



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 16 January 2020

Session 5



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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE

2nd Meeting 2020, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Bill Bowman (North East Scotland) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Alex Neil (Airdrie and Shotts) (SNP)

*Anas Sarwar (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Brown (Scott-Moncrieff)

Caroline Gardner (Auditor General for Scotland)

Rhoda Grant (Highlands and Islands) (Lab)

Leigh Johnston (Audit Scotland)

Pat Kenny (Deloitte LLP)

Michael Oliphant (Audit Scotland)

Karlyn Watt (Deloitte LLP)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 16 January 2020

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Jenny Marra): Good morning, and welcome to the second meeting in 2020 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone in the public gallery to switch electronic devices off or switch them to silent mode so that they do not affect the committee's work.

Agenda item 1 is a decision on taking business in private. Do members agree to take items 4, 5 and 6 in private?

Members *indicated agreement.*

Section 22 Reports

“The 2018/19 audit of Bòrd na Gàidhlig: Governance and transparency”

09:00

The Convener: Item 2 is consideration of the section 22 report “The 2018/19 audit of Bòrd na Gàidhlig: Governance and transparency”. I welcome to the meeting Caroline Gardner, the Auditor General for Scotland; Michael Oliphant, senior audit manager for audit services at Audit Scotland; and, from Deloitte LLP, Pat Kenny, director, and Karlyn Watt, senior manager. I also welcome Rhoda Grant MSP, who is joining us for this item. I invite the Auditor General to make an opening statement.

Caroline Gardner (Auditor General for Scotland): Thank you, convener. Madainn mhath.

I have prepared this short report under section 22 of the Public Finance and Accountability (Scotland) Act 2000. Bòrd na Gàidhlig is the principal public body for promoting Gaelic in Scotland. It is a small body based in Inverness with around 19 members of staff. The external auditor has given an unqualified audit opinion on the annual report and accounts of the bòrd for 2018-19, which means that he is satisfied that the accounts provide a true and fair view of the body's financial position and that there are no significant errors in the accounts.

However, the auditor identified a range of issues relating to governance and transparency, which are the subject of the report. Those include ineffective leadership, inadequate workforce planning and a lack of clarity over roles and responsibilities. The auditor also found a lack of transparency in decision making and limited evidence of board members providing effective scrutiny and challenge of the organisation's senior management team. Those issues led to a lack of confidence and a culture of mistrust in the organisation.

All public bodies, irrespective of their size, must have effective governance and make decisions in an open and transparent way. The bòrd's leadership must demonstrate significant improvements against the issues raised by the auditor. That will be necessary to establish the trust and confidence of its staff and stakeholders.

The team and I are, as usual, happy to answer the committee's questions.

The Convener: Thank you, Auditor General. Alex Neil will open questioning for the committee.

Alex Neil (Airdrie and Shotts) (SNP): Good morning. I will start with a factual question. There

seems to be rather a top-heavy senior management team for such a small body. Can you give us an idea of the management costs—the salary levels for the chief executive and senior management?

Caroline Gardner: I can understand why you might think that, Mr Neil. Deloitte did some work to look at the management costs of comparable organisations, so I will ask Pat Kenny and Karlyn Watt to talk you through what they found.

Pat Kenny (Deloitte LLP): We found that the salary costs were broadly comparable to those of similar public bodies in terms of numbers and overall spend. As we have outlined in the report, our major concern was with what was being achieved with the costs involved. The chief executive's salary is around the £90,000 mark. Karlyn Watt can tell you more.

Karlyn Watt (Deloitte LLP): As Pat Kenny said, in 2018-19, the chief executive's salary was £90,000. That was disclosed in the annual report and accounts.

Alex Neil: What about the senior management team? What is their average salary?

Karlyn Watt: The salary varies from £65,000 to £85,000 across the senior management team.

Alex Neil: That is high for a small organisation, by certain standards. We are primarily interested in value for money. The chief executive is on about £90,000 and the senior management team's average salary is about £65,000 for an organisation with a turnover of £5 million. I have read the auditor's report and, frankly, I think that second-tier managers could run such an organisation in their tea break. It is a small organisation and yet it seems to be a total disaster. Are the board and the senior management team that presided over that still intact? It seems to me that they are not justifying the salary that they are on and the Auditor General said that the board is not providing any effective leadership. The question is, therefore, why are they still in post?

Caroline Gardner: It is a small organisation, but I would not accept that it is a simple one. Gaelic has a very important place in Scotland's public life. We know that it is fragile in terms of the number of people who use it routinely and the geographic location of those communities. Bòrd na Gàidhlig has an important role to play in promoting and developing Gaelic as something sustainable for the future. It is clearly important that there is the right investment for it to do that.

However, as you say, my report and the work of Deloitte highlight that there are problems in the way in which the organisation has been managed in the past, which have potentially limited its

impact in achieving its purpose. Pat Kenny and Karlyn Watt may want to add to this, but our understanding is that the former chair left the board at the end of 2018. The interim chair has been in place since then and the Government has a recruitment exercise under way to appoint a permanent chair. The chief executive is in post and being held to account by the board for delivering the improvement plan that was agreed on the back of the audit work last July.

Alex Neil: I was the Scottish National Party's spokesman on the legislation as it went through Parliament and I was very supportive of the Gaelic Language (Scotland) Act 2005 and the setting up of the Bòrd na Gàidhlig. However, I have two things to say: first, we anticipated that the board would be run properly, efficiently, transparently and effectively, and that is clearly not happening; and secondly, contrary to what a lot of people believe, there are more Gaelic speakers in Glasgow, reputedly, than in the Highlands and Islands.

I agree that the organisation has to spread the word about Gaelic, improve it and increase the concentration of Gaelic-medium education—make a contribution to all that—but the great disappointment is that it seems to be failing in some of the basics of any modern organisation. It is a small organisation that should be easy to lead, and I can think of loads of people in the Gaelic community who will feel let down by what is happening. I do not understand why it is not being fixed more quickly. Who drew up the improvement plan? Was it the board or the Government? Were people consulted about the plan? How effective has it been so far? What is it due to deliver and when?

Caroline Gardner: The improvement plan was agreed in response to the audit work that was carried out by Deloitte. I will ask Pat Kenny and Karlyn Watt to respond to your questions.

Pat Kenny: The improvement plan was drawn up following the recommendations that we made in our report. We were consulted on it and it is comprehensive.

Alex Neil: Was the Gaelic-speaking community consulted on it?

Pat Kenny: I am not aware that the community was directly consulted on it, no. It was an organisational response to the audit findings.

Alex Neil: Is that not part of the problem? It is supplier or producer led, as it were, and the end users, whose access to Gaelic, Gaelic-medium education and all the rest of it we want to facilitate, were not consulted. Surely, when you are doing any business plan—certainly in my experience in business—if you do it properly, you will consult your customers before you finalise it.

Pat Kenny: Absolutely. That is a valid challenge and it is something that the organisation should take on board. It is providing regular updates on the improvement plan and we will look at progress. Next month, we are due to look in detail at its progress to date, but it is early days and the board is still working through the various recommendations.

Alex Neil: Will you talk us through the main features of the improvement programme? What are the main deliverables and when are they due to be delivered?

Karlyn Watt: The improvement plan identified a number of actions, prioritising the things that needed to be looked at initially: the structure of the organisation, the board structure, and the remit and responsibilities. Those were the key things that needed to be looked at before doing any more detailed work. That is in place, there is a timetable and, as Pat Kenny said, we are following it up next month. There is an improvement plan steering group, chaired by a member of the board's audit committee, which also involves staff and senior management. It is taking that work forward and meeting regularly to progress the improvement plan.

Alex Neil: Is any external expertise being brought in? I would not have total confidence in the board improving itself, given the record that is shown in this audit report. There must surely be some external input on how to improve.

Pat Kenny: I totally agree, Mr Neil. I have strongly suggested to the board that it should have external expertise, whether from the Scottish Government or elsewhere. I have said to the board that I would have serious concerns about whether it would be able to deliver the improvement plan without external expertise.

Alex Neil: When you made that recommendation, what response did you get?

Pat Kenny: The response was that the recommendation was under active consideration.

Alex Neil: By who?

Pat Kenny: The board.

Alex Neil: How long has it been considering the recommendation?

Pat Kenny: It has been on-going for the past few months.

Alex Neil: Will you define "few"? When did you make the recommendation to the board?

Pat Kenny: We made the recommendations in the summer—in July or August.

Alex Neil: So we are talking about six months ago, yet the recommendation is still under

consideration. Does that not tell you that the board is not fit for purpose?

Pat Kenny: I share your concern. To be fair to the organisation, I would want to double check what its intentions are regarding external expertise. As I said earlier, the board is working through the improvement plan and it is still early days for its implementation. However, I strongly agree that it needs external expertise to implement it.

Alex Neil: But if the board has been working on the improvement plan for the past few months and there is nobody external involved, how can we have confidence that it will come up with something worth while?

