info/reports-and-research

Open Update newsletter: www.itspublicknowledge.info/newsletter

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

Publishing information and adoption of a publication scheme

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.

We supported a number of newly-designated organisations across 2021-22 as they worked towards the development of their own publication scheme Guide to Information. This included Consumer Scotland, Redress Scotland, Scotrail Trains Limited, the Scottish Biometrics Commissioner and the Scottish Fuel Poverty Advisory Panel. We also carried out a number of interventions with authorities where we identified issues with publication scheme compliance.

More information on the publication scheme duty is available at:

www.itspublicknowledge.info/publication-schemes.

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 and Engagement Framework was delayed due to the continued impact of the Covid-19 pandemic. The new Framework was subsequently approved in the final quarter of 2021-22. Given the timing of this approval, measures from the Commissioner's 2015-2020 Communications Strategy were used to assess and guide communications activity across 2021-22.

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

2015-20 strategy measures	2021-22 performance against the measure
A minimum of 40% of all appeals to be received via the online application portal	This measure has been discontinued. The Commissioner's online application portal was deactivated in August 2021 due to technical issues. We will be considering development of a new online portal in the next phase of our website development work. In the meantime, we continue to receive appeals by email or post.
A 20% increase in the number of annual unique website page views (from 54,000 to 64,800)	In 2021-22 there were 86,000 unique visits, a 34% increase on the preceding year, and a 59% increase from the 54,000 baseline.
Increase in the number of subscribers to emails	We ended 2021-22 with 525 subscribers to our 'Open Update' email newsletter, a 38% increase on 2020-21 subscriber numbers.
Increase in number of annual impressions on Twitter (to 450,000 in 2020)	We did not achieve this ambitious measure in 2021-22, during which 121,042 twitter impressions were recorded. While we tweeted more frequently in 2021-22 than over the preceding year - with 229 tweets issued - the continuing impact of the pandemic contributed to a reduced capacity and fewer opportunities to develop innovative content and campaigns. Nevertheless, we grew our twitter following over the year, adding a total of 96 new followers over 2021-22.

The new Communication and Engagement Framework, which aligns with the Commissioner's Strategic Plan 2020-24 and includes a range of new goals and measures, will be implemented in 2022-23. Progress against this framework will be reported in our next report.

Website development

Across 2021-22 we also worked on the development of a new website, designed to replace our outdated and under-performing existing site.

The new website was developed in accordance with the Digital Scotland Service Standard, using elements from the Digital Scotland Design System. The site improves on our old site in a number of ways, including easier navigation, improved accessibility, faster performance and a more user-friendly appearance and layout.

The site was developed, designed and tested across 2021-22, before finally being launched in April 2022.

Explore our new site at: www.itspublicknowledge.info.

Civil society engagement

Our activities to promote FOI rights to civil society groups during 2021-22 continued to face disruption as a result of the pandemic.

We did, however, deliver online training on the practical use of FOI rights to housing association tenants via the Scottish Government's regional tenant network, and discussed information rights at a Centre for Research into Information, Surveillance and Privacy workshop. We were also pleased to be able to attend an in-person event in October 2021 to highlight the importance of FOI for a community group in St Andrews.

We also worked with Young Scot to deliver a campaign to promote FOI rights to young people. Campaign resources included updated website guidance and an interactive quiz, promoted through Young Scot's website and social media channels.

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 also updated our guidance to support Scotland's new MSPs make the most of their information rights following the May 2021 Scottish Parliamentary election.

We continued our active contribution to the work of Scotland's Open Government Partnership as a standing observer in the Steering Group as the new action plan for 2021 to 2025 was developed and published.

Public awareness polling

In February 2022, we commissioned the latest round of our regular opinion polling regarding public awareness of and attitudes towards FOI in Scotland. This research not only indicates how many people have heard of the FOI Act or know about the rights that it provides, but also offers valuable insights on areas such as:

- the perceived value of FOI in informing the public and delivering transparency
- the types of information that are considered important to be published
- what types of organisations or services should be covered by FOI
- people's approaches and expectations when it comes to accessing information.

The results of the survey activity were published in May 2022, finding that 89% of the public had heard of FOI, while 63% were aware that they had a right to ask for information from Scottish public bodies. The survey also found that 80% of respondents felt it was important for privately-run but publicly-funded health and social care services to be subject to FOI law.

The full survey results are available at:

www.itspublicknowledge.info/new-foi-opinion-polling-results-released.

The results will help inform our future activities in relation to civil society engagement.

Policy and legislation highlights

Coronavirus emergency legislation: FOI impact during 2021-22

We continued to update our Covid-19 and FOI Information Hub over the course of the year, providing updates and guidance for public authorities and the public as the temporary changes to FOI law brought about by emergency coronavirus legislation were phased out. (The Information Hub was discontinued following the move to our new website in April 2022, with any remaining relevant guidance being integrated with our wider guidance and communication activity.)

For FOI requests made over the first six months of 2021-22, emergency legislation gave the Commissioner a discretionary power to take the impact of the pandemic into account when deciding whether or not an authority had complied with FOI timescales.

Where an authority failed to meet these timescales but the Commissioner found that the failure was due to the effect of coronavirus and the delay was reasonable in all the circumstances, the Commissioner had the ability to conclude that the FOI Act had not been breached.

This power was phased out by the Coronavirus (Extension and Expiry) (Scotland) Act 2021 (the 2021 Act) which removed this provision for all requests made to public authorities on or after 1 October 2021.

During its lifespan the provision was, however, only used very rarely, even during national lockdowns. Indeed during 2021-22 the provision was considered in only four cases.

The 2021 Act also extended the ability of the Commissioner and public authorities to issue notices electronically until 31 March 2022 (and this provision was subsequently further extended by regulations to 30 September 2022).

The Commissioner made representations to the Scottish Government in support of making the latter provision permanent, to enable a more modern, efficient, flexible and resilient approach to the issue of notices, enabling notices to be issued via either electronic or postal means, as appropriate to individual circumstances.

These provisions were subsequently made permanent through the passing of the Coronavirus (Recovery and Reform) (Scotland) Bill.

Post-legislative scrutiny of the FOI Act

There were no further developments during the year in relation to the report on the Post-legislative Scrutiny of the FOI Act, published in May 2020, and the Scottish Government's subsequent confirmation, in March 2021, that it would implement the report's recommendations to consult on a number of aspects, including:

- which organisations should be subject to the FOI Act
- the definition of 'information'
- the approach to proactive publication
- record-keeping requirements
- fees and charging.

At the time of writing we await the launch of the Scottish Government's consultation, along with the publication of a previously announced discussion paper on the extension of FOI (which itself follows an earlier consultation on this matter in 2019). The Commissioner looks forward to participating in this keenly awaited consultation and discussion process, in order to work towards the shared goal of protecting and strengthening Scotland's FOI rights for the future.

