



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 9 September 2015

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PUBLIC AUDIT COMMITTEE
13th Meeting 2015, Session 4

CONVENER

*Paul Martin (Glasgow Provan) (Lab)

DEPUTY CONVENER

*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE MEMBERS

Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Nigel Don (Angus North and Mearns) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

*Stuart McMillan (West Scotland) (SNP)

Tavish Scott (Shetland Islands) (LD)

*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Caroline Gardner (Auditor General for Scotland)

Fraser McKinlay (Audit Scotland)

Sandra White (Glasgow Kelvin) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Audit Committee

Wednesday 9 September 2015

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Paul Martin): Good morning, ladies and gentlemen. I welcome members of the press and public to the 13th meeting in 2015 of the Public Audit Committee. I ask all those present to ensure that electronic items are switched to flight mode so that they do not affect the committee's work.

In the absence of Dr Simpson for agenda item 1, we will move on to agenda item 2, which is a decision on taking business in private. Do members agree to take agenda item 7 in private?

Members indicated agreement.

Section 22 Reports

“The 2013/14 audit of Coatbridge College: Governance of severance arrangements”

09:32

The Convener: Agenda item 3 is an Auditor General for Scotland section 22 report entitled “The 2013/14 audit of Coatbridge College: Governance of severance arrangements”. I welcome the Auditor General for Scotland, Caroline Gardner; Fraser McKinlay, who is director of performance audit and best value at Audit Scotland; and Angela Canning, who is assistant director at Audit Scotland.

I understand that the Auditor General has a brief opening statement. The statement will be followed by questions.

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

My report to the committee is about severance arrangements in Coatbridge College. I prepared the report under section 22 of the Public Finance and Accountability (Scotland) Act 2000, which allows me to bring to Parliament's attention issues that arise from the audit of public bodies.

The external auditor of Coatbridge College gave an unqualified opinion on the college's 2013-14 accounts. That means that she was satisfied that the accounts provided a true and fair view and contained no significant errors. However, she included an emphasis of matter paragraph in her audit report, in which she drew attention to serious governance weaknesses in the voluntary severance arrangements for the college principal, five members of the senior management team and a member of staff in the principal's office. She also highlighted problems in accessing the information that she needed to conclude the audit. That delayed the audit and the annual audit report so that the accounts missed the statutory deadline of 31 December 2014 for laying before Parliament.

I prepared the report because I believed that serious failures in the way in which those charged with governance at Coatbridge College dealt with the severance arrangements should be drawn to the Parliament's attention through the committee.

Coatbridge College was one of three colleges that merged to form New College Lanarkshire as part of the wider college reform programme. Thirty-three staff left Coatbridge College before the merger took place on 1 April 2014, at a total cost of £1.7 million. That included the college principal, five members of the senior management team and a member of staff in the principal's office. The total severance cost for those seven

people amounted to £849,842, which was about half the total amount that was paid out in severance in 2014.

My 2013 report entitled “Managing early departures from the Scottish public sector” was clear that, before approving any severance payments, those charged with governance must ensure that the payments

“represent a good use of public money”

and that a clear audit trail is kept. That did not happen at Coatbridge College in the case of those seven individuals, and my report highlights serious failings in governance.

In particular, I draw to the committee’s attention to the following. Those who were charged with governance failed to meet the standards that are expected of public bodies. There was a lack of transparency in the decision-making process. No audit trail was kept. Payments that were made were greater than the college’s severance scheme allowed for. The severance scheme for senior staff offered terms that were significantly higher than those in the Scottish Further and Higher Education Funding Council’s guidance, and higher than those in the schemes of the other colleges that became part of New College Lanarkshire. There is no evidence that the college’s remuneration committee had access to the information and advice that it needed to fulfil its responsibilities. Finally, the college principal failed to take the steps that were needed to demonstrate that his conflicts of interest were properly handled.

Those governance failures have resulted in excess costs being incurred by the college and the public purse. They are also likely to damage confidence in the governance of the college sector, especially following previous failings in a number of other colleges that I have reported to the committee.

As always, we are happy to answer questions from the committee. Unfortunately, the appointed auditor for Coatbridge College, on whose work my report is based, is not able to be with us, so there may be some issues that we will need to follow up separately with the committee. However, we will do our best to answer the committee’s questions as completely as we can.

The Convener: Thank you for that brief opening statement.

I have a number of questions that I want to ask you, the first of which is in connection with the severance arrangements. You confirmed that the latest sum for that particular tranche of severance payments is just over £850,000. Is that correct?

Caroline Gardner: The total payment for those members of staff in 2013-14, which was the year that the auditor reported on, was £849,000. The

figure as a whole for the staff who left the college during that year was around £1.7 million.

The Convener: Can you clarify the arrangements that were in place for drawing down those funds? I take it that funds are allocated to the college to allow it to put in place severance arrangements. Who would it apply to for such funding?

Caroline Gardner: Our understanding is that the funding council made available around £1.3 million to the college to cover severance costs in general that arose from the reform process and that those funds were made available as part of the grant payments made to the college throughout the financial year. The funding council capped its contribution at £1.3 million, and the additional costs—the costs over and above that—were picked up by the college.

The Convener: The report refers to the issues that you have raised concerns about, including the arrangements that were in place for making those payments. Would you expect an audit process to have been available to the Scottish funding council? Should it have confirmed before it signed the cheque that such funds should be paid in the first place?