The board is clearly not listening. You are the auditor and it does not appear to be taking your advice. If I read you right, it has not said one way or the other whether it will bring in external people. If it does not feel that it can learn from other people, that sounds like a board with a bunker mentality.

Pat Kenny: I agree with your observations. The committee would be entitled to question the board on that.

Alex Neil: Is there provision in the improvement plan budget for external assistance?

Karlyn Watt: No. We recommended that the board discuss that with the Scottish Government sponsor directorate.

Alex Neil: They have surely discussed that in the past six months.

Karlyn Watt: I am aware that they have been discussing it, but I am not aware of anything having been agreed.

Alex Neil: It just seems to be more and more talk, when what we need is the implementation of professional action that is drawn up with proper advice.

Pat Kenny: I totally agree.

Alex Neil: Everything that you say further reduces my confidence in the organisation. I am sorry to say that, because the work that it is supposed to be doing is vital to the cultural and linguistic future of our country. It is badly letting people down, and if the senior management team and the board cannot get their act together, they should go. They are getting paid well enough.

The Convener: Mr Neil, I do not think that it is fair to ask the auditors to have an opinion on that; they have just given us the information. We can take the issues up with the board.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Madainn mhath, a h-uile duine. Good morning, everyone.

Auditor General, will you say something about whether the failures in governance that we are discussing today, which are outlined in your report, are impacting on the delivery of support for the Gaelic language?

Caroline Gardner: That is an important question. It is important for us to be clear that my report comes out of the routine annual audit work that is carried out by Deloitte. As you can see from the report, that work focuses on the governance and accountability of the organisation; it does not represent a direct look at the effectiveness of Bòrd na Gàidhlig in carrying out its role or the value for money that it provides.

That said, it is reasonable to assume that the amount of time and energy that has been taken up in dealing with some of the problems around Gaelic culture, which are outlined in my and Deloitte's reports, might have diverted attention from engaging with the Gaelic-speaking community in the ways in which Mr Neil has suggested, and from thinking longer term about the best approach to promoting Gaelic development around Scotland and, particularly, in the areas of the Highlands where it is so important to maintain Gaelic as a living language. We have not looked at that directly, but one of the reasons why the report is here today is the risk of getting in the way of that important work being carried out well.

Willie Coffey: Will work be done to see whether there has been any impact on Bòrd na Gàidhlig's core mission to support Gaelic? Who would do that work, and when?

09:15

Caroline Gardner: For obvious reasons, the focus of the audit work next year will be on progress with the action plan, the way in which it has been implemented and the effect that the actions have had. We will keep in mind whether that is something that audit can best do, or whether the board should take it forward.

As Pat Kenny was answering Mr Neil's questions, I was looking at the improvement plan. One of its recommendations is very much about engaging with stakeholders about what matters to them and ways of working that will have the most impact. It might be that that needs to be evaluated by the board and the Government in order to look at the effectiveness of those actions, but we will certainly keep it under review.

Willie Coffey: Some of the issues that you raise in your report are recurring themes for this

committee and occur in other organisations. It is not just Bòrd na Gàidhlig that experiences them, although this case seems to be a bit more severe. Why is it that such issues are discovered only when Audit Scotland turns up? Why are the issues not made known earlier? Is the sponsor directorate in the Scottish Government aware of them, or is it only made aware when Audit Scotland does its audit? Why is this stuff not identified and actioned earlier, rather than requiring Audit Scotland to come to the door?

Caroline Gardner: The usual health warning applies, in that the issues that come to this committee tend to be those that auditors have identified and I therefore report on. That does not mean that they are identified only by auditors. The background in this case was that the board carried out a staff survey in 2018-19 that threw up concerns about whether staff felt that they were part of a joined-up organisation and were listened to and communicated with. The chief executive asked the auditor to do more work to follow up on that. Pat Kenny and Karlyn Watt might want to say more about that in a moment.

The impetus for some of the work came from the organisation. When Deloitte's auditors started to do that work, they found wider issues, which they and I have now reported on. It is often an iterative process, with a concern leading to a wider net of problems that need to be addressed.

Karlyn Watt: As the Auditor General said, this piece of work came from our planning work for the 2018-19 audit towards the end of 2018, when the staff survey that the board had carried out flagged up a number of issues to do with communication and staff morale. It was at that point that we started looking in a bit more detail and, in discussion with the chief executive, we agreed that there was a risk so we would need to look at it further. That was when we agreed with the Auditor General and her team that we would do this piece of work.

Willie Coffey: What about the sponsor directorate arrangement? Is there any oversight from it? Were the directorate's staff aware of what was going on, or did they suddenly become aware of it after you did your audit?

Caroline Gardner: I think that they were aware of problems with the board. Some members of the committee know that concerns have been raised in the past about the effectiveness of the board and, as Mr Neil highlighted, the engagement with the Gaelic community. It is fair to say that the sponsor team found it difficult to identify the root of the problem and the action that would be needed to deal with that, but they were certainly not inactive. At one point, in its more detailed report, Deloitte suggested that they might have been overinvolved. That is a difficult judgment to make.

What is clear is that it was difficult to resolve the problems, and the work on that is still under way.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Auditor General, your report is short, but I have probably never seen a more damning report on the governance and management of an organisation. It is a worry that the people involved are still in place. This is not the first time that a non-departmental public body has come in front of the committee. Do you think that there is a fundamental problem with NDPBs, in that they are slightly too detached and do not get the oversight and support that they perhaps could?

Caroline Gardner: That is certainly the case for some NDPBs. As you said, Bòrd na Gàidhlig is not the first NDPB whose governance problems have been reported to the committee through the work of the auditors and my reporting powers. However, as I said to Mr Coffey, we report every year on a number of bodies that work well and effectively and never come to the committee's notice.

There is a lot of variability in the Scottish Government in how the sponsorship or Fraser figure relationship works, which you have seen in earlier evidence sessions. The Government has recognised that and, in its governance report as part of its annual reporting last year, it highlighted the work that it is doing to make its sponsorship work more consistent and to avoid such problems arising in the future. However, you are right: we are still seeing some bodies, such as this one, in which things are clearly not working as they are intended to, which could have an impact on the services that they provide.

Colin Beattie: The present formula has been in place for many years—indeed, since before the Scottish Parliament was reconvened. Is it fundamentally flawed, given that we now we have the Parliament? Is the non-departmental public body system an anachronism?

Caroline Gardner: I would not say that. There are good reasons for having public bodies at some distance from the Government, so that they can focus on delivering the services that they exist to provide. In the past, we have reported that it is not always clear why a public body is an NDPB, an agency or one of the other less common types of body that are around. My concern is to ensure that the Government's oversight of such bodies—however it is carried out—is more consistent.

Michael Oliphant might want to add to that, perhaps in relation to one of the Scottish Government audits.

Michael Oliphant (Audit Scotland): On the back of recent section 22 reports that have been before the committee, the Scottish Government arranged a series of workshops that were

attended by more than 100 sponsors. The workshops considered aspects of risk, governance and relationships between sponsor teams and NDPBs. The aims of the workshops were to improve levels of training and understanding among such organisations, and to consider what those relationships should look like and the formal frameworks that are in place. That activity is ongoing and has received quite a bit of attention from the Scottish Government.

Colin Beattie: That sounds positive. To come back to the issue at hand, are the board and the senior management team enthusiastic amateurs who are way out of their depth and unable to handle matters, or are they simply incompetent? The answer has to be one of those two things.

Caroline Gardner: I am not sure that there is a one-word answer to that question. The board is made up of a range of people who have a stake in the Gaelic language and a real commitment to it, rather than being made up of people with experience of being on boards or of working as non-executive directors to guide organisations and hold their executive teams to account.

There have been difficulties with recruitment to some key posts in the management team. Our report highlights the period during which no finance director was in place, but there have been similar difficulties elsewhere. When a body is looking to recruit from within the Gaelic-speaking community, the pool from which it is able to do so is likely to be smaller. There has also been a long history of lower-level problems not being fully addressed, which has a legacy.

I am sure that Pat Kenny and Karlyn Watt will want to add to that, given their much more detailed knowledge of the organisation, as auditors.

Pat Kenny: I agree that there are issues with and concern about the skills and capabilities of the senior management team. If the committee were to ask board members, I think that they would agree that there is room for improvement. There is certainly scope for the board to hold the senior management team to account much more, through formal performance appraisals. We had significant concerns about the evidence on whether that is being done robustly. The senior management structure is no longer fit for purpose and urgently needs to be reviewed, as does the structure below it.

Therefore, I agree that there were significant concerns in areas that were identified by the audit—

Colin Beattie: For how long had the board been concerned about the senior management team, and what did it actually do about that?

Pat Kenny: I am sorry: did you ask about the board?

Colin Beattie: Yes. For how long had the board been concerned about the senior management team?

Pat Kenny: I do not think that our work was the catalyst for that concern. To be frank, I think that that concern had existed for some time. As part of our work, we interviewed the board; that concern came through strongly then. For how long concern had existed is probably a question for the board, but I do not think that it would just have happened overnight.

