

# Crown Office and Procurator Fiscal Service

2021/22 Annual Audit Report



 AUDIT SCOTLAND

Prepared for the Crown Office and Procurator Fiscal Service and the Auditor General for Scotland  
November 2022

# Contents

---

Key messages	3
Introduction	5
1. Audit of 2021/22 annual report and accounts	8
2. Financial management	14
3. Financial sustainability	17
4. Governance and transparency	20
5. Value for money	21
Appendix 1: Action plan 2021/22	25
Appendix 2: Pathology, toxicology and post mortem contract timeline	27
Appendix 3: Summary of 2021/22 national performance reports	29

---

# Key messages

---

## 2021/22 annual report and accounts

- 1 Our audit opinions on the annual report and accounts are unmodified.
- 2 As a consequence of post balance sheet developments, material adjustments have been made to the annual accounts.

## Financial management

- 3 The Inner House of the Court of Session clarified the law on the common law immunity from suit of the Lord Advocate in exercising the prosecutorial function on 30 October 2019. COPFS has been involved in civil litigation brought against the Lord Advocate by individuals prosecuted in connection with the acquisition and administration of Rangers Football Club since August 2016. Some cases have resolved, while others are ongoing.
- 4 To date the COPFS has incurred £60 million of unplanned costs in connection with claims against the Lord Advocate: 2021/22: £19 million, 2020/21: £27.9 million, 2019/20: £12.6 million.
- 5 COPFS operated within its revised Departmental Expenditure Limits, reporting a Scottish Government approved overspend of £16.0 million due late adjustments with regards to ongoing litigation.
- 6 COPFS have appropriate and effective financial management arrangements in place, with regular reports submitted to the Resources Committee and Executive Board.
- 7 Controls within the main financial systems were operating effectively while standards for the prevention and detection of fraud remain appropriate.

## Financial sustainability

- 8 The medium-term financial plan was revised in 2021/22 to take into account the impact of Covid-19 and this continues to have a significant impact on operational activities within sheriff and high courts.

## Governance and transparency

- 9 Arrangements have been adapted to reflect the impact of the Covid-19 pandemic. We have considered these measures and have concluded that COPFS has appropriate and effective governance arrangements in place.

## Value for money

- 10** Performance management and monitoring of key performance indicators has continued throughout 2021/22. However service performance levels for the investigation of deaths has deteriorated further.
- 11** Whilst a project was set up in 2016 to secure improved arrangements with service providers, there have been delays in the receipt of toxicology and post mortem results, which are necessary for the investigations of deaths. Delays in securing contracts with key stakeholders within the justice and health community has meant that the original objectives of the project have not yet been achieved.

---

# Introduction

---

1. This report summarises the findings from our 2021/22 audit of the Crown Office and Procurator Fiscal Service (COPFS).
2. The scope of our audit was set out in our Annual Audit Plan presented to the 3 March 2022 meeting of the Audit and Risk Committee. This report comprises the findings from:
  - an audit of COPFS' annual report and financial statements
  - consideration of the four audit dimensions that frame the wider scope of public audit set out in the [Code of Audit Practice 2016](#).
3. The main elements of our audit work in 2021/22 have been:
  - an audit of COPFS' 2021/22 annual report and financial statements including the issue of an independent auditor's report setting out our opinions
  - a review of the key financial systems
  - consideration of the four audit dimensions.

## Adding value through the audit

4. We add value to the body through the audit by:
  - identifying and providing insight on significant risks, and making clear and relevant recommendations
  - sharing intelligence and good practice through our national reports ([Appendix 3](#)) and good practice guides
  - providing clear and focused conclusions on the appropriateness, effectiveness and impact of corporate governance, performance management arrangements and financial sustainability.

## Responsibilities and reporting

5. COPFS has primary responsibility for ensuring the proper financial stewardship of public funds. This includes preparing an annual report and financial statements that are in accordance with the accounts direction from the Scottish Ministers.
6. COPFS is also responsible for establishing appropriate and effective arrangements for governance, propriety, and regularity.

**7.** Our responsibilities as independent auditor are established by the Public Finance and Accountability (Scotland) Act 2000 and the Code of Audit Practice 2016, and supplementary guidance and International Standards on Auditing in the UK. As public sector auditors we give independent opinions on the annual report and financial statements. Additionally, we conclude on the appropriateness and effectiveness of the performance management arrangements, the suitability and effectiveness of corporate governance arrangements, the financial position, and arrangements for securing financial sustainability. Further details of the respective responsibilities of management and the auditor can be found in the Code of Audit Practice 2016 and supplementary guidance.

**8.** This report raises matters from our audit. Weaknesses or risks identified are only those which have come to our attention during our normal audit work and may not be all that exist. Communicating these does not absolve management from its responsibility to address the issues we raise and to maintain adequate systems of control.

**9.** Our annual audit report contains an agreed action plan at [Appendix 1](#). It sets out specific recommendations, the responsible officers, and dates for implementation. It also includes any outstanding actions from last year and progress against these.

## Auditor Independence

**10.** Auditors appointed by the Accounts Commission or Auditor General must comply with the Code of Audit Practice and relevant supporting guidance. When auditing the financial statements auditors must comply with professional standards issued by the Financial Reporting Council and those of the professional accountancy bodies.

