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Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 28 October 2015

Session 4

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PUBLIC AUDIT COMMITTEE
16th 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:

John Doyle (Former Principal and Chief Executive, Coatbridge College)
John Gray (Former Chair, Coatbridge College)
Laurence Howells (Scottish Further and Higher Education Funding Council)
John Kemp (Scottish Further and Higher Education Funding Council)
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 28 October 2015

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Paul Martin): Good morning. I welcome members of the press and public to the Public Audit Committee's 16th meeting in 2015. I ask those present to ensure that their electronic devices are switched to flight mode so that they do not affect the committee's work.

Agenda item 1 is a decision on taking business in private. Do we agree to take in private agenda item 3?

Members indicated agreement.

Section 22 Report

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

09:01

The Convener: Agenda item 2 is oral evidence on the Auditor General for Scotland's report, "The 2013/14 audit of Coatbridge College: Governance of severance arrangements". I confirm that all evidence will be in public. The committee expects witnesses to answer questions to the best of their ability. I advise witnesses that, should the committee deem it necessary, we may recall them to follow up on any matter that arises during the evidence taking.

All the people from whom the committee is scheduled to take evidence at this meeting and future meetings are here at the invitation of the committee. We welcome the assurances that we have been given that nothing said in evidence will be treated as breaching any confidentiality agreement. We have correspondence from the successor college to Coatbridge College confirming that. It is important to confirm that witnesses are free to answer questions that we put to them.

However, I point out that should any witness refuse to answer a question, we have the option of formally requiring them to return to answer our questions. In those circumstances, if any person who has been required to attend to provide evidence refuses or fails to answer the questions, they may be guilty of an offence.

I welcome our first panel of witnesses, who are from the Scottish Further and Higher Education Funding Council: Laurence Howells, chief executive; and John Kemp, director of access, skills and outcome agreements. I understand that Laurence Howells has a short opening statement to make.

Laurence Howells (Scottish Further and Higher Education Funding Council): I thank the committee for the opportunity to provide evidence on the section 22 report on Coatbridge College. As the Auditor General's report shows, we were concerned at the time about the approach that Coatbridge College was taking to the voluntary severance arrangements for the senior management team. We were very active in expressing those concerns to the chair and the principal of the college, and indeed to the whole board. As the AGS report says, we put those concerns in writing, we met the chair and the principal, and I took the rarely used step of exercising our power to insist on addressing the college board meeting.

I wrote to the college chair on 24 October 2013 asking that the college should not commit to the deal that was proposed to the principal until it had provided us with assurances that the arrangements were in accordance with good practice and represented value for the public. We were therefore dismayed that the college went ahead with the deal anyway.

We considered the scope for legal action to be taken to recover the money that had been spent, but after taking advice we concluded that the prospect of successful legal action was remote. We also considered whether we should withhold funding from or financially penalise the college after the event and concluded that, since those who had been involved had moved on, any financial penalties would simply damage the new college and impact on the staff and students of New College Lanarkshire.

Within the powers available to us at the time we could not prevent the college board from taking those decisions. However, since April 2014, all colleges have been required to seek approval from the SFC before taking such decisions. The new arrangements greatly reduce the risk of similar situations arising in the future. We are not complacent, of course. We need to be mindful of how we operate those powers and how we learn lessons from the events covered in the report.

I am happy to answer any questions that the committee has.

The Convener: I am looking for clarity on some issues that we should put on record for the committee. First, can you confirm that you are the accountable officer for the Scottish funding council?

Laurence Howells: Yes, I am.

The Convener: You are responsible for issuing funding as required, from the £1.5 billion provided to you per year.

Laurence Howells: Yes.

The Convener: Can you confirm that your salary is within the bracket of £110,000 to £120,000 per annum?

Laurence Howells: Yes.

The Convener: As part of your job, you have a significant responsibility to ensure best use of public funds. Is that correct?

Laurence Howells: Yes.

The Convener: In terms of the allocation of funding to Coatbridge College, ultimately you were responsible for ensuring that best value.

Laurence Howells: Yes.

The Convener: Were you concerned at any time that funds for the mergers process may have been allocated outwith the set parameters for severance payments?

Laurence Howells: As you can see from the evidence, we were very concerned that the payments were not being made within the guidance that we had provided, that the proper processes had not been followed by the college board to evidence that they were value for money and that proper records were not being kept, so yes, we were concerned. However, it was within—

The Convener: Did you ask the college to stop making the payments? You said that you were concerned, but did you at any time say, “No, you can’t make those payments, because they are beyond the parameters that we have set out. We ask you not to do that.”

Laurence Howells: In my letter to the college on 24 October 2013, I asked it not to commit to the proposed deal until it had provided certain assurances.

The Convener: Can you confirm that those assurances were that the proposal would be passed by the external and internal auditors? Is that correct?

Laurence Howells: Yes.

The Convener: You said that you would only commit up to 13 months’ salary.

Laurence Howells: Indeed.

The Convener: However, you said that the board itself could decide whether it wanted to extend the payment outwith the parameters of the 13 months. Is that correct?

Laurence Howells: Yes, provided that the board could evidence that it had done that through a proper process and that it had—

The Convener: What would the proper process be?

Laurence Howells: The proper process would be for the board to consider a business case, for—

The Convener: What would the business case say?

Laurence Howells: The business case would need to show that there was a good value-for-money reason for—

The Convener: Can you give me an example of a situation in which the board could have concluded that, yes, it was best value for money and it should pay that amount of money? For all we know, such a case could have been made. You did not say, “Please do not provide that amount because it is well outwith the parameters.” You waited until the decision was taken and then you said that you were pretty appalled by the decision. What were you appalled by? What concerns you?

John Kemp (Scottish Further and Higher Education Funding Council): Let us be clear. The reason that we—

The Convener: Sorry, Mr Kemp. I will bring you in shortly, but I am asking Mr Howells to answer those questions.

Laurence Howells: We were clearly concerned about the arrangement that was being made. However, it was for the college to make the decision and it needed to justify it. It is clear from the correspondence that we did not feel that we had heard any justification for the decision. Nevertheless, it was for the college to make that decision. We went as far as we could within the powers that we had at the time.

The Convener: I can see from the exchange of correspondence that you were involved in the process, Mr Kemp, so this is a question for you. When were you advised that the BACS payment was made to Mr Doyle? What date was it?

John Kemp: I think that it was on 25 October 2013. We had appeared at the board on 23 October. We followed that up with a letter on 24 October and we were advised by the incoming chair on 25 October.

The Convener: You were advised on the evening of 23 October that the decision had been taken to increase the payments.

John Kemp: We were not advised on the evening of 23 October. We attended the board and made a presentation to it. The board did not tell us on that evening what the outcome of the discussion was.

The Convener: When did you find out?

John Kemp: We followed that up with a letter on 24 October and we found out—

The Convener: Given your concerns, did you not phone the college to ask what decision it had taken?

John Kemp: You can perhaps follow that up with Mr Gray later. We made several attempts to contact Mr Gray to find out the outcome of the meeting, but the eventual response that we got was from the incoming chair, Tom Keenan—on 25 October, I think.

The Convener: Did you call the college the day after the meeting to say that you had heard that there was a board meeting the previous night? Did anybody advise you about what happened at the board meeting? You did not hear from anybody that a decision had been taken.

John Kemp: We contacted the college the following day, but the main contact was with—

The Convener: Nobody in the Scottish funding council was aware of the decision.

John Kemp: We were attempting to find out what had happened. I was not at the board meeting, but Laurence Howells and my colleague Sharon Drysdale were there and they made a presentation. I think that part of the decision was taken in the remuneration committee prior to the board meeting, so its members were not present at that discussion at the board meeting. We followed it up the following day with the person who had been chair, but he had stood down at that meeting and did not respond. We got a response from the incoming chair the following day.

The Convener: The BACS payment had already been made by that point.

John Kemp: Yes.

The Convener: Was it in Mr Doyle’s bank account or was it being processed?

John Kemp: I could not say whether it was in Mr Doyle’s bank account, but—

The Convener: The reason for my questioning on this is that we have seen ministers use legislation recently in respect of Glasgow Clyde College. Was that considered in this instance? You were obviously concerned. There were governance issues across the whole year in respect of the college; it was not something that just popped up that particular October. From your exchanges it is clear that you were obviously concerned throughout the whole year that there might be governance issues. Did you not think that you could possibly use the legislation that the minister used effectively recently at Glasgow Clyde College to close down the board, appoint new board members and ensure that the process would be carried out properly?

John Kemp: On the timing, it is worth saying that the issue was first discussed by the college in January. It had sought advice from the funding council and we wrote to it on 24 January with that advice, which you have seen. We were not aware until October that it had not taken that advice.

The Convener: So you had no issues about governance. You were happy with governance at Coatbridge College for that entire year. From January until October you had no concerns. Is that right? That is not what your correspondence says.

John Kemp: On the issue of the severance payments, we had no indication until early October that the college had not taken the advice.

The Convener: Was that not the point when you could have approached the minister? Did you ever approach the minister to say that you were concerned about what was going on at Coatbridge College?

Laurence Howells: We did not approach the minister. We kept Scottish Government officials informed of the process.

The Convener: What did you say?

Laurence Howells: We kept them informed of the process in relation to the merger generally and in relation to the—

The Convener: Did you say that you were concerned about the college?

Laurence Howells: I could not say that we said that we were concerned about general governance of the college. We were certainly concerned about the progress of the merger and about—

The Convener: You wanted Mr Doyle to move on, did you not? Did you want him to move on? Was he getting in the way of the merger process?

Laurence Howells: We wanted a successful merger. I am sure that we wanted that to be done well and we wanted it to create the college that we wanted. It was for the different parties to decide at the end of the day who would be the principal and how that would come about. Our primary concern remained the best way to organise college education in Lanarkshire.

John Kemp: Yes—I would concur with that. The concerns that we had about Coatbridge College between January and October were about the progress of the merger.

The Convener: So there were no governance issues at all.

I have a final question. I can see that your exchanges, which you would argue are pretty robust, refer to ensuring that the deal was agreed with the external and internal auditors. Can I take it that you had contact with the internal and external auditors during the process? Is that something that you would do?

John Kemp: We can follow this up in writing, but my recollection is that one of my colleagues contacted the auditors of not just Coatbridge College but other colleges on that guidance.

The Convener: It was written into the SFC's guidance in 2000 that such arrangements should be passed over to the external and internal auditors. Should you not have contacted the external and internal auditors to make sure that the deals were agreed by you? Is it your understanding that the deals were not passed to the external and internal auditors?

John Kemp: Clearly, the external auditors picked up as a matter of emphasis in the report—

The Convener: On the contact that you had with auditors about your experience of the issue, were both internal and external auditors aware of the severance agreements that were being proposed? Were the agreements passed by the auditors, which is what Mr Howells said in his correspondence that he wanted to ensure?

09:15

John Kemp: Our guidance is that they should be. The process is that the college should make a business case and pass it by the auditors. I do not think that it did that—not at the time.

The Convener: So the auditors were not made aware. It surprises me that you would not know that.

Laurence Howells: We asked the college to assure us that it had those assurances—

The Convener: I would expect you to follow that up and say, "Listen folks, we want to make sure, so we will contact the internal and external auditors to ensure that they are happy with what the college advises, given that we are talking about a serious amount of public money—significant six-figure sums." Did you not do that?

Laurence Howells: Well, maybe we could have done more to talk to the internal and external auditors. When I wrote, I asked the college to assure itself and to talk to the internal auditors, and I asked it to report that back to me explicitly. That did not happen: the board went ahead and made the payments.

The Convener: Could you have stopped the payments being made? Audit Scotland told me that technically you could have done that.

John Kemp: We could have stopped payments to the college by us, but as far as I am aware we could not have stopped the college making payments to Mr Doyle.

The Convener: You could have done that if you had intervened in the way that ministers intervened in relation to Glasgow Clyde College. Why did you not do that?

John Kemp: The process of what has happened at Glasgow Clyde College has been fairly lengthy. What we are talking about took place over a couple of weeks.

The Convener: It did not. It took place from January to October. We can see that from the exchanges that took place. Even if it had taken place over a couple of weeks, it should have been of concern to you. You said that you were appalled at the decision that was taken to award the enhanced severance payments. Surely over a couple of weeks you could have said, "Minister, we're really concerned about this and we want you to get in there and use the legislative measures that allow us to take over the board."

John Kemp: It is important to be right about the timescale. We gave guidance in January on severance, in response to a request from Mr Gray. We had no indication until early October that the guidance had not been followed. We did not see the minute of the remuneration committee's January meeting until October. During the intervening period, although we had concerns about progress on the merger—with Coatbridge being in the merger, then out of it, and so on—we had no indication that there was an issue about how the board was dealing with the severance guidance.

On whether the powers that were used in relation to Glasgow Clyde College could have been used in this context, the upshot of the issues at Clyde was that the board was replaced. In the case of Coatbridge College, the chair and principal were going anyway.

The Convener: I have a final question for Mr Howells. The merger process was a significant one. You knew throughout the process that severance payments would have to be made. Should you not have realised at the beginning of the process that there were potential conflicts of interest if principals dealt with the issue and that there was every possibility that colleges would award severance payments well above what you were proposing?

Surely we have to put in preventative measures. It is a bit like saying to the kids, "We've left a box of matches on the table top, but don't play with them", and then just leaving the kids to play with them. You cannot leave yourselves open to potential abuse. You did not use the powers that were available to you to prevent abuse. Have you reflected on that?

Laurence Howells: Indeed. I guess that we could have—

The Convener: The horse has bolted, has it not?

Laurence Howells: The horse has bolted. I guess that we could have emphasised even more strongly our severance guidance and we could have been even more active in supervising colleges in making such deals—of course, with hindsight, I would have wanted to do that.

I keep coming back to the point that when we were aware of the issues we were very active, as you can see from the documentation. I guess that my expectation was that the college board would listen to the advice, including the advice that I gave when I talked to the board directly, and would act accordingly.

Mary Scanlon (Highlands and Islands) (Con): I want to raise two main issues, given that no member here represents Lanarkshire. Who was in charge of the merger process, nationally?

Laurence Howells: In terms of the merger process, well, ultimately—

Mary Scanlon: It was announced by the Government and every party supported it. Who was in charge? Were you the accountable officer for the merger process?

Laurence Howells: Yes. It was SFC's responsibility to implement the process.

Mary Scanlon: Okay. Why did you have difficulties in Lanarkshire? Why did Coatbridge College agree to the merger, within a month disagree to it and within six months agree again? What happened there?

Laurence Howells: I think that Dr Kemp would be better to answer that.

John Kemp: From the beginning, when regionalisation was announced, Coatbridge College had been in favour of a merger of all the colleges in Lanarkshire. It had said so and had come to the funding council and made a case for merger. However, it had done so without consulting any of the other colleges in Lanarkshire, so part of the issue was that there was no consensus among the four colleges in Lanarkshire on the way forward. Three of them wanted to have a federation. Coatbridge had publicly stated that it wanted a merger of all four, but it had not discussed that with the other three.

The merger began after a period in which federation had been being explored for some time. Motherwell and Cumbernauld then announced that they wanted to merge, and Coatbridge came in, given its previous support for merger.

When Coatbridge came in a month or so after the merger had begun, the other two colleges were quite concerned not to go backwards. They had started a process, set up working groups and made some decisions about the shape of the merger, and they did not want to go backwards on that.

Once Coatbridge joined the merger, there was some friction between the three colleges about the extent to which things that had already been decided should be unpicked because Coatbridge was now in. That friction was discussed at the meeting of the merger partnership board in February and, as a result of that, Coatbridge left the merger.

I was at that meeting. My view was that the issues were not so significant that they should have led to Coatbridge leaving the merger. In the months after that, we sought to bring Coatbridge back in, but it took some time before an arrangement could be reached that would bring it back in. It did not decide to join again until late summer.

The Convener: Let us try to keep the answers shorter and more succinct.

John Kemp: I am just trying to make you understand why there was friction between the two sides.

The key point is that, although we had a role in supporting the mergers, they were carried out by autonomous institutions that decided that they wished to merge. We did not control the process in the sense of having the power to insist that anyone merge.

Mary Scanlon: Well, Laurence Howells has just said that he was in control of the mergers and that he was the accountable officer in control of the mergers. We need to be clear about that.

What I am trying to understand is why Coatbridge College opted in, then opted out and then came back in again. I will ask you again: was Coatbridge College an impediment to the mergers, was it looking for something that the other colleges did not agree with and were the severance payments part of the negotiations within the mergers?

I cannot understand why none of the 33 senior staff at Coatbridge was employed at New College Lanarkshire. What happened there? The word “takeover” rather than “merger” was used. Was that the case? Was there bad feeling that led to the severance payments? Did the staff perhaps think that, as they were not getting anything out of New College, they would just go for the severance payments, because they had nothing to lose? Am I reading it right?

John Kemp: I cannot speculate on why staff in Coatbridge College chose voluntary severance instead of jobs in the new college. I think that you are correct that, of the senior staff, none of them sought—or obtained—jobs in New College Lanarkshire.

However, the issues that led to friction between Coatbridge College and Cumbernauld and Motherwell colleges were about the progress of the merger—how the workstreams were operated and the speed of the merger. They were not about voluntary severance; we were not aware of that issue until fairly late on.

For the sake of completeness, I just want to say that once the severance issue came up as part of the due diligence process in early October 2013, the other two merging partners clearly had some concerns about it. Here was an apparent agreement to a particular severance deal that was not part of the Lanarkshire colleges merger deal and that left a liability that could—had it gone ahead for the whole of the senior management—

Mary Scanlon: Okay. Before I go on to my second question, was there any change in the severance arrangements at Coatbridge College between January and July, when the college agreed to opt in again?

John Kemp: Between January and July we were not aware of the severance arrangements at Coatbridge. We found out only in early October, as I said.

We had given guidance in January, the remuneration committee had made decisions and deals had been offered—

Mary Scanlon: Okay. You have taken me cleanly on to my second point.

