



INFRASTRUCTURE, GOVERNMENT AND HEALTHCARE

# Scottish Legal Aid Board

Annual audit report to the Scottish Legal Aid Board and the Auditor  
General for Scotland  
Year ended 31 March 2009

20 July 2009  
AUDIT

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**About this report**

This report has been prepared in accordance with the responsibilities set out within the Audit Scotland's *Code of Audit Practice* ("the Code").

This report is for the benefit of only the Scottish Legal Aid Board and is made available to Audit Scotland (together "the beneficiaries"), and has been released to the beneficiaries on the basis that wider disclosure is permitted for information purposes, but that we have not taken account of the wider requirements or circumstances of anyone other than the beneficiaries.

Nothing in this report constitutes an opinion on a valuation or legal advice.

We have not verified the reliability or accuracy of any information obtained in the course of our work, other than in the limited circumstances set out in the scope and objectives section of this report.

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**Complaints**

If at any time you would like to discuss with us how our services can be improved or if you have a complaint about them, you are invited to contact Grant Macrae, who is the engagement leader for our services to the Board, telephone 0131 527 6611 or email grant.macrae@kpmg.co.uk who will try to resolve your complaint. If your problem is not resolved, you should contact Lorraine Bennett, our Head of Audit in Scotland, either by writing to her at Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EG or by telephoning 0131 222 2000 or email lorraine.bennett@kpmg.co.uk. We will investigate any complaint promptly and do what we can to resolve the difficulties. After this, if you are still dissatisfied with how your complaint has been handled you can refer the matter to Russell Frith, Director of Audit Strategy, Audit Scotland, 110 George Street, Edinburgh, EH2 4LH.

**Financial Statements**

Following approval by the chief executive we issued an audit report expressing an unqualified opinion on the financial statements of the Board for the year ended 31 March 2009 and on the regularity of transactions reflected in those financial statements.

The financial statements of the Fund report net operating costs of £138.749 million (2007-08; £138.811 million) and net liabilities as at 31 March 2009 of £59.098 million (2007-08; £65.314 million).

Grant-in-Aid reports net operating costs of £14.841 million (2007-08; £15.094 million) and net liabilities of £30.459 million as at 31 March 2009 (2007-08; £34.741 million).

Adjustments made to the financial statements include the reversal of the element of discounting in the provision for legal aid work done of £3 million and a reduction in the bad debt provision of £2 million. Amendments were also made to the presentation of the contributions made to the pension scheme.

**Corporate governance**

We considered corporate governance arrangements as they relate to systems of internal control, the prevention and detection of fraud and irregularity, standards of conduct and arrangements for the prevention and detection of corruption, and its financial position.

- The statement on internal control does not disclose any significant weaknesses in the systems of internal control.
- The process to monitor changes to general laws and regulations, including guidance and circulars issued by the Scottish Government and other government bodies, is now fully implemented.
- None of the Board's activities meet the Government's definition of capital expenditure. Against a Grant-in-Aid budget of £13.568 million for 2008-09, a slight underspend was recorded.
- The Scottish Government has fixed the grant-in-aid element of the Board's administrative budget at £12.659 million per annum for 2008-09 to 2010-11. Management have determined that the Board will need to identify and measure annual savings of £280,000 to meet this target. It is recognised that the Legal Aid Fund is not cash limited.

**Performance management**

There are strong performance management arrangements in place and performance against performance indicators is monitored on a regular basis.

- The Board achieved all of its key performance indicators. The Board's corporate target of the timely payment of invoices was not achieved, as 91% against a target of 98% was attained.
- For 2008-09 the Board will report cash releasing efficiency savings of around £5 million.

Our audit work is undertaken in accordance with Audit Scotland's *Code of Audit Practice* ("The Code"). This specifies a number of objectives for our audit.

### Audit framework

This year was the third of our five-year appointment by the Auditor General for Scotland as external auditors of the Scottish Legal Aid Board ('the Board'). We refer to the Board throughout this document, except where we specifically discuss the financial statements of either the Scottish Legal Aid Fund ('the Fund') or the Scottish Legal Aid Board ('Grant-in-Aid'). This report to the Board and Auditor General provides our opinion and conclusions and highlights significant issues arising from our work.

