

The 2021/22 audit of the

Commissioner for Ethical Standards in Public Life in Scotland



AUDITOR GENERAL 

Prepared for the Public Audit Committee by the Auditor General for Scotland
Made under section 22 of the Public Finance and Accountability (Scotland) Act 2000

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Introduction

1. I have received the audited [annual report and accounts](#) and the [independent auditor's report](#) for the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner's Office) for 2021/22. I am submitting these financial statements and the auditor's report under section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report that I have prepared under section 22(3) of the Act.¹
2. The auditor issued an unqualified opinion on the Commissioner's Office financial statements for 2021/22. Last year, I prepared a report² to draw the Scottish Parliament's attention to significant concerns about the operation of the Commissioner's Office and the impact on the effectiveness of the Commissioner's key statutory functions.
3. Since I last reported, the Commissioner's Office has made progress in addressing substantial weaknesses in the way it is run. It has re-established some fundamentals that every public body needs to operate effectively including an internal audit function, business plans and a risk register. Other important improvement actions are still being progressed and it is likely that the challenges that the Commissioner's Office faces will continue into future years. Most significantly, having largely addressed previous vacancies the Commissioner's Office is further building its staffing capacity to help it address its caseload. I have prepared this follow-up report to highlight the progress made and the challenges that remain to be addressed.
4. My conclusions are limited to the consideration of the annual report and accounts and the auditor's annual audit report.