Caroline Gardner: At the time that the payments were made, individual colleges were not required to obtain approval from the funding council for the individual severance packages that they agreed. It is clear—I stated this in my report—that the funding council had concerns about the severance packages that were being discussed. It raised those concerns with the college’s chair and principal. There is no evidence to show that those concerns were passed on to members of the remuneration committee. As I said in my report, I believe that the remuneration committee did not have access to the information and advice that it needed to make the decisions that it took.

The Convener: The Scottish funding council was concerned and passed information on—whether to the chair, the principal or whoever. Did it pass that information on to the principal?

Caroline Gardner: My understanding is that it raised concerns with the chair and the principal.

The Convener: The principal had an interest, as the matter related their package, so there was an immediate conflict of interests. Obviously, we can go into further detail on the aspects of the report that deal with the arrangements that the college had put in place.

However, there is a separate issue. The Scottish funding council signed the cheque at the end of the day. Surely the fact that it did not follow

through on those concerns is equally a concern. Why was that not covered in the report?

Caroline Gardner: My report focuses on the audit of Coatbridge College and sets out what we found when investigating the circumstances. I share your frustration that payments were made in spite of the funding council raising its concerns with the chair and the principal. Your questions about the sanctions that were available to the funding council and the action that it took are better directed to the funding council.

The Convener: Could the funding council have decided not to make the payment? Would that option have been available to it? What was the urgency in concluding the arrangements? Those people were not going to go away. They were entitled to a package; it is not as though they were going to disappear before the package was concluded. Should the funding council not have said that it would review the position that it found itself in? If it had concerns, should it not have ensured that all those concerns were audited properly and that the proper decisions were taken through the appropriate channels at the college? It should have made sure that the principal was not involved in those decisions in the first place.

Caroline Gardner: You are absolutely right about the inherent conflicts of interest. At the time that the decisions—and the payments—were made, colleges were not required to obtain approval from the funding council. That changed from, I think, December 2014; the funding council is now able to veto such severance packages. At the time, it was not able to do that.

The funding council could have decided to reduce the general grant paid to the college by the amount that it felt had been overpaid. However, as it has said to the committee in previous evidence sessions, it felt that that would have punished other staff and students at the college. That is an issue that you may want to explore with the funding council. It is clear that it raised concerns, but those concerns were not acted on within the college.

The Convener: Before I pass you on to Mary Scanlon, one of the issues that the committee wants to clarify is whether any issues of criminality have been reported to the police.

Caroline Gardner: I did not find—and the auditor did not find—evidence of criminal liability. The auditor specifically says that she believes that the college had the legal power to make those payments under the arrangements that were in place at the time. It is very clear that there has been a serious failure of governance and that payments have been made that need not have been made to individuals under the reform process.

Mary Scanlon (Highlands and Islands) (Con): I am not a lawyer, but if there are no issues of criminality, are there issues of fraud or corruption?

Caroline Gardner: The auditor having looked at the circumstances and, I understand, New College Lanarkshire having taken legal advice, the view is that that is not the case. This is a governance failure and it is about the accountability arrangement between the college as it was then constituted and the funding council.

Mary Scanlon: I have to say that I have been absolutely shocked reading this report. This is probably one of the worst examples that I have seen of people taking full advantage of a situation to line their own pockets. No one is named in the report, but are the people who enjoyed those severance payments still working in the college sector?

Caroline Gardner: My colleagues here will keep me straight. The principal of the college is certainly not employed in New College Lanarkshire. I am not aware of where else he may be employed now.

Mary Scanlon: Are the other people who were given quite excessive payments still working in the public sector?

Fraser McKinlay (Audit Scotland): We know that they are not working in New College Lanarkshire. We do not know whether they are still working in the college sector or elsewhere.

Mary Scanlon: I ask because of our previous experience with North Glasgow College. We were told that we could not pursue people and ask for evidence because those who were culpable had left the sector. They had gone off to wherever and that was it. It would be helpful to know whether that is the case here.

If the convener will bear with me, I will be very brief, but I think that it is worth stating for the record the reason why other committee members and I are so shocked. The report states:

“It is unclear who developed the terms ... that senior management would receive a lump sum equivalent to 21 months’ salary.”

The principal received

“an additional three months’ severance for taking the college ... through to merger”.

The principal was also given an additional 3 per cent pay rise in January 2013, when there was a Government pay freeze across the whole public sector—a pay freeze that I agreed with.

The principal left in October and was granted six months’ pay in lieu of notice. The report goes on to talk about the final payments for the senior management team, which exceeded the agreed terms. A member of staff in the principal’s office

received salary enhancements of around 10 per cent. Again, that was during a pay freeze. Those enhancements were included in severance calculations, which was probably—for them—a smart thing to do. Three of the five members of the senior management team were, coincidentally, on sick leave for several months up to their departure. Finally, there is no documentation about the re-evaluation of a post that led to a 19 per cent pay increase.

09:45

Anyone in the public sector who has had to endure a pay freeze for three years—there are quite a lot of them out there—will be pretty angry to see how those people were allowed to get away with it. The last time that we dealt with such a situation, which was in North Glasgow College, the fault was put at the door of the Scottish funding council, which had not given advice and had not worked with the college. However, as far as I understand from what I can read, the Scottish funding council worked hand in hand with Coatbridge College every inch of the way. It is all very well to say that its advice was not taken, but surely the Scottish funding council has to take some responsibility. We are all aware of the cuts in the college sector. We are talking about money that could have gone to the chalk face to help more students get a career. Aside from the fault in the college, where was the Scottish funding council at fault?