Mr Howells, to whom at Coatbridge College did you, as the accountable officer, give guidance to say, “Stay within this scheme, which has been perfectly acceptable for the other colleges in Lanarkshire, and don’t go above that level”?

To whom did you give the guidance that was not given to the remuneration committee?

Laurence Howells: At several points in the process we gave that guidance directly to the chair, and obviously—

Mary Scanlon: So John Gray received that guidance.

Laurence Howells: Yes. Obviously, when I addressed the board, I summarised the guidance to it, and—

Mary Scanlon: But you were not at the board until October. I am talking about—

Laurence Howells: Earlier in the process, the guidance had been on our website, and the colleges’ principals had had it drawn to their attention.

Mary Scanlon: So John Doyle and John Gray had the guidance on keeping within the level of severance payments in January and February.

Laurence Howells: Yes.

Mary Scanlon: It is quite clear from the information that we have, including the Auditor General’s report, that the guidance was not given to the remuneration committee. Is that correct?

Laurence Howells: Not having been at that remuneration committee—

Mary Scanlon: Well, it is confirmed in the Auditor General’s report, and I presume that you would agree with that.

Laurence Howells: Indeed, yes.

Mary Scanlon: If an accountable officer withholds information from a committee that is making major decisions on hundreds of thousands of pounds, what word would you use to describe that?

Laurence Howells: The word that I have used—I would say that I am dismayed by that.

Mary Scanlon: I am not looking for your opinion. I am looking for the word that would be used.

Laurence Howells: I do not think that that is appropriate.

Mary Scanlon: Well, can I tell you what is appropriate? I looked in the dictionary yesterday, and withholding information is called "deceit". That is the definition in the dictionary.

The Scottish public finance manual uses

"The term 'fraud' ... to describe a wide variety of dishonest behaviour"

including

"deception, forgery, false representation, and concealment of material facts",

and states that

"It is usually used to describe the act of depriving a person of something by deceit".

I do not want to take up all my allocated time, but we have the evidence from David Craig and others to say that the remuneration committee did not have the information that you gave to the college. The committee therefore made a decision to give the principal 30 months' salary and whatever else to top it up.

The committee made that decision as honestly as it could, assuming that it was working with the guidance. The committee members were not dishonest people—they were not given the information that you gave to John Gray and John Doyle.

Do you agree that that critical piece of information, which has led to us all being here today, was concealed from the remuneration committee, and that that is why the committee made the decision that it did?

The information was withheld, I should say.

Laurence Howells: Withheld—yes. I think that that is true. Again, part of my reason for attending the board was to ensure that I had spoken to every board member and that they had heard it from me.

Mary Scanlon: Right. I will leave it there for now.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I want to pick up on a point that the convener made in connection with the actual payments. Presumably there was a transfer of funding from the SFC to the college in order to facilitate the payment. When was the decision taken to make that payment?

Laurence Howells: We would have made that payment retrospectively, some time in March 2014, because those deals were run on a claims basis. Retrospectively, a £1.3 million contribution would have been claimed by the college.

Colin Beattie: When you say "retrospectively"—

Laurence Howells: The events would have happened and the payments would have been made. We would have paid the money the following year.

Colin Beattie: So you physically made the payment in March.

Laurence Howells: We received the claim in March; we probably made the payment a little later than that. Do you know when, John?

John Kemp: I am not sure when we actually made the physical payment, but the claims were made the following year, towards March, which was later than usual for the mergers.

09:30

Colin Beattie: You obviously had a lot of concerns about the scheme that was being proposed. It could not take place unless you made a payment and it is the timing of that payment that I am concerned about. You said that your concerns arose in October 2013. Was the payment made before then, and if so, on what basis—against what business case?

Laurence Howells: We did not make the payment to the college until the following year.

Colin Beattie: The following year.

Laurence Howells: Yes.

John Kemp: That was a payment based on the Lanarkshire voluntary severance scheme, about which we did not have concerns. That scheme went up to broadly a one-year—13-month—payback. We only paid the amount that would be allowed under that scheme. We did not pay the excess amount in the case of Mr Doyle.

Colin Beattie: But if, when you reached the conclusion that there was a problem in October 2013, you had said to the college that in the circumstances it was inappropriate to make the payment, would the college have gone ahead?

Laurence Howells: In effect, we told the board that we did not think that it had created the case to make the payment; we did that at the board meeting. As you heard earlier, the board made the payment a couple of days later. We could, retrospectively, have said to the college that we were not going to contribute to that particular item. We chose not to do that because by that point—a year on—the people responsible had moved on.

Colin Beattie: You went to a board meeting on 23 October 2013.

Laurence Howells: Indeed.

Colin Beattie: What might have happened if you had said at that meeting that you were not going to pay?

Laurence Howells: In addition to the concerns that I was expressing at the time, I could have said that I would not pay if the board operated the scheme on that basis. I guess that at that point I was trying to say, "Here's the guidance; please follow it. If you follow it you will have a proper scheme." I was hoping at that point to persuade the board to make that decision.

Colin Beattie: When you left that board meeting, what was your impression of what had been decided? What did you think that the board was going to do? You did not stay for the whole meeting, obviously.

Laurence Howells: Indeed. My impression was that I had been listened to, and my expectation was that the board would take the advice and act accordingly.

Colin Beattie: Would you say that there was an issue about the due diligence process in relation to the payment from the SFC? Were you satisfied that you were paying against a scheme that was compliant?

John Kemp: I emphasise that our payments were under the Lanarkshire scheme and that we only paid up to the amount that was claimed under the Lanarkshire scheme. We were happy with the Lanarkshire scheme—it had broadly a one-year payback of the kind that we were supporting. We were always clear that we would not pay the payments in excess of the 13 months for Mr Doyle.

Colin Beattie: That is understood, but I would have hoped that, as part of the process of due diligence, you might have taken a more robust stance. In retrospect, do you think that that would have been appropriate?

John Kemp: With hindsight, perhaps we could have behaved differently. Our judgment at the time was that if we did not pay any of the VS it would not make any difference to the college's actions. Indeed, we attended the board meeting on 23 October and by 25 October the payment had been made. Any action that we took then not to pay even the amount payable under the Lanarkshire VS scheme would only have damaged the new college. That was the balance that we were considering in deciding whether to pay.

Colin Beattie: But if it had been made clear on 23 October that your payment was contingent on the overall plan being compliant, would we not have been able to avoid a lot of the trouble?

Laurence Howells: It is possible that that might have added influence. We could have been even more robust at that meeting. We could have added that to the conversation. As I said, my expectation was that the college board would live within the rules.

Colin Beattie: I have looked at the correspondence that you had in October 2013, and some of it is, as has been referred to, relatively robust. However, you did not get responses despite repeated attempts to contact people. Did that not make you suspicious? Did it not make you concerned? Were you not worried?

Laurence Howells: Indeed, and that is why there was an escalating level of concern and why I insisted on addressing the board. A board meeting is an opportunity for me to ensure that the entire board knows what the situation is.

Colin Beattie: Were you aware of when the board was going to make the payments?

Laurence Howells: No.

Colin Beattie: That was not part of the discussion.

Laurence Howells: No.

John Kemp: In our correspondence, we asked it not to commit to the payments.

Colin Beattie: Did it respond to that verbally or in any other way?

John Kemp: No.

Laurence Howells: No.

Colin Beattie: There was silence—it just ignored what you had put to it.

Laurence Howells: Obviously so, because then the action was taken.

Colin Beattie: You have talked briefly about the guidance that was issued. My understanding is—I think that I have a copy of the guidance somewhere in my pile of paper—that you sent out a circular in 2000. Was that the last time that you sent out any reminder on remuneration?

John Kemp: On 24 January 2013, the chair of Coatbridge College contacted Mark Batho, the then chief executive of the funding council. That same day, Mark Batho sent out an email, enclosing the guidance, with a paragraph that explained the emerging practice across the sector on one-year paybacks and so on. Therefore, in the case of Coatbridge College—and in many other colleges, too—the chair was sent, right at the beginning of the process, the guidance and an email explaining how it should be applied and what the emerging practice was.

Colin Beattie: Was it your expectation that that information would be shared with the board and the remuneration committee, and that the guidance would be complied with?

John Kemp: Yes.

Sandra White (Glasgow Kelvin) (SNP): Good morning. The Scottish funding council is the accountable body and Mr Howells is the accountable officer for the guidance and for college due diligence, including on mergers. I am concerned about how the Scottish funding council guarantees that you do due diligence to your best to ensure that responsibilities are carried out properly and timeously.

We have heard that you did not hear from the college for a number of months on the merger, and you have mentioned that you were actively raising concerns. Does the Scottish funding council receive the minutes of the meetings held by colleges that are going through a merger? Do you go along to meetings? Is that part of your job?

Laurence Howells: We are involved in many ways during a merger process. There is usually a partnership board or something of that nature that we would attend, and we would assist the college to make progress. That is a normal part of how we do business.

Sandra White: That is a normal part of the job. However, the evidence—both written and oral—shows that months passed when you did not hear anything at all. I know that that raised concerns, but not to the point where you went along to the meetings or ensured that someone attended them, or insisted on receiving the minutes of the meetings.

John Kemp: Just to be clear, the issue that we did not hear anything about for some time was whether the remuneration committee had dealt with our severance guidance. Throughout the merger process in 2013, we were in constant contact with the two colleges that were merging. We were also in contact with Coatbridge College—we made many attempts to encourage it to reconsider its decision—

Sandra White: I do not mean to interrupt, but that raises another issue. The only area that you did not seem to have any information about was the severance payments. Did the Scottish funding council meet Mr Doyle to discuss the severance payments prior to the board meeting?

John Kemp: During the summer of 2013, when Coatbridge College was considering rejoining the merger, I met Mr Doyle and had phone calls with him and the then director of finance at Coatbridge College about the arrangements for rejoining the merger. At one of those meetings, there was discussion about what VS scheme would apply. By that time, the other two merging parties had pretty much developed a VS scheme, which was the one that was eventually used. I recall at least one meeting at which Coatbridge College suggested that the VS scheme for the merger should cover a period of up to 21 months. My response was that the SFC would fund up to one year only and that the usual practice in mergers had been broadly in line with our one-year funding.

Therefore, there were some discussions about the VS scheme for the whole merger and all the staff, but there were no discussions about a VS package for the principal or the senior management team. We were unaware until October that the remuneration committee had taken a decision on that in January.

Sandra White: You said that you had a meeting when you talked about the college and the merger, but the VS scheme also came into play in the discussions that you had with Mr Doyle, during which the fact was raised that the 13-month period was the normal one and was your recommendation for the merger with the other colleges. I presume that Mr Doyle and the college's finance director raised then that they were looking at some other package. Did that not sound alarm bells for you? Should you not have chased that up?

John Kemp: There were alarm bells around the fact that they were being unreasonable about what we would fund for the merger. In the discussions that I had with them, they were talking about a scheme for the whole staff—it was not a special deal for the senior management team or the principal. In many discussions on mergers, people asked us to fund schemes that were more generous than what we would actually fund. It is not all that unusual for a college to say that it would like us to fund a scheme that goes up to X amount, and for me to say that we will only fund up to a one-year payback. Therefore, what was said was not that unusual, and it did not set alarm bells ringing on the issues that led to the section 22 report.

Sandra White: You were under the impression that if the severance scheme that was different from the other colleges in terms of the 13 month-period went ahead, the Scottish funding council would pay out £1.36 million—the standard amount that you had advised people of—and the rest of the money would be paid out of the college's budget.

John Kemp: Yes.

Sandra White: So that was your understanding. You were quite happy with that. Maybe “happy” is the wrong word, but you accepted that.

John Kemp: It was allowable within the rules for us to pay a particular amount for a voluntary severance scheme and for a college to pay more than that for the reasons that were in our guidance: if it could make a business case for it and if the college’s auditors were happy with it. You are right that I might not have been happy with what was being done, but it was allowable within the rules.

Laurence Howells: We would have been very concerned had there been more than one voluntary severance scheme for the Lanarkshire merger. We would not have thought that it was appropriate for one group of staff to be treated differently.

Sandra White: I accept that it was within the rules then, which I know were changed in April 2014. However, were you not concerned by the fact that, of the three colleges, two set a 13-month payback, but the other college, some of whose staff were paid X amount of money, took money from the college’s public funds to pay certain members of staff? You mentioned in your opening remarks that you considered legal advice on whether it was possible to claim the money back or whatever. I do not know what you were told about that, because you did not say, but it seems that you were told that you should not go ahead with legal action. Are you able to tell the committee what that legal advice was and why you could not pursue the fact that one college operated differently for some of its staff in paying out severance pay?

Laurence Howells: For the record, the Lanarkshire scheme operated as one scheme for the vast bulk of the staff. However, we were concerned particularly about the payments to the principal in this case, so we asked for legal advice about whether there was any prospect of being able to recover that money. The advice was that there was an extremely remote prospect of recovering the money. That was the basis on which we took the pragmatic decision that putting more public money into pursuing a legal case that was very unlikely to be successful was not the best use of public money.

Sandra White: I will pick up on Mary Scanlon’s question about the fact that papers were not given to board members. Surely any legal advice would be that withholding such information—Mary Scanlon looked this up in a dictionary and elsewhere—would be a case of deceit that could constitute fraud.

Laurence Howells: Indeed.

John Kemp: The legal advice to us, based on all those circumstances, was that a case would be so unlikely to succeed that it would not be worth the money to pursue it.

Sandra White: I will leave it there.

09:45

The Convener: Can we get access to that legal advice? Was it from somebody who worked in your organisation or from an external partner?

John Kemp: It was from our lawyers at DLA Piper. We do not have internal lawyers.

The Convener: So they provided specific legal advice at that specific time.

John Kemp: Yes.

The Convener: When would that have been?

John Kemp: It was at the time that the situation was going on.

The Convener: We can perhaps discuss that further so the committee can reflect on the legal advice.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Mr Howells, your letter of 10 October to John Doyle was very clear that the costs over and above the standard scheme would have to be met from the college’s own reserves. You were actually saying to the college at that point, “What you do is up to you, but you must justify it, and that is the guidance—you have to do that now.”

You then moved on to say more strongly, on 11 October, that you required a response to your letter with the required information. However, you never received that information—at least, we do not have papers that indicate that you received the business case at any point.

John Kemp: No.

Dr Simpson: You never did.

Laurence Howells: We never did.

Dr Simpson: Mr Kemp, you wrote on 16 October with a very specific request for information. In the meantime, Mr Doyle had said that the college was taking internal and external advice, and that it would provide that to you. Did it ever provide that advice to you?

John Kemp: After the board meeting—

Dr Simpson: Which board meeting?

John Kemp: The college board meeting on 23 October. After the decision had been taken, we received a minute of the board meeting, a minute of the remuneration committee meeting and a letter from the college’s lawyers explaining their view on the legality of what the college had done. I think that that information is in your papers.

However, we did not receive a written response prior to that point. We met with Mr Doyle, Mr Gray and the college's director of finance. As part of that meeting, we also met specifically just with Mr Gray to discuss the principal's package.

Some of the response was verbal, but—as you can see from the follow-up letters and our attendance at the board meeting—it did not satisfy us.

Dr Simpson: Okay.

As a standard practice, you do not receive the minutes of remuneration committees.

John Kemp: No.

Dr Simpson: Should you be receiving them? I understand that the minutes would have to be approved by the board. Nevertheless, a board might intend to do something that would contravene your guidance—and without justification, which was the situation in January 2013. Should you not normally receive remuneration committee minutes, or draft minutes that are sent to the board for approval?

John Kemp: We need to strike a balance between our completely managing colleges and our setting rules and monitoring whether those rules are complied with. We need to look at where that balance sits, but we would be uncomfortable with a position in which we looked at every board paper from every college, second-guessing whether decisions were right or wrong.

College boards have a role in the process—it is the prime role. If a board's judgment is substituted too much with that of the funding council, we would be in quite a different place.

Dr Simpson: I am not inviting you to take control of all the colleges. What I am saying to you, and particularly to Mr Howells as the accountable officer, is that you are not receiving information on the basis of monitoring, as Mr Kemp just said—I am not talking about interfering; I am talking about monitoring—because if you do not get remuneration committee minutes, you are not in a position to monitor.

Laurence Howells: Indeed—we potentially need to do more on monitoring the whole operation of colleges. That is something for us to reflect on.

In this particular case, given the changes to the colleges since April 2014, we would be in a different situation, as colleges would have to ask permission before doing such things.

How we monitor the whole operation of colleges, and not just severance and remuneration, is an important question. As part of the SFC's system we have outcome agreement managers allocated to individual colleges who are responsible for gathering intelligence and identifying points of risk. That is something that we in SFC will think about over the next few months. We will think about how we up our game in that respect.

Dr Simpson: I know that you asked the college to formally withdraw the more favourable deal for the six. However, you were not in a position to instruct it to do that; you could only invite it to do so. Is that correct?

Laurence Howells: At the time, that was correct.

Dr Simpson: My final question is about your discussions with Government officials. Can you give us a timeline on that? At what point did you discuss issues to do with severance, in particular? After you first learned about the issue on or around 10 October, what discussions did you have with Government officials before the final decision was made and payments were made?

John Kemp: The Government would have found out about the issue at around the same time as we did, because it was part of the change team and was involved in the partnership board meetings. It was aware, at the same time as we were, of what was going on and what we were doing about it. The prime responsibility for action lay with us, but the Government wrote to Mr Gray to back up what we were saying and to ask for assurances that proper processes were being followed. We were in constant contact with the Government over the weeks that this was going on.

Dr Simpson: Right. That was just in the period in October, was it? What about the partnership meetings when Coatbridge was coming back into the process, when the college expressed the view, as you told us, that—

John Kemp: The Government was involved in that. The on-going support for the merger involved the Government. On the specific issue of severance, the Government found out at the same time as we did, and it was made aware of all the actions that we were taking.

Dr Simpson: You said earlier that when Coatbridge came back into the process there were discussions about a separate severance scheme, with a lump sum of 21 months of salary. According to the correspondence, at that stage it was the aspiration or the intention to apply the approach to all staff, but there was to be a separate scheme nevertheless.