Campaign for FOI in Scotland's draft amendment bill

In February 2022, the Campaign for FOI in Scotland published its own draft FOI Amendment Bill, setting out the changes it would like to see made to FOI law. The draft Bill covered a wide a range of proposals, including the extension of the coverage of FOI, explicit clarification that official information stored on personal devices is covered by FOI, and the application of the "public interest test" to all FOI exemptions.

The Commissioner welcomed the opportunity to discuss and explore the changes proposed by the Campaign at various events, including at a meeting of the Scottish Public Information Forum in February 2022.

International engagement

We continued to contribute actively to the furtherance of international cooperation among information rights regulators, including as a member of the International Conference of Information Commissioners' (ICIC) Governance Working Group (ending our tenure at the 2021 meeting held in June). The Commissioner was also Chair of its Strategic Priorities Working Group until that meeting where the Strategic Priorities developed by the Group were adopted by the ICIC. We also contributed to the ICIC's 2021 resolution and joint statement highlighting the value of proactive publication of information about the Covid-19 pandemic.

We also met with staff from Transparency International Hungary to discuss access to information and related issues, while the Commissioner shared learning from Scotland's experience of FOI as part of a transparency webinar in the Philippines.

Corporate Services Performance

Enquiries

The Commissioner has a power to give advice on the operation of FOI and 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. Most of our enquiries are from the public and this service is one of the main points of contact with us. Since FOI was introduced in 2005, we have answered more than 26,300 enquiries.

During the temporary closure of the office premises, an interim enquiries procedure was in place which meant that we were still able to continue to consider and respond to enquiries by email and in writing.

The numbers of enquiries received in 2021-22 as a whole, and in each quarter, with comparative figures for 2020-21 and 2019-20, are:

	2019-20	2020-21	2021-22
Q1	341	177	178
Q2	344	317	208
Q3	336	172	137
Q4	262	194	160
Total	1,283	860	683

In 2021-22, 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 were fewer enquiries in 2021-22, the percentages relating to types of enquirer are similar to previous years.

Type of enquirer	%
Public and other ³	65%
Public authority ⁴	22%
Media	5%
Commercial / private enterprise	3%
Voluntary / campaign organisation	2%
Solicitor	1%
Categories <1%	2%

Response times

We recognise the importance of good performance and quality in the delivery of the enquiries service and met both enquiry KPIs that were in place for 2021-22.

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

⁴ Includes prospective public authorities falling within the Commissioner's jurisdiction & UK public authorities.

One enquiry was open at the end of 2020-21 and responded to in 2021-22. Of the enquiries closed in 2021-22, 670 were responded to within five working days and 12 were responded to within 20 working days. No responses took longer than 20 working days. Two enquiries were open at the end of 2021-22 and will be included in the enquiry statistics for 2022-23.

We were able to respond to 100% of enquiries within 20 working days

Performance measure 2021-22	Target (%)	Actual (%)
answered in 5 days	90%	98%
answered in 20 days	95%	100%

More detail on the Commissioner's Enquiries performance in 2021-22 is set out in the committee report considered by the SMT on 11 May 2022, available at:

www.itspublicknowledge.info/governance-and-finance.

The Commissioner's FOI and subject access performance

Information requests

As a Scottish public authority, we are subject to FOI law and must respond to the requests for information we receive. In 2021-22, we received 72 information requests (2020-21: 62) and 9 requests for review (2020-21: 9).

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 the FOI Act 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.

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" set out how the Commissioner would comply with the FOI Act and EIRs requests and review requests during the temporary closure of the office premises. As the office premises re-opened on 3 May 2022 this guidance is no longer relevant and has been discontinued, however, the guidance was in place during the reporting period.

Requests for information

Received	2019-20	2020-21	2021-22
Brought forward from previous year	3	3	1
Requests received	68	62	72
- FOI requests	67	61	72
- EIRs requests	1	1	0
Request caseload	71	65	73
Closed	2019-20	2020-21	2021-22
Total requests closed	68	64	72
Information provided in full	16	7	13
Information partially supplied	21	14	19
Information not held	18	28	28
Information not supplied	13	15	12
- Clarification not provided	0	2	0
- Request withdrawn	0	5	3
- Exempt	8	5	5
- Neither confirm nor deny	1	0	0
- Excessive costs	0	1	0
- Information request invalid	4	2	2
- Vexatious	0	0	2
Fee charged	0	0	0
Requests open at end of year	3	1	1

Requests for review

Requests for review	2019-20	2020-21	2021-22
Brought forward from previous year	0	0	2
Review requests received	6	9	9
Review caseload	6	9	11
Closed	2019-20	2020-21	2021-22
Total reviews closed	6	7	11
Internal review upholds original decision in full	4	6	7
Internal review partially upholds original decision	0	1	2
Internal review substituted a different decision	0	0	0
Request for review invalid	2	0	1
Request for review withdrawn	0	0	1
Requests for review open at end of year	0	2	0

Response times

The 100% targets for responding to requests for information and requests for review are targets that we aim to meet at all times. We met both KPI targets in responding to information requests and review requests.

Performance measure 2021-22	Target (%)	Actual (%)
% requests answered within 20 working days	100%	100%
% requests for review answered within 20 working days	100%	100%

More detail on the Commissioner's FOI performance in 2021-22 is set out in the committee report considered by the SMT on 11 May 2022, available at: www.itspublicknowledge.info/governance-and-finance.

Subject access

The data protection right of access, commonly referred to as subject access, gives individuals the right to obtain a copy of their personal data as well as other supplementary information. The Commissioner is also subject to data protection law and must respond to subject access requests. This helps individuals understand how and why we are using their data and also enables them to check that 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 2021-22, we received 23 subject access requests (2020-21: 20).

Response times

We have a target to meet 100% of subject access requests within a calendar month and this target was met in 2021-22.

More detail on the Commissioner's subject access performance in 2021-22 is set out in the committee report considered by the SMT on 11 May 2022, available at: www.itspublicknowledge.info/governance-and-finance.

Service standards

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 2021-22, we recorded 92 compliments (2020-21:100).

The majority of compliments came from applicants, enquirers and public authorities and thanked us for helpful advice, support and professional responses.

Compliments were also received relating to events that we have taken part in during the year.

Complaints about our services

Our Complaint Handling Procedures (CHP) set out how we manage and respond to complaints and are based on the Model Complaint Handling Procedures published by the Scottish Public Services Ombudsman (SPSO). The CHP seek to resolve dissatisfaction about any aspect of our service as close as possible to the point at which the complaint arises and, where appropriate, to conduct a thorough, impartial and fair investigation of the complaint so an evidence-based decision on the facts of the case can be made.

