



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 4 November 2015

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PUBLIC AUDIT COMMITTEE

17th 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:

David Craig (Former Member, Coatbridge College Remuneration Committee)

Pauline Docherty (Former Member, Coatbridge College Remuneration Committee)

Caroline Gardner (Auditor General for Scotland)

Paul Gilliver (Former Member, Coatbridge College Remuneration Committee)

Allister Gray (Wylie & Bisset)

Ralph Gunn (Former Member, Coatbridge College Remuneration Committee)

Thomas Keenan (Former Member, Coatbridge College Remuneration Committee)

Carole McCarthy (Former Member, Coatbridge College Remuneration Committee)

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

Cathie Wyllie (Henderson Loggie)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Audit Committee

Wednesday 4 November 2015

[The Convener opened the meeting at 09:04]

Decision on Taking Business in Private

The Convener (Paul Martin): I welcome members of the press and the public to the Public Audit Committee's 17th meeting in 2015. I ask everyone to ensure that their electronic devices are switched to flight mode so that they do not affect the committee's work.

Under agenda item 1, do colleagues agree to take item 3 in private?

Members *indicated agreement.*

Section 22 Report

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

09:05

The Convener: Item 2 concerns the section 22 report "The 2013/14 audit of Coatbridge College: Governance of severance arrangements". On our first panel of witnesses we have Pauline Docherty, Paul Gilliver, Thomas Keenan, Carole McCarthy, David Craig and Ralph Gunn, who are all former members of Coatbridge College's remuneration committee. As we are extremely tight for time, we will move straight to questions.

I advise everyone that, given the numbers of people who are present, the session will be extremely difficult to manage. Therefore, I will clarify the way in which we should proceed. If one former member of the remuneration committee makes a statement, we might best continue without further interjections from other former members on the matter.

My first question is for any former member of the remuneration committee and concerns the meeting that took place in January 2013—I know that some of you might not have attended that meeting. I understand that there was a difference of opinion at that meeting and that, at the meeting in October 2013, there was a further difference of opinion about the minutes of the meeting in January. Does any member wish to refer to that issue?

Carole McCarthy (Former Member, Coatbridge College Remuneration Committee): I was at both meetings. My recollection of the meeting in January 2013 is that we talked in some detail about a severance package for the principal. We were considering going into the merger and it was clear that we had to start thinking about voluntary severance schemes.

We were given information about what was happening in the sector and were told that the Edinburgh scheme, which was in place for the three colleges that were merging in Edinburgh, was being used by most of the sector. We were given information about what principals who had already left had left with. My recollection of the meeting is that we agreed the principal's package and said that we would want to implement the Edinburgh scheme when we decided that it would be appropriate to create a voluntary severance scheme that applied to all staff, which would have a start date and a finish date.

At that time, we had not seen the Edinburgh scheme—it was not available to us in January. I do not remember exactly when it came out, but it

was emailed to us at a later date, some time between January and October.

The Convener: Did you oppose the minutes of the meeting in January 2013?

Carole McCarthy: Yes.

The Convener: Did other members of the remuneration committee do likewise?

Paul Gilliver (Former Member, Coatbridge College Remuneration Committee): I opposed the minutes of the 28 January meeting of the remuneration committee when they were put up for approval at the October meeting.

The Convener: Were your reasons similar to Carole McCarthy's?

Paul Gilliver: My reason was that I wanted equal access to voluntary severance for all staff, and the introduction of an executive scheme would not permit that.

The Convener: You might have read the *Official Report* of our evidence session with Mr Doyle last week. He made it clear that he had no involvement with the remuneration committee and had no discussions concerning his severance package. Did any of you have formal or informal discussions with him about the severance package?

Paul Gilliver: There was no contact at a committee level, and no informal contact with me.

The Convener: Is that the same for the other witnesses?

Thomas Keenan (Former Member, Coatbridge College Remuneration Committee): I can add a caveat that might help you. Following the January meeting, Mr Doyle received an offer that, at this stage, seems to have contravened the guidance from the Scottish Further and Higher Education Funding Council.

Mr Doyle was the accountable officer for the college, so once he was aware of the details of the offer that was made to him, he should have come back to the board; indeed, he should also have reported it to the funding council. That was his responsibility under the memorandum arrangements.

The Convener: Mr Doyle was in the position that it had been made clear to him that he did not have a future at the college. As the remuneration committee, you had to consider how that would be taken forward.

Thomas Keenan: I think that the timeline is fairly important. In January 2013, the board agreed to enter into a merger of the colleges in Lanarkshire. At that time, Mr Doyle had written a letter—I do not have it in my possession, but I

have seen it—in which he suggested that that could make him redundant as the principal of Coatbridge College. Given that it was a three-college merger, there was every possibility that that would occur. Following that, the college's chair called a meeting. I was in New Zealand at the time, and he phoned to ask me what the situation was in relation to the principal and the principal's concerns. The advice that I gave him was, "Make sure it's within the sector norm and complies with all guidance."

In January 2013, Mr Doyle was in the position of being able to apply for a post in New College Lanarkshire. The information that I have seen subsequently suggests that that happened some six months later. At that time, we were in a merger process and, as far as I was aware, Mr Doyle had the ability to apply for a post in the new college.

The Convener: I want to clarify something for everyone's sake. Is it the case that no formal or informal discussions took place with Mr Doyle? Did he pass you in the corridor and say, "Did you hear about the possibility that I could be getting moved on? I'm concerned about the proposed package"? Was there no discussion with him whatever?

Paul Gilliver: None at all.

Thomas Keenan: None at all.

The Convener: So no members of the remuneration committee had any conversations with him in that respect.

I understand that Laurence Howells attended the remuneration committee meeting in October 2013. Is that correct?

Paul Gilliver: He did not attend the remuneration committee meeting; he attended the board meeting.

The Convener: Were you aware of the clear guidance that the Scottish funding council gave that any proposed package should be agreed by the external and internal auditors or should at least be brought to their attention?

Paul Gilliver: We discovered that there were Scottish funding council guidelines, but we did so only in October 2013.

The Convener: As members of the remuneration committee, in which capacity you had an important role to play, did you not think that there ought to be guidelines of some kind out there? Did none of you think that it was your responsibility at least to ensure that you had that guidance in front of you?

Carole McCarthy: That is what we did at the meeting in January—we asked about the norms in the sector and we got information about what was

happening in other colleges. We were told that the voluntary severance scheme in Edinburgh—

The Convener: I am sorry—who told you that?

Carole McCarthy: The chair of the remuneration committee. That is what we were told at the remuneration committee. We were given information at the committee.

The Convener: What kind of information were you given?

Carole McCarthy: It was information about other colleges in the sector.

The Convener: Was that in a paper?

Carole McCarthy: Yes—it was in a paper that came to the remuneration committee. We looked at norms in the sector and at the situation in other colleges, and we talked about value for money. We discussed the need to ensure that there was payback on a reasonable timescale. We asked those kinds of questions at the January remuneration committee meeting.

Laurence Howells came to the board meeting, which was after the remuneration committee meeting. We had a much longer discussion about the minutes of that meeting and absolute clarity about what we approved and did not approve. I believed that Laurence Howells was concerned about a senior management severance package that he was not happy with. We told him that there was no senior management severance package and that every member of the senior management team who was going to leave would do so under the New College Lanarkshire scheme.

The Convener: So all the information that was provided to you was provided by the chair in a paper, but there was nothing that made it explicitly clear to you that the external and internal auditors should be made aware of any severance packages. Were you made aware of the correspondence that was exchanged with the Scottish funding council? Laurence Howells exchanged a number of emails with Mr Doyle and other members of the college, including Mr Gray. Were you made aware of those exchanges, in which Mr Howells made explicitly clear what the Scottish funding council expected of the college?

09:15

Thomas Keenan: I was aware that there was correspondence from Laurence Howells. The exact content of it was not made available to me, but I had a good reason to know about it. Both Mrs McCarthy and I were on the merger committee, which we attended in September 2013, when the question of severance payments arose. Mrs McCarthy and I agreed to a scheme to provide 13 months' pay for all staff members in Coatbridge

and the wider area. I was accompanied to that meeting by a senior member of staff who was aware that there was a scheme that I did not know existed. I wrote a briefing note and went back to the college. That note was taken by the board secretary and circulated to board members. I said in it that I wanted a report to go on 23 October to the remuneration committee and the board to deal with the issue of a 13-month severance payment. That was issued to the board.

Four weeks later, on 5 October, I received a telephone call from Mr McGuire, who was the principal designate of New College Lanarkshire. He brought to my attention the issue of due diligence and said to me that there was a contingent liability in due diligence of a significant sum that was more than I would have expected. That immediately rang alarm bells with me and, on the Saturday, I thought long and hard about it. I thought, "What do I not know and what am I going to do about it?" That was the thrust of the matter.

I thought about the matter on the Sunday. At 7 minutes to 1 on the Monday morning, I sent an email to Mrs McCarthy that said that I was extremely worried that I had been misled in some way. I was very concerned that we had been misled, and I arranged to meet the depute principal on 7 October to find out what was going on, because the due diligence report told me that, in respect of information coming from the college to the auditor, there had to be some legal or factual basis, or it would not have been in due diligence.

I met the depute principal and was shown a letter that was dated 8 February or around then and which highlighted clearly that there had been an offer to senior managers. In my opinion, that offer did not correspond with the Edinburgh scheme. The letter essentially said, "If you don't see a place for yourself in the new college, you will get a 21-month pay-off, irrespective of length of service or anything." I was more than upset when I saw the letter.

I took that up with the board chair, because I had been unaware of that letter, which had significant implications particularly for the merger—it was a wrecking ball that six staff out of 1,000 could have that scheme. I stress that it was not a severance scheme, as a severance scheme presupposes a number of things—folk have to apply to it, it has to be approved and it has to be in the merged college's interests.

Following that, I understood that Mr Howells was pursuing the college. I was pursuing the college—I was absolutely incandescent that we should have been put in that position. As part of the due diligence process, trade union representatives were—properly—at the meeting. When they heard that senior staff in Coatbridge

College had a different severance scheme from other staff, things went ballistic, and I cannot say that I blame them. I was sitting there as a board member, knowing that I had never seen that proposal, never approved it and never considered it to be a part of a severance scheme. It caused a good many problems.

As I said, I spoke to the chair, I wrote to Paul Gilliver and, irrespective of the involvement of Mr Howells in relation to the senior staff severance scheme, when it went to the remuneration committee it was removed. However, it had a number of impacts for the future. I cannot be more candid than I have been today.

The Convener: I appreciate that. I have one final issue to raise. I understand that the director of finance contacted you prior to Mr Doyle's BACS payment on 25 October 2013.

Thomas Keenan: Yes.

The Convener: Did you give authority for that payment to be made?

Thomas Keenan: No. It would be helpful to give the background. Due diligence showed up three things. It showed up an amount of money that I understood that the board had approved, which was at or around two years' salary. It showed up a pension payment of £91,000, which quite frankly I did not understand. It also showed up a payment that was essentially in lieu of notice.

When I went to the remuneration committee, I spoke at length, particularly about the payment in lieu of notice. A lot of information has been put to your committee about who said what and when. The plain fact is that, when we went into the merger process in January 2013, potentially there was no place for one of the principals—principal A or principal B. When we confirmed on 6 August that we were going back into the merger, it was clear that a principal designate either had been appointed or was in the process of being appointed. The merger process was quite far down the line for New College Lanarkshire. Therefore, as soon as we agreed on 6 August to go into an extraordinary merger, in effect Mr Doyle—

The Convener: Can I clarify something? I am asking you a pretty clear question. I understand that, via the director of finance, representations were made to you as the succeeding chair. I want to clarify that for the record.

Thomas Keenan: No. For the record—

The Convener: Just a wee second—sorry. You succeeded Mr Gray in the chair.

Thomas Keenan: Well—

The Convener: Just listen to the question first. Following that, I understand that there was a

representation in an email or in some other form—I am not sure. Let us just clarify that. You were asked, "Should this payment be made to Mr Doyle?" I understand that at that point you might have been concerned about some aspects. I am only asking the question; I not asking you to qualify it. Did you advise the director of finance that the payment should be made—yes or no?

Thomas Keenan: That version of events is not quite right. I am sorry to labour the point.

The Convener: Did you arrange for the payment to be made?

Thomas Keenan: No. I think that I need to qualify this. I am sorry; I am not being obtuse.

The Convener: Can you be as succinct as possible?

Thomas Keenan: I knew that there was a problem because of an email that went out on 24 October from the SFC to the chair. I then received a copy of all the correspondence between the SFC, the former chair and Mr Doyle. My position, which may be debated but which I have documentary evidence to back, was that I was to become chair when the then chair and Mr Doyle both left. I phoned to discuss with the director of finance the elements of Mr Doyle's severance payment. The element that gave me most concern was the £91,000.

Two days before, I had been at a meeting at which the board members unanimously approved a payment in the order of two years' salary and accepted that the position in relation to the six months' pay was a contractual and legal obligation. Therefore, on that basis, I did not insist that Mr Doyle's severance payment should be stopped.

Mary Scanlon (Highlands and Islands) (Con): I have read so much about the witnesses that it feels like you are characters in a novel who are coming to life. I am grateful for your evidence.

Last week, John Doyle said, in response to a question that I asked him:

"There were no voluntary severance applications prior to 31 October."—[*Official Report, Public Audit Committee*, 28 October 2015; c 82.]

If there were no voluntary severance applications prior to 31 October, why were you discussing Mr Doyle's voluntary severance application, as I presume that you were doing, on 28 January?

Thomas Keenan: I can explain the situation and clarify a couple of things, which will be helpful. The committee considered Mr Doyle's request for a severance package—

Mary Scanlon: So he requested a severance package—

Thomas Keenan: He wrote to the chair, and the chair held a meeting.

On the number of severance packages before 31 October, the situation was that New College Lanarkshire had a scheme, which was open to all staff and was based on 13 months' salary. A number of Coatbridge staff applied for the scheme, but none of the senior managers applied for it at that time. Forgive me if I have got the figures wrong, but something like 30-odd staff applied, and they were released as and when it suited the business needs of New College Lanarkshire. Most went in 2015.

To answer your question, a voluntary severance scheme was open for staff members in Coatbridge as part of the merger process, and a number of people applied but, as far as I am aware, and to the best of my knowledge, no payments were made—apart from to Mr Doyle—before 31 October.

Mary Scanlon: Can you confirm that Mr Doyle asked for a voluntary severance application to be considered by the remuneration committee on 28 January? Were your deliberations on that day a response to Mr Doyle asking about voluntary severance? Did he apply?

Carole McCarthy: That day, the remuneration committee was focused on a letter from the chair, which said that the principal's position was no longer tenable, it was likely that he would have to leave in the near future and we needed to talk about a severance package for him. At that meeting, we said, "Well, if we're going into a merger there will have to be a voluntary severance scheme for all staff," and we talked about the Edinburgh scheme.

Mary Scanlon: On 28 January, you agreed to one month's salary for each year, up to a maximum of 21 months. You also agreed to an extra three months' pay for successfully taking the college through the merger—which the college opted out of two weeks later—plus another six months. If Mr Doyle did not apply for voluntary severance, was the issue brought to the committee by John Gray, the chairman of the board?

Carole McCarthy: Yes. In the discussion about the severance package, we discussed two years' pay—21 months' pay plus three months to take the college into the merger—but we did not discuss the six months' notice at that stage in January.

Mary Scanlon: Did you agree in January that the principal would get 21 months' pay?

Carole McCarthy: Yes. Based on the information that we had about what other principals in the sector were leaving with, and

based on the Edinburgh scheme, it was 21 months.

Mary Scanlon: Last week, the Scottish funding council confirmed that it issued the guidance in January that would have seen Mr Doyle get 12 months' pay. Mr Gray and Mr Doyle both had that guidance, which proposed 12 months' pay rather than 30 months' pay.

What information were you given prior to that meeting or at that meeting to ensure that you had the SFC guidance? That is what we are really interested in. What information were you given to make that decision? After all, that is the reason why you are all here today. What guidance were you given before or at the committee to ensure that Mr Doyle's payments were kept within the SFC guidelines? I would like to hear from Ralph Gunn and David Craig in particular—they have both given written evidence to the committee, for which we are grateful—because my understanding is that they were not given that guidance from the funding council.

09:30

Carole McCarthy: We were not given the funding council guidelines. We were told about the norms in the sector and given information on other colleges. We were told about the Edinburgh scheme, which was posted to us later. We talked about the Scottish funding council and asked about the connection with it, and we were probably told that there had been meetings with Mark Batho and someone else at the council. That is what we were told. We never had the SFC's guidelines in front of us.

Mary Scanlon: We have to establish the facts here. The Auditor General's report talks about information being withheld, and the fact is that you came to a decision on the basis of the information that you had and the voluntary severance decision that you made was much more generous than it would have been had you had the funding council's guidance. Do any members of the remuneration committee sitting here feel that information was withheld from it so that it would decide to give Mr Doyle a more generous payment?

Paul Gilliver: It seems to me that we had incomplete information. The minute records:

"The Chair ... confirmed that he had spoken to Mark Batho, Chief Executive of the Funding Council, and that these discussions were in line with the Funding Council's guidance on severance arrangements for senior staff."