**11.** We can confirm that we comply with the Financial Reporting Council's Ethical Standard. We can also confirm that we have not undertaken any non-audit related services and the 2021/22 audit fee of £108,800 as set out in our 2021/22 Annual Audit Plan remains unchanged. We are not aware of any relationships that could compromise our objectivity and independence.

**12.** This report is addressed to both COPFS and the Auditor General for Scotland and will be published on Audit Scotland's website [www.audit-scotland.gov.uk](http://www.audit-scotland.gov.uk) in due course.

**13.** We would like to thank management and the staff who have been involved in our work, for their cooperation and assistance during the audit.

## Audit appointment from 2022/23

**14.** The Auditor General for Scotland is responsible for the appointment of external auditors to central government bodies. External auditors are usually appointed for a five-year term either from Audit Scotland's Audit Services Group or a private firm of accountants. The current appointment round was due to end in 2020/21 but this was extended for a year. Therefore 2021/22 is the last year of the current appointment round.

**15.** The procurement process for the new round of audit appointments was completed in May 2022. From financial year 2022/23 Audit Scotland will continue to be the appointed auditor for COPFS.

**16.** A new [Code of Audit Practice](#) applies to public sector audits for financial years starting on or after 1 April 2022. It replaces the Code issued in May 2016.

**17.** We would like to thank Board members, Audit and Risk Committee members, Executive Directors, and other staff, particularly those in Finance for their co-operation and assistance over the last six years.

---

# 1. Audit of 2021/22 annual report and accounts

The principal means of accounting for the stewardship of resources and performance

---

---

## Main judgements

Our audit opinions on the annual report and accounts are unmodified.

As a consequence of post balance sheet developments, material adjustments have been made to the annual accounts.

---

## Our audit opinions on the annual report and accounts are unmodified

**18.** The annual report and financial statements for the year ended 31 March 2022 were approved by the Audit and Risk Committee on 14 September 2022. As reported in the independent auditor's report:

- the financial statements give a true and fair view and were properly prepared in accordance with the financial reporting framework
- expenditure and income were regular and in accordance with applicable enactments and guidance
- the audited part of the remuneration and staff report, performance report and governance statement were all consistent with the financial statements and properly prepared in accordance with the relevant legislation and directions made by Scottish Ministers.

## The Covid-19 pandemic had minimal impact on the audit process

**19.** The completeness and accuracy of accounting records and the extent of information and explanations that we required for our audit were not affected by the Covid-19 outbreak. Similar to the previous two years, the audit was conducted remotely with audit evidence being provided electronically and audit meetings conducted via Microsoft Teams. During 2021/22 we welcomed the opportunity to have several meetings, including our final clearance meeting, in-person.

**20.** The working papers provided to support the financial statements were of a good standard and the audit team received good support from finance staff which helped ensure the final accounts audit process ran smoothly.

## Whilst the agreed deadline for completion of the audit was not achieved, due to late amendments, the accounts have been submitted earlier than the previous two years

**21.** The unaudited annual report and financial statements were received in line with our agreed audit timetable on 30 May 2022. However, management advised that there was the possibility of amendment to the financial statements due to anticipated post year end events resulting from ongoing litigation. Consequently, the audit was suspended and our sign-off date was postponed for two weeks to factor in and audit these late amendments. We were advised of the last amendment to the financial statements on 8 September 2022 and worked closely with officers to meet the revised Audit and Risk Committee (ARC) meeting date of 14 September 2022.

## Overall materiality is £2.4 million

**22.** Our initial assessment of materiality was carried out during the planning phase of the audit. This was reviewed on receipt of the unaudited annual report and financial statements and is summarised in [Exhibit 1](#). This did not have an impact on our audit approach.

### Exhibit 1

#### Materiality values

Materiality level	Amount
Overall materiality	£2.4 million
Performance materiality	£1.6 million
Reporting threshold	£120,000

Source: COPFS unaudited annual report and financial statements 2021/22

**23.** In determining performance materiality, we considered the following factors:

- auditor's understanding of the audited body - over the past six years of audit appointment we have not identified any significant issues from our planning or controls work, and in 2020/21 only a few minor issues were identified in our financial statements audit.
- nature and extent of misstatements identified in previous audits - no significant issues or misstatements were reported in the 2020/21 Annual Audit Report.
- issues identified during the performance of the risk assessment procedures - our planning work identified risks of material misstatement as noted in our Annual Audit Plan and how we would address these.

**24.** Given that no significant issues have been identified in prior years, we consider the level of performance materiality to be appropriate based on our experience with COPFS.

25. The overall scope of the audit was adapted to incorporate the significant assessed risks of material misstatement included within [Exhibit 3](#) to ensure each risk was addressed.

## We have one significant finding to report on the annual report and accounts

26. International Standard on Auditing (UK) 260 requires us to communicate significant findings from the audit to those charged with governance, including our view about the qualitative aspects of the COPFS' accounting practices.

27. We have one significant finding to report from the work completed and this relates to the significant risk of material misstatement in relation to estimates and judgements over provisions and contingent liabilities. This has also been included in the action plan in [Appendix 1](#).