In 2021-22:

- we received 6 complaints (2020-21:15), the majority of which related to an aspect of our working practices
- 1 complaint case was open at 31 March 2021 and is included in the number of complaints dealt with in 2021-22
- 5 complaints were either resolved at the frontline or investigated:
 - 4 complaints were closed at Frontline Resolution
 - 1 complaint was closed following an Investigation
- 2 complaint cases were open at 31 March 2022 and will be included in next year's statistics.

Complaint KPIs

In 2021-22 we met our targets for investigating complaints and for upholding, in part or full, less than 20% of those cases. However, the target for the resolution of cases at the frontline was not met due to one case taking longer than 10 days to resolve.

Performance measure	Number	Target (%)	Actual (%)
Complaints closed	5		
Resolved at frontline	4	90% resolved in 5 days 95% resolved in 10 days	Not met - 75% resolved in 5 days Not met - 75% resolved in 10 days
Investigated	1	80% answered in 30 days 85% answered in 40 days	Met - 100% answered in 30 days
Complaints upheld in part or full	1	Fewer than 20%	Met - 14% of complaints upheld in part or full

Environment and sustainable development

The Commissioner aspires to attain high environmental standards, minimising the effects on the environment and where possible making a positive contribution to enhancing the environment. The aim is to continually improve our environmental performance, to protect the environment by reducing pollution and resource consumption and to operate in a manner that supports and encourages the natural diversity of plant and animal life. 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

The Commissioner's Environmental Policy seeks to address and control any impacts on the environment that are due to our activities and details a number of objectives through which we aim to manage, and where possible reduce, any effects 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 2021-22 we reduced our impact on the environment by:

- minimising carbon dioxide and other greenhouse gas emissions
- reducing the impact of travel and transport to and from the office
- recycling as much as possible
- selecting the most environmentally friendly products for cleaning where possible.

We also continued to:

- implement a no-paper policy
- continued our temporary remote working to allow staff to work remotely as they were unable to access the office premises due to the impact of the Covid-19 pandemic
- encourage all meetings to be held via telephone or video conferencing software
- comply with legal and other requirements that relate to the environment.

Our Environmental Policy can be found in Class 5 of our Guide to Information at: www.itspublicknowledge.info/our-guide-to-information.

Sustainability

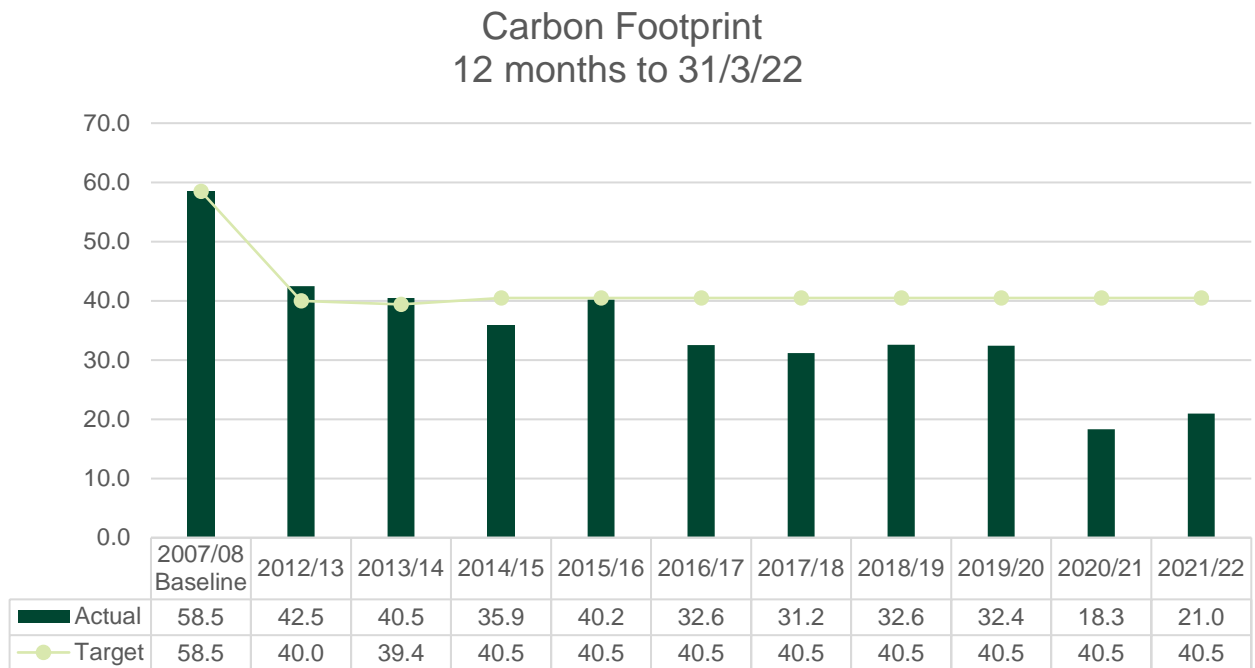
The Commissioner's primary function is to enforce and promote Scotland's freedom of information legislation. Promoting and increasing sustainability is a challenge as we are a small, single site organisation. However, our office can make a direct contribution to sustainability through the management 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 2021-22 has been published and can be found at: www.itspublicknowledge.info/governance-and-finance.

Carbon footprint

For 2021-22, the total organisation CO2e is 21.02 tonnes (2020-21- 18.36 CO2e tonnes) – this is significantly less than our annual target to be below 40.5 tonnes CO2e and can be contributed to the following:

- we followed government guidance to temporarily close the office premises and, throughout the year, only essential work has been allowed to take place, mainly involving a weekly essential visit by members of the Corporate Services Team. This resulted in our electricity and gas usage being considerably lower than in past years
- throughout 2021-22, there were only a few meetings held in person resulting in a 43% reduction in CO2e, in the travel and transport category, from 2020-21
- due to the change in working practices, with all staff working remotely with remote access to our office systems, staff have not needed to use as much paper as in previous years, for example, paper copies of case files have not been needed. As a result of this, our shredding needs have reduced by 91% from previous years.



Community, social and human rights

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, in 2021-22, were unable to support our staff's charitable activities in the usual way as a result of the temporary closure of our office premises.

Fraud and bribery

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 2021-22 (0: 2020-21).

Payment to suppliers

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 2021-22:

Performance Measure	Target (%)	Actual (%)
Settled undisputed targets within 10 days	95%	99.05% (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 29 June 2022, available at:

www.itspublicknowledge.info/governance-and-finance.

Corporate performance

An operational plan is approved for each financial year and an Operational Plan (linked to the Strategic Plan 2020-24) was agreed for 2021-22 and published on our website. More information is available at www.itspublicknowledge.info/strategic-and-operational-plans.

The Operational Plan 2021-22 was set out as a programme of actions listed under types of operational activity, with cross references to the strategic aims supported by the action. The actions listed were business as usual (BAU) and projects.

In general, BAU was managed and monitored in line with set targets, performance indicators (as set out in the Performance and Quality Framework 2021-22, established reporting structures and approved policy). Projects were managed according to project management principles and practice, applied as appropriate.