Mary Scanlon: Is it fair to say that, if you had the Scottish funding council guidance that you are aware of now, you would not have agreed to give Mr Doyle 21 months' pay plus an extra three and then another six?

Paul Gilliver: It is my conviction—

Mary Scanlon: Would you have kept within the Scottish funding council guidelines if the college chair or principal had ensured that you were given that information?

Carole McCarthy: It is not possible to answer that. The funding council guidelines talk about things like discretion and business cases. It is almost impossible to answer that question with hindsight. We thought that we had made a reasonable decision based on the questions that we asked, the conversation that we had and the information that we had in front of us.

Mary Scanlon: I do not doubt that. However, the Scottish funding council guidance says that someone with 14 years' service should receive 12 months' pay. You agreed to 21 months' pay, plus an extra three and then another six, which was much more generous. If you had had the funding council guidance, would you not have said, "Okay. Here's the basic payment, according to the guidance," which would have been 12 months' pay instead of 30 months? That is my critical question today. Would you have made a different decision if that guidance had been available?

Ralph Gunn (Coatbridge College): It is difficult to talk for everybody but, speaking personally, I think that, if I had had guidance in front of me that said something markedly different from what we eventually decided, I would not have made the decision that we made.

Mary Scanlon: The Auditor General talks about withholding information. Is that a fair assessment of the situation?

Ralph Gunn: With hindsight, it is. However, at the time, we did not know about anything like that.

Carole McCarthy: The information that we were given was more up to date. The Edinburgh scheme had 2012 on it, and we got information about the rest of the sector.

Mary Scanlon: Was it John Gray who, in agreement with the principal, developed and put forward to you the principal's severance package to which you agreed on 28 January?

Paul Gilliver: It was proposed by the chairman and agreed by the committee. I cannot add to that.

Mary Scanlon: It was proposed by John Gray.

Paul Gilliver: Yes.

Mary Scanlon: When he proposed it, did he say that he had been discussing it with the principal in advance?

Paul Gilliver: Not to my recollection, no.

Mary Scanlon: Was the decision that you made conveyed to the principal after your meeting?

Thomas Keenan: The answer is obviously yes. He got a letter offering him a severance deal.

Dr Richard Simpson (Mid Scotland and Fife (Lab): That was on 8 February.

Thomas Keenan: Well, it was then or about then.

Mary Scanlon: So he got the letter right after the meeting.

Thomas Keenan: That would have been consistent with what happened with the letters that went to the senior staff—that was on or after 8 February.

Tavish Scott (Shetland Islands) (LD): I want to clarify a couple of things that all of you have mentioned. First, in last week's evidence session, John Doyle said that he or his office had made sure that the funding council guidance that Mary Scanlon has referred to had been placed on the college intranet. Were you made aware of that at the meeting on 28 January?

Paul Gilliver: We were not directed to the intranet.

Tavish Scott: So you were not directed to that at any time.

Paul Gilliver: No.

Thomas Keenan: If Mr Doyle seriously thinks that committees are appropriately advised by going to the college intranet, I have to say that that is quite simply nonsense. I repeat: it is absolute nonsense. If there is information that should have been within our domain—

Tavish Scott: You must understand that the committee is interested only in the facts. I understand your perspectives on the matter, because you have put them on the record, and we are grateful for that.

I think that Ms McCarthy said this earlier, but I want to get it absolutely right. You said that there was a letter from Mr Doyle—which we have not seen—asking to go and therefore asking the remuneration committee or the board to consider a voluntary package. Can you clarify when the letter was written and when, or if, you saw it?

Carole McCarthy: It was a long time ago—

Tavish Scott: I know—I am sorry to ask you about it.

Carole McCarthy: I am almost sure that it was pre the remuneration committee meeting in January. In fact, I think that it led to that meeting. The principal felt that his position was no longer tenable, and he sent the letter to the chair, John Gray.

Tavish Scott: Was that letter tabled at that remuneration committee meeting?

Paul Gilliver: No.

Carole McCarthy: I think that it was sent out beforehand.

David Craig (Coatbridge College): A note was sent prior to the meeting, suggesting that the principal would no longer be looking at a future with New College Lanarkshire.

Tavish Scott: Was that note from the chair?

David Craig: It was. It was sent by email prior—

Tavish Scott: Was it sent to all committee members?

David Craig: Yes.

Paul Gilliver: That was on 25 January, Mr Scott.

Tavish Scott: What did the note say?

Paul Gilliver: I am sorry, but I do not have it in front of me. I think that it said that the principal had decided that his post was not tenable and that he had to go. He circulated the letter and a commentary saying that he hoped that the attached did not come as a shock and that, for him, it was almost inevitable. The meeting of the remuneration committee followed that letter.

Tavish Scott: That is fair.

The minute of the 28 January meeting hardly recognises—indeed, it does not recognise—that point. It seems to me important that you had had a note from your chair in relation to the future of the principal, given that it was the main reason, as it were, for the remuneration committee meeting on 28 January. However, the minutes do not even reflect the fact that that note exists. I know that we are talking about something that happened two years ago.

Paul Gilliver: I recollect that the chairman opened that meeting by saying, “I’ve called this meeting to discuss severance terms for the principal.”

Tavish Scott: And that is how all of you recollect that.

Carole McCarthy: Yes.

Tavish Scott: Was it the chair of the board who at the 28 January meeting led the discussion about the terms?

Carole McCarthy: Yes.

Tavish Scott: And Mr Gray proposed the terms that were to apply to the principal.

Paul Gilliver: Yes.

Tavish Scott: As you have clarified to Mrs Scanlon, you were at no time given the funding council’s very clear guidance with regard to giving one year’s pay instead of two.

Carole McCarthy: Yes.

Tavish Scott: During that meeting, were you told that the only way that a college could make a payment above the moneys coming from the funding council was to use its own resources?

Carole McCarthy: Yes.

Tavish Scott: Did you ask for a business plan? Were you conscious of the funding council’s clear guidance that any financial agreement above that which the council would fund needed to be accompanied by a business plan?

Paul Gilliver: We did not have that advice, and we did not ask for a business plan.

Tavish Scott: I move forward to the October meeting. Mr Keenan’s advice about that earlier was interesting. At any time, was a business plan presented in relation not only to the principal’s package but to other packages that you were being asked to agree to?

Carole McCarthy: No, because we were not being asked to agree to any other packages in October. We had already agreed to create a voluntary severance scheme with New College Lanarkshire. That was what was agreed. We were not agreeing any other packages. People had to apply to the voluntary severance scheme, and that is when their cases were considered.

Tavish Scott: But did you consider that it might have been appropriate to have a business plan, just to give you some context as to the financial liability that you might be entering into at that time?

Carole McCarthy: No, but we talked about the financial aspects and the fact that we had reserves that covered the difference between what the Scottish funding council would pay and what the college would pay.

Tavish Scott: That is very fair. It was suggested to us last week that the additional resources to be used for the packages would come from commercial income that the college generated. Again, is that something that you were conscious of? Was that explained?

Paul Gilliver: I would not like to place emphasis on that. My view of commercial income was that it went into the common reserve, which was applied to the charitable objectives of the college. I would not make the distinction.

Tavish Scott: Therefore, how did you assess how the financial packages were going to be paid? Where was the money going to come from?

Paul Gilliver: The only package that was going to be paid for that we knew about, for which we had a defined liability, was the principal's severance package. We did not have a defined liability for any other package. We did not have any other package that we knew about. As chairman of the finance committee, I would have wanted a costing of any other proposals.

Tavish Scott: If the money to pay for Mr Doyle's package did not come from the funding council, or only up to a certain level, and did not come from commercial income in any other way, it must have come from college resources.

Paul Gilliver: It came from the common resources of the college, yes.

Tavish Scott: Those common resources would normally pay for the things that go on in classrooms to help students.

Paul Gilliver: They pay for everything to do with the college.

Tavish Scott: Absolutely. Thank you very much for that.

My final question is on confidentiality clauses. Was there any discussion at the remuneration committee in relation to the principal or any other members of staff signing confidentiality clauses?

Paul Gilliver: Not to my recollection.

Carole McCarthy: No.

Thomas Keenan: I can indicate that, in relation to the principal, there was absolutely no such discussion. In November 2013, I sought guidance from New College Lanarkshire, because the college solicitor had asked me about the position in relation to the withdrawal of the severance scheme for the senior staff. I got a response, because the college solicitor was keen on a compromise agreement. However, as I understand it—I have a memorandum somewhere to confirm this—New College Lanarkshire, as a matter of policy, implemented compromise agreements for all the people who went.

Tavish Scott: Mr Keenan, you said earlier to the convener that you had raised substantial concerns in September 2013—correct me if I have got that wrong—in relation to what you then began to understand was potentially happening in terms of severance payments.

Thomas Keenan: You obviously have the memorandum that I sent to the funding council. I think that you should correct the date to 7 October, as I have found out that that was the date of the due diligence. I accept that the letter that I sent suggested that it was in September, but it was on 7 October.

Tavish Scott: Did you get a response from the funding council directly to you?

Thomas Keenan: It responded to some parts of the correspondence, but not all.

Tavish Scott: But there was an exchange between you and the funding council after you had provided it with your concerns on 7 October?

Thomas Keenan: No. To be very clear, I did not go to the funding council. Representatives of the funding council were at the meeting on due diligence. This might be a tricky point, but I will do my best to get it across. They obviously had concerns. They saw a different contingent liability from the one that they expected. I saw a different contingent liability from the one that I expected. What I expected was a contingent liability in relation to the college principal, but what I saw was much more than that.

That goes to the heart of the matter and maybe the heart of my immediate concern. When I read the guidance at a later stage, it became apparent to me that the college's accounting officer should have informed the funding council if there was anything materially different from the norm—Mrs Scanlon indicated what the norm was. It worried me that the funding council did not know. The only reason why it did not know is that it was not told. There was a parallel process.

09:45

As a board member, I was very concerned about the position because all the guys round the table, including me, had always acted in an open and diligent manner. Until the situation arose, we would all have said that there were no problems. The corporate governance was good, the auditing was good, people did their jobs and everything was good. On 7 October, I recognised that there was a major issue irrespective of what the funding council was doing. I did not know exactly what it was doing, but I know what I did and I know what the remuneration committee did. When we became aware of things, we did not sit there as passive, quiet folk; we overturned the senior severance agreement and took the £91,000 back from the package. That is what we did—you can dress it up however you like. We knew that there was a problem, we were concerned and we tried to act in the best interests of the college.

It was not an easy time; it was an extremely stressful time. When you wake up and realise that you have been misled by people that you work with, you are not a happy man.

Tavish Scott: I totally understand that. You assumed that, following the discussion that you had had on 7 October, the funding council had

written to the principal on 10 October to seek assurances about the arrangements.

Thomas Keenan: I would have expected nothing less, although I never read any of the correspondence.

Tavish Scott: Exactly. Thank you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): One or two appendices appear to be missing from the minutes of the 4 November meeting. Perhaps you could endeavour to get copies of those, as we do not know whether they are germane to the discussion.

Thomas Keenan: I can tell you anything that you want to know about the meeting on 4 November because I was sitting there. Just ask away.

Colin Beattie: Fine. Appendix 2 deals with mergers in the college sector and background information that Martin McGuire, the principal of New College Lanarkshire, offered. The information is detailed in appendix 2, which we do not have.

Thomas Keenan: I will tell you what is in appendix 2 and will then provide it for you. I think that the auditors have a copy, too.

I was extremely concerned about what had happened, so I called the remuneration committee. I wanted to find out what usually happened in the sector and where I could find demonstrable information to support anything that we were going to do. When the principal was leaving, the board agreed to make the acting principal the principal. It was evident that we needed some form of restructuring to carry us through to reorganisation, which was five months away. I wanted the board never to be in the position that we were in in October. I knew that some allowances would need to be made for people performing additional duties, and I wanted to find out exactly what was happening in the opaque world of the finances of colleges. I decided that I would approach the principal designate, who was eventually going to take over the college. We had a very long discussion about what was the norm in the sector. He had had previous experience in Fife and knew the sort of figures that an acting principal should get. It is very difficult to get information about what happens in the college sector but, from his experience, he gave us specific figures. I stress that Mr McGuire never approved what we did; he gave us advice, which, in the main part, we took.

That is a comprehensive summary of appendix 2. If you have any questions about the other appendices, I would be happy to answer them.

Colin Beattie: We will move on to appendix 3. I think that you introduced the report, Mr Keenan.

Thomas Keenan: Yes.

Colin Beattie: It was about the SFC. Perhaps you could—

Thomas Keenan: It was. I was trying to advise board members of the SFC's absolute position. I wrote the report. I would add that it may not be as accurate as it could be. What was worrying me was whether the funding council had a legitimate concern and what we would have to do to make sure that we dealt with all the issues. The report's conclusion was that the SFC had legitimate concerns. We were talking about public money. I wanted to bring the rest of the board and the remuneration committee to a common position of understanding. It was not nice to have to write that in the report, but that is what I did.

Colin Beattie: I will pursue one last appendix, which is a redraft of a letter prepared by Biggart Baillie.

Thomas Keenan: Yes. I had to write to the funding council and set out what the position was. I had taken legal advice. I knew that I had a requirement to write to the funding council. I had already written informally to it to set out my view of what had happened, but I thought that I needed a formal response. The correspondence was not addressed to me, but I picked it up as the new chair. I wrote to the funding council on or around 11 November 2013 and I explained what the situation was. The letter is contained as part of the evidence in the Scottish funding council's submission to the committee.

Colin Beattie: In his evidence last week, Mr Doyle said that Biggart Baillie was brought in as an independent team to ensure that there was no conflict of interest. Were you aware that Biggart Baillie was being brought in and of the circumstances in which that happened?

Thomas Keenan: There was always a conflict of interest. Clearly, a principal sitting on a remuneration committee and who is looking for a severance payment has, under the guidance, a conflict of interest.

There was a conflict of interest on 28 January 2013 and thereafter. The precise reason for bringing in Biggart Baillie is for Mr Doyle to answer; I cannot speculate on that. He has given his views. I have no information or evidence—

Colin Beattie: Was the issue discussed with the remuneration committee in advance of Biggart Baillie being appointed?

Paul Gilliver: No. I have not questioned Biggart Baillie's independence.

Thomas Keenan: No, and having dealt with the company, neither would I.

Colin Beattie: Okay. Are you aware of the SFC's circular letter of 20 January 2000 on severance payments?

Thomas Keenan: I am now, yes.

Colin Beattie: At the time that you were making decisions, were you aware of that letter?

Thomas Keenan: Yes, on 23 October 2013.

Colin Beattie: In October 2013 and also in January 2013. The letter has been there since 2000.

Thomas Keenan: I was never specifically shown it, and I never chose to go on the intranet because I did not know that it was on there.

Colin Beattie: Okay. In her report, the Auditor General makes quite a few comments that are very concerning. Among them is a concern about the college not retaining sufficient evidence, including business cases, on whether there was any value for money assessment of severance proposals and salary enhancements. Will you comment on that?

Thomas Keenan: Okay. Four individuals applied for severance arrangements. The applications—for the senior staff—went to a panel. The panel consisted of the chair and the principal of New College Lanarkshire, the deputy chair or a member of Cumbernauld College, Mrs McTavish, the regional chair, and me. A meeting was held to look at the severance payments in New College Lanarkshire. The sums of money involved were set out. For one individual who applied at that time, the payment was deemed to be too expensive. She then reapplied. New College Lanarkshire had that information on those four individuals.

Colin Beattie: Was the committee involved in decisions such as the one to award one member of staff a salary uplift of 19 per cent?

Thomas Keenan: The principal referred to that in evidence to this committee last week and explained his reasons for that 19 per cent upgrading.

Colin Beattie: But it did not come before the remuneration committee. Would it normally have done so?

Thomas Keenan: That is a moot point.

Paul Gilliver: It did not come before the remuneration committee.

Colin Beattie: Do you believe that it should have, in the normal course of things?

Thomas Keenan: I will defer to Pauline Docherty on that.

Pauline Docherty (Coatbridge College): Remuneration committees would be called if there was a proposal to enhance a salary for a restructure, a change of duties, et cetera; and that would be discussed at various remuneration committees when it happened. That is what would happen generally. Therefore, there would be a discussion about it, but it would not normally be minuted if someone was getting an enhancement to salary for whatever reason. The relevant questions would be asked about why the enhancement was happening and whether it involved a restructure, a change of duties or a change in structure, but that would not be minuted. However, it was discussed at various remuneration committees when it was—

Colin Beattie: I must say that I find it extraordinary that it would not be minuted.

Thomas Keenan: Can I just clarify something that might be helpful? The remuneration committee dealt with senior staff and the human resources committee dealt with other staff.

Colin Beattie: But it was discussed at the remuneration committee.

Pauline Docherty: Yes.

Thomas Keenan: Yes, on 4 November, but there was a reason for that. I will be very clear. On 2 November 2013, I was advised by the principal that there were letters that emanated from January 2013, which had been exchanged between the principal and the individual concerned, and there was an acceptance by the individual of a voluntary severance package to the tune of 18 months' pay. That was brought to my attention on 2 November. I then took it to the remuneration committee, where we were dealing with all the issues that had arisen. I then sent a letter to New College Lanarkshire, as that individual had not applied for voluntary severance but had a letter giving her a right to 18 months' pay.