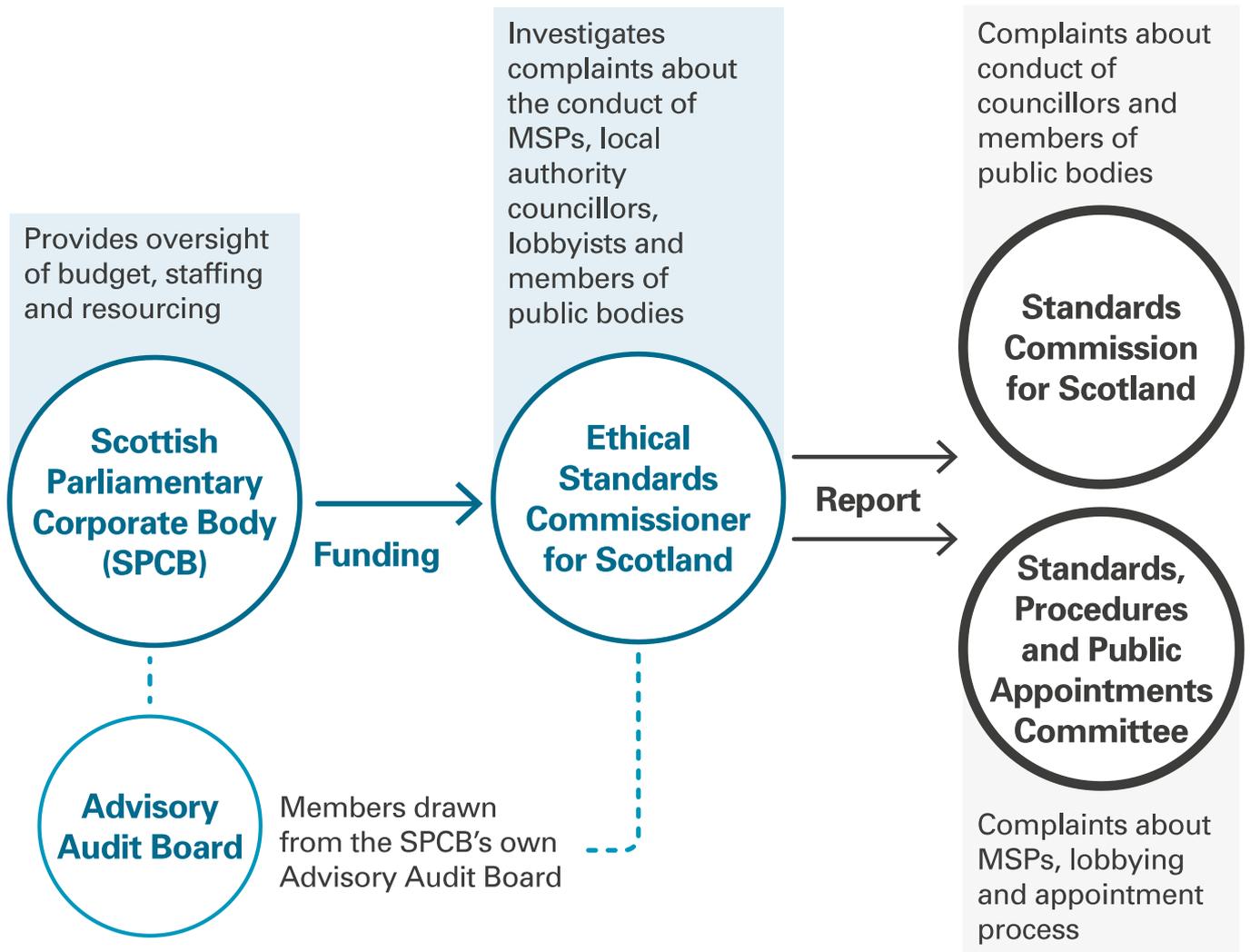
Background

5. The Ethical Standards Commissioner (the Commissioner) is an independent regulator appointed and funded by the Scottish Parliamentary Corporate Body. The Commissioner's Office investigates complaints about the conduct of MSPs, local authority councillors, lobbyists and members of public bodies. It also regulates how people are appointed to the boards of public bodies.
6. Where the Commissioner's Office identifies a potential breach of the relevant Code of Conduct, it refers this to:
 - the Standards Commission for Scotland (the Standards Commission) in the case of councillors and members of public bodies.
 - the Scottish Parliament for MSPs.

¹ Section 22(3) of the Act states, "The auditor (unless the Auditor General) must send the account and the auditor's report to the Auditor General, who may prepare a report on the account."

² [The 2020/21 audit of the Commissioner for Ethical Standards in Public Life in Scotland](#), Audit Scotland, December 2021.

Exhibit 1
Relationships between key stakeholders



Source: Audit Scotland

7. Further information on the Commissioner’s Office’s statutory functions and key legislation which underpins this is detailed on page 8 of the annual report and accounts.

8. The Commissioner, following a period of extended absence from March 2021, resigned in June 2022, effective from 30 April 2022. On 20 April 2021 the Scottish Parliamentary Corporate Body (SPCB) appointed the Public Appointments Manager as Acting Commissioner, and the Head of Corporate Services as Acting Accountable Officer. These arrangements were in place for the remainder of the 2021/22 financial year.

Implementing audit recommendations

9. I previously reported that it is vital that recommendations made by the auditor are implemented and that the Commissioner’s Office progresses planned work

to address substantial weaknesses in governance. The auditor has reported progress made against the 22 recommendations made in 2020/21.

10. Ten of these recommendations are fully implemented and relate in the main to implementing fundamental governance functions. This includes:

- putting in place an internal audit function
- developing a business plan
- building training arrangements for staff
- implementing a risk register.

11. A further ten recommendations are in progress. Principally these relate to:

- staffing, such as workforce plans, recruitment and staff surveys
- performance, such as performance management plans and introducing a full investigations manual
- further governance and oversight arrangements, including engaging with the SPCB on improving governance structures.

12. Two recommendations are not yet progressed. A recommendation to monitor savings is no longer considered applicable, following the reversal of previous organisational restructuring in 2021/22. The recommendation for a medium-term financial plan has not yet been implemented and is now planned to be in place by the end of 2022/23. There were no further recommendations made by the auditor in the course of the 2021/22 audit.

Establishing effective governance and internal processes

13. In the Governance Statement within the annual report and accounts (page 51), the Commissioner's Office Accountable Officer concludes that she is "satisfied that overall an effective system for ensuring appropriate governance of the organisation was reinstated during the year. There is further work required to create a fully robust system of governance with plans to achieve this in place and fully documented".