The Operational Plan 2021-22 Monitoring Report was used as a working document to form the basis of on-going monitoring and progress against the plan (BAU and projects) was reviewed every two months by the SMT. The Operational Plan 2021-22 Monitoring Report was then updated and published.

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. More information is available on the Commissioner's website at www.itspublicknowledge.info/governance-and-finance.

Further information on the governance structures that are in place is also set out in the Accountability Report section of this ARA 2021-22.

Governance reporting

The current Governance Reporting Arrangements (GRA) include 42 reporting measures and more information is available at www.itspublicknowledge.info/governance-and-finance.

In 2021-22, out of the 42 GRA reporting measures, 39 were met in full, one was partially met as the related reporting mechanisms are currently under review and two were not met.

More information on this can be found in the related committee report submitted to the SMT on 14 July 2022, available at www.itspublicknowledge.info/governance-and-finance.

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 2021-22:

- 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 2021-22](#)
- the Head of Corporate Services provided assurance that risk was, and continued to be, managed effectively.

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 2021-22 sets out how risk appetite, tolerance, control and scoring were managed within the Commissioner's risk framework.

Risk profile

In 2021-22, 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 2021-22, eight strategic risks were identified which covered the following areas:

- the allocation and maintenance of sufficient resources to FOI
- continued utility of, awareness of, and support for FOI
- challenges to the economy and public sector funding
- the practice, governance and performance of the office of the Scottish Information Commissioner.

When considering both strategic and operational risks in 2021-22, we took account of the impact of the Covid-19 pandemic and this initially 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 – 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
 - we mitigated this risk by continuing the temporary closure of the office premises and regularly reviewing the temporary closure taking account of relevant government guidance and public health advice. We had systems in place to enable essential work

in the office premises so that the premises continued to be 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.

- The closely related risks of having sufficient resources to enable us to carry out our regulatory role, including physical resources, and our appeal caseload and case journey times - we could not transfer these risks to another body or organisation and managed these risks as threats that were tolerable in the shorter term but became less tolerable as case numbers rose
 - we mitigated these risks by using the remote working facilities that were put in place in 2020, reviewing working practices and revising decision making levels
 - we further streamlined our enforcement procedures and actively managed case allocation to address the significant increase in caseload affecting our performance
 - the risk was partially treated but still remains in 2022-23.
- having a reliable and up to date website with current and managed content – we treated this risk as a threat in that not having this could result in us not implementing our Communications Strategy and failing to meeting our statutory duties
 - we mitigated this risk by implementing a specific project to provide a new website, carrying out a compliant procurement exercise to appoint a developer to provide a website within set timescales (and in accordance with a detailed and relevant specification) and ensuring that there was a project lead in place to work with the website developer
 - the risk was mainly treated and the new “live” website was in place in April 2022.
- having appropriate and relevant governance, including operational governance, human resource governance and information governance – this risk was treated as a threat as, although the expansion of remote working was measured and stepped, this provided a novel way of working for the organisation
 - we mitigated this risk by monitoring and reviewing our policies and procedures to ensure that they continued to be relevant and effective and, as we progressed through the year, this risk was treated and became less significant. However, as we move to hybrid working in 2022-23 we will need to ensure that all relevant governance is in place (see below Future Plans and Performance).

Future plans and performance

Looking forward, the SMT have taken account of the following matters when preparing and approving the Operational Plan 2022-23:

- how we can achieve strategic priorities in 2022-23 - what can we achieve, how can we deliver strategic priorities in a potentially difficult operating environment
- the continuing impact of the Covid-19 pandemic on our office, with an emphasis on planning for and delivering on recovery
- workforce capacity, planning, deployment and wellbeing as we re-open the office premises and explore issues surrounding hybrid working

- quality, efficiency, effectiveness and response/s to changing demands
- our resources - workforce, property and digital
- how do we ensure sustainability is taken into account in our operational work
- how we can support initiatives to improve FOI law.

Statutory reporting

In 2021-22 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/governance-and-finance.

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 Duty Report 2018-20 was published in March 2021 and can be found at www.itspublicknowledge.info/governance-and-finance.

Information and records management

The Commissioner recognises and promotes good records management. The efficient and secure management of information is an ongoing priority. During 2021-22, we:

- submitted an updated Records Management Plan to the Keeper of the Records of Scotland
- managed records effectively in line with our Information and Records Management Policy and Information and Records Management Handbook
- updated guidance to staff working remotely covering:
 - information security, including data protection
 - records management
 - data incident procedures
 - 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.

Our internal auditor reviewed the effectiveness of our UK GDPR compliance and concluded that the Commissioner's procedures reflect good practice in a number of areas and that no high-risk, significant or reportable weaknesses were identified.

More information is available in the related committee report submitted to the SMT on 25 May 2022, available at www.itspublicknowledge.info/governance-and-finance.

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 2021-22.

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Daren Fitzhenry Accountable Officer

Date: 12 December 2022

Scottish Information Commissioner

Accountability Report and Financial Statements 2021-22



Scottish Information
Commissioner

ACCOUNTABILITY REPORT 2021-22

For 2021-22, 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 2021-22
- **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 2021-22
- **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).

The Commissioner was appointed by Her Majesty the late Queen Elizabeth II, 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.

2. 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.
3. For each financial year,
 - the Commissioner’s audited Annual Report must be laid before Parliament before Parliament within 9 months after the end of the reporting year, that is before 31 December 2022

- the Commissioner's general report on the exercise of the functions conferred on him under the FOI Act, must be laid before Parliament within 7 months after the end of the reporting year, that is before 31 October.

Governance Report

Commissioner's Report

Background

4. Our financial statements have been prepared in accordance with the Freedom of Information (Scotland) Act 2002 (the FOI Act) Schedule 2, paragraph 5(1).
5. 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.
6. The Commissioner receives funding through the SPCB which has the power to approve the Commissioner's budget.

Senior Management Team

7. For the financial year ended 31 March 2022, 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 – 01/04/21 – 21/01/22
 - Claire Stephen, Acting Head of Policy and Information – 01/02/22 – 31/03/22

Register of interests

8. Declarations of Interest for the SMT are published on the website, in addition to their biographies, and are updated each year. Declarations of Interest of other staff are obtained and held when required.
9. The declarations of interest can be found in Class 1 at <https://www.itspublicknowledge.info/our-guide-to-information>

Personal data related incidents

10. 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 and Handbook
 - a data protection officer (DPO)
 - Privacy Notice
 - Information and Records Management Policy
 - Information and Records Management Handbook
11. An internal audit carried out during the reporting year confirmed that the data procedures reflect good practice in a number of areas and did not identify any high-risk, significant or reportable weaknesses 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 UK GDPR updates.

12. 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.
13. There were no significant personal data related incidents in 2021-22.

