



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 18 November 2015

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PUBLIC AUDIT COMMITTEE
18th 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:

Laura Anderson (Office of the Scottish Charity Regulator)

Derek Banks (Former Director of Finance, Coatbridge College)

Paul Brown (Former Partner, DWF LLP (Biggart Baillie))

Lorraine Gunn (Former Director of Human Resources and Board Secretary, Coatbridge College)

Alasdair Peacock (DWF LLP)

David Robb (Office of the Scottish Charity Regulator)

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

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Public Audit Committee

Wednesday 18 November 2015

[The Convener opened the meeting at 09:03]

Decision on Taking Business in Private

The Convener (Paul Martin): Good morning. I welcome members of the press and the public to the 18th meeting in 2015 of the Public Audit Committee. I ask everyone present to ensure that their electronic items are switched to flight mode so that they do not affect the committee's work.

Apologies have been received from Colin Keir. I am delighted to welcome Sandra White, who is standing in for him.

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

Members *indicated agreement.*

Section 22 Report

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

09:04

The Convener: Agenda item 2 is an oral evidence session on the Auditor General for Scotland's report entitled “The 2013/14 audit of Coatbridge College: Governance of severance arrangements”. I welcome the first panel of witnesses: Derek Banks, former director of finance, Coatbridge College; and Lorraine Gunn, former director of human resources and board secretary, Coatbridge College.

As we are tight for time, we will move straight to questions. I understand that there are no opening statements.

Mr Banks, will you confirm the period in which you were the director of finance at Coatbridge College?

Derek Banks (Former Director of Finance, Coatbridge College): From 1 August 2006 until 31 March 2014.

The Convener: Obviously, during that period, the matter was your responsibility in your role of director of finance. Is that correct?

Derek Banks: Yes.

The Convener: In particular, you were the director of finance during the period that the Auditor General referred to.

Derek Banks: I was.

The Convener: Were you responsible for the financial arrangements that surrounded the severance agreements that were reached? Were you ultimately responsible for ensuring that those arrangements were signed off financially?

Derek Banks: I was responsible for agreeing that the funds were available, yes.

The Convener: So you were personally responsible for the financial arrangements around the severance arrangements for John Doyle, the former principal, in particular.

Derek Banks: Will you clarify what you mean by “personally responsible”?

The Convener: Maybe you want to explain what your role as the director of finance was when such a severance arrangement was put before you on behalf of the board.

Derek Banks: It was only to ensure that the funds were available for that payment to be made.

The Convener: Okay. So you did not have any responsibility for ensuring that the external and internal auditors were made aware of the arrangements that had been reached for Mr Doyle.

Derek Banks: No. It would have been the responsibility of the audit committee to inform them. The guidance that the Scottish Further and Higher Education Funding Council issued in 2000 clearly states that the accountable officer is charged with informing the auditors of the approach. That would normally be done through the audit committee.

The Convener: When the audit committee or whoever reported to you and advised you that a sum of £304,000 had to be paid into the bank account of someone who would very shortly be a former employee, did it never occur to you that you should at least have contacted the internal and external auditors? As an experienced director of finance, would you not have considered that?

Derek Banks: We discussed with the chair of the audit committee, Mr Keenan, our approach to bringing in internal and external audit. It should be borne in the mind that, at the time, the college was merging, and then it was not. Up until 7 October 2013, the college did not believe that it had any liability for any severance payments, because the decisions that were made by the committee back on 28 January 2013 were nullified by Coatbridge College withdrawing from the merger on 25 February 2013. Therefore, there was no liability up until 7 October. The merger management committee met and discussed the severance arrangements, which were brought up under due diligence. At that point, I discussed with Mr Keenan the approach that we should take. By then, Mr Doyle and Mr Gray had already agreed to bring in Biggart Baillie to fulfil the internal audit role, particularly because of its experience in HR and legal issues.

The Convener: So you were aware of the guidance that was available from 2000. Let us forget about the audit committee arrangements. You were ultimately responsible for signing the cheque to ensure that that money was provided.

Derek Banks: That is not correct.

The Convener: What was your role as director of finance?