Caroline Gardner: I share your frustration, Mrs Scanlon—I have brought the report to the committee so that you can see the serious failings in governance that took place in the college. It is clear that the primary responsibility sits with the board of the college and the principal who, as accountable officer, was accountable to the funding council for the use of public funds. It is also clear that the funding council was aware of the problems that were emerging during the agreement of the packages and raised its concerns with the chair and the principal. As far as we can tell from the very limited evidence that is available, those concerns were not passed on to the remuneration committee, and the funding council felt that it had no sanctions to apply. If you want to explore that further, the funding council is the appropriate body to take it up with.

Mary Scanlon: I appreciate that and I realise that you cannot speak for the funding council but, following what happened at North Glasgow College, I was assured in evidence and in information from the funding council that was given to the committee that measures had been put in place so that, if it worked with a college, such a situation could not arise. I am not sure that we have a system that is fit for purpose, given that

the funding council cannot take any sanctions against the college. Can I just ask—

Caroline Gardner: Could I interject there?

Mary Scanlon: Please do.

Caroline Gardner: It is worth being clear that the changes that came in took effect from December 2014, which was after the decisions were taken at Coatbridge College and the payments were made. That was one of the reasons for the changes. At the time, it would have been possible for the funding council to have withheld some or all of the college's grant, but it chose not to do that because of the wider concern, which it has expressed to the committee previously, about the impact on other staff and students.

Mary Scanlon: The funding council chose not to do that, and our recommendation was that the funding council should work with colleges. My point is that it worked with Coatbridge College, but we have dreadful allegations of corruption and fraud.

As I was saying to committee members earlier, I have seen a colleague named and shamed on the front page of *The Sun* for claiming for a 48p pint of milk. On the same front page, a Scottish National Party colleague was named for claiming for a £1.99 umbrella for their constituency office. Today, we are talking about hundreds of thousands of pounds being taken out of the public system. Why are no names given? Why are these people not named and shamed? If no sanctions can be taken, surely at the very least we can name and shame them.

Caroline Gardner: I share your frustration about the failings in governance and the extent to which public funds were spent unnecessarily for the benefit of individuals. The names of the individuals involved are in the public domain through the college's annual report. They are not withheld for any reason other than that of focusing on the facts of the matter as the decisions were taken and unfolded.

Mary Scanlon: I think that I am right in saying that the names are not in the report that we have in front of us today.

Caroline Gardner: No, you are absolutely right. They are available in the college's annual report and accounts, so they are in the public domain.

Mary Scanlon: Right. Can I just ask why you did not put the names in the report that we have in front of us today?

Caroline Gardner: My focus was on the decision-making process and the consequences of that. There was no other intention behind our

decision. I was aware that the names were in the public domain, and that was behind the decision.

Mary Scanlon: I have a final question. Given that the factual information that you have brought to the committee is very serious—I have to be careful with my words in terms of not making allegations of fraudulent or corrupt practice—can anything at all be done, as far as you are aware, to hold those individuals to account?

Caroline Gardner: This committee has an important role in holding individuals to account, in this case and more generally. I have brought the circumstances to your attention. You can require the accountable officers of the organisations involved to give evidence to you, and I understand that you can invite other individuals to do so.

Clearly the committee will want to make its own decisions about what action to take next, but I think that calling witnesses to explain to you the circumstances that unfolded during 2013 at Coatbridge College would send a powerful signal.

Mary Scanlon: I will leave it there just now—thank you.

The Convener: Before I bring in Sandra White, I welcome to the committee Dr Richard Simpson, who I understand was delayed, and ask him to declare any interests that might be relevant to the committee's remit.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I draw the committee's attention to my interests in health: my membership of the British Medical Association; my fellowships of the Royal College of General Practitioners and the Royal College of Psychiatry; and my membership of a number of organisations. I will provide the clerk with a list of those organisations; I could list them all now but it would probably take too much time.

The Convener: Thank you, Dr Simpson. You will now be able to participate in the committee.

Dr Simpson: I again offer my apologies to the committee and our witnesses. In my 10 and a half years on the Health and Sport Committee and the Health Committee, I was delayed only once, so this is a bad start to my journey on this committee.

The Convener: Thank you. I will now bring in Sandra White.

Sandra White (Glasgow Kelvin) (SNP): Good morning, Auditor General, and thank you very much for the report. I will not repeat everything that has been said by the convener and Mary Scanlon, but I absolutely share their concerns. For seven people to take more than half of the severance budget is absolutely disgraceful.

I want to pick up on a couple of points. First, we do not know whether any criminal proceedings are going ahead or whether any charges have been

made, but apart from the actual severance amount, what I find astounding is that the senior staff left before the audit was complete, which is very concerning, and that the report was not laid before the Parliament at the right time. Are there any checks and balances or guidance in that respect? If we as parliamentarians or the Scottish Government did not lay a report in time, sanctions would be taken against us. Were any sanctions taken against anyone at the college for not meeting the deadline?

Caroline Gardner: I will make two points in response to that question, Ms White. First, reorganisation led to a particular set of circumstances right across the college sector; by its very nature, it meant that senior people left colleges throughout Scotland. I have reported on other circumstances not as serious as this situation in which that caused problems or in which severance was not managed as well as it should have been. Reorganisation had a knock-on effect on the preparation of financial accounts, the auditor's ability to audit them and the reports being laid before Parliament.

