

**Management Statement and Financial
Memorandum Agreed Between the
Scottish Government Health Directorate and
the Mental Welfare Commission for Scotland
April 2011**

MANAGEMENT STATEMENT/FINANCIAL MEMORANDUM

PART 1: INTRODUCTION

This management statement and the associated financial memorandum (MS/FM) has been drawn up by the Scottish Government Health Directorate (SGHD) in consultation with the Mental Welfare Commission for Scotland (referred to as the Commission). This document supersedes the Management Statement and Financial Memorandum agreed between the SEHD and the Commission in October 2006.

1. Subject always to the legislation noted in Part 2, the management statement sets out the broad framework within which the Commission will operate, in particular:
 - The Commission's overall aims, objectives and targets in support of its statutory functions.
 - The principles and guidelines relevant to the exercise of the Commission's functions, duties and powers.
 - The conditions under which any public funds are paid to the Commission.
 - How the Commission is to be held to account for its performance.
2. The management statement and financial memorandum do not convey any legal powers or responsibilities.
3. The associated financial memorandum sets out in greater detail the financial provisions which the Commission is required to observe.
4. The management statement (and the associated financial memorandum) shall be reviewed periodically by SGHD, at least every 5 years.
5. The Commission, or the SGHD, may propose amendments to this document at any time. SGHD shall determine what changes, if any, are to be incorporated. Legislative provisions will take precedence over any part of the document.
6. The Commission shall satisfy the conditions and requirements set out in the MS/FM, together with all relevant requirements of the Scottish Public Finance Manual (SPFM) and such other conditions as the Scottish Ministers or SGHD may, from time to time, impose. Any question regarding the interpretation of the document shall be resolved by SGHD after consultation with the Commission.
7. Copies of this document and any subsequent substantive amendments shall be placed in the Scottish Parliament Reference Centre and provided to the Public Services Delivery Division in an electronic format for inclusion on the Scottish Government internet and intranet websites. Copies shall also be made available to members of the public on the Commission's website.

PART 2: MANAGEMENT STATEMENT

1. FUNCTIONS, DUTIES AND POWERS

- 1.1 Founding legislation; status
- 1.2 The functions, duties and powers of the Commission
- 1.3 Classification

2. AIMS, OBJECTIVES AND TARGETS

- 2.1 Overall aims
- 2.2 Objectives and key targets

3. RESPONSIBILITIES AND ACCOUNTABILITY

- 3.1 The Scottish Ministers
- 3.2 The Departmental Accountable Officer
- 3.3 Sponsorship of the Commission in the Directorate
- 3.4 The Chair of the Commission
- 3.5 The Commission
- 3.6 The Chief Executive

4. PLANNING, BUDGETING AND CONTROL

- 4.1 The corporate plan
- 4.2 The business plan
- 4.3 Publication of plans
- 4.4 Reporting performance to the Department
- 4.5 Budgeting procedures
- 4.6 Internal Audit

5. EXTERNAL ACCOUNTABILITY

- 5.1 The annual report and accounts
- 5.2 External audit
- 5.3 VFM/3E examinations

6. STAFF MANAGEMENT

7. REVIEWING THE ROLE OF THE COMMISSION

1. FUNCTIONS, DUTIES AND POWERS

1.1 Founding legislation; status

1.1.1 The Commission is established as an independent body corporate under Part 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (referred to as the 2003 Act). The constitution of the Commission is set in schedule 1 of the 2003 Act. The Commission does not carry out its functions on behalf of the Crown.

1.2 The functions, duties and powers of the Commission

The principal functions, duties and powers of the Commission are set out in Sections 4–20 of the 2003 Act (as amended by the Public Services Reform (Scotland) Act 2010) and in the Adults with Incapacity (Scotland) Act 2000 (referred to as AWI Act). They are:-

1.2.1 Acting to protect the welfare of individuals with mental illness, learning disability or personality disorder

1.2.2 Monitoring the practical application of the observance of Part 1 of the Act and promoting best practice in relation to the practical application of the observance of Part 1 of this Act. The Act does not empower the Commission to enforce the provisions of the Act but rather to have a role in highlighting situations where best practice is not being followed and making recommendations on how best practice could be improved. Section 6 of the 2003 Act requires the Commission to bring matters concerning the operation of the Act to the attention of the Scottish Ministers.

1.2.3 Investigation by a Commission Visitor of any case where it appears to the Commission there may be ill-treatment, deficiency in care or treatment, or improper detention of any person who may be suffering from a mental disorder, and to bring the facts of any such case to the attention of hospital managers or a local authority. Scottish Ministers, a Health Board or local authority can also request the Commission to investigate such cases.

1.2.4 Carrying out visits to people with mental disorder as often as the Commission considers appropriate.

1.2.5 To advise Scottish Ministers, a Health Board or a local authority when requested, of any matter arising out of the 2003 Act, and to bring to the attention of Scottish Ministers, a Health Board or a local authority or any other body mentioned in section 7 of the 2003 Act any matter concerning the welfare of any persons who are suffering from mental disorder;

1.2.6 To raise concerns about any social services or health care services with SCSWIS, HIS or other relevant persons in terms of section 8A of the 2003 Act;

1.2.7 To ensure that the safeguards in place for patients receiving compulsory care and treatment are adhered to. This includes the operation of

safeguards in relation to medical treatment (part 16) and interference with privacy (sections 281 to 286).

1.2.8 Under section 10 of the 2003 Act the Commission may publish information or guidance about any matter relevant to its functions and its conclusions in relation to an investigation, inquiry or visit carried out under the 2003 Act.