Colin Beattie: It does not reflect particularly well on the board that members knew about the issues and took no steps to rectify them.

Pat Kenny: I agree.

Colin Beattie: The Auditor General talked about there not being a head of finance for 15 months. Was that a direct result of the Gaelic language requirement, or were there other factors?

Karlyn Watt: That was not directly related to the Gaelic language requirement. The previous head of finance left and a decision was taken to review the post to see whether a full-time or part-time role was needed.

Colin Beattie: Was there prevarication on the part of the board or senior management?

Karlyn Watt: The senior management team reviewed the structure for that particular role.

Colin Beattie: What steps did they take to cover that post during the period?

Karlyn Watt: Senior management spoke with another organisation to try to put a shared service agreement in place.

Colin Beattie: What was the other organisation?

Karlyn Watt: It was MG Alba, which is based in Stornoway. It is a comparable Gaelic organisation, but the plan fell through due to lack of capacity in that organisation. The board then looked externally for support for the finance function.

Colin Beattie: There is a policy of requiring all employees to speak Gaelic. Is that actually legal?

Caroline Gardner: I do not think that we checked for the answer to that question. It is the policy of the organisation, and I understand why it has that policy. That will have the effect of restricting the pool from which it can recruit. That trade-off should be considered, but we have not looked at whether the requirement is, in itself, legal.

Colin Beattie: What was the impact of not having a head of finance?

Pat Kenny: The head of finance should have a strategic role in delivering organisational business plans and outcomes. During that time, that strategic input to the organisation's delivery, priorities and outcomes was not available, which would not have helped in respect of the organisation delivering its business plan. We have recommended that the head of finance have a much more strategic role in delivery of the business plan.

Colin Beattie: To whom did the internal auditors report? There seems to be no audit committee.

Karlyn Watt: The internal auditor was a part-time post in the organisation. He reported directly to the audit committee.

Colin Beattie: I thought that there was no audit committee.

Caroline Gardner: In exhibit 1 in my report, that committee is mentioned at the far right hand of the list of committees.

Colin Beattie: Who decided the programme for the internal auditor?

Karlyn Watt: The internal auditor would present his proposed plan to the audit committee, and the committee would approve the plan for the year.

Colin Beattie: So, there was a plan in place. Was it adequate?

Karlyn Watt: The plan was adequate for looking at financial controls and the more traditional areas that internal audit would look at.

Colin Beattie: So were you, as auditors, satisfied that the internal audit function was up to scratch?

Karlyn Watt: Yes.

Colin Beattie: What qualifications did the internal auditor have? I see that the internal auditor was appointed as head of finance.

Karlyn Watt: The internal auditor is a qualified accountant with a number of years of public sector experience.

Colin Beattie: The annual report says that no committee in the organisation has formal responsibility for assessing financial performance. How much of a risk is that?

Pat Kenny: That is a significant risk and one that we have raised before. The recommendation on that is not new; it is a serious concern.

Colin Beattie: It seems that almost every decision that the board or the senior management took was flawed in some way, and did not

contribute to the good running of the organisation. That is detrimental to every Gaelic-speaking person in the country.

Liam Kerr (North East Scotland) (Con): I have a brief question. Colin Beattie talked about the policy of having Gaelic being a prerequisite for being part of that organisation. Who set that policy? When in the organisation's life was it set?

09:30

Caroline Gardner: I do not know. I am not sure whether Pat Kenny or Karlyn Watt can help you.

Pat Kenny: I do not know, off the top of my head. It is a long-standing policy.

Liam Kerr: I presume that the organisation decided on that policy?

Pat Kenny: Yes.

The Convener: Could it have been done through the legislation?

Liam Kerr: That is what I am wondering.

Alex Neil: The legislation did not get into that level of detail.

Liam Kerr: Thank you.

Is it reasonable or sensible to have such a policy? I do not know the statistics, but the Auditor General mentioned earlier that it limits the pool. It does not seem to be sensible.

Caroline Gardner: As the committee knows, I am precluded from commenting on matters of policy; that issue is a matter of policy.

As I said, I understand why Bòrd na Gàidhlig might have that as a policy and a strong aspiration, but it has consequences. As always, it is important for the body and for the Government to weigh the balance of the benefits and costs. If the policy means that the organisation cannot recruit people with the skills that are needed for it to carry out its work, the balance might not be in favour of that decision. If it is possible, however, there are huge advantages to doing so.

Liam Kerr: This might come out as more of a comment than a question. Do you share Colin Beattie's concern about whether that is discriminatory under employment law? It might be worth another look. Also, the committee looks frequently at the challenges of recruiting good senior individuals to boards and throughout the Scottish public sector. In a small pool of talent, it seems to be strange to limit the talent still further.

Caroline Gardner: Leaving aside the question of legality—although we will need to look at that—in some ways, it is just a special case of the issue that all public bodies face all the time: the right skills are needed to run Bòrd na Gàidhlig, a health

board or any other specialist organisation. The more tightly organisations define the requirements, the smaller the pool from which to recruit will be. It is about understanding the trade-offs that are made.

Pat Kenny: It is a good question. I have recommended that the organisation review the policy. I suggested that there might be scope for Gaelic not being a prerequisite for certain roles within the organisation. A more tailored policy might be more appropriate than the blanket policy that it has in place.

Bill Bowman (North East Scotland) (Con): I have a couple of questions. Given previous questions, we might have touched on the subject already.

The section 22 report highlights

“a lack of openness and transparency in decision-making within the organisation.”

The Deloitte report also states that

“There is general consensus that the existing committee structure and governance arrangements are not fit for purpose.”

Who represents that “general consensus”? If it exists, why has that problem not been addressed?

Pat Kenny: The “general consensus” is based on fact finding and discussions with the organisation's board, members of staff and the senior management team. The board has done ad hoc bolt-ons to the committee and governance structure, without doing an end-to-end review from top to bottom.

The question why it has been left to drag on and nothing has been done is a good one. We have made the recommendation and the organisation will look at a top-down, end-to-end review of its governance model. Fundamentally, there have been too many ad hoc changes without a strategic review of the governance model.

Bill Bowman: Those internal issues have spread into the Gaelic community. Other people know that it is not sorted.

Pat Kenny: Yes, that is a fair expectation.

Bill Bowman: Who in the Scottish Government forms the sponsoring department?

Caroline Gardner: In the report, we say that the Bòrd na Gàidhlig is

“sponsored by the Directorate for Learning within the Education, Communities and Justice portfolio of the Scottish Government.”

Bill Bowman: How many people are involved in dealing with the organisation?

Michael Oliphant: I do not know the exact number, but I think that it is a small team. There

are different layers of responsibility, starting with the director general, then the director for learning, then a deputy director, then under them a small team that deals specifically with Gaelic issues.

Bill Bowman: Might it be around seven or eight people?

Michael Oliphant: I do not know the number. We can come back to you with that detail.

Bill Bowman: Do they do that all the time?

Michael Oliphant: I imagine that they have other responsibilities, as well.

Bill Bowman: Here is a question that I usually ask. Where was the audit committee when all that was going on? You said that the organisation has an audit committee. Do its members have the right skills? Does it include the strong individuals who are needed in such situations?

Karlyn Watt: That is one of the areas in which we have made a recommendation. The audit committee itself has recognised that it does not have the appropriate finance skills and is currently looking to recruit a board member who has the relevant skills.

Bill Bowman: Can an audit committee function without finance skills?

Pat Kenny: In my opinion, it cannot; that is why we have made the relevant recommendation.

Bill Bowman: Have the individuals on the board raised the issue?

Pat Kenny: The board is aware of the issue. The chair of the audit committee is a strong individual, but there are definitely concerns that, across the audit committee, there are skill gaps that need to be addressed.

Bill Bowman: An issue that we have had before with an NDPB was that because it was not in central Scotland, the question had arisen whether it could recruit to the audit committee people with the necessary skills, because it was drawing from local people. Does the audit committee have members from throughout the country, or are the members local to Inverness?

Karlyn Watt: There are members who are not local to Inverness; some travel in.

Bill Bowman: So, membership of the board has a spread?

Karlyn Watt: Yes, it does.

Rhoda Grant (Highlands and Islands) (Lab): There has been some discussion about members of the board having the ability to speak Gaelic. That is really important, as the working language of the board would have to be Gaelic. It would seem nonsensical to set up a board to promote

Gaelic that had English as its working language. There could be something about board members having a commitment to learn Gaelic, which could bring in other people. To be part of that kind of organisation, someone would have to be vested in what it is doing. The language is in a perilous state, and, if the board members were not vested in it, that would be an issue.

Have you any insight into how the improvement plan is coming along? I know that it is going to be reviewed in the next few months, but is anyone keeping closely in touch to see that progress is being made?

Caroline Gardner: I will ask Pat Kenny and Karlyn Watt to give you the most up-to-date picture. The normal cycle is that, after the annual audit work is carried out, the improvement plan is agreed and the auditor then comes back in the next couple of months, as part of their interim work, to look at what progress has been made in preparation for the final accounts work, after the end of the financial year. There is contact between those dates, but those are the two big blocks of work for such a body.