I thought "I'll go through the proper process", so I took it to the remuneration committee, I wrote to New College Lanarkshire and I wrote a report for the human resources committee setting out the circumstances of what had happened. Should that letter to the individual have been written? Unequivocally, no—unequivocally. However, it was written by the principal.

Colin Beattie: Okay. Can I just clarify one other thing? I think that you made very clear the circumstances in the January when the principal applied for voluntary severance. In his evidence last week, Mr Doyle said that it was at a meeting on 20 August 2013 that he realised that he would have to go. He said words to the effect that when you meet someone from the SFC and someone from the Scottish Government, you understand without anybody saying anything that that is it.

However, that does not seem to fit with what you are telling us.

Thomas Keenan: Okay. I will give you the information that I have. On 6 August—

Colin Beattie: On 20 August.

Thomas Keenan: No, no—I think that this will answer your question. On 6 August, at an extraordinary board meeting—I will give you a copy of the minute—when asked by a member of staff, “What will happen to you, principal?”, his answer was, “I would have liked to be part of New College Lanarkshire. However, I’ll not be able to undertake that role.”

That moment, on 6 August when we agreed, as a board, that we were going into the merger, was the day and the hour that Mr Doyle almost certainly had no job. Two situations could have arisen from that: alternative employment could have been offered to him, or he could have rejected it. For all practical purposes, on 6 August, Mr Doyle, was made redundant. Unlike in January when Mr Doyle still had the possibility of having a post, by 6 August, Mr McGuire was in post, so I can say and document that Mr Doyle was aware that he had no job on 6 August. Everything else was a matter of timing.

10:00

Sandra White (Glasgow Kelvin) (SNP): Good morning, everyone. Obviously, more issues have come out of the evidence that you have given today. Thank you for that. Members of the committee are constrained to a certain extent, because we cannot mention certain names or correspondence that we have in our possession. Luckily, we are not constrained in relation to the minutes of the remuneration committee.

My concern, much like everyone else’s, is the fact that there was a remuneration committee meeting in January 2013 and yet through the whole merger situation, there was no other meeting until October 2013. Mr Keenan has mentioned meetings in February, April and August, but I presume that they were board meetings, rather than remuneration committee meetings. Were you, as members of the remuneration committee, not concerned that you had no meetings whatsoever between January and October? Did you have ad hoc meetings, or phone calls and emails? The only records that we have are from January and October and then things really hot up and the next meeting is in November. Did it not raise alarm bells that no meetings were being held?

Paul Gilliver: It did not raise alarm bells with me. It has to be seen in the context of all the merger activity. The merger management

committee was extremely busy at the time, the other committees were busy, college life went on and we were waiting to be called. It was originally envisaged that the merger would take place on 31 July, but that then dragged on until 31 March 2014. So, no, I was not all that worried about it—it was all going to take its own time.

Sandra White: Is that the general consensus?

Paul Gilliver: It is my view.

Sandra White: I can see people nodding—if anyone feels differently, please speak up.

Ralph Gunn: One of the reasons why the meetings did not happen was because the proposed merger in January did not take place.

Paul Gilliver: Yes.

Ralph Gunn: Given that the merger did not take place, there was no real need to revisit the situation, until the situation changed again and the merger was back on.

Sandra White: I take that on board and I understand what you are saying. I just wanted to clarify that point.

Mr Keenan, you mentioned that you had emailed or called Ms McCarthy during the time when no meetings were being held. Was it normal practice to speak to each other that way?

Thomas Keenan: People on the board did speak to each other. However, to be specific, by 7 October, Mrs McCarthy and I were aware that there was a due diligence issue. On the afternoon of Monday 7 October, we saw letters and a minute from the 28 January. Mrs McCarthy can tell you her view of the minute. That minute was circulated to members of the remuneration committee that evening for approval. I will leave it to Mrs McCarthy to answer any other questions on that.

Carole McCarthy: On 7 October, we were going to a merger committee meeting with the other colleges, and that was where the due diligence—the financial diligence of Coatbridge College going into the merger—was going to be presented. The phone call took place because that was the first time that I saw—in the due diligence—a liability figure that did not make any sense to me. We had no liability like that—we had no scheme for senior staff. That is why the phone call happened—we were going to a meeting that evening, where a report was going to be presented, which said that we had a liability that we did not understand.

Sandra White: Thank you for that information. The point that I am trying to get at is whether that was normal practice. At the end of the day, the remuneration committee is the one that rubber stamps things.

Paul Gilliver: I would take issue with the phrase “rubber stamp”; we were not a rubber-stamp committee.

Sandra White: Maybe that is the wrong phrase. Basically, you had responsibility for severance pay. I wondered whether it was normal for the college sector to have different committees whose members do not tend to meet or talk to each other in-between. That is the point that I was trying to make.

You mentioned 28 January 2013 and issues that arose at the time. Correct me if I am wrong, but I think you mentioned that Mr Doyle had produced a letter to the remuneration committee, for 28 January or before, saying that he was no longer seeking employment. Is that correct?

Paul Gilliver: I do not recall such a letter. I only recall the chairman saying that it was Mr Doyle’s intention to go.

Sandra White: That is fine. That is what I wanted to establish. Were you aware that, in January 2013, Mr Doyle applied unsuccessfully for the job of principal of Ayrshire College?

Paul Gilliver: No.

Sandra White: So you were not given that information either.

The remuneration committee met on 28 January. We have the minutes here. I think Mary Scanlon raised the issue that part of the minutes say that Mark Batho, the chief executive of the funding council, was aware of everything and agreed to it. However, in response to Mary Scanlon, you said that that was not what was said at the meeting.

Paul Gilliver: The part that I read out excluded the sentence

“He”—

I would certainly interpret that to mean Mr Batho—

“confirmed that the Funding Council had no objections to the Board’s approach.”

I remember the use of the phrase “funding was not a problem”.

Sandra White: Can I read out that paragraph? It may be an accurate minute that you saw but, from what we have heard, there is a question about whether it is accurate. It says:

“The Chair noted that transitional support funding would be made available to the College as part of a merger process and thus the funding was not an issue at this time. The Chair also confirmed that he had spoken to Mark Batho, Chief Executive of the Funding Council and that these discussions were in line with the Funding Council’s guidance on severance arrangements for senior staff, and in particular, any potential arrangements in respect of the Principal. He confirmed that the Funding Council had no objections to the Board’s approach.”

Paul Gilliver: I believe that to be an accurate minute. The only thing that I took exception to was the second-last paragraph, where it purports to record that “the same model” would be afforded to college senior staff.

Sandra White: I just wanted to clarify that point. It is important that we establish what was said and whether the advice from the funding council was correct. We can look at that again.

I move on to the October minutes. We should bear in mind that Mr Gray, the chair, had said that the principal would not apply for his job. At the October meeting, all of a sudden Mr Brown from Biggart Baillie appears. I know that that point has been raised before. Did that raise any concerns? I note from the minutes that Paul Brown was very vocal at these meetings. I think that he appears in every other sentence, never mind every paragraph. Did it raise concerns with you that all of a sudden you had Biggart Baillie at the meeting?

Paul Gilliver: I suppose that it did. I was concerned that there seemed to be an impetus to get the executive scheme through. It did not go through, and indeed it was substituted with the New College Lanarkshire scheme. The fact that Mr Brown was there was extremely comforting. It gave us the baseline that we were being properly advised.

Sandra White: I note that Mr Brown “advised the committee” that you were independent, and you would not question the independence of that. He said that

“he does not believe the funding council can successfully challenge the Committee’s decisions.”

That gave you comfort in that respect.

Paul Gilliver: Correct.

Thomas Keenan: That was the advice that we had and that was the evidence led by Mr Kemp, on the advice that he took on 18 December. That is a legal point. What we are really talking about is public money. The advice that we were given by Mr Brown was clearly agreed with by DLA Piper, according to the evidence led last week.

Sandra White: The minutes also confirm that the £91,000, for the pension, should not be included in the severance package.

Thomas Keenan: We did confirm that.

Sandra White: Yes, absolutely.

In the minutes of the October meeting, Mrs McCarthy said that it was not clear to her when the principal’s termination date was. Mr Keenan responded—bear in mind that you had been sent a letter back in January, to say that Mr Doyle would not seek another job—that the principal

“had not intended to leave until 1 April 2014.”

Did Mr Gray or the principal speak to you specifically about that, and give you that date?

Thomas Keenan: Yes. Regrettably, we were in and out of the merger. If the first merger had taken place on 1 August, the intention was that the principal would leave on 31 July, unless he was successful. The new merger was to take place on 1 April 2014, and Mr Doyle intended to work until the new merger. However, as you will see from other correspondence, Mr Doyle did not have a job in the new structure. There were issues about how to improve the skills of the staff that you have and so on and so forth, and how to bring staff through the really difficult time of the merger—from that, Mr Doyle left early.

Sandra White: Thank you, convener. I might want to come back in later.

Dr Simpson: One of the things that I do not fully understand is the practice of having minutes waiting for six months for approval. In this instance, a letter was issued on your behalf, to the principal, on 8 February, noting the severance package that he was to be offered, but that was before you had approved the minutes. Is that not surprising?

Paul Gilliver: Yes, it was rather surprising, Dr Simpson.

Dr Simpson: Were you told that the letter was going to be issued?

Thomas Keenan: No.

Dr Simpson: So you were not aware that an offer was going to be made on the basis of a decision that you had made—or had indicated—based on the Edinburgh model, which you thought was the correct one.

On 23 October, did you feel that the fact that the letter had been sent out, without your approval of the minutes, in some way committed you to going beyond the funding council guidance? By 23 October, you knew that there had been correspondence, even if you had not seen it. You knew that there was considerable concern about the conflict between the New College Lanarkshire scheme and the South Lanarkshire College and Edinburgh scheme, which you had previously used as the basis, even though you never approved it as a severance scheme for the whole college.

Carole McCarthy: You have just explained the reason why I thought that there was a lawyer—from Biggart Baillie—at the meeting: I thought that Biggart Baillie was at the meeting because we recognised those issues.

Dr Simpson: Is that why you felt committed to the offer? You were given authority by Paul Brown to say that you as a committee of an independent

college could do what you wanted, provided that you could justify it in terms of public accountability. However, the funding council was clearly very unhappy about you going beyond its guidance and would not provide you with the necessary funds, so you had to take a decision that would affect hundreds of thousands of pounds of your reserves. I am just trying to understand why you took the decision, given that you must have known that the funding council would be unhappy, as would New Lanarkshire College as the new college's reserves would be reduced by that amount.

Thomas Keenan: I can explain. The funding council operates on protocols and guidelines. The funding council was very clear that its first port of call was to the principal, the second was to the chair and the third was to the board. It would have been extremely helpful if, given the degree of outrage it has expressed, the funding council had broken that protocol in this case and asked, "Who is going to make the decision and how do we provide them with the information?" The funding council should have thrown protocol out of the window and given us the letters; then we would have understood and been in a position to make an absolute and proper decision.

What decision we would have made is hypothetical. However, it would have been really helpful if someone had not just suggested that the way we should get things was through the intranet. When Mr Howells gave evidence, it may well have crossed his mind that he should have cut the process short and come to us with the guidance. He did not do that.

10:15

Paul Gilliver: Dr Simpson, I was not aware that the funding council guidelines at that time were so stringent. It was my understanding that the guidelines were exactly that—guidelines. I thought that the college had the discretion to spend over the guidelines, although it would not receive reimbursement for it.

Carole McCarthy: I add that I believed that the funding council's outrage was about a supposed severance scheme only for senior staff. That is where we were absolutely clear that there was no separate scheme for senior staff and that they would be leaving under the New College Lanarkshire scheme. I believed that we had satisfied the issues that had been raised by the funding council and that we had a clear audit trail of the decisions that were made running up to then.

Dr Simpson: So for the senior staff and the 33 staff who left as a whole, you applied the New College Lanarkshire scheme and that was what

the funding council appeared to want. As far as the principal was concerned, the letter of commitment had already gone, and the legal advice was that the offer was within your remit. You felt committed to it and there was nothing you could do about it at that point, even though the minutes had not been approved until 23 October.

Carole McCarthy: Yes.

Dr Simpson: Right.

Thomas Keenan: The thing that we could not look at was the contractual rights of the principal. On reflection, there were perhaps options at the time. For example, we could have asked the principal to go on gardening leave. At that time, after the process that had been gone through, I did not think that that was a viable proposition, because of the evidence that I gave earlier.

Stuart McMillan (West Scotland) (SNP): Good morning, panel. When you became members of the remuneration committee, what advice or training were you provided with?

Ralph Gunn: None.

Paul Gilliver: None at all. Our membership was based on experience and we were deemed to be suitable.

Ralph Gunn: We all chair other sub-committees of the board. The chairs of those sub-committees form the remuneration committee.

Stuart McMillan: When you became the chair of any board in the college, were you provided with any particular training or guidance, in particular with regard to legal matters?

Paul Gilliver: No—again it was based on experience and a subjective judgment of suitability.

Stuart McMillan: I posed that question because this process has occurred and, as the likes of Biggart Baillie were brought into the situation, specific legal advice would have been provided. I just want to establish whether there was potentially any conflict in the information or guidance provided to the committee as you went through this particular situation.

Paul Gilliver: I am sorry, but I do not quite follow your question, Mr McMillan. Are you suggesting, for example, that the legal advice that we received might have been in conflict with the communications of the committee?

Stuart McMillan: I am not suggesting anything, but I am posing a question to try to clarify the situation.

Paul Gilliver: Okay. Would you mind asking the question again, please?

Stuart McMillan: I was trying to establish whether you were provided with any information when you became members of the remuneration committee or any other college committee. You indicated that no guidance or assistance was provided in that respect.

In terms of the scenario that we are discussing today, you were provided with advice from Biggart Baillie. I was just trying to establish whether, when you were provided with that information, it was consistent with information you had been provided with previously, when you became members of the committee or in any other situation in which severance payments were considered.

Paul Gilliver: My understanding was that Biggart and Baillie were there because it was an extraordinary set of circumstances. It was important that we reached correctly informed decisions.

Stuart McMillan: Because of the particularly long delay from the January meeting until the October one, and the fact that the expected merger had not taken place, did you have any discussions with members of committees from other colleges, either officially or unofficially, to establish what was occurring elsewhere and to inform yourselves of how to take things forward within Coatbridge College?

Thomas Keenan: No.

Ralph Gunn: No.

Paul Gilliver: No, absolutely not. I attended a couple of conferences that focused on aspects of mergers. I was interviewed by a specialist in mergers who wanted to assess my knowledge of the subject. I do not recall any meetings with other colleges.

Carole McCarthy: I have been at conferences with Colleges Scotland and other organisations, but nothing specifically about remuneration, mergers or the code of conduct.

Thomas Keenan: My experience was that, on 9 September, Mrs McCarthy and I were asked to lead on the merger committee. When we went to the committee, a severance arrangement scheme was on the table. We saw nothing wrong with it whatsoever. We thought that it was right. It was the same scheme for all staff excluding the principal.

Stuart McMillan: It has been clear from today that at no point were you directed to or had copies of the Scottish funding council guidelines. Did any of you contact the Scottish funding council for copies of the guidelines?

Thomas Keenan: I can answer that on a personal basis: I did not know that there were guidelines; if I had known, I would have had them.

Paul Gilliver: That was the answer in my head as well.

Stuart McMillan: Mr Gunn?

Ralph Gunn: I concur with my colleagues.

Nigel Don (Angus North and Mearns) (SNP): Good morning. Let me take you back to 28 January. You have spoken about the information you received and at some length about the information that you now know that you did not receive. Can I ask whether the information that you received came from the chairman and the chairman alone?

David Craig: The actual Edinburgh model was provided by the board secretary as part of information that was requested by the chair to be presented to the January meeting.

Nigel Don: Okay, perhaps my question is then slightly wider. Was there anything else on the agenda that was not requested by the chair?

David Craig: I cannot remember from the minutes. I do not have a copy of them.

Paul Gilliver: I have the minutes here, but I do not have a copy of the agenda. I do not remember an agenda, but perhaps there is one.

Nigel Don: I am not trying to fight about the protocols; it is more a matter of trying to establish where you got your information from.

Paul Gilliver: The information would be furnished through the board papers, through information provided by the chair and perhaps by reports from the chairs of other committees, if there was a board meeting—

Carole McCarthy: I expect that the chair got information from the board secretary. If the chair was going to present something, he would ask the executive and the college to provide him with the information that he needed.

Nigel Don: Right. I am not trying to put words into your mouth, but I am getting the impression that, in essence, the agenda and the materials for the agenda were set by the chair.

Paul Gilliver: That was the impression that I had.

Carole McCarthy: Yes.

Nigel Don: I asked because one of the accusations is that information was withheld, and I am trying to see who might have withheld it, if that were true. I am trying to ascertain whether there was anyone else who provided you with information, but you are not saying that that was the case.

