

Scottish Information Commissioner

Annual Report and Accounts 2022-23

FOI: Building a resilient future



Scottish Information
Commissioner

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Glossary and abbreviations

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

PERFORMANCE REPORT 2022-23

PERFORMANCE OVERVIEW

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

This performance overview provides information about the Commissioner's organisation, its purpose, the key risks to the achievement of its objectives and how it has performed during 2022-23. The related detail on these matters is set out in the rest of the Annual Report.

Commissioner's statement

2022-23: Building a resilient future

Following the reduction in the overall numbers of requests for information made to Scottish Public Authorities during the pandemic, request numbers have strongly recovered in the past year to almost 84,000, numbers not seen since 2018-19. This 13% increase in requests compared to the previous reporting year illustrates the extent of the public's appetite for access to information from Scotland's public bodies. This is especially so in difficult times, with the cost of living crisis and high inflation affecting many, when decisions taken by our public bodies can have heightened impact on people's lives, such as their ability to access vital services.

Against this backdrop of increased demand, we have seen positive signs of resilience in the performance of public bodies, with 86% of responses being issued on time, the same as in the previous reporting year, despite the additional volume. Additionally, there has been an increase, to 75%, of the number of requests which result in disclosure of some or all of the information requested, and over 52% resulting in disclosure of all the information requested. These figures increase to an impressive 84% and 59% respectively once information not held cases are discounted.

Given that most requests are resolved (positively) at the authority level, our continued support of authorities over the past year in providing detailed guidance and updates, supporting network meetings and good practice initiatives, delivering training at events and conferences, responding to enquiries, monitoring performance, and, where necessary, intervening to resolve problems and help them improve, remains a crucial aspect of the output of my office.

We were therefore pleased to support the eCase FOI Awards as an initiative to showcase FOI good practice as well as recognising individual and team performance, and it was encouraging to see strong Scottish Public Authority performance evident in the UK-wide event. In particular, it was encouraging to see positive examples of the use of proactive publication in making it easier for people to access information on topics of interest to them. This year we also provided increased support to public authorities through our enquiries service, with public authority queries accounting for one third of the 808 enquiries received.

We have also continued our targeted and proactive interventions work to improve authority performance. While the number of Level 1 interventions we have been able to conduct has reduced this year, intervention activity at all other levels, including the most often used (non-compliance notifications), remained at similar levels to last year, allowing proportionate engagement with authorities, improving practice for the benefit of requesters.

While appeal numbers received by my office in 2022-23 reduced to more normal pre-Covid-19 pandemic levels at 527, overall case numbers continued to rise during the first two quarters, before beginning to stabilise in the second half of the reporting year. As anticipated in last year's report, the high caseload carried forward into 2022-23 has created challenges for my small team, coinciding with a reduction in staff resource pending the recruitment of new enforcement team members. This has unfortunately contributed to further delays being experienced by applicants who make appeals to us. My team has continued to work hard to manage these delays, keep people informed of the progression of their cases and to streamline and improve our procedures, identifying and addressing pinch points in the system. These initiatives are already showing improved performance in relation to a number of indicators, and, combined with the recruitment of new staff, we are in a better position to reduce case numbers over the next year.

This reporting year saw the launch of our new and much improved website, and we have been continuing to enhance it further for both members of the public and authorities to access useful and relevant content. This includes our Open Update newsletter, which provides news, advice and guidance to Scotland's FOI community and which saw a 45% increase in subscribers over the course of the year - I would encourage you to subscribe too!

Looking to the future, we participated in two significant consultations on FOI law in Scotland, one a Private Member's Bill consultation and the other from the Scottish Government. We have provided detailed responses to both consultations, highlighting the need for improvement of the system while acknowledging its existing strengths, and supporting positive change while cautioning against potential detrimental second order effects of some proposals. I look forward to seeing practical and positive legislative change following on from these initiatives.

Unfortunately, I will be viewing developments from afar as this is my final Annual Report as the Scottish Information Commissioner before I demit office later this year. It has been a privilege as well as a pleasure to be at the helm over the past six years, and particularly to work with such an excellent team. I congratulate David Hamilton on his appointment as the next Commissioner and wish him well in moving this crucial role forward during his tenure.

Daren Fitzhenry
Scottish Information Commissioner

Statutory background

The Commissioner's powers and duties are set out in Parts 3 and 4 of the Freedom of Information (Scotland) Act 2002 (FOI Act). This contains powers and duties to:

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

The Commissioner's statutory functions include:

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

The Coronavirus (Scotland) Act 2020 made temporary amendments to a range of legislation, including the FOI Act. Amongst other things, the Commissioner was given the temporary power to determine that the FOI Act had not been breached if a Scottish public authority failed to respond within the statutory timelines in certain limited circumstances related to the Covid-19 pandemic. On 01 October 2021, the Coronavirus (Extension and Expiry) (Scotland) Act 2021 came into force which, in relation to FOI, had the effect of phasing out the Commissioner's ability to consider the impact of the Covid-19 pandemic when deciding if an authority failed to comply with FOI timescales. This "discretion" could only be applied in relation to FOI requests that were made on or before 30 September 2021.

The Coronavirus (Recovery and Reform) (Scotland) Act 2022 made permanent some of these temporary amendments introduced by the Coronavirus (Scotland) Act 2020, including the ability of the Commissioner to issue decisions and other formal notices by email.

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

Organisational structure

The office premises re-opened on 03 May 2022 and, hybrid working is in place, enabling the Commissioner's team of 24 people to work flexibly, either in the office premises or remotely.

There are three departments, each with a Head of Department who reports directly to the Commissioner and each is supported by a team. The responsibilities of each Head of Department and their team are:

Corporate Services	Enforcement	Policy and Information
<ul style="list-style-type: none">• provides a range of corporate services (e.g. finance, HR, IT, records management)• the Head of Corporate Services provides assurance to the Commissioner as Accountable Officer	<ul style="list-style-type: none">• investigates appeals made under FOI law, ensuring that authorities comply• the Head of Enforcement is in-house legal adviser to the Commissioner	<ul style="list-style-type: none">• carries out research and FOI policy development and delivers strategies to improve authorities' FOI practice and promote FOI rights to the public• the Head of Policy and Information has management responsibility for the website

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

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

Financial performance

The Commissioner receives funding through the Scottish Parliamentary Corporate Body (SPCB) and the SPCB approves the Commissioner's annual budget. The Commissioner's financial performance is set out in full in the Accountability Report and Financial Statements which are published as part of the Annual Report 2022-23. In summary, for the year ended 31 March 2023:

- net operating costs totalled £1,881,000 (2021-22: £1,926,000) – including non-cash transactions totalling £89,000 (2021-22: £39,000)
- capital expenditure totalled £953,000¹ (2021-22: £16,000)
- total net expenditure amounted to £2,837,000² (2021-22: £1,942,000). Cash funding from the SPCB of £1,843,000 (2021-22: £1,942,000) was within the agreed cash budget for the financial year of £1,940,000 (2021-22: £2,030,000).

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

¹ Includes recognition of right to use assets in accordance with International Financial Reporting Standard (IFRS)16, 2022-23 £932,000 (2021-22 £NIL)

² Includes recognition of right to use assets in accordance with International Financial Reporting Standard (IFRS)16

Objectives and strategies

Strategic Plan 2020-24

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

VISION:

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

STRATEGIC OBJECTIVE 1: increase knowledge and understanding of FOI rights

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

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

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

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

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

The 2020-24 Strategic Plan can be viewed at:

www.itspublicknowledge.info/strategic-and-operational-plans.

Operational Plan 2022-23

Each year, the Commissioner publishes an annual Operational Plan, which sets out the specific programme of activity we will deliver over the year, linked to the Strategic Plan, monitoring and publishing progress every two months. Each planned action is cross-referenced to the relevant strategic aims. The section on "Corporate Performance" below provides more detail about the Operational Plan 2022-23.

The Performance and Quality Framework 2022-23 (P and QF) is the performance management system against which we measured, reported on and achieved continuous improvement in the quality of our work and by which we monitored and reported on organisational outcomes. The P and QF is supported by internal systems to ensure we are able to identify and monitor how performance contributes to organisational outputs.

The Performance Analysis section provides commentary on our performance against Key Performance Indicators (KPIs) and the targets for 2022-23.

Operational Performance

As a large part of our operational output is demand driven, our operational performance has been impacted by the number, complexity and timing of appeals to us, combined with ongoing casework from previous reporting periods and reduced investigative resource. We have procedures in place

providing detailed guidance on the investigation of applications and have KPIs for these investigations. After further increases in caseload in Q1 and Q2, and thanks to the hard work of my team, the numbers of ongoing cases began to stabilise in Q3 and Q4 of 2022-23. Although still a significant challenge, continued improvements to our procedures combined with the recent recruitment of enforcement team staff put us in a good position to steadily reduce case numbers as 2023-24 continues

The Performance Analysis section provides commentary on our operational performance in 2022-23.

Covid-19 pandemic

Our priority as an organisation has been to provide our services and guidance while safeguarding the health, safety and wellbeing of our members of staff. The office premises re-opened on 3 May 2022 and, during the reporting year, hybrid working has been in place.

As a regulator, our aim is to be flexible and proportionate while safeguarding the transparency, consistency, quality and integrity of the work we do. We reviewed our work programme to ensure its relevance and continued to develop how we have carried on our regulatory work in the hybrid working environment. For example, in addition to an increase in physical attendance at meetings, and conferences, we continued to use Microsoft Teams to conduct most meetings, reaching increased numbers in our public sector network meetings and used remote training as a provider, participant and audience.

Key issues and risks

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

Risk is actively managed and regularly reviewed through an appropriate and proportionate framework which covers both strategic and operational risks and which identifies the key risks facing the organisation. Operational risks are aligned to our strategic objectives and strategic risks and are assigned to an owner (SMT or head of department) who has responsibility for ensuring that the risk is managed and monitored appropriately.

During 2022-23, risks were regularly reviewed by the Commissioner and the SMT, and the Advisory Audit Board (AAB) carried out its annual review of the strategic risks. Eight strategic risks were identified which covered the following areas:

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

We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff– the office premises re-opened on 3 May 2022 and we mitigated this risk by enabling a hybrid system of working to be in place enabling working in the office premises and remote working. In re-opening the office premises, we took account of health and safety requirements to ensure that the risk to the members of staff working there was managed and mitigated as far as possible
- having sufficient resources to enable us to carry out our regulatory role, including physical resources and maintaining operational output to take account of fluctuating volumes and number of cases – we mitigated this risk by enabling hybrid working and actively monitoring and managing the volume of cases, adjusting decision-making levels and updating procedures and recruiting new members of staff
- having a reliable and up to date website with current and well managed content – we mitigated this by actively managing the new website which went “live” in early April 2022
- having secure and resilient IT systems and equipment – we mitigated this risk by updating IT security and management policies and ensuring appropriate cyber resilience measures were in place

The section in the Performance Analysis titled “Risk Management” provides a further explanation and more detail on the management of risk in 2022-23.

Performance summary

- We received 527 appeals in 2022-23. 85% of appeals were made under the FOI Act and the remainder under the EIRs.
- We carried out 229 interventions to support improvements in public authority FOI practice. While most were relatively straightforward 'non-compliance' notifications, we also carried out 21 interventions at level one and above.
- 72% of appeals to the Commissioner were made by members of the public (the same as in 2021-22).
- 23% of valid appeals were about an authority's failure to respond (18% in 2021-22).
- 71% of our decisions found wholly or partially in the requesters' favour (a significant increase on the 55% in 2021-22).
- 62% of cases were closed within 4 months, and the average closure time of all appeals was 5.4 months.
- Our 2020-2024 Communication and Engagement Framework was approved in May 2022. Our 2022-23 communication and engagement activity is now measured against our new framework. Although, new campaign activity was limited, we continued to increase subscribers to our newsletter by 45% during 2022-2023 (733, making good progress towards our target of 800 by 2024) and engagement rates on our social media remained high (3.3% against a target of 1.5%). Other measures remain ongoing.
- We responded to 808 enquiries, the majority of which related to requests for advice on making and responding to information requests and requests for review. All our enquiries KPIs were met.
- We received 49 information requests and no requests for review. We met our KPIs for requests.
- We received 24 right to access requests under data protection law and responded to all within the statutory timescale of one month.
- 14 complaints were received, up from 6 in 2021-22. We did not meet our KPI that fewer than 20% of complaints be upheld in part or in full.
- 85 compliments were recorded, mainly relating to case handling and enquiries.
- There were no cases of suspected fraud.
- An approved Operational Plan 2022-232 was monitored every 2 months.
- Of the 42 governance reporting requirements, 40 were met in full, 1 was partially met and 1 was no longer required to be met.
- We complied with all of our statutory reporting requirements.
- We met our target of having a compliant publication scheme and Guide to Information and publishing as much information as possible.
- At 18.52 tonnes CO₂e we were significantly below our annual target of 40.5 tonnes CO₂e

PERFORMANCE ANALYSIS

Below we provide a detailed analysis of the Commissioner's performance during 2022-23 which details performance across the following key areas:

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

Enforcement Performance

Interventions

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

Intervention levels

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

Intervention caseload

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

Intervention level	2020-21	2021-22	2022-23
Non-compliance notification	229	211	206
Level 1	24	37	12
Level 2	6	7	7
Level 3	1	1	1
Level 4	0	1	1
TOTAL	260	257	227

Despite a reduced capacity to undertake new interventions in 2022-23, we continued to monitor and address public authority performance. Non-compliance notification activity remained consistent with previous years, with minor non-compliance issues addressed at the point of identification. Our intervention with the Scottish Ministers remains at Level 3 and our Level 4 Intervention was closed early in 2023-24. It is anticipated that new intervention activity will return to previous levels during 2023-24.

Some of the non-compliance notifications included:

- Advising an authority that certain guidance, only made available in hard copy, would benefit from being published online.
- Assisting a local authority in amending its template response letter to ensure all appeal rights are provided.
- Requesting that an authority make changes to its online request form to ensure a valid request could be made.
- Confirming with a local authority that it was still accepting requests for review through other methods, despite directing requesters to submit electronically
- Alerting an optician firm that it was partially subject to the FOI Act and required to respond to FOI requests.

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

Intervention cases

Level 2 Intervention: The Scottish Environment Protection Agency

In June 2021, following its cyber incident in December 2020, we opened a Level 2 Intervention with the Scottish Environmental Protection Agency (SEPA). The intervention's objectives are to improve SEPA's performance in responding to requests within the statutory timescales and supporting it to rebuild its Access to Information (ATI) regime. An action plan is in place, with a target of responding 80% of requests within statutory timeframes by December 2023 (with a view to increasing this target in 2024), alongside actions to rebuild a sustainable ATI regime.

Level 3 intervention: The Scottish Ministers

In May 2022 we published a report following our second in-depth assessment of Scottish Government FOI practice and performance as part of our ongoing Level 3 intervention. This report set out the findings from our detailed review of case handling practice from a sample of more than 70 FOI and EIR cases, alongside a review and analysis of a wider sample of statistical data.

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

In response to the May report, the Scottish Government developed an improvement plan for 2022-23, which introduced a range of measures aimed at addressing the outstanding issues identified in the May report.

The Scottish Government continued to report monthly on progress against the improvement plan across the remainder of 2022-23. By the end of 2022-23, however, there was concern around the pace of progress, alongside some signs that progress had fallen back in some areas. This included a fall in the proportion of FOI reviews responded to on-time and evidence of a backlog of overdue FOI cases. The Commissioner sought further engagement with the Scottish Government in relation to these concerns, with the result that, in Q1 of 2023-24, additional measures were introduced by the Scottish Government to support further improvements in performance and a

significant reduction in the backlog of late cases. As of Q2 2023-24, there are clear signs that these new measures are bringing improvement.