Derek Banks: I was not responsible for authorising that payment. Because it was in excess of £250,000, the scheme of delegation meant that it had to be signed off by the board.

The Convener: So it was signed off by the board. What was your role after the board agreed it? As the director of finance, could you not say, "Look, I think that you should refer this to the internal and external auditors"?

Derek Banks: Obviously, I queried the payment with Mr Keenan.

The Convener: Why did you query it?

Derek Banks: Because of Mr Laurence Howells's attendance at the 23 October board meeting. After that meeting, I asked Mr Keenan whether I should stop the payment, because I was aware that it would be made on 25 October. I was told not to stop it because the committee had agreed it.

The Convener: So on the basis that Mr Keenan was the acting—

Derek Banks: He was the newly elected chair of the board, although that would have been effective only from 1 November.

The Convener: So the board took the decisions. Are you telling me that you were not in a position, as the director of finance, to at least say, "Look, I think this should be referred to the external and internal auditors"?

You are a man of significant experience—I can see that from your biography—and you had been at the college for all those years. Did you not, given the integrity that you should have had as director of finance, say, "I'm really sorry about this, Mr Keenan, but you've asked me to make this payment and it's a significant sum. The guidance says that the external and internal auditors need to be made aware of this. Regardless of the audit arrangements in the college, I want to refer this to the internal and external auditors." You advised the internal auditors some weeks later in an informal conversation, did you not?

Derek Banks: Yes.

The Convener: So it must have been troubling you during that period.

Derek Banks: Paragraph 36 of the guidance details the requirements of external audit and it recognises that, normally, they would pick it up, post event.

The Convener: Yes, so let us stick with internal audit.

Derek Banks: The external audit was fine. There is an issue with the internal audit. It is clear that internal audit should have carried out an audit needs assessment when they found out that the college was going through a merger. It is interesting that they did that for New College Lanarkshire from January 2014, but they did not pick that up for Coatbridge College when they were internal auditors for both Coatbridge College and Cumbernauld College.

The Convener: Let us stick to the point here. You were the director of finance. For the record, can you clarify your annual salary?

Derek Banks: At Coatbridge College at the time?

The Convener: Yes.

Derek Banks: I think that when I left it was £82,000.

The Convener: So it was a significant salary and you had significant responsibilities. You were not there just to make payments without at least questioning them. Previously, had you never questioned payments that were put forward to you?

Derek Banks: I think that I have already demonstrated that I did question whether the payment concerned should be made.

The Convener: But why did you question it? All that you said is that Laurence Howells attended the meeting, but he had attended other meetings before. Were you concerned that the internal auditors were not aware of the situation? Your concern was not just that Mr Howells attended the meeting. I am sure that he attended other meetings, but that did not prevent you from making payments. What was the specific reason for your concern?

Derek Banks: We were not at the initial remuneration committee meeting, and we only attended the board meeting after Mr Howells had left. However, Mr Keenan fed back to us what Mr Howells's concerns were. At that point—

The Convener: What was the feedback?

Derek Banks: Specifically, it was that there would have to be a justification for any agreement above the 13 months.

The Convener: What was the justification?

Derek Banks: You would have to ask the remuneration committee for that, because I was not involved in making that decision.

The Convener: Right. So you were the director of finance and you just decided to make a payment. Is a director of finance there just to make payments? Is that all that you do?

Derek Banks: No.

The Convener: What was your role in the organisation? Did you not have to make people aware of the finances available to the college? I understand that the college faced significant financial challenges. Did you not make people aware of that as well?

Derek Banks: Not in the financial year 2012-13. We actually made a surplus in that year. For anything before this, it would have been fine to make payments. However, I challenged the payment and asked whether it should be made.

The Convener: Right. So you challenged, but you have still not told us what the basis of that was, have you?

Derek Banks: It was on the basis of the concerns raised by Mr Howells.

The Convener: What were the concerns that you were aware Mr Howells had raised?

Derek Banks: Around the amount that was to be paid—

The Convener: —over the 13 months.

Derek Banks: Yes. Obviously, the concerns were that there was no business case for that.