John Kemp: No, I am not sure that the college was arguing for a separate scheme for

Coatbridge. What it was arguing was that the Lanarkshire scheme should be more generous than 13 months' salary. However, things moved on. It probably could not have been unpicked, even if we had wanted to unpick it—and we would not have wanted to do that.

Tavish Scott (Shetland Islands) (LD): May I clarify what was discussed at the meeting on 15 August between Mr Kemp, Mr Mullin and Mr Gray?

John Kemp: Yes. We met Mr Gray as part of the discussions about how Coatbridge would re-enter the merger. As I said in the letter that we sent about that some weeks ago, a key issue was how Coatbridge would interact with the other colleges. For example, who would be its representatives on the partnership board? The discussion was about how would we manage the re-entry into the merger. We talked about partnership board membership and, as I said in the letter, Mr Gray volunteered the information that Mr Doyle probably would not be around for very long.

Tavish Scott: Mr Howells said in his letter to us of 20 October that Mr Gray had told the SFC that he

"did not think that John Doyle would continue either and would not apply for a job in the new structure."

Why was that?

John Kemp: I would not like to speculate on why Mr Doyle or Mr Gray would have had that view—

Tavish Scott: Did you ask?

John Kemp: No. The principal of the new college had been appointed during the period when Coatbridge was outwith the merger, so it would have been tricky to unpick that, if anyone had wanted to do so. There are examples of principals going on to other roles in merged colleges, so it was not automatically the case that Mr Doyle would not have a role in the new college. However, I cannot speculate on his reasons.

Tavish Scott: That is entirely understandable and I would not ask you to do that. However, as a consequence of the discussion on 15 August, it was clear that Mr Doyle was going to go. Was severance discussed?

John Kemp: No.

Tavish Scott: Did you talk about packages or raise anything to do with severance at that time?

John Kemp: No. I have no recollection of discussing that. The discussion was about timing and how the partnership board would operate.

Tavish Scott: Thank you. At the meeting on 20 August, five days later, what was discussed that was different from what was discussed on 15 August?

John Kemp: That was a meeting with John Doyle that followed on from the meeting with John Gray. We covered some of the same issues to do with how the merger would be picked up from the threads that had been left some months before, and we talked about the timing of Mr Doyle's exit. He volunteered that his preferred date was 1 November, I think.

Tavish Scott: So Mr Doyle was very clear and open that he was going to go at that time—subject to his board and all the rest of it, of course.

John Kemp: Yes.

Tavish Scott: Was severance never discussed at that time?

John Kemp: No.

Tavish Scott: Would it not have been a good idea to have raised it? I know that we are looking with hindsight but, given what we know now, would it not have been a good idea to do that?

John Kemp: Normally, any discussion about a principal's severance would not take place between the principal and the funding council. What would normally happen—and this did happen in this case—is that the chair would phone our chief executive and ask what the guidance was, and they would be given the guidance. That was the case in January. As far as I was aware, that is what happened.

Tavish Scott: Sure, but I am just suggesting that the meeting on 15 August that you and Mr Mullin had with the chair of the college, Mr Gray, when there was discussion about the fact that Mr Doyle was going to go, would have been a good opportunity to restate the fact that you had issued guidance on severance that they might be keen to follow.

John Kemp: Had I been aware of the remuneration committee's discussion in January, I would certainly have taken that occasion to raise that matter, but we were not. As far as we were concerned, the guidance had been issued and we had had no indication that it had not been accepted.

Tavish Scott: For the record, I assume that neither Mr Gray nor Mr Doyle raised any discussions with you or gave you any indication of what had already been considered in the remuneration committee back in January.

John Kemp: No.

Tavish Scott: Thank you.

I would like to clarify Mr Mullin's position. Mr Howells, you said earlier to the convener that

Scottish Government officials were kept involved all the way through the process. What is Mr Mullin in this context? He is a member of the Scottish Government change team. Does that mean that he is a civil servant? What is he?

Laurence Howells: You would need to ask the Scottish Government about his exact status. My understanding is that he was contracted as an adviser.

Tavish Scott: Was he the only adviser/civil servant who was involved in those crucial meetings?

Laurence Howells: I think so.

John Kemp: Mr Mullin was the Government person who would attend the merger partnership board, so he was perhaps most directly involved, but there was also frequent contact with other civil servants about the progress of the merger.

Tavish Scott: Would you be able to give the committee a timeline, as other colleagues have asked for, of those frequent communications—you can clarify what they were—with the rest of the Government during the process, and, more to the point, tell us what was discussed? I do not expect that today, of course.

Laurence Howells: Just to be clear, do you mean about the merger process?

Tavish Scott: Yes, but obviously, I would also like to clarify whether there was any discussion about severance and whether the Government raised that matter at any time. You mentioned in response to Richard Simpson's earlier question that Government officials raised that issue and wrote a letter in October, but was it raised at any earlier stage?

Laurence Howells: We will do a timeline for that.

Tavish Scott: I also want clarification on the email that Thomas Keenan sent to Mr Kemp on 23 October. I presume that you have had those papers and know them intimately. In that long email, Thomas Keenan said:

> "I am also aware that a further meeting had taken place in Edinburgh to discuss the departure of the chief executive/principal in light of recent events it would have been more beneficial for him to have gone immediately."

Can you shed any light on your understanding of what that meant? As I said, that was in an email of 23 October, which was at the time when all this was erupting.

John Kemp: I take that to be a reference to either the meeting with Mr Gray or the meeting with Mr Doyle in which there was discussion about the correct timing for Mr Doyle's departure.

Tavish Scott: We could clarify that.

Finally, there were no other minuted meetings. They do not appear in the timeline that the funding council has provided to the committee or in any other evidence that we have yet had. No other meetings took place subsequent to the 20 August meeting right through to October—in other words, in the following two months. My point is that, once you knew that the principal was going to go, two months expired before there was a major row—if I may say so—on 23 October.

John Kemp: There would have been fairly frequent meetings about the progress of the merger, but we were not aware that there was any issue about the severance until early October.

Tavish Scott: Thank you.

10:00

Stuart McMillan (West Scotland) (SNP): Mr Howells, at 9.34 this morning you commented that your expectation was that the college board would operate "within the rules". The merger process is happening across the country and not just in this particular area. Are you satisfied that all the other merger processes that have happened have operated within the rules and that the one that we are discussing is what could be termed a rogue experience?

Laurence Howells: The fact that the Auditor General has identified two section 22 reports in relation to such issues—the one for Coatbridge College and the one for North Glasgow College—suggests that they are two outliers from the process as a whole. Every merger has its own unique characteristics, but I would take the Auditor General's view as the benchmark. I would say that the Coatbridge and North Glasgow cases are two rather distinct ones.

Stuart McMillan: You said in comments earlier today, and it has also been documented in your written evidence, that from January to October 2013 the SFC did not see the minutes from the remuneration committee meeting and was not aware of the position until late in the process. Comments in response to questions from Richard Simpson earlier clearly indicated that we would not want the SFC to run all the colleges and the like but, after a couple of months of receiving no response from Coatbridge College about the minutes, would a better course of action for the SFC not have been to make contact with the college at an earlier stage to obtain a copy of the minutes of the meeting in January 2013?

John Kemp: We would not normally expect to see the minutes of a remuneration committee. On the timeline—

Stuart McMillan: Can I just interrupt for a second? I accept that point. I would not want the

SFC to run all the colleges. I do not think that that would be beneficial for all concerned. At the same time, because a merger process was being discussed, would it not have been the right course of action for the SFC to go back to the college at an earlier stage?

John Kemp: It is important to remember that for a large chunk of that time there was not a merger process involving Coatbridge College. The discussion that led to Mark Batho sending the guidance took place at the end of January 2013, when Coatbridge was considering entering the merger. The college was in the merger for a few weeks in early February 2013 and then it left again.

The discussions that we had with Coatbridge over the period through to July and August 2013 were less about the details of the merger and what would happen with voluntary severance and so on, and more about whether the college wanted to come back into the merger. For most of that period there was no merger process involving Coatbridge because it had left the process in February.

Stuart McMillan: I accept that point but, at the same time, because there was that air of uncertainty about what Coatbridge College's course of direction was going to be, would it not have been beneficial for the SFC to pay closer attention to the goings-on at the college to allow you to have a better understanding of what was happening on the ground?

John Kemp: We were paying quite a lot of attention to Coatbridge, but it was on the issue of the merger rather than severance. With hindsight, had we known—had we seen that minute the week after the meeting, say, although I am not sure that anyone in the college saw it until later on in the year either—we would have been very concerned. The minute clearly states that the funding council supported a line of action that we did not support and which was clearly contrary to the guidance that we had given just before. Had we been aware of that, we would have been very concerned. The issue is whether we should have tried to find out what had happened at that remuneration committee meeting. I am not sure that we knew that there was a remuneration committee. All we knew was that the chair had inquired of our chief executive what the guidance was and that guidance had been given. After that, Coatbridge was no longer part of the merger. As we did not know what had been discussed at the remuneration committee, to our mind there was no issue. With hindsight, we would have done things differently.

Stuart McMillan: Sure, but why would the SFC not be aware of the existence of a remuneration committee in a college?

John Kemp: I meant that we were not aware that that particular meeting had taken place; we would have expected a college to have a remuneration committee. Sometimes you hear that something is going to be discussed at a particular meeting and you want to hear the outcome. In this case I do not think that we were aware and it came as a surprise later that the discussion had taken place.

Laurence Howells: To emphasise a point that John Kemp has made, our focus during most of that period was on how to get a good merger for Lanarkshire and how to get Coatbridge College back to being involved in it. That was the focus of our attention and the most material issue going on at the time.

Stuart McMillan: In your opening statement, Mr Howells, you indicated that the new powers that were introduced in April 2014 will "greatly reduce the risk" of similar events happening again—I am quoting you from this morning. How confident are you that this type of situation can never happen again?

Laurence Howells: I guess that you can never say never when you have independently run colleges. However, the rules now say that a college needs to seek prior approval from SFC for any new severance scheme and for changes to a scheme in this kind of situation. Had I had those powers at the time, I would have acted differently and explicitly vetoed a scheme of this sort. I would not have been offering advice and guidance and seeking to use all the processes that we had but would have simply said, "You have sent me a business case. I do not accept it and I am not agreeing to it." I think that the powers make a significant difference.

I also think that the attention that has been given to the issue as a result of the Auditor General's report and the things that we will be doing will make a difference.

As I said earlier, within the SFC we are thinking about how to take a risk-based approach in order to focus on the danger points, how to up our game so that we identify those points and how to act to avoid such things in the future.

Stuart McMillan: I take you back again to your comments at 9.34 this morning. You said that the expectation was that the college board would operate "within the rules." Considering the new rules that came in from April 2014 and those comments from earlier this morning, what actions could you take further down the line if you were to find that some individuals or a board were not operating within the rules?

Laurence Howells: If we find out about it ahead of the event, as we did in this case, I can veto the action taken. It is always possible for people to write cheques or act outwith the rules and we find out afterwards. In those cases, we have to respond in that way. The new rules are much clearer that, if somebody steps out of line and we find out afterwards, we will have a stronger power to act on those individuals. The likelihood of that happening is much less, however, because everybody in colleges is now aware of a whole set of new processes relating to how money flows from the SFC and how the Scottish public finance manual applies to them.

There is also more work to be done in training and development for board members so that they play their role properly and exercise the appropriate challenge function. The new environment, with larger and stronger colleges with stronger finance teams and strong networks of people, also helps us to raise standards.

Nigel Don (Angus North and Mearns) (SNP): Good morning, gentlemen. I understand that decisions on remuneration are made by boards; it is their responsibility, and equally it follows that it is at their discretion. I also understand that you had a standard scheme. I wonder whether you could give me some criteria that you think might be appropriate—although it is down to the board's judgment—to justify going beyond the scheme that you regard as standard.

Laurence Howells: I will bring in John Kemp on that. In my view, one can imagine a situation in which, for the benefit of allowing a new college to merge or whatever, there may be a need to incentivise people to move on. One can imagine a different scheme with some small margin of flexibility to reflect different circumstances. We never know exactly what we are going to hit when we try to make these sorts of changes. However, I would regard good practice as requiring that the bounds of change be quite narrow.

There is the matter of reflecting on individual circumstances. It is true to say that, had I seen a business case presented in this particular case, I would have found it very difficult to agree that amount.

John Kemp: Our guidance is fairly clear on what should not be included in a business case with regard to rewarding poor behaviour—and rewarding past success, as the assumption is that the person will already have been paid for that.

We are talking about voluntary schemes, so one needs to balance how to get the outcome that one wants within a voluntary scheme and how much one needs to offer to make it work. That is the kind of business case that one would normally expect to see. I stress that we do not see those business cases—they are normally produced to satisfy the auditors, and we pick up through the accounts that the auditors were happy or not happy with a business case.

Our guidance is stronger on what a business case should not include than it is on what it should include. We have heard in the past comments such as, "So-and-so has done an excellent job and ought to be rewarded." That is not allowable within our guidance.

Nigel Don: Forgive me, but I am sitting here representing the normal folk of Scotland, and I do not understand the idea of paying somebody more to leave when they are paid a lot of money in the first place, when they can see it coming and there is plainly no longer a role for them, and when they have skills that must be transferable. I am struggling—as I think most people would be—to understand how there is a business case for giving them more to go away. What is the justification for that? Can there be a justification?

John Kemp: The reason why we were so concerned in this case is that we, too, would struggle to see the business case.

Nigel Don: I come back to my original question. What might make that business case? I am sure that we will hear later this morning that the payments were justified. I would like to know what on earth the criteria could be that might, in your view, justify such a case.

John Kemp: The criteria would relate to the effective operation of the college but, that said, our guidance explicitly rules out some aspects that might relate to that area. To be clear, the reason why we were so concerned about this case is that we could not see what business case could be made.

Nigel Don: Has Mr Howells anything to add to that? If you guys cannot see why there should be a business case, I am sitting here thinking that there cannot be a business case.

Laurence Howells: There are two things. Our new controls mean that we have to approve new schemes. At that point, we are talking about the business case for the whole scheme rather than for individuals, and therefore we would want to see the evidence for that. We would look at how a scheme fits with public sector norms and practice at present, whether it is affordable, whether it looks like it will be fair, and whether or not it is excessive—all those sorts of things. That would enable me to agree a scheme. If a college came to me with an exceptional payment for one individual or a group of individuals within the scheme, I would have to be convinced that there was some exceptional reason for that. My default assumption would be to say no, there should be one scheme that applies to everybody. Indeed, that happened in some of the mergers.

Going back to John Kemp's point, is there a case for some exceptional treatment to enable a college to get from A from B to make the journey to a new merger? Again, in the sort of situation that we are in at present, I cannot see that such a justification could have been made.

I am with you, Mr Don, in believing that it will be hard for people to justify special treatment for individuals.

10:15

The Convener: A couple of members have supplementary questions.

Colin Beattie: I must say, having listened to what has been said, that the reform of our college sector came none too soon.

I want to touch on something that Tavish Scott was looking at. The SFC's submission refers to a meeting on 20 August 2013 between John Doyle, John Kemp and Roger Mullin, as indeed does the acting principal's submission. It is noted that the subject of the meeting was discussion with the principal on his leaving his post early, but Mr Mullin seems to contradict that and states that that is not so. As Mr Kemp was at that meeting, can he clarify that point?

John Kemp: The account of the meeting that is in our submission was informed by my recollection of the meeting and my notes of it. What Mr Mullin's response says is that at no time was there any question of our forcing any redundancy or resignation on the principal. There was a discussion on the timing of when he would leave, because he volunteered that his aspiration was that it would be at the beginning of November. Therefore, there was discussion on the timing of the principal's exit, and that was based on an earlier discussion that I was present at with John Gray—and I understand that there were earlier discussions before that, involving others, about the time of the principal's departure.

The key point that Mr Mullin is making is that there was no question of our forcing redundancy on the principal; it was a discussion on the timing of something that had already been broached by others.

Colin Beattie: I just wonder why Mr Mullin's submission states that the acting principal's comments are "without foundation".

John Kemp: It is because there was no question of our dealing with the issue in the way that is suggested in the acting principal's submission.

Colin Beattie: So it was purely exploratory talks with the principal in terms of an early departure.

John Kemp: Well, it was beyond exploratory talks, because we had heard prior to that meeting from the chair that he did not intend to stay, so it was about the timing.

Colin Beattie: So there were substantive talks at that time.

John Kemp: Yes.

Colin Beattie: Were they about remuneration at that point?

John Kemp: No.

Colin Beattie: They were just about the principal leaving.

John Kemp: Yes. They were about the timing and how we would manage the merger over that period and whether the timing of his leaving helped or did not.

Tavish Scott: I have two brief questions. Mr Howells, was the Scottish funding council under constant pressure from Scottish Government officials to drive forward the merger process, not just in Lanarkshire but across the country? Was there a week-by-week or a month-by-month assessment of how you were getting on?

Laurence Howells: You used the word "pressure", which implies pushing. The process was being monitored closely and we were continually discussing it because it was a key aspect of Government policy and one that we were charged with pushing through. Therefore, yes, we discussed the process across the whole country on a regular basis. Indeed, there were points where we were meeting weekly.

Tavish Scott: That was throughout the course of the summer in 2013 and, for that matter, the course of the year.

Laurence Howells: Yes. The whole merger process was quite extended.

Tavish Scott: That is fine. Thank you.

My second question is on the legal advice that you mentioned earlier. If I caught your evidence correctly, I think that you said that the judgment on the legal advice was that recovering moneys would be all but impossible and that more money would be spent on trying to recover them. However, did the legal advice actually cover stopping the money in the first place?

Laurence Howells: It had happened already.

John Kemp: The advice was about recovery of the payment in excess of what we would have funded from the board.

Tavish Scott: I am sorry to be pernickety, but will you clarify precisely when you got the legal advice? Can you recall what the date was?

John Kemp: It was 18 December 2013.