With regard to the incorporation of colleges into the public sector, and the changes to their accountability arrangements, colleges are now required to comply with a number of conditions, including those in the "Scottish Public Finance Manual", which specifies the dates by which their accounts must be available for audit and by which the accounts and the auditor's report must be laid by the Government in the Parliament. If colleges fail to meet that condition, among other conditions, the funding council is able to take sanctions against them, including withdrawing their grant. At the time of the situation at Coatbridge College, the college was not part of the public sector as it would now be, so those sanctions were not available.

Sandra White: So changes have been made since the North Glasgow College investigation, perhaps in response to it.

Picking up on the point about the Scottish funding council, I note from your report that the funding council contacted the college on 10 October, 16 October, 22 October and 23 October. In the end, it told the board that it would not fund the principal's package beyond the 13 months, but it still went ahead. I also note in the report that, when that was reported to the remuneration committee, the board did not even mention the Scottish funding council's letter to it. What can I say? Obviously I cannot say the word "criminal", but according to the recorded minutes, the board deliberately misled the people on the remuneration committee. When the new chair took over on 25 October—only the day after—they basically said

that they apologised because the advice had not been put forward.

Surely some form of sanction could be applied there. I do not like to use the word “criminal”, but actions were taken that deliberately misled the remuneration committee.

Caroline Gardner: There is absolutely no doubt that there have been very serious failures of governance; indeed, they are among the most serious that I have seen during my time as Auditor General.

One of the challenges that we and the college’s auditor faced was that there was very little evidence available of what happened. There are minutes, but they are incomplete; there was disagreement about them in the following remuneration committee minutes; and there were no business cases or papers available to the auditor setting out the basis on which the remuneration committee members made their decision. As I have said in my report, it appears to me that the full information that was available to the board chair and the principal was not passed on to members of the remuneration committee—and as you have pointed out, Ms White, the new chair of the board apologised for that after the event. If the committee wants to explore the decision-making process that the funding council went through and what sanctions it might have been able to apply, that would be best taken up with the accountable officer of the funding council.

Sandra White: Thank you. I will leave it there for the moment.

Stuart McMillan (West Scotland) (SNP): From start to finish, the report shows that what took place at the college really was a disaster. I will be careful with my language—I would suggest that a whole series of incidents of moral corruption, rather than anything else, went on at that particular facility. What has happened has been just appalling.

Paragraph 20 of the report highlights a whole host of dates on which the SFC was in contact with various people at the college. In paragraph 21, you note that

“It is not clear from the available evidence”

whether information was passed on, which goes back to what you said a few moments ago. In paragraph 22, you state:

“It is clear that the terms being discussed by the Remuneration Committee were not in line with the advice of the SFC”.

The SFC provided advice, but

“the Chair did not provide the Remuneration Committee with complete or accurate information about the advice provided by the SFC.”

That is absolutely appalling.

The committee has a decision to take later on, but one of the things that struck me was, as you have mentioned, the changes that have taken place from 2014 onwards. I—and I am sure all committee members and everyone else in this room—would like to know that, as a result of those changes, this type of activity cannot happen again.

Caroline Gardner: I would like to be able to give the committee that assurance, but I do not feel that I can. There have been improvements and clarifications to the accountability between the principal and the board of a college and the funding council, which go along with colleges moving to the public sector and the new conditions that are applied to them such as the requirement for compliance with the “Scottish Public Finance Manual”. There is no question about that.

10:00

Equally, when the committee took evidence from the funding council earlier this year, it heard about the dilemma that it feels it faces in considering sanctions against a college, in that the main sanction that is available to it is that of withdrawing the college’s grant. Although that is a sanction on the college, its impact is often felt by the students and the other staff at the college. I think—and colleagues will keep me straight here—that the funding council told the committee that it was considering what further sanctions might be possible, and the committee might want to explore with it what stage that consideration has reached and what it thinks might be possible in future.

I also think that the committee’s consideration of the matter will have a serious effect on the decisions taken by those who are charged with governance in colleges in future, because it makes it clear that there is proper scrutiny of the decisions that are taken. I share the committee’s frustration that it is not possible to undo the decisions that were taken and the payments that were made, and the committee might like to explore that issue further with the funding council.

Stuart McMillan: From what you have said, I still have some concerns that, despite the changes that have been brought in, such activity could still take place, albeit not at the same level. How can we tighten up the new system?

Fraser McKinlay: It would certainly be much more difficult to make these kinds of severance payments now because, as the Auditor General has mentioned, as a result of reclassification and all that comes with it, the funding council, in effect, has a power of veto that it did not have when the payments in question were made. Therefore, it could say to a college, “No, you’re not doing that.”

That said—and coming back to one of the points that Ms Scanlon made, which was raised in relation to paragraph 20 of the report—I think that one of the reasons why the situation at Coatbridge College appears to be in a different league in terms of its seriousness is that, although the college had such a large amount of information and traffic from the funding council saying that it had serious concerns about the proposed payments and that making them would not be in line with good practice, the college still went ahead with them. If some people are intent on doing a particular thing, no internal control in the world can prevent it from happening. Therefore, we would never tell the committee that such a scenario could never arise again—we are not in a position to give you that assurance—but we can say that the arrangements that are in place would make it much more difficult for that to happen.

Stuart McMillan: Is there a legal element to the new arrangements? If someone were to breach them and undertake some activity akin to the activity at Coatbridge College that we are discussing, would some type of legal recourse be available?