We outlined the framework under which we operate, under appointment by Audit Scotland, in the audit plan overview discussed with the audit committee on 5 March 2009.

The purpose of this report is to report our findings as they relate to:

- the **financial statements** and our audit opinions on net operating costs and the regularity of transactions;
- **use of resources**, including financial outturn for the year ended 31 March 2009 and financial plans for 2009-10 and beyond;
- arrangements around **governance and accountability**, including risk management, and our consideration of the work of internal audit; and
- **performance management** and the Board's arrangements to achieve efficiency savings.

### Best Value

Audit Scotland and the Scottish Government have been committed to extending the Best Value audit regime across the whole public sector for some time now, with significant amounts of development work having taken place during the last year. Using the Scottish Executive's nine best value principles as the basis for audit activity, Audit Scotland selected five areas as priority development areas (use of resources, governance and risk management, accountability, review and option appraisal, and joint working).

Plans are being developed for the application of a series of toolkits on the use of resources in future years based on an assessment of the Board's priorities and risks during the audit planning process.

### Responsibilities of the Board and its auditors

External auditors do not act as a substitute for the Board's own responsibilities for putting in place proper arrangements to account for the stewardship of resources made available to it and its financial performance in the use of those resources, to ensure the proper conduct of its affairs, including compliance with relevant guidance, the legality of activities and transactions, and for monitoring the effectiveness of those arrangements and, through the accountable officer, to make arrangements to secure Best Value.

### Action plan

This report includes an action plan containing areas for development or improvement identified during our financial statements audit fieldwork. We have not repeated recommendations raised in reports issued during our earlier work in respect of our 2008-09 audit. Responsibility for taking action and monitoring progress in response to all our recommendations lies with management.

### Acknowledgement

We wish to record our appreciation of the continued co-operation and assistance extended to us by your staff.

**Overview of activities**

The Board is a non-departmental body responsible to the Scottish Government. The purpose of legal aid is to make good quality legal assistance available to individuals with limited financial resources. The Board manages legal aid funding, which includes deciding who is entitled to legal aid and whether they are required to make a contribution towards it. These decisions are based on legislation and tests for granting legal aid set by the Scottish Parliament. Funding for legal assistance is unlimited and will be granted to anyone satisfying the requirements, unlike the costs of administering legal assistance, for which an annual budget is set by the Scottish Government. These two streams of funding are accounted for separately, in the Fund and Grant-in-Aid, as required by the Legal Aid (Scotland) Act 1986. Legal aid is broadly the cost of taking a case to court, including the cost of experts if required. Advice and assistance covers everything other than 'representation' pertaining to Scottish law via a solicitor. Legal aid currently comprises two main categories, legal aid and advice and assistance.

Changes faced in the financial year to 31 March 2009 included introducing reforms to the criminal justice system in Scotland under summary criminal legal aid reform. These reforms were specifically designed to support the main features of the wider summary justice reforms, such as the use of alternatives to prosecution and early resolution of cases where appropriate. Other developments in the year included the simplification of civil legal assistance and working to finalise the quality assurance scheme for criminal legal assistance.

The Scottish Government announced in 2008 that a further £3 million would be made available to the Board over the next two years. This funding will be used to help provide legal advice and representation for people facing problems related to the economic downturn, such as repossessions and debt.

The Board will continue to roll out online systems for the use of applicants and solicitors in 2009-10. Currently, approximately 70% of advice and assistance intimations are made online.

We have issued unqualified opinions on the financial statements and the regularity of transactions reflected in those financial statements.