1.2.9 To publish an annual report and submit it as soon as practicable after the end of each financial year to Scottish Ministers, who will lay copies before Parliament. The financial year of the Commission ends on 31 March;

1.2.10 Under Section 9 of the Adults with Incapacity Act 2000, the Commission continues to have general functions in relation to adults to whom the Act applies by reason of mental disorder. The functions under that Act include: to consult with the Public Guardian and any local authority on any case of common interest; to receive and investigate complaints relating to the exercise of functions relating to the personal welfare of the adult in relation to welfare attorneys and guardians or persons authorised under intervention orders (where they are not satisfied by an investigation made by a local authority or where the local authority has failed to investigate); and to provide a guardian, welfare attorney or person authorised under an intervention order with information and advice in connection with the performance of his or her functions under the 2000 Act.

1.2.11 In discharging its statutory functions the Commission is accountable to Scottish Ministers but at the same time it carries out its work and produces reports independently.

1.3 **Classification**

1.3.1 For administrative purposes the Commission is classified as an independent NHS body.

1.3.2 For the purposes of staff remuneration the Commission is **not** classed as an NHS body. It is therefore required to comply with the Scottish Government pay policy and gain approval from Scottish Ministers on its pay policy. The Commission is defined as an employing authority for the NHS pension scheme under Scottish Statutory Instrument 2003 No 55

1.3.3 For national accounts purposes the Commission is classified to the central government sector. The Commission's accounts are consolidated into those of the NHS in Scotland and it follows procedures outlined in the Health Board Manual.

2. **GOALS, OBJECTIVES AND TARGETS**

2.1 **The Commission's goals are to:**

- Help individuals using mental health or learning disability services to get the best possible care and treatment;

- Help people working in mental health and learning disability services to provide the best possible care and treatment for each person using those services;
- To be independent experts in promoting best practice as to applying best ethical and legal practice in care and treatment of individuals with mental disorder.

2.2 Objectives and key targets

2.2.1 The Commission will develop a set of strategic objectives which will be reproduced in the organisation's corporate and business plans. This plan is approved by Scottish Ministers as set out below (3.1.1).

2.2.2 The Commission will also develop specific performance measures which are appropriate for assessing how successfully it is meeting its aims and objectives each year.

3. RESPONSIBILITIES AND ACCOUNTABILITY

3.1 The Scottish Ministers

3.1.1 The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities and performance of the Commission. Their responsibilities include:

- Approving the Commission's strategic objectives in light of its statutory duties and the policy and performance framework within which the Commission will operate (as set out in this management statement and associated financial memorandum).
- Providing information to the Scottish Parliament about the Commission as required.
- Approving the budget and associated grant-in-aid requirement to be paid to the Commission and securing the necessary Parliamentary approval.
- Carrying out responsibilities and powers specified in the 2003 Act. These include:
 - appointments and any removal of the Chair and other members of the Commission;
 - power to determine remuneration and allowances of the Chair and other Commission members;
 - prior approval of appointment of chief executive by the Commission;
 - power to approve terms and conditions, and to determine remuneration and allowances, of Commission staff (including the chief executive) and visitors;
 - power to determine pensions, allowances and gratuities to or in respect of Commission staff and former staff;

- approval of the Commission's location of its office premises; and
- laying of annual report and accounts before the Scottish Parliament.

3.2 The Departmental Accountable Officer

3.2.1 The Director General Health and Chief Executive of NHS Scotland is designated as the Health Directorate's Accountable Officer (DAO) by the Principal Accountable Officer for the Scottish Government. The DAO is responsible for the overall organisation, management and staffing of SGHD and for ensuring that there is a high standard of financial management in SGHD as a whole.

3.2.2. In particular the DAO shall ensure that:

- The Commission's strategic aims and objectives support its statutory obligations;
- The financial and other management controls applied by SGHD to the Commission are appropriate and sufficient to safeguard public funds ("public funds" in this context include not only any funds granted to the Commission by the Scottish Ministers but also any other funds generated by approved activities or falling within the stewardship of the Commission, including gifts, bequests and donations);
- The internal controls applied by the Commission conform to the requirements of regularity, propriety and good financial management;
- Any funding provided to the Commission is within the scope and the amount authorised by Budget Acts.

The responsibilities of a DAO are set out in more detail in the Memorandum to Accountable Officers from the Principal Accountable Officer – see Annex 1 of the section on Accountability in the Scottish Public Finance Manual (SPFM).

3.3 Sponsorship of the Commission within the SGHD

3.3.1 Within the SGHD the Mental Health Division of the Primary and Community Care Directorate is the sponsoring team for the Commission. The Mental Health Division in consultation as necessary with the DAO, is the primary source of advice to the Scottish Ministers on the discharge of their responsibilities in respect of the Commission. Whilst the Mental Health Division remains the primary point of contact for the Commission in dealing with the SGHD, the Commission is free to make appropriate direct links/engage with relevant policy branches throughout the SG. The Mental Health Division shall carry out its duties under a senior officer who shall have an overview of all Commission activities.

3.3.2 The Mental Health Division shall advise the Scottish Ministers on:

- The Commission's framework of objectives and targets in the light of current mental health legislation and policy, and relevant incapacity legislation as it affects the Commission;

- An appropriate budget for the Commission in the light of the Scottish Ministers' overall public expenditure priorities;
- How well the Commission is achieving its strategic objectives and whether it is delivering value for money.

3.3.3 The Health Finance Division of the SGHD will advise Scottish Ministers on:

- An appropriate revenue budget for the Commission in the light of SGHD's overall public expenditure priorities; and
- The Commission's financial performance, budgeting, financial control and management of financial risk.

3.3.4 The Capital Planning and Asset Management Division (CPAMD) shall advise Scottish Ministers on

- An appropriate capital budget for the Commission in the light of SGHD's overall public expenditure priorities and matters pertaining to the development of the Non Profit Distributing (NPD) model of Public Private Partnerships (PPP) within NHS Scotland.

