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Public Audit Committee

The 2020/21 audit of the Crofting Commission

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Public Audit Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any accounts laid before the Parliament;
- (b) any report laid before or made to the Parliament by the Auditor General for Scotland; and
- (c) any other document laid before the Parliament, or referred to it by the Parliamentary Bureau or by the Auditor General for Scotland, concerning financial control, accounting and auditing in relation to public expenditure.

2. No member of the Scottish Government or junior Scottish Minister may be a member of the Committee and no member who represents a political party which is represented in the Scottish Government may be convener of the Committee.



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Introduction

1. Through its scrutiny of reports prepared by the Auditor General for Scotland (AGS) and Audit Scotland, the Public Audit Committee examines whether public funds are being spent wisely and holds to account those who are charged with spending tax payer’s money. In all our work, we aim to make a difference to the quality of public services in Scotland.
2. The 2020/21 audit of the Crofting Commission (the section 22 report), was laid in Parliament on 13 October 2021. In the section 22 report, the AGS states his reasons for reporting to Parliament—

” I have prepared this report to draw the Scottish Parliament's attention to significant weaknesses in the Commission’s leadership and governance arrangements. I also highlight the need to reconsider sponsorship arrangements between the Commission and the Scottish Government and for improvements in the Commission’s overall business planning. ¹
3. In the report the AGS highlights that the issues that have been identified by the audit means that “...that the leadership and governance of the Crofting Commission (the Commission) is currently falling below the standards expected of a public body in Scotland”. ¹
4. We explored the issues raised by the AGS in his report by taking oral evidence from the following key stakeholders—
 - The Auditor General for Scotland on 4 November 2021 ²
 - The Crofting Commission on 2 December 2021 ³
 - The Scottish Government on 16 December 2021 ⁴
5. To inform our scrutiny, we also considered the following reports—
 - The Auditor’s 2020/21 annual audit report ⁵
 - The Auditor’s Audit Dimensions and Best Value report to the Commission's Audit and Finance Committee for the year ended March 2021 ⁶
6. This report sets out our key observations, recommendations and conclusions on the issues identified in the section 22 report.

Background

7. In his report, the AGS explains that crofting is a system of landholding which is unique to Scotland and is an integral part of life in the Highlands and Islands. The AGS also explains the importance of crofting—
 - ” Crofting plays an important role in many aspects of life in the Highlands and Islands. A croft provides a base for crofters and their families to reside on, utilising the land for agriculture and other enterprises. Crofting has resulted in a strong culture of community and common purpose and is usually done in combination with other means of employment. As well as being a source of economic activity in remote and rural areas, the crofting system of diverse small-scale agriculture and low intensity grazing contributes significantly to the environment, landscape, ecology and biodiversity.¹
8. The Crofting Commission (the Commission) was established in April 2012 as a non-departmental public body (NDPB), as part of the Crofting Reform (Scotland) Act 2010.⁷
9. The Scottish Government’s Agricultural and Rural Economy Directorate sponsors the Commission and provides grant-in-aid which is the Commission’s sole source of funding. During 2020/21, the Commission employed an average of 50.9 whole time equivalent staff. Its expenditure during the year amounted to £3.1 million, of which £2.4 million was incurred on staff costs (77 per cent).
10. The section 22 report concluded that—
 - ” There is a need for significant improvements in the leadership and governance of the Commission if it is to provide effective strategic leadership and oversight of the key services it provides to crofting communities. There is a pressing need to rebuild trust between the Chief Executive and the Board and to ensure that the boundaries between both roles are understood and respected. The role of the Scottish Government sponsor division will be key in supporting the Commission to develop relationships based on openness, respect and mutual support.¹