Pauline Docherty commented that some things probably would not be minuted. My colleague

Colin Beattie was a bit surprised to hear that. Would you expect things to be minuted? Surely that is part of governance. The Auditor General pointed out that things had not been minuted. Did that concern you?

Pauline Docherty: All our committees were minuted—the HR committee, the finance committee and so on. Remuneration committee meetings could be called ad hoc if remuneration issues needed to be discussed, and sometimes they were not minuted.

Nigel Don: With hindsight, does that seem to be an omission? Are not numbers with pound signs in front of them rather important?

Pauline Docherty: Yes.

Nigel Don: Okay. Does anyone else want to comment on other minutes of which you have been aware? Were remuneration committee minutes comprehensive enough?

Paul Gilliver: I think that they recorded events, apart from the event that I would not support.

Carole McCarthy: Lots of internal audits and audit reports confirmed that governance and how we operated were appropriate and good, so we had no reason to be concerned about minutes.

Nigel Don: Let us consider the two remuneration committee meetings that we have been talking about. Something that came up at our meeting last week was the business case. We are familiar with the idea in principle, but I still do not understand what the business case might be for paying someone more to go away than we have to pay them. Why would there have been a business case for exceeding any standard?

Paul Gilliver: I think that the package was based on precedent. We were not aware of the funding council's insistence on a business case at that point, and in October we received legal advice in support of the decision. I think that that summarises our position.

Nigel Don: You did not see the need for a specific business case as long as you were sticking to established standards. Am I right in saying that?

Paul Gilliver: Yes.

David Craig: Yes.

Nigel Don: To be fair, that is what I think I have heard you say.

Paul Gilliver: Yes. It is a fair summary.

Nigel Don: Right. At the board meeting on 23 October—the board meeting, not the remuneration committee meeting—I understand that you received advice from Biggart Baillie. I do not doubt the independence of that advice. Am I right in

thinking that you were told that you were committed to the offer to the principal, and it was not suggested that the offer could be withdrawn?

Paul Gilliver: It was not suggested that the offer could be withdrawn.

Nigel Don: Did anyone question whether the offer could be withdrawn? In Scots law, an offer can always be withdrawn until it is accepted.

Paul Gilliver: I am not a lawyer.

Nigel Don: No, forgive me. We are where we are.

Ralph Gunn: I cannot comment; I was not at the meeting.

Nigel Don: That is all right—clearly someone who was not at the meeting will not be able to comment. I am simply interested in what the board members who were there thought that they were being advised and what they thought their options were.

Carole McCarthy: Our meeting was really about making sure that there was no separate scheme for senior staff. Most of the debate at the meeting was about the senior staff, not the principal. The information that we had about the principal in January—on comparisons in the sector and what had happened in other colleges—was still the latest information that we had.

Nigel Don: So at that meeting you were still working on the assumption that that was current guidance. I thought that the funding council had come along a few hours earlier and pointed out firmly that it was not current guidance.

10:30

Thomas Keenan: We need to put the situation in context. We had a very robust remuneration committee meeting that lasted a considerable amount of time. Much of the focus was on the senior staff severance scheme.

For the reasons outlined by Mrs McCarthy, members were broadly aware of the situation. Mr Howells came into the meeting and he was not in a long time—he was in and he was out. The meeting before it had not been polite and civil. I think that people were a bit frayed and a bit upset about what had happened.

Mr Howells came in and gave a five-minute talk. At the end of the process, a five-minute talk probably did not quite convey what he was trying to get across. I am not knocking him for it, but I go back to my point that it would have been really helpful if we had been sitting with the guidance.

I am just trying to tell you how it was at that time. My main focus was on the £91,000, and my secondary focus was on whether Mr Doyle should

get six months' severance pay. We had very clear legal advice on that and we followed it. That sums up where we were, if that is helpful.

Nigel Don: That information will do for the moment. Thank you.

The Convener: Could we have very brief questions from Mary Scanlon and Colin Beattie, please?

Mary Scanlon: I will be very brief. Mr Doyle said last week that the Auditor General's report was "incomplete, inaccurate and vexatious". For the record, do you agree with the contents and accuracy of the Auditor General's report, or do you agree with Mr Doyle?

Thomas Keenan: I will answer that. We cannot answer the question. We do not know all the facts in the situation. After the committee has concluded its work, having heard the very candid evidence that we have given, you will be in a better position than we are to determine the matter. It is a question that—with the greatest respect, Mrs Scanlon—is not for us to answer, but for you guys.

Mary Scanlon: Do you agree with paragraph 22 of the Auditor General's report, which says that

"it appears that the Chair did not provide the Remuneration Committee with complete or accurate information about the advice provided by the SFC"?

Can you confirm that that is the case? Do you agree with that part?

Paul Gilliver: We did not have complete information.

Mary Scanlon: You did not have complete information.

You agreed on 28 January 2013 to give the principal an additional three months' salary, as well as the salary for 21 months and six months, because he had successfully taken Coatbridge College through the merger process. Two weeks later, Coatbridge was out of the merger. It is perhaps an unfair question, but do you have any idea why Coatbridge opted out of the merger two weeks after the principal was rewarded for its inclusion?

Thomas Keenan: You heard evidence from Mr Kemp, who said that there were specific frictions and potentially a lack of trust. In the minute from 6 August, my colleague Mrs McCarthy comments that the merger failed because of leadership and culture. That accurately sums up what happened.

Mary Scanlon: I have one more tiny question. My understanding is that the legal advice was that the decisions of the remuneration committee were legally binding on the college. Have you any idea why Roger Mullin from the Scottish Government, who was facilitating the merger process, sent an

email to John Doyle on 18 August asking to discuss various issues including voluntary severance?

Thomas Keenan: I have absolutely no idea. It was very clear to me that the board decision effectively made Mr Doyle redundant. I have no idea about or opinion on that communication.

Colin Beattie: I have three quick questions. Can you confirm that neither the principal, nor the senior managers, nor any of the staff of the principal's office was present at meetings where the severance arrangements were being discussed?

Paul Gilliver: I can confirm that. That is right, is it not?

David Craig: Yes.

Colin Beattie: In retrospect, do you consider that there was any conflict of interests in having the chair of the board as chair of the remuneration committee?

Thomas Keenan: That was the guidance and it was allowable under the rules at that time. I suspect that that has now changed. As we understood it, that was normal practice in the sector.

Colin Beattie: At what point did the external auditors sign off the severance scheme?

Thomas Keenan: I presume that they signed it off at the start of New College Lanarkshire. The external auditors would be able to answer that question themselves.

Colin Beattie: Were you aware of the external auditors being consulted at any point in the process?

Thomas Keenan: They were not consulted, to the best of my knowledge.

Paul Gilliver: No.

Colin Beattie: There were recommendations that that should happen.

Paul Gilliver: I think that you are referring to a letter from Laurence Howells to John Gray, which was written shortly after the board meeting in late October 2013. The board and the remuneration committee were not aware of that letter. We had heard Mr Howell's presentation at the board meeting.

Colin Beattie: Would it not have been good practice, as a matter of course, for the external auditors to be involved and to sign off? We can see the results in the audit statement, which shows that they are concerned about governance weaknesses and so forth. Clearly, it might not have been a straightforward process for them to sign off.

Thomas Keenan: The timescale is important.

The Convener: Would it have been in your responsibility, as the remuneration committee, to take forward the auditing arrangements? I just want us to be clear in this line of questioning.

Paul Gilliver: That would have been the responsibility not of the remuneration committee, but of the board. The board was acquainted with things after the remuneration committee meeting.

The Convener: I suggest that in order to move forward we take the matter up with the auditors during the next evidence session.

Tavish Scott: Mr Keenan referred to the presentation that the chief executive of the funding council gave to the board on 23 October 2013. In that presentation, did he make it clear that the board should reconsider its position on the severance proposals for the principal?

Thomas Keenan: I do not think that he did.

Paul Gilliver: No, he did not lay that on the line, at all.

Carole McCarthy: No.

Stuart McMillan: In answer to my earlier question about speaking to board members from other institutions, Carole McCarthy mentioned that you attended conferences that other folk would have been at. Was the SFC at such events, did it have representatives there and were issues of finance and remuneration highlighted or discussed? Did the SFC indicate any guidelines?

Carole McCarthy: It is likely that representatives from the SFC were at those events, but I cannot remember—they are usually quite big events. In no meeting that I was at was there anything said about remuneration or severance.

The Convener: Were you made aware of "Guidance on Severance Arrangements to Senior Staff in Scottish Further Education Colleges", which was issued in 2000?

Paul Gilliver: No.

Thomas Keenan: No.

The Convener: The document was issued in 2000 by the funding council. You have advised us that you thought that Biggart Baillie LLP provided some very effective information and you have ensured that it is well aware of that. Would you not have expected Biggart Baillie to have provided that document issued in 2000 that was the norm in the sector as a basis for your work? From our understanding, and Mr Doyle made it clear, Biggart Baillie was providing not just legal advice, but also human resources advice.

Paul Gilliver: The answer to your question is that the document was not presented to us, so I cannot give you any other answer.

The Convener: You are saying that you feel that you were well informed as possible in the process by Biggart Baillie, but would you not have expected an organisation with its expertise to have at least used the 2000 document as a reference point in making the severance arrangements? Should not Biggart Baillie have advised you of the SFC's arrangements? I do not expect the remuneration committee to have had access to all that information, particularly when you have paid people to ensure that the research is carried out and the information is put before you. Do you think that you were kept in the dark by Biggart Baillie?

Carole McCarthy: I am not clear about the guidelines. We never saw them and we were never told to look at them. If those guidelines existed, why were we presented with much more current schemes—dated 2012—and other information that was not in line with those?

The Convener: The document is the basis of the approach that should be taken for severance arrangements. The Scottish funding council has confirmed that. As a committee, would you not have expected Biggart Baillie, which was responsible for taking you through the process and for providing you with legal and HR advice to have provided you with some of the information in the document?

Paul Gilliver: My considered answer is that committees should have full information when they are making decisions.

The Convener: Yes, but I am asking a specific question. We will question Biggart Baillie later. Do you feel let down by it on the basis that it did not provide that information? Individuals there were tasked with the responsibility of researching the issue and providing the necessary information.

Paul Gilliver: I really think that you have to ask Biggart Baillie that question. I do not feel let down, because I accepted the advice that it gave us.

The Convener: I understand that you accepted the advice, but should Biggart Baillie not have provided you with the advice in question so that you would have been informed? You were placed in a position in which you took a decision to spend large sums of public money. Do you not think, "Wait a minute. We expected Biggart Baillie, which was paid significant sums of public money, as well, to advise and ensure that we have the advice"? Do you not feel let down?

Paul Gilliver: I cannot answer your question. I am sorry.

The Convener: Does nobody feel let down?

Thomas Keenan: I feel let down because the college principal and the accounting officer never brought the matter to our attention. I can be absolutely definite about that.

The Convener: To clarify, Mr Doyle advised that Biggart Baillie was appointed and tasked with providing that information to you. I am only saying what Mr Doyle said. Do you not feel that, at the meeting in which you took an important and significant decision and you had a legal adviser before you with HR expertise, they should have provided those documents to you? Does nobody feel let down by that?

Ralph Gunn: I was not at that particular meeting, but I find it difficult to be let down by something not being provided to me that I did not know about.

The Convener: I understand your position. You were provided with information. You are unpaid volunteers who give up your time to attend meetings to do the good work of the college, but professional advisers are there to advise you. It is their job to research and use their expertise to do that. I am just asking whether you think that you should have been provided with that information.

Carole McCarthy: It is that person's job to tell us whether we are doing something wrong and acting against the rules. That was what I believe the job was about.

The Convener: Okay. I thank you all for your time in this extended session.

Thomas Keenan: I would like to make a statement, if that is possible.

The Convener: It should be very brief.

Thomas Keenan: It will be.

This has been a difficult time for the board members, and considerable anguish has been caused. Mrs McCarthy and I continued on in New College Lanarkshire for a time. So that there were no insinuations, we stepped aside when the matter arose and declined to reapply, because we think that the matter is extremely important. I hope that we have given the committee all the evidence; we have been extremely frank and candid. As I said, it has been a very difficult time, and Paul Gilliver and Carole McCarthy in particular have worked really hard right through it. We did our best. You may judge that we did not do enough.

The Convener: On behalf of the committee, I put on the record that we appreciate the candid approach that you have taken, and I thank you all for your commitment to the college sector during the period. I know that that work is done unpaid and that you give up your time to do it. I thank you all for that.

10:43

Meeting suspended.

10:50

On resuming—

The Convener: I welcome our second panel of witnesses: Allister Gray is audit partner at Wylie & Bisset and former internal auditor at Coatbridge College, and Cathie Wyllie is partner at Henderson Loggie and former external auditor at Coatbridge College. I understand that Mr Gray has a brief opening statement to make.

Allister Gray (Wylie & Bisset): Thank you for the opportunity to provide an opening statement. It is very brief.

Wylie & Bisset is keen to be of assistance to the committee and we will answer members' questions as fully as we can do. We apologise in advance if there are questions that we are unable to answer because of the constraints of client confidentiality, data protection or our professional regulations.

Wylie & Bisset was the internal auditor of Coatbridge College for the period that ended on 31 March 2014, and was appointed as internal auditor to New College Lanarkshire with effect from January 2014. We would be happy to outline the role and remit of internal auditors if that would be helpful to the committee.

The Convener: I understand that you might have a statement that would elaborate on that, but I hope that members' questions will bring out some of those points. That might be more helpful.

Allister Gray: I am happy with that.

The Convener: If there are issues that you want to ensure are covered, I am sure that you can elaborate on them. Is that okay?

Allister Gray: Yes, absolutely.

The Convener: In the previous evidence session, we heard from the remuneration committee—I understand that you listened to that evidence—and at our meeting last week we heard from Mr Doyle. As the internal auditor, can you confirm that you were aware of the compromise agreements that Mr Doyle signed, and did you approve them prior to his signing them?

Allister Gray: I was aware of them as part of an exercise that was carried out by New College Lanarkshire to look at the severance arrangements.

The Convener: A requirement of the Scottish funding council is that both the internal and the external auditors are aware of arrangements that are reached with senior members of staff. In

relation to Mr Doyle, you are clarifying that you, as internal auditor, were aware of the arrangements. Did you approve them? Were you asked to approve them?

Allister Gray: Perhaps I should explain and give a bit of background. What happened was that Wylie & Bisset was the internal auditor of Coatbridge College until the date when it came into New College Lanarkshire. In effect, I am now working as the internal auditor of New College Lanarkshire. I prepared a report for New College Lanarkshire through its audit needs assessment and internal audit planning for the year, and that was the first time that I was aware of any compromise agreements.

The Convener: You have heard some of the evidence that the committee has received, which clarified that the remuneration committee approved the proposal from Mr Doyle. The Scottish funding council guidance requires that external and internal auditors are made aware of arrangements that have been reached. Is it the case that you were at no time made aware of the arrangements?

Allister Gray: At no time. As I said, we were looking at the matter from New College Lanarkshire's point of view. We prepared a report, which Cathie Wyllie looked at as part of her audit for the year. In essence, that was the first time that I was aware of any compromise agreements.

The Convener: We are talking about a significant sum of public money, which you will have heard people talking about this week and last week. Would you expect a director of finance to make you aware that a significant sum was being paid into an employee's account via a BACS payment?

Allister Gray: Absolutely.

The Convener: Did the director of finance make contact with you, to advise you of that?

Allister Gray: No.

The Convener: After that significant sum of public money had been placed into Mr Doyle's account and the arrangement had been reached, did you contact the college to say that you were aware that the sum had been paid?

Allister Gray: The only time that Wylie & Bisset was aware of anything was when the internal audit work was being carried out for New College Lanarkshire.

The Convener: When was that?

Allister Gray: Effectively, Wylie & Bisset was appointed in January 2014. The audit needs assessment was drawn up for the year and approved by the audit committee in March 2014. In April 2014, work commenced to look at what

had happened in the severance schemes. That is why I talked about the compromise agreement: at that stage, we were trying to get information for our report and we were unable to get information from certain individuals because of compromise agreements that had been signed. Prior to that, Wylie & Bisset did not know anything about it.

The Convener: Who would you expect to provide you with that information? You have significant experience in the area over many years—I can see that from your biography. Have you ever come across a situation like this, where significant sums of public money have been spent? Who would you expect to make you aware of the situation—would it be the director of finance, or perhaps the college principal?

Allister Gray: One would automatically assume that it would come from the senior management team, which would include the director of finance and the principal.

The Convener: Did you highlight that in the internal report in 2014? Did you say that you were concerned that you had not been made aware of those aspects when you signed it off?

Allister Gray: It was not looked at until we examined it as part of the internal audit of New College Lanarkshire, because prior to that Wylie & Bisset was not aware of the fact that the scheme was being offered at all.

The Convener: Given that you created a report in which you had to put together the internal audit documentation, did you highlight your concern that you had not been made aware of the compromise agreements?

Allister Gray: As I say, effectively we had a report that was prepared under New College Lanarkshire. I can run you through how the report was produced, if that would be helpful.

The Convener: Are there any specific areas that relate to Mr Doyle or to the compromise agreements?