The Commissioner is planning a further assessment of Scottish Government practice during Q2 2023-24, with a report anticipated to be published in Q2-Q3 2023-24.

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

Level 4 intervention: Aberdeenshire Council

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

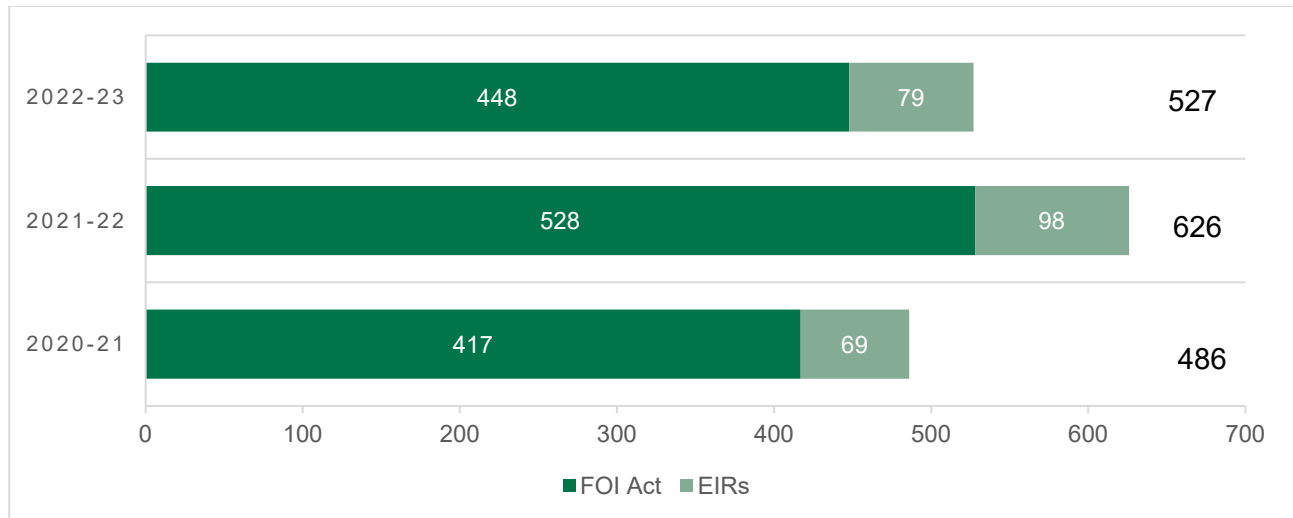
This intervention led to the issuing of a formal Practice Recommendation in 2021-22, only the third to be issued under FOI law. This required the council to ensure that all staff are trained in understanding the 'requester blind' principle, while also emphasising to senior managers the leadership expected of them in all aspects of managing FOI. This intervention was closed in Q1 2023-24.

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

Appeals received

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

Number of appeals received



Reason for appeals

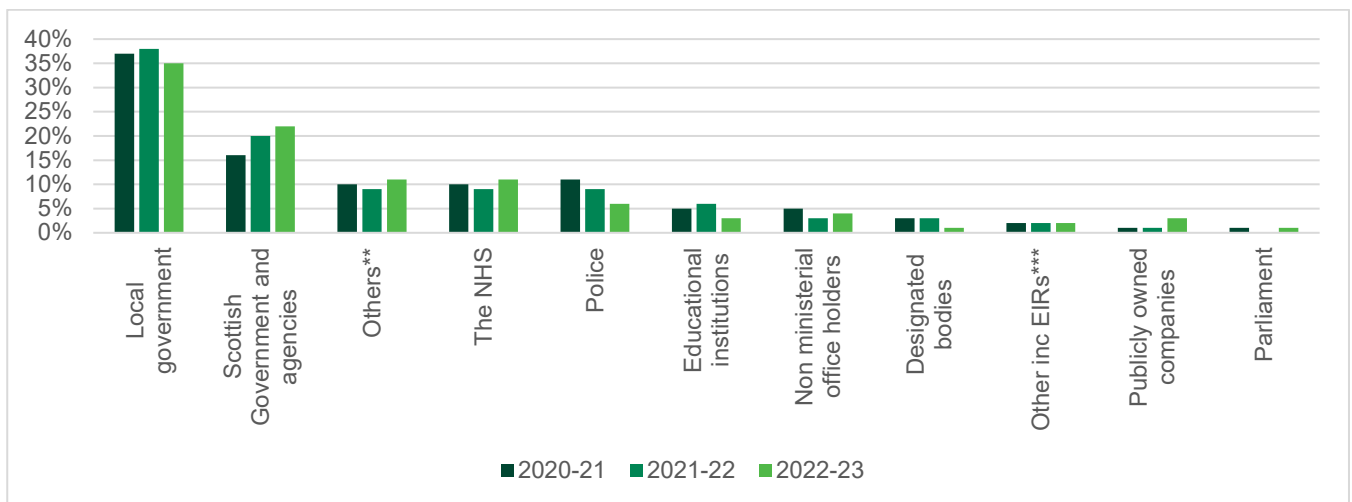
	2020-21 (%) [*]	2021-22 (%) [*]	2022-23 (%) [*]
Information was withheld under an exemption	29%	36%	31%
Failure to respond (no response sent)	23%	24%	27%
“Not held” response disputed	24%	16%	15%
Request not responded to in full	8%	10%	9%
Request refused on grounds of excessive cost	6%	3%	5%
Request deemed “vexatious” or “manifestly unreasonable”	3%	2%	4%
Refusal to confirm or deny whether information was held	2%	2%	4%
Fee or charge disputed	1%	2%	2%
Request deemed “repeated”	2%	1%	1%
Request deemed “invalid”	1%	1%	1%
Publication scheme concern	0%	1%	1%
Inadequate advice and assistance from authority	1%	0%	1%

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

Who appeals?

	Top three applicant types
2020-21	<ul style="list-style-type: none"> Public and other (81%) Media (8%) Private/commercial enterprise (5%)
2021-22	<ul style="list-style-type: none"> Public and other (72%) Media (12%) Private/commercial enterprise (5%)
2022-23	<ul style="list-style-type: none"> Public and other (72%) Media (13%) Private/commercial (4%)

Which authority types are the appeals about?*



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

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

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

Validation

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

Validity of appeals received

	2020-21	2021-22	2022-23
Total appeals received	486	626	527
Invalid appeals	118	183	157
Valid appeals	368	443	370
<i>Failure to respond appeals</i>	<i>80</i>	<i>81</i>	<i>85</i>
<i>Substantive appeals</i>	<i>288</i>	<i>362</i>	<i>285</i>

Assessing validity: our performance

Decision made on validity	Target (%)	Performance* (%)
1 month or less	70%	68% (not met)
2 months or less	90%	92% (met)
3 months or less	97%	97% (met)

“Failure to respond” appeals

A Scottish public authority must provide a response promptly (as soon as possible) and within no more than 20 working days³. If an authority fails to respond to a request for review on time - or fails to respond at all - it has broken the law and requesters have a right to appeal to us.

The proportion of valid “failure to respond” appeals we received increased to its highest level since 2018-19, with 23% of our appeals relating to this issue, compared to 18% last year (although this only translates to an additional four cases). As ever, it should be stressed that timely responses to FOI requests are important for all parties: supporting both the prompt disclosure of information to the public and reducing the likelihood of FOI reviews, appeals or wider reputational damage for public authorities.

Investigations and enforcement action

Investigations

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

³ Response times for requests made under EIRs can be extended to 40 working days in limited circumstances, where the volume and complexity of the information make it impractical to comply with the 20 working day timeline (Regulation 7 of the EIRs).

Investigations over four months

The FOI Act requires the Commissioner to report the number of cases taking longer than four months. We aim to resolve the majority of our cases within this period, although more complex cases will often take longer. As discussed below, delays in allocating cases to investigators are affecting the time taken to close cases.

More information is available at: www.itspublicknowledge.info/operational-performance.

	2020-21	2021-22	2022-23
Cases closed without investigation			
4 months or less	117	181	154
More than 4 months	1	4	4
Subtotal	118	185	158
Cases closed during investigation			
4 months or less	89	79	65
More than 4 months	40	68	56
Subtotal	129	147	121
Cases closed with decision			
4 months or less	42	24	41
More than 4 months	118	193	97
Subtotal	160	217	138
All cases			
Total 4 months or less	248	284	260
Total more than 4 months	159	265	157
Total cases closed	407	549	417

Case closure times

	Target (%)	Performance* (%)
“Failure to respond” appeals		
1.5 months	60%	58% (not met)
4 months or less	100%	96% (not met)
Substantive appeals		
4 months or less	50%	12% (not met)
6 months or less	75%	16% (not met)
12 months or less	95%	54% (not met)
All appeals		
4 months or less	70%	62% (not met)
6 months or less	85%	65% (not met)
12 months or less	97%	81% (not met)

* Percentages have been rounded to the nearest whole number.

The average closure time of all appeals was 5.39 months (2021-22: 4.48 months; 2020-21: 4.37 months).

In last year’s annual report, we reported that, in 2021-22, we received the highest number of appeals since 2005-06. That, together with the after effects of the Covid-19 pandemic, meant we started 2022-23 with a considerably elevated caseload. As can be seen from the graph on page 24, at the start of 2022-23, we carried forward 406 cases from previous years and received 527

new appeals. This coincided with a significant reduction in investigative staff resource following a number of departures from the organisation, pending the recruitment of new enforcement team staff.

In addition, for the first time since the FOI Act came into force, we faced a number of practical, logistical issues in investigating over 40 applications on various aspects of a single topic (the Guarantee and Reimbursement Agreement relating to the Lochaber Smelter entered into by the Scottish Ministers).

Unfortunately, the large caseload, combined with reduced investigative resource in 2022-23, led to a significant increase in the number of cases waiting to be allocated to investigators. This has, in turn, impacted our KPIs. As can be seen from the previous page, while we aim to close 70% of appeals within four months from receipt, only 62% of appeals were closed within that timescale in 2022-23 and this was primarily driven by the time taken to allocate substantive cases to investigators.

Through 2022-23, we took a number of positive steps to improve matters. We recruited three new investigators (who joined us in Q4 2022-23 and Q1 of 2023-24) which has given us much more investigative capacity. Following identification of pinch points in the decision approval process, we also obtained Scottish Parliament Corporate Body approval to regrade an existing post to give us an additional Deputy Head of Enforcement, who will help speed up the approval of decisions and the throughput of cases.

We also continued to find ways to streamline our procedures in order to speed up investigations, discussing approaches with the (UK) Information Commissioner and the (Irish) Office of the Commissioner for Environmental Information.

We increased the number of people in the team able to approve specific types of decisions and, in order to reduce the time cases “lie fallow” while waiting to be allocated for investigation, we changed the way in which we seek comments and withheld information from the authorities. This has allowed us to review, at an earlier stage, cases which might be suitable for early resolution and means that, when cases are allocated to investigators, they will often be able to move the cases on more quickly.

We therefore ended 2022-23 in a more positive position with performance against nine of our KPIs having improved, when comparing performance in Q4 against performance in Q1. Although the caseload remains high, we are in a better position to deal with it and there are already signs that the backlog, which steadily increased during Q1 and Q2 of 2022-23, had largely levelled off in Q3 and Q4. We anticipate that the changes we made to our procedures last year, combined with the recent recruitment of staff will make a real difference in the forthcoming year and that, as 2023-24 continues, the time it takes us to close cases will steadily reduce.

Appeals to the courts

The Commissioner’s decisions can be appealed to the Court of Session on a point of law. In 2022-23, only one appeal was lodged against a decision of the Commissioner, by the Scottish Ministers. The hearing will take place on 6 December 2023.

Two previous appeals against decisions of the Commissioner were closed in 2022-23. In the first of these, which involved a decision from 2011, the appellant was unsuccessful in their attempt to appeal the decision to the UK Supreme Court. In the second of these, the appellant withdrew their appeal against a 2021 decision. A further appeal, against a 2021 decision, remains ongoing.

Enforcement performance outcomes

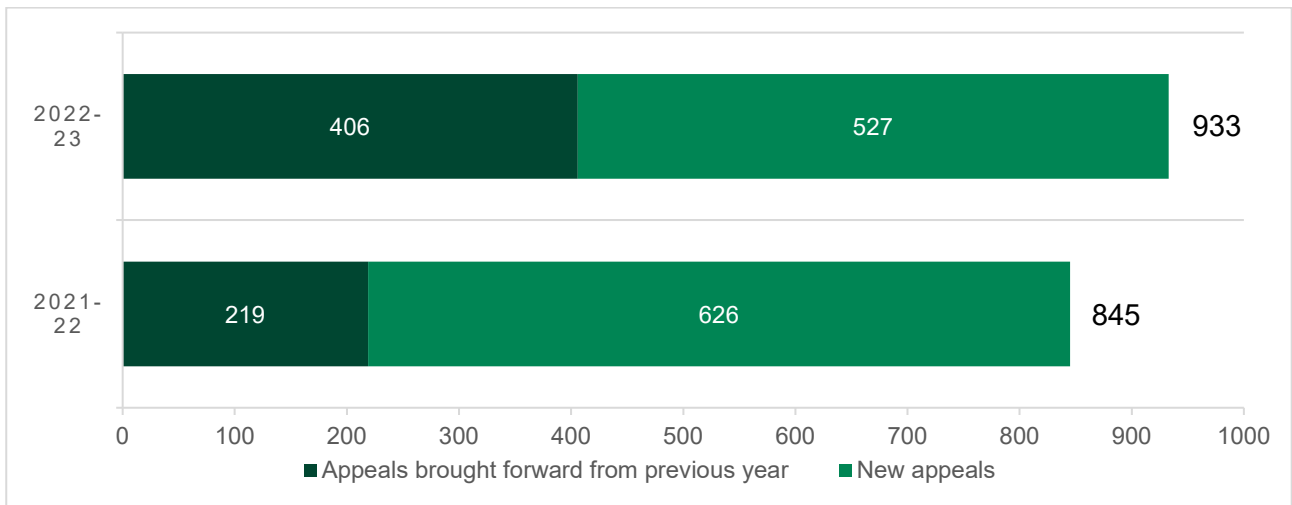
Appeal outcomes

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

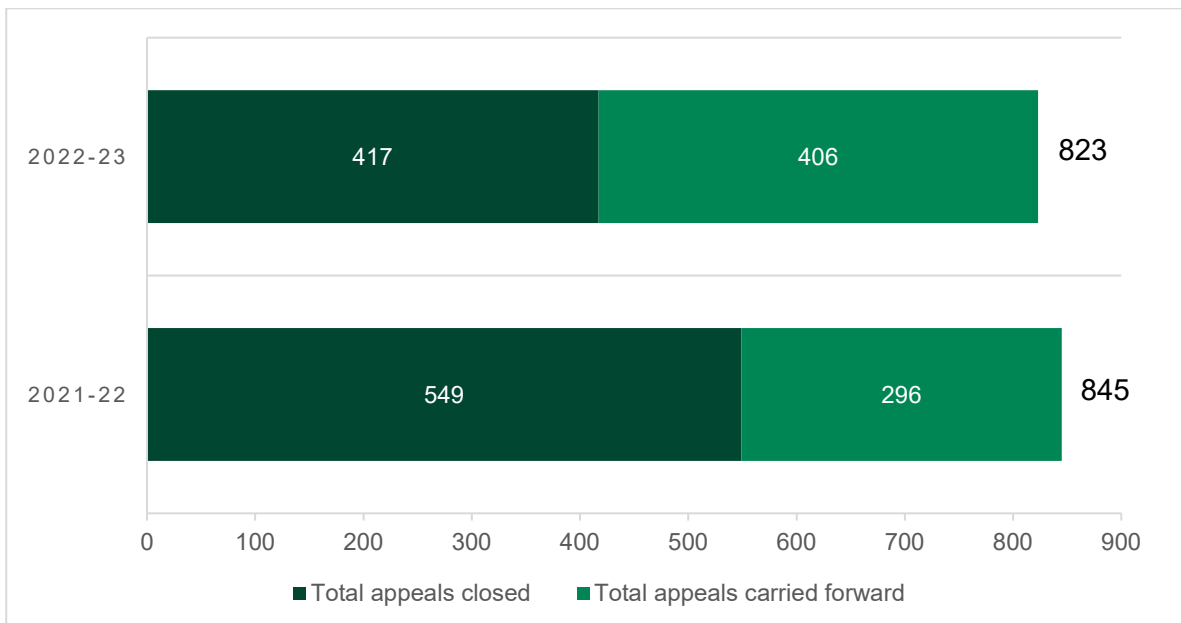
- closure without investigation - for example, where the appeal is not valid
- closure during investigation - for example, where the matter is resolved to the satisfaction of the requester during the investigation
- the Commissioner issues a Decision Notice.