14. This assessment reflects the improvement made since I last reported. In 2020/21, the Acting Accountable Officer had stated that she was not satisfied that an effective system of governance operated, with the auditor also concluding that arrangements in place were ineffective.

15. I am pleased that the Commissioner's Office has re-established many of the fundamental elements of effective governance in 2021/22. The auditor states (page 21) that the "Commissioner's Office has worked quickly to implement a number of the recommendations raised in our 2020/21 audit". The auditor notes that the internal auditors appointed in 2021/22 carried out their own corporate governance review. The internal auditors concluded that substantial assurance could be provided over the Commissioner's Office governance arrangements (page 4 of the auditor's report). The auditor also states that issues remain

where the SPCB and the Commissioner's Office need "to work together to address some of the specific governance issues identified" (page 21).

16. I previously highlighted the breakdown in key relationships resulting in a lack of scrutiny and challenge of the Commissioner's Office during 2020/21. These relationships are being restored, with the auditor noting re-engagement with the Audit Advisory Board (AAB) during the year, as well as the SPCB.

17. In 2020/21, for the first time, the Standards Commission for Scotland (SCS) took the significant step of issuing statutory directions. Statutory directions are made under the Ethical Standards in Public Life etc. (Scotland) Act 2000 and aim to provide the SCS with assurance that the Commissioner's Office is acquitting its functions in accordance with its founding legislation. The Commissioner's Office notes that these directions remained in place for 2021/22 and are being fully complied with (page 11).

18. The Acting Ethical Standards Commissioner highlights the challenge of implementing auditor recommendations alongside meeting the Office's core statutory functions (page 7). The Acting Commissioner describes the process as "akin to rebuilding a plane in flight" with the Commissioner's Office on the "road to recovery". The dual task of meeting core business demands alongside progressing the remaining auditor recommendations mean that significant pressures on the Commissioner's Office are likely to continue in the coming year.

19. A key recommendation in 2020/21, noted as partially implemented in the auditor's report, was the production of an investigations manual to ensure consistency and compliance across all cases. This was made following legal advice obtained by the Commissioner's Office which found that the operation of the investigation process (as amended in August 2020) and the assessment process did not previously comply with the required legislation.

20. It is encouraging that a draft investigations manual has now been produced, with the auditor noting that its assessment criteria has been shared with the SCS to ensure that they are compatible with the directions issued. The management update to the auditor's recommendation states that the procedures set out in it have been "adopted incrementally as they have been developed over the course of the year". The draft manual includes references to maintaining an audit trail of decisions made, and the Commissioner's Office intends to make the contents of the manual publicly available. Factors such as these will help build public trust and transparency around the Commissioner's Office procedures. It will be important that the current processes outlined in the investigation manual allow for timely quality and compliance checks to mitigate the need for retrospective lessons-learned exercises after final decisions have been made.

21. The Commissioner's Office has decided it will not re-open already concluded investigations since August 2020. I note that this follows legal advice that a Commissioner's decision cannot be revisited.

Staffing capacity and performance

22. In 2020/21, the auditor recommended that the Commissioner’s Office recruits into current vacant roles as a matter of priority, and to consider whether temporary resource is required. All vacancies apart from the Public Appointment Officer are now filled. This is important progress. However, capacity concerns to manage workload continued in 2021/22. The Commissioner’s Office reports (page 49) that in 2021/22, “it became clear that the staffing resource available to the Commissioner was insufficient to fulfil all their statutory functions and ensure the resilience of the organisation”.

23. The Commissioner’s Office carried out a workforce planning exercise shortly after year end. The auditor notes that this exercise “identified that it would be unable to meet its statutory functions and address our 2020/21 recommendations around the rebuilding of the organisation without additional funding”. In May 2022, after the end of 2021/22 financial year, emergency proposals for additional funding were submitted to the SPCB, with permission granted in October 2022. The auditor expects this will “enable the Commissioner’s Office to move forward in terms of completing actions that have not yet been fully implemented and embed those which have, as well as delivering the statutory functions to a reasonable level of satisfaction”.