Key issues arising from our audit of the financial statements are:

- Management had amended their approach to bad debt provisioning within the Fund to reflect the impairment requirements of IFRS, but the Board continues to prepare its financial statements under UK GAAP for 2008-09. The bad debt provision was therefore decreased by £1.695 million to revert to the existing policy.
- The provision for legal aid incurred but not billed at 31 March 2009 within the Fund was reduced by £3m by adopting a policy of discounting for the first time using the HMT Treasury rate of 3.5%. This arose out of an interpretation of FRS 26 Financial Instruments: Recognition and Measurement that provides for discounting of long term liabilities. This adjustment was reversed by management following review of the requirements of accounting standards.
- The draft and prior year financial statements accounted for both pension contributions and the current service cost in the Grant in Aid financial statements within operating costs with the corresponding entry with regards to the contributions included within the statement of recognised gains and losses. The financial statements were amended to reflect the correct actuarial position in the statement of recognised gains and losses.

### **Recommendations**

We did not identify any significant recommendations for development in relation to the financial statements.

## Audit opinions and key issues

### Reporting arrangements and timetable

In accordance with the Board's timetable, draft financial statements were available for audit on 8 June 2009. This was consistent with the date that we received the financial statements in 2007-08. This allowed for timely completion of the audit and consideration and approval of the financial statements by the chief executive on 20 July 2009.

### Audit opinion

Following approval we issued an audit report expressing an unqualified opinion on the financial statements for the year ended 31 March 2009 and on the regularity of transactions reflected in those financial statements.

### Key issues arising during our audit of the financial statements

Our audit plan overview identified four key risk areas.

Key risk area	Conclusions
<b>Provision for legal aid costs</b>	<p>As at 31 March 2009 the provision for legal work performed but not paid in the period to 31 March was £63.797 million, including an adjustment for discounting of £3.45 million.</p> <p>The provision had been discounted for the first time in 2008-09, but the accounting treatment was subsequently revised by management following consideration of the requirement of FRS 12, 'provisions contingent liabilities and contingent assets'. We reviewed the underlying basis of the provision and concluded that the provision as at 31 March 2009 was not materially misstated.</p>
<b>Net liabilities</b>	<p>As at 31 March 2009 the Fund balance sheet reported net liabilities of £59.098 million (2007-08: £65.314million) primarily due to the carrying value of provisions for liabilities and charges. Net liabilities in the Grant-in-Aid balance sheet were £30.459 million (2007-08: 34.741 million), which primarily relates to the value of the pension scheme liabilities at year end.</p> <p>Provisions for liabilities and charges and pension scheme liabilities have been accounted for under financial reporting standard 12 and financial reporting standard 17 'retirement benefits' respectively. We have reviewed a 'letter of comfort' provided by management, originating from the Scottish Government confirming that cash will be available in future years to fund the settlement of these obligations as and when they fall due.</p>
<b>Governance and risk management</b>	<p>We have considered the results of a recent review of Corporate Governance as reported to the audit committee on 8 December 2008 and the audit committee self-assessment checklist completed in December 2008. We have no recommendations for areas of improvement.</p>
<b>Fraud</b>	<p>The nature of the Board's transactions place a degree of reliance on the integrity of third parties (i.e. solicitors and assisted persons) thus increasing the inherent risk of fraud. The Board has implemented a number of proactive and reactive controls to prevent and detect fraud.</p> <p>Internal audit, led by the director of audit and compliance, has carried out extensive work in the year to prevent and detect fraud. We have placed reliance upon the internal audit 'fraud review' which concluded that controls in place were satisfactory.</p>

**Regularity of transactions**

In order to gain assurance over the regularity of expenditure we have updated our understanding over the processes in place to receive Scottish Government circulars, register, allocate and distribute responsibility for action points and monitor and follow up on these action points. Testing of the register and monitoring process identified that these processes are designed, implemented and operating effectively.

The Board has formal procedures in place to ensure that the existence of relevant guidance is noted and that there is a procedure to record action taken and progress.

We reviewed a sample of communications from the Scottish Government to ensure that the correct procedures had been followed. In all cases we found that the correct procedures had been followed.



# Implementation of International Financial Reporting Standards

The 2007 Budget had announced that central government and health bodies would report under international financial reporting standards ("IFRS"), as adapted by HM Treasury through the financial reporting manual ("IFReM"), from 2008-09. Following consultation with Government departments and the Financial Reporting Advisory Board on the technical work needed to implement this change, the Government now intends to move to IFRS from 2009-10 as announced in the 2008 budget.