Caroline Gardner: I do not think that there would be legal recourse, but there would be clearer accountability to the funding council at the time because, as Fraser McKinlay has said, it would have the power to veto packages. Accountability to this committee is another important mechanism. As far as we can tell, Coatbridge College had the legal power to do what it did, but it clearly represented a significant failure of governance and a very poor use of public money.

The Convener: Mr McKinlay has said that the funding council now has a power of veto, whereby it can say to a college that it is not going to get its chequebook out to pay the money. Are you honestly saying that it was not in a position to do that at the time?

Fraser McKinlay: There are two parts to the issue. The funding council paid out what would have been paid under the normal terms of the scheme for severance payments. At the time, it was entirely within Coatbridge College's gift to top that up and pay the package that it wanted to pay, which is what happened.

The funding council probably could have said, "We're not handing over any of our bit of the money," but it would still have been entirely within the college's legal powers to top the money up and to pay it out. The difference now is, as the Auditor General has mentioned, that a college must seek and receive approval specifically from the funding council—

The Convener: I do not want to lose track of what happened previously. Was it within the funding council's gift to say, "Sorry—we're not giving you this money, because we're not satisfied with the arrangements that are in place"? Could it have done that?

Fraser McKinlay: Our understanding of how the system worked is that, at the start of the year, a specific pot of money was set aside for each college for severance payments to do with regionalisation.

The Convener: I am sorry, but that was not my question. With respect, I think that the question that I am asking is clear. I am not worried about arrangements—we have already gone over them. Was it within the funding council's gift to say, "We have this sum of money, but we're not giving it to you. Because of the exchange of emails and correspondence that has taken place, we are now not going to allocate this money to you"? Would it have been able to not pay the money out—yes or no?

Fraser McKinlay: My understanding is that it could have done that. That is worth checking with the funding council.

Nigel Don (Angus North and Mearns) (SNP): I do not want to go over what other colleagues have said; I want to go beyond it and reflect on the fact that it comes with the territory of being Auditor General that you will meet this kind of thing year in, year out, although it possibly does not always involve such big numbers or such blatant behaviour.

We have spoken about the law, and you have clearly indicated that your legal advice is that nothing that was done here was criminal, as it is currently understood. Would it be fair to deduce that the law of the land is inadequate, and that we should be changing it?

Caroline Gardner: I am not a lawyer. It is clear that the committee and I share a sense of real frustration about this particular case and about other cases that come to your attention. I think that that frustration will be shared by men and women across Scotland, for reasons that we all understand.

I do not know what the legal remedy is. I can tell you what my powers are and I can bring the matter to your attention so that you can use the mechanisms that are available to this committee. There is a separate discussion to have about what might in legal terms be a better way of doing this, but I am not qualified to advise you on that.

Nigel Don: That is a fair comment, but I guess that I was looking for your advice in that regard. I know that you are not a lawyer, but I thought that your perspective would be useful.

Mr McKinlay has referred to the internal controls, which failed. They often fail—that is exactly what you are looking for. The ultimate external control is the criminal law; it is simply because it is there that most people behave correctly most of the time. Do you agree that we should be exploring whether there should be a change in the law? I have long held the view that corporate criminal law is pretty awful—to put it politely, I think that Scots corporate criminal law is not in a good place. That is one of the reasons why it is difficult to prosecute the banks, for reasons that we all understand. Should we be addressing all the issues around how people behave in financially responsible places?

Caroline Gardner: It is safe to say that a case this egregious is unusual. As Fraser McKinlay has suggested, what appears to have allowed it to happen is the fact that the chair of the board and the principal worked together to achieve a certain outcome and that members of the remuneration committee did not receive the information that they needed to make their decision or the information about the funding council's concerns.

Like you, we have heard that the new arrangements should mean that this cannot happen again, because the funding council now has to approve severance packages before they are paid. However, I do not know whether it would be possible for the sort of collusion that we are discussing to circumvent that control. It is worth exploring with the funding council how it expects to monitor those sorts of decisions and the payments that go with them. If that leaves a gap, it would also be worth exploring whether other remedies, including legal ones, are needed. I would hope that they would not be. Most public servants do not behave in this way most of the time but, occasionally, a case comes along in which the normal controls have simply failed to have their intended effect.

Nigel Don: Again, Auditor General, I am glad to be able to ask you this question, because you see the wide sweep of public service. Surely this is just a particularly bad example of the kind of misuse of funds, the deliberate withholding of information and the feathering of one's nest that are always likely to happen when people are in charge of quite large sums of public money and can find ways around accountability, which intelligent people generally can do. Is it not your observation that tightening up the criminal law would help across the board?

Caroline Gardner: I do not know what specific remedy would prevent cases like this from happening. The changes that have been made in the further education sector will reduce that likelihood as the arrangements effectively provide

a stop power for the funding council to avoid such cases.

The committee plays an important part in holding individuals to account. Equally, I share your frustration that there is an area where the mechanisms in place have not been effective and that we do not know how effective they will be under the current arrangements. I am very happy for us to go away and have a look at the wider set of circumstances in this and other cases that have come to our attention and which have been brought before the committee to find out whether the mechanisms would be effective. My first reaction is not that there is a legal problem here, but that there has been a failure in the governance and the accountability arrangements that have been put in place with regard to the use of public money.

Colin Keir (Edinburgh Western) (SNP): I will partly follow on from Nigel Don's point. The information that went between the SFC and the senior officers, which I assume includes the principal, did not get through to the remuneration committee. Is there any evidence that the information was withheld intentionally or was it a genuine oversight?