28. The significant finding is summarised in [Exhibit 2](#).

### Exhibit 2

#### Significant findings from the audit of the financial statements

Issue	Resolution
<p><b>Estimation and judgements over provisions and contingent liabilities</b></p> <p>COPFS is required to evaluate whether any legal cases against it require provision and/or disclosure by the time the annual accounts are signed by the Accountable Officer.</p> <p>This was raised as a risk in our Annual Audit Plan. In line with International Standard on Auditing (ISA 501) Audit Evidence – Specific Considerations for Selected Items, Litigation and Claims we had to determine the adequacy of the accounting treatment/disclosure of provisions and contingent liabilities.</p> <p>On receipt of the unaudited accounts it was noted that the accounts omitted a provision in relation to ongoing litigation.</p> <p>Post balance sheet, certain legal cases have progressed and it has been during the audit process that management has had to re-examine compliance with IAS37: Provisions, Contingent Liabilities and Contingent Assets.</p> <p>Cases are at varying stages of litigation and remain confidential until concluded.</p>	<p>Multiple discussions were held with senior staff over the course of the audit regarding this area including discussions at the ARC (private session).</p> <p>Additional information was received in late August 2022 from COPFS and subsequently reviewed by audit. A further event occurred on 8 September. Management has adjusted for post balance sheet events. The impact is an increase to expenditure of £17.7 million.</p> <p>In agreement with the Scottish Government, the provision is being treated as a charge against Annually Managed Expenditure (AME). The Scottish Government has authorised the 2021/22 overspend, which has increased to £16.0 million as a result of these late adjustments.</p> <p>The Performance Report and the Parliamentary Accountability Report have both been updated to reflect the revised outturn position, as have all associated notes and disclosures.</p> <p>In view of the ongoing litigation there remain contingent liabilities and this has also been disclosed in the notes to the accounts.</p> <p>Officers continue to re-assess the likelihood of liability in accordance with IAS 37:</p>

Issue	Resolution
	<p>Provisions, contingent liabilities and contingent assets, and have sought external expert advice to determine the most reliable estimate for inclusion as a provision.</p> <p>We are satisfied that we can place reliance on management's experts. Consequently, we are satisfied with the estimation and judgements applied to provisions and contingent liabilities.</p>

Source: Audit Scotland

**29.** We have obtained audit assurances over the identified significant risks of material misstatement to the financial statements. [Exhibit 3](#) sets out the significant risks of material misstatement to the financial statements we identified in our 2021/22 Annual Audit Plan. It summarises the further audit procedures we performed during the year to obtain assurances over these risks and the conclusions from the work completed.

**30.** In summary we have obtained audit assurances over the identified significant risks of material misstatement to the financial statements.

### Exhibit 3

#### Significant risks of material misstatement in the financial statements

Audit risk	Assurance procedure	Results and conclusions
<p><b>1. Risk of material misstatement due to fraud caused by the management override of controls.</b></p> <p>As stated in International Standard on Auditing (UK) 240, management is in a unique position to perpetrate fraud because of management's ability to override controls that otherwise appear to be operating effectively.</p>	<p>Assess the design and implementation of controls over journal entry processing.</p> <p>Make inquiries of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments.</p> <p>Test journals at the year-end and post-closing entries and focus on significant risk areas.</p> <p>Consider the need to test journal entries and other adjustments during the period.</p>	<p><b>Results and significant judgements:</b> From the audit testing that we carried out, there was no evidence of management override of controls.</p> <p><b>Conclusion:</b> Satisfactory - we did not identify any instances of management override of controls or fraud in our 2021/22 testing.</p>

Audit risk	Assurance procedure	Results and conclusions
	<p>Evaluate significant transactions outside the normal course of business.</p> <p>Assess the adequacy of controls in place for identifying and disclosing related party relationship and transactions in the financial statements.</p> <p>Assess any changes to the methods and underlying assumptions used to prepare accounting estimates compared to the prior year.</p> <p>Substantive testing of income and expenditure transactions around the year-end to confirm they are accounted for in the correct financial year.</p> <p>Focussed testing of accounting accruals and prepayments.</p>	
<p><b>2. Estimation and judgements over provisions and contingent liabilities</b></p> <p>There is a significant degree of subjectivity in the measurement of material account areas of provisions and contingent liabilities.</p> <p>COPFS is required to evaluate whether any legal cases against it require disclosure by the time the annual accounts are signed by the Accountable Officer.</p> <p>It is essential that each disclosure is based on sound professional judgement.</p> <p>There is a risk of misstatement in the accounts over the completeness, presentation, and disclosure of these items.</p>	<p>Review the information provided by legal counsel to assess for completeness.</p> <p>Obtain an understanding of management's involvement in the estimation process to assess if appropriate oversight has occurred.</p> <p>Critically assess the adequacy of the COPFS disclosures regarding the assumptions in relation to contingent liabilities.</p>	<p><b>Results and significant judgements:</b></p> <p>Refer to paragraphs <a href="#">26-30</a> and <a href="#">Exhibit 2</a> above for details.</p> <p><b>Conclusion:</b> We are satisfied with the estimation and judgements applied to provisions and contingent liabilities.</p>