Previous governance concerns

11. A key focus of the Session 5 Public Audit and Post-legislative Scrutiny Committee (the session 5 Committee) was ensuring that ‘lessons were learned’ and that public sector bodies did not continue to repeat the same errors. We explored this factor in relation to a previous independent review of the Commission’s governance systems, procedures and practices which was requested by the Scottish Government in 2016.⁸
12. During oral evidence, the AGS explained that “A previous review of the commission’s governance, in 2016, highlighted concerns”. When asked about the extent to which there is a similarity between the issues identified in 2016 and the issues in the section 22 report, the AGS commented—
 - ” There is undoubtedly read-across between that report and what you see in the present report. As we note, it referred to “strong personalities, differences of opinion and ... incongruent individual ... priorities”....Unfortunately, five years down the line from the 2016 report, we are now seeing elements recurring in the organisation.²
13. However, the Chief Executive and Accountable Officer of the Crofting Commission disputed that there were similarities between the current day issues and those in 2016 when giving oral evidence to the Committee. He stated—
 - ” The fact that you can describe the troubles that we are having now and the troubles that we had in 2016 with that phrase does not mean that there is any similarity between them.³
14. However, in response to a question on the nature of the Scottish Government’s relationship with the Senior Management Team (SMT), the Chief Executive also said—
 - ” That goes back to the predecessor board that was in place from 2012 to 2017. As you know, there were governance difficulties with that board towards the end of its term.³
15. The AGS commented that “The Scottish Government sponsor division plays a key role supporting the commission so that it is operating properly”.² Therefore we also considered the extent to which the Scottish Government had taken on board the lessons to be learned from the 2016 review.
16. During our consideration of the section 22 report, we found that despite there being a history of governance issues, it appears that the Scottish Government were not sufficiently alive to the seriousness of the governance issues that were emerging within the Commission. We asked the Scottish Government to what extent they were aware of the leadership and governance issues that existed. The Head of Agriculture and Policy Division told us that—

” From a sponsor’s point of view, we were aware that there were some tensions between the board and the staff, particularly the chief executive, in advance of the Deloitte report. ⁴

17. It seemed to us that the AGS's section 22 report was a surprise to the Scottish Government. During oral evidence, the Head of Agriculture and Policy Division told us that the Sponsor Team was of the view that they were “managing the relationship at a sponsorship level”. However, when it came to the AGS’s decision to produce a section 22 report, he commented—

” It is fair to say that we did not anticipate that that would be the outcome of Deloitte’s more detailed review into the governance arrangements. ⁴

18. We believe that neither the Scottish Government or the Crofting Commission took appropriate action to address the serious concerns raised in the independent governance review requested by the Scottish Government in 2016. The Committee is therefore very concerned that these fundamental issues could reoccur in the future and seeks reassurance from both organisations that lessons will be learned to ensure this situation does not arise again.

The role of Scottish Government sponsorship teams

19. We are aware of the work undertaken by the session 5 Committee in response to number of audit reports highlighting issues that have arisen in relation to Scottish Government Sponsor Teams. The Session 5 Committee's 2019 Key Audit themes report specifically raised questions over the adequacy of support that Sponsor Teams were providing to public bodies.⁹
20. In his letter of 26 February 2021 to the Session 5 Committee regarding the Scottish Government's sponsorship of Bòrd na Gàidhlig, Paul Johnston, the then Director-General for Education, Communities and Justice, confirmed that the Scottish Government would be undertaking a "short life review" of the Scottish Government's relationship with public bodies with a view to strengthening the governance and oversight of public bodies and drive ongoing improvements in approaches to sponsorship. The review was due to complete and make recommendations by September 2021.¹⁰

21. The Committee asks for an update on the progress of the Scottish Government's short life review into its current relationship with public bodies.