Provision of information to employees

14. 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

15. The Principal Civil Service Pension Scheme (PCSPS) and the Civil Servant and Other Pension Scheme (CSOPS) – known as “alpha” – are unfunded multi-employer defined benefit schemes but the Scottish Information Commissioner is unable to identify its share of the underlying assets and liabilities. The scheme actuary valued the PCSPS as at 31 March 2016. You can find details in the <https://www.civilservicepensionscheme.org.uk/knowledge-centre/resources/resource-accounts/>
16. For 2021-22, employers’ contributions of £269,879.00 were payable to the PCSPS (2020-21: £270,235) at one of four rates in the range 26.6% to 27.9% of pensionable earnings, based on salary bands.
17. The Scheme Actuary reviews employer contributions usually every four years following a full scheme valuation. The contribution rates are set to meet the cost of the benefits accruing during 2021-22 to be paid when the member retires and not the benefits paid during this period to existing pensioners.
18. Employees can opt to open a partnership pension account, that is, a stakeholder pension with an employer contribution. For 2021-22, employers’ contributions of £7,165.00 were paid to one or more of the panel of three appointed stakeholder pension providers. Employer contributions are age-related and ranged from 8% to 14.75%. Employers also match employee contributions up to 3% of pensionable earnings. In addition, employer contributions of £201.83, 0.5% of pensionable pay, were payable to the PCSPS to cover the cost of the future provision of lump sum benefits on death in service or ill health retirement of these employees.
19. Contributions due to the partnership pension providers at the balance sheet date were £759.14. Contributions prepaid at that date were £0.

Audit

20. 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

21. 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.
22. 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:
 - observe the Accounts Direction including, the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
 - make judgements and estimates on a reasonable basis
 - 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
 - prepare the financial statements on a going concern basis
 - 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.
23. 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.
24. 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 auditor is unaware.
25. 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

26. 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.

27. A scheme of control is in place, the key features of which are:

- The Commissioner holds the role of Accountable Officer.
- 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.
- Day-to-day operational management is the responsibility of the individual Heads of Department (HODs), their deputies and team members. The individual HODs are responsible for delivering the functions and business of office of the Commissioner to achieve the aims of the Strategic Plan 2020-24.
- 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:
<https://www.itspublicknowledge.info/governance-and-finance>
- 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.
- 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.
- 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: <https://www.itspublicknowledge.info/governance-and-finance>
- External scrutiny is provided by
 - external auditors appointed by the Auditor General for Scotland
 - the Commissioner's Advisory Audit Board (AAB) as set out in its purpose and objectives at: <https://www.itspublicknowledge.info/governance-and-finance>
- an internal audit service provided by an independent firm, when required and possible

- other audits carried out by external experts, for example, health and safety, Cyber Essentials and Cyber Essentials Plus
28. In 2021-22 an internal audit reviewed the effectiveness of our Governance and Risk Management arrangements and the internal auditor concluded:
- the Scottish Information Commissioner has effective and appropriate corporate governance and risk management processes in place
 - the governance arrangements are well documented and supported by policies and procedures reinforcing standards of behaviour, with performance monitored on an ongoing basis
 - there is also clear evidence of proactive risk management controls and practices.
 - there were no reportable weaknesses identified in the internal audit as regards:
 - roles, responsibilities and terms of reference
 - formal performance evaluation of key governance forums/ organisational performance
 - there is robust risk management policy
 - which has a defined, consistent and embedded approach for the accurate and timely identification and evaluation of risks related to achievement of business objectives
 - mitigating actions are identified to manage residual risk down to an acceptable level, in line with an agreed risk appetite/tolerance, with actions allocated and risk reported in line with agreed frequencies
29. 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.
30. The scheme of control has been in place for the year 2021-22 and up to the date of the approval of the annual report and accounts.

Scheme of Control - Review and assessment of effectiveness

31. As Accountable Officer, I am responsible for reviewing the effectiveness of the scheme of control. My review has been informed by:
- reports and comments made by the external auditors
 - 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)
 - the strategic direction of the organisation
 - the advice of the AAB in relation to the Commissioner's governance arrangements
 - internal audit – two internal audits took place in 2021-22
 - governance and risk management arrangements
 - UK GDPR compliance
32. 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.
33. 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

34. 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 framework:
- fosters a culture that embeds risk management into all aspects of the business.
 - embeds risk management in corporate decision-making processes to ensure that the impact of policy decisions on risk is considered each time a strategic or operationally significant decision is taken or policy and procedures are approved.
 - Provides for the maintenance and regular reviews and updating of the strategic and operational risk registers.
35. The SMT approves the Risk Management Policy which defines the organisation's risk appetite and articulates the organisation's risk tolerance. The Commissioner's risk appetite 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 is 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.

36. The risk appetite helps the Commissioner 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.
37. The Commissioner's 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.
38. 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.
39. In 2021-22:
 - 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
 - the overall risk management process was reviewed by the SMT to ensure that it was appropriate and effective. The Risk Management Policy and strategic risks were reviewed by the AAB. 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.
 - a Strategic Risk Register was agreed and reviewed and updated by the SMT on a quarterly basis.
 - a comprehensive Operational Risk Register was also agreed for the financial year and is reviewed and updated by the SMT every two months.
40. The Performance Report explains the key risks, affecting performance, considered by the SMT in 2021-22 - see page 12.
41. The risk management systems have been in place for the year 2021-22 and up to the date of the approval of the annual report and accounts.

Review of effectiveness of risk management

42. As Accountable Officer, I have reviewed the risk management arrangements. My review has been informed by:
- reports and comments made by the external auditors
 - the internal audit which reviewed the effectiveness of the risk management arrangements and which concluded:
 - there are effective risk management processes in place
 - there was clear evidence of proactive risk management controls and practices.
 - the work of the SMT
 - the management of risk by the organisation
 - the strategic direction of the organisation
 - the advice of the AAB in relation to the Commissioner's Risk Management Policy and strategic risks.
43. 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.
44. The Risk Management Policy 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.
45. 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 managing risk in decision making and planning practices.

Significant issues

46. During the financial year to 31 March 2022 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.
47. As Accountable Officer, I authorised the Financial Statements 2021-22 for issue on 12 December 2022.

DocuSigned by:



Daren Fitzhenry Accountable Officer

Date: 12 December 2022

Remuneration and Staff Report

Remuneration Report

Remuneration⁵ policy

48. 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.
49. The SMT remuneration is determined by the Commissioner subject to the approval of the SPCB.
50. 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.
51. In practice, the terms and conditions of employment (including remuneration) of the SMT are modelled on those of the SPCB.