Tavish Scott: Thank you.

Dr Simpson: I understand from the SFC guidance that the college does not have the power to make payment for hurt or distress due to severance and that no gratuity for service beyond a small token can be made. Did you comment on the fact that staff members were given not only extra payments but pay increases during the course of the process, which were then consolidated into the severance payments? Therefore, the staff not only received extra severance payments but those payments were augmented beyond the standard process of which you approved by a significant pay increase—in one case the increase was 10 per cent; in another case it was 19 per cent.

John Kemp: We were not aware of the pay increases until the auditor's report. That was not part of the discussion that we had. We were aware of the proposals for the senior management team and for the principal, but the pay rises took place outwith our sight and were picked up by the auditors later.

Dr Simpson: An invoice for more than £1.3 million was submitted to you sometime in the new year, which you paid. Presumably the amount was based on the augmented severance payments and not the standard severance payments. Did you not think to ask whether the payments were based on standard terms?

John Kemp: What was not visible to us at that time and what we were not aware of until the auditor's report was that some of the staff had had significant pay rises.

Dr Simpson: If you look at the board's remuneration report, you will see that a number of the staff stepped up the payment bracket. Although an increase that saw a move from the £60,000 to £70,000 bracket up to the £70,000 to £80,000 bracket may have been only £1,000, one staff member went from the £60,000 to £70,000 bracket up to the £90,000-plus bracket, which is obviously a big increase.

John Kemp: We were aware of the acting arrangements but not the precise financial arrangements in the college. Some things that we were not aware of—because they were to do with staff who were not senior management—were picked up by the auditors.

Dr Simpson: You did not think, with all that was going on and the clear concerns that you had expressed about the whole process, to say, "I want details of these payments. I want details of the pay of the staff. I want them for last year and this year, and any additional payments that were made." You did not think to inquire about any of that or to ask for the remuneration committee's minutes, which would have shown the increases and their consolidation into the severance payments.

John Kemp: We had the remuneration committee minutes for January and October 2013. The issue that is picked up in the auditor's report is that some of the other payments were not properly done anyway, so we could not have picked up that through the minutes of the remuneration committee.

With hindsight, we can see that there were changes to salary levels that we should have perhaps been aware of. However, it was not our practice to ask when someone submitted a VS claim what variation had there been in that person's salary over the past year. In this case, with hindsight, perhaps we should have asked that but, as Mr Howells has said, in most cases colleges abide by the rules. It has been this case and North Glasgow College that have been picked up as issues for section 22 reports. By and large, the colleges stuck by the rules.

Dr Simpson: You also said in your earlier evidence—this is what triggered my questioning—that it would be entirely appropriate that, if staff had to take on additional responsibilities as part of the merger process, they should receive additional pay. Are you confident that no other college consolidated those temporary payments into remuneration severance packages? If you are not, you might want to think about having another look at the issue.

Laurence Howells: That issue was not picked up by the Auditor General, but it is something that we need to think about.

Mary Scanlon: Coatbridge College opted in, opted out and then opted in again to the merger. Were those decisions taken by the full board? Do you have the minutes of the relevant meetings?

John Kemp: The full board of Coatbridge College?

Mary Scanlon: Yes. Did the full board, including the chair, make those decisions?

John Kemp: I think that that is a question probably best asked for the witnesses on your next panel.

Mary Scanlon: I would have thought that, given that you were in charge of the mergers, you might have known.

John Kemp: I was certainly aware that there were divisions in the Coatbridge College board about whether the college should be in or out of the merger. I was at the meeting of the merger partnership board when it decided to opt out. That decision was taken not by the entire board but by the people from the Coatbridge board who were at the merger board.

Mary Scanlon: Were there divisions between the chair and the principal?

John Kemp: Not that I am aware of.

Mary Scanlon: Okay.

SFC was in charge of the whole mergers process. Mr Howells, given that you were the accountable officer, there will have been some pressure on you to make the mergers a success. You said, I think in response to Nigel Don, that there can be a need to "incentivise people to move on". You were in charge and you wanted the process to be a success, but there was a little local difficulty in Lanarkshire and the principal was regarded as an impediment to the merger.

Given all that, did you perhaps turn a wee blind eye to some of the goings on at Coatbridge? From where I sit, it seems that the college ran rings round your guidance, your advice and your efforts to contact it. It withheld information.

Laurence Howells: You asked whether I turned a blind eye to what was going on. No, I did not. You can see how active we were and what we put on record—

Mary Scanlon: It did not make any difference, though.

Laurence Howells: I was certainly not turning a blind eye.

Mary Scanlon: Was the excessive payment to Mr Doyle—let us forget the rest of the team—part of an attempt to incentivise him to move on and clear the way for the merger?

Laurence Howells: Absolutely not. As you can see, we tried to prevent that from happening.

Mary Scanlon: Was Mr Doyle an impediment to the merger?

Laurence Howells: As I think that we said earlier, he and his chair had come to the conclusion that he needed to move on at that point.

Mary Scanlon: Your focus was on the merger process. There was an agreement that, for the merger to be a success, Mr Doyle had to move on, and he walked away with a significant amount of public money.

Laurence Howells: We would have expected him to walk away, as you said, but with a fair amount that was properly determined. That is not what happened—

Mary Scanlon: He was getting in the way of your main goal, which was to make the merger a success.

Laurence Howells: We never deviated from wanting good value for money in securing our goal of an effective college.

Mary Scanlon: Tavish Scott asked about Mr Doyle being asked to move on. Surely that was part of the merger process.

John Kemp: He was not asked to move on by the SFC or by the Government. That was a judgment that was reached within Coatbridge. Yes, relationships between Coatbridge, particularly the chair and principal, and the other partners in the merger were very poor, and that might have contributed to the decision, but the decision was taken by Coatbridge.

Mary Scanlon: Is that why 33 staff from Coatbridge played no part in the new merged college?

John Kemp: In all mergers, there are people who leave under voluntary severance arrangements. Many people who were employed at Coatbridge are now working at New College Lanarkshire.

The Convener: I want to return to the deal for the management team—let us leave Mr Doyle out of the equation for the moment. You said that you were made aware of the deal, apart from the issue to do with holiday enhancements. Were you satisfied with the arrangements for the management team?

John Kemp: Let us be clear about which arrangements we were made aware of. We were made aware of the potential for the management team to receive 21 months' salary when the rest of the staff were potentially going to receive 13 months' salary, and we were very unhappy about that. We were annoyed about the content of the proposed deal and we were annoyed that it had apparently been reached without discussion. We were very unhappy about that.

The Convener: You were annoyed about that.

John Kemp: Yes. After Mr Doyle's departure, there was some reshuffling within the senior team, and I was aware that there were some payments in that regard. I do not think that we were aware of the detail, but we were happy that there would be—

The Convener: You are talking about the management team. What happened to the rest of the team? There were other people in the building, such as cleaning staff and catering staff, and there must have been redundancies among those staff. What enhancements were made to their arrangements? Were you not interested in those arrangements? Were they of no consequence? Was it just the management team that you were concerned about?

10:30

John Kemp: The issues that I referred to that I was made aware of, albeit not in detail, were that the management team did not intend to replace John Doyle with an external person and therefore they were reshuffling the team that they had. That would not have applied to the teaching staff and others whose jobs were not changing. Our concern was that—

The Convener: Let us face it. Some of the teaching staff were under pressure as a result of both the merger process—we aware of that from the evidence that we have received—and the fact that redundancies would be taking place within the teaching staff complement. The teaching staff, the catering staff and all the other people in the college were under pressure. What did you say in response to the management team when they said, “We need to reshuffle here and we are looking for some extra payment for that”? What did you say to them?

John Kemp: The extra payments—

The Convener: You said that you were happy with that.

John Kemp: No, no. The extra payments were not our responsibility. Following Mr Gray’s departure, the chair made us aware that he was doing that, but it was in the context that the principal had gone and the management team were reshuffling. Our concern for the whole staff was that there should be a fair voluntary severance—

The Convener: I will bring you back to those staff, but I am asking you about the management team. You were made aware that the management team had had to reshuffle and had taken on additional responsibilities and you had said that you were happy with that; it was something that you would accept. What about the other staff who would be under the same kinds of pressure? Other staff in the building were under pressure as a result of the process; we know that from the evidence that we have received. What did you say—what would you have said—in response to that?

John Kemp: We do not manage the college. What we were concerned about was that the voluntary severance scheme, which would affect all of the staff, was a fair one and applied equally to all staff, and that there was not a separate way of dealing with the senior management team. I was aware that there was some reshuffling of the senior management team that involved some change to payments. I was not aware at that stage that that would flow through into voluntary severance.

The Convener: Okay. I have two final questions. Are you aware of any other colleges that have reached similar agreements to the arrangements that Mr Doyle reached with his board—maybe 24 months or above the 13 months? Would a number of them have reached that kind of arrangement?

Laurence Howells: Throughout the whole process there have been different schemes in different parts of the country.

The Convener: Let us talk about months, Mr Howells. Has anyone else received similar deals? Mr Doyle is coming to give us evidence shortly. Could he say “I tell you what—I know of other principals who have received similar deals”? Will he say that?

Laurence Howells: Yes, I am sure that he will. There are other people who have achieved other deals, but nobody has achieved them through the kind of process that we have seen at Coatbridge.

The Convener: Forget about the process. Let us say that the principle of the matter is that someone can receive a 24-month deal. Have others received similar deals but been able to tick all the boxes and go through the auditing process and say that they have ticked them all? Is it the case that Mr Doyle has just not got all the boxes ticked while others have? We have already discussed North Glasgow College so let us discuss the others.

Laurence Howells: Others have had those deals but they would have been part of a uniform deal across that individual college. It would have been done through a proper process and it would not have been funded by us.

The Convener: It is an important point that I want to clarify for the record. The response from the SFC is that you are appalled at the deal that Mr Doyle reached. Are you appalled about the process that he followed or about the sums of money that he has received? Let us clarify that for the record.

Laurence Howells: I am appalled at the process that has been followed and the poor governance that has been demonstrated throughout.

The Convener: So you are not concerned about the sums involved.

Laurence Howells: I do not think that the sums could be justified in that case.

The Convener: I am sorry but I am not asking you about that case. Someone has been awarded a 24-month deal—was it 24 months? Let us clarify that for the record, and can you confirm the sum of money please?

John Kemp: It was 30 months by the time that the six months' pay in lieu of notice was included.

The Convener: Can you confirm that no other principal—apart from North Glasgow College that we have already discussed—in all the other mergers that have taken place has received anything near to that kind of a deal?

Laurence Howells: There have been deals of 20 or 21 months and similar things, as there have been—

The Convener: So why did you not say that you were appalled about those deals?

Laurence Howells: And there are other deals in other parts of the public sector of that scale.

The Convener: With respect, I am not asking you about the public sector. I am asking specifically about the sector that you are responsible for. I take it that you are not responsible for any other organisations. You are the accountable officer for the Scottish funding council, and I am asking you whether you can provide us with details of other principals who may have received something similar to what we will hear about from Mr Doyle.

John Kemp: The details of what other principals received will be available in the accounts of the colleges involved.

Mary Scanlon: You are in charge.

John Kemp: The process was that the college took a decision on these things and had to satisfy its auditors. The cases of North Glasgow College and Coatbridge College were picked up by the Auditor General and section 22 reports were produced. In the other cases, leaving aside the ones that were referred to in the Auditor General's report on colleges—

The Convener: Mr Kemp, don't talk this out; we are asking specific questions. Can you provide us with details of other principals who may have received something similar to what Mr Doyle received? I guess that Mr Doyle will tell the committee that other people received similar pay-outs and that he only wanted what they got.

John Kemp: We can compile the information from college audit reports—

The Convener: So you can't—

Laurence Howells: We can and we will do so.

The Convener: For the record, can I clarify that we can expect to receive information on other arrangements that were reached? If you could advise us of how many months of annual salary other people got, it would be very helpful for the committee to receive that information.

John Kemp: We can do that.

Dr Simpson: Can we also get the business cases that justified those increases, please? They were presumably submitted to and approved by the SFC.

John Kemp: No—they would have been submitted to the boards of the colleges concerned and would have had to satisfy their auditors. They would not have been submitted to us.

Dr Simpson: But, in your monitoring role, you would have been aware of the business cases. In earlier evidence, you said that you could not see any justification for the increases. Have you not looked at the other cases?

John Kemp: No. The process is such that they would be monitored through the annual accounts of the colleges concerned and—

Dr Simpson: But not by you.

John Kemp: Not by us.

The Convener: I have one final question. Some of the publicity, which you will have read, has said that Mr Doyle feathered his own nest. That is the allegation that has been made in the media. Do you agree with that comment, Mr Howells?

Laurence Howells: My view is that the governance is—

The Convener: I am asking you whether you agree with that statement—yes or no. I am not asking you to qualify your answer. A number of press reports have said that Mr Doyle feathered his own nest and set up the whole thing. We have to take evidence on the issue. I am simply asking you whether you agree—yes or no.

Laurence Howells: My concern is with the actions of those who made the decision in question. Ultimately, they are the ones who decided to offer the money.

The Convener: So you are not able to answer that question.

Thank you. I think that we have made clear what we require by way of follow-up correspondence. I thank both the witnesses for their evidence.

We will have a brief interval.

10:37

Meeting suspended.

10:45

On resuming—

The Convener: I welcome our second panel of witnesses on the AGS report on Coatbridge College: John Doyle, the former principal of Coatbridge College, and John Gray, the former chair of Coatbridge College. I have referred to the correspondence that we have received and how we will approach the committee proceedings, and you were in the public gallery for the earlier evidence session. I understand that you would like to make separate opening statements.

John Doyle (Former Principal and Chief Executive, Coatbridge College): Thank you for the opportunity to come and speak freely today. I have been in public service for almost 40 years and, until the publication and statements from the Auditor General, I had an unblemished career and reputation. For nine years, I had the honour of being the principal and chief executive of Coatbridge College. It was a position and an achievement that I was very proud of, especially in working with and leading a highly motivated team of managers, lecturers and support staff. I take great exception to the conclusions that were reached and the vexatious statements that were made by the Auditor General about me, John Gray and the senior team. I hope that, through this process—from the evidence that you have already been given and the evidence that you have not yet received—you will come to know that those were totally unfounded.

I hope that, by now, you will also know that the severance package that was offered was based on a federation action plan—a scheme for all staff in all four Lanarkshire colleges—and that it was the intention of my board for that plan to be made available to all staff in the event of colleges merging. Given the real conflict of interest, I very much wish you to be aware of exactly how I and the clerk to the board completely discharged our respective duties at the point at which the funding council and the Scottish Government expressed their concerns regarding the existence of two VS schemes. That was achieved by the engagement of Biggart Baillie, and I respectfully ask why no one has mentioned the role of Biggart Baillie in the matter. I am at a complete loss as to why the committee was not given all the available evidence—in particular, the minutes of the remuneration committee and board meetings, which were readily available for all to see.

I also ask someone to clarify exactly what the Auditor General meant in saying that I acted outwith my authority. Given the damning statements that she has made about me, I would have thought that she could at least have been specific. I would not have raised the matter but, given the correspondence from the funding council and the statements by Laurence Howells and John Kemp, I would like the opportunity to clarify exactly why I felt it necessary to leave early.

Finally, I advise the committee that the evidence that I can give covers only the period up to 31 October.

John Gray (Former Chair, Coatbridge College): Good morning, ladies and gentlemen. You will not be surprised to hear that I totally reject the Auditor General's conclusions. I have very good grounds for doing so.

I have two points to make. First, I am surprised that the Auditor General was able to draw such emphatic and terse conclusions without at least having the courtesy to discuss the situation with the two people who were being criticised—John Doyle and me. As you can see from my career details, which have been circulated to you all, I have operated throughout my working life at a high level of corporate governance, which is not something that I have ever taken lightly. The board structure in further education was one that I was unhappy with from day 1 and, as a result, I invited the management team along with staff and student representatives to attend board meetings. That open and inclusive process ensured good communications at all times and meant that nothing was being fixed behind closed doors.

My second point is that when the Auditor General made her report to this committee it should have been set very firmly in the context of the Lanarkshire colleges merger process. At the start of the process, there was no nice clear set of rules; the situation was allowed to evolve and reacted to changes that were incorporated from time to time. The timeline illustrates that clearly.

I want to cut to the chase and go straight to the minutes of the board and remuneration committee meetings of 23 October 2013, which happened to be the day before I demitted office, and to my successor's subsequent correspondence to Laurence Howells. The documents show quite clearly that all concerned were fully informed of the situation and, taken together, correctly state the final position. The question that I have to ask is: were these documents seen by the auditor and the contents reported to the Auditor General? If so, I find it very hard to understand why we are all sitting here today.

Thank you very much.

The Convener: I want to open with questions to Mr Doyle. You said that you spent nine years as chief executive and principal at the college.

John Doyle: I did.

The Convener: Can you confirm your annual salary during that period?

John Doyle: Obviously it varied, but—

The Convener: What was it at the end of the period?

John Doyle: I think that it was about £116,000.

The Convener: So it was £116,000 during that period. During that period, you would have been responsible for redundancy payments or severance arrangements for a number of staff who worked for you. Is that correct?

John Doyle: Over the nine-year period, some staff left with—

The Convener: A voluntary severance agreement.

John Doyle: But we never had a voluntary severance agreement within the college until 2012.

The Convener: Were you involved with the voluntary severance agreements for what I think were the 39 staff who were made redundant?

John Doyle: No. I was not involved in any of that.

The Convener: You were not involved in any of that at all.

John Doyle: No.

The Convener: Why was that?

John Doyle: I was not there.

The Convener: In the run-up to the severance?

John Doyle: I was not there. I left on 31 October.

The Convener: Yes, but I am talking about the period prior to that. You were not involved in any redundancy payments in the run-up to anything.

John Doyle: No.

The Convener: And over the nine-year period you were not responsible for redundancy payments or voluntary severance agreements.

John Doyle: There was a very occasional situation in which someone would leave with a scheme, but not in the merger context that you are talking about.