Central government bodies will be required to prepare their financial statements on the basis of the IFReM from 2009-10. Shadow IFReM financial statements, including an opening balance sheet, will be required for 2008-09. The shadow IFReM financial statements were subject to a 'dry run' audit in accordance with timescales prescribed by the Scottish Government. The timescales are set out in the table

	Presented for audit	Completion of dry-run audit
Opening 2008 IFRS based balance sheet	28 November 2008	28 February 2009
2008-09 shadow IFRS based financial statements	30 November 2009	28 February 2010

As a result of the audit of opening balances a report was issued to management highlighting the work done, our findings and areas for further work by management. Our work was undertaken in accordance with guidance included in Audit Scotland's note for guidance 2008/6: *Auditors' role in the implementation of international financial reporting standards*. The key points to note from our audit were that management should enhance the documentation supporting the accounting treatment of leases and given the likely work involved in developing notes and disclosures, that this work be undertaken well in advance of the requirement for preparation of full IFRS accounts

Our work on the 2008-09 shadow IFReM based financial statements will be performed as part of our 2009-10 audit.

The Board met its financial targets. The outturn against Grant-in-Aid budget on a cash basis was £13.5 million against a budget of £13.6 million, an underspend of £0.1 million.

The 2009-10 financial plan for Grant-in-Aid forecasts an outturn of £13.1 million against total funding of £13.1 million. Achievement of the plan will be challenging due to the economic climate and subsequent pressures on the Scottish Government's budgets. The Board forecasts an outturn of £145.1 million for the Fund against available funding of £154.7 million. Achievement of this plan will depend to an extent on the demand led nature of legal aid and future reforms to the Scottish legal system.

Internal audit work conducted over the Board's accounting and budgeting procedures concluded that the controls in place were satisfactory.

- The asset management programme to free up space in the leased buildings is almost complete and the Board has established carbon footprint targets.
- The continued development of Legal Aid online remains key to the Board's aspirations to achieve efficiency savings. At present, approximately 70% of advice and assistance intimations are made online.

The Board has satisfactory formalised procedures in place to ensure that all reports receive from Audit Scotland are considered and actioned where appropriate in a timely manner.

### **Recommendations**

We did not identify any significant recommendations for development of the Board's arrangements to manage the use of resources.

### Financial position

Actual performance in 2008-09 against Scottish Government funding allocations was as follows:

	Scottish Government Budget £000	Other funding sources £000	Total funding available £000	Cash Expenditure £000s	Net Operating Costs (accruals basis) £000s
Scottish Legal Aid Fund	151,300	-	<b>151,300</b>	<b>149,235</b>	138,749
Scottish Legal Aid Board Administrative Budget	12,900	668	<b>13,568</b>	<b>13,532</b>	14,841

### Scottish Legal Aid Fund

The nature of legal aid and complexity of relevant legislation means that expenditure is demand led and therefore unpredictable in timing and volume. Section 40 of the Legal Aid (Scotland) Act 1986 states that "*The Secretary of State shall pay to the Board out of moneys provided by Parliament ... such sums as are required ... to meet payments out of the Fund under this Act*". This means that expenditure is driven by legislation and is not cash limited to the funding allocation of £151.3 million. As a result of this, the Fund's expenditure is not limited by budget but is rather regularly monitored throughout the year by management submitting a monthly vote monitoring return detailing cash drawn down to date and forecast cash required to 31 March 2009 in line with Scottish Government Justice Department requirements. The Fund drew down £147.076 million in cash during the year, which is consistent with correspondence from the Scottish Government Justice Department, which together with a further £149,000 of pension related amounts comes to the figure of £147.225 million shown as grant-in-aid received in the cash flow statement. The total cash expenditure, reflecting both cash drawn down and the movement in bank balances was £149.235 million. Timing differences between expenditure being incurred on the accrual basis and cash payouts for legal aid can vary and along with depreciation charges and notional interest on capital results in a significant difference between cash and accruals based expenditure.

