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Public Audit Committee

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Convener,

During my appearance at the evidence session on the 2020/21 audit of the Scottish Government Consolidated Accounts on 24 February 2022, I committed to providing you with further information in relation to three areas of interest, outlined below. You also wrote to me on 29 March in relation to tracking in-year changes to spending plans and final expenditure. This letter offers my response to this as well.

Crown Office and Procurator Fiscal Service (COPFS)

You indicated that the Committee is interested in how the COPFS overspend impacted on the service, as well as who authorised the special payments of £40.2 million, in connection with the acquisition and administration of Rangers Football Club, which resulted in the overspend.

Budgetary decisions were taken on the basis of advice that the payments would have to be made. The quantum of individual settlements paid in these cases was agreed by the Law Officers on the basis of expert advice and was subject to consideration by the Accountable Officer and Principal Accountable Officer, in accordance with the usual rules on public finance and accountability.

As set out in the Scottish Government Budget for 2020/21, COPFS fiscal resource budget totalled circa £124 million, which meant it could not absorb the costs of the special payments within budgets. As with any additional costs impacting budgets, changes required to support expenditure are funded via careful in-year budget management across the Scottish Government, and reported as part of Autumn and Spring Budget revisions.

Lochaber Aluminium Smelter

During the discussion on the Lochaber Guarantee, Colin Cook drew the Committee's attention to the published asset valuations reported in the accounts of SIMEC Lochaber Hydropower 2 Limited and Alvalde British Aluminium Limited. Mr Beattie sought further information on the way in which the Scottish Government considers the value of its security under different scenarios, including a potential default event, whereby the smelter is unable to meet its primary payment obligations to the bondholders.

Should Scottish Government be required to make any payment under the Lochaber Guarantee and Reimbursement Agreement, it is able to recover the full amount of any such payment, in the first instance, from other members of the Liberty and SIMEC Groups. Scottish Government also has additional security over the smelter, the Fort William hydro-electric power station and substantial land holdings. In a potential default scenario, the Scottish Government would be able to utilise these assets, either through a sale and/or the exercise of 'step-in' rights to operate the assets, in order to recover any amounts it has been required to pay.

Scottish Government Officials have assessed the Lochaber guarantee exposure in line with a HM Treasury Green Book analysis and concluded that the value of the security exceeds the present value of the payments guaranteed. This analysis includes a technical assessment of a range of credit risk scenarios carried out by independent advisers and is driven, in particular, by the value of the hydro-electric plant, due to its ability to supply highly profitable baseload and flexible grid balancing services.

I hope this offers sufficient reassurance on this matter.

Fraud and Payments Made in Error

The Committee asked for additional information about how much money the Scottish Government had recovered to date with regard to fraudulent payments and payments made in error from the two business support schemes introduced in response to the pandemic.

As I set out, the risk of fraud in business support schemes was mitigated through a number of control mechanisms built into the design and delivery of the business support schemes. This includes the decision to base eligibility for many of the grants on non-domestic rate liability (NDR) and the decision to ask local authorities to administer those grants, based on the NDR data they already hold and their existing administrative capabilities, including fraud detection and prevention. This meant local authorities could use a well-established, robust existing data set and other information relevant to determining eligibility to enable a large number of businesses to be paid quickly, with appropriate checks in place to mitigate fraud.

Covid-19 business support schemes have been delivered in accordance with the Scottish Public Finance Manual, which requires delivery partners to take steps to detect and prevent fraud when distributing funds. The Scottish Government has worked closely with delivery partners in order to ensure due diligence processes to mitigate fraud and error are in place, building on strong existing capabilities.

As I assured the Committee, most cases of fraud identified by local authorities were detected as being fraudulent before a payment was issued; therefore, these payments did not need to be recovered. Information collected about detected frauds showed that, of the fraud detected, only 5% of attempts were successful. You will recall the available data tells us that of the fraud detected, a loss of £605,610 was realised as at April 2021.

Prevention of fraud is always preferable. However, where fraud is detected later, delivery partners will take appropriate action to pursue the recovery of losses, referring matters to the Police where appropriate. In doing so, there will be both practical and legal limits depending on individual circumstances. This requires each case to be considered on its own merits. The ability and pace at which funds can be recovered is also therefore dependent on the individual circumstances of the case – for example, if the loss can be offset against legitimate eligibility for a future grant. Local authorities also proactively share information and data on key fraud markers with each other in the interests of detecting and preventing fraud.

It is for individual delivery partners to determine how and when to take action to recover funds and, as such, the Scottish Government does not currently hold data on the number of cases of suspected fraud that delivery partners are pursuing, either through legal, police enforcement or recovery routes. Since I appeared before the Public Audit Committee, officials have been engaging with the Convention of the Scottish Local Authorities (COSLA) to explore what local authorities currently collect on detective controls (such as error spotting, omissions and frauds) and the recovery of monies to enable us to provide a fuller response to the Committee. This work is currently underway and I expect to be in a position to provide a more detailed update in the coming months, once this analysis has been concluded.