The Convener: Would you have expected anyone for whom you were responsible during that period to enjoy the benefits of a 30-month payment plus a pension agreement being made available?

John Doyle: I would want to break that down into exactly what was offered and what was contracted. I was leaving on a scheme based on the Lanarkshire federation scheme for all four colleges.

The Convener: What does the Lanarkshire federation scheme say? Can you provide a copy of that document?

John Doyle: No, but I can say that the funding council, the regional chair Ms McTavish, all the chairs and principals of the colleges and the Scottish Government adviser, Roger Mullin, were at all of the meetings. It is well recorded.

I will be as quick as I can, but it might help to put things in context if I point out that in December 2012, one of the four colleges in Lanarkshire, South Lanarkshire College, presented a VS scheme for potential adoption by all four colleges in the federation. It was loosely based on what was called the Edinburgh model—we are all aware of what that is, so I will move on. That was then put in the action plan for Lanarkshire—that is a matter of public record; the plans are there. As I have said, my college did not have a VS scheme, and the board intended to adopt that one.

The Convener: Can I take you back? Is it not correct that you eventually enjoyed the benefits of that scheme? Although it was not necessarily attached to that, you benefited from 30 months' pay, did you not?

John Doyle: Yes. That is a matter of record.

The Convener: Did anyone else in the college benefit from 30 months' pay?

John Doyle: No.

The Convener: Why did you, as the person leading this organisation, think it acceptable to receive 30 months' pay while nobody else got that? You were the leader of the organisation. Should you not have set an example? You could have acknowledged what everybody else was getting, and you could have shown a good example—that is what you were there to do, and that is what you were being paid £116,000 per annum for. Why not do that?

John Doyle: At the time, several weeks before I was due to leave, there was a change in scheme. I was leaving at the end of October 2013. About the middle of September—I cannot remember exactly when—New College Lanarkshire published a new scheme, not the one that was originally planned, running all the way from January to September. I found that out from the Educational Institute of Scotland and Unison trade unions. After they had told me about that, it was subsequently confirmed by the board representatives, Tom Keenan and Carole McCarthy.

At that point, several weeks before I was due to go, I was under the impression, as was everyone else, including the unions, that, if there was a scheme and anyone was leaving under VS, it would be under that—

The Convener: To be fair, that does not answer the question.

The question for Mr Gray is a similar one. You are the principal. Regardless of the timing and of whatever the agreement is—whatever you want to call the agreement—surely you, as the leader and chair of the organisation, should have decided that, if there were people going out the door, they should all go out with the same package. You could have decided not to give any preferential treatment to anybody. Is that not what you should have said? Why did you give preferential treatment to Mr Doyle?

John Gray: The scheme that Mr Doyle has been talking about was discussed by the board, and the board decided on the process. I did not make the decision; the board made the decision.

The Convener: The remuneration committee, you mean.

John Gray: The remuneration committee—and it was made to the board.

The Convener: Did you agree with the decision?

John Gray: Yes.

The Convener: You are leading the organisation. You are the chair. You obviously led it—you said, "Yes, that's a good idea. Let's pay the principal more than everybody else."

John Gray: In the commercial world, which is the world that I used to work in—

The Convener: This is public money, Mr Gray. It is not a commercial—

John Gray: I can argue the toss on that as well.

The Convener: Let us not.

John Gray: As you have heard, the public money was limited by the funding council to what was paid to everybody else. The balance of funds had to be found by the college, and we did that. We did that on an annual basis. We had a commercial operation that raised funds to support the college. Those funds were not provided by the funding council or by the Government.

The Convener: Despite the fact that you were advised by the funding council not to provide this.

John Gray: Sorry?

The Convener: You were advised by the funding council. Did you receive that email from Mr Kemp?

John Gray: I cannot remember all the details, to be perfectly frank.

The Convener: Surely you can remember.

John Gray: It is three or four years ago.

The Convener: It is not three or four years ago, actually. We are talking about 2013—the date was 24 October. A board meeting took place, which you presided over as chair.

John Gray: That is right.

The Convener: At that meeting, it was made explicitly clear to you that you should get the agreement of the auditors before signing anything off, and you should provide a copy of that agreement to the funding council. Did you get the agreement of the auditors, both internal and external?

John Gray: That was my last day at the college.

The Convener: I am just asking, though. Perhaps Mr Doyle could clarify this.

John Gray: No, I personally did not get that. However, my successor followed the matter up.

The Convener: So the deal was agreed without the agreement of either the internal or the external auditors. Is that correct?

John Doyle: I can explain exactly what the situation was. Around 10 October 2013, as we have heard, we received a communication from the Scottish Government, which was followed up by the Scottish funding council. The clerk to the board and I, given the concern about the two VS schemes, contacted the chair and put a suggestion to him, which he readily accepted, that we would bring in Biggart Baillie, our legal team, to act as an independent audit—

The Convener: Let us forget about the legal—

John Doyle: It is very important, sir, in the context of—

The Convener: No—I will come back to the issues concerning the legal team. I or someone else will ask you about the legal aspects, but let us talk about the auditors. This is very clear in the guidance that was issued in 2000—we are going back some years now. In 2000, it was made explicitly clear that you should seek the approval of either the external or the internal auditors before entering into such agreements. Can you tell me whether you did that? Yes or no?

John Doyle: It was not a simple yes or no. Given the conflict of interest that I clearly had, I suggested, with the clerk to the board, that the chair bring in an independent team to examine the whole process to ensure that we had continued transparency and openness. It was very important that, in doing so, I had extinguished my duties and responsibilities as the principal by ensuring that somebody was there who was completely independent, who could advise the remuneration committee and the board.

The Convener: Who was that?

John Doyle: That was Biggart Baillie, and the partner was Paul Brown.

The Convener: Mr Gray, are you aware of whether Paul Brown sought approval from the internal or external auditors? Were they aware of the deal that was being reached?

John Gray: I do not know.

11:00

The Convener: Can we find that out? Mr Doyle, I know that there were issues concerning your deal—

John Doyle: Real issues, as you have stated.

The Convener: That is respected. However, there were other elements of what was being proposed, and I assume that you would have been involved in them. Were you not involved in any of it?

John Doyle: I was not involved in any remuneration committee meetings and I did not contribute to any remuneration committee meetings. As soon as we were aware that there were two VS schemes, we brought in Biggart Baillie to advise the board on all aspects—including all guidance, all support and all documentation—in order to ensure that the remuneration committee was on a solid footing of knowledge and had all the information to enable a decision to be made. The committee met again, having had all that information, and Biggart Baillie provided all the clerk-to-the-board duties in that regard in order to ensure that there was transparency and that what is being alleged to have happened would not happen.

Up to the point at which we engaged Biggart Baillie, I acted, as the principal and chief executive, in a way that ensured that I had done everything possible to ensure that everything was done correctly and transparently. At that point, if I had done any more, I would have been accused, quite rightly, of engagement—

The Convener: I want to ask one final question. Were you ever asked, by anybody in the funding council, to leave? Did anyone ever say, “Time’s up—we’ll see what we can do about getting you an enhanced package and we’ll give you the Edinburgh agreement”?

John Doyle: No one from the funding council ever said that to me, but there is a story to tell about me leaving early.

The Convener: Tell the story now, then. Who said it?

John Doyle: I am sure that somebody will ask me about Ms Livingstone’s allegation about Mr Mullin, so we may as well talk about it now.

Mr Mullin and Ms McTavish came to the college in July and met John Gray and me.

The Convener: Mr McTavish?

John Doyle: Ms McTavish. She is the regional chair and was the regional lead at that point.

The Convener: I just wanted to clarify that.

John Doyle: She and Roger Mullin were facilitating the merger. They came to the college and presented the terms and conditions of the merger. Within those was a statement that I could not apply for the post of principal and that the principal would be Martin McGuire.

I then met all the staff when I delivered the principal’s address in August, as I did every year. I told them that, although, sadly, I could not be with them after the merger, I would be with them until 31 March and would work with them to ensure that the existing cohort of students got the best experience. I told them that, importantly, I would be there to support, facilitate and advise—also, as many said to me afterwards, to protect them in terms of ensuring that there was fair representation as we moved towards the merger.

I received an email from Roger Mullin inviting me to come in and meet him and John Kemp from the funding council.

The Convener: That was five days later.

John Doyle: It was. It was quite clear in the email, in my opinion—

The Convener: Do you have a copy of the email?

John Doyle: I do.

The Convener: Could you provide that to the committee?

John Doyle: I can.

The email says:

> “One of our thoughts is the need for you to identify the appropriate person to act up as principal ... This should be someone with ambition to seek a senior role in the new college.”

Everyone in this room understands the language of power. When you are invited by the Scottish Government and the funding council to discuss your leaving early, you know that your position is untenable. However, I circulated the email among the senior team, John Gray and a few close friends and they all independently came back and said, “You’re not wanted.”

No one has ever said to me that I have done anything wrong. My actions at that point validate that I have done everything that I should do.

Having taken that advice, I met Mr Mullin and Mr Kemp in the offices of the funding council. It was quickly agreed that I would leave on 31 October—the date is no coincidence, I am sure, as November 1 is the date of the merger between Cumbernauld College and Motherwell College.

I had to then go back—

The Convener: Did they discuss severance payments with you?

John Doyle: No. We can talk about who knew about severance payments, if you want; I am happy to do so.

I then had to go back in front of all college staff, less than a week or so later, to tell them that unfortunately I could not stay with them. I was not someone who wanted to get out of the door quickly; I wanted to be there to support staff. Mrs Scanlon alluded to the fact that none of my senior team—despite their achievements, qualifications and experience—got a post. A large number of people did not get posts, despite the assurances that Mr Mullin, Mrs McTavish and others gave us that the merger would be fair and transparent and would not be a takeover.

Colin Beattie: Mr Gray, you said that you reject the Auditor General's report. Do you reject it in total or in part?

John Gray: I certainly object to the part that relates to John Doyle and me.

Colin Beattie: Mr Doyle, do you have a comment on the Auditor General's report?

John Doyle: Yes. I think that it is incomplete, inaccurate and vexatious. There was no collusion in relation to my voluntary severance, which was based on a scheme for all colleges in Lanarkshire. Several weeks before I was due to leave, the scheme was changed—New College Lanarkshire was perfectly entitled to do that. My board had felt that the scheme would be for every member of staff. Yes, I had enhancements to my voluntary severance—certainly the contractual six months' pay, which had been in my contract for nine years.

I take exception to the way in which—on limited evidence, as the Auditor General said herself—our reputations have been absolutely trashed, when we have done nothing wrong. As an employee—I remind everyone that principals are employees—who was about to lose several years' salary and to leave with a reduced pension, I had some rights. I did not contribute to the offer and I did not influence the offer in any way. On the basis that I was leaving early, I took advice, and my lawyer said, "You are losing all this money. The public purse will be more than recompensed within a short time, because it will not be paying your salary and pension contributions et cetera."

Colin Beattie: The Auditor General said in her report that your auditor had concerns and

"included an 'Emphasis of matter' paragraph, in which she drew attention to serious governance weaknesses in how voluntary severance arrangements ... were considered, implemented and reported; and the arrangements for senior staffing and salary approval."

That was the view of another independent body.

John Doyle: May I clarify that? The report covers two phases: the first is the period up to and including 31 October 2013, when I left, and the second phase is thereafter. I respectfully suggest that the part that you are talking about relates to the arrangements that were made and the discussions that took place after John Gray and I had left.

Colin Beattie: The Auditor General appears to agree with the auditor and sets out specific issues in paragraph 25. I will list a couple, which are that there was a

"failure to meet the standards expected of public bodies in the use of public money and a lack of transparency in the decision-making process for voluntary severance arrangements",

and that

"payments were made that exceeded the terms of the college's severance scheme".

I could carry on down the list. You cannot just say, "It wisnae me."

John Doyle: I most certainly would not say that. If you want to go through each issue, I am happy to do so.

Colin Beattie: In all fairness, it might be appropriate for you to comment on them.

John Doyle: On openness and transparency, it was clear that the remuneration committee and ultimately the board were well aware that, because of a change in the VS scheme, there was concern from the Scottish funding council and the Scottish Government. There is no question about that.

For the record, Biggart Baillie was facilitating the board's activities, advising it and ensuring that it had all the appropriate information. I can talk only about the period to 31 October, but I completely disagree with the Auditor General's comments that we were not transparent. She does not make it clear, but she might be referring to the situation after we left. By bringing in Biggart Baillie, by ensuring that there was a completely independent clerk to the board and by ensuring that the board got clear advice on all aspects, including the funding council's guidance and the concerns of the Scottish Government and the funding council, I did my job.

Colin Beattie: The Auditor General told the committee on 9 September this year that her professional judgment was that there was a deliberate withholding of information from the remuneration committee, and her report says that there is no evidence that the remuneration committee had access to the information and advice that it needed.

John Doyle: Has anyone actually spoken to Biggart Baillie?

The Convener: For the record, when was Biggart Baillie appointed?

John Doyle: As soon as a concern was raised. As the funding council said, we are talking about a period of a couple of weeks. When I left, I destroyed all the things that I had, but from memory—I am sure that someone behind me in the public gallery can correct me—I think that the first concern was raised on 10 October 2013. I spoke to the chair, who said "We're planning to have a remuneration committee meeting. We'll discuss it then." We then got another communication from the funding council, and I responded to that verbally to say that the board was going to bring in independent advice and support and that a full report would be copied to the funding council in due time. However, I also pointed out to the funding council that, given the conflict of interest, I had to—correctly—take a step back.

Colin Beattie: The Auditor General states in her report that

"the Principal failed to take the steps needed to demonstrate that the inherent conflicts of interest were properly handled."

John Doyle: I am not sure that the Auditor General was aware of the remuneration committee minutes, of the role of Biggart Baillie and the reason why it was brought in, of the actions—

Colin Beattie: Did the college not have a responsibility to make that information available to the Auditor General?

John Doyle: Yes, but I was not there, Mr Beattie. I am sorry, but I left on 31 October 2013 and it was a matter of weeks between a concern being raised and my leaving. The Auditor General is basing her report—

Colin Beattie: I am sorry, but what we are talking about here happened before 31 October.

John Doyle: Could you be specific, please?

Colin Beattie: I am looking at the Auditor General's report and at the issues that have been raised about the various things that have happened.

John Doyle: Could you be specific, please?

Colin Beattie: Did the remuneration committee meet before 31 October?

John Doyle: Yes. It met twice.

Colin Beattie: The Auditor General's report states that there is an

"absence of any evidence that the Remuneration Committee had access to the information and advice it needed to fulfil its responsibilities".

Whose responsibility was that before 31 October?

John Doyle: My understanding, sir, is that the remuneration committee was well briefed on all aspects.

Colin Beattie: Who by?

John Doyle: Originally, in the first meeting, by John Gray, and in the subsequent meeting, by Biggart Baillie, which had access to all aspects of documentation. The remuneration committee meeting on 23 October was clerked and advised by Biggart Baillie, which had all the documentation.

Colin Beattie: So why was the college unable to provide evidence to the Auditor General that the remuneration committee had proper access to information and advice?

John Doyle: You will have to ask others that, because the audit took place six to eight months after I had left. There is a timescale that the Auditor General has merged together, but you cannot tell that, which is why I have defined the timescale as having phase 1 and phase 2. In phase 1, we acted very appropriately as soon as we were contacted by the Scottish Government and the funding council about there being two VS schemes. We did everything correctly. I cannot possibly talk about what happened after I left.

Colin Beattie: Specifically, during the month of October, there was a great deal of activity from the funding council.

John Doyle: There was indeed.

Colin Beattie: The funding council was having great difficulty in getting responses from the college.

John Doyle: That is not correct. I had conversations with John Kemp and Laurence Howells. There were emails back and forward. I phoned them to say what we were doing. I made them aware that we were bringing in independent advice and clerk to the board advice. I assured them that, in due course, they would receive a full report. I understand that the new chair of the board gave that report around 25 October, but do not hold me to that, because I did not see it.

11:15

Colin Beattie: There is no evidence of that in the evidence that has been provided to the committee.

John Doyle: The evidence is clear, Mr Beattie. That is what I find strange about the Auditor General's report to you. The keystone in phase 1 of the process was the step that the college took to bring in independent advice, to provide the remuneration committee with all the evidence that it needed to make a decision as my employer. That happened, but at no point has anyone—either the funding council or the Auditor General—mentioned any of it.

Incidentally, nobody in the meeting has mentioned the fact that there was a Lanarkshire federation scheme. All the language that has been used until now has said that we suddenly created a scheme for the senior management team—and, to be fair, as Mrs Scanlon said, the rest of the Coatbridge College staff.

Colin Beattie: There are still problems with the minutes and so on. According to the Auditor General's report, there is evidence to suggest that

"pay rises were considered and approved by the Remuneration Committee"

but

"only the decision to award the two per cent rise to all staff was recorded in the minutes."

Why is there not a full record in the minutes?

John Doyle: I cannot answer that. I am sorry to be repetitive, but the minutes of the meeting on 23 October were done after I had left. They were being facilitated and administered by—

Colin Beattie: I thought that you left on 31 October.

John Doyle: Yes, but I was not at the remuneration committee meetings. I could not and should not have been engaged in any aspect of those meetings. They were being handled by the college's legal representatives, Biggart Baillie. I had to have clear blue water between me and the remuneration committee's decision-making process, which I did.

You are absolutely right about the timescales. The meeting was on 23 October and there was the awards ceremony all day on 24 October—there were two awards ceremonies. There was only a matter of days for Biggart Baillie to produce a set of draft minutes and circulate it to the remuneration committee. I would not have had any locus in that.

Colin Beattie: Mr Doyle, your argument appears to be, "It wisnae me."

John Doyle: No—that is not correct.

Colin Beattie: What about you, Mr Gray—do you have any recollection of any of the points that the Auditor General raises?

John Gray: I will just use the words that the Auditor General used:

"what appears to have"

happened

"is … the chair of the board and the principal worked together to achieve a certain outcome".