### Grant-in-Aid

The total funding available of £13.568 million for the Board's administrative budget combines the Scottish Government's core grant-in-aid with sums the Board is entitled to retain from the collection of superannuation contributions from staff; with the Scottish Government's funding of pension costs above an agreed baseline sum; and with additional funding provided by the Scottish Government to fund a suite of legal aid reforms. At £13.532 million, net cash expenditure for the year is within that total available cash funding. The higher accruals based expenditure primarily relates to non-cash pension scheme service and finance costs, depreciation and notional interest on capital.

The Board is given a budget allocation by the Scottish Government each year. An extensive annual process of budget preparation, in which each cost centre is examined, is undertaken annually. Internal audit reviewed the accounting and budgeting processes during the year upon and they concluded that the controls in place were satisfactory.

The board meets eight times a year. Financial performance is discussed in detail at these meetings, and any concerns over or risks to the financial plan are discussed. The Board has opportunities to amend its budget through the autumn and spring budget revisions. Any such amendments must be authorised by the Scottish Government.

**Efficiency savings**

All public bodies are required to meet the Scottish Government's efficiency targets. The Board is working with the Scottish Government to identify a further range of changes to legal aid which will generate savings over the coming three years. Like the last efficient government programme, elements of the package may require ministerial agreement and may rely upon the Scottish Government to promulgate relevant legislation. The Scottish Government has set the Fund efficiency savings targets for the next three financial years by declaring that the cash available for 2008-09 will be £151.3 million increasing to £157 million in 2010-11. The approach adopted for Grant-in-Aid is for funding to be capped at £12.659 million for the next three years requiring Grant-in-Aid to make annual savings of £280,000 or 2% of 2007-08 figures, to meet inflationary pressures. Along with significant reductions in staff numbers, a major contribution identified by management in achieving these savings is sub-letting a substantial part of its premises. The Board has surpassed this target for 08-09 and will report efficiency savings of £0.433 million for Grant-in-Aid, through;

- involvement in the central Government's procurement initiative which may reduce the cost of service contracts and capital expenditure through collective bargaining;
- using the Board's well established internal audit department to provide services to other public sector bodies;
- improving space utilisation and sub letting released accommodation to a combination of other public sector bodies;
- increasing the resources of the compliance and investigations divisions within the audit department due to the significant success they have achieved recently by investigating the accuracy of information submitted by assisted persons and claims made by solicitors; and
- the continued implementation of *Legal Aid Online* and increased use of document management and intelligent scanning.

Savings to be realised in the Fund involve changes to legislation and thus the pace of such reform is, to an extent, dictated by Scottish ministers and the timetable of the Scottish Government. Cash releasing efficiency savings reported in 2008-09 amount to £5 million and comprise savings due from implementation of the summary justice reform and savings realised from increased investment in accounts verification and solicitors investigations.

**Financial planning**

The 2009-10 financial plan for Grant-in Aid forecasts an outturn of £13.1 million against the total funding available of £13.1 million.

The financial planning process is an annual process of analysing expenditure requirements of each cost centre within Grant-in-Aid and Fund. Budgets are agreed locally before being collated and sent to the executive team and then on to the Scottish Government .

**Long-term financial planning**

In order to meet the savings targets set by the Scottish Government's efficiencies programme, the Board will continue to invest in the development of *Legal Aid Online* and document management system to generate further staff savings in the future. The Board has identified that the rate of take up of such systems as a risk to maintaining the pace of staff, and thus cost, reduction going forward.

## Financial management (continued)

Risks highlighted in the 2009-10 forecast with regards to Fund expenditure include:

- in any given year, a small number of high cost cases can markedly impact upon Fund expenditure;
- the recession may precipitate a need for better and widely available advice which may increase fund expenditure and/or drive demand for increased grant funding; and
- increases in prisoner rights cases in light of the current large prison population.

In addition, management recognises that, due to the current economic climate and the pressures that this will place on Scottish Government budgets, efficiencies may be called for beyond those set out in the current efficient government programme.