## Other areas of audit focus

**31.** We identified in our 2021/22 Annual Audit Plan areas where we considered there to be other risks of material misstatement to the financial statements. Based on our assessment of the likelihood and magnitude of the risk, we did not consider these to represent significant risks. The area of specific audit focus was:

- Property, Plant and Equipment - COPFS held land and buildings with a NBV of £21.9 million as at 31 March 2022, of which £13.4 million is owned. Land and buildings are revalued on a three-year rolling basis. An external valuer carries out valuations of land and buildings. There is a significant degree of subjectivity in the valuation of land and buildings. Valuations are based on specialist and management assumptions and changes in these can result in material changes to valuations. There is also the risk, for those assets that have not been subject to revaluation in year, that the carrying value does not reflect current value.

**32.** We kept this area under review throughout our audit and based on the findings of the audit procedures performed, there are no matters which we need to bring to your attention.

## Limited progress was made on the prior year recommendation

**33.** COPFS has made limited progress in implementing our prior year audit recommendation regarding securing the continuity of service provision to fulfil COPFS' role for the investigation of sudden or suspicious deaths. Further details can be found in [Part 5](#) of this report.

---

## 2. Financial management

Financial management is about financial capacity, sound budgetary processes and whether the control environment and internal controls are operating effectively.

---

### Main judgements

COPFS operated within its revised Departmental Expenditure Limits, reporting a Scottish Government approved overspend of £16.0 million due late adjustments with regards to ongoing litigation.

COPFS have appropriate and effective financial management arrangements in place, with regular reports submitted to the Resources Committee and Executive Board.

Controls within the main financial systems were operating effectively while standards for the prevention and detection of fraud remain appropriate.

---

### COPFS overspent its budget in 2021/22

**34.** The main financial objective for the body is to ensure that the financial outturn for the year is within the budget allocated by Scottish Ministers. COPFS has overspent its 2021/22 total budget by £16.0 million and has received Scottish Government approval for this. This is due to an overspend in non-cash Annually Managed Expenditure (AME) of £17.7 million due to costs arising from ongoing court proceedings against the COPFS.

**35.** The Inner House of the Court of Session clarified the law on the common law immunity from suit of the Lord Advocate in exercising the prosecutorial function on 30 October 2019. COPFS has been involved in civil litigation brought against the Lord Advocate by individuals prosecuted in connection with the acquisition and administration of Rangers Football Club since August 2016. Some cases have resolved, while others are ongoing.

**36.** To date the COPFS has incurred £60 million of unplanned costs in connection with claims against the Lord Advocate: 2021/22: £19 million, 2020/21: £27.9 million, 2019/20: £12.6 million.

**37.** The Lord Advocate made a statement in the Scottish Parliament about this matter on 9 February 2021 and has committed to further public accountability and to a process of inquiry once all litigation has concluded.

**38.** COPFS has reported a total DEL (resource and capital) outturn of £178 million against budget for 2021/22 with an underspend of £1.7 million. The late AME adjustment results in a total overall overspend for the 2021/22 financial year of £16.0 million.

39. The financial performance against fiscal resources is shown in [Exhibit 4](#).

#### Exhibit 4

Performance against fiscal resource in 2021/22

Performance	Initial budget £m	Final budget £m	Outturn £m	Over/(under) spend £m
Resource DEL	151.9	171.5	168.8	(2.7)
Capital DEL	4.8	8.2	9.2	1.0
<b>Total DEL</b>	<b>156.7</b>	<b>179.7</b>	<b>178.0</b>	<b>(1.7)</b>
AME Provision 2021-22	0	0	17.7	17.7
AME Provision 2020-21 Utilised	0	(10.9)	(10.9)	0
<b>Total</b>	<b>156.7</b>	<b>168.8</b>	<b>184.8</b>	<b>16.0</b>

Source: COPFS Annual Report and Financial Statements 2021/22

#### Budget processes were appropriate with no significant financial impact on resources due to Covid-19

40. COPFS' budget was increased as part of the Autumn and Spring Budget revisions. Additional funding from the Scottish Government totalled £23 million. The majority of the additional funding relates to the additional provision required late in 2020/21 and utilised in 2021/22.

41. The increases to the capital budget were to support capital refurbishments and further investment in IT, as part of delivering the Digital Strategy, and other transformation projects within COPFS.

42. We observed that senior management and the Audit and Risk Committee continued to receive regular budget monitoring reports.

#### Financial systems of internal control are operating effectively

43. Our management letter presented to the Audit and Risk Committee on 25 May 2022 detailed our findings from the review of the main systems of internal control. We concluded that the controls tested were operating effectively.

44. No significant internal control weaknesses were identified during the audit which could affect COPFS' ability to record, process, summarise and report financial and other relevant data to result in a material misstatement in the financial statements.

## **Standards of conduct and arrangements for the prevention and detection of fraud and error are appropriate**

**45.** There are appropriate arrangements for the prevention and detection of fraud, error, and irregularities. COPFS is responsible for establishing arrangements for the prevention and detection of fraud, error and irregularities, bribery, and corruption. Furthermore, the board is responsible for ensuring that its affairs are managed in accordance with proper standards of conduct by putting effective arrangements in place.