I repeat that she said that that is "what appears" to have happened. I would like to see on what basis she appears to have come to that conclusion.

Later, the Auditor General said:

"My professional judgment … is that it is very unlikely to be a case of oversight … it was a deliberate withholding of the information."—[*Official Report*, *Public Audit Committee*, 9 September 2015; c 15, 16.]

I would like to see the evidence that she has for that, because the minutes of the remuneration committee and the board completely cut across it. Communications by my successor as chair of the board also cut right across those comments. Perhaps the auditors did not seek some of the evidence that we have and see.

Incidentally, the auditor audited the accounts for the year to March 2014, which is five, six or seven months after I left the college. She did not seek information from me or my comments on what she apparently found. She did not speak to John Doyle, either. She wrote the report and tabled it.

Colin Beattie: Mr Gray, are you saying that there is additional evidence?

John Gray: We think that there are minutes and correspondence that might not have been seen. We do not know what evidence has been sought. All that we can conclude is that we disagree with what is said in the report.

John Doyle: If it helps, we know exactly the actions that we took and we know that the minutes of the meetings were agreed.

Neither I nor John Gray can comment on the audit process that took place six—or however many—months after we left. That is a matter for New College Lanarkshire. You will have to ask the chair, Tom Keenan, about that audit process. We have no knowledge of it. We knew that everything was being done openly and transparently. We were taking advice and we knew of the concerns of the Scottish funding council and the Scottish Government, which were well expressed. As Laurence Howells said, the full board of management had a briefing and nothing was being hidden. My employer made me an offer, which, on the basis that I had to leave, I took.

Colin Beattie: I think that I will leave it at that.

Mary Scanlon: I will go back to my earlier line of questioning. The SFC guidance on voluntary severance refers to 12 months' pay for anyone who has more than 14 years' service. Did staff at Motherwell and Cumbernauld—the other colleges that became part of New College Lanarkshire—

enjoy 12 months' or 30 months' voluntary severance pay?

John Doyle: I was not there. You must remember that I was the first person to go—there were no structures involved and there was clearly no place for me in New College Lanarkshire. The scheme had just been introduced, so I cannot talk about its implementation.

Mary Scanlon: That is fine—I thought that it was worth a try.

When did both witnesses become aware of the Scottish funding council's guidance on severance payments in relation to the merger of colleges?

John Doyle: It is fair to say that all boards are aware of the guidance. Certainly, our board would have been aware of it through the college intranet.

This has not been mentioned yet, but all documentation—anything that came in—with regards to federation minutes and action plans would have been put on the college board of management intranet. Everything was on that.

Mary Scanlon: We have already heard from the funding council that you were both aware of its guidance.

John Doyle: I agree with that.

Mary Scanlon: I am pleased about that. It is nice to get agreement now and again.

The minutes are rather sparse. We have remuneration committee minutes from January 2013 and the next ones are from October 2013. However, we have had submissions from remuneration committee members, including one from Ralph Gunn and another from David Craig. In relation to the meeting on 28 January, David Craig said:

"the committee members were advised that no specific guidance was available".

Ralph Gunn said that the committee was "clearly informed" that what it was being asked to agree with—the proposals for your maximum of 21 months' severance payment, and your further payments of three months' and six months' pay—was

"in line with the Funding Council's guidelines for senior staff."

My point is that you had the funding council guidelines, which referred to 12 months, but the remuneration committee was told that the 21 months' pay that it was being asked to agree with was in line with the funding council's guidelines. The submissions state that the remuneration committee was misled and was not given the information from the funding council that you had.

John Doyle: No—that is inaccurate.

Mary Scanlon: Are you saying that the two remuneration committee members who have given us evidence have not told the truth?

John Doyle: I do not know—you would need to ask them about that. I am telling you what the situation would have been. We had a board intranet, which contained everything. I was not at the remuneration committee meeting in January 2013, nor was I at the meeting in October 2013. I cannot possibly have an opinion on what was discussed or not discussed.

However, I have an informed opinion on the role of Biggart Baillie in ensuring that all remuneration committee members were well aware. If it had been the case—and I am not saying that it was—that someone felt that they had not got all the information in January, they certainly had lots of opportunity to get it in October when the committee met again, when every aspect was covered by Biggart Baillie.

Mary Scanlon: The decision to give you 30 months' severance was made on 28 January 2013.

John Doyle: That is correct.

Mary Scanlon: At that point in time, the funding council had given you guidance to say that anything over 12 months' pay was not acceptable. You had that information, Mr Doyle, and so did you, Mr Gray.

We have evidence in front of us that those on the remuneration committee who made the decision to give you 30 months' pay did not have that guidance. Is that correct? Mr Doyle, did you not ensure that those making the decision about this excessive payment to yourself had the proper Scottish funding council guidance?

I would like to hear from Mr Gray on this as well.

John Doyle: Not a problem.

Yes: in the context of the paperwork that would have gone out, the conversation thereon and the board intranet, all the remuneration committee members should have been aware of the guidance. The guidance, as we have heard from the funding council, is that it will not pay any more than—

Mary Scanlon: But they were advised that no guidance was available.

John Doyle: I cannot comment on that. I was not at the remuneration committee meetings. I can tell you—

Mary Scanlon: You must have taken a bit of an interest in what the committee was doing.

John Doyle: Very much so.

Mary Scanlon: It was pretty lucrative for your bank balance. You must have thought, "Let's see what terms I'm going to leave with." You must have taken a wee bit of a passing interest.

John Doyle: Not a passing interest.

Mary Scanlon: At least a passing interest.

John Doyle: A real interest—but not to the point where I would influence the remuneration committee members.

Mary Scanlon: And not to the point where you would give them the guidance that they needed to adhere to the guidelines on paying your severance pay.

John Doyle: You will have to ask both the members referred to earlier. The guidance was available on the board intranet. I was not at the meeting of the remuneration committee when it was discussed—

Mary Scanlon: Mr Doyle and Mr Gray, did you withhold any information from the remuneration committee before it made the decision on Mr Doyle's severance agreement or the other agreement for senior staff? Did you withhold any information from the remuneration committee?

John Doyle: I did not deliberately or unintentionally withhold any information—

Mary Scanlon: Did you ensure that the committee had all the guidance required to make the right decision?

John Doyle: The answer to that is yes, over a period of time. In relation to the remuneration committee, I ensured that the clerk to the board provided all the documentation and that the board intranet had all the information on it containing the guidance.

Thereafter—I am sorry for repeating myself, but this is what happened—it was a matter of absolutely ensuring that we had independent support that would look at every aspect of the process, particularly the remuneration committee meeting, the guidance and the concerns of the funding council and the Scottish Government about there being two schemes.

If I was wishing to collude, as has been alleged, or if I was wishing to hide, I would not have brought in or suggested bringing in an independent company that would advise the board and ensure that it had every aspect of knowledge that it should have had for making a decision, and I would not then have got it to do the duties of the clerk to the board as well.

I did absolutely everything that I should have done to remain open with integrity. I did that. I held nothing back from anyone.

Mary Scanlon: Mr Gray, did you ensure that the remuneration committee had all the information required? It says that it was informed that what it was being asked to agree to was in line with funding council guidance. There was also mention of a lack of guidance.

John Gray: All I can say is that, categorically, nothing was withheld by me from any committee or board at Coatbridge, at any time.

Mary Scanlon: Who chaired the remuneration committee?

John Gray: I think that I was in the chair.

Mary Scanlon: The members of that committee were advised that no specific guidance was available. That was on 28 January 2013. Did you advise them that there was no guidance—

John Gray: I do not recognise that.

Mary Scanlon: Well, who advised the committee members if you did not do so?

John Gray: You had better ask them.

Mary Scanlon: You were the chair. This is a critical part of evidence here.

John Gray: As I said at the very beginning, you have to take a bit more of the context here. That was at the start-up of the process. A lot of changes were made right through. In the end, the remuneration committee was quite clear about what was being offered, about what the limitations were and about what the funding council would or would not pay. At that point, there was no disagreement at the remuneration committee meeting or at the board meeting as to what the situation was, what was happening and what was going to happen.

11:30

Mary Scanlon: After paragraph 17, the Auditor General's report says:

> "The Chair and Principal of Coatbridge College did not provide the college's Remuneration Committee with advice provided by the SFC".

Paragraph 13 says:

> "There is no evidence that the Remuneration Committee or the Board were provided with detailed business cases".

The report goes on to say:

> "It is clear that the terms being discussed by the Remuneration Committee were not in line with the advice of the SFC and so it appears that the Chair"—

you, Mr Gray—

> "did not provide the Remuneration Committee with complete or accurate information about the advice provided".

I put it to you that you either concealed or withheld information from the remuneration committee. That committee, in all honesty, agreed to an excessive severance payment for Mr Doyle and others. It was misled. It thought that what it was agreeing to was in line with funding council guidance, but that was not the case. You withheld and concealed information from that committee because that information was not in the interests of the senior staff and their severance payments. Is that correct?

John Gray: No.

Mary Scanlon: That was the conclusion of the Auditor General. It is a serious point.

John Gray: It is fine for her to conclude what she likes. I can say categorically that I never withheld anything from any of the committees that I was involved in.

Mary Scanlon: That is not what the remuneration committee members are saying.

My final point is one that I raised earlier. There seemed to be more than a bit of local difficulty with Coatbridge coming into the merger. I now understand that some of the board wanted to go in and then wanted to come out—it was back and forth. Who decided that you would go in, then come out and then go in again? The board was not unanimous. What were the reasons for the back and forth? Why did you finally decide to go in?

John Gray: You are quite right. It was a very convoluted process. The timetable within which all of this happened is critical to the discussion.

Mary Scanlon: Very much so.

John Gray: The original federation idea, in which the four Lanarkshire colleges would get together, progressed along a line. At one moment in time, it was announced that Motherwell and Cumbernauld would merge—

Mary Scanlon: Why did you not go in then?

John Gray: Just hang on a sec. That process happened without any consultation with the other two colleges involved. When we had a meeting to discuss that, it became absolutely clear what the deal was. It was decided by Cumbernauld and Motherwell together. If we wanted in, we played the game by their rules. No participation in this, no jobs for that—nothing. It was a takeover.

Mary Scanlon: But surely the Scottish Government, which facilitated the process, was not going to allow a takeover. It was all about merger, partnership and so on. Was the Scottish Government quite happy that you were left out in the cold?

John Gray: I agree totally with what you are saying. There was a lot of discussion about the subject, and about what role Coatbridge would play in the merger of the three colleges. My key aim was to ensure that the staff at Coatbridge got a fair hearing in terms of the jobs that were on offer.

Mary Scanlon: They never got any jobs, did they?

John Gray: Exactly.

Mary Scanlon: Why not?

John Gray: Well, you would have to ask the New College Lanarkshire management team why they filled the jobs up and did not give any to Coatbridge.

Mary Scanlon: I ask you the same question that I asked the funding council earlier. As accountable officer, Mr Howells was in charge of making the merger succeed. Every party in the Parliament supported the merging of colleges—that goes without saying. Did the focus on the merger and the priority given to it, and the fact that you were not really fitting in—you were not really very compliant, it seems—lead you to think, “There’s nothing in this merger for us. We’ll just look at enhancing our severance payments”? Is that possible? Was that an attitude?

John Gray: That is a total non sequitur. As far as I am concerned, there is no connection between one thing and the other.

Mary Scanlon: None at all?

John Gray: Absolutely none.

Mary Scanlon: Not even in relation to Mr Doyle being told that he could not apply for the post of principal?

John Gray: Yes.

Mary Scanlon: So, even though he was told that he need not bother applying, that did not affect your quest for severance payments?

John Gray: It was not about not bothering to apply—he was not allowed to apply, which is quite a different set of circumstances.

Mary Scanlon: Yes. He was told he could not apply.

John Gray: Exactly.

John Doyle: For the record, that was six months later.

Mary Scanlon: So, because no one was getting anything out of the merger, you thought that there was nothing to gain there and you should just focus on the severance payments.

John Gray: No. What happened was that because the merger with Motherwell College and Cumbernauld College was progressing, we had to look at it carefully to see whether we would be compliant in order to make real progress, or whether we would just stick our heads in the sand as the South Lanarkshire College people tended to do—they are still out of it.

We argued strongly for proper representation on committees, the board and so on, but a lot of that was not forthcoming. We came out of the merger process.

The Coatbridge board talked about it and said, “No, no, we really have to play the game and get into the merger—it’s a thing that going to happen and we’ve got to be in there to influence it the best way we can.” That is why we went back in again. That is where we ended up. As you rightly say, the number of staff positions that the Coatbridge team got was zero.

Sandra White: Good morning, gentlemen. To clarify things, can you explain what Biggart Baillie is?

John Doyle: Yes, of course. Biggart Baillie was our legal representative. It advised the college and the board on all legal matters.

Sandra White: You say that it was your legal representative. Did it represent you commercially or in the law courts?

John Doyle: In the context of support for the college board and management, in the main it provided equality support and human resources support and advice.

Sandra White: When was Biggart Baillie brought in for this specific—

John Doyle: As soon as we found out.

Sandra White: What specific date?

John Doyle: From memory, we received the first communication from the Scottish Government on or around 10 October 2013. I spoke to the chairman immediately and said, “Look, we have a concern here because there are now two schemes”—the New College Lanarkshire scheme having been introduced a couple of weeks beforehand. As I said earlier, John Gray immediately said that the issue would be discussed at the remuneration committee—a meeting had already been planned. We then received a funding council note of concern. The clerk to the board—doing her job very well—said that we needed to have something independent and that we should do two things, which we suggested to the chair, who readily agreed. The first thing that we agreed we should do was that we should bring in Biggart Baillie to sit with the remuneration committee—this is very important, given the previous series of questions—to ensure that it had all the advice, information, documentation and every single piece of information that any member of the committee would want in order to make a decision on 23 October.

Sandra White: Can we get all of that?

John Doyle: I am surprised that the Auditor General has not put all that in the submission.

Sandra White: I assume that we can get all that information from Biggart Baillie. We will ask the clerks to see whether we can get that information.

John Doyle: Can I just say—

Sandra White: May I finish my question? It is all about timing and dates. So Biggart and Baillie was brought in on 10 October.

John Doyle: Round about 10 October—we are talking days.

Sandra White: Yes, the 10th or 12th or whatever day it may be—it was around then that Biggart and Baillie was brought in on that specific issue. You left on 31 October 2013.

John Doyle: Yes, that was my last working day.

Sandra White: You had a BACS payment put in just before 23 October.

John Doyle: It was on 25 October.

Sandra White: So we have Biggart Baillie brought in between 10 and 13 October for that specific issue.

John Doyle: That is correct.

Sandra White: That has been clarified—I hope that we will get the minutes for that.

On 25 October, you had a payment through BACS, which related to your remuneration—the pay in lieu of two years and six months. I am just trying to establish the timescale. That all happened within the month. You left on 1 November.

John Doyle: It was 31 October.

Sandra White: Okay, 31 October—in the minutes it says 1 November. It is quite a tight timescale, so I just wanted to get it on the record.

I want to go back to something from the very beginning—I get quite confused on this issue. The colleges were being merged and the Scottish funding council had its stipulation about how much severance pay should be given—that it should be 13 months. Today, we hear evidence that that was not the case because there was something called the Lanarkshire federation scheme and the federation action plan, which you said was for all the colleges in Lanarkshire. I cannot quite understand why only Coatbridge College—and not all the colleges—went for that scheme. According to my notes, the only reason that you mentioned is that you spoke to the EIS and Unison.

John Doyle: Yes.

Sandra White: Will you clarify that for me?

John Doyle: I would be delighted.

Sandra White: We have the EIS and Unison now involved. You say that you took advice from them.

John Doyle: No.

Sandra White: Maybe I picked it up wrong. I have written down that you spoke to them and then we had the Lanarkshire federation scheme and the federation action plan. The only body that adopted that scheme is Coatbridge College and the only people who benefited from it were you, Mr Gray—

John Doyle: Mr Gray did not benefit from anything.

Sandra White: Mr Gray did not benefit. I will come back to that if I can.

The Convener: Can we try to keep questions and answers brief?

Sandra White: I am sorry. It is just that the federation scheme has come into it all of a sudden. Why did the rest of the colleges not take it up?

John Doyle: First of all, I will comment on the BACS payment, so that we have clear information on that. All employees of the college were paid on 25 October. As an employee, I was leaving on 31 October, so my HR department would have processed the BACS payment. The director of finance, Derek Banks, spoke to the incoming chair and asked him whether he wanted the BACS payment to be stopped. He said, “No, the remuneration committee has all the facts. It made a decision. Let it go through.”

The voluntary severance scheme for the federation of the four colleges was proposed by South Lanarkshire College in November 2012. Its board adopted that scheme. The action plan was a minute for all the other three colleges’ boards. Remember that the Scottish Government, the funding council, chairs and principals were all at the meetings about that. It was decided that that scheme, which is the 21-month scheme that you are talking about, was the preferred one.

As I always do, I spoke to my trade unions about the scheme and asked them to meet their officials so that, when I briefed the board, I could tell board members that I had engaged with our trade union partners. Although they had objections about posts having to be left, there were no real objections to the scheme. It was the EIS and Unison representatives who briefed me, in about mid-September, that there had been a change in plan and that New College Lanarkshire had introduced a new, much-reduced scheme.

Sandra White: That was in September.

John Doyle: It was in September, a couple of weeks before I was due to go.

Sandra White: When the EIS and Unison briefed you that a much-reduced scheme had been introduced, did you alert the other colleges to that?

John Doyle: No, they were all at the meeting.

Sandra White: They were all at the same meeting.

John Doyle: Yes. I was not at the meeting.

Sandra White: Oh, you were not at the meeting.

John Doyle: No. I know that it is complex—

Sandra White: It seems rather strange. You know so much about various meetings but you never seem to be at them.