## Management arrangements

### Workforce management

Employee sickness absence for 2008-09 was 7.9 days per whole time equivalent (WTE). This was made up of 3.1 days per WTE for self-certified absence and 4.8 days per WTE for certified absence. This compares favourably with the absence rate for the public sector which stands at 9.8 days.

Although marginally higher than last year at 13.4%, staff turnover, still compares favourably with the most recently reported overall average within the public sector at 13.5%. This figure can be broken down further to reflect a level of 'voluntary' leavers at 7.2%, compared to 9.4% more generally within the public sector. The gap between the total turnover and the 'voluntary' turnover reflects a strategy to use agency staff in the short term to give the Board the ability manage the planned reduction of staff numbers following the implementations of new systems and processes, without the need for redundancy.

### Asset Management

The free estates and asset management programme, whereby space is being freed up within its leased premises, is almost complete. The space freed has been taken by various organisations, including the Penrose Inquiry and the Finger Print Inquiry. This is consistent with recent Scottish Government initiatives whereby relocating organisations should find space within existing public sector buildings.

The Board has also established targets to reduce its carbon footprint. As part of this programme the Board targets use of fuel, waste and travel. The Board also measures savings in its carbon footprint by monitoring its use of electricity, and recycling of confidential waste, paper, toners cups, cardboard, cans, bottles and tubes.

During 2009-10 management plan to develop a carbon management plan.

### Procurement

The Board is involved in the Scottish Government's procurement initiative which aims to reduce the cost of service contracts and capital expenditure through collective bargaining. The chief executive is chair of the central government centre of procurement expertise supervisory board and is a member of the public procurement reform board. The Board makes extensive use of collaborative procurement contracts. A recently produced CGCoPE report indicates that SLAB's expenditure on collaborative contracts rose from £14k in the first quarter of 2008/09 to £62k in the final quarter of 2008/09, seeing a growth in savings from £2k per quarter to £7k per quarter by the end of the year.

### Information management

The Board is committed to following Scottish Government guidance on matters such as data security. The Board complies with the Freedom of Information (Scotland) Act 2002, and seeks to act in the spirit of openness to provide information within twenty working days under its publication scheme. The continued development of *Legal Aid Online* continues to be a focus in the drive to achieve efficiencies.

### Partnership working

In addition to sharing its premises at Drumsheugh Gardens, the Board has been actively sharing services with other organisations. Internal audit is providing audit and consultancy services to the Scottish Public Services Ombudsman, The Scottish Legal Complaints Commission (SLCC) and Architecture and Design Scotland. The director of audit and compliance and the head of civil legal assistance are also involved in providing training to SLCC staff on risk, financial assessment and solicitor investigations.

The statement of internal control does not disclose any significant weaknesses in the systems of internal control.

There is a formal process to record, distribute and monitor action in response to key guidance and circulars.

There is a formal fraud policy in place at the Board.

The Board has a formal policy around receiving and reviewing Audit Scotland national reports.

### **Recommendations**

We did not identify any significant recommendations for development in governance and accountability arrangements.

### **Introduction**

Corporate governance is concerned with structures and processes for decision-making, accountability, control and behaviour. The three fundamental principles of corporate governance – openness, integrity and accountability – apply to all bodies.

Through its chief executive and accountable officer, the Board is responsible for establishing arrangements for ensuring the proper conduct of its affairs, including compliance with relevant guidance, the legality of activities and transactions, and for monitoring the adequacy and effectiveness of these arrangements. The *Code* requires auditors to review and report on corporate governance arrangements as they relate to:

- the Board's reviews of its systems of internal control, including its reporting arrangements;
- the prevention and detection of fraud and irregularity; and
- standards of conduct and arrangements for the prevention and detection of corruption.

### **Governance framework**

The audit committee and the remuneration and appointments committee are established as sub-committees of the Board. The role of these committees is to support the chief executive, as accountable officer, to ensure that corporate governance arrangements are effective and appropriate. The annual internal assurance programme supports the assessment of the operation of the system of internal control. Responsible officers provide a statement of assurance to the chief executive to assist in his preparation of the statement.