Reason for closure	2021-22	2021-22 (FOI Act)	2021-22 (EIRs)	2022-2023	2022-23 (FOI Act)	2022-23(EIRs)
Closed without investigation						
Premature or “out of time”	46	36	10	32	25	7
Withdrawn or abandoned	6	5	1	8	7	1
Resolved	2	2	0	0	0	0
Excluded – Lord Advocate or Procurator Fiscal (FOI Act only)	6	6	0	5	5	0
Format invalid	46	45	1	29	29	0
Body not subject to FOI	3	2	1	7	6	1
No request for review made	41	36	5	41	39	2
No request to public authority	5	3	2	5	5	0
Frivolous or vexatious	0	0	0	0	0	0
Other	30	28	2	31	28	3
Subtotal	185	163	22	158	144	14
Closed during investigation						
Withdrawn or abandoned	25	21	4	12	9	3
Resolved	122	101	21	109	87	22
Frivolous or vexatious	0	0	0	0	0	0
Subtotal	147	122	25	121	96	25
Closed with a Decision Notice						
For requester	77	57	20	66	56	10
For authority	98	88	10	40	37	3
Partially upheld	42	31	11	32	28	4
Subtotal	217	176	41	138	121	17

New appeals in 2022-23 and appeals brought forward from previous year



Appeals closed in 2022-23 and appeals carried forward into following year



Commissioner's decisions

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

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

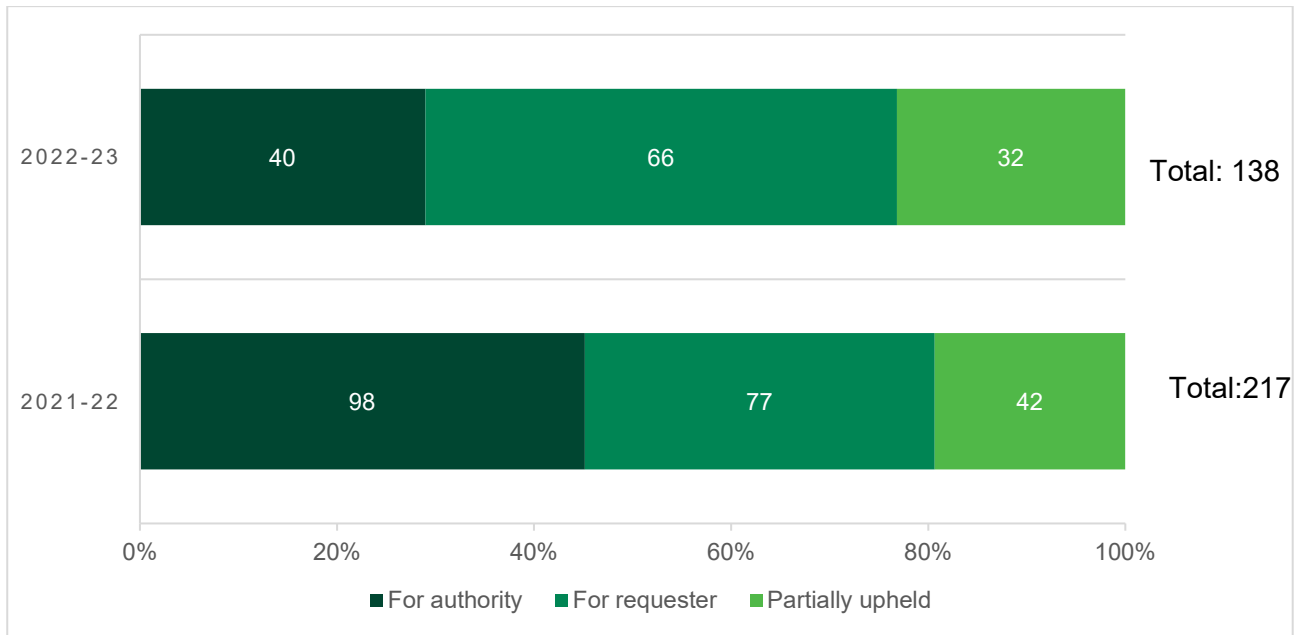
- The Guarantee and Reimbursement Agreement entered into by the Scottish Government in relation to Lochaber Smelter (Decision 046/2022)
- Legal advice taken by the Scottish Government on the legality of a second independence referendum (Decision 048/2022)
- The Hunterston Offsite Emergency Plan held by North Ayrshire Council (Decision 053/2022)
- Information about the policing by Police Scotland of the weekend Rangers FC won the SPFL premiership (Decision 081/2022)
- Fees charged to the US Military by Glasgow Prestwick Airport Ltd (Decision 104/2022)
- Following the attack at the Park Inn Hotel in Glasgow, Glasgow City Council's minutes of Asylum Board Meetings (Decision 123/2022)
- The decision to close places of worship during the pandemic (Decision 124/2022)
- The tender awarded to Ferguson Marine by the Scottish Government (Decision 136/2022)
- James Hamilton's report under the Ministerial Code into whether the First Minister misled the Scottish Parliament (Decision 004/2023)

These, and the other decisions issued in 2022-23, are available at:

www.itspublicknowledge.info/decisions.

Outcome types

71% of our decisions found wholly or partially in favour of the requester.



Further information on this area of performance can be found in the committee report considered by the SMT on 11 May 2022, available at:

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

Policy and Information Performance

Authorities' FOI statistics

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

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

The collation and publication of this data by the Commissioner is also recognised internationally as a good practice model of FOI regulation⁴.

Data submitted for 2022-23 shows a return to pre-pandemic levels of requests, an increase on the previous two years (83,963 requests were recorded in 2018-19, only marginally above the total for 2022-23 (83,918))

The number of responses on time as a proportion of requests remained consistent with the previous year at 86%, despite a significant increase in the number of requests received.

75% of all requests submitted resulted in the disclosure of some or all of the information requested (equating to 62,874 requests) and a positive increase on the previous two years (73% in 2020-2021 and 2021-2022)

Our appeal numbers as a proportion of requests reduced from 0.8% to 0.6%, and there was also a reduction in appeals as a proportion of review requests – from 27% to 22%.

⁴ See Parsons, A (2022) *Improving Oversight of Access to Information* mySociety Research: <https://research.mysociety.org/publications/improving-oversight>

Authorities' FOI statistics

	2020-21	2021-22	2022-23
Total requests	69,519	73,983	83,925
- FOI requests	61,217	64,469	73,212
- EIRs requests	8,302	9,514	10,713
- EIRs as a percentage of total requests	12%	13%	13%
Total responses on time	57,121	63,833	72,038
- responses on time as a percentage of total requests	82%	86%	86%
Total late responses	8,229	7,616	8,307
- late responses as a percentage of total requests	12%	10%	10%
Failures to respond	1,803	1,657	957⁵
- failures to respond as a percentage of total requests	3%	2%	1%
Response: full disclosure	37,021	38,702	44,126
Response: partial disclosure	13,636	15,488	18,748
- full/partial disclosure as a percentage of total requests	73%	73%	75%
Response: information withheld	6,348	7,045	6,589
Response: information not held	7,334	8,484	9,346
Refused: excessive cost, or manifestly unreasonable for cost reasons	1,893	2,030	2,611
- cost refusals as a percentage of total requests	3%	3%	3%
Refused: vexatious, repeated, or manifestly unreasonable for non-cost reasons	392	377	431
- vexatious/similar refusals as percentage of total requests	0.6%	0.5%	0.5%
Total review requests	1,961	2,292	2,421
- total review requests as a percentage of total requests	3%	3%	3%
Appeals to the Commissioner	486	626	527
- appeals as a percentage of total requests	0.7%	0.8%	0.6%
- appeals as a percentage of total review requests	25%	27%	22%

During 2021-22 we revised the route through which public authority statistics are gathered; introducing a temporary submission method in advance of the April 2022 launch of our new website. We will be scoping and consulting on the development of a new, improved tool for statistics collection in 2023-24.

⁵Does not include Failure to Respond figures for Scottish Environment Protection Agency, subject to a Level 2 Intervention.

Monitoring and improving authority practice

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

Communications, guidance and briefings to authorities

Communication tool	Description
Website	We continued to make improvements to our website following its launch in April 2022, including improvements to layout, content and the addition of a public authority A-Z, a database of authorities covered by the FOI Act. We also used the website to ensure that learning and good practice from conferences and events could be shared as widely as possible with our stakeholders.
Newsletter	We issued 5 editions of Open Update, our email newsletter providing FOI news, advice and guidance to Scotland's FOI community. Through the newsletter we promoted engagement with the two consultations on FOI reform, highlighted the right to request environmental information during Scotland's Climate Week, encouraged participation in the first annual UK-wide FOI awards, and shared learning from the Commissioner's decisions. We ended the year with 730 active newsletter subscribers, a 5% increase on the preceding year.
Social media	We tweeted 176 times across the year, providing our 1,196 followers with updates on key developments, new resources, relevant events and FOI rights.
Network meetings	We supported virtual network meetings of staff from across the public sector, including groups of FOI practitioners from the health and local government sectors and staff from non-departmental public bodies and regulatory organisations. We look forward to a number of these meetings taking place in-person during 2023-24
Events and conferences	We supported a number of conferences and events, including an online Centre for FOI Practitioners' Conference which, with more than 250 delegates attending from across Scotland's public sector, was the largest Centre for FOI event to date. We also supported the 2022 Holyrood FOI conference, held in person for the first time since 2019. Our team participated in a series of free UK-wide training events for FOI staff, and delivered regular updates at the Scottish Public Information Forum (SPIF), which brings together a wide range of stakeholders to discuss the development of FOI in Scotland. In addition, we were pleased to support the first annual eCase FOI Awards, a UK-wide initiative to identify and promote good practice in FOI case-handling across the UK. The Commissioner and his staff spoke at the FOI Awards Conference in Birmingham in February 2023. Our staff also spoke at an event for UK housing associations on the experience of FOI designation for the sector in Scotland, to inform preparations for their own access to information regime.
Surveys	We published a report from our survey of FOI practitioners across Scotland. The survey collected details of the views and experiences of FOI practitioners, helping to support the development of tools and resources and inform our wider work. We plan to carry out a short follow-up survey in 2023-24.

Communication tool	Description
FOI Reform Consultation responses	We responded to two significant consultations on the reform of FOI law in Scotland, one by the Scottish Government exploring the need for change, the other a Private Member's Bill consultation which sought views on a wide range of specific proposals. Details of the Commissioner's views on key issues were reported through our wider communications activity, including our newsletter, website and our direct engagement with stakeholders.
Interventions & enquiries	We provided one-to-one support, guidance and advice to public authority staff through our programme of interventions and our enquiries service.

More information:

Our new website: www.itspublicknowledge.info

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

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

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

FOI consultation responses: www.itspublicknowledge.info/foi-amendment-consultation-responses

eCase FOI Award winners' stories: www.itspublicknowledge.info/award-winner-stories

Good practice learning from Conference Workshops: <https://www.itspublicknowledge.info/holyrood-conference-2022-workshop-report>

Open Update newsletter: www.itspublicknowledge.info/newsletter

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

Publishing information and adoption of a publication scheme

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

We supported newly-designated organisations across 2022-23 as they worked towards the adoption of our Model Publication Scheme and the development of their own Guide to Information. This included Consumer Scotland and continued support to The Promise Scotland and the Scottish Fuel Poverty Advisory Panel. We also carried out interventions with authorities where we identified issues with publication scheme compliance.

More information on the publication scheme duty is available at:

www.itspublicknowledge.info/publication-schemes.

Raising awareness and improving access to FOI

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

Communications strategy

Development of the Commissioner's 2021-2024 Communication and Engagement Framework was delayed due to the continued impact of the Covid-19 pandemic. The new Framework was approved in May 2022.

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

Performance across 2022-23 against the measures set out in the Framework was as follows.

2021-24 Performance Measure	Status	2022-23 performance against the measure
FOI awareness at 90% or above at FOI understanding at 75% or above, as measured by omnibus polling.	Ongoing	Our 2022 omnibus polling reported FOI awareness at 89% and FOI understanding at 63%. A range of work is planned for 2023-24 to further promote FOI rights.
At least one successful campaign or initiative per year, increasing FOI awareness amongst those known to have lower levels of awareness / understanding, such as young people	Not achieved	A combination of resource challenges and competing, high-profile work priorities meant we were unable to take this measure forward during 2022-23. Related campaign work is planned for 2023-24.
FOI practitioners reporting confidence in their FOI skills increases by 10% (from baseline to be captured with survey)	Ongoing	The baseline figure was captured through our FOI practitioners' survey, published in May 2023. This figure found 67% of practitioners reporting that they were 'confident' or 'very confident' they had the skills required to do their job.
Increase subscribers to newsletter (from 360 to 800)	Ongoing	As of 31 March 2023, we had 730 active subscribers to the newsletter. Work continues to grow our subscriber base across 2023-24.
80% or more of participants in training, events or presentations given across each year report main learning goal set for the session achieved	Not achieved	76% of attendees at the Centre for FOI Conference reported that the event gave them a better understanding of FOI issues, while 74% reported that they learned something to help them in their job.
90% or more of proactive news media engagement across each year results in top two key messages appearing in target publications	Achieved	Successful engagement carried out to accompany the launch of the Commissioner's assessment report in relation to the ongoing intervention to improve Scottish Government FOI performance. Key messages appeared in target publications.

Increase users and pageviews on website by 20% from May 2022 baseline	Ongoing	Data from March 2023 showed a 29% increase on May 2022 for users of the website, and a 4% increase for pageviews.
Average engagement rates of 1.5% and above for posts on social media	Achieved	3.3% average engagement rate on Twitter across 2022-23. Our 2022-23 engagement rate also represents an increase on our engagement rate for 2021-22, which was 1.9%.
Average of 85% or more of targets set for views, engagement with or downloads of resources, reports and campaigns are met across each year	Not applicable	No active targets set across 2022-23. Appropriate targets to be set for 2023-24.
Accessible and inclusive communication guidance developed and implemented across organisation in accordance with our legal responsibilities and duties	Ongoing	Across 2022-23 we developed and collated documentation, resources and guidance related to accessibility matters with all high profile external communications being reviewed to support accessibility.

Website launch

In April 2022 we celebrated the launch of our new website. The new site improves on our old site in a number of ways, including easier navigation, improved accessibility, faster performance and a cleaner, more modern and more user-friendly appearance and layout.

The new website was developed in accordance with the Digital Scotland Service Standard, using elements from the Digital Scotland Design System.