Pat Kenny: We are keeping an eye on the improvement plan. We are aware of it, and we are in on-going communication and dialogue with the board. However, our detailed follow-up work on how well the improvement plan is progressing will take place next month.

Caroline Gardner: We have been pleased by the extent to which the interim chair has shown a real recognition of the problems and a commitment to the improvements that are needed to resolve them. We do not always see that, and it is a very definite feature of our engagement with the board around my report this time.

Rhoda Grant: There seem to be three themes: the management team, the board and the sponsoring department. In your report, you talk about discouraging funding applications, and I think that somewhere you actually say that the board could not afford a full management team, because of caps on its funding and its being discouraged from applying for more. I think that it was marked as a high priority to make sure that funding was in place. Do you know whether a business plan has been put to the Scottish Government and whether that has been successful? It seems to me that, if the board is going to take in external people, to have that level of scrutiny and breadth of experience, it needs to pay for it—it does not come free.

Karlyn Watt: I am not aware of a business plan. We would need to check with the board whether that has progressed. We will follow up on that next month.

Rhoda Grant: It will be followed up on and, hopefully, in place.

Karlyn Watt: Yes, absolutely.

Rhoda Grant: I note that we are in budget territory just now, so this would be the time to make a plea for additional funding.

I am not a member of this committee, so I was interested to hear that some of the governance issues are common to other organisations and NDPBs. Given that, is there training in place for people who take on the role of a board member, which is a huge responsibility? They may be passionate about, and have expertise in, the subject of the organisation whose board they are on, but they might not have any expertise in governance arrangements. Is training available for anyone who becomes a board member, to equip them for that role?

Caroline Gardner: Rhoda Grant is absolutely right, and this committee has shown a lot of interest in that question over the session. Michael Oliphant will pick up on that question.

Michael Oliphant: Training is available. The guidance “On Board: a guide for members of statutory boards” is provided by the Scottish Government. In addition, the public bodies unit within the Scottish Government provides training to board members across the public sector. Board members can access training there, but it is down to the individuals themselves, as part of any performance appraisal, to make their training requirements known and to agree those with the body.

Pat Kenny: Another recommendation that we made to the organisation is that a training needs assessment be completed for board members and the senior management team.

Rhoda Grant: I have a final question. There were questions earlier about the impact that this situation might have had on the language and on organisations that were looking to the board for leadership and funding. Will any work be undertaken to consider whether it has had a damaging effect on the language and whether we have missed opportunities, and, if so, to consider what remedial steps need to be taken?

Pat Kenny: We have suggested that we need much more of an evidence base in relation to grant applications and that they need to be much more aligned to the outcomes and priorities of the organisation, so that we, as an audit team, can much more easily track the impact of awards being made to specific organisations against performance indicators.

In the past, the evidence base in relation to the making of awards in alignment with an organisation’s priorities and objectives has not

been clear. It could be substantially better, and it is improving now, with three-year funding awards. We are looking for a much more evidence-based process that will allow a trail to be established, so that we can consider the impact of awards on the delivery of an organisation’s key outcomes and ensure that there is full alignment.

Alex Neil: I have a few more factual questions—three specific and straightforward questions, to which simple replies will be fine.

You said that, at the time of the audit, all board and committee meetings were held in private. Is that still the case?

Karlyn Watt: Yes. As far as I know, that is still the case. However, board papers and minutes are now being published and made available on the Bòrd na Gàidhlig website.

Alex Neil: But the board and the committees meet in private.

Karlyn Watt: Yes.

Alex Neil: The whole board meeting is in private. That is totally unacceptable and should be changed immediately. The sponsoring department should be on top of that. In this day and age, that is totally contrary to everything that we are trying to do in terms of transparency.

My second question is on the topic of board minutes and agendas appearing on the website. Your report says that, at the time of the audit in May 2019, the latest agenda and minutes published were from June 2018. When you say that they are now published on the website, do you mean that they are now published on the website timeously?

Karlyn Watt: Yes. I checked earlier in the week, and the minutes from the board meeting in November were available. The minutes are now being published in a more timely manner.

Alex Neil: Okay. Is that just for November?

Karlyn Watt: And for previous months.

Alex Neil: That is progress.

I will move on to my third question. Your report says that,

“In May 2018, a review of the members’ Code of Conduct was recommended by the Board, but this did not take place.”

Has it now taken place?

Karlyn Watt: I am not sure. I would need to check with the board.

09:45

Alex Neil: Could you check and come back to us on that, please?

Karlyn Watt: Yes.

Alex Neil: It seems to me that, leaving aside the particular problems, the basics of running an organisation—some of which are legal requirements—are not being met. Am I right?

Caroline Gardner: They are not legal requirements, but they are certainly good practice under the “On Board” guidance, to which Michael Oliphant referred. They are expectations of Government NDPBs.

The Convener: During your audit, did the board say, or did anyone indicate, why it felt compelled to meet in private?

Karlyn Watt: The response was that the meetings had always been held in private. It seemed to be a historical practice from before the current board and chief executive were in post.

The Convener: Did they seem comfortable with that? Were they surprised by the question at all?

Pat Kenny: Yes, they were surprised that we were taking a view on that. We had quite a bit of discussion with them on that.

The Convener: Were they aware that good practice among other boards is to meet in public when that is possible?

Pat Kenny: I suspect not.

The Convener: Really? Was that due to ignorance?

Pat Kenny: As my colleague said, it was just the way that it had always been done in the organisation. Our recommendation on openness and transparency appeared to be new to them, and we had several discussions with them before it was agreed.

The Convener: The whole concept of openness and transparency was new to them.

Pat Kenny: In the context of the public-private dimension, yes.

The Convener: That is interesting, because there has been public discussion of the subject for a long time.

I will bring in Colin Beattie in a minute.

The committee will make its own decision on where we take the issue, but I sense from your answers that, having done the audit, you think it might be worth our probing the matter further with the individuals who are responsible.

Pat Kenny: Yes. That would be appropriate.

Karlyn Watt: I agree.

Colin Beattie: The board agreed an improvement plan in July 2019. Are you satisfied

that that improvement plan is adequate and that it is being followed?

Pat Kenny: I am satisfied that the improvement plan is adequate and is being followed, but my major concern is that, as I outlined earlier, the board will definitely require external resource and assistance to deliver it on the ground.

Colin Beattie: Just to be clear: do you think that, given the board’s current skills and experience, it is able to deliver and implement that plan without someone helping and guiding it?

Pat Kenny: No, I am not convinced that it would be able to deliver the plan without that.

Colin Beattie: I have one last question. Have any members of the board or the senior management stepped down or offered to step down as a result of your report?

Caroline Gardner: I understand that the former chair left at the end of December 2018, before the end of her term of office. Karlyn and Pat may be able to amplify that and add any other changes that they have seen.

Karlyn Watt: There have been a few changes in board membership since the report. I could not say whether they related to the report or whether there were other reasons why those members stepped down.

Colin Beattie: Have those changes in board membership demonstrably improved the experience and skills level of the board?

Pat Kenny: I think that the changes on the board were due to natural turnover, to be honest. The board was too big before, and it has now come down to a more manageable level. There were more than 10 individuals on the board, which, in my opinion, was totally inappropriate for an organisation of that size. It is coming down to a more manageable level. I think that those changes were not directly related to the issues that are raised in the report.

Colin Beattie: Is the board actively looking for members who have the skills to support its activities?

Pat Kenny: That is a good question. The committee should follow that up in subsequent evidence sessions.

Colin Beattie: Is there any evidence that the new members of the board have those skills?

Pat Kenny: The issues that are raised in the report clearly express that the board did not have the necessary skills and expertise. There were serious concerns about that, and those concerns remain.

Caroline Gardner: The Government is in the process of appointing a new permanent chair to the board. The appointment of that person will be key in developing the abilities of board and of the organisation as a whole.

The Convener: Pat Kenny, you are a director at Deloitte LLP. You must have done a fair few audits—public and private sector—in your time.

Pat Kenny: Yes. I head up the Deloitte public sector business in Scotland.

The Convener: To what extent were you shocked or surprised by what you found?

Pat Kenny: In terms of the findings and recommendations, I cannot think of another report that has raised such serious issues during my time in this role.

The Convener: Thank you all very much for your evidence. I will suspend the meeting briefly to allow a change of witnesses.

09:51

Meeting suspended.

09:55

On resuming—

“The 2018/19 audit of NHS Lothian: Delay to the opening of the Royal Hospital for Children and Young People”

The Convener: Item 3 is consideration of the section 22 report, “The 2018/19 audit of NHS Lothian: Delay to the opening of the Royal Hospital for Children and Young People”. I welcome our witnesses: Caroline Gardner, the Auditor General for Scotland; Leigh Johnston, senior manager, performance audit and best value, Audit Scotland; and Chris Brown, a partner at Scott-Moncrieff.

I understand that the Auditor General has an opening statement.