John Doyle: That is one of the things about being principal. The board of management had decided that, as I was leaving and John Gray had decided to leave at the same time, we needed continuity. That was perfectly acceptable. The board elected Tom Keenan as the chair and Carole McCarthy and Paul Gilliver as two new vice-chairs. It was established—this is going back two years, so bear with me—that Carole McCarthy and Tom Keenan would represent the Coatbridge College board of management at all the merger meetings. That made a lot of sense, because they were going to be there after I had gone.

Sandra White: I understand that. I will move on. We have still not got to the bottom of the fact that the other colleges did not accept the federation scheme but your college did.

John Doyle: I have no idea if it is still on the books at South Lanarkshire College, but it adopted the scheme.

11:45

Sandra White: I would like it if we were able to consider the Lanarkshire federation—perhaps we will need to bring in the EIS. I would like to see exactly what it was, because it is new to me.

You mentioned the fact that Mr Gray did not benefit—perhaps “benefit” is the wrong word—from a severance payment. You adopted a far more enhanced pay-out scheme than any other college, against the Scottish funding council’s wishes. From what we can gather, the principal, senior managers and a member of staff from the principal's office received enhanced pay-outs.

John Doyle: I am not sure that that is correct.

Sandra White: So you deny that, then.

John Doyle: I am not denying anything.

Sandra White: You say that they did not.

John Doyle: I am saying to you that there were two phases to the matter: phase 1 until 31 October 2013, and phase 2 thereafter.

Sandra White: Correct me if I am wrong, but you were not there after 31 October.

John Doyle: No, I was not there.

Sandra White: So, really, you are not responsible for any enhanced payment that you got at all.

John Doyle: No, that is not—

Sandra White: Is that correct? Is that what you are saying?

John Doyle: No.

Sandra White: In answer to any question that we have asked, you have said that you were not present.

John Doyle: I left on 31 October. The people you are talking about were there long after 31 October, with a new board chair who looked again at the severance arrangements for the six people. That was after John Gray and I had left. Nobody has raised this, but it should be a matter of record that—

Sandra White: I am not—

The Convener: Just let Mr Doyle answer.

John Doyle: It is a matter of record that, on 23 October, the remuneration committee, with all the facts—I repeat: all the facts—made a decision to look again at the severance scheme for the senior managers and the pension arrangements for the principal. In short, the severance arrangements were reduced and the principal's pension contribution was reduced.

Sandra White: There are so many different dates, as you say. I want to raise the issue of conflicts of interest. You said that you were not at the meetings, but Mr Gray was the chair of the board. However, I will come back to that, if that is all right with the convener.

The Convener: Okay.

Dr Simpson: I will try to clarify the situation for myself. It is quite complicated. There was the South Lanarkshire College-adopted scheme, which all four colleges were considering at the beginning of the process when the merger that Coatbridge College was in and out of was being considered. As far as Mr Doyle and Mr Gray were aware, and as far as the board was aware, until September 2013, the scheme that was going to be adopted across all four colleges was the one that had originally been proposed for, and adopted by, South Lanarkshire College.

John Doyle: Yes.

Dr Simpson: It was only in September, when Tom Keenan, as the new chair designate, went to the meeting with—was it Paul Gilliver?

John Doyle: He went with Carole McCarthy, as I understand.

Dr Simpson: When they went to the joint meeting, they learned that a new scheme would apply, which was the 12 or 13-month scheme, instead of the 21-month scheme. Is that correct?

John Doyle: It is.

Dr Simpson: At that point, your remuneration committee, on the basis of discussions with Biggart Baillie, decided to continue with the original scheme but only for the top management, not for all the staff. Is that correct?

John Doyle: No, that is not correct. You will need to speak to the chair of the board, because he was there, but my clear understanding is that the remuneration committee considered the scheme for the principal and the senior management team because those were the people upon whom it was focused. A different committee—the full board, not just the remuneration committee—would consider the adoption of a VS scheme. The reason is that the people we are talking about—the principal and the senior team—are employees of the board of management in colleges. I have no idea what the situation is now but, at that point, it was established practice that they were employees not of the college but of the board of management. That is why I referred to my employer as being the board of management, not the college.

Dr Simpson: So those are two different entities.

John Doyle: Correct.

Dr Simpson: It is even more complicated than I thought. There was information that the remuneration committee originally had an aspiration to pay everybody the same amount, which was then converted to an intention to do that, but finally, it turned out that only the senior management got the enhanced payments, and the rest of the staff did not.

John Doyle: My understanding is that I was the only one who got the enhanced payment because after I left—or at the meeting chaired by John Gray—they looked again at the position of the senior management team, who they had hoped would all get posts, in the new scheme. You would need to speak to John Gray about that. However, I understand that they felt that, given the contractual arrangements, they were legally bound to pay me what I was contracted to receive.

Dr Simpson: So, somewhere, there is a business case for that.

John Doyle: In terms of my package?

Dr Simpson: Yes.

John Doyle: There are two things. First, because my post was closing—do remember that in August, of the three colleges, the only post that was definitely closing was my post—and I was effectively being made redundant, there was no need for a full business case. Secondly, that said, my understanding is that at the meeting on 28 January, the committee discussed all the aspects of why I would receive the package that was offered to me.

Dr Simpson: Okay, thank you.

Tavish Scott: Mr Doyle has just mentioned 28 January. Mr Gray, you very sensibly asked Mark Batho—the then chief executive of the funding council—for advice on severance four days before the meeting on 28 January and he then provided you with the entire guidance on severance payments.

John Gray: Possibly. I cannot remember getting the document, but if it is in the record book, then I must have got it.

Tavish Scott: Yes, it is a matter of evidence.

John Gray: Exactly, then I must have received it.

Tavish Scott: Do you recall what you did with it? Did you circulate that guidance to the members of the remuneration committee?

John Gray: As I said earlier, it is not, and never has been, my practice to be secretive and to do things behind closed doors. The natural process of communication would have been to circulate that information to the committee. If that was not done, it might be my fault or the secretary's fault—I really do not know.

John Doyle: If I may interject, I inform the committee that, as I said earlier, all the documentation was on the board intranet.

Tavish Scott: Yes, but that is not what I asked, Mr Doyle. I asked whether the information was circulated to the members of the committee. As you were not there, I assume that you do not know.

John Doyle: I would not know that.

John Gray: As we have heard in the evidence, some people did not receive it, for whatever reason. I can say only that that did not happen as a result of deliberate withholding of information.

Tavish Scott: At that meeting, a proposal was tabled in relation to Mr Doyle's severance. Who proposed that? Do you recall whether it was a written document?

John Gray: That was the Lanarkshire scheme that Mr Doyle has talked about at some length. That was what was on the table. At that stage, we had no VS scheme at Coatbridge, but because we knew that the merger was coming up, we put one in place, which we thought—in all innocence—was the one that would apply to the whole of Lanarkshire. It was put in place for the college at large and as the thing materialised, it turned out that the people who got offers were senior managers and John Doyle.

Tavish Scott: I am just trying to clarify who tabled the proposal. Do you recall whether it was the secretary?

John Gray: I cannot recall.

Tavish Scott: Someone must have written a document.

John Gray: Yes, it was a document written by South Lanarkshire College, which was circulated to the four colleges involved in the proposed merger. It was a proposal for the Lanarkshire voluntary severance scheme.

Tavish Scott: I appreciate that this is some time ago, but did you have an oral discussion at that committee about the proposal that you were going to make in relation to your principal and chief executive?

John Gray: The scheme was laid out and in those terms he would qualify for that scheme.

Tavish Scott: Was that minuted as such?

John Gray: As far as I know. The senior managers would also have qualified for the scheme.

Tavish Scott: However, as Mary Scanlon pointed out to you earlier, two members of your committee—people you know well and who were, presumably, good colleagues at the time—absolutely disagree with that interpretation of events.

John Gray: Yes.

Tavish Scott: That difference in opinion must be a source of some regret to you.

John Gray: It is, because in more than 12 years as chair of Coatbridge College, I tried to make sure that everything was done openly, honestly and clearly.

Tavish Scott: I take that point, but we are trying to understand why those two colleagues so diametrically disagree with your interpretation of events. Can you shed any light on that?

John Gray: I might have to go and call on them.

Tavish Scott: I will not go there.

John Gray: Can I just add that the senior management team did not get enhanced payments? I was there when the managers had offer letters in their hands for the enhanced scheme and were requested to reject them and accept the scheme that everyone else accepted. That is what they did, which is a credit to them.

Tavish Scott: Yes. Thank you.

Mr Doyle, I have a couple of questions about the evidence that you gave to the convener in relation to the document that was tabled in July on the merger of the colleges. You said—please correct me if I am wrong—that you could not apply for the post of the new principal of the college.

John Doyle: That is correct.

Tavish Scott: Was it not publicly advertised?

John Doyle: You would need to speak to the people who were facilitating the process.

Tavish Scott: Mr Doyle, you were a principal in the Scottish college network, did you not read *The Herald*'s appointment page and that kind of thing? Was it not publicly advertised?

John Doyle: I understand that it was advertised.

Tavish Scott: So you could have applied for the job.

John Doyle: It was a merger between Motherwell College and Cumbernauld College at that point.

Tavish Scott: I am talking about in July.

John Doyle: That is right. It was not our merger.

Tavish Scott: I thought that by that time Coatbridge was back in the merger proposal.

John Doyle: No. This is going back two years and whilst I have a knowledge of what is going on around me, I do not have specific dates. However, I am quite convinced that the interview process for the principal elect for Motherwell and Cumbernauld colleges was held before July. When Roger Mullin and Linda McTavish came to see John Gray and me in the college, they told us that the principal elect of New College Lanarkshire would be Martin McGuire, which means that they had gone through the process.

Tavish Scott: When did Coatbridge College get back into the merger negotiations?

John Doyle: It was at that point in mid-July, when Roger Mullin and Linda McTavish came to the college and said that they knew—as has been stated—that Coatbridge College board had said from the very early days that merger was the best thing for Lanarkshire, given the economic circumstances. We had said that from the off. What we now had was a situation in which two colleges—as John Gray said—had decided to merge without consultation, which is something that they are entitled to do. The board of management met to consider that development, and as a board it decided to embrace the merger and join in. Unfortunately, as is widely known in Lanarkshire, the board, having heard the circumstances of the first merger, regretfully had to withdraw.

That decision was taken simply because no effort at all was made to bring people into the workstreams. If you know anything about mergers, you will know that from the point of view of a curriculum leader, a teacher and a support manager, workstreams are everything. We were not getting an opportunity to engage in the leadership of any of the workstreams so, with regret, the board of management made the decision to withdraw.

Then, in July 2013, the board of management decided to go back into the merger, with assurances from the Scottish Government representative, Linda McTavish and others, that the process would be fair and transparent. I think that Mrs Scanlon has given us a clear indication of how that went.

Tavish Scott: So the July document said that the merger would take place and that the principal's post was already filled. You said to the convener that you were presented—I cannot remember if it was in a phonecall or an email—with a paper that effectively meant that you had no post to go to.

John Doyle: That was in the July meeting. It effectively made my post redundant, on the basis that the board accepted those measures, which it did.

Tavish Scott: What were the meetings on 15 and 20 August about? The 15 August meeting was between Mr Gray, the Scottish funding council, Mr Kemp and Mr Roger Mullin. What is Mr Gray's recollection of what was discussed at that meeting in relation to Mr Doyle's position?

John Gray: I cannot recollect the meeting at all and I have no paperwork to support it. I was in both the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council for a period and I was a member of the SFC; I know them well and they know me well. Having had discussions with the funding councils over some time, they know that if there was an issue they could pick up the phone and tell me. We never had any discussion of that kind.

Tavish Scott: Would it be fair to say, as Mr Kemp did earlier, that there was no discussion at those meetings about severance payments in relation to Mr Doyle?

12:00

John Gray: I think that that is correct. John Doyle had his offer based on the Lanarkshire proposal; that was what was sitting on the table, and no one questioned that. It was only when it came out later that the proposed scheme—the scheme that finally went in—was a much lower effort that it became an issue.

While we are on the subject, I make it quite clear that six months of what Mr Doyle was paid was a contractual payment in lieu of notice; it was nothing to do with the severance payment. That is something that anyone sitting around the table with a contract of employment will know about.

As for the 24 months' compensation, I found it interesting that John Kemp said that it was not unusual for colleges to pay more than that. He said that this morning, but the funding council made it clear that if colleges did that, they had to find the extra money themselves. In fact, that is what it told us to do, and that is what we did.

Tavish Scott: The funding council told you that you had to find the extra money.

John Gray: Absolutely. It would pay only the limited sum, which it did. We had to find the excess ourselves.

Tavish Scott: From your own resources.

John Gray: It came from commercial income raising, not from public funds.

Tavish Scott: The issue of where the money came from is important. Are you able to provide the committee with evidence to back up your statement that the money came from commercial sources?

John Doyle: The annual accounts for the past several years come to this committee. I am sure that it will be easy enough for the clerk to look back. You will note that every year the report on Scotland's colleges shows Coatbridge College with a surplus. The board recognised very early on that we had to develop substantive alternate income sources because of the cuts that were imminent and which were then put in place. Despite that, the staff did a magnificent job in developing commercial, international and European funding sources to support the students and the staff in the college as a whole. A very good example of that, for which the Parliament provided the majority of the money, was the complete refurbishment and rebuilding of the college campus. Because of the board's alternate income strategy, we had no loans—there is no legacy of loans for the building of the magnificent campus.

Tavish Scott: Thank you.

Stuart McMillan: Good afternoon, gentlemen. I have a few questions about the remuneration committee, which I note met on 28 January 2013 and 23 October 2013. Is it quite common for a remuneration committee not to meet a great deal over a 12-month period?

John Doyle: Yes. The remuneration committee meets only to discuss the terms and conditions of payment for the principal and the senior management team; the executive committee, too, meets irregularly to talk about pay and conditions for staff. The only difference between the two is that the principal attends the executive committee, and it would be that committee that on receipt of a pay claim by trade unions would set parameters and look at what was being paid, say, in Lanarkshire and what, if anything, we could afford. The executive committee would deal with the majority of staff.

Stuart McMillan: In one of your earlier responses, you said that, even though you were not entitled to attend the remuneration committee's meetings, you paid attention to what was going on. I take it, then, that you saw the agendas beforehand and that you read the minutes afterwards.

John Doyle: In normal circumstances, that would be exactly what would happen. However, with regard to the minutes of the October remuneration committee meeting, clearly I had left. The meeting was on 23 October, Biggart Baillie was being the clerk to the board and the minutes would then have had to go to the remuneration committee members for approval, which would have been some time in November. However, in relation to what would have happened in the past, my answer would be yes.

Stuart McMillan: You mentioned Biggart Baillie. I note that it was brought into the college at quite a late stage.

John Doyle: It was brought in as soon as concerns were raised that two VS schemes were in operation.

Stuart McMillan: Is it usual for an external organisation to clerk a committee of a public sector operation?

John Doyle: You are absolutely right to point this out. It is highly exceptional, and it goes to the core of what I have said to the committee about the Auditor General's findings with regard to what I call phase 1. I should say that the clerk to the board is excellent; you must remember that in my nine-year tenure there had never been an issue that had gone to the funding council or a problem with our accounts. All we got was lots of awards. As soon as we understood that there was a problem, I understood my conflict of interest and the clerk to the board understood her professional conflict of interest, and we took the exceptional step of advising the chair and the remuneration committee to bring in someone separate to ensure that there was complete honesty and transparency.

You are quite right—that was highly exceptional. However, the clerk to the board and I—and ultimately John Gray—felt that it was very important, otherwise we would have been accused of exactly what we were accused of doing.

Stuart McMillan: Why was this particular company chosen? What process was gone through?

John Doyle: They were our lawyers.

Stuart McMillan: So they were chosen purely because they were your lawyers.

John Doyle: You should remember the timescales. Lawyers could provide more than internal or external auditors could. They would be able to take an overarching approach, particularly on the legality of payments to the senior staff, including the principal, and they would be able to provide correct advice on whether the board could or should have continued with the agreement that it had with the principal. It was a sound choice, given the circumstances.

Stuart McMillan: An email of 22 October 2013 from the Scottish funding council to Mr Gray, which contains some of what I have just highlighted, talks about the guidance on voluntary severance arrangements. I know that when Mr Gray was contacted earlier in the year—in January—that email was attached to the correspondence.

The email stressed that, given the situation that was developing, there had to be a focus on the SFC's guidance in relation to the position of the principal. Given that that was the case and given that a board meeting was to take place the very next day, was that guidance reissued to the members of the remuneration committee or was there just an expectation that members would know that the guidance was on the intranet and would automatically look at it?

John Gray: I do not believe that it was reissued, but one should remember that Laurence Howells and company were coming to the meeting the next day with both the remuneration committee and the board and were able to deliver their message verbatim. There was a good discussion with them, and they were able to say whatever they felt they had to say, which is what they did—and the minutes are there to show that. Everybody had a fair chance to question or challenge anything that was developing or any of the payments that were being proposed. As far as I am concerned, it was abundantly clear from the funding council that it would not reimburse the college with anything more than the guidance amount, and it was then up to the board to decide whether to pay more than that, which, as has been mentioned, was what happened in other boards. The board had an opportunity to discuss that in full and agreed at the end of the day that that payment should be made.

Stuart McMillan: My reason for highlighting this point is that, as we have already heard, the remuneration committee, with its particular focus and remit, met only twice. Because it met only twice, it is possible that members of the committee might not have had the Scottish funding council guidance as their regular reading material. Although it is, as we have heard, on the intranet, people might not automatically go on to that system to look at it. I would argue that, given that the committee met on only two occasions, it would have been reasonable, at the very least, to provide a link to the guidance for members of the committee in the agenda that was sent out to them before the meeting and to remind them to have a look at that document.

John Doyle: You are absolutely correct.

Stuart McMillan: But, from what I have heard so far, that might not have been the case.

John Doyle: You are absolutely correct, apart from that last part. That is why we brought in Biggart Baillie; we wanted to ensure that the remuneration committee had all the guidance, that it was well aware of the concerns of the funding council and the Scottish Government and that there was a senior partner in the firm in position to advise the board on any questions that it might have about legality and the process.