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

Civil society engagement

As noted elsewhere, a combination of resource challenges and competing, high-profile work priorities meant that some of our planned activity to promote FOI rights to civil society groups during 2022-23 was unfortunately curtailed.

Nevertheless, we were able to undertake related work in a number of key areas. We continued our active support of the Scottish Public Information Forum across the year: a regular forum where campaigners, requesters, authorities and regulators are brought together to explore issues relating to access to information in Scotland and beyond. Through these sessions we shared updates on FOI and the work of the office, engaged with key stakeholders and discussed and explored proposals for the reform of FOI law. We also supported this forum through the commission of live transcription services to ensure the accessibility of the forum to all.

We also explored the proposals for FOI reform at a number of other stakeholder events, including three Scottish Government online consultation events and at a learning and discussion forum for members of the Scottish Council for Voluntary Organisations (SCVO). These events were hugely valuable in understanding both the aspirations and concerns of the third sector in relation to FOI reform.

In August, the Commissioner joined with MSPs, campaigners, practitioners, academics, journalists and former Commissioners to celebrate 20 years since the FOI Act received Royal Assent, at a parliamentary event organised by the Campaign for FOI in Scotland. During this session the Commissioner reflected on the impact of FOI to date, while also looking forward to opportunities to update and enhance FOI law for the future.

In September, the Commissioner celebrated both International Right to Know Day and Scotland's Climate Week through the promotion of the public right to ask for environmental information under the EIRs, through our newsletter and social media channels. Recent years have seen a gradual growth in the profile of the EIRs in Scotland, with data showing that EIR requests accounted for 13% of the information requests made to Scottish public authorities in each of the last two years, up from 10% four years ago.

In December 2022 we met with staff from Young Scot to explore potential future work areas, following our successful short campaign to promote FOI rights to young people in 2021-22. We look forward to taking this work forward across 2023-24, alongside other work to review and develop our FOI guidance for requesters and potential requesters and deliver events to promote the effective use of FOI rights to civil society members.

Finally, we also continued our active contribution to the work of Scotland's Open Government Partnership as a standing observer in the Steering Group.

Engagement with Scottish Parliament Committees

In November 2022, the Commissioner gave evidence to the Scottish Parliament's Health, Social Care and Support Committee, as it considered the National Care Service (Scotland) Bill. In his evidence the Commissioner reflected on his view that FOI should be extended to cover individual providers of care services under the Bill's primary legislation, rather than through a separate and subsequent designation under section 5 of the FOI Act.

In March 2023, the Commissioner also gave evidence to the Scottish Parliament's Standards, Procedures and Public Appointments Committee, discussing the work of his office over 2022-23, including measures taken to reduce the backlog of FOI appeals and speed up the issuing of

decisions. During the session the Commissioner also explored the impact of potential changes to FOI law and discussed the importance of increasing public engagement with FOI.

Watch the March 2023 evidence session on the Scottish Parliament's website:

<https://www.scottishparliament.tv/meeting/standards-procedures-and-public-appointments-committee-march-23-2023>

Public awareness polling

In May 2022, we published the findings from our latest round of public awareness research, carried out to measure public awareness of, and attitudes towards, FOI in Scotland.

Key findings from our 2022 polling of the Scottish public included:

- 89% reported that they were aware of FOI
- 63% understood they had a right to ask for information from public bodies
- 43% of people were not confident they would receive a reply if they asked for information from a Scottish public body
- 39% felt that FOI helped to increase trust in Scottish public bodies
- Respondents felt it was important that Scottish public bodies publish a range of information, with e.g. 95% supporting the publication of information on spending and 93% on decision-making
- 91% thought it was important that bodies providing health and social care services should be covered by FOI law
- Only 9% felt that FOI was a waste of public money

The full survey results are available at:

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

We plan to carry out further polling of public awareness during 2023-24.

Policy and legislation highlights

Consultations on FOI reform

During 2022-23 there were two separate consultations launched which aimed to gather views on whether and how FOI law in Scotland should be reformed and improved.

1 November 2022 saw the launch of a proposal for a Private Member's Bill to reform FOI law by Katy Clark MSP. The consultation document set out a wide range of proposals for potential FOI reform, including:

- The extension of FOI to all bodies delivering public services
- Reform of the FOI duty for public authorities to publish information
- The creation of a formal FOI Officer role
- Review of the FOI Act's exemptions
- Removal of the need to provide a name and address when requesting information

The Private Member's Bill consultation was followed shortly after by the Scottish Government's own consultation on FOI rights, which sought views on the recommendations made during the Scottish Parliament's post-legislative scrutiny of FOI in 2019-20. Specific areas on which views were sought included:

- Whether additional bodies should be brought within the scope of FOI law
- The information that should be published proactively by public bodies
- the impact of technological developments on FOI rights
- Technical amendments to ensure the FOI Act remains fit for purpose

Both consultations closed on 14 March 2023.

The Commissioner's responses to these two consultations welcomed many of the measures proposed, including the extension of FOI rights to cover third party organisations that deliver important public services. However, the Commissioner cautioned that any extension of FOI should be targeted, manageable and proportionate, in order to ensure that public confidence in the reliability and effectiveness of Scotland's FOI regime was maintained.

Other proposals supported by the Commissioner included those to:

- Introduce a new Code of Practice to improve the proactive publication of information.
- Remove the FOI 'ministerial veto', which enables the Scottish Administration to refuse to comply with decisions and enforcement action of the Commissioner in some circumstances, without having to appeal the case to the courts;
- Enable appeals to the Commissioner to be made in relation to FOI responses issued by the Lord Advocate, the Crown Office and Procurator Fiscal Service, and the Commissioner's own office.

The Commissioner also expressed concern around some of the proposals contained across the two consultations, and their impact on the effective operation of FOI law in Scotland. These included:

- The practical impact of proposals which would enable fully anonymised FOI requests to be made to organisations.
- The potential impact of amendments to definitions which are currently widely understood, including the definition of 'information' in FOI law. The Commissioner's concerns related to unintended consequences that might arise from such proposals.
- The exclusion of organisations which deliver public services from FOI law based solely on considerations relating to the type or size of the organisation, rather than the nature of the public service provided and the public interest in extension to that service.

Reports from both consultation exercises are due to be published in 2023-24.

Read the Commissioner's full response to both consultations at:

<https://www.itspublicknowledge.info/foi-amendment-consultation-responses>

eCase FOI Awards

The Commissioner was pleased to support the first annual eCase FOI Awards, a new award scheme to recognise and celebrate FOI good practice across the UK, which launched in November 2022.

The awards sought nominations across four categories:

- Practitioner of the Year
- Team of the Year
- Rising Star
- Best Initiative

The Commissioner sat on the judging panel for the awards, alongside colleagues from the UK Information Commissioner's Office (ICO), the Information and Records Management Society, the UK and Scottish Campaigns for FOI and others.

The award-winners were announced at a free conference in Birmingham in February 2023 - the first ever conference for FOI practitioners across the UK. The Commissioner delivered a keynote address at the conference, while staff from our office also took part in panel discussions focussed on FOI good practice and FOI challenges.

The Commissioner was delighted to see good practice from Scotland recognised through the awards, with staff from Social Security Scotland winning the Rising Star Award, while Marine Scotland was also highly commended in this category. The FOI Team from Social Security Scotland also found themselves highly commended in the Team of the Year category.

We look forward to continuing our support for the eCase FOI Awards in 2023-24.

Find out more about the work done by the Scottish award-winners:

www.itspublicknowledge.info/award-winner-stories

Working in partnership

Our work on the judging panel of the eCase FOI awards alongside staff from the UK Information Commissioner's Office (ICO) was representative of our strong and developing relationships with ICO colleagues in recent years.

Other areas of productive and collaborative joint-working across 2022-23 have included:

- Participating in workshops to support the development of the ICO's 'vexatious request' self-assessment toolkit
- An ICO staff-member working on secondment with our Policy and Information Team from 01/04/22- 04/10/22⁶
- The establishment of a new, ongoing schedule of six-monthly meetings between our Policy and Information Team and ICO staff working in this area
- Proposals for the development of co-produced, UK-wide FOI 'beginner-guides' to be taken forward in 2023-24.

We look forward to continuing to work collaboratively with our ICO colleagues on appropriate shared activity across 2023-24 and beyond.

Centre for FOI law essay prize

In the first quarter of 2022-23 we supported the Centre for FOI's first law essay prize, an FOI-themed essay writing competition for school pupils with an interest in legal reasoning. The competition asked aspiring lawyers or students in S5 or S6 to respond to a challenging question assessing the legal validity of an unusual FOI request.

The Commissioner judged the prize, while also promoting the competition through our social media channels and our newsletter.

Coronavirus emergency legislation

During the coronavirus pandemic the Scottish Parliament introduced legislation which enabled the Commissioner to take the impact of the pandemic into account when deciding whether or not an authority had complied with FOI timescales. This provision was removed for all requests made to public authorities on or after 1 October 2021 by the Coronavirus (Extension and Expiry) (Scotland) Act 2021 (the 2021 Act).

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

The Commissioner made representations to the Scottish Government for this provision to be made permanent, with this subsequently being enacted through the Coronavirus (Recovery and Reform) (Scotland) Act 2022. The Commissioner welcomes this change, allowing for a more modern, efficient and flexible approach to the issue of notices, while enabling future notices to be issued via either electronic or postal means, as appropriate to individual circumstances.

⁶ Secondment period 05/10/2021-04/10/2022

International engagement

In September 2022, the Commissioner met with visiting delegates from Hungary - including colleagues from the Hungarian National Authority for Data Protection and FOI and Transparency International Hungary - to discuss the implementation of FOI. The wide-ranging discussions and opportunity to share experience, information and learning will support the ongoing development of FOI law and practice across our two countries.

The Commissioner also continued to contribute actively to the furtherance of international cooperation among information rights regulators, including through his (virtual) participation in the International Conference of Information Commissioners (ICIC), which was held in Puebla, Mexico in June 2022. The conference featured discussion of current challenges, opportunities for innovation, the role of FOI in countering misinformation and the promotion of rights to vulnerable groups. The event concluded with the issue of a public statement on the value of FOI in supporting vulnerable groups and strengthening democratic institutions.

The Commissioner also shared learning from Scotland's experience of FOI as part of a transparency webinar in the Philippines.

Corporate Services Performance

Enquiries

The Commissioner has a power to give advice on the operation of FOI and uses this power to provide an enquiries service to the public and public authorities. Anyone with a question about FOI can contact us for advice. Most of our enquiries are from the public and this service is one of the main points of contact with us. Since FOI was introduced in 2005, we have answered more than 27,100 enquiries.

Our office premises re-opened on 3 May 2022 and hybrid working is in place. We have continued to respond to enquiries sent to us by email or by post and they are being managed in line with the relevant procedures. Phone messages, relating to an enquiry, can be left on our general office phone number and these are picked up by the Corporate Services Team (CST) and the related details forwarded to the relevant member of staff for response. As the hybrid working system develops, we will be considering how telephone enquiries are handled.

The numbers of enquiries received in 2022-23 as a whole, and in each quarter, with comparative figures for 2021-22 and 2021-20, are:

	2020-21	2021-22	2022-23
Q1	177	178	163
Q2	317	208	185
Q3	172	137	236
Q4	194	160	224
Total	860	683	808

In 2022-23, the majority of enquiries related to requests for advice on making and responding to information requests and requests for reviews or appeals, submitting FOI statistics to us (a password is now needed to submit quarterly statistics which generated additional enquiries) and providing information on the referral of matters to the UK Information Commissioner's Office.

Type of enquirer	%
Public and other ⁷	52%
Public authority ⁸	33%
Media	5%
Commercial / private enterprise	3%
Voluntary / campaign organisation	2%
Academic / student	1%
Solicitor	1%
Categories <1%	3%

⁷ "Public and other" represents all individual members of the public with no identified affiliation to an organisation or group.

⁸ Includes prospective public authorities falling within the Commissioner's jurisdiction & UK public authorities.

Response times

We recognise the importance of good performance and quality in the delivery of the enquiries service and met both enquiry KPIs that were in place for 2022-23.

Two enquiries were open at the end of 2021-22 and responded to in 2022-23. Of the enquiries closed in 2022-23, 788 were responded to within five working days and 20 were responded to within 20 working days. One response took longer than 20 working days as the case was kept open whilst a related intervention was progressed. One enquiry was open at the end of 2022-23 and will be included in the enquiry statistics for 2023-24.

We were able to respond to 99.87% of enquiries within 20 working days

Performance measure 2022-23	Target (%)	Actual (%)
answered in 5 days	90%	97.40%
answered in 20 days	95%	99.87%

More detail on the Commissioner's Enquiries performance in 2022-23 is set out in the committee report considered by the SMT on 27 April 2023, available at:

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

The Commissioner's FOI and subject access performance

Information requests

As a Scottish public authority, we are subject to FOI law and must respond to the requests for information we receive. In 2022-23, we received 49 information requests (2021-22: 72) and 0 requests for review (2021-22: 9).

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

Covid-19 pandemic

Our priority as an organisation was to provide services and guidance while safeguarding the health, safety and wellbeing of our members of staff. We maintained operational output, which included responding to requests for information.

The interim policy "Covid-19: How the Commissioner will respond to FOI requests during the temporary office closure due to the impact of the Covid-19 pandemic" set out how the Commissioner would comply with the FOI Act and EIRs requests and review requests during the temporary closure of the office premises. As the office premises re-opened on 3 May 2022 this guidance is no longer relevant and has been discontinued, however, the guidance was in place during the first few weeks of the reporting period.

Requests for information

Received	2020-21	2021-22	2022-23
Brought forward from previous year	3	1	1
Requests received	62	72	49
- FOI requests	61	72	49
- EIRs requests	1	0	0
Request caseload	65	73	50
Closed	2020-21	2021-22	2022-23
Total requests closed	64	72	49
Information provided in full	7	13	4
Information partially supplied	14	19	8
Information not held	28	28	30
Information not supplied	15	12	7
- Clarification not provided	2	0	1
- Request withdrawn	5	3	2
- Exempt	5	5	3
- Neither confirm nor deny	0	0	0
- Excessive costs	1	0	0
- Information request invalid	2	2	0
- Vexatious	0	2	1
Fee charged	0	0	0
Requests open at end of year	1	1	1

Requests for review

Requests for review	2020-21	2021-22	2022-23
Brought forward from previous year	0	2	0
Review requests received	9	9	0
Review caseload	9	11	0
Closed	2020-21	2021-22	2022-23
Total reviews closed	7	11	0
Internal review upholds original decision in full	6	7	0
Internal review partially upholds original decision	1	2	0
Internal review substituted a different decision	0	0	0
Request for review invalid	0	1	0
Request for review withdrawn	0	1	0
Requests for review open at end of year	2	0	0

Response times

The 100% targets for responding to requests for information and requests for review are targets that we aim to meet at all times. We met our KPI targets in responding to information requests. There were no review requests and, therefore, we were unable to measure performance against the KPI target relating to review requests.

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

More detail on the Commissioner's FOI performance in 2022-23 is set out in the committee report considered by the SMT on 27 April 2023, available at: www.itspublicknowledge.info/governance-and-finance.

Subject access

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

In 2022-23, we received 24 subject access requests (2021-22: 23).

Response times

We have a target to meet 100% of subject access requests within a calendar month and this target was met in 2022-23.

More detail on the Commissioner's subject access performance in 2022-23 is set out in the committee report considered by the SMT on 27 April 2023, available at: www.itspublicknowledge.info/governance-and-finance.

Service standards

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

Compliments recorded

In 2022-23, we recorded 85 compliments (2021-22: 92).