22. We asked the AGS what communications he had had with the Scottish Government regarding the recurring issues that have arisen in previous audit reports in relation to sponsorship arrangements. The AGS confirmed that he "interacts with the Scottish Government's executive team on matters that come out of public audit work, and the theme of sponsorship is part of those discussions. Therefore, the senior civil service is not unsighted on these issues".²

23. The AGS went on to add—

” However, the question that I am left with is whether there is an opportunity for a more fundamental audit of how sponsorship arrangements work in Scotland so, rather than focusing on individual organisations, I am considering whether it is now time to refresh those arrangements.²

24. The Committee urges the Auditor General for Scotland to give serious consideration to undertaking an audit of the Scottish Government's sponsorship arrangements for public bodies.

Leadership and governance

25. We also scrutinised the specific weaknesses in leadership and governance at the Commission as highlighted by the AGS in his section 22 report. These included issues such as:
- The Board’s lack of confidence in the Commission’s Chief Executive.
 - The lack of involvement of the Board and wider stakeholders in the setting of the Commission’s budget.
 - Excessive involvement of the Board and the former Convener in operational decision making.
 - The leadership of the now former Convener.
26. The section 22 report states that—
- ” At the core of these issues is a failure to respect established boundaries between the respective roles of the Chief Executive, Convener and Board. This transgression, when combined with a breakdown of trust between the various parties, means that the leadership and governance of the Commission is currently falling below the standards expected of a public body in Scotland. ¹

Lack of clarity of roles and relationships

27. The Convener of the Commission’s Board told us that the Commission welcomed the recommendations in the Auditor’s action plan and in the AGS’s report, and that 33 of the 41 recommendations in the Auditor’s action plan had already been implemented. The Convener agreed with the AGS’s assessment that—
- ” At the root of many of the recommendations was a lack of clarity about roles and relationships. ³
28. One of the most concerning points raised in the section 22 report was that of the Scottish Government appearing to view its ‘relationship of consequence’ as being with the Senior Management Team, principally the Chief Executive rather than with the Commission’s Convener. The Chief Executive agreed that prior to the previous Convener being appointed—
- ” we probably got into the bad habit of having a strong connection between me and the sponsor team, and we tried to reset that when the new board came in...and we did not do enough to strengthen the direct relationship between the sponsor and the then convener. ³
29. The section 22 report states that the Commission did not have an overarching Code of Corporate Governance or equivalent, instead it has a framework document which governs the relationship between it and the Scottish Government in general terms. We heard from the Convener of the Commission that following recommendations made by the Auditor and the section 22 report, the Commission had been working closely with the Scottish Government to revise its framework document.

30. We sought further assurance from the Scottish Government’s Interim Director-General for Net Zero, that the revised framework document clearly sets out the roles and responsibilities of those who are involved in the governance of the Commission, particularly the Board’s responsibility for strategic, as opposed to operational, decision making and the chief executive’s accountability to the Board for performance. The Interim Director-General told us that there is “now good clarity on the Crofting Commission” and that the new framework makes this “very clear”.⁴

31. **We note the steps taken by the Crofting Commission and the Scottish Government to implement the recommendations made by the Auditor to revise the Commission’s framework document and to address the issues of clarity around roles and responsibilities.**

32. **We are clear that while the Auditor General for Scotland may continue to monitor the implementation of the Auditor’s action plan, it is the responsibility of the Crofting Commission and the Scottish Government to ensure that the revised arrangements are working properly.**

33. **We therefore recommend that the Crofting Commission and the Scottish Government put plans in place to regularly review the revised framework document to ensure it remains fit for purpose.**

Lack of confidence in the Chief Executive

34. A further impact of the lack of clarity of roles and responsibilities appears to have been the reason that a letter, expressing a lack of confidence in the abilities of the Chief Executive to discharge his duties, was sent by the former Convener to the former Scottish Cabinet Secretary for Rural Economy and Tourism (the Cabinet Secretary) on behalf of the Board in November 2020. The section 22 report states that the specific concerns expressed in the letter included “a lack of leadership; indecisiveness; procrastination; a lack of communication; and poor personnel management”.¹

35. The Auditor told us that—

” Fundamentally, the issues with the chief executive arose because the responsibilities were blurred, which applies to all the main players in the governance structure.”²

