

Assembly Commission Audit and Risk Assurance Committee: Annual Report 2018-19


July 2019



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Assembly Commission Audit and Risk Assurance Committee: Annual Report 2018-19

July 2019





Contents

Introduction	6
Role of the Committee	7
Activity and Considerations	8
Findings and Observations	12
Annual Report and Accounts 2017-18 and External Audit.....	12
Internal Audit	13
Risk Management.....	14
Assurance Framework.....	16
Forward Look.....	16
Conclusion	17
Appendix 1: Assembly Commission Audit and Risk Assurance Committee Terms of Reference	19
Appendix 2: Internal Audit reviews considered by the Committee during the year.....	23

Introduction

- 1.** The Assembly Commission's Audit and Risk Assurance Committee (the Committee) is pleased to present this report on its work for the year ended 31 March 2019, the third year of the Fifth Assembly.
- 2.** The report focuses on the Committee's work in relation to the Commission's governance arrangements, risk management, internal control and assurance framework. It highlights: the remit of the Committee; the work undertaken and associated findings and recommendations; the Committee's proposed focus for 2019-20; and our overall conclusions.
- 3.** 2018-19 has been a year of significant achievement, challenge and change for the Commission. As well as continuing to provide high standards of service and performance for business as usual activities, as evidenced by the Corporate Performance Report (see paragraph 19) and the results of the survey of Members and their staff, the Commission has also delivered on some significant pieces of work. This has included the following:

 - implementing the initial phases, and planning future phases of work around the programme of Assembly reform, including, in February 2019, the introduction of the first ever Commission Bill - the Senedd and Elections (Wales) Bill - to change the name, lower the voting age, and address other institutional reforms;
 - preparations for the exit from the European Union (Brexit) which has included scenario planning exercises, resource and forward planning, regular ongoing dialogue between the Llywydd and Committee Chairs in relation to workloads and regular liaison with other UK Parliaments; and
 - establishment of a Youth Parliament, election of Welsh Youth Parliament Members and preparing for and running its inaugural meetings.
- 4.** These have been resource intensive pieces of work and, from the regular updates provided, the Committee considers that the Commission has demonstrated flexibility and agility in the way it has deployed resources to deliver them whilst remaining within the establishment figures agreed with the Assembly's Finance Committee. Moreover, these priority areas have been delivered during a period of considerable organisational change.

5. In April 2018, the Chief Executive introduced a new governance structure to clarify decision-making responsibilities. This consists of an Executive Board and a Leadership Team, which replaced the Investment and Resourcing Board and Management Board. The Terms of Reference demonstrate that the Executive Board is the main decision-making body and set out how the Leadership Team supports the Board. The Head of Internal Audit plans to carry out a review and evaluation of the effectiveness of this new governance structure during the summer of 2019, now that it has been in place for a full year.

Role of the Committee

6. The Committee supports the Commission and the Accounting Officer with regard to their responsibilities for risk management, internal control and corporate governance. It acts in an advisory capacity and has no executive powers. It provides advice on the comprehensiveness, reliability and integrity of assurances, including internal and external audit. The Committee's Terms of Reference (**appendix 1**) and **forward work programme** are produced in accordance with HM Treasury guidance.

7. The Committee's **current membership** (an Assembly Commissioner, two Independent Advisers, one of whom is the Chair, and an Independent Committee Member) is outlined in paragraph 59 of this report and is published on the Commission's website. During the year, both the Chair and one Committee member have been replaced as they came to the end of their terms as Independent Advisers. The following also attended Committee meetings during the year:

- Manon Antoniazzi – Chief Executive and Clerk of the Assembly (the Commission's Accounting Officer);
- Nia Morgan – Director of Finance ;
- Dave Tosh – Director of Resources;
- Siwan Davies – Director of Assembly Business (attended one meeting);
- Gareth Watts – Head of Internal Audit / Head of Governance and Assurance;
- Ann-Marie Harkin – Engagement Lead, Wales Audit Office;
- Gareth Lucey – Audit Manager, Wales Audit Office;
- Kathryn Hughes – Risk and Governance Manager; Committee Clerk; and

- Buddug Saer – Deputy Committee Clerk.

Other Assembly Commission officials also attended meetings as required.

8. The Committee held private meetings with the internal auditors, and the Chief Executive and Clerk of the Assembly and the Chair has held private meetings with the external auditors to ensure that relationships remain effective.