The Convener: I have a final couple of questions. During the period concerned, were there any exchanges with anybody, either verbally or via email, in which somebody said, "Look, maybe this should go to the external and internal auditors. Maybe we should have a discussion about that"? Do you recall any such emails during that period?

Derek Banks: Nothing specifically about bringing in internal or external audit.

The Convener: No. Do you look back now and say, "Maybe I should have called the internal auditors"?

Derek Banks: Hindsight is always a great thing, but I think—I have not discussed this with Tom Keenan, who was the chair of the audit committee at the time—that bringing in Biggart Baillie was more effective than bringing in internal audit at that point in time.

The Convener: I put it to you that the £304,000 that was paid into somebody's bank account was a significant sum of public money. You were the director of finance and you must have known somewhere along the line that somebody would say, "Derek, why did you make that payment? What is the justification for it?" Clearly, the issue has now been questioned by the Auditor General for Scotland. Do you not feel some sense of responsibility and that maybe you should have probed the matter to a greater extent?

Derek Banks: I think that I probed it as far as I could. Obviously, the remuneration committee made the decision about the award to Mr Doyle and its timing. I questioned it, and we went through a process with Biggart Baillie to identify that we had followed guidance and that the remuneration committee had all the information that it required to make that decision. Therefore, it was not my decision to make that payment.

The Convener: Yes, I understand that, but the guidance is very clear about the role of internal and external auditors, regardless of what committee the matter is referred to. I would have

seen that. Do you not accept that it was your responsibility as director of finance to have seen it? That was why you were paid £82,000 a year—you were paid that so that you would at least say, “Listen, there’s an issue about this payment, Tom. We’ll need to look at this, but so will the internal auditors.”

Were you in constant contact with the internal auditors? How often were you in contact with them?

09:15

Derek Banks: It depended on the audit programme that was in place. Obviously, I was the main liaison with the internal auditors in terms of their work programme, which was set by the audit committee.

The Convener: Finally, just to confirm, were quite a lot of discussions taking place during September and October, but particularly during October, about the severance arrangements?

Derek Banks: Through the board, yes.

The Convener: Did you have any discussions with the internal auditors during that period?

Derek Banks: The only time when I had a specific conversation about the issue with internal audit was on 28 October 2013.

The Convener: So you never at any stage during those two months said, “Why don’t I have a chat with the internal auditor and tell them that significant sums of money are going to be paid out of the college bank account? I need to have a chat with the auditor to make sure that whatever payment I’m making is going to be accepted or at least that they’re not going to have any issues with it.” That would particularly be the case for the external auditor, who would have to sign off the accounts.

Derek Banks: Yes, but again, paragraph 36 of the guidance says that, generally, the external audit would be performed after the event.

The Convener: I understand that, but you still need to put together a set of accounts, make payments to people and satisfy both internal and external auditors. You will know that better than I do, because you are the one who is qualified to do that—I am not. However, here is the issue: should you not have done that? Should you not at least have had a conversation with the auditors? During that whole year, did you have conversations with the auditors?

Derek Banks: In general, yes, there would be conversations, because they attended—

The Convener: So you would have general conversations with the auditors about other issues.

Why did you not want to make contact with the auditors about a really important financial transaction that was taking place at the college? That is incredible, is it not?

Derek Banks: It is not that we did not want to make contact with them. We did not think that it was required, because we brought in Biggart Baillie to do that assessment for us.

The Convener: So Biggart Baillie is to blame now. People from Biggart Baillie will be giving evidence next.

Derek Banks: I am not blaming anyone, but they carried out an assessment for us.

The Convener: To be fair, they were not the director of finance—you were. I take it that they were not responsible for appointing external auditors or at least for liaising with internal and external auditors.

Derek Banks: No, but they gave us advice that the remuneration committee asked for in terms of whether the committee could make that payment.

The Convener: Yes. Let me just clarify this, as Biggart Baillie is giving evidence next. At no time did they say to you, “You don’t have to make contact with the external or internal auditors.”

Derek Banks: I cannot remember them saying that.

The Convener: So why would it be relevant to bring them into the conversation?