36. Evidence from the Commission and the Scottish Government supports the Auditor’s view that the situation arose due to the lack of clarity over roles and responsibilities. We understand that the concerns raised in the letter sent to the Cabinet Secretary by the former Convener was withdrawn in late 2021. The current Convener of the Commission confirmed that—

” We felt that, based on the changes that have taken place, the clarity of the roles, responsibility and our understanding and the support that Bill Barron has from his senior management team, it was correct that we withdraw our vote of no confidence.”³

Role of the Board

37. During evidence the AGS told us that—
- ” Serious governance deficiencies were identified, including the excessive involvement of the board and the former convener in operational decision making, which is normally the responsibility of the senior management team.²
38. Examples given in the section 22 report were of the Board spending large amounts of time discussing individual grades that new staff positions should be at within the organisation, including for junior positions and of the former Convener making “repeated requests to regularly attend Senior Management Team meetings”. We were frustrated that when we attempted to explore how this situation arose, the Commission’s focus seemed to be on the actions taken by the previous Convener and the Board during the early stages of the Covid-19 pandemic, which the section 22 report makes clear were perfectly justified as they “helped maintain services to crofters”.¹
39. The section 22 report also commented on the lack of involvement of the Board and other wider stakeholders in the setting of the Commission’s budget, which had been developed without prior Board or Audit and Finance Committee input.
40. We were also somewhat concerned at the adequacy of the training previously provided to the Board. The Convener of the Commission commented, that in relation to recent training—
- ” In fact, one of the biggest things that we have learned from the training that we have just undertaken is that it should have happened when the new board was brought together.³
41. However, we note the Convener of the Commission believes that the most recent training has—
- ” ...highlighted in a very detailed manner what is operational and what is strategic, and what the board should and should not get involved in.³
42. We also welcome confirmation from the Scottish Government that the new Commissioners appointed at the forthcoming elections will also undertake similar training and that getting this right “will be key to ensuring that we are not here discussing similar issues again in the future”.⁴
43. In his section 22 report, the AGS has stated that “the role of the Scottish Government sponsor division will be key in supporting the Commission to develop relationships based on openness, respect and mutual support”. The section 22 report stated—
- ” There is a pressing need to rebuild trust between the chief executive and the board and to ensure that the boundaries between both roles are understood and respected. The Scottish Government has a key role in supporting the commission so that it is operating properly.¹

44. **It is clear that a lack of clarity of roles and responsibilities has contributed to a significant breakdown of trust between the chief executive and the board which will take time to rebuild. We seek reassurance from the Scottish Government on how it intends to support the Crofting Commission rebuild key relationships.**
45. **We also wish to emphasise the importance of the Scottish Government's role in ensuring that boards are aware of their role and responsibilities and the requirements of good governance. It is critical that both the Scottish Government and the Crofting Commission start planning its training and development programme for new and existing Commissioners now. This will be critical to the success of the Board moving forward.**

Role of the former Convener

46. The section 22 report states that the former Convener retained the confidence of the Board, colleagues and crofting colleagues before his resignation in June 2021. However, the section 22 report also identified a number of concerns with his leadership of the Commission, these included—
- ” not carrying out performance appraisals on other Board members; not recognising the distinction of their role from that of management, making repeated requests to regularly attend Senior Management Team meetings; failing to appropriately chair meetings of the Board by allowing it to move into areas which were beyond its remit; and arranging a private decision-making meeting of the Board which was not minuted, contrary to the Commission's Standing Orders. ¹
47. It was evident to us that routine tasks such as carrying out appraisals had not previously been undertaken. Indeed, when explaining to the Committee how the recommendations from the Auditor's action plan were being implemented, the Convener of the Commission told us that—
- ” Some of those changes—for example, the fact that I as convener and Bill Barron as direct report now do appraisals—brought in things that did not happen in the past, and previously the board had had absolutely no input into that sort of thing. ³
48. We noted that the Crofting Commission's Framework Document, April 2018- March 2021 states that it is the responsibility of the Portfolio Accountable Officer to ensure that—
- ” There is effective continuous assessment and appraisal of the performance of the Convener of the Crofting Commission, in line with the requirements of the Code of Practice for Ministerial Public Appointments in Scotland. ¹¹
49. The Framework Document also specifies that “The Director for Agriculture and Rural Economy (ARE) shall be responsible for assessing the performance of the Crofting Commission's Convener and Chief Executive at least annually”.