The majority of compliments came from applicants, enquirers and public authorities and thanked us for a number of aspects of our work, mainly helpful, clear and professional advice and prompt responses to enquiries, support and professional responses. Compliments were also received relating to events that we had taken part in during the year.

There are no service standards or targets relating to compliments.

Complaints about our services

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

In 2022-23:

- we received 14 complaints (2021-22: 6), the majority of which related to an aspect of our working practices
- 2 complaint cases were open at 31 March 2022 and are included in the number of complaints dealt with in 2022-23
- all complaints were either resolved at the frontline or investigated:
 - 4 complaints were closed at Frontline Resolution
 - 12 complaints were closed following an Investigation
- there were no complaint cases open at 31 March 2023.

Complaint KPIs

In 2022-23 our target for the resolution of cases at the frontline was met. However, we did not meet our targets for investigating complaints and for upholding, in part or full, less than 20% of those cases.

Performance measure	Number	Target (%)	Actual (%)
Complaints closed	16		
Resolved at frontline	4	85% resolved in 5 days 100% resolved in 10 days	Met - 100% resolved in 5 days N/A (100% above)
Investigated	12	85% answered in 30 days 100% answered in 40 days	Not met - 83% answered in 30 days Met – 100% answered in 40 days
Complaints upheld in part or full	8	Fewer than 20%	Not met – 67% of complaints upheld in part or full

Environment and sustainable development

The Commissioner aspires to attain high environmental standards, minimising the effects on the environment and where possible making a positive contribution to enhancing the environment. The aim is to continually improve our environmental performance, to protect the environment by reducing pollution and resource consumption and to operate in a manner that supports and encourages the natural diversity of plant and animal life. We have not identified any specific aim or risk relating to climate change. However, improving our environmental performance will contribute towards wider efforts to mitigate climate change.

Environment

The Commissioner's Environmental Policy details a number of objectives through which we aim to manage and, where possible, reduce any impacts on the environment that are due to our activities. Generally, we are committed to improving the environmental performance of our organisation, which involves protecting biodiversity, reducing pollution and carbon emissions.

We also continue to be committed to improving efficiency in how we function as an organisation and in how the office is managed and in 2022-23 we:

- continued our hybrid working practices to allow staff to work remotely
- adopted a no-paper policy when working remotely
- used telephone and video conferencing to replace in person face to face meetings
- selected the most environmentally friendly products for cleaning where possible.

Our Environmental Policy can be found in Class 5 of our Guide to Information at:

www.itspublicknowledge.info/our-guide-to-information.

Sustainability

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

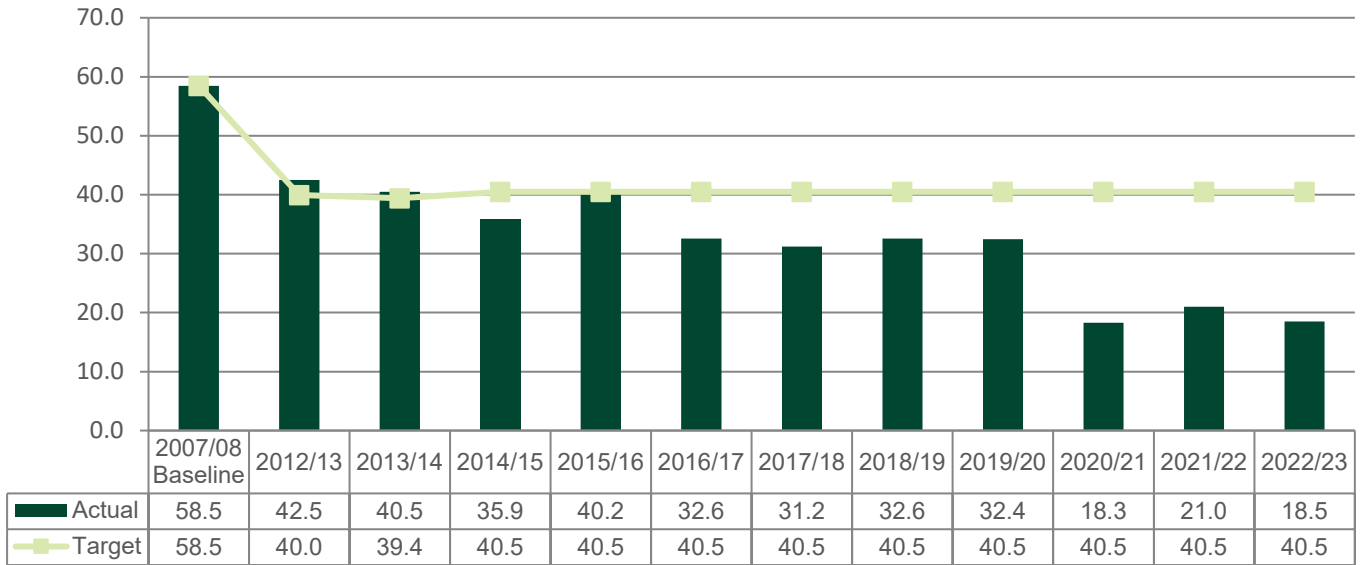
The Commissioner's Statement on Sustainable Growth for 2022-23 has been published and can be found at: www.itspublicknowledge.info/governance-and-finance

Carbon footprint

For 2022-23, the total organisation CO₂e is 18.52 tonnes (2021-22: 21.02 CO₂e tonnes) – this is significantly less than our annual target to be below 40.5 tonnes CO₂e and can be contributed to the following:

- this overall decrease throughout the years has been mainly due to the impact of the COVID-19 pandemic affecting our organisation as we changed our way of working from 2020 and enabled remote working.
- the electricity consumption has increased by 2% which is due to more staff members working in the office premises following the re-opening of the office premises on 3 May 2022. When the office premises were closed, only essential work was allowed to take place in the onsite and this mainly involved a weekly essential visit by members of the Corporate Services Team.

Carbon Footprint 12 months to 31/3/23



- a new gas boiler has been fitted and this has also contributed to some of the 18.6% reduction of gas usage throughout the year as the newer model is more fuel efficient.
- due to the change in working practices, with staff working remotely with remote access to our office systems, staff have not needed to use as much paper as in previous years, for example, paper copies of case files have not been needed.
- in 2022-23 there was a 0.5 tonne increase in paper re-cycling from 2021-22 mainly due to the destruction of paper files in line with the Commissioner's retention policies. However, overall there is still a reduction from 2019-20 Levels (pre the Covid-19 pandemic).

Community, social and human rights

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

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

Due to continuing health and safety requirements and restrictions on social activities, we were unable to support charitable activities in the usual way in 2022-23.

Fraud and bribery

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

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

There have been no fraud or bribery cases in 2022-23 (0: 2021-22).

Payment to suppliers

We are committed to the Scottish Public Finance Manual (SPFM) requirements to ensure the prompt payment of invoices for goods and services and have KPIs which are in accordance with the SPFM requirements. Our KPIs require us to pay 95% of undisputed invoices within 10 days of receipt or fewer and 100% of undisputed invoices within 30 days or fewer and we met these in 2022-23.

Performance Measure	Target (%)	Actual (%)
Settled undisputed targets within 10 days	95%	99.37% (exceeded)
Settled undisputed invoices within 30 days	100%	100% (met)

Further information on this area of performance can be found in the committee report considered by the SMT on 26 May 2023, available at:

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

Corporate performance

An operational plan is approved for each financial year and an Operational Plan (linked to the Strategic Plan 2020-24) was agreed for 2022-23 and published on our website. More information is available at www.itspublicknowledge.info/strategic-and-operational-plans.

The Operational Plan 2022-23 was set out as a programme of actions listed under types of operational activity, with cross references to the strategic aims supported by the action. The actions listed were business as usual (BAU) and projects.

In general, BAU was managed and monitored in line with set targets, performance indicators (as set out in the Performance and Quality Framework 2022-23, established reporting structures and approved policy). Projects were managed according to project management principles and practice, applied as appropriate.

The Operational Plan 2022-23 Monitoring Report was used as a working document to form the basis of on-going monitoring and progress against the plan (BAU and projects) was reviewed every two months by the SMT, updated and then published.

Governance

The Key Document C1 Governance Arrangements (GA) sets out the Commissioner's governance arrangements and monitoring and reporting systems that are in place to ensure that strategic objectives are delivered and that there is an appropriate level of accountability and control. More information is available on the Commissioner's website at www.itspublicknowledge.info/governance-and-finance.

Further information on the governance structures that are in place is also set out in the Accountability Report section of this ARA 2022-23.

Governance reporting

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

In 2022-23, out of the 42 GRA reporting measures, 40 were met in full, one was partially met as the related reporting mechanisms are currently under review and one was no longer required to be met.

More information on this can be found in the related committee report submitted to the SMT on 12 July 2023 available at www.itspublicknowledge.info/governance-and-finance.

Risks

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

In 2022-23:

- the Commissioner ensured that risk management was embedded into corporate decision-making processes so that the impact of policy decisions on risk was considered when a strategic or operationally significant decision was taken or policy or procedure approved
- the Head of Corporate Services provided assurance that risk was, and continued to be, managed effectively

- the risk profile of the organisation, that is the risks we faced, how the risks affected the achievement of objectives, how the risks were mitigated and how this affects future plans and performance, changed throughout the course of the year.
- the Commissioner defined strategic risks as those which relate to the organisation's ability to deliver long-term and strategic aims and which derive from the relationship with the external environment and legislative context
- the Commissioner defined operational risks as those relating to issues which impacted directly on day-to-day activity and which impacted on the operational delivery of the annual operational plan

In 2022-23, eight strategic risks were identified which covered the following areas:

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

When considering both strategic and operational risks in 2022-23, we took account of the continuing impact of the Covid-19 pandemic which had initially resulted in the residual risk assessments, relating to both strategic and operational risks, being increased.

We recognised that the highest operational risks related to:

- ensuring the health and safety of all staff – this risk was treated as a threat and we constrained the risk by limiting the possible exposure of our staff to Covid-19 in the office premises
 - the office premises re-opened on 3 May 2023 and we mitigated this risk by enabling a hybrid system of working to be in place enabling working in the office premises and remote working. We took account of health and safety requirements to ensure that the risk to the members of staff working in the office premises was managed and mitigated as far as possible
- having sufficient resources to enable us to carry out our regulatory role, including physical resources and maintaining operational output to take account of fluctuating volumes and number of cases times - we could not transfer these risks to another body or organisation and managed these risks as threats that were tolerable in the shorter term but became less tolerable as case numbers rose. We mitigated these risks by:
 - using enabling hybrid working, reviewing working practices and revising decision making levels
 - further streamlining our enforcement procedures and actively managing the volume of cases and case allocation to address the increase in cases affecting our performance
 - enabling hybrid working
 - recruiting to vacant posts and re-structuring enforcement
 - the risk was partially treated but still remained as at 31 March 2022-23.

- having a reliable and up to date website with current and managed content – we treated this risk as a threat in that not having this could result in us not implementing our Communications Strategy and failing to meeting our statutory duties. We mitigated this risk by
 - completing the specific project to provide a new website, within set timescales (and in accordance with a detailed and relevant specification)
 - actively managing the new website which went “live” in early April 2022
 - the risk was treated and the new “live” website was in place in April 2022.
- having secure and resilient IT systems and equipment – we treated this risk as a threat in that not having secure and reliable IT systems could result in the failing to meet our statutory duties. We mitigated this risk by:
 - updating IT security and management policies
 - ensuring appropriate cyber resilience measures were in place

Future plans and performance

Looking forward, the SMT have taken account of the following matters when preparing and approving the Operational Plan 2023-24:

- how we can achieve strategic priorities in 2023-24 - what can we achieve, how can we deliver strategic priorities in a potentially difficult operating environment
- workforce capacity, planning, deployment and wellbeing as we explore issues surrounding hybrid working
- quality, efficiency, effectiveness and response/s to changing demands
- our resources - workforce, property and digital
- how do we ensure sustainability is taken into account in our operational work
- how we can support initiatives to improve FOI law
- appointment of new Commissioner

Statutory reporting

In 2022-23 we complied with our statutory reporting duties by:

- laying our FOISA, Section 46(1) report on performance before the Scottish Parliament
- laying our Annual Report and Accounts 2021-22 before the Scottish Parliament
- publishing our report under the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017
- publishing information on our website on specific expenditure areas under the Public Services Reform Act 2011 (PSRA).

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

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

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

The Nature Conservation (Scotland) Act 2004 places a statutory duty on all public sector bodies in Scotland to further the conservation of biodiversity and the Wildlife and Natural Environment (Scotland) Act 2011 introduced a requirement for all public bodies to make a report publicly available on their compliance with the biodiversity duty. Biodiversity duty reports are required every three years. Our Biodiversity Duty Report 2018-20 was published in March 2021 and can be found at www.itspublicknowledge.info/governance-and-finance.

Information and records management

The Commissioner recognises and promotes good records management. The efficient and secure management of information is an ongoing priority. During 2022-23, we:

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

Re-use of public sector information

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

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

We received no re-use requests in 2022-23.

Daren Fitzhenry

Daren Fitzhenry Accountable Officer

26 September 2023

Date:

Scottish Information Commissioner

Accountability Report and Financial Statements 2022-23



Scottish Information
Commissioner

ACCOUNTABILITY REPORT 2022-23

For 2022-23, the Accountability Report includes the following sections:

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

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

This report contains the following:

- **Commissioner’s Report** – this provides information about the Commissioner and his Senior Management Team (SMT), staff information and data incidents in 2022-23
- **Statement of the Accountable Officer’s Responsibilities** – this gives details of the duties of the Accountable Officer and how these duties have been met in 2022-23
- **Governance Statement** – this explains the systems by which the organisation is directed and controlled, sets out the governance framework and includes details on the management of risk

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

Parliamentary Accountability and Audit Report

1. The Commissioner is held to account by the Scottish Parliament (Parliament) through statutory arrangements put in place by the Freedom of Information (Scotland) Act 2002 (the FOI Act).
2. The Commissioner was appointed by Her Majesty the late Queen Elizabeth II, on the nomination of the Scottish Parliament, and the Scottish Parliamentary Corporate Body (SPCB) determines the Commissioner’s salary and the terms and conditions upon which they hold office. The SPCB approves the Commissioner’s annual budget.
3. The Commissioner must send a copy of the annual accounts to the Auditor General for Scotland for auditing. The Auditor General for Scotland has appointed Grant Thornton UK LLP to carry out the external audit on their behalf.
4. For each financial year,
 - the Commissioner’s audited Annual Report must be laid before Parliament within 9 months after the end of the reporting year, that is before 31 December 2023
 - the Commissioner’s general report on the exercise of the functions conferred on him under the FOI Act, must be laid before Parliament within 7 months after the end of the reporting year, that is before 31 October 2023.

Governance Report

Commissioner's Report

Background

5. Our financial statements have been prepared in accordance with the Freedom of Information (Scotland) Act 2002 (the FOI Act) Schedule 2, paragraph 5(1).
6. On 16 October 2017, Daren Fitzhenry took up his appointment as Commissioner, for a fixed term of six years, and is the designated Accountable Officer accountable to the Scottish Parliament for the finances of the Commissioner.
7. The Commissioner receives funding through the SPCB which has the power to approve the Commissioner's budget.

Senior Management Team

8. For the financial year ended 31 March 2023, the Commissioner's SMT comprised:
 - Daren Fitzhenry, Scottish Information Commissioner
 - Helen Gardner-Swift, Head of Corporate Services
 - Margaret Keyse, Head of Enforcement
 - Claire Stephen, Acting Head of Policy and Information – 01/04/22 – 31/03/23

Register of interests

9. Declarations of Interest for the SMT are published on the website, in addition to their biographies, and are updated each year. Declarations of Interest of other staff are obtained and held when required.
10. The declarations of interest can be found in Class 1 at [Our Guide to Information | Scottish Information Commissioner \(itspublicknowledge.info\)](https://www.itspublicknowledge.info).