Of particular interest to the Committee was the estimate of fraud within the Covid-19 business support schemes. Based on available data and a number of factors, I had explained that we believe undetected fraud, or an estimated level of fraud, was around 1-2% of overall spend.

The total spend for the delivery of the Strategic Business Framework Fund, the Small Grant Scheme, Retail Hospitality and Leisure Business Grant Scheme was £1.6 billion. Our estimate of 1-2% would put undetected fraud at £16 million and £32 million respectively.

I also wanted to provide an update regarding the actions we are taking to improve the validity of these estimates which may help to provide further assurances to the Committee.

The Scottish Government Head of Counter Fraud is working with delivery partners and Audit Scotland to improve our fraud estimates, based on an improved understanding and management of fraud risks, improved consistency and quality in the capture of data on fraud and error, and increased post-delivery testing of control effectiveness.

Recent engagement with the Head of Audit in one of the local authorities has provided an opportunity to explore possible post event sampling across local authorities. This would enable data to be gathered on the amount of fraud and error within the data sample, and in turn would help improve the validity of the fraud estimates. The Head of Counter Fraud is engaging with the Chief Internal Audit Group to explore this opportunity further.

Additionally, business support funding payments will be included in the next National Fraud Initiative data matching exercise, which matches electronic data within and between public and private sector bodies to prevent and detect fraud.

The 2020/21 audit of the Scottish Government Consolidated Accounts - Tracking in-year changes to spending plans and final expenditure

Can I start by reiterating the Scottish Government's commitment to working with the Parliament to continuously improve the information available to support its scrutiny of both the budget and the associated spending.

If I can turn to the specifics raised in your letter.

I note your comments on the level of detail provided in Budget Revisions. Officials continue to engage with the Finance and Public Administration Committee (FPAC) to ensure the right level of information is provided to facilitate the appropriate level of scrutiny.

The Scottish Government routinely provides FPAC with a Guide to Budget Revisions to support scrutiny, given the volume and technical nature of the Budget Revision document itself. This process has evolved over the years as the Scottish Government has sought to improve the information provided. For the latest iteration the Scottish Government significantly expanded this secondary document to ensure it was a broader "Finance Update" covering all of the latest funding implications of events in the run up to the Budget Revision and immediately after. It also provided increased disclosure of Covid-19 expenditure, recognising the public interest.

However, despite the expanded material in the update, its primary function remained as a "Guide to the Spring Budget Revision", tailored for the needs of FPAC, reflecting our ongoing dialogue and exchange of information to support their scrutiny of the revision. It was not therefore deemed optimal at the time for the Scottish Government to publish this material in a stand-alone way before the scrutiny session, recognising an understanding that FPAC publishes all such materials on its own website. Feedback from the FPAC session welcomed the additional information and the continuing effort to improve the scope and scale of what is being provided. It should be noted that the material was also provided to Audit Scotland and the Scottish Fiscal Commission in advance, on the understanding that this was being published at the discretion of FPAC.

Recognising the wider interest in the information contained within the guide, I have acted to ensure that this is now published on the Scottish Government website alongside the Spring Budget Revision. Equally, and subject to any further views from either Committee, I am open to the Scottish Government publishing the guide material following future Budget revisions, and sharing it with PAC when it is submitted to FPAC.

The SBR guide and the Consolidated Accounts fulfil very different functions and although there are direct links, the information contained in each will necessarily be different. It is of course vital that the PAC receives all relevant information, whilst recognising that the PAC and the FPAC have different roles to play in the parliamentary scrutiny process.

With regard to the ongoing interest in Covid-19 budgets and spending, we will consider providing a further parliamentary update as part of the provisional outturn process in June. As noted in the SBR guide, we will do this recognising the ongoing challenges and caveats associated with any such analysis.

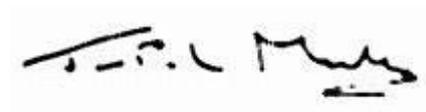
I acknowledge the need to improve the accessibility of information about public finances more broadly. However, while publishing information on the website constitutes good progress, we want to continue to improve on transparency and reporting. User research undertaken in Spring 2021 highlighted the needs that different users of Government data have and the value that would be created by moving from stand-alone reports to connected and

inter-linked financial data. The Scottish Government is exploring how to achieve that, learning from other countries which do this well. Making progress in relation to this is central to the Fiscal Transparency commitment in Scotland's third Open Government Action Plan which was published on 25 March.

I welcome the opportunity to discuss this further during my evidence session to the Committee on 3 May. I am copying this letter to the FPAC Convenor.

I hope the information provided in this letter satisfies the questions posed by the Committee. Please let me know if there is anything further you require at this stage.

Best wishes,

A handwritten signature in black ink, appearing to read 'John-Paul Marks', with a horizontal line underneath.

John-Paul Marks
Permanent Secretary to the Scottish Government