Caroline Gardner: Thank you, convener. My report summarises the circumstances surrounding the delay to the opening of the Royal hospital for children and young people, the department of clinical neurosciences and the child and adolescent mental health service in NHS Lothian. The report is not an investigation into the causes of the delay, but it aims to clarify the facts as we currently know them.

The Scottish Government announced a non-profit distributing funding route for the project in 2010. In 2014, NHS Lothian appointed Integrated Health Services Lothian to design, build, finance and maintain the project. Total costs were estimated at £230 million, which was made up of

construction costs of £150 million plus enabling and equipment works of £80 million that were outwith the agreement with IHSL.

The hospital was originally due to open in July 2017, but it has been delayed by a series of technical and contractual disputes. In February 2019, with Scottish Government approval, NHS Lothian signed a settlement agreement with IHSL, and an £11.6 million payment was agreed. In February 2019, the independent tester—Arcadis NV—issued a certificate of practical completion and the hospital was handed over to NHS Lothian. However, in June, final compliance checks revealed that the ventilation system in the critical care department did not comply with current guidance, leading to the decision not to open the hospital on 9 July as planned.

Since then, two reviews that were commissioned by the Cabinet Secretary for Health and Sport have been published. The first report, which was produced by KPMG, focused on governance arrangements. It set out a picture of confusion and human error in relation to the interpretation of the relevant specifications and guidance, together with missed opportunities to spot and rectify that error. NHS National Services Scotland, which produced the second review, carried out a series of checks to ensure that the relevant technical specifications and guidance had been followed. It identified a range of issues to be addressed.

It is estimated that the additional work that is required to ensure that the new hospital complies with the relevant specifications and guidance, as well as the work to keep the current site open while that happens, will cost an additional £16 million. A public inquiry will be held to examine those issues and those at the Queen Elizabeth university hospital in Glasgow. My report aims not to pre-empt that inquiry but to set out a factual account of what I currently understand about the situation, based on the reviews that were carried out by KPMG and NHS National Services Scotland, and on NHS Lothian’s annual audit report, which was produced by Chris Brown of Scott-Moncrieff.

My report is not the result of a full investigation into the project; instead, it identifies a number of issues for consideration to ensure that lessons are learned for future projects of such nature. Those include the clarity and application of the relevant guidelines and how they were managed, the contractual implications, the roles and accountability of all the parties involved and the effectiveness of oversight and scrutiny.

As usual, my colleagues and I will do our best to answer the committee’s questions.

The Convener: Thank you very much, Auditor General.

Colin Beattie: I am conscious that a public inquiry is under way, and we do not want to second guess what it will find, but there are some issues on which we could get a little bit more texture. Auditor General, in your report, you say that

“A series of technical and contractual disputes”

took place during 2017. Can you give us a wee bit more detail on those disputes?

Caroline Gardner: Certainly. Chris Brown might want to pick up on that question, based on the audit work that he carried out at the end of the 2018-19 financial year.

Chris Brown (Scott-Moncrieff): There were a number of contractual disagreements between NHS Lothian and the contractor on issues relating to the hospital’s specifications, such as its drainage and ventilation systems.

Colin Beattie: How did those arise? When it is said that they are “disputes”, does that mean that the contractors were not building according to the specification, the health board found out about it and there were disputes about how to rectify matters?

10:00

Chris Brown: That was the nature of the disputes. The health board’s contention was that the contractor was not building in accordance with the specification. The contractor’s view was different. That resulted in quite a protracted dispute, which eventually went to a formal dispute resolution process. That ended in a settlement agreement, resulting in the health board paying £11.6 million to the contractor.

Colin Beattie: If the contractor did not build according to the specifications, why did the health board have to pay out?

Chris Brown: The health board, based on the legal and technical advice that it was given, took the view that it did not have strong enough grounds to challenge that issue with the contractor.

Colin Beattie: It had strong enough grounds to raise disputes with the contractor, but not strong enough to win a dispute.

There must have been a process—in accordance with the contract, presumably—for the disputes to take place, to be discussed and to be escalated.

Chris Brown: Yes. That was exactly why NHS Lothian went through the dispute resolution process; that is exactly what that did.

Colin Beattie: And yet its grounds were not strong enough.

Chris Brown: The conclusion of the process was that the health board considered that it did not have strong enough grounds to pursue the issue through legal redress.

Colin Beattie: Either the specification was right or it was wrong. Is it not as simple as that?

Chris Brown: No, I do not think that it is as simple as that. One of the issues in relation to the situation on which we are reporting is that, in a major construction project, defining exactly what is the responsibility of the public sector procurer and what is the responsibility of the contractor in some of the contracts is very complex.

Colin Beattie: If you take a very simplistic view, either the specifications are according to what was agreed and what was in the contract or they are not.

Chris Brown: It depends on the level of detail that the specification goes into. Different contracts and funding routes require different levels of detail in relation to the specification that the public sector provides for major construction projects.

If a public sector organisation simply describes the operational requirements that it wants to achieve in relation to a building, it may be up to the private sector contractor—the builder—to define exactly how that will be provided, in the detailed specification. One of the issues is that there has been some ambiguity and uncertainty in the project as to exactly which party is responsible for the detailed specifications for some aspects of the new hospital.

Colin Beattie: Even if the health board specified only its expected outcomes, and the contractor was largely left to put in place whatever—according to regulation—would provide those outcomes, if those were not right, in simple terms, you would think that the health board would be a strong position.

Chris Brown: The purpose of the contracting model is to achieve that outcome. The public sector specifies what it is looking for and the contractor interprets that specification and designs something that meets those requirements. That is the intention, but that just has not happened in this situation for aspects of the new hospital.

The Convener: Willie Coffey wants to ask a supplementary question on that point.

Willie Coffey: Page 15 of the Auditor General’s report points towards that issue. It seems to suggest that there was an inconsistency in two documents about air ventilation levels.

One part of the specification said that four complete air changes an hour were required and

another part of the specification said that it should be 10 an hour. I am no expert, but I can see why that would give rise to some confusion. It seems to me, without pre-empting or guessing anything, that that might explain why there was an inconsistency. I suggest that both parties should have spotted that.

Caroline Gardner: You are right to identify that as another source of confusion between the parties involved, but it is a different issue from the one that Mr Beattie has been asking about and Chris Brown has been answering. That is the issue that was identified in late June 2019, which led directly to the decision to delay the opening of the new hospital. We do not yet know in enough detail what the differences were between the contractor and NHS Lothian in the period that Chris Brown has been describing. We do know that the advice that the board took from technical and legal experts was that the risks of going ahead with legal action on the contract outweighed the potential benefits that the work was likely to achieve. The settlement agreement and the payment of £11.6 million were the result of that.

Mr Coffey is right that one of the overarching points in my report concerns the confusion about the application and status of the relevant standards and guidance, and about the roles and responsibilities of all the parties involved—it is not just about actions in NHS Lothian.

Colin Beattie: The report says that the “technical and contractual disputes throughout 2017”

were

“over and above what would generally be expected on such a project”.

Why? What is the reason for that?

Caroline Gardner: I am not sure that we know the reason for that. We know that they were and that that led to the dispute resolution process. I am not sure whether Chris Brown can say more about it.

Colin Beattie: The disputes clearly could not be resolved through the established channels, but why was that?

Chris Brown: That is one of the issues that the health board is looking at now—it has commissioned a review from its internal auditors into the root causes of the issues that led to the delay in opening the hospital. Maybe that review will answer some of those questions.

Colin Beattie: Is the contractor meeting any part of the shortfall in funding that is required to make everything right?

Caroline Gardner: If we return to your original question, we know that the settlement agreement

that was reached in 2018 and the £11.6 million payment that NHS Lothian made reflected the relative balance of responsibilities that were seen to be in place at the time. If we then look at to the events of June and July 2019, which is when the other problems arose that led to the delay in moving to the hospital and the announcement of a public inquiry, we do not know the outcome of that yet.

As Chris Brown said, the board has asked its internal auditors to look at the circumstances in the board. We are waiting to hear about the start of the public inquiry that the Cabinet Secretary for Health and Sport announced. That will include work to understand better the contractual implications, which is one of the questions that I have raised in my report. That is a big and important question to which we do not yet know the answer. However, we know that NHS Greater Glasgow and Clyde has announced that it intends to take legal action against the contractor responsible for the Queen Elizabeth university hospital.

Colin Beattie: Is it the same contractor?

Caroline Gardner: It is.

Colin Beattie: Interesting. Exhibit 4 of the report shows a breakdown of the

“Estimated costs resulting from the 2019 delay”.

That includes

“contingency for further remedial action”

of £2 million. Are you confident that that figure will be enough to cover any “further remedial action” that is needed? Is the figure based on anything?

Caroline Gardner: It is an estimate, as contingencies always are. We cannot give the committee any assurance about whether it is enough, but we have had no indication so far that it is not enough. Does Leigh Johnston have anything to add?

Leigh Johnston (Audit Scotland): The figures came from the Scottish Government, which was keen to point out that they are estimated figures at this point. We will not know the full and total cost that is required until the work is done and the facility is ready to open.