Personal data related incidents

11. Appropriate technical and organisational measures are in place to meet data protection and accountability requirements and to ensure that personal information is safeguarded including:
 - a comprehensive Data Protection Policy and Handbook
 - a data protection officer (DPO)
 - Privacy Notice
 - Information and Records Management Policy
 - Information and Records Management Handbook
12. An internal audit carried out in 2021-22 confirmed that the data procedures reflect good practice in a number of areas and did not identify any high-risk, significant or reportable weaknesses. Training on data protection and information security is included in the induction process for all new members of staff. All members of staff received refresher training and were provided with data protection and UK GDPR updates.

13. When working remotely, all members of staff are still bound by our requirements regarding the security of information and are required to adopt the same information security measures that they would take if working in the office premises.
14. There were no significant personal data related incidents in 2022-23.

Provision of information to employees

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

Pension costs

16. The Principal Civil Service Pension Scheme (PCSPS) and the Civil Servant and Other Pension Scheme (CSOPS) – known as “alpha” – are unfunded multi-employer defined benefit schemes but the Scottish Information Commissioner is unable to identify its share of the underlying assets and liabilities. The scheme actuary valued the PCSPS as at 31 March 2016. You can find details in the [resource accounts of the Cabinet Office: Civil Superannuation](#).
17. For 2022-23, employers’ contributions of £253,641 were payable to the PCSPS (2021-22 £269,879) at one of four rates in the range 26.6% to 30.3% of pensionable earnings, based on salary bands.
18. The Scheme Actuary reviews employer contributions usually every four years following a full scheme valuation. The contribution rates are set to meet the cost of the benefits accruing during 2022-23 to be paid when the member retires and not the benefits paid during this period to existing pensioners.
19. Employees can opt to open a partnership pension account, a stakeholder pension with an employer contribution. For 2022-23, employers’ contributions of £8,386 were paid to one or more of the panel of three appointed stakeholder pension providers. Employer contributions are age-related and ranged from 8% to 14.75%. Employers also match employee contributions up to 3% of pensionable earnings. In addition, employer contributions of £236.27, 0.5% of pensionable pay, were payable to the PCSPS to cover the cost of the future provision of lump sum benefits on death in service or ill health retirement of these employees.
19. Contributions due to the partnership pension providers at the balance sheet date were £793.31. Contributions prepaid at that date were £0.

Audit

20. The Commissioner’s financial statements are audited in accordance with paragraph 5(2) of Schedule 2 to the FOI Act by auditors appointed by the Auditor General for Scotland. Grant Thornton UK LLP have been appointed as the Commissioner’s auditors for a five-year period from 2022-23 to 2026-27 and have received no fees in relation to non-audit work.

Statement of Accountable Officer's Responsibilities

21. Under paragraph 5(1) of Schedule 2 to the FOI Act, the Commissioner is required to keep accounts and prepare annual financial statements in respect of each financial year, in accordance with the directions of the Scottish Ministers. The financial statements are prepared on an accruals basis and must give a true and fair view of the state of affairs and application of resources of the Commissioner and cash flows for the financial year.
22. In preparing the financial statements, the Accountable Officer is required to comply with the requirements of the Government Financial Reporting Manual (FReM) and in particular to:
 - observe the Accounts Direction including, the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
 - make judgements and estimates on a reasonable basis
 - state whether applicable accounting standards, as set out in the FReM, have been followed, and disclose and explain any material departures in the financial statements
 - prepare the financial statements on a going concern basis
 - confirm that the Annual Report and Accounts as a whole is a fair, balanced and understandable and take personal responsibility for the Annual Report and Accounts and the judgements required for determining that it is fair, balanced and understandable.
23. The SPCB has appointed me as Accountable Officer. The responsibilities of the Accountable Officer (including responsibility for the propriety and regularity of the public finances) for keeping proper records and for safeguarding the Scottish Information Commissioner's assets, are set in the Memorandum to the Accountable Officer of the Scottish Information Commissioner which was provided to me on my appointment.
24. As Accountable Officer, I have taken all steps that I ought to have taken to make myself aware of any relevant audit information and to establish that the Scottish Information Commissioner's auditor is aware of that information. So far as I am aware, there is no relevant audit information of which the auditor is unaware.
25. As Accountable Officer, I confirm the Annual Report and Financial Statements are, as a whole, fair, balanced and understandable and, also, that I am personally responsible for these documents and the judgements required in reaching that conclusion.

Governance Statement

Governance Framework: Scheme of Control

26. As Accountable Officer, I am responsible for maintaining a sound system of governance. Governance systems must ensure appropriate levels of internal control and support the achievement of the organisation's aims and objectives, while safeguarding assets and the funds approved by the SPCB for which I am responsible.
27. A scheme of control is in place, the key features of which are:
- The Commissioner holds the role of Accountable Officer.
 - The Commissioner leads a SMT whose membership is the Commissioner and the three Heads of Department and who have overall responsibility for the operation and development of the organisation (Corporate Services, Enforcement and Policy and Information). Each member of the SMT has delegated authority to make decisions as set out in the Commissioner's Scheme of Delegation. All decisions should be authorised in line with the Scheme of Delegation and approved policies and procedures.
 - Day-to-day operational management is the responsibility of the individual Heads of Department (HODs), their deputies and team members. The individual HODs are responsible for delivering the functions and business of office of the Commissioner to achieve the aims of the Strategic Plan 2020-24.
 - The SMT has formal meetings each quarter which focus on governance reporting and meets monthly to discuss operational matters and required additional items. The key document C1 Governance Reporting Arrangements sets out the matters to be considered at each of these meetings. The agendas, minutes and papers considered at the SMT meetings are published on our website at:
[Governance and finance | Scottish Information Commissioner \(itspublicknowledge.info\)](https://itspublicknowledge.info/governance-and-finance-scottish-information-commissioner).
 - Information from the agendas, minutes and papers is only withheld where the relevant exemption(s) in the FOI Act or the EIRs would apply if a request were to be made for the information.
 - An Operational Plan is approved for each financial year which sets out how the Commissioner's vision and strategic objectives are to be realised in that year. Progress against the plan is regularly reviewed by the SMT which enables the monitoring of outcomes and the management of resources. The plan is laid out as a programme of actions listed under types of operational activity, with cross references to which strategic objective(s) each action supports and the HOD are accountable for their identified actions. The actions listed are a mixture of "business as usual" and one-off projects. Day-to-day operational management is the responsibility of individual HOD, their deputies and/or managers and their teams and the HOD report on operational performance and issues to the SMT.
 - The established and approved governance arrangements are set out in the key document C1 Governance Arrangements which, together with the supporting key document C1 Governance Reporting Arrangements, is published on the Commissioner's website at:
[Governance and finance | Scottish Information Commissioner \(itspublicknowledge.info\)](https://itspublicknowledge.info/governance-and-finance-scottish-information-commissioner).

- External scrutiny is provided by
 - external auditors appointed by the Auditor General for Scotland
 - the Commissioner’s Advisory Audit Board (AAB) as set out in its purpose and objectives at:
[Governance and finance | Scottish Information Commissioner \(itspublicknowledge.info\)](https://www.scot.nhs.uk/itspublicknowledge/info).
- internal audits provided by an external internal auditor or expert, when required and possible
- other audits carried out by external experts and accreditations, for example, health and safety, Cyber Essentials and Cyber Essentials Plus

28. In 2021-22 an internal audit reviewed the effectiveness of our Governance and Risk Management arrangements and the internal auditor concluded:

- the Scottish Information Commissioner has effective and appropriate corporate governance and risk management processes in place
- the governance arrangements are well documented and supported by policies and procedures reinforcing standards of behaviour, with performance monitored on an ongoing basis
- there is also clear evidence of proactive risk management controls and practices.
- there were no reportable weaknesses identified in the internal audit as regards:
 - roles, responsibilities and terms of reference
 - formal performance evaluation of key governance forums/ organisational performance
- there is robust risk management policy
 - which has a defined, consistent and embedded approach for the accurate and timely identification and evaluation of risks related to achievement of business objectives
 - mitigating actions are identified to manage residual risk down to an acceptable level, in line with an agreed risk appetite/tolerance, with actions allocated and risk reported in line with agreed frequencies

29. The scheme of control is designed to manage rather than eliminate the risk of failure to achieve aims and objectives and, therefore, can provide only a reasonable and not an absolute assurance of effectiveness. Systems are in place and will continue to be developed to identify and evaluate risks and manage them efficiently, effectively, economically and proportionately.

30. The scheme of control has been in place for the year 2022-23 and up to the date of the approval of the annual report and accounts.

Scheme of Control - Review and assessment of effectiveness

31. As Accountable Officer, I am responsible for reviewing the effectiveness of the scheme of control. My review has been informed by:

- reports and comments made by the external auditors
 - the work of the SMT
 - checking implementation and progress through regular reporting of achievement against the Commissioner's Strategic Plan, the Operational Plan and risk registers
 - periodic review of the appropriateness of measures and policies in place
 - statements of assurance from delegated officers (as set out in the Governance Reporting Arrangements)
 - the strategic direction of the organisation
 - the advice of the AAB in relation to the Commissioner's governance arrangements
 - internal audit – one external review took place in 2022-23 relating to cyber resilience
32. Compliance with generally accepted best practice principles and relevant guidance on corporate governance has been assessed using an internal control checklist completed by the Head of Corporate Services (HOCS). The checklist is based on that provided within the Scottish Public Finance Manual (SPFM) and a proportionate approach has been adopted, reflecting the relatively small size and modest structure of the Commissioner's office whilst recognising the wide impact of the Commissioner's duties.
33. The internal control checklist and the statements of assurance provided by the HODs (as set out in the key document C1 Governance Reporting Arrangements) and the HOCS assurance on the compliance with governance reporting arrangements have confirmed that effective controls and systems are in place.

Governance Framework: Management of risk

34. The Commissioner actively manages risk through an appropriate and proportionate framework which identifies, assesses, addresses, reviews and reports on risk, in the context of its risk appetite and environment. The framework:
- enables the organisation to take informed decisions across all its functions
 - gives confidence to those that scrutinise the organisation in the robustness of corporate governance arrangements
 - embeds risk management in corporate decision-making processes to ensure that the impact of policy decisions on risk is considered each time a strategic or operationally significant decision is taken or policy and procedures are approved
 - provides for the maintenance and regular reviews and updating of the strategic and operational risk registers.
35. The SMT approves the Risk Management Policy which defines the organisation's risk appetite and articulates the organisation's risk tolerance. The Commissioner's risk appetite is set at two levels, reflecting the differing natures of the Commissioner's duties and powers. Statutory duties impose functions which must be carried out, or carried out in a particular way, or to achieve a particular outcome. Statutory powers give the ability to carry out functions but they are not prescriptive about approach or outcomes.

- **Statutory functions:** the risk appetite is cautious to open. This risk appetite is assessed using appropriate caution to ensure the Commissioner meets statutory requirements, but the aim is to push the boundaries to achieve an acceptable level of reward, particularly in relation to our interpretation of FOI legislation.
- **Statutory powers:** the risk appetite is open, that is, willing to consider all potential delivery options and choose the one that is most likely to result in successful delivery while also providing an acceptable level of reward (and value for money). In setting the risk appetite in this way, the Commissioner recognises that the appetite for some categories of risk will be more cautious or hungry depending on what they are and what type of impact they have.

36. The risk appetite helps the Commissioner to prioritise risk mitigations, and therefore, resources, on those risks outside of our agreed acceptable limits to actively monitor risk assessment and the use of target scoring within each of the risk registers ensure that the risk appetite is reflected in the register, supporting effective discussion when current scores are beyond the target or risk appetite and when risks are close or proximate.
37. The Commissioner's management of risk provides an ongoing system which identifies key risks and evaluates their potential impact on the achievement of strategic and operational objectives and the control measures in place or needed either to eliminate or mitigate the impact and/or reduce the likelihood of occurrence. Our systematic approach to risk ensures that there is a complete risk profile in place for each financial year. The evaluation of risk involves assessing its nature and extent so that effective and affordable control measures can be implemented.
38. The systems are designed to manage rather than eliminate the risk of failure to achieve the Commissioner's policies, aims and objectives and can only provide a reasonable and not absolute measure of effectiveness.

Risk appetite, tolerance, risk control and risk score

39. The [Risk Management Policy 2022-23](#) sets out how risk appetite, tolerance, control and scoring were managed within the Commissioner's risk framework.

Risk profile

40. In 2022-23, the risk profile of the organisation, that is the risks we faced, how the risks affected the achievement of objectives, how the risks were mitigated and how this affects future plans and performance, changed throughout the course of the year.
41. In 2022-23:
- the overall risk management process was reviewed by the SMT to ensure that it was appropriate and effective
 - the Risk Management Policy and strategic risks were reviewed by the AAB.
 - the Commissioner defined strategic risks as those which relate to the organisation's ability to deliver long-term and strategic aims and which derive from the relationship with the external environment and legislative context
 - a Strategic Risk Register was agreed and reviewed and updated by the SMT on a quarterly basis.

- the Commissioner defined operational risks as those relating to issues which impacted directly on day-to-day activity and which impacted on the operational delivery of the annual operational plan
 - a comprehensive Operational Risk Register was agreed and reviewed and updated by the SMT every two months.
 - individual risks were owned by Heads of Department
 - the risk assessment process took account of the cost, feasibility, probability, risk appetite and potential impact and action was planned and undertaken to address and mitigate risks.
40. The Performance Report Overview and Analysis sections explains the key risks, affecting performance, considered by the SMT in 2022– 23 see page 12.
41. The risk management systems have been in place for the year 2022-23 and up to the date of the approval of the annual report and accounts.

Review of effectiveness of risk management

42. As Accountable Officer, I have reviewed the risk management arrangements. My review has been informed by:
- reports and comments made by the external auditors
 - the internal audit which reviewed the effectiveness of the risk management arrangements and which concluded:
 - there are effective risk management processes in place
 - there was clear evidence of proactive risk management controls and practices.
 - the work of the SMT
 - the management of risk by the organisation
 - the strategic direction of the organisation
 - the advice of the AAB in relation to the Commissioner’s Risk Management Policy and strategic risks.
43. Compliance with generally accepted best practice principles and relevant guidance on risk management has been assessed using an internal control checklist completed by the Head of Corporate Services. The checklist is based on that provided within the SPFM and a proportionate approach has been adopted, reflecting the relatively small size and modest structure of the Commissioner’s office whilst recognising the wide impact of the Commissioner’s duties.
44. The Risk Management Policy and the risk registers have been effective in enabling the SMT to manage the organisation’s risk profile and include target risks which inform priorities when formulating and carrying out the annual Operational Plan.
45. All matters requiring a formal decision by the SMT have included an assessment of the impact on risk. This, combined with the SMT’s active management of the risk registers and

the implementation of the governance arrangements, has been effective in managing risk in decision making and planning practices.

Significant issues

- 46. During the financial year to 31 March 2023 and to the date of this statement, no significant control weaknesses or issues have arisen and no significant failures have arisen in the expected standards for good governance, risk management and internal control.
- 47. As Accountable Officer, I authorised the Financial Statements 2022-23 for issue on 22 September 2023.