Service contracts

52. The Head of Corporate Services and the Head of Enforcement hold appointments which are open-ended. The Acting Head of Policy and Information is on a fixed term contract. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the Civil Service Compensation Scheme.
53. 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

54. The following sections provide details of the remuneration and pension interests of the Commissioner and the SMT. The information relating to salary⁶ 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	
	2021-22 (£)	2020-21 (£)
Daren Fitzhenry Scottish Information Commissioner	78,353 ⁷	78,042

⁵ Total remuneration does not include amounts which are a reimbursement of expenses directly incurred in the performance of an individual's duties; severance payments; employer pension contributions and the cash equivalent transfer value of pensions.

⁶ 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 or other allowances to the extent that they are subject to UK taxation and any severance or ex-gratia payments.

⁷ Salary does not include any accrual for holiday pay.

Single total figure of remuneration								
Name and title	Salary: full year equivalent		Pension benefits accrued during the year ⁸		Bonus Payment		Total	
	2021-22 £'000	2020-21 £'000	2021-22 £'000	2020-21 £'000	2021-22 £'000	2020-21 £'000	2021-22 £'000	2020-21 £'000
Daren Fitzhenry Scottish Information Commissioner	75-80	75-80	30	30	0	0	105-110	105-110
Margaret Keyse Head of Enforcement	70-75	70-75	15	33	0	0-5 ⁹	85-90	100-105
Helen Gardner-Swift Head of Corporate Services	70-75	70-75	28	28	0	0	100-105	100-105
Erin Gray (01/04/21 to 21/01/2022) ¹⁰ Head of Policy and Information	45-50	55-60	19	22	0	0	60-65	75-80
Claire Stephen (from 01/02/2022) ¹¹ Acting Head of Policy and Information	10-15	-	5	-	0	-	15-20	-

Fair pay disclosure

55. Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid director in their organisation and the lower quartile, median and upper quartile remuneration of the organisation's workforce (with prior year comparatives).
56. Total remuneration includes salary, non-consolidated performance related pay and benefits-in-kind. It does not include severance payments, employer pension contributions or the CETV of pensions

⁸ 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.

⁹ Allowance paid in respect of interim Accountable Officer appointment

¹⁰ 2021-22 full year equivalent salary £60,000-£65,000

¹¹ 2021-22 full year equivalent salary £60,000-£65,000

Fair Pay Disclosure	2021-22	2020-21
Staff remuneration	£22,883 - £72,129	£22,083 - £70,714
Commissioner remuneration ¹²	£75,000 - £80,000 ¹³	£75,000 - £80,000 ¹⁴
25th percentile remuneration	£39,523	£35,763
25th percentile pay ratio	2:1	2.2:1
Median remuneration	£45,209	£44,322
Median pay ratio	1.7:1	1.7:1
75th percentile remuneration	£45,209	£44,322
75th percentile pay ratio ¹⁵	1.7:1	1.7:1
Average Commissioner remuneration	£77,500	£77,500
% difference in average Commissioner remuneration	0%	
Average staff remuneration	£47,506	£46,399
% difference in average staff remuneration	2%	

57. In 2021-22 no employee received remuneration in excess of the Commissioner and the median pay ratio for the relevant financial year is consistent with the pay, reward and progression policies for the entity's employees taken as a whole.

58. No benefits in kind¹⁶ were paid in either 2021-22 or 2020-21.

59. There were no bonus payments¹⁷ made in 2021-22 and one allowance paid in respect of the Interim Accountable Officer appointment in 2020-21. This allowance was determined by the SPCB.

¹² Salary does not include any accrual for holiday pay.

¹³ Actual: 2021-22 £78,353

¹⁴ Actual: 2020-21 £78,042

¹⁵ Median and 75th percentile ratios are the same - this is as a result there being a number of employees on the same grade point

¹⁶ 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.

¹⁷ Bonuses are generally based on performance levels attained and relate to the performance in the year in which they become payable to the individual.

Pension benefits

60.

	Total accrued pension at pension age as at 31 March 2022	Real increase in pension at pension age	CETV at 31 March 2022	CETV at 31 March 2021	Real increase in CETV as funded by employer
	£'000	£'000	£'000	£'000	£'000
Daren Fitzhenry Scottish Information Commissioner	5-10	0-2.5	98	74	16
Margaret Keyse Head of Enforcement	35-40	0-2.5	592	556	5
Helen Gardner-Swift Head of Corporate Services	5-10	0-2.5	106	79	19
Erin Gray (from 01/04/2021 to 21/01/2022) Head of Policy and Information	0-5	0-2.5	24	14	7
Claire Stephen (from 01/02/2022) Acting Head of Policy and Information	15-20	0-2.5	186	181	1

61. 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)

62. 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 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.

63. 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

64. This is the element of the increase in accrued pension funded by the employer. It excludes increases due to inflation and contributions paid by the employee. It is worked out using common market valuation factors for the start and end of the period.

65. 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 59-63.

Staff Report

Staff numbers

66. The number of full time equivalent (FTE) persons employed by the Commissioner during the year was as follows¹⁸:

	2021-22			2020-21		
	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	3	0	3
Staff	19.9	0	19.9	20.6	0	20.6
TOTAL	23.9	0	23.9	24.6	0	24.6

Staff costs

67. Staff costs

	Commissioner	Senior Management Team	Staff	TOTAL	TOTAL
	2021-22	2021-22	2021-22	2021-22	2020-21
	£'000	£'000	£'000	£'000	£'000
Salary ¹⁹	81	201	799	1,081	1,124
ERNIC	10	24	83	117	116
Pension costs	23	57	213	293	292
TOTAL	114	282	1,095	1,491	1,532

Staff composition

68. Analysis by gender of the organisation as at 31 March 2022.

Category	2021-22			2020-21		
	Female	Male	Total	Female	Male	Total
Scottish Information Commissioner	0	1	1	0	1	1
Senior Managers	3	0	3	3	0	3
Staff (other than senior managers)	16	5	21	17	5	22
TOTAL	19	6	25	20	6	26

¹⁸ Calculated as an average for the financial year

¹⁹ Salary includes basic salary adjusted for accrued holiday pay but does not include employee National Insurance or pensions contributions.

Temporary staff

69. As at 31 March 2022, 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

70. 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.

71. For 2021-22:

- 82.49 days were lost to ill health absence – an increase of 43.11 days when compared to the previous year (2020-21 39.38)
- the total days lost to ill health absence per FTE member of staff is 3.89, an increase of 2.27 days when compared to the previous year (2020-21 1.62)
- the total days lost to ill health absence per FTE member of staff is 0.71 days lower than the ONS benchmark of 4.6.

Staff turnover

72. For 2021-22:

- 1 member of staff resigned
- 1 member of staff retired
- 1 member of staff was employed on an inward secondment
- the staff turnover percentage was 9%
- no exit packages have been used

Human Resources Strategy and staff policies

73. 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 supports the achievement of Human Resources (HR) governance objectives.

74. In 2021-22:

- HR continued to be managed in line with the HRS
- a revised Employee Handbook was approved
- the Performance and Development framework was reviewed as part of the work on review of the Employee Handbook.
- all members of staff were provided with wellbeing guidance and the Employee Assistance Programme (EAP) continued to be in place for any member of staff to contact at any time for advice.