9. The Committee reports to the Commission via the Commissioner after each meeting, and publishes its meeting minutes on the Assembly **website**. The Committee Chair also attends a meeting with Commissioners to present the Committee’s Annual Report before the end of the summer term.

Activity and Considerations

10. The Committee met six times during the year, with activity guided by its forward work programme. Standard agenda items, and other items considered mirror the responsibilities and information requirements sections outlined in the Committee’s Terms of Reference (**appendix 1**).

11. There were no significant issues and only one low priority recommendation emerging from the external audit of the Commission’s 2017-18 Annual Report and Accounts. The recommendation, which was around a review of depreciated assets, was quickly resolved.

12. A list of the internal audit reports reviewed by the Committee can be found in **appendix 2**. The Committee also received updates on management’s progress in implementing the associated recommendations.

13. The ‘forward look’ section of the Committee’s 2017-18 Annual Report highlighted several areas in which the Committee would continue to take an active interest. Details of the Committee’s consideration of these areas are outlined below:

- changes to senior management and governance board structures have been shared with the Committee as they have been implemented;
- management of risks around constitutional change and Brexit have been presented at each meeting in the form of the Commission’s Corporate Risk Register and in detail during a deep dive into these risks in November 2018 and March 2019 respectively (see Risk Management section under Findings and Observations for further details);

- regular updates on progress with implementing recommendations of the Capacity Review, including the development and use of a new prioritisation criteria for projects and investment opportunities, have been provided by the Head of Internal Audit and the Director of Resources (see further details in paragraphs 14 and 15 below);
- implementation of, and compliance with GDPR has been reviewed via an internal audit report on progress towards compliance in April 2018, a follow up report in February 2019 and regular updates on the associated risks (see Risk Management section under Findings and Observations for further details);
- risks around cyber-security have been considered in summary at each meeting and in detail, including from an internal audit report and deep-dive into the corporate risk in April 2018 (see Risk Management section under Findings and Observations for further details);
- updates on progress with projects, including phase two of the new finance system and the establishment of a Youth Parliament have been provided by relevant officials;
- options for future budget strategy and presentation (as a result of changes to treatment of the Remuneration Board's Determination underspends) were outlined by the Director of Finance in April and November 2018 and consolidated in an update in February 2019. The Commission and Assembly's Finance Committees welcomed this process for its transparency (as reported in the 2018-19 Governance Statement). The Committee were encouraged by the elevated transparency evident in the scrutiny sessions and acknowledged the level of preparation involved across the organisation, especially by the Finance team;
- updates in relation to the Assembly/Welsh Government's accommodation strategy have been provided in summary at each meeting via the Commission's Corporate Risk Register, although progress has been constrained by the Welsh Government continuing to consider options; and
- responses to, and implementation of, internal audit recommendations through update reports at each meeting.

14. The Committee took a keen interest in the implementation of recommendations of the Capacity Review, and noted and welcomed the assurances provided by officials in response to its scrutiny.

- 15.** In June 2018, the Director of Resources presented details of prioritisation criteria which had been developed to inform decisions around investment opportunities and deployment of resources. The Committee stressed the need to have a common understanding of the terms used and welcomed that this was not used in isolation but that other factors would be taken into consideration during discussions on priorities.
- 16.** One area of continued interest identified in last year's report which has not been considered by the Committee is the Commission's Engagement Strategy. However, this is being considered by the Remuneration, Engagement and Workforce Advisory Committee (REWAC) which also consists of Independent Advisers, one of whom is also a member of this Committee. This dual membership also provides a useful read-across on matters relating to engagement.
- 17.** Other areas considered by the Committee are included in other parts of this report.
- 18.** The Committee has been provided with robust assurances on the areas considered from the updates it has received both at and outside of meetings. Attendance and presentations to the Committee by relevant officials to inform its considerations have been very much welcomed.
- 19.** The 2018-19 Corporate Performance Report, which is published as part of the **Commission's Annual Report and Accounts** reflects continued high achievement, with the largest proportion of Key Performance Indicators (KPIs) rated 'green'. Where this was not the case, the Commission has outlined reasons and actions to address any underlying issues. The Committee encouraged officials to consider setting tolerance levels for its KPIs. Quarterly updates on the progress of change programmes and projects are also reviewed by the Commission's Executive Board.
- 20.** In addition to the formal business of the Committee, members also supported the Commission on aspects of governance and assurance during the year. This has included:
- attending a senior management team meeting to scrutinise and challenge the assurance statements provided by each Director for the Accounting Officer's Governance Statement (see Assurance Framework section for further details);

- attending the All-Wales forum for Audit Committee Chairs and the TIAA Audit Conference and feeding back findings at Committee meetings; and
- involvement in the appointment of the Commission's new Independent Advisers.