3.3.5 In support of the DAO the Mental Health Division shall:

On Performance and Risk Management:

- Monitor the Commission's activities on a continuing basis through an adequate and timely flow of information from the Commission on performance, budgeting, control and risk management, including early sight of the Commission's Statement on Internal Control;
- Address in a timely manner any significant problems arising in the Commission, whether financial or otherwise, making such interventions in the affairs of the Commission as SGHD judges necessary;
- Ensure that the activities of the Commission and the risks associated with them are properly and appropriately taken into account in SGHD's own risk assessment and management systems;
- Ensure appropriate accommodation and resources in the event of an emergency. This is outlined in the Commission's business continuity management policy.
- Ensure that appointments to the Commission are made timeously and in accordance with the Office of the Commissioner for Public Appointments (OCPAS) Code of Practice.

On Communication with the Commission:

- Include the Commission in its early discussions about relevant policy formulation, and seek the Commission's views on the desirability and feasibility of particular courses of action and reflect these in advice to Scottish Ministers as appropriate;
- Inform the Commission of relevant Scottish Government policy in a timely manner; advise on the interpretation of that policy; and issue specific guidance to the Commission as necessary;
- Bring concerns about the activities of the Commission to the attention of the Board of the Commission, and require explanations and assurances from the Commission that appropriate action has been taken;
- Maintain good working relationships with the management of the Commission, recognising the need to ensure, on the one hand, that the organisation has the necessary freedom of action to establish its credibility, authority and effectiveness and, on the other, that such freedom of action is exercised responsibly.

3.4 The Chair of the Commission

3.4.1 The Chair is appointed by Scottish Ministers. This appointment is based on merit, using a process of independent and open assessment, which complies with the OCPAS Code of Practice

3.4.2 The Chair is accountable to Scottish Ministers for the Commission Board's performance. The Chair shall ensure that collectively and individually the functions of the Commission are fulfilled as outlined in the Mental Health (Care & Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000, and any other relevant legislation ; and that the Commission's affairs are conducted with probity. The Chair shares with other Commission members the corporate responsibilities set out in paragraph 3.5.3.

3.4.3 The Chair has a particular responsibility for providing effective strategic leadership for the Commission, in particular on the following matters:

Formulating the Commission's strategy with the Commission Board:

- work with the other members of the Board and Senior Management Team to define clear roles, responsibilities and accountabilities against delivery of the organisation's objectives, which will comprise:
 - setting strategic direction, defining annual and longer term objectives and agreeing plans to achieve them;
 - ensuring that plans and performance are responsive to staff and stakeholder needs;

- overseeing the delivery of planned results by monitoring performance against objectives;
 - ensuring effective financial stewardship; and
 - ensuring high standards of governance and conduct throughout the organisation.
- Setting the agenda, style and tone of Commission Board discussions to promote effective decision making and constructive debate;
 - Ensuring that the Commission Board, in reaching decisions, takes proper account of guidance provided by Scottish Ministers/SGHD or other regulatory bodies;
 - Promoting the efficient and effective use of staff and other resources;
 - Encouraging high standards of propriety;
 - Support organisational change sensitively, effectively and in partnership;
 - Actively work with Health Improvement Scotland (HIS) and Social Care and Social Work Improvement Scotland (SCSWIS), as the scrutiny bodies in respect of mental health services, in line with the statutory duties in each body to co-operate and in line with best practice.
 - Representing the Commission's activities, in an open and positive way, to people with mental illness, learning disability or personality disorder and practitioners that work with them; NHS bodies, local authorities, professional and other advisory bodies, the media; the general public and all other interested parties;
 - Making sure that all Board Members are effectively trained and developed and that their performance is formally reviewed on a regular basis.

3.4.4 The Chair shall also:

Ensure that all Board members, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities

- Advise Scottish Ministers of the needs of the Commission when vacancies for Board members arise, with a view to ensuring a proper balance of experience and expertise;
- Provide advice as appropriate to Scottish Ministers and the Scottish Government's Mental Health Division
- Assess the performance of individual Board members and the Chief Executive on an annual basis and provide an assessment of performance for all Board members when they are being considered for reappointment to the Commission;

- Ensure that all Board members are aware of their individual responsibilities under the Ethical Standards in Public Life etc (Scotland) Act 2000 and the Code of Practice approved by Scottish Ministers.

3.4.5 Communications between the Commission and Scottish Ministers shall normally be through the Chair. The Chair shall ensure that the other members of the Commission are kept informed of such communications.

3.5 The Board

3.5.1 Board members of the Commission are appointed by Scottish Ministers. These appointments are based on merit, using a process of independent and open assessment, which complies with the OCPAS Code of Practice.

3.5.3 The Board has corporate responsibility for ensuring that collectively and individually the functions of the Mental Welfare Commission are fulfilled as outlined in the Mental Health (Care & Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000, and any other relevant legislation and for promoting the efficient and effective use of staff and other resources in accordance with the principles of best value – see relevant section of the SPFM. To this end, and in pursuit of its wider corporate responsibilities, the Commission Board shall:

- Establish the overall strategic direction of the Commission within the policy and resources framework determined by mental health legislation and policy;
- Ensure that Scottish Ministers are kept informed of any changes which are likely to impact on the strategic direction of the Commission or on the attainability of its targets, and determine the steps needed to deal with such changes;
- Monitor the effective performance of the Commission's activities and ensuring achievement of its aims.
- Ensure that any statutory or administrative requirements for the use of public funds are complied with; that the Commission operates within the limits of its statutory authority and any delegated authority agreed with SGHD, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Commission takes into account relevant guidance issued by Scottish Ministers / SGHD;
- Ensure that the Board receives and reviews regular financial information concerning the management of the Commission; is informed in a timely manner about any concerns about the activities of the Commission; and provides positive assurance to SGHD that appropriate action has been taken on such concerns;
- Demonstrate high standards of corporate governance in accordance with the requirements of NHS Circular MEL (1994) 80 and subsequent guidance, at all

times, including by using the audit committee (paragraph 4.6.2 below) to help the Commission to address the key financial and other risks facing it;

- Provide commitment and leadership in the development and promotion of best value principles throughout the Commission;
- Appoint, a Chief Executive to the Commission and set performance objectives and remuneration terms linked to these objectives for the Chief Executive which give due weight to the proper management and use of public monies and to the delivery of outcomes in line with the corporate strategy.