Our testing of the design and operation of entity level controls and significant risk points in key financial processes confirms that, subject to some very minor recommendations reported, controls are designed appropriately and operating effectively.

**Corporate Governance Review**

During 2008/09 a review of Corporate Governance for the Audit Committee provided an update on a range of issues arising from the Board's last review of this topic, including:

- Statement of Internal Control;
- Code of Conduct for Board Members;
- Recording of declarations of interest by board members;
- Financial Memorandum;
- Delegated Authority Matrix; and
- Risk Management Framework.
- 'Whistleblowing' and Anti-fraud and Corruption Policies.

The review also considered some of the wider implications of Good Corporate Governance by reference to more recent guidance in the form of the Good Governance Standard for Public Service (the 'Langlands Review'); as well as providing assurance over elements of best practice arising from key publications such as the Government's Financial Reporting Manual (FReM) and the Scottish Public Finance Manual.



#### Internal audit

Our planned audit approach seeks, wherever possible, to place reliance on the work completed by internal audit to minimise duplication of effort and ensure maximum benefit from the combined audit resource.

Internal audit have completed work in accordance with the annual audit plan and the director of audit and compliance has concluded in the annual assurance 2008-09 that there is a "...generally sound framework of control", and that "...there is nothing which would warrant the Accountable Officer not signing the standard form of the Statement of Internal Control in the Board's report and accounts for the year to 31 March 2009".

Internal audit reached a conclusion of 'good' or 'satisfactory' on all areas covered. Internal audit delivered the annual assurance statement and the director of audit and compliance's opinion to the accountable officer at the audit committee on 20 July 2009. We placed reliance on internal audit's work in the following areas:

- bank and cash;
- trade creditors;
- income;
- operating costs;
- budgetary control and financial reporting; and
- best value.

#### Internal controls

Our work on organisation-wide controls has included the review of relevant policies and procedures and consideration of the adequacy and appropriateness of the content. In addition, we reviewed evidence of processes such as risk monitoring and financial reporting, to confirm these processes are operating as intended, with the exception of delayed revisions to the financial memorandum and management statement in conjunction with the Scottish Government. The majority of policies and procedures are available to all staff on the intranet. This ensures that relevant personnel have access to the current version of key documents at all times.

The statement on internal control provides details of the purpose of the system of internal control, the risk and control framework and the effectiveness of this framework. The statement complies with the Scottish Government's guidance and is consistent with our understanding.

## Prevention and detection of fraud and irregularity

There continues to be a strong fraud policy in place at the Board, with no significant changes in the year. Management continues to recognise the importance of controls designed to mitigate the risk of fraud.

A formal whistle blowing policy governs the procedures to be followed in the event of suspecting or detecting fraud. This is incorporated in the fraud prevention policy which is available to all staff on the intranet. The policy also incorporates a fraud detection and response strategy.

Where management are made aware of a suspected fraud, the director of audit and compliance and the senior auditor will co-ordinate an investigation. The director of audit and compliance and the senior auditor are responsible for undertaking preliminary investigations, and will proceed with any follow up investigation which may be recommended by legal services and agreed with personnel.

The two major types of fraud committed are likely to be solicitors submitting fictitious claims and individuals falsifying the extent of their financial means when applying for advice and assistance. The audit and compliance department adopts various means in the prevention and detection of fraud with success. These measures include, analysing amounts claimed by solicitor firms and by case type and performing onsite investigations at solicitor's premises.

During the 2008-09 it was discovered that a solicitor, in private practice, had been claiming excess travel expenses for legal aid cases. Recovery of the £221,000 lost was made in 2008/09. No specific disclosure has been made in the financial statements.

Audit Scotland periodically undertakes national studies on topics relevant to the performance of central government bodies. While the recommendations from some of the studies may have a national application, elements of the recommendations are also capable of implementation at local level, as appropriate.