Caroline Gardner: There is very little evidence available. My professional judgment, which I hope is clear in the report, is that it is very unlikely to be a case of oversight. As far as I am able to draw a conclusion from the evidence, it was a deliberate withholding of the information.

Colin Keir: There was a clear conflict of interest between the principal and the others who had received the information. The SFC also had doubts about the payments. I am not a lawyer, but if it is the case that information was deliberately withheld, and given that obvious conflict of interest, surely that brings into dispute the view that there is no legal recourse to recover funds or to take civil or criminal action?

Caroline Gardner: I have no doubt that the principal had a serious conflict of interest and that he did not take the steps that he should have taken to manage the conflict. That is covered in my report. I understand that New College Lanarkshire, when it took responsibility for Coatbridge College's affairs, took legal advice on what action was possible, including on seeking to recover the funds that had been paid out, and it was advised that that was not possible. That legal advice is in play at the moment.

Colin Keir: Is there a clear indication anywhere in the old college's management rules, guidelines, contracts or whatever we want to call them that any conflict of interest must be reported?

Caroline Gardner: That is covered very clearly by the principles that should govern everyone in

public life. The Nolan principles, which are well accepted, run through all the codes of conduct that apply to public servants. It should be clear to everyone in a senior position that the principle of integrity, for example, means that, if someone has a conflict of interest in which their personal position and that of their institution may be in conflict, they should take all the necessary steps to manage that conflict. That did not happen in this case. I do not think that the lack of specific guidance is a reason that could be used to explain or excuse that.

Colin Keir: I asked that simply because, if doing X, Y or Z is known to be good practice in the public service but, as far as we know, there is nothing on paper on the agreement of the management principles of the remuneration and the senior officers of the college, and if there is no recourse for either the recovery of funds or some form of investigation, I do not know where the law would stand. I do not know how we would fight against such a thing happening again if the circumstances were the same, because there do not appear to be any teeth anywhere that force people to act to the standards to which they are meant to work.

Caroline Gardner: The principles of conduct in public life are clear and they run through all the available guidance including the codes of conduct, the “Scottish Public Finance Manual” and the terms of appointment for accountable officers. The question is what sanctions are appropriate and are available to those who are responsible. Changes have been made to the sanctions that are available to the funding council in relation to pre-approval of voluntary severance packages before they are agreed and paid and in relation to compliance with the terms of the “Scottish Public Finance Manual”.

Perhaps there is a gap beyond that that needs to be explored, but the question for the committee today is whether the accountability mechanisms that were available at the time were applied as fully as they could have been and what the reasoning process was for the funding council in applying those mechanisms.

10:15

Mary Scanlon: I seek clarity in relation to the questions from the convener and Stuart McMillan. You confirmed that payments were made that exceeded the terms of the college’s severance scheme. There is absolutely no doubt about that, and the payments also exceeded the terms of Scottish funding council guidance. You said that some college staff chose to top up their severance payments and line their own pockets. Is it perfectly acceptable for them to do that? Did they have the power? I know that there was no audit trail or trail

of evidence, but did they have the power or authority to top up the severance payments above the level of the college scheme and Scottish funding council guidance? Did they have carte blanche to top up by as much as they wanted?

Caroline Gardner: Clearly, it was not perfectly acceptable for them to do that, which is why my report is in front of this committee today. In investigating this, the auditor concluded that there was no legal barrier to them doing it. They had the legal power to do it.

Mary Scanlon: That is my point. There was no legal barrier. Those staff could top up by as much as they wanted. They could have gone beyond what is in the report had they chosen to do so, and they would have been fully aware that there was no legal barrier. That is all I wanted to know.

Dr Simpson: Mary Scanlon has opened up the area that I want to discuss rather nicely. The remuneration committee would have been aware that this was a top-up.

Caroline Gardner: Yes. As my report shows, the committee made decisions about terms for the seven people involved that went beyond those that were available for the other staff in the college.

Dr Simpson: Exactly. Did the remuneration committee require to justify to anybody that the payment was appropriate? Could the committee have known the normal terms that the funding council would have applied? Should the committee have sought independent guidance? There was an exchange of emails, but there was a failure to get information from the funding council. Should the remuneration committee, in fulfilling its duty, have sought external advice from somebody—Audit Scotland as the auditors, or the funding council—about whether the payments were appropriate?

Caroline Gardner: The lack of an audit trail makes it difficult to give you a firm answer to that. However, as I say in my report, it is very clear that the remuneration committee did not have available to it the information and advice that it needed to make the decisions that it made. Anybody in such governance positions of responsibility should be aware of their responsibilities to seek the information and advice that they need.

Dr Simpson: So there was a failure in the remuneration committee.

Caroline Gardner: In that sense.

Dr Simpson: I am trying to think of the future. You have not named the individuals, but you said that their names would be available to us in the public domain. I assume that the individuals who were involved—the principal and the chair—will now be banned from holding public office. Who would be responsible for that? Would you recommend that the appropriate Government

committee should ensure that those people never again hold public office or are banned, as they would be if it was a company, from holding public office for a period, depending on how egregious offence was? It seems to have been pretty egregious.

Caroline Gardner: You are absolutely right that the former board chair and principal hold the primary responsibility. Although there were failings among the other members of the remuneration committee in pursuing the information and advice that they needed, it is also clear that they were not receiving information held by the principal and chair that was very relevant to their decision making.