21. Throughout the year, the Committee is presented with a Governance and Assurance update at each of its meetings. This includes important assurances and updates over a range of matters including progress on implementing the actions of the Capacity Review, on-going enhancements to the risk management system and on-going work supporting the Commission's preparations for Brexit.

Findings and Observations

Annual Report and Accounts 2017-18 and External Audit

22. The Committee supported the production of the 2017-18 Annual Report and Accounts, including advising on the 'using resources wisely' section and the Governance Statement.

23. The Committee welcomed early presentation of the Financial Statements Report (ISA260) and Management Letter. This was a clean and straightforward audit with a high-quality set of accounts. There were no material matters raised by the external auditors, and the Auditor General for Wales issued an unqualified auditor's report on the financial statements in July 2018. The one recommendation concerning accounting for fully depreciated assets was quickly and satisfactorily resolved.

24. The Committee appreciated the continued strong working relationship between the external and internal auditors through the 'joint working protocol'. The protocol enables the external auditors to rely on Internal Audit's work, including the review of Key Financial Controls and Assembly Members' Expenses.

25. Building on the successful arrangements of previous years, the Committee is pleased that the Commission and the external auditors have agreed to repeat the accelerated process for the 2018-19 Annual Report and Accounts, including the production of interim accounts.

26. The Committee will continue to work closely with the external auditors to ensure that the key financial systems and controls and the procedures supporting the accounts production process remain robust. The reduction in the 2017-18 WAO fee for the third year running reflects the Commission's competence in managing the accounting process and continuous improvement in working practices.

27. The Committee welcomed early sight of a draft Governance Statement for 2017-18 in April 2018 and considers this was a robust statement and a true and honest reflection of the effectiveness of the Commission's governance arrangements over the year. The Committee had received updates on areas identified in the previous year's Governance Statement throughout the year via reporting on the Commission's corporate risks, financial management, major projects and internal audit reports.

28. The Governance Statement includes reference to the Commission's proactive resolution of historical issues around payments for public appointments made from the Welsh Consolidated Fund. The Committee scrutinised actions and received updates on this issue both during and outside of meetings.

29. The Committee also welcomed early sight of a draft Governance Statement for 2018-19 at its March 2019 meeting.

Internal Audit

30. The Commission's Internal Audit service is managed by the in-house Head of Internal Audit, Gareth Watts, who is responsible for all internal audit outputs. The Committee is pleased that Gareth has continued to develop the profile of internal audit throughout the Commission. Gareth is supported by external assistance, currently provided by TIAA which helps to ensure the independence of the audit work.

31. The Committee welcomes the progress that has been made across all areas reviewed and endorses the continued focus on management implementing internal audit recommendations, reports on which are reviewed by the Committee regularly. Assurances have been received from the Head of Internal Audit that all recommendations from 2016-17 and earlier have been completed. All recommendations from 2017-18 have either been completed or are in progress.

32. Reports on a total of eight formal audits, two advisory audits and one follow-up audit were reviewed by the Committee. Details of these audits and their assurance ratings are listed in **appendix 2**.

33. No cases of actual or suspected fraudulent activity were brought to the attention of Internal Audit in 2018-19. There were also no internal whistleblowing disclosures.

34. The Head of Internal Audit's Annual Opinion and Report for 2018-19 states that "... the Accounting Officer can take moderate assurance that arrangements to secure governance, risk management and internal control, are suitably designed and applied effectively".

35. The Committee considered the report to be a good assessment of work undertaken during the year and of the effectiveness of recommendations.

36. That report also confirmed compliance with Public Sector Internal Audit Standards (PSIAS) and the Internal Audit Charter. The Committee welcomed an

update on progress against actions identified in the results of the External Quality Assessment of Internal Audit, undertaken by the Scottish Parliament's Head of Internal Audit and Risk.