Management has established procedures to consider individual reports. It was agreed by the audit committee that, following the formal consideration of any reports issued by Audit Scotland, by the director of corporate service and accounts will prepare a report for the executive team. The outcome of such reviews will then be reported annually by way of inclusion in the annual assurance report. This action will fall to the director of audit and compliance. The Board has recognised that in 2008-09 there would be a 'catching up' exercise to review all reports issued in 2008-09 but that once this had occurred reports would be assessed as and when they were received. As a part of this exercise management has reviewed the eight reports issued by Audit Scotland in the period and has identified those with the greatest relevance to the Board. These are 'central government's use of consultancy services', 'improving energy efficiency' and 'review of major capital projects'.

We understand that the management response to these Audit Scotland reports is being formulated and that a report will be made to the Executive team and, in turn, the Audit Committee in early course.

The Board achieved all of its key performance indicators. The Board's corporate target of the timely payment of invoices was not achieved, as 91% against a target of 98% was attained.

Strong performance management arrangements include regular monitoring of key performance indicators to provide a framework of accountability for performance.

For 2008-09 the Board will report cash releasing efficiency savings of around £5 million for the Fund and savings of £0.433 million for Grant-in-Aid.

Performance is regularly reported to the Board and the appropriate governance committee.

### **Recommendations**

We did not identify any significant recommendations for development in performance management arrangements.

## **Performance management arrangements**

The corporate plan details the annual objectives and performance indicators. The annual report summarises performance during the year and we understand that management will report that the eight headline performance indicators were met during 2008-09.

The Board's corporate target of the timely payment of invoices was not achieved, as 91% against a target of 98% was attained. The reason for not achieving this target is due to staffing issues.

## **Performance against targets in 2008-09**

The Board achieved all of its key performance indicators for 2008-09. These indicators measure the timeliness, consistency and accuracy of processing of legal aid applications and accounts. Performance indicators are reviewed on an annual basis to ensure they continue to reflect the Board's services and the needs of legal aid applicants.

## **Public performance reporting**

The corporate plan which details annual objectives and indicators is made available upon the Scottish Legal Aid website. The Board publishes its annual report for the year online for access by the general public after the financial statements have been finalised.

## **Stakeholder engagement and consultation**

Strategically, the Board continues to work in partnership with other stakeholders in the justice system. An examination of the strategic risk register confirmed continuous liaison with the Law Society and the Faculty of Advocates, the Crown Office, Bar Associations, the Advice Sector as well as Sheriffs and Sheriff Principals.

# Appendix one – action plan

## Priority rating for recommendations

**Grade one** (significant) observations are those relating to business issues, high level or other important internal controls. These are significant matters relating to factors critical to the success of the Board or systems under consideration. The weakness may therefore give rise to loss or error.

**Grade two** (material) observations are those on less important control systems, one-off items subsequently corrected, improvements to the efficiency and effectiveness of controls and items which may be significant in the future. The weakness is not necessarily great, but the risk of error would be significantly reduced if it were rectified.

**Grade three** (minor) observations are those recommendations to improve the efficiency and effectiveness of controls and recommendations which would assist us as auditors. The weakness does not appear to affect the availability of the controls to meet their objectives in any significant way. These are less significant observations than grades one and two, but we still consider they merit attention.

No.	Issue and recommendation	Management response	Officer and due date
1	<p>The financial memorandum / management statement has been in a draft format for a sustained period of time.</p> <p>There is a risk that the original Management Statement and Financial Memorandum established between the then Secretary of State and the Board, detailing the framework under which the Board will operate and its reporting obligations, is obsolete and the Board is operating under out of date operational guidelines.</p> <p>We understand that recent communication with the Scottish Government indicates that this will be addressed in the near future. It is recommended that the Board works with the Scottish Government to ensure that this agreement is finalised as soon as practically possible.</p> <p><i>(Grade two)</i></p>	<p>The Board has continued to work with the SG sponsor division to progress this matter, to a stage where the draft financial memorandum/management statement is in a near final state. Resource constraints within the SG sponsor division over recent months have hindered progress on the final steps to agreement of that draft, but the sponsor division have recently committed to taking the matter forward during July 2009.</p>	<p>Director of Corporate Services Summer 2009</p>