Allister Gray: I will briefly run through what happened. In January 2014, an audit needs assessment was drawn up with New College Lanarkshire. A colleague and I met the financial person at New College Lanarkshire and, as part of the internal audit plan and the audit needs assessment, it was agreed that the severance schemes from the three colleges would be looked at.

The Convener: Who was the auditor for Coatbridge College, prior to your arrival?

Allister Gray: It was Wylie & Bisset, but it was the responsibility of one of my colleagues.

The Convener: So are you speaking on behalf of your colleagues today?

Allister Gray: Yes. We were engaged by New College Lanarkshire and, as part of the internal audit process for the year, we prepared our report. We met the financial person in January 2014 and the audit needs assessment was approved by the audit committee in March. Initial fieldwork began at each of the different locations—Motherwell, Cumbernauld and Coatbridge—and it was only at that point that Wylie & Bisset became aware of the issues at Coatbridge College.

That report was produced, but at the moment New College Lanarkshire does not want to release it because of confidentiality issues and so on.

The Convener: You had carried out the internal audit report and part of your responsibility would have been to highlight issues concerning the processes that had been followed. You were not made aware that the money had been placed in someone's account—in this case, Mr Doyle's. Are you saying that you would have expected to have been made aware of that?

Allister Gray: Yes.

The Convener: Have you highlighted that concern anywhere in your report?

11:00

Allister Gray: I want to go back to the process that was gone through, which you really need to understand. The report was prepared under New College Lanarkshire—in effect, we issued a report that has not been released. I am trying to give you the timeline. There are points in it that the college has given me the authority to mention today—I can tell you that they were reported.

The Convener: You can do so briefly.

Allister Gray: As I said, a process was gone through.

The Convener: Do you understand the question that I am asking, which I think is pretty clear? Obviously, a payment was made to a senior staff member—the principal—and my point is that you would have expected to have been informed of that. We know that the external auditor has said that she was concerned about that, because that is stated in the Auditor General's report. In terms of your internal report, did you record anywhere the fact that you were concerned that the payment was made without you or your company being made aware of it—yes or no? I think that the question is clear. Did you record that anywhere? Perhaps you can answer yes or no first and then elaborate on that.

Allister Gray: The report that we prepared had conclusions, which I can run through just now.

The Convener: Paraphrase them for me. Just tell me whether you recorded your concern—yes

or no? Did you contact the college to ask why you had not been made aware—why no one had advised you, as the internal auditor—that the college had made a payment to Mr Doyle on 25 October? Did you raise that concern?

Allister Gray: We took our report to a certain point—we have said that in the report—after which it was passed over to external audit, which followed up with the funding council the points that were raised in our report, most of which eventually came out in the Auditor General's report.

The Convener: Does the external auditor want to elaborate on that?

Cathie Wyllie (Henderson Loggie): All I want to say is that although I was aware that payments had been made to the principal and that there was a scheme in place for other staff, which I knew that I needed to look at as part of my audit, we had agreed that the internal auditors would undertake some work first and then we would get involved. It is normal practice that neither the internal nor the external auditor would duplicate the work that the other had done. We are all aware of the guidance that says that we need to look at severance payments that exceed £50,000. That is sometimes done in advance of the arrangement being agreed and it is sometimes done retrospectively, but it is always done before the audit is signed off.

The Convener: The Scottish funding council's guidance says that external and internal auditors should be made aware of such arrangements. Are you both aware of that guidance?

Allister Gray: Yes.

Cathie Wyllie: Yes.

The Convener: That is part of your responsibilities. Were you made aware of the arrangements, Ms Wyllie?

Cathie Wyllie: I was not specifically made aware of them and I certainly was not made aware of them in terms of—

The Convener: What do you mean by “not specifically made aware of them”?

Cathie Wyllie: I was aware that the principal had left in October and I knew that he would have had a package at that point. I knew that I would have to look at his severance payment, but I was not specifically made aware of it until after the event.

The Convener: Until after the payment had been made.

Cathie Wyllie: Yes. Once I saw the guidance from the funding council I was concerned, because I had not specifically been made aware, in the way that it asked.

The Convener: So you became aware of the payment after it had been made. How did you become aware of it?

Allister Gray: Are you asking me how I became aware of it?

The Convener: I would like Ms Wyllie to answer first.

Cathie Wyllie: I was aware towards the end of 2013 that the principal had left the college. I knew at that point that there would have been a package. I did not become aware of the specifics of that until I saw the internal audit report later in 2014.

The Convener: Mr Gray?

Allister Gray: I confirm that I did not know anything about the payment until I came here today.

The Convener: You did not know about the payment.

Allister Gray: I did not know all the detail of it, because, as I said, we took our report to a certain stage and then it was passed across to external audit.

Mary Scanlon: I want to ask about the £400,000 difference between the £1.3 million and the £1.7 million. We heard from Mr Doyle and Mr Gray last week that that money came from commercial activity. Can either of you—the internal or the external auditor—confirm that the additional payments to Mr Doyle and others came from commercial activity?

Cathie Wyllie: It will be easier for me to answer that, although I do not think that I can answer it as specifically as you would want me to.

It is true that there was commercial income in Coatbridge College, but it is very difficult to distinguish that income from other income that would have come from public funds. In some respects, that is because some of what might be termed “commercial income” may not have come from the funding council but would still have come from public funds, in that it might have been paid by local authorities, Skills Development Scotland or the Students Awards Agency for Scotland.

You also need to consider that, although you can identify income, the expenditure that is recorded in the college accounts does not distinguish between the expenditure to deliver publicly funded activity and expenditure to deliver commercial activity. Without a great deal of work, it would be very difficult to determine whether a surplus had been created that could then be attributed to the payment.

Mary Scanlon: So it is a bit of a red herring. We were told last week—I am sure that you have read

the *Official Report*—that the £400,000 came not from students and front-line education and training but from commercial activity, which implied that it really did not matter. It seems that that is quite untrue and quite misleading. Is that fair?

Cathie Wyllie: It is a bit misleading. There is definitely commercial income in the college, but it is impossible to say how much of it would have been attributed to that payment. It certainly was not included in any evidence that I have seen regarding the contemplation of the package that was being awarded.

Mary Scanlon: Thank you. My second question—I am aware that you sat through the previous evidence session today—is on the concealment of material facts and the withholding of information, given that the remuneration committee was not provided with the Scottish funding council guidance. The remuneration committee made its decisions fairly and squarely on the information that it had, and I do not blame it for that.

How would you describe the concealment of material facts in the consideration of a major decision involving public funds?

Cathie Wyllie: Well, it should not happen. The people involved should have known that that information should be given.

Mary Scanlon: I am asking the question because the Scottish Parliament information centre, the Parliament's research unit, has highlighted that

"The term 'fraud' is ... used to describe ... concealment of material facts"

and

"is usually used to describe the act of depriving a person of something by deceit, which may involve the misuse of funds or other resources".

Fraud, as we all know, is a criminal offence. Do you agree that information was withheld and concealed from the remuneration committee, which led to the committee making a much more generous severance payment to Mr Doyle than it would otherwise have made if it had had the full information?

Cathie Wyllie: I agree that the information was withheld from the remuneration committee, but—as I concluded in my own report—it is not for me to say whether it would still have made the same decision or whether it would have made another decision if it had had that information available.

Mary Scanlon: Okay. I will leave it there for just now.

Tavish Scott: I want to ask first about the internal audit process in the context that, during 2013, it was understood that there was a merger

process going on in Lanarkshire. Would the internal auditor—Allister Gray's firm—have been in regular contact with the principal and the director of finance as the accountable officers of the college through the course of that year?

Allister Gray: They would. In the normal course of events, they would meet on a reasonably regular basis, mostly with the director of finance.

Tavish Scott: Would that be monthly?

Allister Gray: Maybe not quite as often as that, but Wylie & Bisset would, as a natural position, send a senior member of staff to the audit committee.

Tavish Scott: And that happened during 2013—the college's audit committee met on a regular basis and your firm would have been represented at those meetings?

Allister Gray: Yes, and it would have been the same with the new college.

Tavish Scott: A merger process was going on during 2013 and severance was clearly an issue that was going to come up, because some staff would be leaving the sector altogether. Were there no discussions about severance at any time?

Allister Gray: No, there was none. We were never asked to look at the severance arrangements.

Tavish Scott: Did neither the director of finance nor the principal raise that issue with whichever of your colleagues was attending those audit committee meetings?

Allister Gray: The only thing was that there was an informal meeting—it was not a formal meeting—that took place on 28 January. Specifically, that was the first time that Wylie & Bisset was made aware of the fact that there were potential severance arrangements.

Tavish Scott: That was 28 January in which year—2013 or 2014?

Allister Gray: It was 28 October 2013.

Tavish Scott: It was October—28 October 2013.

Allister Gray: It was mentioned in passing that the college was taking legal advice from Biggart Baillie in relation to severance agreements and that it might ask us to look at the issue, but nothing was ever asked beyond that.

Tavish Scott: You had probably better say all that again for the record—both the date and what exactly was discussed at that meeting, because that is very important.

Allister Gray: Specifically, the first time Wylie & Bisset was made aware that any severance was

being talked about was at an informal meeting on 28 October 2013 with the principal and the director of finance of Coatbridge College. It was mentioned in passing that the college was taking legal advice from Biggart Baillie in relation to severance arrangements and that it might ask us to look at that, but it never did.

Tavish Scott: So Mr Doyle, I presume, volunteered the information that severance payments were being considered.

Allister Gray: Yes, but it was just an in-passing comment that was made. Prior to that, Wylie & Bisset had never been asked anything about severance and we were never asked to look at the severance arrangements that were in place at that time.

Tavish Scott: I understand that. You have said that very clearly on the record. Did it not occur to the partner—whichever of your colleagues was dealing with the matter—to ask the question, given that the college merger process was in play?

Allister Gray: At the time, what would have been said was that if advice was needed we could help with that.

Tavish Scott: The onus was on the college principal and the director of finance to come to you, as the Scottish funding council guidance—with which I am sure that you are entirely familiar—states.

Allister Gray: Yes.

Tavish Scott: And they never did that.

Allister Gray: They never did that. No.

Tavish Scott: My next question is for the external auditor. Mrs Wylie, the Auditor General's report makes quite clear how difficult your job was in gaining information from the college as to what had happened. Would you elaborate on that for the committee?

Cathie Wylie: By the time that I was involved in looking at the matter, internal audit had undertaken its work and I was waiting for the report to come. It was delayed in being provided to me. In September 2014, when I was trying to complete the audit of Coatbridge College, I spoke with members of the New College Lanarkshire senior management team and with the internal auditors to try to get access to the report. I could not conclude my work without undertaking the work that I needed to do. At that point—the middle of September—the information was given to me.

Tavish Scott: What information was that?

Cathie Wylie: I was provided with the report that Wylie & Bisset had produced about severance payments in Coatbridge College.

Tavish Scott: Did that report detail all the payments and to whom they had been made?

Cathie Wylie: Yes, it included all the information about the timings of when—

Tavish Scott: Did it mention the funding council advice and therefore that the payments that had been made were considerably in excess of that?

Cathie Wylie: I think that it did. I cannot remember whether it specifically mentioned the funding council advice, but certainly, as a result of receiving that report, I tried to get more information from the college. I needed to understand the report more fully in order to consider its impact on my audit opinion. At that point, it was very difficult, because we were now into New College Lanarkshire dealing with ex-Coatbridge information. The people there found it very difficult to access information from Coatbridge College; the information that was available to be provided to me was incomplete.

Tavish Scott: Was information withheld from you knowingly, do you believe?

Cathie Wylie: I do not believe that information was withheld from me knowingly at that point. New College Lanarkshire provided as much as it could when I started to ask questions. I think that there were points earlier in the process when some of the senior management team at Coatbridge College could have spoken to me about things that they did not speak to me about.

Tavish Scott: Yes. They did not volunteer—

Cathie Wylie: They did not volunteer the information.

Tavish Scott: Mr Doyle said on record last week that he destroyed papers. Were you aware of papers that would have been helpful to your inquiry that you were not given access to because, by definition, they did not exist any longer?

11:15

Cathie Wylie: Among the things that I had asked for were the papers that had been presented to the remuneration committee, so that I could see the business cases that should have been made. I should have looked at them, but those papers were not able to be found. I do not know whether that is because they never existed or because they had been destroyed.

Tavish Scott: When you asked whether a business case existed, what answer did you get?

Cathie Wylie: No one could find one.

Tavish Scott: You will have heard the evidence earlier this morning from Mr Keenan. Were you made aware of the letter that Mr Doyle had written to John Gray in January 2013—prior to the

remuneration committee meeting on 28 January—which, as we understand it, intimidated Mr Doyle's desire to leave Coatbridge College?

Cathie Wyllie: No. I first heard of that when it was discussed this morning. I was aware of the letter that had gone to Mr Doyle in January, following the remuneration committee meeting, that made the offer to him, and of his acceptance of the offer in January 2013.

Tavish Scott: What would cause you to qualify accounts? Was this not a material issue that would have led you to do that?

Cathie Wyllie: It is a material issue, and that is why, in the end, an emphasis of matter paragraph was included in my audit opinion.

Tavish Scott: On the scale of offences, shall we say, how important is that? Let me put it this way: as a country, our accounts are qualified all the time by the European Commission, because it claims that we do lots of things wrong. You were not qualifying these accounts in a way in which I would understand accounts to be qualified.

Cathie Wyllie: I did not qualify the accounts because the transactions as they had occurred were properly reflected in the figures.

Tavish Scott: Yes.

Cathie Wyllie: It was a difficult decision that I discussed at length with some of my colleagues at Henderson Loggie and some of the technical people at Audit Scotland. Although the process that had been followed was flawed, my view in the end—which was agreed with—was that the remuneration committee had made a decision that the college was entitled to make; it had made it with incomplete information, but that was a different issue. I came to the conclusion that the issue was one of governance.

That was one of the things that delayed the finalisation of the audit and the signing of the accounts for Coatbridge College for the final period. I felt that it was a governance issue and needed to be reflected in the governance statement that the college would produce as part of the accounts. That would have made everything open and transparent and all I would have needed to do would have been to put an emphasis of matter paragraph into my opinion. However, if the college had declined to include the information about the governance failures in the actual accounts, I would have needed to refer to that in my opinion in order to draw that information out so that it was made public.

Tavish Scott: Okay. I have two final questions.

First, the report that Allister Gray mentioned has yet to be placed in the public domain. From an

accounting perspective, can you understand why it has not yet been?

Allister Gray: I can answer that. The basic reason is that New College Lanarkshire wanted to make sure that this was Coatbridge College's problem rather than New College Lanarkshire's problem. Also, because there were compromise agreements, New College was not sure what could be released. We said in our report that New College would need to take legal advice before releasing that report. There was sensitive information in it, some of which might not have been releasable because of data protection rules. New College has given me permission to say today what the main points in the report were.

Tavish Scott: You have made that clear to the convener.

My final question is for Mrs Wyllie. When you were seeking to gain an understanding of what had actually happened, did you seek to speak to Mr John Gray and Mr Doyle? Were you able to contact them?

Cathie Wyllie: I did not seek to speak to either of them, but I did speak to Mr Keenan.

Tavish Scott: Did you not feel that it was necessary to speak to those two gentlemen?

Cathie Wyllie: No, because we do not normally speak to people who are no longer part of an organisation. The evidence trail that should be left should be adequate to provide any information that is required for an audit.

Tavish Scott: Thank you.

Colin Beattie: Briefly, can you define the boundary between internal and external audit at Coatbridge College?

Cathie Wyllie: I will answer from the external perspective. The external auditors are appointed by the Auditor General to audit the financial statements and put the opinion on the annual accounts of the body, but they also have a wider remit in relation to governance and performance, which is covered by the code of audit practice that the Auditor General and Audit Scotland produce as guidance for auditors. The internal auditors are employed by the college to undertake reviews of any areas in which the college feels that there is risk and on which it would like assurance, but perhaps Allister Gray would like to say a bit more about that.

Allister Gray: The role of internal audit is to provide independent assurance that an organisation's risk management, governance and internal control processes are operating effectively. Wylie & Bisset has a number of appointments in which it provides an outsourced internal audit service. In the context of Coatbridge

College and New College Lanarkshire, we are directed by the organisation's audit committee to consider various areas over the period of our contract but the committee owns and directs the audit plan. In effect, we provide a set number of internal audit days in a year. It is not like a multinational company that has its own in-house internal audit function that is there all the time. It is quite different.

Colin Beattie: We heard this morning that there had been previous voluntary severance schemes—the one in 2012 comes to mind. Who would normally have signed off on those in the past? Would that have been done by internal audit or external audit.

Cathie Wyllie: No one would particularly sign off on the schemes, although we would have examined them to see whether they were reasonable. Either internal audit or external audit can examine them first. Usually, we both get involved and, in the various colleges with which I have been involved, that has been done either way to best suit what the college required.

Allister Gray: It has worked in different ways. Cathie Wyllie and I have been involved in different colleges in which the roles have been reversed: she has been the internal auditor and I have been the external auditor. The bottom line is that, no matter what happens with any severance arrangement, the external auditors always have to consider it because they have to sign off the accounts. If any packages are being paid to senior employees, they are included in the accounts and the external auditors have to look at them. The internal auditors might also be asked to examine them. In the past, Cathie Wyllie and I have both been consulted on such packages.