3.5.4 Individual Board members shall act in accordance with their wider responsibility as Members of the Commission – namely to:

- Comply at all times with the Code of Conduct outlined in 3.4.4 above and with the rules relating to the use of public funds, conflicts of interest and confidentiality;
- Not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- Act in good faith and in the best interests of the Commission.

3.6 The Commission Chief Executive

3.6.1 The Chief Executive of the Commission is designated as Accountable Officer in accordance with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000.

3.6.2 The Accountable Officer is personally responsible for safeguarding the public funds (i.e. all funds falling within the stewardship of the Commission) for which he/she has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the Commission. He/she should act in accordance with the terms of the *Memorandum to NHS Board Accountable Officers* issued with the letter of appointment, the terms of this MS/FM, and within the terms of relevant guidance in the SPFM and other instructions and guidance issued from time to time by SGHD.

3.6.3 The Accountable Officer has a duty to secure best value, which includes the concepts of good corporate governance, performance management and continuous improvement. Guidance to Accountable Officers on what their organisations should be able to demonstrate in fulfilment of the duties which make up a best value regime outlined in the best value section of the SPFM as supplemented by the document *Best Value in Public Services - Secondary Guidance to Accountable Officers*.

3.6.4 As Accountable Officer the Chief Executive shall exercise the following specific responsibilities:

On planning, performance management and monitoring:

Establish the Commission's strategic plan, in the light of its statutory duties and to an agreed planning and reporting process.

- Establish a robust performance management framework which supports the achievement of the Commission's aims and objectives as set out in the strategic and business plans; and which enables full performance reporting to the Commission, SGHD and the wider public;
- Inform SGHD of the Commission's progress in fulfilling its statutory duties as set out in the strategic plan and in demonstrating how resources are being used to achieve those objectives;
- Ensure that timely monitoring information and forecasts are provided to SGHD; that corrective action is taken to avoid overspends; and that SGHD is notified promptly when overspends are likely and that corrective action is taken; and that any significant problems, whether financial or otherwise, and whether detected by internal audit or by other means, are notified to SGHD in a timely fashion.

On Advising the Commission Board:

- Advise the Board on the discharge of its responsibilities as set out in this document, in relevant mental health legislation and in any other relevant instructions and guidance issued by the Scottish Ministers or SGHD;
- Advise the Board on the organisation's performance compared with its aims and objectives;
- Ensure that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions, and that standard financial appraisal techniques are followed as set out in "The Green Book: Appraisal and Evaluation in Central Government" as far as this is appropriate and practical;
- Take action as set out in section 5 of the *Memorandum to NHS Board Accountable Officers* if the Commission, or its Chair, is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration or efficiency or effectiveness.

On Managing Risk and Resources:

- Ensure that a system of risk management is embedded in the organisation to inform decisions on financial and operational planning and to assist in achieving objectives and targets;
- Ensure that an effective system of programme and project management and contract management is maintained;
- Ensure that all public funds made available to the Commission (including any approved income or other receipts) are used for the purpose for which they were intended by the Scottish Parliament, and that such funds, together with the Commission's assets, equipment and staff, are used economically, efficiently and effectively;
- Ensure that adequate internal management and financial controls are maintained by the Commission, including effective measures against fraud and theft;
- Maintain a comprehensive system of internal delegated authorities which are notified to all staff, together with a system for regularly reviewing compliance with these delegations;
- Ensure that appropriate human resource management policies are maintained and that strategic human resource planning is related to the Commission's objectives.

On Accounting for Commission Activities:

- Sign the accounts and be responsible for ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by Scottish Ministers;
- Sign a Statement of Accountable Officer's responsibilities, for inclusion in the annual report and accounts;
- Sign a Statement on Internal Control regarding the Commission's system of internal control, for inclusion in the annual report and accounts;
- Sign a Certificate of Assurance on the maintenance and review of the Commission's internal control systems, for submission to the Department;
- Ensure that an effective complaints procedure is in place and made widely known, including reference to the Scottish Public Services Ombudsman;
- Give evidence when summoned before Committees of the Scottish Parliament on the use and stewardship of public funds by the Commission.

3.6.5 The Chief Executive may delegate the day-to-day administration of the Accountable Officer responsibilities to other employees in the Commission.

However, the Chief Executive shall not assign absolutely to any other person any of the responsibilities set out in this document.

3.6.6 The Chief Executive is responsible for informing the Departmental Accountable Officer about any complaints about the Commission accepted by the Scottish Public Services Ombudsman for investigation, and about the Commission's proposed response to any subsequent recommendations from the Ombudsman.

4. PLANNING, BUDGETING AND CONTROL

4.1 The Strategic Plan:

4.1.1 Consistent with the timetable for public spending reviews the Commission will submit to SGHD a draft of an updated strategic plan covering 5 years ahead. The Commission will have discussed with SGHD the issues to be addressed in the plan and the timetable for its preparation. The plan, or elements thereof, shall be updated annually.

The plan shall reflect the Commission's statutory duties.

4.1.2 The strategic plan will include:

- The Commission's key objectives and associated key performance targets for the forward years, and its strategy for achieving those objectives;
- The broad programme of work for the planning period and the manner in which it is to be implemented;
- Alternative scenarios to take account of factors which may significantly affect the execution of the plan but which cannot be accurately forecast;

4.1.3 The strategic plan will be approved by Scottish Ministers.

4.2 The Business Plan

4.2.1 The business plan for the year immediately ahead shall be consistent with the agreed strategic plan. The business plan shall be updated annually by the Commission to include key targets and milestones for the forthcoming year and shall be clearly linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by SGHD. A copy of the business plan shall be submitted to the SGHD for information prior to the beginning of the financial year in question or as soon as the SGHD has confirmed the Commission's resource allocation for the year.

4.2.2 Details of the Commission's pay remit should be sent for approval to Mental Health Division for submission to the Scottish Government Pay Policy Unit.