I do not know what the Scottish Government's process is for, in effect, identifying individuals as being unfit to hold public appointments in future. That might be an area that the committee chooses to explore with the Government.

Dr Simpson: My final question goes back to the remuneration committee. It clearly failed in its duty, so I would hope that none of the members of that committee has remained on any remuneration committee. I know that we now have an amalgamated college, but I hope that none of them has transferred to the new body.

Caroline Gardner: You would need to take up that question with New College Lanarkshire and the funding council.

Stuart McMillan: Did you look at the membership of the remuneration committee?

Caroline Gardner: In carrying out the work that the auditor needed to do to complete her audits—for example, reviewing the minutes and the other limited documentation that was available—she did her best to interview members of the remuneration committee. That was the process that she went through, and it is the source of some of the evidence that you see referred to in my report.

Stuart McMillan: Were there any family or friendship links between members of the remuneration committee and the individuals who are discussed in the report?

Caroline Gardner: Not that we are aware of. Two individuals with the same names are involved but, as far as we are aware, they are not related.

The Convener: Paragraph 11 in the report says:

“One committee member indicated that she had not had enough information at the time to allow her to make the decision.”

We need to be clear in terms of casting aspersions over the entire committee. Somebody on the committee may have had issues with the

information that was being provided to them. We need to be careful on that issue.

Stuart McMillan: I accept that, convener. I was well aware of that. I was trying to work out whether there was any other related activity.

Colin Keir: Richard Simpson got me thinking about something. The auditor passed a note that basically gave an unqualified set of accounts. On two occasions this morning, you have referred to a lack of an audit trail somewhere along the line. Why were the accounts unqualified? I am not sure how much weight you put on these things, but it appears to me that, if there is a lack of an audit trail, it is difficult to give an unqualified set of accounts.

Caroline Gardner: The opinion on the financial statements is a very particular declaration. It is a confirmation from the auditor that the financial statements give a true and fair view of the college's financial position at the point of the audit. In order to give that opinion, the auditor had to look at the internal controls for systems of collecting income and making payments, paying salaries and so on, as well as a range of other things. She concluded that all of that was working soundly, as it had done in previous years.

The mechanism that she has for raising concerns that are significant—as these clearly are—but do not affect the numbers and the financial statements is to include an emphasis of matter paragraph in her audit report. That is what she did in the circumstances, and that is what led me to make a report to Parliament under my statutory powers. I am satisfied that that is the appropriate response.

The Convener: I take it that, as part of the merger process, severance arrangements would be in place for other members of staff such as catering staff and staff on lower pay grades. Was there any enhancement of the arrangements for their severance payments? Was that ever considered by the remuneration committee?

Caroline Gardner: As my report says, in the January 2013 consideration of the matter by the remuneration committee, there was a deliberate proposal to enhance the terms for the seven members of staff that my report focuses on, compared with other staff. A total of 33 staff left during the financial year. Severance packages for the other staff were calculated on the standard basis assumed by the funding council and the other colleges that were part of the merger.

The Convener: So there was a two-tier system for catering staff, cleaning staff—

Caroline Gardner: And other lecturing staff.

The Convener: Unless people are higher up the tree and are involved in the decision-making

process, they just get what they get. We need to look at how we can enhance the decision-making process. Who made the decision to differentiate between those two classes of employee?

Caroline Gardner: We do not know who proposed to the remuneration committee that there should be a two-tier system, but we know that the remuneration committee made the decision to have that in January 2013. However, as you said, convener, we found that when the remuneration committee considered the minute at its following meeting in October 2013, a couple of committee members raised their concerns that it was not a full record.

The Convener: Why did the funding council accept enhancements for management staff when the merger was taking place but let catering, cleaning and lecturing staff get the basic package? What kind of environment was it that allowed that approach?

Caroline Gardner: I share your unhappiness that that happened. My report says that that is one of the questions that the funding council asked the college in October 2013; it asked for assurances that the arrangements that were being proposed for the senior management team and one other member of staff represented good value for money.

I think that it is a question for the funding council as to what actions it took on the back of the concerns that it clearly had about that aspect of the severance discussions and the others that I refer to in my report.

The Convener: There seems to be a class approach here, which is that those in lower pay grades get the basic package but those in higher ones get an enhanced package.

Caroline Gardner: I can see no justification for having a standard two-tier package. I can see that there might be exceptional circumstances where an individual may incur additional responsibilities that might justify an additional payment. In any case, senior people almost always have higher salaries to start with, which leads to higher packages at the end of the process. I cannot see the justification for a two-tier approach, particularly for the small number of staff who were involved in this situation.

The Convener: Thank you.

Sandra White: If we look at taking further evidence on the issue, particularly on who in the remuneration committee agreed to having different packages, would it be advantageous for us to bring in those who were members of the committee to ask them about that? As the convener said, a package was agreed but seven staff members got enhanced payments. We know

that two members of the remuneration committee said that they did not recollect agreeing to that and were unhappy with it, but the other members of the committee agreed to it. However, there do not seem to be any minutes about that. Would it be advantageous to bring in the former members of the remuneration committee to give evidence as well?

The Convener: That is a matter for the committee to consider later in the meeting.

I thank the Auditor General and her team for their evidence. I remind members that we will discuss the matter under agenda item 7 later in the meeting.

I will suspend the meeting briefly.

10:28

Meeting suspended.