Colin Beattie: By Coatbridge College?

Allister Gray: Not by Coatbridge College but by other colleges. It depends on the circumstances. Some colleges will run things by the auditors before anything happens, if they do not know themselves—

Colin Beattie: So the college could have gone to the internal or external auditors to run the process past them.

Allister Gray: Yes.

Colin Beattie: Were you aware that the SFC had recommended that the college should run it past its external auditors? Did you become aware of that later?

Allister Gray: I think that the SFC guidance says that the internal auditors and the external auditors should be involved.

Colin Beattie: When did you become aware that the SFC had concerns about the severance payment arrangements?

Allister Gray: Personally, I was not aware of that until we carried out the report into New College Lanarkshire. In effect, we became aware of it when we did that report, which, in essence, is the basis of what ended up in the Auditor General's report.

Colin Beattie: What about the external auditor?

Cathie Wyllie: The first record that I can find of me recording that is in September 2014.

Colin Beattie: Which is a year later.

Cathie Wyllie: Yes.

Colin Beattie: Do you find it strange that the college did not run the package past you, given its size?

Cathie Wyllie: It is not unusual for the college not to run things past us before the event although, in other cases in which we have considered matters after the event, there have been business cases and other items of evidence to support the action that was taken.

Colin Beattie: Past audits referred to the governance arrangements at the college as robust. Suddenly, in this report, we have governance problems. Were there no hints previously that there were difficulties with governance or issues with the processes that the college followed? If not, what happened?

Allister Gray: Wylie & Bisset has been looking at the systems at Coatbridge College over the years, and there have not been issues in other areas. The problem here is specific to the severance package. Wylie & Bisset has looked into other areas during the year, and they are all as normal. The governance processes around the other areas that we have looked at are all fine. The last time we looked at corporate governance, it was fine. Some of the former remuneration committee members have said that today—they feel that the processes are okay. It appears to me that the issue is specific to the problem of the severance packages.

Colin Beattie: Of this particular severance package?

Allister Gray: Yes.

Sandra White: I have a small point of clarification. I was not quite sure what you meant when you answered Tavish Scott's question. You said that you received information just in a chat with someone. This relates to 28 January 2013—or was it 28 October 2013? You mentioned January first, but then you said October. This is an important point, and I ask you to clarify it.

Allister Gray: Sorry—is this about when we were first made aware of the matter?

Sandra White: Yes.

Allister Gray: That was on 28 October 2013.

Sandra White: That is a very important point. That is when Biggart Baillie was brought into the equation. It was not brought in previously—in January. You were informed then, just in a chat.

A number of the questions that I was going to ask have already been answered, but I want to whether the Coatbridge College case is unusual. Would you expect to be presented with business cases more timeously? Would you expect to see the minutes of any remuneration committee or board meetings? Is what happened at Coatbridge College unusual?

Allister Gray: If you looked at colleges in general and then at each college that went through the New College Lanarkshire voluntary severance scheme, you would have said that the scheme looked reasonable and that there was no need to worry about things.

However, if there was deviation from the New College Lanarkshire scheme and you applied that across the sector, there would have to be robust business cases behind that deviation. Further, if you are in any doubt about whether you are deviating, you should ask the internal and external auditors about that.

Before the process with the Public Audit Committee started, I did not know about the funding council letters. We were never aware of them—we were not aware of them when our report was produced. Given that those letters say that the internal and external auditors should be consulted, I am surprised that they were not.

Sandra White: That relates to another point. There have been a number of college mergers. Some of them have been fine, and some have been not so fine. This one seems to be one that was not so great.

In future, should the funding council meet the internal and external auditors before anything happens? I find it truly astonishing that it was September 2014 before external audit considered the matter. Mr Doyle's payment was already in the bank in October 2013. You were the auditors, and Coatbridge College was not audited timeously, as far as I can see. Given what happened at Coatbridge, what would be the best way to deal with any future issues?

Allister Gray: With the benefit of hindsight, we can look at the position and consider what could have been done. In future, you should ensure that there is clear advice and that everybody knows where that advice is. All parties who are likely to

be involved should be involved in preparing whatever paper is put out.

The guidance is not actually sent to the auditors, so the internal and external auditors are not necessarily aware of it. It is sent to the colleges and the college principals. It would be good to have clear guidance that goes to the internal and external auditors as well as to the colleges.

Sandra White: That is a well-made point.

Ms Wyllie, in your job as an auditor for colleges—this applies to Mr Gray, too—would you not be expected to be aware of the funding council's guidance when you are auditing?

11:30

Cathie Wyllie: Yes, we would be aware of the funding council's guidance. We would receive it from the college, or we would see it on the funding council's website. Also, Audit Scotland provides guidance for auditors that summarises information from the funding council and other sources that is relevant to the audit that we are undertaking.

It is also important to recognise that external audit occurs after a year-end has been completed. Therefore, it is not unusual for us to look at transactions after they have taken place.

Sandra White: I completely understand that external auditors cannot audit something until it has been completed, but should internal auditors not be more closely involved in situations involving remuneration? I am not blaming anyone; I am just suggesting that it might be part of the proper process for people who are internally auditing something to be there at the beginning of the process.

Allister Gray: Again, it goes back to what I said earlier, when we were defining the role of internal audit. Essentially, we are almost consultants to the college's audit committee. To some degree, we rely on the college making us aware of potential issues. If it had been dealing with a normal severance scheme, it might not have had to highlight that, because, in essence, there would be nothing wrong with the scheme and the external auditor would examine it in due course anyway. However, a scheme that was unusual, as this one was, should definitely have been flagged up.

Dr Simpson: We have talked about the remuneration committee and the board, but your relationship was with the audit committee, mainly. Did you get any minutes of the audit committee in the period between January 2013 and the informal meeting on 28 October 2013? Did those minutes indicate that severance schemes were being considered by the remuneration committee?

Allister Gray: Wylie & Bisset attended all the audit committee meetings, and Henderson Loggie probably did, too.

Cathie Wylie: We did not attend all the audit committee meetings, but we received all the minutes. Until the issue was identified with the late production of the remuneration committee minutes, there had never been an issue with receiving minutes late or not receiving information when we expected to receive it.

Dr Simpson: Were there any meetings of the audit committee between January 2013 and the end of October 2013 that either of you attended?

Cathie Wylie: I think that there was one in June that year, but I would have to check.

Dr Simpson: You could perhaps get back to us on that, because it would be good to confirm that the audit committee did not discuss any matters to do with severance between January and October. Clearly, it is not just the remuneration committee that had a problem; the audit committee appears to have had a problem as well.

Cathie Wylie: I can confirm that severance was not discussed at any of the audit committee meetings that I was at in that period.

Dr Simpson: That would be unusual, given that severance arrangements had been approved by the remuneration committee and a letter had been issued to the principal on 6 or 8 February outlining extraordinary severance terms. Are you both saying that that issue did not come to the audit committee?

Allister Gray: I would need to confirm that, but there were audit committee meetings on 4 October 2013, 6 February 2014 and 7 March 2014, all of which Wylie & Bisset attended.

Dr Simpson: And before 4 October?

Allister Gray: I would need to come back to you on that.

Dr Simpson: That would be interesting to know.

Stuart McMillan: With regard to this situation, Mr Gray, your colleague will have been aware of the funding council guidelines. Is that correct?

Allister Gray: As far as I am aware, yes.

Stuart McMillan: In the normal process that your organisation goes through, you will acquire what you hope to be all the information but, when you are going through that and putting together your report, if you encounter any potential discrepancies or have any questions about the information that has been provided or if you see potential gaps, do you go back to the relevant committees, organisations or individuals to ask for further clarification before you produce a report?

Allister Gray: Normally, we would do that. In this case, with the report that we produced, which went across to external audit, because of the compromise agreements et cetera, we could not get access to some information on individuals, which is quite unusual. We were able to take our report only to a certain point. After that, because Cathie Wylie had additional responsibilities in respect of the external audit, she had to explore the information further than Wylie & Bisset could in our report. Having said that, Tom Keenan, who was on the remuneration committee, was very helpful to us, which allowed us to produce a report that would be helpful to the external auditor.

Stuart McMillan: Thank you very much.

Nigel Don: Both our witnesses have mentioned business cases. I think that Cathie Wylie suggested that she would normally expect to see a business case in the records. What kinds of things would be in a business case? None of our witnesses has yet managed to produce even a heading.

Cathie Wylie: I would expect to see some rationale for the person leaving and for the need to pay some kind of voluntary severance. If an enhanced payment was proposed, I would expect to see some kind of costing to explain how long it would take to pay back the cost, or how long it would be before the money would be recouped.

Nigel Don: If I understood that correctly, you would be looking for some numbers to work out the cost. I still have no understanding of what the benefit might be against which the cost would be offset.

Cathie Wylie: In some situations—such as the one that we are discussing, in which there was a merger—it is sometimes helpful in allowing things to move forward if some people who are not going to be involved in the long term leave earlier. That argument might be used in a business case for someone to leave early or be given an enhanced package.

Nigel Don: Would that package need to exceed payment in lieu of notice?

Cathie Wylie: Payment in lieu of notice is one of the things that the funding guidance says should be used only in exceptional cases. If there is an exceptional case, the circumstances that give rise to that should be documented.

Nigel Don: So somebody who receives a severance enhancement for leaving early would in your view get less than payment in lieu of notice.

Cathie Wylie: Well, they might receive more than the statutory minimum that is required in a severance situation, but they might also receive pay in lieu of notice if the agreement did not

require them to serve the notice period that they were contractually entitled to.

Nigel Don: Okay. To get to the specifics on Mr Doyle, who as I understand it was contractually entitled to six months' notice—which I think is relatively unusual and is probably not statutory—can you give me any rationale from your collective experience as to why anybody might feel required to pay him more than six months' pay in lieu of notice as well as the other payments that were known to them, if not perhaps to the remuneration committee, to be relevant at the time?

Cathie Wyllie: I am sorry, but could you ask that question again?

Nigel Don: Sorry—I ended that sooner than you were expecting. We are talking about a package that seems to have been six months' pay in lieu of notice and, ignoring the pension, more than what was then regarded as the Lanarkshire scheme. Given that we are talking about large sums anyway, can you give any justification as to why there should have been an enhancement? I am just trying to find a way of rationalising what happened. You did not have to do that, but can you give me clues as to how we might?

Cathie Wyllie: The original decision was taken back in January 2013 and reiterated in October. It is difficult, with hindsight, to understand why it was reiterated in October, but I think that there was legal advice about contractual obligations relating to the paperwork that had already been signed at that point.

Nigel Don: That brings me to the other point, because you said earlier that you thought that Mr Doyle accepted the offer that had been made some time early in February as a result of the January meeting. I think that you were the only person who suggested that, which does not make it wrong. Presumably that referred to some offer that would have been relevant had Mr Doyle been leaving in July.

Cathie Wyllie: Yes, but that offer also said that the leaving date was negotiable.

Nigel Don: So there is somewhere an offer document, which I do not think anybody has yet seen, by which the remuneration committee might have felt that it was contractually bound in October.

Cathie Wyllie: Yes.

Nigel Don: Could you offer any suggestion as to why that has not been mentioned until this moment?

Cathie Wyllie: I am not sure. I think that some of the specific detail has not been mentioned because the Auditor General's report has dealt with things at a higher level.

Mary Scanlon: Prior to January 2013, were the remuneration committee minutes published regularly?

Cathie Wyllie: Remuneration committees do not meet regularly; they meet only when they need to, which is one of the difficulties that we had—it is why we did not realise that we had not been given the minutes. We have the scheduled board meetings, the audit committee meetings and other meetings, and we know which minutes we should expect. However, we usually ask for remuneration committee minutes at the end because we will not necessarily know when those meetings have taken place.

Mary Scanlon: But nine months to publish the minutes would be unusual.

Cathie Wyllie: Yes.

Mary Scanlon: Did you check that the severance payments to the principal were in line with his contract of employment? We have never seen the contract of employment, but I am assuming that you would have seen that as part of your audit.

Cathie Wyllie: I did not see the contract of employment, but I was given written assurances by one of the HR staff in New College Lanarkshire that that was in the contract of employment.

Mary Scanlon: That is the full 21 months, the three and the six—

Cathie Wyllie: No. The only element that was contractual was the six months' pay in lieu of notice, because the contract of employment had a six-month notice period contained in it.

Mary Scanlon: What were the decisions that the principal was making that he did not have the authority to make, as noted in the external auditor's report?

Cathie Wyllie: The reason why I included that was that there was no evidence, other than some information that Mr Doyle had offered a severance package to a member of staff that—

Mary Scanlon: Was that a 19 per cent pay increase?

Cathie Wyllie: There was the 19 per cent pay increase, but there was also the 18-month severance package that was mentioned by one of the remuneration committee members this morning. A letter was sent in February 2013 from Mr Doyle to the member of staff offering 18 months' severance, when there was at that point no other agreement to that package.

Mary Scanlon: So he was making those decisions without referring to the remuneration committee, the audit committee or indeed anyone else.

Cathie Wyllie: I think that that one probably would have gone to the HR committee, but I am not aware of it having done so.

Stuart McMillan: The Coatbridge College audit committee has come up in discussion. I am not aware of the membership of the audit committee at the time, but it was highlighted by the previous panel that members of the audit committee were also members of other committees in the college. Was there any crossover in membership of the audit committee and the remuneration committee?

Cathie Wyllie: I believe that there was, but without checking specifically I would not like to say.

The Convener: Would Mr Doyle have attended any of the audit committee meetings?

11:45

Cathie Wyllie: Mr Doyle used to attend audit committee meetings. He was there in his capacity as principal. There was normally an item on the agenda for him to give a brief update about what had been happening in the college and perhaps comment about specific things that were happening. He was also there to provide advice and answer questions on individual agenda items if the need arose. He was not a member of the committee.

From the middle of 2013 onwards, Mr Doyle did not attend the committee any more, but that was not necessarily unusual in general; it was unusual in the context of Coatbridge.

The Convener: Finally, looking at the situation from the outside in and looking at the checks and balances in place, we see that £304,000 was paid into Mr Doyle's account on 25 October. That is a lot of money to be paid into somebody's account.

You have been advised by the funding council on how to prevent such a situation from ever happening again, but the process that was followed in that case was pretty straightforward. Somebody agreed something at a committee and the director of finance arranged for the money to be paid into the account. How do you prevent that from happening? If we say that the auditors should be made aware of that happening and somebody in the college does not do that, should we not be able to recover the money because that process has not been followed?

Cathie Wyllie: It would need quite a lot of legal review because, in the end, the conclusion that I came to was that the college board members were entitled to make the decisions that they did. At that time, the responsibilities of the board members were such that they could make those decisions. They had done so and therefore the payment was legitimate.

The Convener: To be fair, though, I am talking about the next part of the process, which is paying money into somebody's account. Is it just the director of finance who says that they will arrange for the money to be paid in and that is it? Does nobody then say, "This is £304,000—it is a lot of money. Somebody needs to get on to the external and internal auditors before we can transfer that money to the account"? What checks and balances are put in place so that such a transfer can be stopped if necessary? No matter what it was for—it does not matter who has agreed to it or what has happened—an amount of £304,000 surely needs to be checked. I know of organisations that need three signatories for their cheque account—I know of bowling clubs that need three people to sign for anything—so surely, in a college, it is not up to one person to make that payment of £304,000 without a process that at least confirms that it is the amount that should be paid?

Cathie Wyllie: There were processes in Coatbridge College—

The Convener: Can you take me through the processes that were followed in that case?

Cathie Wyllie: I do not know specifically what happened in that case. I know that generally there were levels of delegation in relation to who could sign off on payments in the college, and any testing that we and internal audit had done in the past had shown that those limits were adhered to and that authorisation processes were applied correctly.

The Convener: Sorry, Ms Wyllie, but you have just confirmed to me that you do not know what process was followed for Mr Doyle's payment. We know that £304,000 was paid into Mr Doyle's account. You have carried out an external audit; Mr Gray has carried out an internal audit. We do not know what process was followed to make sure that there was due diligence. For all I know, one person could have agreed to give permission to process that amount and nobody checked it out.

Cathie Wyllie: We know that a process was undertaken in the college and that there was information that showed that the payment had been approved and therefore that it was legitimate for the payment to be made.

The Convener: Okay. So after that approval takes place, one person is responsible for making the payment.

I thank both witnesses for their attendance this morning. We will briefly suspend to allow the next witnesses to join us.

11:49

Meeting suspended.

11:50

On resuming—

The Convener: I welcome our final witnesses today: Caroline Gardner, Auditor General for Scotland; and Angela Canning, assistant director of Audit Scotland. I understand that Ms Gardner has a brief opening statement to make.

Caroline Gardner (Auditor General for Scotland): Thank you, convener, for the opportunity to support the committee in investigating the issues raised in my report on severance arrangements at the former Coatbridge College. I welcome the committee's decision to call for evidence on these matters following my briefing to the committee in early September, particularly given the complex nature of the issues raised through the audit process.

Since then, the committee has heard evidence from individuals who were responsible for governance at Coatbridge College during the merger in 2013. There has also been evidence that concerns about severance and salary enhancements were widely shared.