Staff surveys

75. In 2021-22:

- staff were asked to complete a confidential equality and diversity monitoring survey. Completion of the survey was not compulsory and the return rate for the 2021-22 survey was 87%. For operational reasons and, also, due to the impact of the COVID-19 pandemic, it was not possible to carry out this survey in 2019-20 or 2020-21
- staff were asked to complete a well-being survey as part of the work relating to the re-opening of the office premises.

Health, safety and wellbeing

76. The office premises were temporarily closed throughout 2021-22 and temporary remote working was in place for all members of staff. The health, safety and wellbeing of all our staff continued to be paramount. The Commissioner followed Scotland's public health measures and guidance and there has been a consistent message about the importance of all members of staff staying safe.

77. The office premises re-opened in May 2022 and this has been, and continues to be a gradual and measured process. In 2022-23 the Commissioner will continue to support all members of staff as hybrid working is established.

78. There were no reportable health and safety incidents during 2021-22.

79. There was an increase in staff ill health absence rates in 2021-22, an average of 3.89 days per FTE employee was lost to ill health absence (1.62 days: 2020-21)

80. We published expenditure on consultancy on our website relating to the specific expenditure areas under the Public Services Reform Act 2011 (PSRA)²⁰. In 2021-22, as regards consultancy services for employment and health and safety matters the expenditure was:

- Law at Work Employment Law Support Service: £4,945
- Law at Work Health & Safety Support Service including Health & Safety Audit: £2,052

81. An employee assistance programme continued to be provided signposting staff to wellbeing guidance and access to confidential advice.

Staff relations

82. We recognise the importance of good staff relations and effective communication with staff. Quarterly all staff meetings 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 were provided with updates following each review by

²⁰ More information is available at www.itspublicknowledge.info/StatutoryReporting

the SMT of the temporary closure of the office premises and were consulted on the staff handbook relating to the gradual re-opening of the office premises.

Diversity and inclusion

83. 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 (the Act) 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.
84. The Commissioner must comply with the general requirements of the Act. However, the Commissioner is not included in the list of public authorities which are subject to the specific public sector equality duties set out in the Act. The Commissioner is also not listed as a public authority with a duty to report under the public sector specific equality duty²¹ (see Schedule 19 of the Act).
85. A revised Equality Policy was approved by the SMT in 2021-22. This policy covers any member of staff with a disability.
86. As part of the actions taken to ensure compliance with the general requirements of the Act, we collect and analyse staff data and then use the analysis to refine policies and practice where required. Staff are asked to complete an equality and diversity monitoring survey annually which is confidential. Completion of the survey is not compulsory and the return rate for the 2021-22 survey was 87%. For operational reasons and, also, due to the impact of the COVID-19 pandemic, it was not possible to collect staff data for 2020-2021 and 2019-20.
87. 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.
88. All staff receive mandatory equalities and diversity training annually and training on equality and diversity was provided to managers and staff in 2021-22.
89. 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. The Recruitment and Selection Policy and related Procedures were reviewed in 2021-22 and these contain relevant provisions relating to the treatment of an applicant who may have a disability

²¹ Schedule 19

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

Learning and development

91. A Learning and Development Plan 2021-22 was in place and training was provided online using approved training providers and platforms.
92. Mandatory training in data protection and UK GDPR requirements was undertaken by all members of staff in December 2021. Management training was also provided to line managers.
93. In 2022-23, as we develop hybrid working, we will continue to support staff where possible through relevant training and development of skills.

DocuSigned by:

Daren Fitzhenry

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Daren Fitzhenry Accountable Officer

Date: 12 December 2022

INDEPENDENT AUDITOR'S REPORT

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 2022 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 significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and UK adopted international accounting standards, as interpreted and adapted by the 2021/22 Government Financial Reporting Manual (the 2021/22 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 2022 and of its net expenditure for the year then ended;
- have been properly prepared in accordance with UK adopted international accounting standards, as interpreted and adapted by the 2021/22 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 for 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 6 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.

These conclusions are not intended to, nor do they, provide assurance on the body's current or future financial sustainability. However, we report on the body's arrangements for financial sustainability in a separate Annual Audit Report available from the [Audit Scotland website](#).

Risks of material misstatement

We report in our separate Annual Audit Report 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 there is an intention to discontinue the body's operations.

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 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. 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 and legal counsel 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 and reviewing internal audit reports.

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 skilfulness 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 in respect of irregularities explained in the audit of the financial statements section of our report, 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.

Other information

The Accountable Officer is responsible for the other information in the annual report and accounts. The 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 other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the course of 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 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 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.

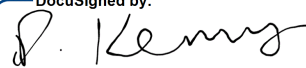
We have nothing to report in respect of these matters.

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.

DocuSigned by:

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Pat Kenny, CPFA

Date: 12 December 2022

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

Scottish Information Commissioner

FINANCIAL STATEMENTS 2021-22

Financial Statements and notes

Statement of comprehensive net expenditure for the year ended 31 March 2022

	Notes	2021-22 £'000	2020-21 £'000
Income			
Other income	4	(2)	0
Expenditure			
Staff costs	5	1,491	1,532
Other administration costs	7	398	366
Depreciation and amortisation	8	39	47
Net administration costs		1,928	1,945
Net operating costs		1,926	1,945

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 76-86 form an integral part of these accounts.

Statement of Financial Position as at 31 March 2022

	Note	2021-22 £'000	2020-21 £'000
Non-current assets			
Property, plant and equipment	8	85	99
Intangible assets	9	19	28
Non-current assets		104	127
Current assets			
Trade and other receivables	10	20	29
Cash and cash equivalents	11	291	215
Current assets		311	244
Total assets		415	371
Current liabilities			
Trade and other payables	12	(150)	(122)
Current liabilities		(150)	(122)
Assets less liabilities		265	249
Taxpayers Equity			
General Fund	13	238	222
Revaluation reserve	13	27	27
Taxpayers Equity		265	249

The accompanying notes on pages 76-86 form an integral part of these accounts.

As Accountable Officer, I authorised the Financial Statements 2021-22 for issue on 12 December 2022.

DocuSigned by:

Daren Fitzhenry

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Daren Fitzhenry Accountable Officer

Date: 12 December 2022

Statement of cash flows for the period ended 31 March 2022

	Note	2021-22 £'000	2020-21 £'000
Cash flows from operating activities			
Operating cost		(1,928)	(1,945)
Adjustments for non-cash transactions			
Depreciation and amortisation	8,9	39	47
Movements in working capital			
(Increase)/Decrease in trade and other receivables	10	9	(5)
Increase/(Decrease) in trade and other payables	12	28	57
Net cash outflow from operating activities		(1,852)	(1,846)
Cash flows from investing activities			
Recovery of court costs	4	2	0
Purchase of property, plant and equipment	8	(13)	(45)
Purchase of intangible assets	9	(3)	(33)
Net cash outflow from investing activities		(14)	(78)
Total cash outflows from operating and investing activities		(1,866)	(1,924)
Cash inflows from SPCB financing activities	3	1,942	1,961
Net increase in cash and cash equivalents		76	37
Cash and cash equivalents at beginning of period	11	215	178
Cash and cash equivalents at end of period	11	291	215
Net increase in cash and cash equivalents		76	37

The accompanying notes on pages 76-86 form an integral part of these accounts.