It is fair to say that Biggart Baillie provided all of that. I was not at the meeting, but I know that because I spoke to Paul Brown when we engaged Biggart Baillie and said to him, "Look, you've got full access to the board and the college intranet. We're sending you all the documentation and all the letters and communications from the funding council and the Scottish Government. Because of the conflict of interests, which, as you know, is why we brought you in, I now have to take a step back." I am convinced that a company of that ilk and a person so senior in its team would have provided all the evidence to the remuneration committee. Nevertheless, that same evening, Laurence Howells came and briefed the full board, which included the remuneration committee. Therefore, everybody had the facts. That evening, the remuneration committee changed the conditions of severance for the senior team and the conditions with regard to the principal's pension.

Stuart McMillan: Are you content that all the information was passed over to the representatives from Biggart Baillie?

John Doyle: Absolutely.

Nigel Don: Good afternoon, gentlemen. I want to go back over what Mr Doyle has just said, but with Mr Gray. I listened to everything that Mr Doyle said. Will you confirm whether, on 23 October, the remuneration committee met before or after the board meeting?

John Gray: Before.

Nigel Don: I imagined that that was the case. Can you please give me your version of what was said, what was done, and how that was managed? I do not know what a clerk does. I know what the clerks in the Parliament do, but I do not know what a clerk does in that context. Given that you chaired that meeting, can you give me a feeling of what Paul Brown from Biggart Baillie did?

John Gray: I assume that the minutes of the remuneration committee meeting and the board meeting of 23 October are in your papers somewhere.

Nigel Don: Forgive me, but will you please work on the assumption that I do not have those? Will you please explain on the record what you believe happened and why Mr Doyle is entitled to the view that he has very clearly expressed that everything was done transparently?

The Convener: Just to clarify so that we are open and transparent, there may be issues concerning the data that is provided in the remuneration committee minutes. We are currently looking at that so that we can explore further how that information can be disclosed. Those minutes have not been published on the website, so we are not in a position to refer to them. We have been provided with them in confidence. They are private papers.

Nigel Don: Thank you, convener. That is why I am asking Mr Gray to take me through on the public record what he believes happened. Obviously, I do not want every word, but I would like to hear about what is relevant in the specific advice that would have been given to the board and how that would have been handled in order to justify Mr Doyle's clearly stated view that it was all handled in public. I am not doubting that for the moment, but I want to hear evidence from the chair of the board.

John Gray: If we have half an hour—

Nigel Don: If it takes half and hour, I have that.

John Gray: I will read out the minutes of the meeting.

The Convener: To clarify, rather than taking half an hour, Mr Gray should give us a very brief summary in no more than three minutes.

John Gray: I understand that, convener. The minutes of the meeting run to three pages of foolscap, and the font is small. The document is quite voluminous, and it has a lot of detail in it.

Nigel Don: I am very happy for you to edit that and to take out the voluminous detail, but let me be clear: if I had to read three pages of small print, it would not take above half an hour, and I have half an hour.

The Convener: I clarify to the member that we do not have half an hour to go through that.

John Gray: I understand that.

The Convener: We are looking for a one-minute overview of what was said to you by Paul Brown, who led the meeting. That is all that we need for the moment. If Mr Gray is not able to provide that, maybe Mr Don can change his line of questioning and we can follow that up in writing.

Nigel Don: Forgive me, convener, but that is exactly what I want to hear. I have heard Mr Doyle explain what he intended to happen, which I respect. I would like to hear the man who was there and who is in front of the committee say how that happened.

12:15

John Gray: I really do not know how to tackle this question. I have underlined a number of lines in the minutes, which seem to me to be important, so maybe I will just tell you what they are.

Nigel Don: Please proceed.

John Gray: Okay. The minutes say:

> "Paul Gilliver agreed with Carole McCarthy that the Edinburgh policy was not agreed at the 28 January 2013 meeting."

That refers to the staff getting enhanced payments. Paul Gilliver and Carole McCarthy had interpreted the January meeting as a meeting to talk about the principal's severance, not staff severance, so that came out in the discussion.

The minutes go on to say that—at that point—the committee

> "did not agree to the item relating to the senior management team."

That is the thing that we talked about earlier, about the senior management team originally being offered an enhanced package. That was discussed at the meeting.

Under paragraph 6, "Actions", the minutes say:

"The Committee approved the 28 January 2013 meeting minutes, but the reservations of both Carole McCarthy and Paul Gilliver, who disagreed that the Edinburgh policy was agreed, were noted."

That is the point to do with staff enhancement. The minutes continue:

"The Committee approved that the Lanarkshire Voluntary Severance scheme offer be introduced and made available to the senior management team and all other staff members with effect from the 1 November 2013.

The Committee confirmed their approval of the Principal's package as 21 months, 3 months for taking the merger forward and a 6 month payment in lieu of notice."

That was discussed at the remuneration committee on that day.

Nigel Don: Do the minutes say anything about input from Biggart Baillie?

John Gray: Biggart Baillie drew up the minutes.

Nigel Don: I was looking for the firm's people's input, because the suggestion has been made that they provided advice to the remuneration committee. Do the minutes say as much?

John Gray: No. The minutes record the meeting but do not talk about them. There is no minute involving them saying something at the meeting.

Nigel Don: I suggest that that is one of the reasons why people might have drawn the conclusion that there is no evidence of the input. Does the minute say that they are there?

John Gray: Yes. Paul Brown and Victoria Cowan, both of DWF LLP, are minuted as being in attendance. There are apologies from Ralph Gunn, who was a board member. The others present, apart from me, are David Craig, Pauline Docherty, Paul Gilliver, Thomas Keenan and Carole McCarthy. Those are the people who were present at the meeting.

Nigel Don: Do the minutes indicate what was done, rather than what was agreed?

John Gray: What was done?

Nigel Don: Exactly. Minutes often say, "X, Y and Z were agreed." Do the minutes say anything before that, such as "There was a discussion about this," or, "There was a presentation about that"?

John Gray: The minutes say:

"Further discussion took place on the understanding of all of those present at the meeting on 28 January. John Gray brought the discussion to a close"

et cetera, et cetera; there is a load of narrative about what was said, done and discussed at the meeting.

Nigel Don: And the people from Biggart Baillie—

John Gray: They minuted all of that.

Nigel Don: Yes, but did they contribute to it?

John Gray: No, it does not say that they contributed to it.

Nigel Don: That, I suggest, provides some evidence for the feeling that there is no evidence that they made an input. We are not denying that they were there and we are not necessarily denying that they had an input in the writing of the minutes. However, if I were looking for evidence that they provided independent advice to the remuneration committee, what you have told us, if I have heard right, does not provide such evidence. I am not saying that it did not happen. However, there is no evidence of that.

John Doyle: If I may, the minutes say that Paul Brown, the college's legal adviser—convener, you will have to keep me right on the legality of what I can say, but it is quite clear—

The Convener: I should make clear, so that everyone is aware, that there are negotiations concerning the document that we are considering. We want to ensure that every document is published, and we are working towards that.

John Doyle: Can I just say that this is very tight script and that this is a very stressful environment?

To answer Mr Don's question, in paragraph 3, "Funding council", the minutes say:

"Paul Brown, the College's legal advisor, addressed the Committee in relation to the issues raised by the funding council. Paul Brown advised that the Committee—"

Do you want me to continue to read it verbatim?

Nigel Don: You have said that Paul Brown advised the committee. That is all that I wanted to hear. We will worry separately about what he said.

John Doyle: There are absolutely sentences—

Nigel Don: If we are not sure about the legality, we can stop there, but thank you—

John Doyle: There was legal advice to the committee. I know that because I read the minutes—I was not there.

Colin Beattie: We have talked a bit about Biggart Baillie, which was Coatbridge College's legal adviser. You engaged it to take on that additional task. Was a cost involved in that?

John Doyle: There certainly would have been.

Colin Beattie: Do you have any idea what that was?

John Doyle: I imagine that it was several thousand pounds. The reason why I do not have an exact figure—I am sorry to sound repetitive—is that I left on 31 October 2013. I presume that the board continued with the services of Biggart Baillie, so I cannot tell you what the figure was if it continued to be involved in another meeting or several meetings.

Colin Beattie: I presume that you fixed some sort of remuneration rate.

John Doyle: Standard charges were well established, so the answer is yes.

Colin Beattie: Did the cost of that work relate purely to your potential conflict of interests?

John Doyle: No—absolutely not. This was about the concern that the funding council and the Scottish Government raised about there being two VS schemes. The fact that I, as the principal and chief executive and as the clerk to the board, had a conflict of interest was discussed with the chair, who readily and rightly agreed that we needed somebody to come in and support the remuneration committee, to ensure that that committee had all the facts and could make a decision—whatever that decision was—on the basis of an informed opinion. The remuneration committee's minutes show that clearly, both in the advice that that committee was given and in the dialogue between members. It was money well spent.

Mary Scanlon: I will ask about something that has not been raised yet. Paragraph 16 of the Auditor General's report says that a member of staff in the principal's office received a pay increase of 19 per cent in January 2013, which was in the middle of the public sector pay freeze. That was approved by Mr Doyle, but there was no record of why that person was given the increase. Can you say why you approved a 19 per cent pay increase for a member of staff in your office at that time?

John Doyle: Yes, I can. It was an operational matter and something that I was perfectly entitled to do. As has been indicated before, the 19 per cent increase sounds a lot, and it would have been with my salary, but it was not with that member of staff's salary. The reason behind the increase was clear.

I stress again that it was an operational issue. I understood from many principals who had gone through a merger that they would lose their senior staff as soon as they went into merger talks about workstreams.

Mary Scanlon: What was that person's salary?

John Doyle: I have no idea.

Mary Scanlon: You have just said that it was—

John Doyle: It was about £20,000-odd, but I could not tell you whether that was after or before. If you let me explain, I will make the position clear.

Mary Scanlon: There is no record—

John Doyle: I am going to talk about that as well.

It was clear from speaking to many principals and people who had gone through a merger that, as soon as merger talks started, it came to pass that all the curriculum leaders, all the support managers and the senior team would be all over the place in different colleges talking about the development of the new college, what curriculum would be offered and what the support services and structures would look like—and rightly so. I understood that clearly, as did my board, and we needed a continuation of the excellent educational service that was given to the cohort of students.

I needed somebody who could work with me 24/7, who would be able to communicate effectively, who understood how the college operated and who was known by staff. The first thing that I looked at was providing unlimited overtime to that person, but that was not going to be effective. The second thing that I looked at was bringing in somebody separate to assist me, because I needed assistance and I needed someone to come with me and work through the day-to-day running of the college, particularly on communications. The individual in my office was a communications expert who met all the criteria. I put all the paperwork in her personal file and I am surprised—and yet not surprised—that the auditor did not find that evidence trail.

Mary Scanlon: So there is no record of the additional responsibilities. Did everybody—

John Doyle: There should be.

Mary Scanlon: I can only read what is before me in the Auditor General's report.

John Doyle: The report is light—it is sparse.

Mary Scanlon: I cannot make anything up. Perhaps you would be good enough to give us that information.

John Doyle: What information?

Mary Scanlon: I ask the questions; you do the answers.

As a former lecturer, I know that every member of staff would be involved in moving forward with the merger. Did you give any other member of staff who was on a pay scale of £20,000 a 19 per cent pay rise or only the person in your office who worked for you?

John Doyle: The answer to your question is that I did not find the need to provide additional duties to other staff—

Mary Scanlon: They got 2 per cent.

John Doyle: The other thing that you should know is that we are talking about an interim period of several months. The increase was not intended to be an established rise. The simple fact is that the overwhelming majority of my staff wanted jobs in the new organisation. The individual member of staff was keen to be part of New College Lanarkshire—

Mary Scanlon: I am sure that the others were, too.

John Doyle: May I finish? In that context, that person, like every other support manager, would have to apply for a post that was to become available five months down the line—actually, at that point, we thought that the length of time would be shorter than that.

The increase was an interim measure and an operational issue. There was an evidence trail in place and a rationale for it. Further, it represented better value for money than bringing in a consultant, which, as you guys know better than anyone, is done across the piece.

Mary Scanlon: We will be the judge of that when we get the information.

John Doyle: I am not sure what information I can give you.

Mary Scanlon: The voluntary severance payments that your college paid out were £400,000 higher than the funding council's recommendations. It recommended paying out £1.3 million and you paid out £1.7 million.

The funding council has told us that it cannot apply any sanctions, because recouping that £400,000 would have a detrimental effect on staff and students and on education in Lanarkshire. However, we have heard from you today that the £400,000 would have had no detrimental impact on staff and students, because you got it from commercial activity.

Did the funding council know that the additional £400,000 that you had to hand out came from commercial activity? If it did, it might have been a bit more keen to apply the sanctions that it had the right to apply. Why was the funding council misled into thinking that the money would be taken from students as opposed to coming from commercial activity?

John Gray: I can answer that clearly. The money came from commercial activity. As John Doyle said earlier, it was recorded in our annual report and accounts over many years that we had done that on a regular basis. I have no idea why the funding council concluded what it did. It is a false conclusion, as far as I am concerned.

Mary Scanlon: So it is a false conclusion. I would be the last person to say that the money should be taken from students and front-line education in Lanarkshire, so I accepted the funding council's statement that it could not apply sanctions. However, it could have applied sanctions, because the money came from commercial activity, so the sanctions would not have affected students. Am I right?

John Doyle: I am unsure about the figure of £400,000.

Mary Scanlon: It is in one of the first paragraphs of the Auditor General's report, which I am happy to read out to you.

John Doyle: Please do.

Mary Scanlon: Paragraph 4 says:

> "Thirty-three staff left ... at a total cost of £1.7 million, of which the ... Funding Council ... contributed £1.3 million and the college contributed £397,945."

John Doyle: With regret, I have to remind you again that all the severance arrangements for all the staff happened well after John Gray and I had left. We had no input into the severance arrangements of the college board at that time, after 31 October 2013. No structures were available. At that time, nobody had applied to VS schemes.

Mary Scanlon: We have had plenty of other people coming to give us evidence, and the written submissions that we have had contradict what you are saying.

John Doyle: I am sorry, but it is a matter of record that all the people who left under voluntary severance did so after 31 October. There is complete confusion on this issue in some quarters. John Gray demitted office on 24 or 25 October. I left on 31 October.

Mary Scanlon: The decisions were made in January 2013, when you were opting in and opting out and opting back in again. The decisions were not made on 1 November. You cannot walk away and say that it has nothing to do with you.

John Doyle: The decisions were made by the New College Lanarkshire management team, based on what was happening on the ground and the structures that that college had developed. That was way after I left. There were no voluntary severance applications prior to 31 October.

12:30

The Convener: I have two final questions. First, can you clarify whether Biggart Baillie was a facilitator or a provider of specific HR advice?

John Doyle: As I have said, it was a facilitator and a provider of specific HR advice.

The Convener: For the issues surrounding the provision of information about the guidance from the funding council, are you placing the blame squarely on Paul Brown, who you think was required to provide the information?

John Doyle: I understand that there is some concern about the ability to share the remuneration committee's minutes. They make it clear that, on numerous occasions, Paul Brown and Biggart Baillie advised the remuneration committee on all matters pertaining to—

The Convener: As far as you are concerned, Biggart Baillie had a copy of the guidance.

John Doyle: Yes.

The Convener: You are clear that Paul Brown, acting on behalf of Biggart Baillie, would have had a copy of that guidance.

John Doyle: That is explicit in the minutes, in the context of the advice.

The Convener: Is there a context in which he actually said, "I'm going to provide this advice"?

John Doyle: You would need to speak to Paul Brown. I was not at the meeting. He was certainly aware of the concerns.

The Convener: He was aware of the advice.

John Doyle: He was also aware of all the evidence that he needed to support the board.

The Convener: I have a final question that is in connection with the commercial activities that you referred to. I want us to be clear that, when colleges go about their business in relation to their commercial activities, the officials who are involved are paid by public money. That is what allows those commercial activities to continue in the first place.

I take it that the commercial activity is not completely separate from the college. Can we have clarity on that? How do the commercial activities operate? I take it that they operate under the autonomy of the college.

John Doyle: You are absolutely correct.

The Convener: And under the charitable status.

John Doyle: They are absolutely part of the college. I hope that I have not given an impression to the opposite effect.

The Convener: You have given the impression that the view was, "Everything is okay because we have a bit of cash in the private company, so it does not really matter."

John Doyle: I have not said that.

The Convener: No, but Mr Gray did. You might want to explain that, Mr Gray.

The status of a private company is that it comes under the autonomy of the college. In many different ways, such companies are funded by public funds. What reason, therefore, did you have for thinking, "Oh, it really doesn't matter. Let's just take a decision to enhance the package because the money isn't really coming out of the public purse"? It came out of the public purse, as those organisations exist because the public funds them in the first place. Is that correct?

John Gray: I did not say anything like that.

The Convener: You did say that. I have got it on record. You said to me that it was acceptable and that you did not know why the funding council was concerned, because the funds were being provided via the private enterprise that the college was involved in. You went on to explain how proud you were about that.

Tell me, does it not matter that, whatever way you look at it, the money comes from public funds, which ensure that those private companies are in place?

John Gray: I am not sure how you can conclude that money that is raised from commercial activities becomes public—

The Convener: Because those companies are part of the college. They are not Apple. Colleges create such organisations as part of their autonomy. Whichever way you look at it, public funds ensure that they are in existence. Is that not correct?

John Gray: If that is your interpretation, I am happy to live with it.

The Convener: You should know better than me, because you are the man who has been involved in the process.

John Gray: That does not get away from the fact that the funds to make the payments had to be found from the college resources, and they were.

The Convener: Stuart McMillan has a brief question.

Stuart McMillan: Does the revenue that is raised by the commercial activities go into a separate bank account?

John Gray: No.

Stuart McMillan: So it goes into one big college bank account.

John Gray: It is there for the use of the college, at all times.

The Convener: I thank the witnesses for their evidence. We now move into private session, as agreed.

12:34

Meeting continued in private until 13:12.

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