Some of that evidence has provided helpful insight into both key discussions and decisions on severance at Coatbridge College and the difficult environment within the college during the merger process. However, when the committee started this morning, a number of pivotal questions remained unanswered, in particular about the timing of the events on which I reported, the information that was available to the remuneration committee when it was carrying out its responsibilities, and the role played by Biggart Baillie in advising the remuneration committee. Those questions need to be addressed if lessons are to be learned from what happened at Coatbridge College and public confidence is to be restored in the ability of colleges to manage public funds openly, effectively and ethically.

Therefore, I welcome the opportunity to explore these questions further with members today and I will be happy to do so again in future if it assists the committee, citizens, taxpayers, staff and students across Scotland to gain a full and clear picture of what happened in this case.

The Convener: Thank you. I will open the questioning by referring you to exhibit 2 of your report. The list of bullet points starts with

"The Principal making decisions he did not have authority to make",

and a number of other points are raised in that list. We have heard from the external auditor about the

decisions that the principal took that he did not have the authority to make and I will come back to that.

The other bullet points include:

"Agendas and papers for Remuneration Committees either not being fully prepared or not kept

Minutes for the Board and Remuneration Committee did not record fully the discussions and decisions made

Minutes from Remuneration Committee meetings not being produced or reported to the Board timeously."

Who do you see as being responsible for the process not being followed through? You will have heard that, last week, Mr Doyle advised us that he felt that it was not appropriate for him to attend the remuneration committees and he absented himself during the process to ensure that there could be no conflict of interest. Could you advise us who you think should have been responsible for the issues in those four bullet points?

Caroline Gardner: Certainly, convener. It is very clear in general governance terms and in the funding council's guidance on severance that the principal had a key responsibility in ensuring that the remuneration committee had the information and advice that it needed to carry out its role.

The evidence that the committee heard last week suggested that Biggart Baillie was brought in around 10 or 11 October to provide that advice to the remuneration committee on 28 October. I have two concerns about that statement. First, as you have heard today, the decision about the principal's severance package was made at the meeting on 28 January and a letter relating to that offer was issued to and accepted by Mr Doyle on 29 January. By the time that the 23 October meeting happened, the issue of advice was beside the point. My reading of the minutes of the meeting on 23 October suggests that Biggart Baillie was brought in to provide independent advice not about the broader question of a severance package but about the entitlements that had been generated by the issue of offer letters to the principal and, perhaps, other members of the senior management team in January.

The Convener: I refer you to the evidence that you will have heard from the remuneration committee. One of the points that I raised was that Biggart Baillie should have provided the remuneration committee with the SFC guidance, which has been in place since 2000, and with other guidance that the remuneration committee should have been aware of. Should Biggart Baillie have provided that guidance to the remuneration committee?

Caroline Gardner: If it was appointed to carry out the role that Mr Doyle suggested to you last week, I would have expected there first of all to

have been a paper from the principal to the remuneration committee at the appropriate meeting—and I am not sure that that was the October meeting—making it very clear that he had a conflict of interest and proposing that Biggart Baillie provide independent support to the committee. There is no mention of such a paper in the remuneration committee minutes, and Ms Wyllie found no evidence of one. However, my view is that that is not the role that Biggart Baillie played at the 23 October meeting, given that the decisions had already been taken at the meeting on 28 January and an offer issued and accepted immediately after that.

The Convener: Mr Doyle has advised us that he absented himself from anything related to his severance package and that there is no suggestion that he was involved in any of that. Do you agree?

Caroline Gardner: It is certainly true that Mr Doyle was not at the remuneration committee on 28 January or 23 October, according to the minutes and the testimony that you have heard today from remuneration committee members. However, it is clear from the funding council guidance, which I know that members have a copy of, that the principal's role goes further than that. The guidance specifically makes it clear that the principal's role is very sensitive and says:

"It is not acceptable for the Accounting Officer to abstain from their personal responsibilities by contending that they are not part of the Remuneration Committee or form any part of the decision process."

Given that the funding council guidance makes that clear, I would have expected Mr Doyle to put on record the steps that he was taking to handle his conflict of interest and to ensure that the committee had the advice that it needed to carry out its role.

The Convener: I have two final questions. It is pretty clear from the evidence that we have received this morning that the external and internal auditors played no role in this and were not made aware of the proposal on the table. Do you think that there was a process of trying to prevent those auditors from passing their eye over the proposal and perhaps rejecting it? Was it perhaps convenient to Mr Doyle for this information not to be provided?

Caroline Gardner: As you have heard from Ms Wyllie and Mr Gray, it is unusual for them not to be consulted informally when these matters are under consideration. It is clearly a requirement in the funding council guidance. You heard my professional view back in September when I gave evidence that, through this process, information had been withheld from the remuneration committee. I do not think that it is a coincidence that the auditors were not asked either.

The Convener: Do you put the blame fairly and squarely on Mr Doyle for withholding that information from the remuneration committee and the internal and external auditors?

Caroline Gardner: As principal and accounting officer for the college, Mr Doyle had a responsibility to ensure that the remuneration committee had the advice that it needed. If the members had had that, they would have had the funding council advice that would have made it clear to them that they were expected to consult external and internal auditors. The chain of events flows from the failure to ensure that the remuneration committee had the independent advice and support it needed back in January 2013 when the original decision was made.

The Convener: So you think that Mr Doyle withheld information to his financial benefit.

Caroline Gardner: It is very clear that he bears responsibility for the information not having been provided to the remuneration committee.

Mary Scanlon: Over the years, we have heard quite a few opinions about Auditor General reports, but we have never heard them described as "incomplete, inaccurate and vexatious". Auditor General, can I ask you to respond to Mr Doyle's description—or opinion—of the Auditor General's report on Coatbridge College?

Caroline Gardner: Of course, Mrs Scanlon. Ms Wyllie has already told you a little bit about my role, which is to appoint an external auditor to all of the public bodies in Scotland that come under my remit and to set out their responsibilities with regard to the things that they are required to look at, which involves an annual audit of the financial statements plus some wider dimensions. Under section 22 of the Public Finance and Accountability (Scotland) Act 2000, I also have the power to report to Parliament through this committee matters arising from those audits. As you would expect, I take neither of those responsibilities lightly. In fact, I take them very seriously, and I think that they are a key part of the checks and balances with regard to the way in which public money is used in Scotland.

When Ms Wyllie was carrying out her work, she kept in very close contact with my team in Audit Scotland about the concerns that she was becoming aware of and the issues that she was seeing. My team worked with her to test and challenge the evidence that she was finding and on the other evidence that she might look for and the relevant guidance that she might apply, and it quite easily came to the conclusion that a section 22 report should be produced and that it was a matter of public interest that I should bring to the committee's attention. We applied the same care, attention and professionalism that we apply to all

cases in bringing the report together. I think that much of the other evidence that the committee has heard in its evidence sessions has confirmed that, and the committee will come to its own view on the quality of the report that I have produced for it.

12:00

Mary Scanlon: I am very grateful—I think that it was important to get that on the record.

I appreciate that you have listened to all the evidence that we have heard. Are you any clearer now about who developed the terms of the severance payments to Mr Doyle that were presented to the remuneration committee in January 2013?

Caroline Gardner: That is one of those difficult issues that we come across from time to time in audit work. In such circumstances, we are often faced with an absence of evidence. In normal circumstances, we would expect to have seen—this would have been good practice—a set of papers for the remuneration committee meeting in January 2013 that included an overall scheme for severance for staff at the college and a business case for its application to individual members of staff, particularly senior members of staff. Neither we at Audit Scotland nor Cathie Wyllie as the external auditor have ever been provided with that evidence.

This morning, the committee has heard evidence from remuneration committee members that the advice was verbal and was provided by the chair. The committee has also heard evidence about a letter before that from the principal in which he expressed an interest in leaving under a voluntary severance scheme. There is no evidence that anyone else provided advice, and there is certainly no evidence that steps were taken to have independent advice provided to the committee at that point.

Mary Scanlon: My final question relates to paragraph 22 of your report, in which you say:

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

You use the phrase “so it appears”. Now that you have heard the evidence that we have all heard at the sessions last week and this week, would you go further than that and use stronger language? Would you now say that the chair definitely did not provide the remuneration committee with the information in question?

Caroline Gardner: Earlier, the committee was told clearly by members of the remuneration committee that they did not have access to that guidance, even though the committee knows from the evidence from Mr Doyle and Mr Gray and the

evidence from the funding council that it had been provided to Mr Gray in advance of the meeting. That concern is heightened by the wording of the minutes of the remuneration committee's meeting on 28 January, which indicate that a misleading version of the funding council's view was relayed to members of the committee.

Mary Scanlon: So it was the case not simply that information was withheld but that misleading information was given.

Caroline Gardner: That is my view.

Mary Scanlon: How serious do you feel that the issue that we are looking into is?

Caroline Gardner: I think that it is very serious. As I said when I gave evidence to the committee back in September, in my experience it is very unusual to find a case of this nature. The overall failings in governance were very serious, and in my view there was a deliberate withholding of information from the people who were charged with making a decision.

It could be argued that the amounts of money involved are relatively small, although I think that people across Scotland would disagree with that heartily, as do I. It is very important that any of us as citizens, taxpayers and people who rely on public services can depend on the people who are charged with stewardship of that money and can feel confident that it is being handled well and in line with all the expectations of people in public life. I reported to the committee because I think that that did not happen in this case.

Mary Scanlon: Thank you.

Tavish Scott: Can I clarify Audit Scotland's understanding of what happened before the meeting on 28 January 2013? I think that what we learned earlier is that Mr Doyle wrote some kind of note to his chairman saying, “I want to go,” and Mr Gray then spoke—if I have got this right; please correct me—to the then chief executive of the Scottish funding council and got the advice that we all now know was not given to the remuneration committee on 28 January. At that meeting, the remuneration committee took the definitive decision about Mr Doyle's package, after which it was a done deal. Is that accurate?

Caroline Gardner: Yes. The only bit of that that I cannot actively confirm, because I have not seen the evidence, is the letter or memo—or whatever—from Mr Doyle to Mr Gray. We know from the evidence in front of the committee that, on 25 January 2013, the then chief executive of the funding council confirmed to Mr Gray the conversation that he had had with him about voluntary severance. He also forwarded a copy of the guidance with the funding council's expectations.

We have seen a copy of an offer letter to Mr Doyle from Mr Gray dated 29 January 2013, which set out the terms that were discussed at the meeting on 28 January. That was returned, signed by Mr Doyle, that same day, 29 January. We know that the settlement agreement between Mr Doyle and the college was signed on 11 October in advance of the 23 October 2013 remuneration committee at which Mr Doyle told the committee that DWF Biggart Baillie was providing independent advice on how to handle the conflict of interest in which he found himself.

Tavish Scott: Thank you for that. I will come back to Biggart Baillie in just one second. I am also conscious of the evidence that Mrs McCarthy, who was a former member of Coatbridge College remuneration committee, gave this morning to the committee. She said that the remuneration committee was advised that many such severance payment deals were taking place across the college sector. What is your view? Is it the case that all those other deals, if that is the right expression, accorded with the need to have a proper business plan and appropriate governance procedures in place so that they were, at least in that sense, acceptable?

Caroline Gardner: In my wider report "Scotland's colleges 2015", I identified six colleges where auditors had raised concerns about severance arrangements as colleges went through the reform process. The report gave details on all six colleges. Two of them—Coatbridge College and North Glasgow College—were serious enough to warrant a section 22 report.

We know that other colleges paid more than the amount recommended in the funding council guidance, and that they were permitted to do so under the guidance, subject to certain conditions. I have no evidence to suggest that where those higher deals were paid, that was not done as a result of a proper process and a proper consideration of the balance of cost and benefits of doing so.

I know that the committee has requested further information from the funding council about that, but you have the assurance from my earlier section 23 report that where other arrangements were made, auditors had not raised concerns about the process that had been gone through, except in those six cases.

Tavish Scott: I want to ask about Biggart Baillie in relation to the convener's questions. When you appoint a lawyer, the lawyer gets a brief. Given that it was clearly Mr Doyle who appointed Biggart Baillie—it would be interesting to know about the governance of that decision—what brief do you think the firm got?

Caroline Gardner: I have not seen the brief that went to Biggart Baillie, but in reading the remuneration committee minutes of 23 October 2013, I form the impression that it had been asked to provide advice on the commitments that the college had entered into following the remuneration committee on 28 January 2013. There are some quite surprising comments in there. The advice that although the funding council was unhappy with the arrangements that had been made, they were within the college's competence was certainly true, but it does not sound to me like the advice that you would give if you were being asked to handle the conflict of interest that the principal faced.

There was also a comment in the minutes that confirmed to the remuneration committee that it did not need the board's approval to do what it had done, because it had delegated powers. That leads me to believe that Biggart Baillie had advised on the legal obligations into which the college had entered because of the decisions that the remuneration committee had taken back in January 2013. That belief is heightened by the fact that Mr Doyle's settlement agreement was signed on 11 October 2013 in advance of the remuneration committee on 23 October 2013 at which Biggart Baillie provided support.

Tavish Scott: Quite. I have a final question on the evidence that Mr Gilliver—also a former member of the remuneration committee—gave this morning. He suggested that there is no evidence whatsoever that the commercial income that Coatbridge College had gained had been used to pay the enhanced principal's settlement over and above what the funding council had provided. Does Audit Scotland have any reflections on that evidence?

Caroline Gardner: I have two reflections. First, I fully agree with Ms Wyllie's earlier comment that that is not a meaningful distinction in this context. It is all college funding, which is there for the purposes of the college, and some of which will be public money from local authorities and other public agencies.

Secondly, the funding council guidance, which is very useful on many aspects of this matter, says very clearly that

"In principle, colleges can supplement severance payments with private funds. However, in such cases, the college still has a duty to behave prudently and responsibly in using funds held on trust."

We also know that the Office of the Scottish Charity Regulator has concerns about the extent to which the members of the board were fulfilling their role as trustees in using funds for that purpose. The distinction of funds has no meaning.

Tavish Scott: One could argue that Scottish students suffered while Mr Doyle got his big payoff. That is another assertion that could be made, given the number of assertions that Mr Doyle made himself.

I was genuinely taken aback when Thomas Keenan, I think, reported that when the chief executive of the funding council turned up at the board meeting of 23 October, “he did not lay” reconsideration of the payment “on the line”. There are two perspectives on that. Either it was a done deal—as we know now—so it really did not matter what Laurence Howell said at that meeting, or the level of mistrust and disquiet about the whole thing was such that he did not think that it was worth doing. Do you have any reflections on why the chief executive did not make it very clear, in simple and abrupt language, how displeased the funding council was by the whole thing?

Caroline Gardner: I was surprised to hear that, and it is not the impression that I got from the minute of the meeting. It was a board meeting, rather than a remuneration committee meeting, that Mr Howells and Miss Drysdale attended. I was taken aback by the timing of their presence at the meeting. The meeting opened at 7 pm and there was an introduction before Mr Howells was invited to speak. The minute records that Mr Howells and Miss Drysdale left the meeting at 7.10 pm—just 10 minutes later. There followed a general discussion between the chair and the board on the issues that were raised by Laurence Howells, then the management team representatives joined the meeting at 7.15 pm. That means that there were only five minutes for discussion. I find that surprising. You heard evidence from Mr Howells last week and, in my view, the minute gives a clear record of what he put forward to the board. The way in which it was received is harder for me to comment on.

Colin Beattie: Last week, Mr Doyle and Mr Gray were quizzed about the circumstances around Mr Doyle’s point of departure. No mention was made at all of the fact that Mr Doyle had applied for a severance package in January. Does that not seem extraordinary? Did that come out at any point in the audit, prior to this?

Caroline Gardner: As I said in response to a question from Tavish Scott, we have never seen the letter that was referred to. I think that the form in which Mr Doyle’s wishes were made known to Mr Gray was hearsay evidence among the remuneration committee members. It is clear that there is no evidence of either a scheme being in place for voluntary severance or of an application from Mr Doyle or other members of the senior management team whose voluntary severance was also approved at the same remuneration committee. There is a general concern, which is

one of the cornerstones of my section 22 report, that the lack of that evidence is very poor governance.

There is a wider question about whether Mr Doyle could have hoped or wished for a continuing role with Coatbridge College up to the point of merger and then with the successor merged college, New College Lanarkshire. You heard evidence last week that Mr Doyle had not applied for the post of principal of the merged college, and my understanding is that that post was advertised at the point when Coatbridge was outside the merger discussions. At the point when Coatbridge College rejoined, the process was complete, or very nearly so, and Mr McGuire had been appointed as the principal designate, so at that point, Mr Doyle had missed the opportunity of the principal’s post in the new college, but as you also heard from Mr Howells last week, there were examples of principals in merging colleges taking other posts. They may not have been successful in applying to be principal, but they may have been well able to serve in other roles in the new colleges. I can also see no reason why, having been unsuccessful and perhaps feeling that voluntary severance would have been the best outcome for Mr Doyle and the college, he could not have been expected to serve his notice period and to do his best to see the college through to the merger at the end of March.

12:15

Colin Beattie: My concern is that, as I see it, information was concealed from this committee. Information was not volunteered to this committee when there was the opportunity to do so, which seems to be odd.