Statement of changes in taxpayers' equity for the year ended 31 March 2022

	General Fund		Revaluation Reserve		Total Reserves	
	2021-22 £'000	2020-21 £'000	2021-22 £'000	2020-21 £'000	2021-22 £'000	2020-21 £'000
Balance at 1 April	222	206	27	23	249	229
Net operating cost for year	(1,926)	(1,945)	0	0	(1,926)	(1,945)
Net funding	1,942	1,961	0	0	1,942	1,961
Revaluation of artwork			0	4	0	4
Balance at 31 March	238	222	27	27	265	249

Notes to the Financial Statements

1. Accounting policies

These financial statements have been prepared in accordance with the Government Financial Reporting Manual 2021-22 (FReM). In compliance with the direction issued by Scottish Ministers under Section 19(4) of the Public Finance and Accountability (Scotland) Act 2000. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the 2021-22 FReM permits a choice of accounting policy, the accounting policy judged to be the most appropriate to the circumstances of the Scottish Information Commissioner (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. 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

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

The Commissioner discloses accounting standards not yet applied and assesses the possible impact that initial application would have on the financial statements. There is one standard not yet effective, IFRS 16, and the Commissioner does not expect that the adoption of the IFRS 16 will have a material impact on the financial statements in future periods, as explained 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.

An initial quantification of the expected impact in applying the standard has been made and 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 2021-22 the Commissioner was allocated a funding budget of £2,030,000.

	Budget		Expenditure		Variance	
	2021-22	2020-21	2021-22	2020-21	2021-22	2020-21
	£'000	£'000	£'000	£'000	£'000	£'000
Net operating costs	2,013	1,909	1,926	1,945	87	(36)
Capital expenditure	17	56	16	78	1	(22)
Total expenditure	2,030	1,965	1,942	2,023	88	(58)

Accruals adjustments

Non-cash items	-	-	(39)	(47)	39	47
Working capital (including cash)	-	-	39	(15)	(39)	15
Cash funding from the SPCB	2,030	1,965	1,942	1,961	88	4

4. Income from all sources

	2021-22	2020-21
	£'000	£'000
Recovery of court costs	2	0
Miscellaneous income	0	0
Bank interest received	0	0
Total	2	0

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	Commissioner	Senior Management Team	Staff	Total
	2021-22	2021-22	2021-22	2021-22	2020-21
	£'000	£'000	£'000	£'000	£'000
Salaries / Wages	1,081	81	201	799	1,124
ERNIC	117	10	24	83	116
Pension Costs	293	23	57	213	292
Total	1,491	114	282	1,095	1,532

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 2021-22, 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 2021-22. 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 2022 (2020-21: £NIL).

The expected employer contributions rates for 2022-23 are 26.6% to 27.9% and the estimated staff pension costs are £210,000.

7. Other administrative costs

	2021-22	2020-21
	£'000	£'000
Property costs	89	90
Research and promotion	13	21
Administration costs	259	215
Legal costs for court of session hearings	20	23
Travel and expenses	0	0
Audit Fees	17	17
Total	398	366

Included within Administration costs is £1,617 (2020-21: £1,617) equipment rental costs and included in property cost is £54,000 (2020-21: £54,074) in association with operating leases (see also note 14).

8. Property, plant and equipment

	Lease Improvements		Artwork		Fixtures, fittings and equipment		Information Technology		Total	
	2021-22	2020-21	2021-22	2020-21	2021-22	2020-21	2021-22	2020-21	2021-22	2020-21
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Cost or Valuation										
At 1 April	214	214	42	38	144	144	189	172	589	568
Additions	0	0	0	0	3	0	10	45	13	45
Revaluations	0	0	0	4	0	0	0	0	0	4
Disposals	0	0	0	0	(11)	0	(96)	(28)	(107)	(28)
At 31 March	214	214	42	42	136	144	103	189	495	589
Depreciation										
At 1 April	214	203	0	0	134	127	142	151	490	481
Charge for year	0	11	0	0	4	7	23	19	27	37
Disposals	0	0	0	0	(11)	0	(96)	(28)	(107)	(28)
At 31 March	214	214	0	0	127	134	69	142	410	490
Net book value at 31 March 2022	0	0	42	42	9	10	34	47	85	99
Net book value at 31 March 2021	0	11	42	38	10	17	47	21	99	87

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 for the financial year ending 31 March 2022. 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.

	2021-22
	£'000
Cost	
As at 1 April 2021	416
Additions	3
Disposals	(352)
At 31 March 2022	67
Amortisation	
As at 1 April 2021	388
Charge for the year	12
Disposals	(352)
At 31 March 2022	48
Net book value at 31 March 2022	19
Net book value at 31 March 2021	28

10. Trade and other receivables

	2021-22	2020-21
	£'000	£'000
Amounts falling due within one year		
Prepayments and accrued income	20	29
Receivable within one year	20	29

11. Cash and cash equivalents

	2021-22	2020-21
	£'000	£'000
Balance as at 1 April 2021	215	178
Net change in cash and cash equivalent balances	76	37
Balance as at 31 March 2022	291	215
Cash held at commercial banks	291	215

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

	2021-22	2020-21
	£'000	£'000
Amounts falling due within one year		
Trade payables	8	3
HMRC	27	0
Accruals and deferred income	115	119
Total	150	122

13. Capital and reserves

13.1. General fund

	2021-22	2020-21
	£'000	£'000
As at 1 April 2021	222	206
Net expenditure for the year	(1,926)	(1,945)
Funding from the SPCB	1,942	1,961
As at 31 March 2022	238	222

13.2. Revaluation reserve

	2021-22	2020-21
	£'000	£'000
As at 1 April 2021	27	23
Increase in valuation	0	4
Revaluation reserve	27	27

14. Commitments under leases

Obligations under operating leases

	2021-22	2020-21
	£'000	£'000
Buildings		
Not later than one year	54	54
Later than one year and not later than 5 years	216	216
Later than 5 years	745	799
Other		
Not later than one year	0	0
Later than one year and not later than 5 years	0	0
Later than 5 years	0	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 2022 (2020-21: £NIL).

16 Contingent liabilities disclosed under IAS 37

There are no contingent liabilities as at 31 March 2022 (2020-21: £NIL).

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 December 2022 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/2022/296