Derek Banks: Because they were replacing internal audit in the process as they had particular expertise in HR and legal issues that would—

The Convener: Sorry, but I just want to clarify that you are saying that they were replacing internal audit.

Derek Banks: Yes.

The Convener: Is that the basis on which Biggart Baillie was appointed?

Derek Banks: As far as I know, yes.

The Convener: So there will be paperwork to clarify that Biggart Baillie was appointed and, in effect, took over the role of internal audit.

Derek Banks: Yes.

The Convener: That is not what the auditors advised us when they met us last week or the week before. They did not advise us that they were replaced by Biggart Baillie.

Derek Banks: We had a discussion with them on 28 October 2013, when we outlined our processes and what we were planning to do, and they did not disagree with those processes.

The Convener: Okay. I will bring in Mary Scanlon now.

Mary Scanlon (Highlands and Islands) (Con): Before I go to Lorraine Gunn, I have a question for Mr Banks. When the people concerned were looking for their generous payments and you were agreeing to them, did you, as the director of finance, confirm to the principal and others that the college could well afford the £400,000 above what the SFC would pay?

Derek Banks: Not at that particular time. Again, the process that we went through started in January 2013, where the remuneration committee agreed—

Mary Scanlon: But there was a shortfall.

Derek Banks: There would have been, yes.

Mary Scanlon: The sum paid out was £1.7 million, of which the SFC paid £1.3 million and the college had to pay £400,000. Did you okay that £400,000?

Derek Banks: I would have raised my concerns about it, but ultimately it was not my decision to do it.

Mary Scanlon: But ultimately you, as the director of finance for Coatbridge College, agreed to that payment of £400,000.

Derek Banks: I would have told people about the potential risks at the time of not being able to meet that.

Mary Scanlon: You told them about the risks of—

Derek Banks: The potential of not having the funds to do that.

Mary Scanlon: I am not hearing what you are saying properly—sorry. It is just different accents; I am from the Highlands. Could you speak a bit more clearly? You told them about the potential risks of paying out an extra £400,000, which was more than the SFC guidance allowed.

Derek Banks: Yes.

Mary Scanlon: That is nowhere in our evidence, which tells us that you agreed to that extra £400,000, saying “Don’t you worry. The SFC will pay £1.3 million. I can find £400,000 in the college funds for the £400,000 shortfall.” Is that right?

Derek Banks: No, no—

Mary Scanlon: That is not right?

Derek Banks: I communicated with New College Lanarkshire and the funding council about that issue. A standard template had to be completed for a business case; all the figures were

in there. I informed both New College Lanarkshire and the funding council about the shortfall.

Mary Scanlon: You informed them? You need to be clear about that. When did you inform them? Did you agree to the £400,000 being paid? Our evidence says that you did.

Derek Banks: It would have been in March 2014 that they were told.

Mary Scanlon: But you signed off the cheque. They were talking about the additional money long before March 2014.

Derek Banks: The only one who went before 1 October was Mr Doyle. After that, there was a process by which most people left on 31 March 2014, so—

Mary Scanlon: But you knew—

Derek Banks: That is the point at which we knew.

Mary Scanlon: You knew that, on vesting day, Coatbridge had a deficit of more than £1 million. The £400,000 additional—and very generous—severance payments contributed 40 per cent of that deficit. You were fully aware of that, but the advice that you gave was, “Yeah, it’s okay—we can find that.”

Derek Banks: No—when I left the college, I was predicting a small surplus of £34,000 up to 31 March, including those payments.

Mary Scanlon: And when did you leave the college?

Derek Banks: On 31 March.

Mary Scanlon: And when did you—

Derek Banks: But I actually stayed on—

Mary Scanlon: When did you start your new job with the Scottish Qualifications Agency?

Derek Banks: About seven weeks later.

Mary Scanlon: Seven weeks later—okay.

I am quite surprised that, although the severance that was due to you as a director of finance under the New College Lanarkshire scheme was for nine months, you were in fact paid for 13 months. You got a job seven weeks later, but your payment in lieu of notice was £20,600, with another £5,500 in accrued annual leave. That is not bad money for seven weeks of being unemployed, is it?