4.3 Publication of Plans

4.3.1 Copies of the Strategic and Business Plans will be made available to the public on request. Copies will also be placed on the Commission website.

4.4 Reporting Performance to the Department

4.4.1 The Commission shall operate management information and accounting systems which enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in its agreed strategic and business plans.

4.4.2 The Commission shall take the initiative in informing SGHD of changes in external conditions which make the achievement of objectives more or less difficult, or which may require a change to the budget or objectives set out in the strategic or business plans.

4.4.3 The Commission's performance in helping to deliver its statutory duties and functions shall be reported to SGHD on a regular basis, and formally reviewed annually by the SGHD. The Commission's performance against key targets shall additionally be reported in the Commission's annual report and accounts (see sections 5.1 and 5.2 below). Other forms of reporting performance to the public should also be considered by the Commission.

4.4.4 The Cabinet Secretary for Health and Wellbeing or the Minister for Public Health and Sport shall meet the Commission Chair and chief executive (or other board members or staff to which such a meeting is delegated by the Chair and chief executive) formally at least annually. The purpose of this meeting is to discuss the Commission's performance, its current and future activities and any areas of concern that the Commission wants to raise with the Cabinet Secretary or the Minister, as the case may be. The Commission has a separate statutory duty in any case to raise any issue of concern with Scottish Ministers at any time, such as about the operation of the 2003 Act, and otherwise any matters of general interest or concern as respects the welfare of any persons with mental disorder.

4.4.5. In addition, relevant Ministers and persons authorised by them will meet with the Commission Board once a year to review the performance of the Commission Board in the preceding financial year. The purpose of this meeting is to ensure that Ministers have confidence in the performance and accountability of the Commission as a public body, and the role of the Board in securing that.

4.4.6 The SGHD will give the Chair of the Commission at least three weeks' notice of any proposal to attend any meeting of the Commission's Board or any of its Committees.

4.4.7 The Chair of the Commission will give the SGHD at least three weeks' notice of any invitation to attend any meeting of the Commission's Board or any of its Committees.

4.4.8 The Commission reserves the right to exclude members of the Scottish Government and persons authorised by Scottish Ministers from any meeting (or part of a meeting) in order to hold private discussions about the Commission's views on

Government policy or where matters that pertain to, or could identify, any individual in whose case the Commission has an interest.

4.5 Budgeting Procedures

4.5.1 The Commission's budgeting procedures are set out in the financial memorandum.

4.6 Internal Audit

4.6.1 The Commission shall contract an internal audit service from another NHS body in accordance with Government Internal Audit Standards (GIAS).

4.6.2 The Commission shall set up an independent audit committee as a standing committee of the Commission in accordance with the guidance on Audit Committees in the NHS Scotland Audit Committee Handbook.

4.6.3 The Commission rely on the NHS body providing the internal audit service to arrange for the appropriate quality review of its internal audit in accordance with HM Treasury's Government Internal Audit Standards (GIAS). The Commission's external auditors require to review the quality review prior to finalising the Commission's accounts.

4.6.4 The Department's internal audit service shall also have a right of access to all documents prepared by the Commission's internal auditor. The audit strategy, periodic audit plans and annual audit report, including the Internal Audit's opinion on risk management, control and governance shall be forwarded without delay to SGHD who shall consult the SG Head of Internal Audit as appropriate.

4.6.5 The Commission shall forward to SGHD an annual report on fraud and theft suffered by the organisation (notified as part of the annual accounts); notify any unusual or major incidents as soon as possible; and notify any changes to its internal audit's terms of reference, its audit committee's terms of reference or its Fraud Policy and Fraud Response Plan.

5. EXTERNAL ACCOUNTABILITY

5.1 Annual Report

5.1.1 After the end of each financial year the Commission shall publish an annual report which is laid before Parliament by Scottish Ministers. The report shall contain a summary of the accounts.

5.2 The Annual Accounts

5.2.1 The Commission shall keep proper accounts and other records in relation to the accounts and promptly after the end of each financial year, shall prepare annual accounts in the form prescribed in Accounts Directions issued by Scottish Ministers and in accordance with the requirements of the Government Financial Reporting Manual (FRoM) issued by HM Treasury, which follows International Financial

Reporting Standards as adopted by the European Union (IFRSs as adopted by the EU), IFRIC Interpretations and the Companies Act 2006 to the extent that they are meaningful and appropriate to the public sector.

5.2.2 The accounts shall be submitted by 30 June each year. The final accounts must be submitted formally by the Auditor General to Scottish Ministers and must not be published before they have been laid before the Scottish Parliament. The Commission shall make available the accounts on request.

5.2.3 The report to the accounts shall outline the Commission's main activities and performance during the previous financial year and set out in summary form the Commission's forward plans. Information on performance against key financial targets shall be included in the notes to the accounts, and shall therefore be within the scope of the audit.

5.3 External Audit

5.3.1 The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, the Commission's annual accounts and passes them to Scottish Ministers who shall lay them before the Parliament. For the purpose of audit the AGS has a statutory right of access to relevant documents and information as provided for in the Public Finance and Accountability (Scotland) Act 2000, including by virtue of any Order made under Section 24 of that Act.

5.3.2 The Commission shall instruct its auditors to send copies of all management letters (and correspondence relating to those letters) and responses to SGHD.

5.4 VFM/3E examinations

5.4.1 The Public Finance and Accountability (Scotland) Act 2000 provides that the AGS may carry out examinations into the economy, efficiency and effectiveness with which the Commission has used its resources in discharging its functions. For the purpose of these examinations the AGS has statutory access to relevant documents and information [by virtue of an Order made under Section 24 of that Act].

5.5 Funding for Inquiry Requests

Under the 2003 Act, Scottish Ministers can request the Commission to undertake an inquiry into a deficiency in care and practice. These types of request cannot be planned and therefore if such a situation arises the Commission and Sponsor Department will negotiate funding which is over and above the annual allocation.