Colin Beattie: The obvious concern about that is that NHS Lothian is already in a tight financial situation. Will it be expected to pick up that cost? Has the Government indicated whether it will bail the board out on that?

Caroline Gardner: The Government has indicated that it will cover the additional costs incurred by delaying the move.

Colin Beattie: That is the £16 million.

Caroline Gardner: Yes. The board has paid the £11.6 million that was agreed in February 2018. One of the reasons why I wanted to produce my report was to clarify those figures, because there has been a lot of speculation in the press about what has happened to the costs overall. The original total cost was expected to be £230 million. The total additional cost so far, from the February 2018 settlement and the £16 million that Colin Beattie referred to, is £27.65 million.

So far, we expect the increase in cost to be about 12 per cent, which is significant but not overwhelming in relation to the original cost envelope. In relation to the overall amount that NHS Lothian spends, again, that is a relatively minor figure. The bigger questions are what impact the delay is having on patients and staff in Edinburgh and what we can learn to make sure that no health board ends up in this position again.

Colin Beattie: Is the Scottish Government picking up all the additional costs in relation to running two sites, the additional maintenance costs at the existing site and so on? I want to be clear about that.

Caroline Gardner: It is our understanding that the Government will meet the £16.05 million figure that you have identified from exhibit 4 in our report, which shows the additional costs as a result of the delay and the need for double running in the meantime.

Colin Beattie: So any financial difficulties that NHS Lothian has that arise from its day-to-day operations will not be impacted by the delay in the opening of the new hospital.

Caroline Gardner: No, they will not—we know that NHS Lothian has significant financial challenges, but the costs associated with the delay should not add directly to those.

Anas Sarwar (Glasgow) (Lab): Good morning, Auditor General. I am keen to understand the level of Government oversight of the project. Given the similarities between this project and the project to build the new Queen Elizabeth university hospital in Glasgow, with regard to not only the constructor but some of the outcomes, why were adequate lessons not learned? Can you give us a quick overview of your understanding of the level of Government oversight of the project to build the new Royal hospital for sick children?

Caroline Gardner: I will ask Leigh Johnston to answer that, and I will come back on the lessons-learned question.

Leigh Johnston: The Scottish Government sat on the programme board. Although we say in our report that the Government did not often attend the meetings, it always got the minutes.

There were lots of other opportunities for oversight throughout the project. We say in the report that the Government kept in touch and had dialogue throughout the process. There were many opportunities for members of the board and people in the Government to talk about the project and the on-going risks, which were often to do with the finances involved.

Caroline Gardner: In relation to the timeline and the opportunity for lessons to be learned from the Glasgow project, with hindsight it looks as though there was an obvious opportunity, but if you look at the dates, you will find that the picture is not as clear as that.

The Queen Elizabeth university hospital opened in April 2015, and services were fully transferred across between then and the summer of 2016. We were not aware of any problems with it until around August 2018, when we found out that the glass panels had crashed. It was after that that the problems with infection started to emerge. By then, the contract to build the Royal hospital for children and young people in Edinburgh had already been agreed and construction had started. There is evidence that, once the problems started to emerge, the programme board asked IHSL for assurances that its work was in line with standards and that the problems were being addressed, and it received those assurances. It is not a straightforward case of saying that there were things in Glasgow that should have triggered extra work in Edinburgh.

However, as I say in my report, there are significant similarities with what was found in the inquiry into the Edinburgh schools after the problems at Oxbgangs primary were first identified. Professor Cole's report, which was published in February 2017, raised questions that are very relevant to projects such as that to build the new Royal hospital. I think that it would be well worth exploring the extent to which those questions were fully recognised and responded to by NHS Lothian, in Glasgow and in other big construction projects.

Anas Sarwar: I will come back to the issue of the water supply and infection. It is important to note that there was an overlap in the timelines, which meant that it was difficult to learn lessons at an early stage.

In general, do you think that there was adequate Government oversight of the project to build the new Royal hospital?

Caroline Gardner: As Leigh Johnston said, there was significant involvement over and above involvement in the programme board. I will give you a flavour of that. There are quarterly meetings between a representative of the Government's health finance and infrastructure team and NHS

Lothian; NHS Lothian provides an annual report to the chief financial officer, giving a more general update on projects; and there is dialogue on specific issues as they come up. There is a lot of engagement and, as colleagues have indicated, it was not until late 2017 that problems with the build started to emerge.

10:15

However, we say in the report that the roles of the respective parties are not clear enough. Exhibit 1 sets out the roles and responsibilities of all the parties. The first thing to note is that there are a lot of them. Secondly, it is clear that the independent tester, for example, did not think that it was their role to look at whether the specs were right, whereas IHSL and, in particular, NHS Lothian thought that that was the role of the independent tester. Therefore, no one fulfilled that role.

Anas Sarwar: Let us look at exhibit 1 again to get an understanding of the similarities between the Queen Elizabeth and Lothian projects. Are you aware of whether the same people—not roles—were responsible for Scottish Government oversight of those projects?

Caroline Gardner: Leigh Johnston will be able to give you a bit more detail on that. My sense is that it will have been the same team—the Scottish Government health finance and infrastructure team—that was responsible for the projects. I do not think that we can tell you whether it was the same individuals.

Anas Sarwar: Moving on to—

Caroline Gardner: Leigh might be able to add to that.

Anas Sarwar: My apologies.

Leigh Johnston: I do not have much more to offer. It will have been the same health finance and infrastructure team in the Scottish Government that had oversight of the Queen Elizabeth and Lothian projects.

Anas Sarwar: If it was the same team, would the same person be responsible for the team?

Leigh Johnston: Yes.

Anas Sarwar: The programme board had day-to-day responsibility for managing the project. You said that the Scottish Government was a member of the programme board, but quite often did not attend its meetings. Do you know how many meetings were held and how many times the Scottish Government failed to attend?

Leigh Johnston: I do not; I would have to look into that.

Anas Sarwar: Is that something that we could find out?

Leigh Johnston: Yes, I can look into it.

Anas Sarwar: Excellent. Did the same team represent the Scottish Government on the programme boards for the Lothian and Queen Elizabeth projects?

Caroline Gardner: We cannot answer that for you. The report looks at NHS Lothian; we have not looked at the Glasgow project, so I am afraid that I cannot give you any detailed information about that.

Anas Sarwar: Would a team from the same area of responsibility in the Scottish Government sit on the programme board? Would that be how it worked?

Caroline Gardner: We would expect those people to be from the health finance and infrastructure team. We do not know whether they were the same individuals.

Anas Sarwar: Great.

What were the reporting mechanisms for the project team that was responsible for project activities and was located on the site? Was there a Scottish Government representative on that team, as there was on the programme board?

Caroline Gardner: No.

Anas Sarwar: If there was no Government representative, what were the reporting mechanisms from the project team to the board and the Government?

Caroline Gardner: The direct reporting line was from the project team to the project board. The project board's role was to oversee the project in its entirety on behalf of the NHS Lothian board. The reporting line will have been to the board and then to the Government, in the ways in which we have described.

Anas Sarwar: Were there individuals from not just the Scottish Government but elsewhere who sat on the programme board and the project team?

Caroline Gardner: The project team members were members of the programme board, as we say in the report.

Anas Sarwar: Do we know whether any of same people—from the Scottish Government or elsewhere—sat on the Lothian programme board and project team and on the programme board and project team for the Queen Elizabeth project?

Caroline Gardner: I would be surprised if that was the case. The programme board was established by NHS Lothian for its project, and I

cannot see any reason why there would have been cross-membership with the Glasgow project.

Anas Sarwar: There are three names listed under “Professional advisors” in exhibit 1. Were any of the three also professional advisers on the Queen Elizabeth project?

Caroline Gardner: Again, we have not checked that, Mr Sarwar. This report focuses on NHS Lothian.

Anas Sarwar: Is there a way of finding that out?

Caroline Gardner: There is. We will see what we can do, but the report focuses on NHS Lothian and not on the two projects together.

The Convener: Anas, I sound a little warning, as the Auditor General has indicated that legal proceedings are going on. Auditor General, will you clarify who is involved in those proceedings? Are the proceedings between NHS Greater Glasgow and Clyde and the contractor?

Caroline Gardner: NHS Greater Glasgow and Clyde has announced that it is taking legal action against the contractor for the QEUH.

The Convener: We should tread carefully with our questions, because some of these issues will be sub judice.

Anas Sarwar: No problem.

Arcadis NV was the independent tester. Is it a regularly used independent tester for new hospital projects across the Scottish national health service?

Caroline Gardner: That is one of the functions that Arcadis NV commonly provides not only to public sector clients but, more generally, to big construction companies. As I say in the report, and as I have said this morning, one of the questions is whether people understand the role of the independent tester and for whom it works.

Anas Sarwar: I will step back to the project company. Are you aware of what checks were done on Brookfield Multiplex before it was commissioned to carry out the hospital project? For example, has it ever built a hospital, other than the Queen Elizabeth, in the United Kingdom?