10:28

On resuming—

“The 2013/14 audit of NHS Highland: Financial management”

The Convener: I draw the committee’s attention to the responses that we have received from the Scottish Government, NHS Highland and Audit Scotland to the committee’s “Report on NHS Highland 2013-14: Financial Management”. Members will be aware that the Auditor General intends to publish a report next month on the audit of NHS Highland’s 2014-15 accounts.

Do colleagues have any comments on the responses? Will members advise me how they wish to move forward on the issue?

Mary Scanlon: We previously received a section 23 report that highlighted poor financial management at not just Raigmore hospital but NHS Highland, and we rigorously pursued that issue through our questions. I think that we should acknowledge the changes that NHS Highland has made, particularly in its standing orders, to address matters including the board’s acceptance of any future brokerage. That should have been in the standing orders a long time ago, but I am pleased to see that it is there now.

It is worth acknowledging that paragraph 4 on page 2 of NHS Highland’s response to our report refers to the fact that this committee has asked the Auditor General to report directly to us on the Raigmore budget and recovery plan for the next three years, which is something that I have asked many questions about. Raigmore is the main acute hospital for the Highlands and it serves a huge geographic area. The overspend at the hospital was £9.9 million and it is now just over £6

million. There are serious concerns about cutbacks and so on. I have been assured that the Auditor General for Scotland will report directly to the committee on how the budget and the overspend are being managed over the next three years.

I acknowledge that we found some very poor financial management, but we have to be big and professional enough to accept that some steps have been taken, although we are not yet at the end of the road. On that basis, and as a member for the Highlands and Islands, I would be content to note the responses. I look forward to the AGS's report, which is expected next month, and to continuing our scrutiny of NHS Highland.

The Convener: As no other colleagues have comments, are we agreed that we shall await the Auditor General's report, which will be published later in the year, and move forward from there?

Members *indicated agreement.*

Section 23 Reports

“The Scottish Fire and Rescue Service”

10:31

The Convener: Agenda item 5 is consideration of a written submission from the Scottish Government on the Auditor General for Scotland's report, “The Scottish Fire and Rescue Service”. Members may recall that we noted the AGS's report at a previous evidence session in May. The submission was in response to the follow-up to the committee's questions. Do colleagues have questions or comments?

Mary Scanlon: Sorry—it is me again. I highlighted the recruitment of retained firefighters. I appreciate that that is not a big issue in Glasgow, Edinburgh or other big cities, but the recruitment of retained firefighters is essential to having a fit-for-purpose fire and rescue service in the Highlands and Islands. Paul Johnston's letter from the Scottish Government makes no mention of and gives no commitment on the recruitment of retained firefighters. I want to put it on the record that I hope that we will get an update from Alasdair Hay or Pat Watters. I think that such an update was promised towards the end of the year. I would like to think that the accountable officer is on board in relation to those concerns.

Nigel Don: I will pick up on Mary Scanlon's comments. It is not an issue only in the Highlands and Islands—every rural community is dependent on volunteer firefighters. I share her concern, as we need to keep an eye on the issue across the whole fire service.

The Convener: Subject to the comments that have been made, do we agree to note the submission?

Members *indicated agreement.*

“Scotland's colleges 2015”

10:33

The Convener: We move on to agenda item 6. We have received written submissions from the Scottish Government, the SFC and Audit Scotland on the Auditor General for Scotland's report, “Scotland's colleges 2015”. The draft report that we will consider under item 8 takes the responses into account. Do members have any comments or questions on the responses?

Mary Scanlon: Sorry—it is me again. A couple of figures jumped out at me. I am very pleased to see that the colleges have increased—although it is only a slight increase—the number of students from deprived backgrounds. We have to welcome

that. However, I am shocked that the figures for the Highlands and Islands indicate that only 4 per cent of students come from the 10 per cent most deprived areas, whereas the figure for Forth Valley indicates that 27.9 per cent of students come from those areas. Why can some colleges do so well in opening opportunities to students from deprived backgrounds and others do so badly?

My other point relates to Audit Scotland's submission. It states that 23 members of staff left North Highland College through compulsory redundancies and that there were also some compulsory redundancies at Fife College. We have been told constantly since the mergers in 2013 that there were no compulsory redundancies. I wanted to note that point and put it on the record.

Nigel Don: I echo Mary Scanlon's comments on the issue that she has highlighted. Is it worth trying to do some work on why there are such wide differences in the figures in annex A of the SFC's submission? I would just like to understand the reasons for those differences—I am not being critical of anybody. One can understand that there are very small numbers in very small places, so I do not want us to worry about the 0.0s that occasionally creep in, but the figure in Aberdeen and Aberdeenshire is only 5 per cent, whereas the figure for Glasgow Kelvin College is 35 per cent. I would like to understand that difference. What is hiding behind that? Is there something else that we should be teasing out?

The Convener: How do we wish to take forward the issues that colleagues have raised?

Dr Simpson: Is there a mechanism for looking at variation? In addition to reporting the numbers, does the SFC go in and investigate outliers? Does it do funnel plots and say, "Here are the outliers. Why is the figure for Glasgow Kelvin College 35 per cent? What is it doing right? How has it overcome the barriers?" On the other hand, does the SFC investigate what efforts the colleges that are at zero, 0.4 per cent or whatever are making? Can we ask the SFC whether there is such a mechanism?

The Convener: I suggest that the clerk takes on board the points that have been raised and that we go back to seek further clarity on them before we come back to the committee on the issue. Is that agreed?

Members *indicated agreement.*

The Convener: As previously agreed, we will move into private session for agenda items 7 and 8.

10:36

Meeting continued in private until 12:12.

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