6. STAFF MANAGEMENT

6.1 Within the arrangements approved by Scottish Ministers as set out in the Mental Health (Care and Treatment) (Scotland) Act 2003 and the public sector pay guidance (see 5.2 in the financial memorandum) the Commission shall have the responsibility for the recruitment, retention and motivation of its staff. To this end Commission shall ensure:

- The recruitment of its staff is based on fair and open competition and equal opportunities;
- The level and structure of its staffing, including grading and numbers of staff, is appropriate to its functions and the requirements of efficiency, effectiveness and economy;
- The performance of its staff at all levels is managed effectively and efficiently; they are satisfactorily appraised; and the Commission's performance appraisal and promotion systems are reviewed from time to time;
- Its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the Commission's objectives;
- Proper consultation with staff takes place on key issues affecting them;
- Adequate grievance and disciplinary procedures are in place;
- Whistle blowing procedures consistent with the Public Interest Disclosure Act are in place;
- a code of conduct for staff is in place.

7. REVIEW PROCEDURES

7.1 The role of the Commission shall be reviewed periodically in accordance with the needs of Scottish Ministers and of the Commission, normally at least every 5 years.

PART 3: FINANCIAL MEMORANDUM

1. BUDGETING PROCEDURES

Resource Expenditure Limits
Setting the annual budget
Transfers of budgetary provision
End-year flexibility
Authority to spend.

2. INCOME

Funding
Borrowing
Income
Receipts from the EC
Fees and charges
Receipts from sale of goods and services
Interest earned
Proceeds from disposal of assets
Gifts, bequests and donations
Unforecast changes in in-year income.

3. EXPENDITURE: GENERAL PRINCIPLES

Delegated authority
Appraisal and Evaluation
Procurement
Competition
Value for money
Timeliness in paying bills
Novel, contentious or repercussive proposals
Risk management.

4. EXPENDITURE ON BOARD MEMBERS

5. EXPENDITURE ON STAFF

Staff costs
Pay and conditions of service
Pensions, redundancy/compensation.

6. NON-STAFF EXPENDITURE

Capital expenditure
Lending, guarantees, indemnities, contingent liabilities, letters of comfort
Grant or loan schemes
Gifts made, write-offs, losses and special payments
Leasing
Public/Private Partnerships
Subsidiary companies and joint ventures
Financial investments
Unconventional financing
Commercial insurance

7. MANAGEMENT AND DISPOSAL OF NON CURRENT ASSETS

Register of assets

Disposal of assets

Recovery of grant-financed assets.

8. BANKING

APPENDIX: SPECIFIC LIMITS ON DELEGATED AUTHORITY

1. BUDGETING PROCEDURES

Resource Expenditure Limits

1.1 The Commission's revenue and capital expenditure form part of the expenditure charged against the Scottish Government Health Directorate's (SGHD's) Resource and Capital Departmental Expenditure Limits (DEL) respectively.

Setting the annual budget

1.2 Each year, the Mental Health Division of SGHD will send to the Commission a formal statement of the annual budgetary provision setting the Revenue Resource Limit and Capital Resource Limit (ring-fenced where appropriate) allocated by Scottish Ministers in the light of competing priorities across the Scottish Government.

1.3 The Commission's annual business plan will take account of its approved budgetary provision and of any forecast income, and will include a profile of estimated payments and receipts together with a profile of expected expenditure and income over the year. These elements will also form part of the corporate plan (Section 4.1 of the management statement).

1.4 Funding provided by Scottish Ministers for the year in question will be included in the annual Budget Act and will be subject to approval by the Scottish Parliament.

Transfer of budgetary provision

1.5 All transfers of budgetary provision between revenue and capital budgets require the prior approval of SGHD. With effect from 2006-07 there will be no transfers between capital and revenue budgets. Other transfers between main budget headings may be undertaken without the prior approval of SGHD. Ring fenced funds cannot be used for any other purpose without SGHD's approval in advance.

End-year flexibility

1.6 The Commission can request a limited carry forward of RRL or CRL budgetary provision to the next financial year. This must be agreed, at the earliest opportunity, with the Health Finance Division and the Mental Health Division.

Authority to spend

1.7 Once the Commission's budget has been approved by SGHD (and subject to any restrictions imposed by statute, the Scottish Ministers, or the MS/FM) the Commission shall have authority to incur expenditure/consume resources without further reference to SGHD, on the following conditions:

- The Commission shall comply with the specific delegations set out in the attached Appendix. These delegations shall not be altered without the prior agreement of SGHD.

- The Commission shall comply with the conditions set out in this financial memorandum regarding novel, contentious or repercussive proposals and with any relevant guidance in the Scottish Public Finance Manual (SPFM).
- Inclusion of any planned and approved expenditure in the Commission's budget shall not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed.
- The Commission shall provide SGHD with such information about its operations, performance, individual projects or other expenditure as SGHD may reasonably require.

Impairment of Assets

1.8 Assets will normally only impact on the resource budget through depreciation and the cost of capital charge or where there is a profit or loss on disposal, which would all score in the resource DEL budget of the Commission. Assets should be recorded on the balance sheet at equivalent use value or in the case of specialised assets depreciated replacement cost, with any fluctuations in value being dealt with through the revaluation reserve. However, where an asset suffers an impairment (i.e. a permanent write-off of value which cannot be met from the revaluation reserve) this amount should be charged as operating expenditure in year. Funding may be available from Treasury for some impairments and the Board should refer to the NHS Scotland Capital Accounting Manual to determine the appropriate budgetary treatment and classification. The details of impairments for each year should be agreed in advance by the Health Finance Directorate.

Provisions

1.9 A provision is a liability of uncertain timing or amount. It should be recognised in the resource DEL budget for the Commission when it has a present obligation (legal or constructive) as a result of a past event, when it is probable that a transfer of economic benefits will be required to settle this obligation, and when a reliable estimate can be made of the amount of the obligation. The timing of significant changes in provisions should be agreed in advance by the Health Finance Directorate.