**46.** We have reviewed the arrangements in place to maintain standards of conduct including COPFS' Making the Most of our Money booklets. There are established procedures for preventing and detecting any breaches of these standards including any instances of corruption.

### **National Fraud Initiative**

**47.** The National Fraud Initiative (NFI) is a counter-fraud exercise across the UK public sector which aims to prevent and detect fraud. COPFS is pro-active in investigating matches and reporting the outcomes of NFI activity. COPFS have investigated all matches and no fraud was identified. The results of this exercise were reported to the Audit and Risk Committee in May 2022.

**48.** During 2021/22 COPFS introduced enhanced counter fraud procedures relating to expenditure payments. This was introduced alongside their improved fraud and whistleblowing intranet site and related policies. The site includes sections on counter fraud, fraud and irregularities, code of conduct and cybersecurity. The launch and associated policies were communicated to all staff.

---

## 3. Financial sustainability

Financial sustainability looks forward to the medium and long term to consider whether a body is planning effectively to continue to deliver its services

---

### Main judgements

The medium-term financial plan was revised in 2021/22 to take into account the impact of Covid-19 and this continues to have a significant impact on operational activities within sheriff and high courts.

---

### COPFS have revised their strategic plan and financial strategy to reflect the impact of the Covid-19 pandemic

**49.** COPFS published their Strategic Plan 2020-23 in July 2020. It was subject to review and updated in August 2022. The Finance Strategy (2020-23) was approved at the Executive Board in May 2021 and is supported by a medium-term financial plan (2021/22 to 2024/25) which went to the August 2021 Resources Committee. The objective of the plans is to provide services which, as a minimum, meet reasonable public expectations with regard to the scope, quality and timeliness of the services.

**50.** The medium-term financial plan reflected that staff levels would increase by 235 full time equivalent (FTE) from 2020/21 to 2021/22. This is in line with COPFS' long term people strategy and workforce plans to meet organisational objectives and public expectations; to deal with the increase in caseloads, complexity of cases and special investigations including historic sexual abuse cases.

**51.** This increase in FTE reflects the trend over the past six years, due to increased serious and complex caseloads as well as demands brought on by the Covid-19 pandemic. This has resulted in an increase in their staff cost budget of £42.5 million over the last six years. The staff cost budget has also increased due to COPFS securing additional funding after agreeing improved terms and starting salary for trainee solicitors. The staff cost analysis is shown in [Exhibit 5](#).

**Exhibit 5****Staff Costs and Full Time Equivalent (FTE) from 2016/17 to 2021/22**

	2016/17 £000	2017/18 £000	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000
Staff costs	71,746	73,941	79,312	90,052	100,003	114,256
FTE (#s)	1,617	1,598	1,699	1,814	1,912	2,254

Source: COPFS Annual Report and Financial Statements 2016/17 - 2021/22

**52.** The medium-term financial plan takes account of the impact of Covid-19 on future operational activities, court activity and recovery programmes as part of the Recover, Renew, Transform (RRT) programme. The RRT programme's purpose is to enable the justice system to be able to not just operate/return to pre-Covid-19 levels, but also prepare for future transformation of the service.

**53.** Covid-19 has impacted across the whole of the justice system. COPFS continues to make use of the pandemic emergency legislation, including use of virtual courts and introduction of additional recovery courts within the sheriff and high courts to reduce the significant backlog of criminal cases. Court recovery (e.g. functions returning to normal) is not expected to be achieved until quarter 3 of 2027.

**54.** The pandemic has highlighted the critical importance of reliable technology, partnership working and workforce planning across the justice system. New and innovative ways of working have been introduced to aid recovery of the system. This has seen an increase in court business being handled virtually and case information shared digitally. The Scottish Government provided additional funding for investment in court technology and towards the establishment of remote jury centres to enable serious criminal cases to be heard. COPFS' Digital Strategy 2017-22 is due to be revisited and updated during 2022/23 as part of the ongoing recovery. It is also subject to annual review to ensure the strategic approach remains appropriate and to confirm implementation priorities.

**55.** COPFS have identified the following key achievements and challenges as part of the RRT programme in responding to Covid-19<sup>1</sup>:

<sup>1</sup> Extract from Scottish Government report: [Justice - vision and priorities report](#)

- Extensive work has been undertaken by COPFS and justice partners, including the Scottish Court and Tribunal Service and Police Scotland, to mitigate the impact of the delays on the public. It is recognised that the impact of the pandemic has been especially hard on witnesses and victims of crime due to delays in bringing their cases to court. Such delays can cause witnesses to withdraw and/or the quality of the evidence to diminish.
- Digital solutions have been a critical feature of the justice system's response to the pandemic. For example, in the custody courts video links between police custody suites and the court have been used since the start of the pandemic. That service remains in place and, to date, 3,500 virtual custody hearings have taken place.
- Advocate Deputes have been appearing in entirely virtual appeal court hearings and the Solicitor General has argued a virtual appeal in the United Kingdom Supreme Court. The COPFS case management in court ("CMiC") programme (effectively the digitalisation and use of electronic documents) and use of tablets in summary cases has been very significant throughout the crisis. All Advocate Deputes, whether they have appeared in the physical courts, the virtual courts, or the administrative courts, have had access to their documentation on tablets, either at the court or at home, to enable them to conduct the trial or procedural hearing.