Caroline Gardner: At this stage, we have no concerns about the process that NHS Lothian went through in putting together the tender and making an appointment at that level. Does Chris Brown want to add anything about the contractor?

Chris Brown: All of that happened before we took over as the health board’s external auditors. In addition to an internal audit review of project management and governance, a series of key-stage reviews were completed by the Scottish Futures Trust in the run-up to financial close for

the project. We expect that those reviews would have covered the issues that Anas Sarwar has described.

Anas Sarwar: Do we know whether Brookfield Multiplex had ever built a hospital in the UK before it built these two hospitals?

Chris Brown: I do not know the answer to that off the top of my head.

Anas Sarwar: Okay.

The Auditor General said, quite rightly, that there was an overlap in the two projects starting. The concern about the ventilation system is less about how the problem could have been prevented at the construction stage and more about why it was realised so late on in the process—at the opening stage—that there was an issue with the ventilation system.

The Convener: Is that a question specifically about the ventilation system at the hospital in Glasgow?

Anas Sarwar: No. I am talking about the hospital in Edinburgh. There is clearly a link between the water supply and the ventilation system, given that water supplies the ventilation system. If there was a concern that the design of the ventilation system was flawed, why was that issue highlighted so late in the process, which meant that NHS Lothian and the health secretary made their decision so late?

Caroline Gardner: That question is right at the heart of the circumstances that I am trying to pull together. The issue that led to the immediate decision in July 2019 to postpone the move to the new hospital was the identification, not by the independent tester, to which you referred, but by the third-party tester—the Institute of Occupational Medicine—that the air change rates that were being achieved in some parts of the critical care department were not in line with Scottish health technical memorandum 03-01, which relates to ventilation systems. Once that was known, the issue was escalated very quickly to the health board and to the Government. In the end, the cabinet secretary took the decision to postpone the move and to commission the two reviews to which I referred briefly in my opening statement.

In its review, KPMG was asked to look at governance and the sequence of events. As I refer to in my report, it identified that there was an inconsistency in the project tender documentation between what SHTM 03-01—the ventilation guidance—says about air change rates for critical care areas and what had been included in a document called the environmental matrix that the board prepared. There were inconsistencies between those two documents and within the environmental matrix. Although the environmental

matrix was not a direct part of the contract between the board and the construction company, it was referred to throughout the life of the project, and it appears that the discrepancy was not recognised formally until July last year—right at the end of the process.

As I say in my report, and as KPMG identified, at some point between 2012 and 2015, the environmental matrix was changed, so somebody knew that there was a discrepancy and tried to clarify it. There is no evidence that the issue was ever escalated to the project team or the project board. What happened there is at the heart of the sequence of events and the question whether the discrepancy could have been spotted and corrected in good time.

It is important that I say that that issue is strictly about the air change rates; it is not about saying that the ventilation system could not operate safely but about saying that, instead of delivering 10 air changes per hour, the system was designed and installed to deliver four air changes per hour. Ten air changes per hour, for some of those critical care areas, is what is in the guidance or standards. The contractor initially said that it was able to correct that, but then very quickly—a week later, I think—came back and said that it could not. That has led to the delay in the work that is required to pick that up.

NHS National Services Scotland has carried out a range of wider checks and has recommended some improvements that could be made. However, I understand that they do not involve failures to comply with standards; they are improvements to the health and safety of patients, staff and other people who use the hospital.

The confusion around the standard itself, and the way in which that worked through the tender documentation and the contract used by all the players that we set out in exhibit 2, is at the heart of what happened. That plays back to Professor Cole's recommendation about really strong and independent inspection and oversight of such projects as they are being built, not just at the end of the process.

That was a long answer, but I hope that it was useful.

Anas Sarwar: Thank you; it was very helpful.

I have a final question. Is Health Facilities Scotland the responsibility of NHS Scotland, or is there a health facilities part of individual boards as well?

Caroline Gardner: It is part of NHS National Services Scotland.

Liam Kerr: To finish off Mr Sarwar's line of questioning, can you expand on the specific role of the Scottish Futures Trust in respect of the project.

Assuming that it had a role, at what point did that finish?

Caroline Gardner: We summarise the role of the Scottish Futures Trust in exhibit 2 on page 10 of the report. It developed the non-profit distributing model that was used at the time of the project as a way of bringing revenue financing into large construction projects, particularly in health and education. It produces standardised project documentation, as well as guidance and support for the bodies that carry out these big projects, and it provides support during the programmes. It is not accountable for the projects. That accountability remains with the individual body, whether it is NHS Lothian as in this case, the City of Edinburgh Council as in the schools case, or bodies right across Scotland.

Liam Kerr: I understand. Thank you.

We have looked at exhibit 2, on page 10, which indicates that a certificate of practical completion was issued in February 2019. However, later on, we discover that significant work was still required at that point. That raises the question of why the certificate of completion was issued in those circumstances.

Caroline Gardner: That is an important question, and it is not one that we can answer directly. As you can see from the timeline in exhibit 3, on page 12, the issuing of the certificate of practical completion followed very quickly the signing of the settlement agreement between NHS Lothian and IHSL and the payment of the settlement payment—the £11.6 million that we have talked about. Arcadis NV then did the final testing and issued the certificate of practical completion.

It was known at that point that significant work was still required, both to fulfil the settlement agreement and more generally to reach the point at which opening the hospital would have been possible and safe. There is no question in my mind—I think that KPMG reached the same conclusion—that that left very little time for rectification of those problems and almost no time as a contingency if things went wrong. We say that in the middle of page 12. That is a very important question to explore further.

Liam Kerr: Thank you.

I will stick with exhibit 3. Colin Beattie asked about early 2017, when it became clear that the hospital would not open in July 2017. Throughout 2017, there was a series of problems, as we have investigated. Were there problems with the project prior to that date? If so, what were they?

Caroline Gardner: Chris Brown tried to answer Mr Beattie's question earlier. It involved a range of issues to do with the way in which the hospital was

being delivered and how far that matched up to the contract that had been agreed between the two parties. Chris, will you outline the 2017 problems a bit further?

10:30

Chris Brown: We did a bit of work on those as part of our audit last year. We looked at the settlement agreement—the £11.6 million that was paid in February. We looked at the basis for that payment, what the governance was like around approving and agreeing it and whether there were big issues around value for money. It was a high-level review and we looked into all those areas. There was the governance that we would expect to see around the process. The delay was the result of a lengthy dispute resolution process: three specific issues were in dispute between the health board and the contractor, which were around drainage systems, heater batteries and fire detectors. As I said to Colin Beattie, the health board was unable to convince the contractor that it was the contractor's responsibility to address those issues. On the basis of the legal and technical advice that the board was given, it felt that the risks of pursuing legal redress were greater than the risks of making a payment and getting the hospital finished. The board went through all the processes that we would expect to see in relation to governance, taking legal and technical advice and consulting the Scottish Government. The dispute was around those three main areas, and it was well documented through the programme board and the health board.

Liam Kerr: I will make this my final question at this stage. Going back to the start, is there evidence of anyone anticipating the significant issues that could arise when a clinical neuroscience facility was attached to a sick kids initial business case? At that point, had there been any planning?

Caroline Gardner: You will have to ask that question of either the NHS Lothian board or the Government. We have not looked at that issue. As you said, those decisions go back to 2010 and 2012.

Liam Kerr: I will ask the question. Auditor General, do I take it from that answer that, at the moment, you have no evidence to suggest that that planning took place?

Caroline Gardner: I have not looked for that evidence. As I said, the report is not a performance audit into what has happened at the Royal hospital for children and young people. It was an attempt to pull together for the committee what is known at this stage from the annual audit work, the KPMG review and the NHS National

Services Scotland review. It is a synthesis, but we know that some questions are outstanding.

Liam Kerr: Thank you.

Bill Bowman: We have been talking about some of the reviews that have been carried out or that are about to be carried out. In paragraph 34, you say that NHS Lothian is asking its internal auditors to carry out a review in two phases—the second being dependent on the first. The first phase will

“produce a timeline of the key events and decisions”,

consider “the scope and remit” of advisors and look at “the root cause” of the issues.

It sounds as though some of that information is already in your report. Can you say more about the detail of the review, how closely you will monitor it and who the internal auditors are?

Caroline Gardner: The internal auditor is Grant Thornton. I ask Chris Brown to talk you through the questions on what we know about the review and how we are keeping in touch with it.

Chris Brown: The review is being monitored by the audit and risk committee in the health board. The review is due to report to the audit and risk committee on 24 February, and the phase 1 report is due to be finalised by 24 February. It will build on the work in the KPMG report and the work in the section 22 report, to understand the root causes behind the issues that led to the delay in the opening of the hospital. Those are the issues that are flagged up in the Auditor General's report around the discrepancies between the environmental matrix and the health technical memorandum, what impact that had on the completion of the project and the governance and scrutiny that existed around those areas.

Bill Bowman: I state for the record that I used to be a partner at KPMG, whose report has been mentioned.