Daren Fitzhenry

Daren Fitzhenry Accountable Officer

26 September 2023

Date:

Remuneration and Staff Report

Remuneration Report

Remuneration⁹ policy

48. The Commissioner's remuneration is determined by the SPCB. The Commissioner's salary is reviewed on an annual basis.
49. The SMT remuneration is determined by the Commissioner subject to the approval of the SPCB.
50. In determining levels of remuneration, account is taken of the need for pay to be set at a level which will ensure the recruitment, retention and motivation of staff, together with the need to ensure affordability and value for money.
51. In practice, the terms and conditions of employment (including remuneration) of the SMT are modelled on those of the SPCB.

Service contracts

52. The Head of Corporate Services and the Head of Enforcement hold appointments which are open-ended. The Acting Head of Policy and Information is on a fixed term contract. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the Civil Service Compensation Scheme.
53. The members of the SMT are not classified as civil servants but pension benefits are provided through the Civil Service pension arrangements.

Remuneration (including salary) and pension entitlements (audited)

54. The following sections provide details of the remuneration and pension interests of the Commissioner and the SMT. The information relating to salary¹⁰ and pension entitlements, fair pay disclosures and the analysis of staff numbers and costs are subject to audit.

Name and title	Salary: full year equivalent	
	2022-23 (£)	2021-22 (£)
Daren Fitzhenry Scottish Information Commissioner	87,033 ¹¹	78,353

⁹ Total remuneration does not include amounts which are a reimbursement of expenses directly incurred in the performance of an individual's duties; severance payments; employer pension contributions and the cash equivalent transfer value of pensions.

¹⁰ Salary and allowances cover both pensionable and non-pensionable amounts and includes, but may not necessarily be confined to: gross salaries; overtime; recruitment and retention allowances or other allowances to the extent that they are subject to UK taxation and any severance or ex-gratia payments.

¹¹ Salary does not include any accrual for holiday pay.

Single total figure of remuneration								
Name and title	Salary: full year equivalent		Pension benefits accrued during the year ¹²		Bonus Payment		Total	
	2022-23 £'000	2021-22 £'000	2022-23 £'000	2021-22 £'000	2022-23 £'000	2021-22 £'000	2022-23 £'000	2021-22 £'000
Daren Fitzhenry Scottish Information Commissioner	85-90	75-80	34	30	0	0	120-125	105-110
Margaret Keyse Head of Enforcement	75-80	70-75	0	15	0	0	75-80	85-90
Helen Gardner-Swift Head of Corporate Services	75-80	70-75	30	28	0	0	105-110	100-105
Claire Stephen (from 01/02/2022) ¹³ Acting Head of Policy and Information	60-65	10-15	27	5	0	0	90-95	15-20

Fair pay disclosure (audited)

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

¹² The value of pension benefits accrued during the year is calculated as (the real increase in pension multiplied by 20) plus (the real increase in any lump sum) less (contributions made by the individual). The real increases exclude increases due to inflation or any increase or decrease due to a transfer of pension rights.

¹³ 2021-22 full year equivalent salary £60,000-£65,000

Fair Pay Disclosure	2022-23	2021-22
Staff remuneration	£26,413 - £79,672	£22,883 - £72,129
Commissioner remuneration ¹⁴	£85,000 - £90,000	£75,000 - £80,000 ¹⁵
25th percentile remuneration	£46,091	£39,523
25th percentile pay ratio	1.9:1	2:1
Median remuneration	£50,079	£45,209
Median pay ratio	1.7:1	1.7:1
75th percentile remuneration	£53,092	£45,209
75th percentile pay ratio	1.6:1	1.7:1
Average Commissioner remuneration	£87,500	£77,500
% difference in average Commissioner remuneration	13%	0%
Average staff remuneration	£53,043	£47,506
% difference in average staff remuneration	12%	2%

57. In 2022-23 (2021-22 £NIL) no employee received remuneration in excess of the Commissioner and the median pay ratio for the relevant financial year is consistent with the pay, reward and progression policies for the entity's employees taken as a whole.
58. No benefits in kind¹⁶ were paid in either 2022-23 or 2021-22.
59. There were no bonus payments¹⁷ made in 2022-23 (2021-22 £NIL).

¹⁴ Salary does not include any accrual for holiday pay.

¹⁵ Actual: 2022-23 £87,033 (2021-22 £78,353)

¹⁶ The monetary value of benefits in kind covers any benefits provided by the Scottish Information Commissioner and treated by HM Revenue and Customs as a taxable emolument.

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

Pension benefits (audited)

60.

	Total accrued pension at pension age as at 31 March 2023	Real increase in pension at pension age	CETV at 31 March 2023	CETV at 31 March 2022	Real increase in CETV as funded by employer
	£'000	£'000	£'000	£'000	£'000
Daren Fitzhenry Scottish Information Commissioner	10-15	0-2.5	130	99	19
Margaret Keyse Head of Enforcement	35-40	0-2.5	652	592	-10
Helen Gardner-Swift Head of Corporate Services	5-10	0-2.5	136	106	20
Claire Stephen (from 01/02/2022) Acting Head of Policy and Information	15-20	0-2.5	219	186	11

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

The Cash Equivalent Transfer Value (CETV)

62. A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which the disclosure applies.

63. CETVs are calculated in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

The real increase in CETV

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

65. The following are covered by the audit opinion: single figure of remuneration, pension tables, fair pay disclosures, exit packages, staff costs and numbers and this information is set out in the tables on pages 65-69.

Staff Report

Staff numbers (audited)

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

	2022-23			2021-22		
	Permanent	Temporary	Total	Permanent	Temporary	Total
	FTE No.	FTE No.	FTE No.	FTE No.	FTE No.	FTE No.
Commissioner	1	0	1	1	0	1
Senior Managers	3	0	3	3	0	3
Staff ¹⁹	19.6	0	19.6	19.9	0	19.9
TOTAL	23.6	0	23.6	23.9	0	23.9

Staff costs (audited)

67. Staff costs

	Commissioner	Senior Management Team	Staff	TOTAL	TOTAL
	2022-23	2022-23	2022-23	2022-23	2021-22
	£'000	£'000	£'000	£'000	£'000
Salary ²⁰	88	217	781	1,086	1,081
Employer's NIC	12	27	83	122	117
Pension costs	26	60	194	280	293
TOTAL	126	304	1,058	1,488	1,491

Staff composition

68. Analysis by gender of the organisation as at 31 March 2023.

Category	2022-23			2021-22		
	Female	Male	Total	Female	Male	Total
Scottish Information Commissioner	0	1	1	0	1	1
Senior Managers	3	0	3	3	0	3
Staff (other than senior managers)	15	5	20	16	5	21
TOTAL	18	6	24	19	6	25

¹⁸ Calculated as an average for the financial year

¹⁹ Permanent FTE includes one inward secondment, 5 October 2021 to 4 October 2022

²⁰ Salary includes basic salary adjusted for accrued holiday pay but does not include employee National Insurance or pensions contributions.

Temporary staff

69. As at 31 March 2023, all members of staff had a permanent employment contract and there was no member of staff on a temporary contract of employment.

Ill health absence data

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

71. For 2022-23:

- 307.84 days were lost to ill health absence – an increase of 225.35 days when compared to the previous year (2021-22 82.49)
- the total days lost to ill health absence per FTE member of staff is 15.77, an increase of 12.04 days when compared to the previous year (2021-22 3.73)
- the total days lost to ill health absence per FTE member of staff is 10.07 days higher than the ONS benchmark of 5.70.

Staff turnover

72. For 2022-23:

- 3 members of staff resigned
- 3 members of staff joined
- 1 member of staff was employed on an inward secondment
- the staff turnover percentage was 13%
- no exit packages have been used

Human Resources Strategy and staff policies

73. The key document C5 Human Resources Strategy (HRS) sets out what the Commissioner aims to achieve with, and for, staff at all levels and, in doing so, provides a framework for the focus and setting of how the organisation manages human resources and supports the achievement of Human Resources (HR) governance objectives.

74. In 2022-23:

- HR continued to be managed in line with the HRS
- all members of staff were provided with wellbeing guidance and the Employee Assistance Programme (EAP) continued to be in place for any member of staff to contact at any time for advice
- recruitment for vacant posts was undertaken and our policies and procedures relating to no candidate receiving less favourable treatment on the grounds of a protected characteristic were followed.

Staff surveys

75. In 2022-23:

- staff were asked to complete a confidential equality and diversity monitoring survey. Completion of the survey was not compulsory and the return rate for the 2022-23 survey was 87% (2021-22 87%).

Temporary (non-payroll) staff and consultancy

76. For 2022-23, there were no temporary (non-payroll) staff (2021-22 NIL)²¹.

Reporting of off-payroll appointments

77. For 2022-23, there were no off-payroll appointments (2021-22 NIL)

78. For 2022-23, there was no expenditure on consultancy incurred relating to the provision of advice to management outside the “business-as-usual” environment.

Health, safety and wellbeing

79. The office premises re-opened on 3 May 2022 and in 2022-23 hybrid working has been in place.

80. There were no reportable health and safety incidents during 2022-23.

81. There was an increase in staff ill health absence rates in 2022-23, an average of 15.77 days per FTE employee was lost to ill health absence (3.73 days: 2022-22)

82. We published expenditure on consultancy on our website relating to the specific expenditure areas under the Public Services Reform Act 2011 (PSRA)²². In 2022-23, as regards consultancy services for employment and health and safety matters the expenditure was:

- Law at Work Employment Law Support Service: £4,238
- Law at Work Health & Safety Support Service including Health & Safety Audit: £2,394

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

Staff relations

84. We recognise the importance of good staff relations and effective communication with staff. Quarterly all staff meetings and regular team meetings have taken place. All members of staff can access the agendas, papers and minutes of meetings of the SMT (information is only withheld from staff where the relevant exemption(s) in the FOI Act or the EIRs would apply if a request were to be made for the information or where a duty of confidence is owed to a third party).

²¹ Permanent FTE includes one inward secondment, 5 October 2021 to 4 October 2022

²² More information is available at www.itspublicknowledge.info/StatutoryReporting

Diversity and inclusion

85. In the work of the organisation, the Commissioner has due regard to the three aims of the public sector equality duty under the Equality Act 2010 (the Act) which are:
- to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - to advance the equality of opportunity between people who share a protected characteristic and people who do not share it; and
 - to foster good relations between people who share a protected characteristic and people who do not share it.
86. The Commissioner must comply with the general requirements of the Act. However, the Commissioner is not included in the list of public authorities which are subject to the specific public sector equality duties set out in the Act. The Commissioner is also not listed as a public authority with a duty to report under the public sector specific equality duty²³ (see Schedule 19 of the Act).
87. A revised [Equality Policy](#) was approved by the SMT in 2021-22. This policy covers any member of staff with a disability.
88. As part of the actions taken to ensure compliance with the general requirements of the Act, we collect and analyse staff data and then use the analysis to refine policies and practice where required. Staff are asked to complete an equality and diversity monitoring survey annually which is confidential. Completion of the survey is not compulsory and the return rate for the 2022-23 survey was 87% (87% 2021-22).
89. All committee reports or proposals submitted to the to SMT and project plans must include a section on the impact of the project or proposal on equalities and the protected characteristics.
90. All staff receive mandatory equalities and diversity training annually and training on equality and diversity was provided to managers and staff in 2022-23.
91. The Commissioner is committed to eliminating discrimination, valuing and promoting equality, diversity and inclusion among our workforce. The Commissioner is working to increase diversity, supporting flexible approaches to work and it is the Commissioner's policy to treat all job applicants and employees equitably regardless of age, disability, gender, gender reassignment status, marriage or civil partnership status, maternity or pregnancy, race, religion or belief or sexual orientation. The C5 Recruitment and Selection Policy and related Procedures contain relevant provisions relating to the treatment of an applicant who may have a disability.
92. Where appropriate, we have implemented reasonable adjustments to enable staff to fulfil their potential.

²³ Schedule 19

Learning and development

- 93. A Learning and Development Plan 2022-23 was in place and training was provided online using approved training providers and platforms.
- 94. Mandatory training in data protection and UK GDPR requirements was undertaken by all members of staff in December 2022.
- 95. Management training was also provided to line managers.
- 96. In 2022-23, we continued to support staff where possible through relevant training and development of skills.

Daren Fitzhenry

Daren Fitzhenry, Accountable Officer

26 September 2023

Date:

INDEPENDENT AUDITOR'S REPORT

Independent auditor's report to the Scottish Information Commissioner, the Auditor General for Scotland and the Scottish Parliament

Reporting on the audit of the financial statements

Opinion on financial statements

We have audited the financial statements in the annual report and accounts of Scottish Information Commissioner for the year ended 31 March 2023 under the Freedom of Information (Scotland) Act 2002. The financial statements comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity and notes to the financial statements, including significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and UK adopted international accounting standards, as interpreted and adapted by the 2022/23 Government Financial Reporting Manual (the 2022/23 FReM).

In our opinion the accompanying financial statements:

- give a true and fair view of the state of the body's affairs as at 31 March 2023 and of its net expenditure for the year then ended;
- have been properly prepared in accordance with UK adopted international accounting standards, as interpreted and adapted by the 2022/23 FReM; and
- have been prepared in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

Basis for opinion

We conducted our audit in accordance with applicable law and International Standards on Auditing (UK) (ISAs (UK)), as required by the [Code of Audit Practice](#) approved by the Auditor General for Scotland. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report. We were appointed by the Auditor General on 18 May 2022. Our period of appointment is five years, covering 2022/23 to 2026/27. We are independent of the body in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK including the Financial Reporting Council's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. Non-audit services prohibited by the Ethical Standard were not provided to the body. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern basis of accounting

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

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

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

Risks of material misstatement

We report in our separate Annual Audit Report the most significant assessed risks of material misstatement that we identified and our judgements thereon.

Responsibilities of the Accountable Officer for the financial statements

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

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

Auditor's responsibilities for the audit of the financial statements

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

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

- using our understanding of the central government sector to identify that the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers are significant in the context of the body;
- inquiring of the Accountable Officer and management as to other laws or regulations that may be expected to have a fundamental effect on the operations of the body;
- inquiring of the Accountable Officer and management concerning the body's policies and procedures regarding compliance with the applicable legal and regulatory framework;
- discussions among our audit team on the susceptibility of the financial statements to material misstatement, including how fraud might occur; and
- considering whether the audit team collectively has the appropriate competence and capabilities to identify or recognise non-compliance with laws and regulations.

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

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

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

Reporting on regularity of expenditure and income

Opinion on regularity

In our opinion in all material respects the expenditure and income in the financial statements were incurred or applied in accordance with any applicable enactments and guidance issued by the Scottish Ministers.

Responsibilities for regularity

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

Reporting on other requirements

Opinion prescribed by the Auditor General for Scotland on audited parts of the Remuneration and Staff Report

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

Other information

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

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

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

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

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

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

Matters on which we are required to report by exception

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

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

We have nothing to report in respect of these matters.

Conclusions on wider scope responsibilities

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

Use of our report

This report is made solely to the parties to whom it is addressed in accordance with the Public Finance and Accountability (Scotland) Act 2000 and for no other purpose. In accordance with paragraph 108 of the Code of Audit Practice, we do not undertake to have responsibilities to members or officers, in their individual capacities, or to third parties.

Angela L Pieri

Angela Pieri, (for and on behalf of Grant Thornton UK LLP),
110 Queen Street
Glasgow
G1 3BX

Date: 26 September 2023
Date:.....

Scottish Information Commissioner

FINANCIAL STATEMENTS 2022-23

Financial Statements and notes

Statement of comprehensive net expenditure for the year ended 31 March 2023

	Notes	2022-23 £'000	2021-22 £'000
Income			
Other income	4	0	(2)
Expenditure			
Staff costs	6	1,488	1,491
Other administration costs	8	304	398
Depreciation and amortisation	9,10	89	39
Net administration costs		1,881	1,928
Net operating costs		1,881	1,926
Finance income	5	(2)	0
Finance expense	5	5	0
Net expenditure for the year		1,884	1,926

All amounts relate to continuing activities.