Bad Debt

1.10 Bad debt that is written off by the Commission scores in its resource DEL budget. Write-off of bad debt is subject to the delegated limit set out in the attached Appendix. Write-off above that limit is subject to the prior approval of the Health Finance Directorate. Appropriate provision for known bad debt should be made in the Annual Accounts at the year end.

2. THE COMMISSION'S INCOME

Funding

2.1 The Commission uses the Scottish Executive Accounting System (SEAS) to make payments against its agreed budget. Any proposal to cease using SEAS as the main accounting system must be agreed by the SGHD in advance.

Borrowing

2.2 The Commission is not allowed to borrow funds.

Income

2.3 Any proposals for new sources of income or methods of fundraising should be cleared with SGHD in advance.

Receipts from the EC

2.4 The Commission should ensure that the sponsoring division is informed of all potential EU funding so that there can be a full assessment of the implications of such funding for the Scottish Government. Structural Funds claimed by the Commission via the Scottish Government score against the Scottish Government's Departmental Expenditure Limit (DEL) and any proposals must therefore be considered by the Scottish Ministers together with all other pressures on resources. See the guidance in the EU Funding section of the SPFM.

Fees and charges

2.5 Fees or charges for any services supplied by the Commission shall be determined in accordance with the Fees & Charges section of the SPFM.

Receipts from sale of goods or services

2.6 Receipts from the sale of goods and services, rent of land, and dividends may be used to provide additional spending power subject to them being included in the approved budget.

Interest earned

2.7 No interest will be earned on cash balances in Office of the Paymaster General accounts and balances should not be held in commercial accounts in excess of need.

Proceeds from disposal assets

2.8 Disposals of land and buildings are dealt with in Section 7 below.

Gifts, bequests and donations

2.9 The Commission is free to retain any gifts, bequests or similar donations. These shall be treated as receipts that, where appropriate, can be used to increase spending power. [NOTE: Donated assets do not attract a cost of capital charge, and a release from the donated assets reserve should offset depreciation in the operating cost statement.]

2.10 Before proceeding in this way the Commission shall consider if there are any associated costs in doing so or any conflicts of interests arising. The Commission

shall keep a written record of any such gifts, bequests and donations and of their estimated value and whether they are disposed of or retained.

Unforecast change in in-year income used to provide additional spending power

2.11 If income realised or expected to be realised in-year is less than estimated, the Commission shall, unless otherwise agreed with SGHD, ensure a corresponding reduction in its gross expenditure so that its RRL and CRL are not exceeded.

2.12 If income realised or expected to be realised in-year is more than estimated, the Commission may retain the excess income for specified additional expenditure within the current financial year without an offsetting reduction to funding. SGHD must be informed of any anticipated excess income as soon as possible in order that appropriate Budget cover can be sought.

3. THE COMMISSION'S EXPENDITURE: GENERAL PRINCIPLES

Delegated authority

3.1 The Commission shall not, without prior approval of SGHD, enter into any undertaking to incur any expenditure, which falls outside the specific limits on its delegated authority as set out in the attached Appendix.

Appraisal and Evaluation

3.2 All expenditure proposals shall, so far as appropriate, be subject to the guidance in the Appraisal and Evaluation section of the SPFM.

Procurement

3.3 The Commission's procurement policies shall reflect relevant guidance in the Procurement section of the SPFM. Procurement should be treated as a key component of achieving the Commission's objectives, as well as a means of finding the most cost-effective method for securing the quality of assets and/or services. The Commission shall also ensure that it complies with any relevant EU or other international procurement rules.

Competition

3.4 Contracts shall be placed on a competitive basis and tenders accepted from suppliers who provide best value for money overall. Proposals to let single-tender or restricted contracts above the relevant delegated limit in the attached Appendix must be submitted to SGHD for prior approval.

Value for money

3.5 Procurement by the Commission of works, equipment, goods and services shall be based on value for money, ie quality (in terms of fitness for purpose) and

delivery against price. Where appropriate, a full option appraisal shall be carried out before procurement decisions are taken.

Timeliness in paying bills

3.6 Payments should be made promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days for the payment of invoices.

Novel, contentious or repercussive proposals

3.7 The Commission shall obtain the approval of SGHD before:

- Incurring any expenditure for any purpose which is or might be considered novel or contentious, or which has or could have significant future cost implications, including on staff benefits;
- making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by SGHD;
- making any change of policy or practice which has wider financial implications (eg because it might prove repercussive among other public sector bodies) or which might significantly affect the future level of resources required.

Risk management

3.8 The Commission shall ensure that the risks, which it faces, are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and shall develop a risk management strategy, in accordance with the Risk Management section of the SPFM.

3.9 The Commission shall adopt and implement policies and practices to safeguard itself against fraud and theft, in line with the Fraud section of the SPFM.

3.10 The Commission shall take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract.

4. EXPENDITURE ON BOARD MEMBERS

4.1 Remuneration, allowances, and expenses paid to Board members and any pension arrangements must comply with specific guidance on such matters issued by Scottish Ministers.

5. EXPENDITURE ON STAFF

Staff costs

5.1 The Commission is responsible for determining the number of staff required and the most appropriate organisational structure to deliver its remit economically, efficiently and effectively within the resources available to it. However, any significant changes in staff numbers must be approved in advance by SGHD.

Pay and conditions of service

5.2 The Commission shall submit to Scottish Ministers for approval a pay remit within the terms and conditions set out in the Scottish Executive's Public Sector Pay Guidance and negotiate a pay settlement within the terms of the subsequently agreed remit. This is normally on an annual basis unless a multi year deal has been agreed. Proposals on non-salary rewards must comply with the guidance in the non-salary rewards section of the SPFM. The Commission shall comply with the EU directive on contract workers "Fixed Term Employees Regulations (Prevention of Less Favourable Treatment)". The terms and conditions of the Chief Executive (Director) are subject to a separate approval exercise.