37. The Committee is satisfied with assurances from the Head of Internal Audit that the level of resourcing committed to the Audit Programme remains sufficient. Assurance was also sought and received on the protection of Gareth's independence and that there was no conflict of interest in carrying out the audits – this was done through weekly meetings with the Director of Assembly Resources.

38. The Committee welcomes the Head of Internal Audit's commitment to his continuing professional development and membership of professional networks, and in particular his close ongoing engagement with other UK legislatures.

Risk Management

39. The Committee continued to monitor the effectiveness of risk management processes and scrutinised the identification, severity and mitigation of key risks. The quality of risk reports facilitated this. The Commission undertook a thorough review and refresh of the corporate risk register during the year, together with regular horizon scanning exercises.

40. The Committee also undertook 'deep dive' reviews of the following corporate risks for which the relevant senior officials (Directors and/or Heads of Service) attended to present the status of the risks, the latest position on mitigating them and to answer questions from the Committee:

- Cyber-security (April 2018);
- Dignity and Respect (June 2018 and February 2019);
- Assembly reform (November 2018); and
- Brexit (March 2019).

41. As a result of detailed scrutiny of these risks, the senior officials attending were able to provide assurance to the Committee on their effective management.

42. The Committee encouraged the Commission to remain appropriately focussed on cyber-security risks, including raising awareness with Assembly Members and their support staff at constituency offices. The Commission's ICT service have confirmed that there were no cyber-security incidents that resulted in

data breaches in 2018-19. Cyber-security will remain on the annual internal audit plan, and at the Committee's request, updates on the mitigation of cyber-security risks are presented every six months.

43. At the November 2018 and February 2019 meetings the Committee took assurance that risks around safeguarding and data protection in relation to the Youth Parliament were being adequately managed.

44. The Committee has also taken a keen interest in compliance with GDPR. It considered a follow-up audit report in February 2019, and was reassured by the level of awareness-raising activity that has been carried out across the Commission and with Assembly Members and their support staff. The Annual Report by the Senior Information Risk Owner (SIRO) further bolsters assurance that information risks are being managed effectively. During 2018-19, there were two personal data loss incidents which required reporting to the Information Commissioner's Office (ICO). The ICO decided that further action was not necessary as the cases did not meet their Data Protection Regulatory Action Policy criteria.

45. The Committee remains satisfied with the processes in place to identify and manage key corporate risks and supports the continued inclusion of the risks around constitutional change, Brexit and Dignity and Respect.

46. At the end of the reporting period, there were seven corporate risks with a 'red' severity rating. The Committee recognises that the Commission has limited opportunity to reduce the impact of some of these risks and is monitoring and mitigating these as far as possible.

47. The Committee were assured by the substantial assurance rating from the internal audit review of risk management. When this was presented at the November 2018 meeting the Chair confirmed that "the Commission had demonstrated increasing risk management maturity during his tenure, and that (he was encouraged by) the risk management forums and networks in place and the involvement of staff at all levels".

48. Also at that meeting, in response to questions by Committee members, officials provided an update on the roll-out of the new Risk Management System, engagement of the Risk Management Forum and the training which involved a full refresh of risk management policy and process for all Heads of Service and Risk Champions. The Committee agreed that the Forum was established and robust enough to cope with a fluctuating membership and welcomed that

minutes of the Forum's meetings were circulated to Heads of Service and published internally which kept those involved updated.

49. The Committee also received updates on the formalisation and streamlining of the corporate approach to issues management and encouraged officials to escalate the further development of the Risk Management System to capture corporate issues.

50. The Committee believes that one of the most significant risks will continue to be that concerning the impact of, and responses to, political, legislative and constitutional change alongside delivering the Commission's ambitious strategic priorities.

Assurance Framework

51. The Commission has an 'exemplar' assurance framework which maps the operational, corporate and independent sources of assurance against internal processes, risks and systems for each service area. The framework is based on the HM Treasury 'three lines of defence' model and illustrates the overall strength of the Commission's sources of assurance and highlights potential vulnerabilities. This is routinely reviewed to validate arrangements and is used to inform drafting of annual service-level assurance statements.

52. During 2018-19 the Commission's co-sourced internal audit partners, TIAA were asked to undertake a review of the Assurance Framework to ensure it remained fit for purpose, having been in place for four years. They concluded that *"the arrangements underpinning the Commission's Assurance Framework are robust and ensure that a bottom up approach is taken to provide assurance that each of the assurance map components is in place and operating effectively. This in turn provides a comprehensive audit trail to support the Annual Governance Statement"*.