Turning to the reviews that were carried out by NSS and KPMG, I note that you state:

“The KPMG report sets out a picture of human error and confusion over interpretation of the relevant specifications and guidance and missed opportunities to spot and rectify that error.”

How many of the characters that that refers to are still involved in NHS Lothian? What comfort would you take from their saying that they will act on a report that comes to them now?

Caroline Gardner: We are not aware of any disciplinary action having been taken or of any grounds for disciplinary action at this point. That is very much the purpose of the internal audit work that Chris Brown has been outlining for you. We are assured that the board is taking very seriously both the problems that have emerged and the

need to understand the root causes of them, and the cabinet secretary provided assurance to Parliament in her statement before Christmas that she and her officials are keeping a close eye on how that is being done, to ensure both that good employment practice is followed and that proper accountability is delivered.

Bill Bowman: We have seen Grant Thornton's work elsewhere, and I think that its work will be done in a particularly forensic way given the potential for litigation around it. Do you expect it to be almost at the expert witness level?

Caroline Gardner: Grant Thornton is acting as the internal auditor, so I assume that its starting point will be the usual process of doing everything that it can to evidence and document the facts and the sequence of events. What happens next will depend on what it finds.

Chris, do you want to add anything?

Chris Brown: No, I do not think that I can add anything to that.

Bill Bowman: You say that NHS Lothian has drawn up action plans in response to the NSS review. Can you give us any more detail on the progress that is being made and the timescales?

Caroline Gardner: The action plans were published shortly after each of the National Services Scotland reviews were published. They are very detailed, in my view, and very specific. They are clear about what action will be taken and about timescales and responsibilities, and they are being monitored by the board. I think that that will be part of what Chris Brown looks at when the audit work picks up again in NHS Lothian, and I am certain that it will be part of the process that the Scottish Government goes through before it decides that it is safe to open the new hospital and transfer services during 2020.

Bill Bowman: When might we hear from either of you again on that?

Chris Brown: We will definitely pick that up as part of our audit. We usually report towards the end of June, but we can bring forward aspects of our reporting if we need to do that.

Bill Bowman: Okay. Thank you.

Willie Coffey: On the ventilation issue that is discussed on page 15 of your report, did KPMG try to identify who or what was responsible for the inconsistency between the matrix and Scottish health technical memorandum 03-01 regarding the need for four or 10 air changes per hour?

Caroline Gardner: KPMG did not identify who was responsible for that, but it did identify questions about the clarity and the application of what have been referred to as the standards, which are actually formal guidance. When they

were translated into the tender documentation, an error was introduced to the environmental matrix, which contained a different standard for air change rates from what is in SHTM 03-01.

In any case, there are questions about which standard should apply where different types of accommodation overlap in the hospital. For example, in a utility area that is within a critical care unit, should the critical care air change rate of 10 air changes per hour be applied or should the utility room air change rate of four air changes per hour be applied? KPMG suggested that that could be made clearer in order to make it more likely that everybody will agree on how the standards should apply in practice.

Willie Coffey: Somebody changed the wording, though, inserting the words "for isolation cubicles", and people then thought that the standard applied only to those. Did KPMG try to find out who made that change?

Caroline Gardner: KPMG was unable to identify who did that. It happened sometime between 2012 and 2015, because there is a version dated 2015 that is different. I assume that the internal audit will try to identify who did it. It may not have been someone within NHS Lothian—we do not know.

Willie Coffey: Okay. Thank you.

Alex Neil: Earlier, Chris Brown said that NHS Lothian decided, on the basis of advice, not to pursue legal action against the contractor because it was not clear that it would win the case. Given the experience of the national health service in procuring hospitals, and wider procurement issues in Government, is there not a lesson to be learned? It should be made very clear in contracts who is responsible for what—whether the contractor, the customer or a third party is responsible for various things. The contract was possibly to blame.

Caroline Gardner: Of course contracts should be as clear and enforceable as they can be. I do not want to give the impression that every public sector construction contract runs into problems. For example, we know that the new Dumfries hospital was delivered very successfully, on time and on budget. The committee sees the things that have not gone well.

I am not an expert in the field—I am an auditor, not a procurement or construction expert—but we know that such projects are very big and complex. Healthcare projects are particularly complex, given all the clinical and technical requirements that need to be built in. A question that the public inquiry will have to answer is whether there were failings in the Lothian contract, or whether there were failings by either of the parties in the way that it was delivered.

The cabinet secretary has announced a new centre for healthcare procurement excellence, which is intended to pull together expertise and experience of such procurement. Obviously, building a hospital on such a scale is something that most healthcare professionals will do only once or twice in their career—they will not do it routinely—and we need to build that expertise. Mr Neil's question is at the heart of the matter, and I cannot answer it, but we need to recognise the complexity while also recognising that something went wrong in this case.

Alex Neil: Is there another dimension to the matter, with the involvement of the Scottish Futures Trust through the NPD model? We have ended up with a hospital that has not opened and is not operational, and yet NHS Lothian is in the contractual position of having to pay £1.35 million a month, even though it could be many months, as I understand it, before the hospital is occupied. Surely we must never again get into a position where we are paying for something that has not been delivered.

Caroline Gardner: It is clearly deeply unsatisfactory. The question for me is less about the role of the Scottish Futures Trust than about the role of the independent tester and the issue of the certificate of practical completion back in February 2019. That is when the building was handed over to NHS Lothian and it became liable for the monthly payments. At that point, it was known that there was much more work to do and that time was tight for completing it before the planned opening in July. That was before the issues with the ventilation system were identified. It is really important that we are all clear about why the certificate was issued, given the problems that were known about at that point.

Alex Neil: There may still be a need to look at the NPD contract, to see whether lessons can also be learned about that.

Caroline Gardner: The public inquiry needs to be wide ranging. I am conscious that when Professor Cole looked at the Edinburgh schools project, he found that the NPD vehicle was not a significant cause of the problems. It was much more about the oversight of the construction work and the assumptions that different parties were making about who was doing that.

Chris Brown: I have a brief comment. One of the complications in this particular project was that the funding model changed. It was originally a capital funded project, which is one of the reasons why the health board developed the environmental matrix, as that would normally be its responsibility under a capital funded project. The funding route changed from capital funded to NPD, but as the health board had spent money on developing the matrix, it took the view—again, I think, based on

advice—that it should provide that information to the contractor to speed up the process of its developing a specification. The health board provided information that it would not normally provide under an NPD project, simply because it started off as a capital funded project.

Alex Neil: Perhaps there is a lesson in that as well.

Chris Brown: Yes.

10:45

Alex Neil: Has the public inquiry started yet? I know that this is like asking, "How long is a piece of string?", because once a public inquiry starts we never know when it will finish, but do we have a rough idea of how long it will take?

Caroline Gardner: The Cabinet Secretary for Health and Sport announced before Christmas that Lord Brodie would lead the public inquiry. They were due to meet before Christmas to discuss the terms of reference and the timescales, with the intention of providing an update to Parliament early in the new year. We have not seen that yet and I know no more than that.

Alex Neil: Okay. It will be difficult for the committee to reach any conclusions until we see the outcome of the public inquiry. A lot now depends on the public inquiry, for both Edinburgh and Glasgow.

Caroline Gardner: It does, and we know that public inquiry timescales are long—much longer than audit timescales.

Alex Neil: Absolutely.

My final question is about the additional costs of £27.6 million. As things stand, how robust do you think that estimate is?

Caroline Gardner: Of that, £11.6 million is the settlement that was agreed and paid in February 2019.

Alex Neil: What about the other £16 million?

Caroline Gardner: The other £16 million is the Government's estimate, made in the latter half of 2019, of the double-running costs and the improvements that are needed for the facilities that continue to be used. As Leigh Johnston said, we are not in a position to give the committee an assurance that those costs will not be exceeded. So far, we have no information that they will be, so it is the best estimate at this stage.

Alex Neil: You will presumably keep a close eye on that.

Caroline Gardner: As we do with everything, Mr Neil.

Alex Neil: Absolutely—thank you.

Liam Kerr: I have a couple of quick questions. Forgive me if I have missed this during the evidence session, but at paragraph 29 on page 17, your report states that the Scottish Government has appointed a new senior programme director to the project, who has a

“substantive role”

as

“Director of Strategy ... at NSS”.

Can you clarify whether that post holder works full time on the project?

Leigh Johnston: They currently work full time on the project, but they were keen for us to point out that they will go back to their substantive role once the facility is fit for purpose and open.

Liam Kerr: I understand.

My final question is about progress on the disposal of the old sick kids site and the proposed distribution of the proceeds from that. I understand that the NHS holds some of those assets, but that a charitable endowment fund owns a considerable proportion of them.

Caroline Gardner: I cannot help you much with that at the moment. I only know what has been reported in the press. Can Chris Brown add anything?

Chris Brown: No. I cannot answer that question in detail.

Liam Kerr: Thank you.

The Convener: I thank the witnesses for their evidence. I now close the public part of the meeting.

10:48

Meeting continued in private until 11:09.

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