50. **We note that there are clear responsibilities set out for the Portfolio Accountable Officer and the Director of Agriculture and Rural Economy in the Crofting Commission’s original framework document, in terms of their oversight of the performance of the Convener. We also note that the Sponsor Team frequently attended Board meetings. It is therefore very concerning that performance issues identified by the Auditor General for Scotland, regarding the former Convener were not detected and acted upon.**
51. **We seek confirmation from the Scottish Government that effective arrangements are in place to monitor the performance of the Convener of the Crofting Commission.**

National Development Plan for Crofting

52. The section 22 report states that proposals for an extended role for the Commission to be included in the National Development Plan for Crofting was discussed informally between the Commission and the Scottish Government. The report goes on to state however that the Scottish Government made the decision to implement this proposal without seeking formal agreement from the Commission.
53. We agree with the Auditor that the correct action would have been for the Board to have been shown the final version of the Plan and to agree the actions contained in it, rather than the Plan being published and the Board being asked to agree the actions retrospectively.
54. We asked the Commission what impact this has had on them and the Chief Executive told us—
 - ” The consequences are that the national development plan says that the commission will deliver something that the commission has not agreed to deliver, so there is a continuing tension between us and the Scottish Government in relation to that. ³
55. We were therefore somewhat concerned to hear that the Scottish Government was of the view that it felt that “the dialogue that went into creating the national plan was robust; we felt that the process of getting to the final document was done consensually with all parties, including the commissioners”. ⁴

56. **We note with concern the Crofting Commission’s comments that ongoing tensions exist with the Scottish Government as a result of it being asked to retrospectively agree and implement actions in the National Development Plan for Crofting.**
57. **We ask the Scottish Government to set out the steps it will be taking to resolve these tensions.**

Business planning

58. The section 22 report also identified weakness in the Commission's business planning. In particular, in relation to its medium-to-longer-term financial planning, budget setting process and workforce planning. The evidence we heard indicated that the Chief Executive played a much more significant role in these matters than would normally be the case. The Auditor was of the view that this situation had arisen due to the fact that "roles and responsibilities on the organisation had become blurred".²
59. Both the Commission and the Scottish Government confirmed that work has been taken forward in these areas following the recommendations made by the Auditor in his action plan.
60. However, it remains a concern to us that the section 22 report states that "the auditor was unable to conclude that the Commission is in a financially sustainable position over the medium-to-longer term. This was due to weaknesses in its overall business planning".¹ We note that this is an area where the Commission continues to work on.

61. **While we do not comment in detail on the weaknesses that were identified in the Crofting Commission's overall business planning, we note that this appears to be yet a further consequence of the lack of clarity of roles and responsibilities.**

Conclusion

62. **The Crofting Commission has an important role to play in providing key services to the crofting community. We were therefore extremely concerned to hear that the issues identified by the Auditor General for Scotland were such that they had led to the organisation falling below the standards expected of a public body in Scotland.**
63. **We are clear that effective leadership is critical to the delivery of high-quality public services which meet the needs of users of such services and also provide good value-for-money. We find the weaknesses in leadership and governance identified by the Auditor General for Scotland at the Crofting Commission to be unacceptable.**
64. **We welcome Auditor General for Scotland's intention to monitor this with a view to further public reporting in the future.**

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