



National Audit Office

The UK's independent public spending watchdog

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Reference FOI-1742

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## GOVERNMENT COMPENSATION SCHEMES REPORT

Thank you for your request on 19 August 2024 in relation to the National Audit Office (NAO) report [Lessons learned: Government compensation schemes](#) which was published on 23 July 2024. You have specifically asked "Please provide any draft versions of this report. For example, any versions that had not yet gone through clearance from ministers/advisers/officials in central government."

We have handled your request under the terms of the Freedom of Information Act 2000 (FOIA). The FOIA provides a legal right of access to recorded information held by a public authority, but it is subject to certain exemptions that may apply. While we hold information relevant to your request, we have decided to withhold the information under Section 33, the public audit exemption of the FOIA. The reasons for this and our consideration of the public interest test are explained below.

### Section 33 Freedom of Information Act 2000 – Public Audit

Section 33 of the Freedom of Information Act 2000 (FOIA) provides that:

- (1) *This section applies to any public authority which has functions in relation to -
  - (a) the audit of the accounts of other public authorities, or
  - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.*
- (2) *Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).*
- (3) *The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).*

The NAO is a public authority to which Section 33 applies. Your information request encompasses information we hold resulting from the exercise of functions in relation to Section 33(1)(b). Typically referred to as value for money (VFM) reports, we conducted the examination referred to in your request in accordance with statutory powers provided by the National Audit Act 1983.

## Reasons why we have applied this exemption:

The preparation of a VFM report is an iterative process and the final published report is the product of continuous work over the examination's life-cycle. Report content is developed and amended on an ongoing basis – essentially, every change that is made represents the draft report at a particular point in time. It follows that it would not be possible to identify and provide copies of the updated draft arising from each and every word change made during the report's preparation. However, notwithstanding this practical impediment to meeting your request, by convention there are typically two stages within the examination lifecycle where the draft report is shared with the audited body for comment on its factual accuracy. These are known as the Finance Director and Accounting Officer drafts. We have considered the potential disclosure of these two drafts in response to your request and have concluded that it is necessary to apply the Section 33 audit exemption to both documents. Our reasons for non-disclosure are provided below.

- The Comptroller and Auditor General (C&AG), as head of the NAO, fulfils their statutory function through the publication of finalised VFM reports. The factual accuracy of each report is cleared with the audited body and the report provides the basis for sessions of Parliament's Committee of Public Accounts (PAC). This clearance process ensures that parliamentary and broader public focus is on the issues set out in the report rather than on disputing the validity of the content. The draft reports you have requested do not represent the C&AG's conclusions. They constitute work in progress and their release would be likely to undermine effective accountability by shifting attention to unfinished and potentially misleading or erroneous information. The impact of this would be to disrupt the effective performance of our statutory functions as attention and resources are diverted to engage with matters outwith our published report.
- The C&AG is an officer of the House of Commons and agreed to perform the Government Compensations Scheme report in response to a request from the PAC Chair ([Government compensation schemes: PAC Chair requests National Audit Office review - Committees - UK Parliament](#)). The report was laid in Parliament and attracts parliamentary privilege. This is a fundamental protection that ensures the C&AG can report without fear or favour.

The application of parliamentary privilege to the NAO's draft reports is unclear. If parliamentary privilege does apply, then it seems to us that disclosure would be precluded under section 34 of the FOIA. However, if parliamentary privilege was deemed not to apply in this case, then the disclosure of these draft reports would mean the parliamentary privilege attached to the published report effectively being lost. The C&AG would no longer be protected from legal challenge in the proper pursuit of their statutory function i.e. reporting the facts on a matter of significant public interest. This would be an insurmountable impediment on the C&AG's ability to perform their role effectively, with a corresponding adverse impact on parliamentary accountability.

- An efficient, effective audit is supported through an open and constructive approach between the NAO and the audited body. It is critically important that we can gather audit evidence readily and can engage freely and frankly with audited bodies. Disclosing draft reports would undermine this safe space and encourage a minimalist approach to requests for information. Audited bodies would be concerned about detriment arising from the potential disclosure of sensitive, misleading or erroneous information contained in draft reports. It would precipitate increased challenge and procedure around the gathering of audit evidence. This would require the NAO to formally assert our statutory access rights more frequently and potentially seek to enforce them, leading to significant delay, formal proceedings and increased audit costs. This would conflict with Section 17(3) of the Budget Responsibility and National Audit Act 2011 which places a duty on the C&AG to "*aim to carry out functions efficiently and cost-effectively*".
- The audit process is enhanced significantly by third-party entities volunteering information to support a constructive, timely and effective audit. The disclosure by NAO of draft information with the associated risks of it being misleading or inaccurate and potentially beyond that required for audit reporting purposes would impair the provision of audit evidence in the future – it would reduce, if not cut off, this critical flow of additional information.
- The NAO's role is to put properly considered and factually accurate information into the public

domain, consistent with the public interest. To do this effectively, NAO staff require a safe space to develop their thinking and record ideas, uninhibited by constant concerns about subsequent disclosure. The release of these draft reports would serve to heighten such concerns and constrain the scope and breadth of thinking that supports the completion of high quality VFM reports.

**Reasons why the public interest in maintaining the exemption outweighs the public interest in disclosing the information:**

The C&AG and the NAO are independent of government and scrutinise public spending on behalf of Parliament. Our work serves the public interest by putting factual information into the public domain - helping Parliament hold government to account, providing transparency on nationally important matters, driving public service improvements and better use of public funds.

We recognise that there is public interest in knowing how the C&AG and NAO fulfil their statutory responsibilities through the conduct of their audit work. To this end, our published reports include information about our audit approach and we publish comprehensive information on our website to assist public understanding - for example, through our annual [Transparency Report](#).

For the reasons set out above, we consider that the public interest in disclosing draft versions of the report you requested is outweighed by the public interest in ensuring that we do not prejudice the effective performance of our public audit function. We should not act to disrupt and undermine our statutory role through the release of these draft reports. Given the negative impact that would result from such disclosure, we consider it appropriate to apply the Section 33 public audit exemption.

I hope this information is helpful. If you are not happy with the way we have handled your request, you can escalate your concerns. You should write to us within 40 working days, and we will carry out an internal review in relation to your original request.

Write to the NAO (FOI) Team at [FOI@nao.org.uk](mailto:FOI@nao.org.uk) or by post to: FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP.

Yours sincerely

**FOI and Correspondence Manager**