**56.** COPFS submitted their five year strategic approach to budgeting (SAB) paper to the Scottish Government in March 2022. This is part of the wider Scottish Government Resource Spending Review which is designed to identify how COPFS' core activities meet the Scottish Government priorities and if any savings can be found as a result of process review or new initiatives. This provides a longer-term view on the impact of decisions taken in year, the impact on future years and includes horizon scanning for possible future pressures and opportunities for savings that can be realised.

**57.** COPFS have secured a total budget of £180.9 million (increase of 12.5%) for 2022/23, which includes a resource budget settlement of £169.8 million, non-cash budget of £5.8 million and capital budget of £5.3 million. The budget increase recognises the continuing trend in increase in volume and complexity of cases, and more complex investigations and court hearings. As reported above examples include a rise in sexual offences, an increase in major crimes and increased volumes and complexity of evidence as a consequence of the expanded use of social media and electronic communication. Part of the increase is a direct result of COPFS securing additional funding after agreeing improved terms and starting salary for all staff.

---

# 4. Governance and transparency

The effectiveness of scrutiny and oversight, and transparent reporting of information

---

## Main judgements

Arrangements have been adapted to reflect the impact of the Covid-19 pandemic. We have considered these measures and have concluded that COPFS has appropriate and effective governance arrangements in place.

---

### The governance arrangements and controls operating during the Covid-19 pandemic have been appropriate

**58.** We reported in our 2020/21 annual audit report on the revised governance arrangements introduced by COPFS including:

- home working for the majority of staff
- holding Audit and Risk Committee and Board meetings on Microsoft Teams
- enhanced internal controls and assurance over financial management and reporting, governance, and risk management.

**59.** We have confirmed that the majority of these arrangements have been maintained in 2021/22 and remain appropriate. COPFS have introduced hybrid working for staff during 2021/22, following the re-opening of offices and courts and this appears to be working well.

### The performance report was of a good standard

**60.** In addition to the opinion on the performance report covered in [Part 1](#) of this report, we also consider the qualitative aspects of COPFS' performance report. The performance report should provide information on the organisation, its main objectives and the principal risks. Additionally, it should provide a fair, balanced and understandable analysis of performance as well as helping stakeholders understand the financial statements.

**61.** The performance report submitted for audit was compliant with the FReM and SPFM requirements. We are pleased to report the continued improvement in the quality, structure and content of the performance report.

# 5. Value for money

Using resources effectively and continually improving services

## Main judgements

Performance management and monitoring of key performance indicators has continued throughout 2021/22. However service performance levels for the investigation of deaths has deteriorated further.

Whilst a project was set up in 2016 to secure improved arrangements with service providers, there have been delays in the receipt of toxicology and post mortem results, which are necessary for the investigations of deaths. Delays in securing contracts with key stakeholders within the justice and health community has meant that the original objectives of the project have not yet been achieved.

**62.** COPFS continued to monitor key performance indicators throughout the year, with performance reported to the Resources Committee and Operational Performance Committee, Senior Executive Team and Executive Board on a regular basis.

## Risks identified from the auditor's wider responsibility under the Code of Audit Practice

**63.** We have identified audit risks in the area set out in [Exhibit 6](#). This exhibit sets out the risk, sources of assurance from management arrangements and the further audit procedures we performed to gain assurances over the risk.

### Exhibit 6

Risks identified from the auditor's wider responsibility under the Code of Audit Practice

Audit risk	Assurance procedure	Results and conclusions
<p><b>Procurement contract for morbid toxicology and post mortem</b></p> <p>The pathology and toxicology contract remains the largest and most significant procurement exercise in COPFS and has been ongoing for several years. Discussions with officers indicate approximately 20% increase in volume of cases</p>	<p>Appropriate external expertise has been sourced and dedicated to negotiating and delivering a revised contractual structure for all Pathology services.</p> <p>A Pathology Programme Board made up of key internal and external stakeholders is in place and managing the delivery of the revised service structure.</p>	<p><b>Ongoing with revised contracts extended to March 2024.</b></p> <p>Refer <a href="#">paragraphs 64-74</a> for details.</p> <p>COPFS have a contract with the University of Glasgow for the post-mortem toxicological support services in Scotland (excluding Aberdeenshire and the Highlands).</p>

Audit risk	Assurance procedure	Results and conclusions
<p>but the backlog is being addressed.</p> <p>There remains an overall risk to continuity of the service and wider reputational and operational risks specifically for the investigation of deaths and resultant KPIs.</p>	<p>Regular updates are provided to the Senior Executive Team and Executive Board. The necessary action plans are in place to manage and mitigate risk with appropriate updates provided to the Pathology Programme Board and Risk Management Group.</p>	<p>The University is currently working through a transition process (agreed with COPFS and Scottish Government) for the transfer of the PMTSS to the Scottish Police Authority.</p> <p>To avoid disruption of service, COPFS plan to procure the provision of external PMTSS support during the transition to provide support which will supplement the current service as opposed to replacing it.</p> <p>COPFS meet regularly with Justice, Health and Cabinet stakeholders to report on progress.</p> <p>Gateway review into the Pathology and Mortuary Service commissioned by COPFS through the SG is currently underway and due to be completed in September 2022.</p> <p>Refer <a href="#">Appendix 1</a> – Action point 1</p>

## Service performance in the investigation of deaths has deteriorated further in 2021/22

**64.** The Lord Advocate is responsible for the investigation of sudden and suspicious deaths. The service standard is that where a death requires further investigation, COPFS will advise the next of kin of the result within 12 weeks in at least 80% of cases.