24. The Acting Commissioner states that staff shortages “meant that a backlog of complaints persisted throughout 2021/22, and this remains an ongoing issue” (page 11). I note from my review of the annual report and accounts that the complaints backlog at the end of 2021/22 has significantly increased compared to 2020/21.

Exhibit 2

Increases in complaints still open at year end

	2020/21	2021/22	Increase in year
Local Authorities and Board (open at 31 March)			
Complaints	24	146	122
Cases	8	84	76
MSPs (open at 31 March)			
Complaints	738	760	22
Cases	14	19	5

Source: Annual Report and Accounts

25. Currently, the Commissioner's Office is reporting on its website that it can take up to nine months to conduct an initial assessment of a complaint. Reducing this backlog in the coming years is a significant challenge. While additional recruitment will help, it will take time for this to be completed and for new staff to be trained to the standard required. Failure to process complaints in a timely way may affect public confidence in the complaints process, both for individuals making complaints and for the subject of those complaints.

26. Strengthening performance management arrangements, will be key to restoring public trust and standardising good practice in future years. The auditor reports some progress in producing a performance management framework, tracking progress against the business plan. The Commissioner's Office plans to introduce performance indicators to track complaints handling by March 2023.

Medium-term planning

27. In 2020/21, the auditor highlighted that the then Commissioner had implemented two phases of organisational restructuring which was approved by the SPCB in July 2019. This restructure anticipated savings of around £450,000. The 2021/22 audit report notes that the SPCB has approved a business case from the Acting Commissioner, "effectively reversing the restructure" (page 18).

28. The savings from the original restructure will not now be achieved. The Commissioner's Office reported this to the SPCB as part of its 2022/23 budget proposal. Monitoring the savings from the restructure was an audit recommendation in 2020/21, and this recommendation is regarded by the Commissioner's Office as no longer required in the 2021/22 audit report.

29. Given the pressures of addressing the current backlog, alongside the reversal of the intended cost-saving restructure, a focus on maintaining financial sustainability over the medium and long-term is critical. Preparing a medium-term financial plan was an auditor recommendation in 2020/21 and is currently planned for completion by March 2023. The auditor reports that the Commissioner's Office is financially sustainable in the short-term. However, it notes that "the continued lack of a medium-term financial plan means that the Commissioner's Office is unable to demonstrate that it is financially sustainable in the medium term" (page 4).

30. The Commissioner's Office notes that progress against certain recommendations relating to reviewing underlying governance structures will rely on continued engagement with the SPCB. Demonstrating that the operations of the Commissioner's Office can be carried out effectively and within the workforce and financial limits is needed to allow targeted and realistic engagement with its stakeholders.

Conclusions

31. Last year, I noted my concern at the substantial weaknesses in governance at the Commissioner for Ethical Standards in Public Life in Scotland. The Commissioner's Office has worked hard to implement recommendations which

put governance arrangements on a firmer footing, but significant challenges remain.

32. The number of outstanding complaints has grown from its already high levels in 2020/21, and the expected time to conduct an initial assessment of a complaint, currently at up to nine months, is significant. Further funding from the SPCB for additional staffing is an important development in tackling the backlog, but it will take time to hire and train the people needed to do this.

33. It is clear that fulfilling its core statutory duties alongside rebuilding its workforce and progressing audit recommendations has been difficult. This is likely to continue to be an area of challenge in the coming years before new structures and governance processes embed.

34. The auditor can only provide assurances over the short-term financial position considering the lack of a medium-term plan. Given that the previously agreed restructures have now been reversed, and additional funding was required to address current workload, building a governance and operational structure that is financially sustainable should be a high priority.

35. The Commissioner's Office is transparent about the challenges it faces and its re-engagement with the AAB, SCS and SPCB is both encouraging and necessary to address these. I will continue to monitor the performance of the Commissioner's Office, with a view to further public reporting in the future.

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