53. A further layer of assurance was provided through attendance by a member of this Committee at the senior management team meeting to scrutinise and challenge the assurance statements provided by each Director to inform the Accounting Officer's Governance Statement.

Forward Look

54. Whilst the Committee recognises the strength of the Commission's governance, risk, control and assurance arrangements during the year, there are always opportunities for greater efficiency and effectiveness. As a result, and as

well as its regular activity, the Committee will be taking an active interest in the following areas during 2019-20:

- any key actions, issues and recommendations emerging from the audit of the Commission's 2018-19 Annual Report and Accounts;
- evaluation of the changes to the Commission's governance board structures;
- management of the risks around the Assembly's response to the significant changes it faces in terms of constitutional change and Brexit, in particular changes to the Assembly's name and internal, operational and electoral arrangements, and the associated risks around public perception of these changes;
- implementation of proposals around change and programme management governance arrangements;
- management of cyber-security risks, including the testing of response plans;
- the Assembly/Welsh Government's accommodation strategy; and
- preparations for the 2021 Assembly elections.

Conclusion

55. The Committee is satisfied that it has sufficient evidence to provide assurance to the Accounting Officer and the Commission on the effectiveness of the overall risk, control and governance environment. Indeed, overall, assurance levels within the Commission continue to be strong. The sources of assurance are also robust and reliable, as evidenced by the external audit of accounts, the Assurance Framework and the on-going work and Annual Opinion and Report from Internal Audit.

56. The Committee thanks the Chief Executive and Clerk of the Assembly, and her staff, for the constructive and cooperative approach they have taken to the Committee's work over the past year. Throughout the period the Committee has continued to enjoy very good working relationships with Commission staff and have found them to be open and receptive to challenge. The secretariat support provided continues to be first class and is highly valued by the Committee members, particularly during this transitional period. During this time, in addition to support for meetings, secretariat colleagues have co-ordinated some excellent

induction sessions and rolled out the new Sharepoint facility for storing and sharing of papers.

57. During the year, Eric Gregory and Keith Baldwin concluded their tenure as Independent Advisers. At the July 2018 meeting, Keith delivered a presentation on his reflections on his role as an Independent member. The minutes recorded that his experience had been positive, enjoyable and rewarding. Eric expressed the same sentiments at his final meeting in February 2019.

58. The current Committee would like to record our thanks to both Eric and Keith for their invaluable contributions to the Committee over the preceding six years and the support and advice they have provided to new members during the transitional period.

59. Current membership and details of changes during the year are as follows:

- Eric Gregory, Chair and Independent Adviser (last meeting February 2019)
- Suzy Davies AM, Commissioner
- Keith Baldwin, Independent Adviser (last meeting July 2018)
- Hugh Widdis, Independent Committee Member
- Robert Evans, Chair and Independent Adviser (appointed in October 2018, Chair from February 2019)
- Ann Beynon OBE, Independent Adviser (appointed in October 2018)

Appendix 1: Assembly Commission Audit and Risk Assurance Committee Terms of Reference

The National Assembly for Wales Commission establishes the Assembly Commission Audit and Risk Assurance Committee in support of its responsibilities for issues of risk, control and governance. Its role is to review the comprehensiveness, reliability and integrity of assurances and whether they meet the Assembly Commission and the Accounting Officer's needs.

MEMBERSHIP

1. The members of the Assembly Commission Audit and Risk Assurance Committee are:
 - **Suzy Davies**, AM, Commissioner;
 - Two **independent advisers: Robert Evans** (Chair) and **Ann Beynon**; and
 - One independent committee member **Hugh Widdis**.

REPORTING

2. The Committee will report to the Commission via the Accounting Officer after each meeting. The minutes of the meeting are published on the Assembly website.
3. The Committee Chair, will attend a Commission meeting in July and present the Commission and the Accounting Officer with an Annual Report, timed to support finalisation of the accounts and the Governance Statement. The Annual Report will summarise the Committee's conclusions from the work it has done during the year.