**65.** We reported in 2019/20 and 2020/21 that service performance had deteriorated. In 2021/22 the service performance has deteriorated even further and is at its lowest level with only 50% of deaths which require further investigation being completed within the 12 week target. This has operational and reputational implications for the COPFS and other key justice stakeholders such as the Scottish Police Authority and the Scottish Courts and Tribunal Service. [Exhibit 7](#) presents the KPI over the last six years.

**Exhibit 7****Key performance indicator – trend analysis**

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Investigation of deaths (80% target)	● 89%	● 89%	● 89%	● 70%	● 58%	● 50%

Source: COPFS Annual Report and Financial Statements 2016/17 – 2021/22

**Background**

**66.** As reported in the annual report and financial statements, many deaths require a post-mortem examination. Pathologists are unable to conclude their examinations and submit their final reports to the Procurator Fiscal until they receive the toxicology results. The Scottish Police Authority has the legislative duty to carry out all toxicological services notwithstanding the fact that COPFS contracts with the University of Glasgow (until 30 November 2022) and NHS Grampian under sub-contract to Aberdeen University for this service. Scottish local authorities have the legislative duty to deliver mortuary services although COPFS contracts with several Health Boards for this service.

**67.** In 2016 it was recognised that improvements in service provision were required to ensure a sustainable, high quality national pathology and toxicology service in Scotland, with justice and health partners working together. A pathology, toxicology and mortuary programme board (PTM) was established to monitor the pathology contract, toxicology performance and service continuity, and to secure the procurement of new pathology and mortuary service provision. The impact of these revised and renegotiated contracts was to improve value for money and secure continuous improvement in these related services.

**68.** Despite these intentions, since February 2019, COPFS has experienced delays in the provision of toxicology results from the main service provider. Consequently, there were delays in the provision of pathologists' final reports to COPFS at the conclusion of investigations. A timeline of events has been prepared by audit and can be found in [Appendix 2](#).

**Progress on securing pathology, toxicology and mortuary contracts has been slow**

**69.** A project manager was recruited in November 2017, initially for six weeks, and whose contract has been regularly extended, now to March 2024.

**70.** The pathology contract renegotiation and toxicology transition is complex and of significant operational importance. It has proven to be a lengthy process to procure 'fit for purpose' toxicology and post mortem services. Whilst these areas are related, they are provided as separate services and therefore numerous suppliers and justice and health stakeholders are involved; there is no single contract. The challenge has been compounded by the additional demands placed on the services, arising from Covid-19.

**71.** COPFS currently contracts with the University of Glasgow for post-mortem toxicological services for the whole of Scotland (excluding Aberdeenshire and the Highlands). The University is currently working through a transition process for the transfer of this service to the Scottish Police Authority (SPA) effective from 1 December 2022. There may be periods when the University is not able to fully engage with operational service delivery and therefore service provision will require to be supplemented and supported. To address this, COPFS has advertised to procure a Post Mortem Toxicology Support Service (PMTSS) to supplement the existing service and this contract will be awarded in September 2022.

**72.** Current service providers contracted to COPFS for mortuary services include local authorities and certain NHS Boards and all contracts have been further extended to March 2024 (previously March 2022).

**73.** The Programme Board continued to meet during 2021/22 and formal arrangements remain in place to brief key stakeholders on the development of procurement arrangements as they progress. The latest reported update (May 2022) is that the project is due to be completed and all contracts in place by March 2024.

**74.** A Gateway Review of Pathology Services is currently underway by the Scottish Government's Portfolio, Programme and Project Assurance Team, estimated to be completed in late September 2022. The review will go to COPFS management including the Audit and Risk Committee and shared with wider justice partners.

---

## Recommendation 1

Progress needs to be made to secure continuity of service provision for COPFS to fulfil its statutory role for the timely investigation of sudden or suspicious deaths.

---

### National performance audit reports

**75.** Audit Scotland carries out a national performance audit programme on behalf of the Accounts Commission and the Auditor General for Scotland. In 2021/22 several reports were published which may be of direct interest to the body. These are outlined in [Appendix 3](#).