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

The accompanying notes on pages 81-92 form an integral part of these accounts.

Statement of Financial Position as at 31 March 2023

	Note	2022-23 £'000	2021-22 £'000
Non-current assets			
Property, plant and equipment	9	76	85
Right of use assets	10	883	0
Intangible assets	11	9	19
Non-current assets		968	104
Current assets			
Trade and other receivables	12	7	20
Cash and cash equivalents	13	337	291
Current assets		344	311
Total assets		1,312	415
Current liabilities			
Trade and other payables	14	(267)	(150)
Assets less liabilities		1,045	265
Non current liabilities			
Trade and other payables	14	(821)	0
Assets less liabilities		224	265
Taxpayers Equity			
General Fund	15	197	238
Revaluation reserve	15	27	27
Taxpayers Equity		224	265

The accompanying notes on pages 81-92 form an integral part of these accounts.

As Accountable Officer, I authorised the Financial Statements 2022-23 for issue on 22 September 2023.

Daren Fitzhenry

Daren Fitzhenry Accountable Officer

26 September 2023

Date:

Statement of cash flows for the period ended 31 March 2023

	Note	2022-23 £'000	2021-22 £'000
Cash flows from operating activities			
Operating cost		(1,881)	(1,928)
Adjustments for non-cash transactions			
Depreciation and amortisation	9,10,11	89	39
Movements in working capital			
(Increase)/Decrease in trade and other receivables	12	13	9
Increase/(Decrease) in trade and other payables	14	938	28
Net cash outflow from operating activities		(841)	(1,852)
Cash flows from investing activities			
Recovery of court costs	4	0	2
Interest receivable	5	2	0
Interest on finance leases	5	(5)	0
Purchase of property, plant and equipment	9	(18)	(13)
Recognition of right of use assets	10	(932)	0
Purchase of intangible assets	11	(3)	(3)
Net cash outflow from investing activities		(956)	(14)
Total cash outflows from operating and investing activities		(1,797)	(1,866)
Cash inflows from SPCB financing activities	3	1,843	1,942
Net increase in cash and cash equivalents		46	76
Cash and cash equivalents at beginning of period	13	291	215
Cash and cash equivalents at end of period	13	337	291
Net increase in cash and cash equivalents		46	76

The accompanying notes on pages 81-92 form an integral part of these accounts.

Statement of changes in taxpayers' equity for the year ended 31 March 2023

	General Fund		Revaluation Reserve		Total Reserves	
	2022-23 £'000	2021-22 £'000	2022-23 £'000	2021-22 £'000	2022-23 £'000	2021-22 £'000
Balance at 1 April	238	222	27	27	265	249
Net operating cost for year	(1,884)	(1,926)	0	0	(1,884)	(1,926)
Net funding	1,843	1,942	0	0	1,843	1,942
Revaluation of artwork	0	0	0	0	0	0
Balance at 31 March	197	238	27	27	224	265

Notes to the Financial Statements

1. Accounting policies

These financial statements have been prepared in accordance with the Government Financial Reporting Manual 2022-23 (FReM) in compliance with the direction issued by Scottish Ministers under Section 19(4) of the Public Finance and Accountability (Scotland) Act 2000. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the 2022-23 FReM permits a choice of accounting policy, the accounting policy judged to be the most appropriate to the circumstances of the Scottish Information Commissioner (Commissioner) in order to provide a true and fair view has been selected. The particular accounting policies adopted by the Commissioner are described below. They have been applied consistently in dealing with items considered material in relation to the financial statements.

1.1. Accounting convention

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

1.2. Critical Judgements in Applying Accounting Policies

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

1.3. Critical Accounting Estimates

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

1.4. Property, Plant and Equipment (PPE)

1.4.1. Recognition

All Property, Plant and Equipment assets are accounted for as non-current assets unless they are deemed to be held for sale. Enhancements to occupied space related to a Property interest held under an operating lease, such as interior fit-out costs, and including related professional fees, are capitalised.

1.4.2. Capitalisation

The minimum levels for capitalisation of a PPE asset are:

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

1.4.3. Depreciation

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

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

1.4.4. Valuation

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

1.4.5. Intangible non-current assets

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

1.5. Financial instruments

Financial instruments are classified and accounted for according to the substance of the contractual agreement as either financial assets or financial liabilities.

The fair value can be assessed by calculating the present value of the cash flows that will take place over the remaining period of the instrument, using the assumptions that the fair value of trade and other receivables and payables is taken to be the invoiced or billed amount.

The Commissioner has classified its financial instruments as follows:

1.5.1. Financial assets

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

1.5.2. Financial liabilities

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

1.6. Funding receivable

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

1.7. Value Added Tax (VAT)

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

1.8. Leases

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

1.9. Pension costs

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

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

Civil Service pension arrangements

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

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

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

appropriate. Where the staff member has benefits in both the PCSPS and **alpha** the figure quoted is the combined value of their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a defined contribution (money purchase) pension with an employer contribution (**partnership** pension account).

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

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

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

Further details about the Civil Service pension arrangements can be found at the website www.civilservicepensionscheme.org.uk

1.10. International Financial Reporting Standards (IFRS)

Adoption of new and revised Standards

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

In the current year, the Commissioner has applied a number of amendments to IFRS Standards and Interpretations that are effective for an annual period that begins on or after 1 January 2022. Their adoption has not had any material impact on the disclosures or on the amounts reported in these financial statements:

- IFRS 16 - Leases

b) Standards, amendments and interpretations early adopted this year

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

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

The Commissioner discloses accounting standards not yet applied and assesses the possible impact that initial application would have on the financial statements. At the date of authorisation of the financial statements the following new and revised IFRS Standards have been issued but are not yet effective:

- IFRS 17: Insurance Contracts. Applicable for periods beginning on or after 1 January 2023
- Amendment to IAS 1: Classification of Liabilities as Current or Non-Current. Applicable for periods beginning on or after 1 January 2023
- Amendment to IAS 1: Disclosure of Accounting Policies. Applicable for periods beginning on or after 1 January 2023
- Amendment to IAS 8: Definition of Accounting Estimates. Applicable for periods beginning on or after 1 January 2023

An initial quantification of the expected impact in applying the standard has been made and the Commissioner does not expect the implementation of these standards to have a material impact on the financial statements.

1.11. Right of Use Assets

Right-of-use assets are depreciated on a straight line basis over the associated lease term, or estimated useful life where this is shorter. Impairment losses are charged in the same way as those arising on property, plant and equipment.

As permitted by the FReM, right-of-use assets are subsequently measured using the cost model as a proxy for the measurement of the cost value in use. This is because lease terms require lease payments to be updated for market conditions, for example, rent reviews for leased properties, which will be captured in the IFRS 16 cost measurement provisions. Right-of-use assets also have shorter useful lives and values than their respective underlying assets and, as such, cost can be used as a proxy for assets with shorter economic lives or lower values in accordance with the FReM.

1.12. Leases and Initial Application of IFRS 16

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

Under IFRS 16, lessees are required to recognise assets and liabilities for leases with a term of more than 12 months, unless the underlying asset is of low value. While no standard definition of "low value" has been mandated, the Commissioner has elected to utilise the capitalisation threshold of £5,000 to determine the assets to be disclosed.

Where the interest rate implicit in a lease cannot be readily determined, the Commissioner calculates the lease liability using the HM Treasury discount rates promulgated in PES papers as the incremental borrowing rate. For leases that commence or are remeasured in the 2022

calendar year, this rate is 0.95% (2021: 0.91%). The Commissioner does not apply IFRS 16 to leases of intangible assets and recognises these in accordance with IAS 38 where appropriate.

The following leased assets were identified as Right of Use Assets in this way:

a) Land and buildings

The Commissioner leases office accommodation. Under IAS 17, this contract was treated as an operating lease. On initial application of IFRS 16, the Commissioner has recognised the right-of-use asset at an amount equal to the initial lease liability, adjusted by the amount of any prepaid or accrued lease payments recognised immediately before the date of initial application. The initial lease liability has been calculated based on the present value of future cash flows for the lease over the applicable lease term determined in accordance with the new standard.

The Commissioner has recognised the following opening balances in 2022-23

	2022-23
Land and buildings	
IAS operated lease commitments at 31 March 2022	1,012,500
Adjustment for discounting of future cashflows	(89,093)
IFRS 16 lease liability at 1 April 2022	923,407
Amounts prepaid	9,000
Right of Use value at 1 April 2022	932,407

2. Prior year adjustments

No prior year adjustments have been made.

3. Performance against budget

The Commissioner is funded through the SPCB. For the financial year 2022-23 the Commissioner was allocated a funding budget of £1,940,000.

	Budget		Expenditure		Variance	
	2022-23	2021-22	2022-23	2021-22	2022-23	2021-22
	£'000	£'000	£'000	£'000	£'000	£'000
Net operating costs	1,927	2,013	1,884	1,926	43	87
Capital expenditure	13	17	953 ²⁴	16	(940)	1
Total expenditure	1,940	2,030	2,837	1,942	(897)	88

Accruals adjustments

Non-cash items	-	-	(89)	(39)	89	39
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²⁴ Includes Recognition of right to use assets in accordance with IFRS 16, 2022-23 £932,000 (2021-22 £NIL) (see Note 10)

Working capital (including cash)	-	-	(905)	39	905	(39)
Cash funding from the SPCB	1,940	2,030	1,843	1,942	97	88

4. Income

	2022-23	2021-22
	£'000	£'000
Recovery of court costs	0	2

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

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

5. Finance income and expenditure

	2022-23	2021-22
	£'000	£'000
Income		
Bank interest received	2	0
Expenditure		
Interest on finance leases	5	0

6. Staff costs

	Total	Commissioner	Senior Management Team	Staff	Total
	2022-23	2022-23	2022-23	2022-23	2021-22
	£'000	£'000	£'000	£'000	£'000
Salaries / Wages	1,086	88	217	781	1,081
ERNIC	122	12	27	83	117
Pension Costs	280	26	60	194	293
Total	1,488	126	304	1,058	1,491

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

7. Pension costs

The details of the pension costs are set out in the table shown in Note 6.

For 2022-23, employer's contributions were payable to the Civil Service and Others Pension Scheme (CSOPS) or the Principal Civil Service Pension Scheme (PCSPS) at one of four rates in the range 26.6% to 30.3% of pensionable pay, based on defined salary bands. The contribution

rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme.

One employee has opted for a partnership pension with a private sector pension scheme into which the SIC made an employer contribution in 2022-23. For partnership pensions, employer contributions are age-related and range from 8% to 14.75% of pensionable pay.

There were no outstanding scheme contributions as at 31 March 2023 (2021-22: £NIL).

The expected employer contributions rates for 2023-24 are 26.6% to 30.3% and the estimated staff pension costs are £338,000.

8. Other administrative costs

	2022-23	2021-22
	£'000	£'000
Property costs	40	89
Research and promotion	12	13
Administration costs	198	259
Legal costs for court of session hearings	31	20
Travel and expenses	1	0
Audit Fees	22	17
Total	304	398

Included within Administration costs is £1,617 (2021-22: £1,617) equipment rental. Costs in association with operating leases is NIL (2021-22 £54,000).

The reduction in property costs is a result of the reclassification under IFRS 16 of the lease of office premises as a finance lease. These premises are included within right to use assets and depreciated over the life of the lease, see Note 10.

9. Property, plant and equipment

	Lease Improvements		Artwork		Fixtures, fittings and equipment		Information Technology		Total	
	2022-23	2021-22	2022-23	2021-22	2022-23	2021-22	2022-23	2021-22	2022-23	2021-22
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Cost or Valuation										
At 1 April	214	214	42	42	136	144	103	189	495	589
Additions	0	0	0	0	10	3	8	10	18	13
Revaluations	0	0	0	0	0	0	0	0	0	0
Disposals	(214)	0	0	0	0	(11)	0	(96)	(214)	(107)
At 31 March	0	214	42	42	146	136	111	103	299	495
Depreciation										
At 1 April	214	214	0	0	127	134	69	142	410	490
Charge for year	0	0	0	0	4	4	23	23	27	27
Disposals	(214)	0	0	0	0	(11)	0	(96)	(214)	(107)
At 31 March	0	214	0	0	131	127	92	69	223	410
Net book value at 31 March 2023	0	0	42	42	15	9	19	34	76	85
Net book value at 31 March 2022	0	0	42	42	9	10	34	47	85	99

The Commissioner's artwork was valued on 10 May 2021 by scotlandart.com, independent art dealers and on 11 May 2021 by David Mach Limited. The Commissioner considers the valuation to be appropriate for the financial year ending 31 March 2023. The basis of valuation used was open market value and the unrealised gain was transferred to the revaluation reserve. No other assets have been revalued.

10. Right of use assets

Right of use assets represent the right to direct the use of an underlying asset arising as a result of a lease. The Commissioner's office does not own the underlying asset, but recognises the value of the right to use in accordance with IFRS 16.

	2022-23
	£'000
Lease of office premises	
Cost	
As at 31 March 2022	0
Initial adoption of IFRS on 1 April 2022	932
At 1 April 2022 and 31 March 2023	932
Amortisation	
As at 1 April 2022	0
Charge for the year	49
At 31 March 2023	883
As at 1 April 2022	0

11. Intangible assets comprise software and licences

	2022-23
	£'000
Cost	
As at 1 April 2022	67
Additions	3
Disposals	(1)
At 31 March 2023	69
Amortisation	
As at 1 April 2022	48
Charge for the year	13
Disposals	(1)
At 31 March 2023	60
Net book value at 31 March 2023	9
Net book value at 31 March 2022	19

12. Trade and other receivables

	2022-23	2021-22
	£'000	£'000
Amounts falling due within one year		
Prepayments and accrued income	7	20
Receivable within one year	7	20

13. Cash and cash equivalents

	2021-22	2021-22
	£'000	£'000
Balance as at 1 April 2022	291	215
Net change in cash and cash equivalent balances	46	76
Balance as at 31 March 2023	337	291
Cash held at commercial banks	337	291

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

14. Trade and other payables

	2022-23	2021-22
	£'000	£'000
Amounts falling due within one year		
Trade payables	9	8
HMRC	29	27
Accruals and deferred income	175	115
Lease liabilities	54	-
Total	267	150
Amounts falling due after one year		
Lease liabilities	821	0

15. Capital and reserves

15.1. General fund

	2022-23	2021-22
	£'000	£'000
As at 1 April 2022	238	222
Net expenditure for the year	(1,884)	(1,926)
Funding from the SPCB	1,843	1,942
As at 31 March 2023	197	238

15.2. Revaluation reserve

	2022-23	2021-22
	£'000	£'000
As at 1 April 2022	27	27
Increase in valuation	0	0
Revaluation reserve	27	27

16. Capital commitments

There were no contracted capital commitments as at 31 March 2023 (2021-22: £NIL).

17. Contingent liabilities disclosed under IAS 37

There are no contingent liabilities as at 31 March 2023 (2021-22: £NIL).

18. Related party transactions

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

19. Post reporting year events

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

20. Financial instruments

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

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

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

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



SCOTTISH INFORMATION COMMISSIONER

DIRECTION BY THE SCOTTISH MINISTERS

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

Signed by the authority of the Scottish Ministers

Dated

A. J. Staffin
1 September 2006.

Scottish Information Commissioner

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Laid before the Scottish Parliament in October 2023 in pursuance of section 46 of the Freedom of Information (Scotland) Act 2002 and section 22(5) of the Public Finance and Accountability (Scotland) Act 2000.

SG laying number: SG/2023/199