Caroline Gardner: I share your concern. There are clear discrepancies between the evidence that you heard from Mr Gray and Mr Doyle last week and the evidence from your other witnesses. I am appointed by Parliament to report to you independently on what I and my auditors find. You have heard my very clear view about the failings in this case.

Colin Beattie: It seems that the remuneration committee had regular informal meetings. It met informally frequently, but met formally only rarely. The minutes that we have seen are fairly sparse, in that they do not give us any real grip of what decisions were taken and so on. Previously auditors have said that governance was robust. Did the auditors know anything about the informal meetings, the decisions that were taken at them and how they were recorded? The situation seems to be extraordinary.

Caroline Gardner: I have not heard much evidence about informal meetings of the

remuneration committee. I think that there was a meeting in January and one in October, which were called because there was, in the first case, an issue that the chair wished to discuss and, in the second case, the funding council's concerns had been relayed to him and to others.

I agree entirely that the minutes are thin. As you pointed out in a question earlier, one would expect more to see a list of action points than a record of what had been discussed and the views that were put forward. The auditor's report, which is in the public domain, is very clear. Paragraph 21 says:

"The governance lapses arose as a result of the established and expected processes and procedures that had previously operated well within the College not being followed by a small number of people. The lack of openness and information about the actions that were being taken made it difficult for Board members to scrutinise and challenge these actions."

Elsewhere in the report the auditor gives her view that the governance failings improved slightly after late October 2013.

Colin Beattie: My concern about informal meetings is that it was one of the remuneration committee members who said that from time to time they just have a quick informal meeting to make a decision.

Caroline Gardner: I am sorry if I missed that evidence this morning. I did not hear it so I would not comment on it. That is not my understanding from Ms Wyllie, as the external auditor, and it is certainly not supported by the conclusions that she makes in her annual audit report on the overall process that was followed.

Colin Beattie: Okay.

Dr Simpson: I must apologise, as I have to leave shortly.

We now know that the principal applied for severance, the chair called a meeting at which he misled the committee—that is clear from the evidence—and immediately issued a severance letter that was immediately accepted. Would you have expected the audit committee to have been informed of that? The audit committee met in June—I think that the internal and external auditors were present at that meeting; certainly one of them was—yet there is nothing recorded about that significant severance package being agreed.

Caroline Gardner: I would not expect that necessarily to be part of the audit committee's business. Any organisation's audit committee has a clear set of functions. The remuneration committee was set up for the purposes of agreeing senior staff pay—we know that there were failings in that as well, during the period—pay policy for the wider staff, and exceptional items such as voluntary severance. The more testing question is

whether the board was fully exercising its oversight of the remuneration committee. As the committee has noted, the fact that the chair of the remuneration committee was also chair of the board, although that was permitted at the time, is not good practice in general governance terms.

Dr Simpson: Would you have expected the letter that Mr Gray issued to Mr Doyle, which Mr Doyle accepted, to have been reported immediately at the next board meeting?

Caroline Gardner: I would have expected the remuneration committee's decisions to have been reported at the board meetings. That is normal practice in any organisation in which committees with delegated powers report regularly to the board. I would have expected the process by which the remuneration committee made its decision to have been very much better than it was.

Dr Simpson: I presume that there was a board meeting between 28 January 2013 and 24 or 25 October—the meeting at the end of October 2013. There must have been board meetings in the intervening period.

Caroline Gardner: There were.

Dr Simpson: The chair did not report that decision to the board, even though a huge amount of public money was involved.

Caroline Gardner: It seems to me that normal good practice would be for the minutes of committees of any board—the remuneration committee, the audit committee or any other—to be reported back regularly in the meeting cycle.

Dr Simpson: Thank you very much.

Sandra White: I have a small follow-up question on the issues that Dr Simpson raised. Most of the issues have been covered.

It looks like the severance package was a done deal from early January 2013. However, as we have heard in evidence, there were board meetings, finance committee meetings and so on in the intervening period. If it was a done deal—as it seems to have been—from 28 January, surely if that had been reported to a board meeting, concerns would have been raised at that point. How can the committee—and you, as Auditor General—ensure that meetings are conducted properly and that the minutes are passed on? We are basically saying that Mr Gray, who was the chair of the remuneration committee, withheld evidence to the board about all that money being paid out in a severance payment. Two board members did not agree that it was a correct minute.

Caroline Gardner: I can probably only refer back to the evidence that I gave when I met the

committee to discuss the subject back in September. Good governance is there for a reason. Managers in any sector—in the public sector or the private sector—are professionals who are paid to carry out a role for the organisation, and who often also have a self-interest. The corporate governance system is a system of checks and balances that is designed to safeguard—in our world—public money and to ensure that the interests of the individual are not satisfied at the expense of the interests of the rest of us, who fund public organisations. In this case, the system of corporate governance failed. It failed—in the view of the external auditor and in my view—because of the actions of a small number of people.

It is always very hard to put in place systems that can cope with people actively working to circumvent the checks and balances in order to achieve a certain outcome. You have heard evidence from the funding council that the veto powers that it now has in relation to early severance would stop this from happening again. I reported in “Scotland’s Colleges 2015” that, in my view, in the light of the substantial amounts of public money that were being paid as part of the reform process to generate savings, there should have been greater monitoring and oversight of what was happening across Scotland. However, I think that we know that it is always—not just in public organisations, but more widely—very hard to put in place checks and balances that get around the risk of individuals colluding to achieve a particular outcome.

Sandra White: I have one small follow-up question. You do not have to answer it if you do not wish to. Mary Scanlon alluded to the fact that part of the definition of the word “fraud” is withholding of evidence. It is clear that from 28 January 2013 this was a done deal; it was passed and there was not another meeting of the remuneration committee until October. There were board meetings and other meetings, but evidence—the minute of that meeting and others—was withheld from board meetings. Is that a criminal offence?

Caroline Gardner: The first thing to say is that I share the committee’s frustration. People across Scotland who look at the matter will feel a real sense of outrage that this has happened. Our challenge—the committee also got a flavour of this from Ms Wyllie—is that we need to go on not the dictionary definition of fraud but the legal definition of fraud. The college involved took legal advice and the funding council took advice from its legal advisors. Both came to the conclusion that the likelihood of money being recovered from the individuals concerned was very small and that the costs and risks of doing so outweighed the likely

benefit. We have to work on the basis of that assumption.

When I originally briefed the committee on the issue, Nigel Don asked whether there should be a new offence or some other sanction available. That is a good question for the committee to consider.

Stuart McMillan: We have touched on the brief for Biggart Baillie when it came in. Which committee or committees at the college should have been looking at or provided with the brief for Biggart Baillie to discuss the matter?

Caroline Gardner: As I said, the funding council is clear that the principal had the responsibility to ensure that his conflict of interest was properly handled. What I would have expected to see was a paper from the principal at an appropriate stage—and in my view that was not the October meeting but the January meeting—that set out why he believed that he had a conflict and proposed that it should be handled by the appointment of Biggart Baillie or another law firm to provide independent advice to the committee.

Such advice would have covered not just whether the committee was legally competent to make the payment but the options that were available to it, the costs and benefits associated with the options and the process that it should go through. It was entirely appropriate for the remuneration committee to make the decision, but it should have done so on the back of a proper briefing from the principal about why it was required and how that responsibility should be fulfilled.

Stuart McMillan: Should the college’s audit committee or even the board have been consulted about Biggart Baillie coming in to undertake the work?

Caroline Gardner: I would not necessarily expect that. As it says in my report, the principal had a duty to take steps to manage his conflict of interest, and in my view he did not do that.

Nigel Don: It is unfortunate that only this morning have I come to understand that Mr Doyle made some kind of request in early January, that the minutes that we have of the remuneration committee’s meeting in late January appear to show that some package was agreed, that a letter was written by Mr Gray on 29 January and was turned around straightaway by Mr Doyle, and that the settlement agreement was actually signed on 11 October, which was plainly ahead of the meeting on 23 October. Do you think that that is what the remuneration committee thought was going to happen? Is that what the remuneration committee agreed to in January?

Caroline Gardner: Because of the lack of papers for the remuneration committee meeting in January, the opacity of the minute and the disagreement about the minute 10 months later in October, it is very hard to be clear about what the remuneration committee thought that it had agreed.

What I heard this morning is that the committee felt that there was a strong case for the principal's position to be resolved at that point. It is clear that it did not have access at that point to the funding council guidance, which it should have had. In my view it is also clear that it did not have the information that should have been provided to it more generally about the reasons why the principal's position needed to be resolved at that point, what options might be open to the committee and what the costs and benefits of the options would be.

Nigel Don: The minutes of the meeting in January come to us as an annex to the call-in notice for the meeting in October. Is there evidence that those minutes were seen by anyone before that?

Caroline Gardner: I think that there is evidence that they were not seen by members of the remuneration committee until the meeting on 23 October in the minute itself, where we start to see disagreement between committee members about what had been discussed and agreed. I think that that is common ground between the members of the committee from whom you have heard.

Nigel Don: Is there evidence that anyone else saw those minutes in the time between?

Caroline Gardner: Not that I am aware of. My expectation would always be that either there would be a committee meeting at which the minutes were agreed and then reported to the board or the minutes would be agreed by correspondence among the members and then reported to the next board meeting.

Nigel Don: Am I entitled to take the view, on the evidence that we have, that the chairman drew up the letter that was signed on 29 January on his understanding of what had been agreed?

Caroline Gardner: I do not know whether the chair of the board and the committee had access to the minute of the 28 January meeting when the chair put together the offer letter that was accepted by Mr Doyle.

In any case, it is clear that it would have been good practice for there to have been confirmation among the committee members about what they had agreed, and that that confirmation would have been much easier to achieve had good papers been prepared for the committee to consider in the first place. The whole system of governance

around the remuneration committee fell down at that point, and I think that the evidence that you have heard suggests that that was more than an accidental failure.

12:30

Nigel Don: As always, I am not trying to put words in your mouth, but I would like something confirmed. I am getting the impression that there is no evidence of any paperwork between 28 January and the letter from the chairman, but nobody has spoken about the letter and nobody seems to have known anything about it having been written.

Caroline Gardner: As far as I can see, there is no evidence other than what is still called the draft minutes of the meeting on 28 January and a letter signed by Mr Gray dated 29 January, which was signed and returned by Mr Doyle on the same day. We have access to that through the audit process, but I have no evidence that anybody else saw it, except the two of them.

Nigel Don: Thank you.

The Convener: We have a question from Mary Scanlon.

Mary Scanlon: I think that we are all agreed that the remuneration committee did not have the Scottish funding council guidance when it made the decision in January 2013. However, Biggart Baillie said in a letter to Thomas Keenan that

"The position which was adopted by the"

remuneration committee

"at the end of January 2013 was in my opinion based on the guidance that existed at that time and indeed followed discussion with the SFC at that time."

We know that there was no guidance from the SFC or, indeed, discussion with it. Is it fair to say that Biggart Baillie was also misled into thinking that the SFC advised the remuneration committee?

Caroline Gardner: I cannot comment on that letter. I share your view that we heard very clearly from the remuneration committee members this morning that they had not had the funding council guidance drawn to their attention, and we know from the correspondence shared by the funding council that its expectation was that it would be made available to the committee.

Mary Scanlon: But Biggart Baillie thought that the remuneration committee had been advised.

I think that we are now much clearer about the remuneration committee, the audit committee and so on, but I am still struggling to understand the role of Roger Mullin. An email from him to John Doyle on 18 August about "Proposed agenda

issues" referred to the issue of voluntary severance. Given that Roger Mullin was the Government's main person in pursuing the merger process, what role did he have in confirming and discussing the approach to voluntary severance with John Doyle?

Caroline Gardner: My understanding is that Mr Mullin was appointed by the Scottish Government to provide support to the merger process and that he provided that support in a number of areas. I know from other work that we have done that he was providing support in Lanarkshire and in other parts of Scotland.

I have a copy of the email that Mr Doyle provided to you as background for today's meeting. Mr Mullin said in that email:

"On 18 July you asked myself and Linda McTavish to advise on when you might depart. We avoided answering, as we didn't have a clear view and didn't know what the wider major considerations would be."

That seems to me an entirely appropriate response, particularly in the context that back in January, as we have heard, Mr Doyle had already made clear his wish to depart, had not applied for the principal post of the new merged college and had, in effect, already accepted an offer on 29 January of voluntary severance. The departure date therefore seems to me to be something that is important but not central to the matters that you are considering today.

Mary Scanlon: Given that Mr Doyle agreed to voluntary severance at the end of January and had a letter of confirmation from John Gray, why is Roger Mullin's email of 18 August inviting him in to discuss the approach to due diligence, culture study and voluntary severance?

Caroline Gardner: I do not think that that is a question that I can answer.

Mary Scanlon: I appreciate that. Thank you.

The Convener: I have a couple of other questions. You will have heard Mr Keenan this morning, who raised the issue that the funding council should perhaps have provided direct support to board members, which could not be that difficult a process to follow in this day and age. Could there have been, for example, an away day for remuneration committee members? That committee's members were given the significant responsibility for carrying through a merger process, which not many of them would have had experience of doing, as we had never had a merger process on such a scale.

Given that the Scottish funding council was tasked with responsibility for the merger by the Scottish Government, surely it should have looked ahead and realised that it would need to start contacting the colleges involved and ensure that

the board members were directly aware of their responsibilities and that the SFC would support them in the merger process. Do you think that the funding council should have done that?

Caroline Gardner: I have great sympathy with that view, convener. In my report "Scotland's colleges 2015", which looks at the bigger picture with regard to this issue, I concluded that, given the significant amounts of public money involved, the funding council should have assured itself that colleges had the right processes in place and used the money in line with its guidance. Training and support would be an important part of that process.

The Convener: So it would not have been particularly difficult to ensure that, when this particular process was announced, all the individuals were in some way directly apprised of the guidance that had been provided. There were other challenges with regard to certain local arrangements such as the Edinburgh and Lanarkshire agreements, but should there have been some direct communication between the SFC and the members in question to allow them to make this decision? Would that have been helpful?

Caroline Gardner: I would distinguish two things in that respect. As I said in my earlier report, I think that there was a strong case for the funding council to provide more support to colleges going through the merger process to ensure that they understood what was expected of them, had the right processes in place and made good use of public money.

In the case of Coatbridge College, given that the chair of the board contacted the then chief executive of the funding council to ask about voluntary severance for principals and given that the chief executive's response was, "Here's the guidance", I think that the funding council was perfectly entitled to expect that guidance to be passed on to members of the board and the remuneration committee.

The Convener: On the £304,000 that was paid to Mr Doyle, the point that I keep making and which I raised with the auditors earlier is that, although I appreciate that the board decided that he should receive this money, surely there should be some external scrutiny, either by an internal or external auditor, when someone is paid such a large sum of money. Is that not normal practice for organisations?

Caroline Gardner: Actually, it is not. I understand why you might think that it would be, but what the external auditor is looking for and what the internal auditor is providing assurance to the board about is proper checks and balances in the system. Normally, that would be a scheme of

financial delegation that makes clear the individuals who can approve the payment of small amounts of money and the individuals who can approve the payment of larger amounts. Very often, two signatories will be required—indeed, as you have suggested, that is commonly the case for voluntary organisations—and what the people approving those payments will be looking for is proper authorisation by the board.

As far as the people involved in this case are concerned, there was proper authorisation, and we heard that the remuneration committee received advice from Biggart Baillie at the 23 October meeting that the authorisation was there. I recognise that this is cold comfort, but the safeguard is that, in its review of the annual financial statements, external audit looks at unusual payments such as severance payments and will bring to my attention any anomalies that it finds—after all, its audit reports are addressed to me as well as to the board of management—and I can then bring the matter to your attention.

The Convener: We have been assured that the Scottish funding council now has a veto, but the fact is that the same thing could happen again. If, as you have alluded to, someone follows a process in which information is withheld and people do not get the information that they should get, the Scottish funding council cannot prevent a payment from being made. The provision is apparently in place, but is it not true that it has not made any significant changes to the process to prevent the same thing from happening again?

Caroline Gardner: When we met the committee in September to discuss this report, my colleague Fraser McKinlay talked you through the new power of veto, and our view is that it will help. In this instance, all Mr Howells as chief executive of the funding council could do was meet the board for a short period and express his concerns about the process that it was going through, but the council now has the power to veto a payment. If the payment is made, the funding council is now on very much stronger ground in seeking to recover it than it would have been in the past.

The Convener: So what has changed? What legislation has been passed to allow the council to do that?

Caroline Gardner: The legislation that brought the colleges into the public sector—the Post-16 Education (Scotland) Act 2013—and the revised financial memorandum that sits alongside it set out the way in which the powers that come from the new classification will be exercised by the funding council. There are real changes there.

The Convener: Obviously this payment was missed, because it was made in October 2013. I know the legislation that you are referring to, but

the issue is the process that is followed as a result of it.

Caroline Gardner: The enactment of that legislation has given the funding council greater power, which will greatly reduce the likelihood of the same thing happening in future.

The Convener: I thank the Auditor General for her evidence. As previously agreed, we will now move into private session.

12:39

Meeting continued in private until 12:55.

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