# Appendix 1: Action plan 2021/22

## 2021/22 recommendations

Issue/risk	Recommendation	Agreed management action/timing
<p><b>1. Value for money – Pathology, post mortem and mortuary contracts</b></p> <p>As we reported in our 2019/20 and 2020/21 Annual Audit Reports, there have been significant delays in the provision of toxicology and post mortem reports. This has resulted in delays in the provision of pathologists' final reports to COPFS and the ability to conclude on investigations.</p> <p>For 2021/22, the position remains largely unchanged however we do note contracts have all now been agreed to commence from April 2024. The position and poor performance is reflected in the significant decrease in COPFS' KPIs for the investigations of deaths.</p> <p>COPFS continue to work on procuring a new toxicology and post mortem service fit for the future working with Justice and Health partners.</p> <p>There is an overall risk to the continuity of service, and wider operational and reputational implications.</p>	<p>Progress needs to be made to secure continuity of service provision for the COPFS to fulfil its role for the investigation of sudden or suspicious deaths (refer paragraphs 66-77 above).</p>	<p><b>Agreed action:</b></p> <p><b>Toxicology</b> - The level of performance has improved and has been sustained for some time now within agreed performance targets. Revised performance targets that will result in further service improvement have been agreed and will be implemented in the current financial year and will cover the full period of the transition to SPA.</p> <p>The transition to SPA is well underway and COPFS is represented on both the Delivery Board and Steering Committee in addition to attendance at various other integral operational meetings.</p> <p><b>Pathology and Mortuaries</b> - An Action Plan covering the response of COPFS to a range of potential outcomes has been drafted and discussed at the Programme Board. This Action Plan will mitigate any risks to pathology service continuity.</p> <p><b>Responsible Officer:</b> Deputy Crown Agent Agreed</p> <p><b>Agreed Date(s):</b></p> <p><b>Toxicology Targets:</b> period to 30 November 2022</p>

Issue/risk	Recommendation	Agreed management action/timing
		<p><b>Service Transition:</b> as above to 31 March 2024 subject to Gateway Review</p> <p><b>Pathology Procurement:</b> 1 April 2024 subject to Gateway Review</p>

---

# Appendix 2: Pathology, toxicology and post mortem contract timeline

Date	Area and Description of events		
November 2017	Draft transitional letters of arrangement	December 2017	Initial project plan agreed
	Issue & sign transitional letter contracts	January 2018	
	Finalise new contracts	November 2018	
	Procure and implement new contracts	April 2019	
May 2018	All current contracts to terminate on 31 May 2018 except for Edinburgh City mortuary	To be replaced by new transitional contracts.	
December 2019	Project now moved to the following strands: Morbid Toxicology Pathology Mortuary	Contract extensions planned until end of January 2021	
February 2020	Morbid Toxicology	Performance issues significantly affecting KPIs	
February 2020	Pathology – 7 out of 9 providers signed up to contract extensions (A&A and Dundee not signed)	1 April 2021 still go live date for national pathology services	
February 2020	Mortuary – Councils don't have the capacity	Evaluating whether to use private suppliers	
April 2020	Forensic & Non- Forensic pathology and Mortuary Services	Prior Information Notice (PIN) on public contracts Scotland website	

Date	Area and Description of events	
June 2020	Forensic & Non- Forensic pathology and Mortuary Services	Not much interest in National contract
January 2021	Pathology	Deadline for contract completion 1 October 2021
January 2021	Mortuary	COPFS to end all contracts by 30 September 2021. NHS is responsible for mortuary services from 1 October 2021
January 2021	Morbid Toxicology	Interim contract until 31 March 2022 when transfer of service to SPA due on 1 April 2022, however, SPA not signed up yet
May 2021	Morbid Toxicology	Transfer of service to be delayed from April to November 2022
June 2021	Pathology	Aberdeen and Lothian have submitted bids, however, still awaiting on Glasgow bid
June 2021	Mortuary	Contracts extended to 31 March 2022. All services still working under general contractual arrangements
February 2022	Pathology	Procurement completed for 3 areas (East/ North/ West) however, contract not signed. <b>All contracts extended now to March 2024</b>
February 2022	Morbid Toxicology	Transition to SPA commencing September 2022 and <b>planned completion 1 December 2022</b>
February 2022	Mortuary	Previous contract extended to March 22, however, <b>contract now extended to March 2024</b>

Source: COPFS

# Appendix 3: Summary of 2021/22 national performance reports

---

## May

[Local government in Scotland Overview 2021](#)

## June

[Covid 19: Personal protective equipment](#)

## July

[Community justice: Sustainable alternatives to custody](#)

## September

[Covid 19: Vaccination programme](#)

## January

[Planning for skills](#)

[Social care briefing](#)

## February

[NHS in Scotland 2021](#)

## March

[Local government in Scotland: Financial Overview 20/21](#)

[Drug and alcohol: An update](#)

[Scotland's economy: Supporting businesses through the Covid 19 pandemic](#)

# Crown Office and Procurator Fiscal Service

## 2021/22 Annual Audit Report

Audit Scotland's published material is available for download on the website in a number of formats. For information on our accessibility principles, please visit:

[www.audit-scotland.gov.uk/accessibility](http://www.audit-scotland.gov.uk/accessibility)



Audit Scotland, 4th Floor, 102 West Port, Edinburgh EH3 9DN  
T: 0131 625 1500  
E: [info@audit-scotland.gov.uk](mailto:info@audit-scotland.gov.uk)  
[www.audit-scotland.gov.uk](http://www.audit-scotland.gov.uk)