Pensions; redundancy/compensation

5.3 Superannuation arrangements for staff are subject to the approval of Scottish Ministers. Commission staff shall normally be eligible for a pension provided by membership of the NHS Superannuation Scheme and all new staff will be offered membership of this scheme. Some Commission staff are eligible for a pension by admittance to the local Government Pension Scheme (Lothian Pension Fund).

5.4 Staff may opt out of the NHS or other superannuation scheme, however, the employer's contribution to any personal pension arrangement shall be limited to the national insurance rebate level.

5.5 Any proposal by the Commission to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the approval of Scottish Ministers. Proposals on severance payments must comply with the guidance in the Severance etc section of the SPFM.

6. NON-STAFF EXPENDITURE

Capital expenditure

6.1 Subject to being above the Scottish Government's capitalisation threshold, all expenditure on the acquisition or creation of non current assets shall be capitalised on an accruals basis.

Property, Plant and Equipment is capitalised where: it is held for use in delivering services or for administrative purposes; it is probable that future economic benefits will flow to, or service potential be provided to, the Commission; it is expected to be used for more than one financial year; and the cost of the item can be measured reliably. Intangible assets are non-monetary assets without physical substance which are capable of being sold separately from the rest of the Commission's business or which arise from contractual or other legal rights. They are recognised only where it is probable that future economic benefits will flow to, or service potential be provided to, the Commission and where the cost of the asset can be measured reliably.

6.2 Proposals for large-scale individual capital projects or acquisitions will normally be considered within the Commission's corporate planning process and within the context of its long term estate strategy. Any such project shall be subject

to the guidance in the Scottish Capital Investment Manual (SCIM) and supporting guidance. Individual capital projects or acquisitions are subject to specific delegated limits as indicated in the attached Appendix.

Lending, guarantees, indemnities; contingent liabilities; letters of comfort

6.3 The Commission shall not, without SGHD's prior agreement, lend money, charge any asset or security, give any guarantee – excluding a guarantee of a standard type given in the normal course of business – or indemnity or letter of comfort, or incur any other contingent liability (as defined in the Contingent Liabilities section of the SPFM), whether or not in a legally binding form.

Grant or loan schemes

6.4 The Commission shall not make any grants or loans to a third party.

Gifts made, write-offs, losses and special payments

6.5 Proposals for making gifts or other special payments (including write-offs) outside the delegated limits set out in the attached Appendix must have the prior approval of SGHD. Any such proposals should address the considerations listed in the Losses & Special Payments section of the SPFM. Gifts by management to staff are subject to the guidance in the Non-Salary Rewards section of the SPFM.

Leasing

6.6 Prior departmental approval must be secured for all finance leases. The Commission must have capital CRL provision for finance leases and other transactions, which are in substance borrowing. Before entering into any lease (including an operating lease) the Commission must demonstrate that the lease offers better value for money than purchase.

Public/Private Partnerships

6.7 The Commission shall seek opportunities to enter into the Non Profit Distributing model of PPP where this offers better value for money than conventional public procurement. Where cash flow projections may result in additional cash requirement the Commission shall consult the Health Department. Any partnership controlled by the Commission shall be treated as part of the Commission in accordance with International Reporting Standards (IFRS) and consolidated with it [subject to any particular treatment required by IFRS]. See also the guidance in the Public/Private Partnerships section of the Scottish Capital Investment Manual (SCIM). <http://www.scim.scot.nhs.uk/>

Subsidiary companies and joint ventures

6.8 The Commission shall not establish any subsidiary companies or joint ventures.

Financial investments

6.9 The Commission shall not make any investments nor shall it invest in any venture of a speculative nature.

Unconventional financing

6.10 The Commission shall not enter into any unconventional financing arrangement.

Commercial Insurance

6.11 The Commission may only take out commercial insurance, without the prior approval of SGHD, in accordance with the guidance in the Insurance section of the SPFM eg third party insurance required by the Road Traffic Acts. In the event of losses arising under the Scottish Government's policy of self-insurance SGHD shall consider, on a case by case basis, whether or not it should make any additional resources available to the Commission and/or agree adjustments to the targets in the corporate plan.

6.12 Employers' liability insurance is provided through membership of the NHS in Scotland Clinical Negligence and Other Risks Scheme (CNORIS).

7. MANAGEMENT AND DISPOSAL OF NON CURRENT ASSETS

Register of assets

7.1 The Commission shall maintain an accurate and up-to-date register of its non current assets.

Disposal of assets

7.2 The Commission shall dispose of assets which are surplus to its requirements and in accordance with its long-term estate strategy. Assets shall be sold for the best price, taking into account any costs of sale and in accordance with the guidance in the SCIM. Income from the disposal of assets may normally be retained by the Commission subject to the prior approval of SGHD eg in the context of the business plan. In the absence of departmental approval any profit on disposal shall be deducted from the Revenue Resource Limit (RRL) and net book value of disposals deducted from the Capital Resource Limit (CRL).

Location of the Commission

7.3 The location of the Commission's office premises is subject to the approval of the Scottish Ministers."

8. BANKING

The Commission has a bank account for petty cash. This is used for items of low value and for payment of expenses to service users and carers at consultation events.

FINANCIAL MEMORANDUM

SPECIFIC LIMITS ON DELEGATED AUTHORITY

Single-tender contracts		£50,000
Acquisition of assets		<p>All projects (other than IM&T projects) with a capital value of more than £2m (inclusive of VAT) require approval from SGHD.</p> <p>All IM&T projects with a capital cost of £1m (inclusive of VAT) or greater require approval from SGHD.</p> <p>These limits were set in HDL (2005) 16 and any changes will be announced in a similar manner.</p> <p>All PPP schemes are subject to Departmental approval.</p>
Claims waived or abandoned		£5,000
Write-off of losses		<p>Cash losses £5,000</p> <p>Stores and damage losses £20,000</p> <p>Furniture & Equipment £10,000</p>
Special Payments		£5,000