RESPONSIBILITIES

4. The Committee will advise the Commission and the Accounting Officer on:
 - the strategic processes for risk, control and governance;
 - the Governance Statement;

- the accounting policies, the accounts, and the annual report of the Commission, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the Auditor General;
- the planned activity and results of both internal and external audit;
- the adequacy of management response to issues identified by audit activity, including the external audit management letter from the Wales Audit Office;
- assurances relating to the management of risk and corporate governance for the Commission;
- proposals for tendering for Internal Audit services or for purchase of non-audit services from contractors who provide audit services; and
- anti-fraud policies, whistle-blowing processes, and arrangements for special investigations.

5. The Committee will periodically review its own effectiveness and report the results of that review to the Commission.

RIGHTS

- 6.** Subject to budgets agreed by the Commission, the Committee may:
- co-opt additional members for a period not exceeding one year (with the approval of the AO) to provide specialist skills, knowledge and experience;
 - procure specialist ad-hoc advice, at the expense of the organisation.

ACCESS

7. The Head of Internal Audit and the representative of the Wales Audit Office will have free and confidential access to the Chair of the Committee.

MEETINGS

8. The Committee will meet at least four times a year. The Chair may convene additional meetings, as necessary.

9. A minimum of two members of the Committee must be present for the meeting to be deemed quorate.

10. Committee meetings will normally be attended by the Accounting Officer, the Director of Finance, the Director of Resources, the Risk and Governance Manager, the Head of Internal Audit, and a representative of the Wales Audit Office.

11. The Committee may ask any other officials to attend to assist it with its discussions on any particular matter.

12. The Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.

13. The Commission or the Accounting Officer may ask the Committee to convene further meetings to discuss particular issues on which they require the Committee's advice.

INFORMATION REQUIREMENTS

14. For each meeting the Committee will be provided with:

- a report summarising any significant changes to the Commission's Risk Register;
- a progress report from the Head of Internal Audit summarising:
 - work performed (and a comparison with work planned);
 - key issues emerging from Internal Audit work;
 - management's response to audit recommendations;
 - changes to the annual audit plan;
 - resourcing issues affecting the delivery of Internal Audit's plan;
- a progress report from the Wales Audit Office representative summarising work done and emerging findings;
- management assurance reports; and

- reports on the management of major incidents/issues, “near misses”, and lessons learned.

15. As and when appropriate the Committee will be provided with:

- proposals for the terms of reference of internal audit / the internal audit charter;
- the internal audit strategy;
- the Head of Internal Audit’s Annual Opinion and Report;
- quality assurance reports on the internal audit function;
- the Wales Audit Office annual Audit Strategy;
- the Wales Audit Office ISA 260 report to those charged with governance;
- the draft accounts of the Commission;
- the draft Governance Statement;
- Senior Information Risk Owner (SIRO) Annual Report;
- a report on any changes to accounting policies;
- the Wales Audit Office management letter;
- a report on any proposals to tender for audit functions;
- a report on co-operation between internal and external audit;
- the Commission’s Risk Management Strategy;
- reports on information breaches and regular updates on cyber-security;
- details of key change programme/project portfolio management; and
- departure summaries.

Appendix 2: Internal Audit reviews considered by the Committee during the year

April 2018

- Cyber Security (formal audit – moderate assurance)
- Pension Scheme (formal audit – substantial assurance)
- GDPR (advisory review – no opinion)
- Security Assurance Review (formal audit – no opinion)

June 2018

- AMs Expenses (formal audit – moderate assurance)

November 2018

- Events Review (formal audit – moderate assurance)
- Risk Management (formal audit – substantial assurance)
- Assurance Framework (advisory review – no opinion)

February 2019

- Scheme of Delegation (formal audit – substantial assurance)
- GDPR Compliance Follow up (follow up report – moderate assurance)
- Payroll (formal audit – moderate assurance)

Definitions for assurance opinions are shown in the table below. These have been revised in the current financial year to bring them into line with the Government Internal Audit Agency (GIAA) model of assurance.

Due to the type of internal audit work undertaken it is not always possible to give an opinion based on an assessment of controls – sometimes narrative conclusions are recorded and this is explained in each individual report.

Assurance Definitions	
Substantial	The framework of governance, risk management and control is adequate and effective.
Moderate	Some improvements are required to enhance the adequacy and effectiveness of the framework of governance, risk management and control.
Limited	There are significant weaknesses in the framework of governance, risk management and control such that it could be or could become inadequate & ineffective.
Unsatisfactory	There are fundamental weaknesses in the framework of governance, risk management and control such that it is inadequate and ineffective or is likely to fail.