Derek Banks: I started with the SQA as a consultant, not as a permanent employee, and I am still not a permanent employee—I have a temporary contract with the SQA.

With regard to my severance arrangements, I was on a retainer to give advice and help to New

College Lanarkshire, which I did until May this year.

Mary Scanlon: So why were you paid four months' more in severance pay than what you were due, in comparison with all the other payments?

Derek Banks: Because—

Mary Scanlon: Why were you given more generous payments?

Derek Banks: Because New College Lanarkshire wished me to be on a retainer to give advice and help when required.

Mary Scanlon: I will move to Lorraine Gunn. The 28 January remuneration committee meeting is critical. It is at the heart of the Auditor General's report, which states that:

"The Chair and Principal ... did not provide the ... Remuneration Committee with advice provided by the SFC"

and that there is

"no evidence that"

the remuneration committee's members

"were provided with detailed business cases".

We still have not found a business case from either of you.

The report went on to state:

"the terms being discussed by the Remuneration Committee were not in line with the advice of the SFC".

Those quotes are all from the Auditor General. I understand that it was your responsibility, as the HR director, to provide the remuneration committee with that advice and information. Is that correct?

Lorraine Gunn (Former Director of Human Resources and Board Secretary, Coatbridge College): What I provided in advance of the committee meeting was in response to questions from the chair of the board. He wanted to know from me what was available in the sector in terms of known severance arrangements. The purpose of the meeting, when I was told to call it as the clerk to the board, was specifically to address arrangements for senior staff. It was not at that point in time necessarily about payments—the chair wanted to discuss with the committee generally where we were all at in terms of worries about the merger and so on—but I was aware that severance would come up as part of those discussions.

Mary Scanlon: There is nothing general about the specific discussion of 21 months' pay for John Doyle, and three months' pay for taking the college through the merger and six months' pay plus a £90,000 pension contribution—

Lorraine Gunn: They did get—

Mary Scanlon: That is hardly a general discussion—it is specific to Mr Doyle.

Lorraine Gunn: If you let me explain, I will. When I was first asked to give advice, I was asked for a broad overview of what was available. I believe that it was the remuneration committee's responsibility to discuss that in some detail, in order to formulate a way forward or come to an informed decision about what it wanted to do. All that I was doing was giving information.

Mary Scanlon: In that broad overview of what was available, did you give the Scottish funding council's advice, which you had sought and found on the funding council's website, to each and every member of the remuneration committee in order that they would make the right decision—an informed decision?

Lorraine Gunn: I believe that I did that in two ways. Initially, I spoke to the chair of the board and gave him guidance and counsel to engage, in advance of that remuneration committee meeting, with Mark Batho, the then chief executive of the funding council, on that severance guidance. I was specific in drawing his attention to the existence of the guidance, which I was aware had existed historically.

The chair asked me to get him a copy of said guidance beforehand. When I went to the SFC website I could not find anything other than what we now know to be the 2000 document, which happened to be in the archived part of the site. In getting the chair to speak to Mark Batho of the funding council, I counselled that he needed to check that we were operating from the most correct version of the guidance.

Subsequent to that, I was called into the remuneration committee meeting part way through—about 20 minutes into it. John Gray, the chair of the board, explained that the purpose of my being there was to be able to share the information that he had asked me to get in advance, which I did.

I have made available to you a statement, which is publicly—

Mary Scanlon: I have read your statement, but you still have not answered my point.

Lorraine Gunn: Well, I am—

Mary Scanlon: Just let me finish. You say that you gave the advice to the chair—but we have already had the chair before us, sitting in the chair that you are in. We have also had the remuneration committee before us. The remuneration committee did not see that advice. When you talked to the chair, did you raise with him the issue that the SFC guidance on voluntary

severance recommended 12 months' pay for 14 years' service—

Lorraine Gunn: It was not—

Mary Scanlon: —as opposed to what the remuneration committee was discussing, which was 21 months plus three months plus six months?

Lorraine Gunn: No—

Mary Scanlon: Did you point out that the generous terms for Mr Doyle that the committee was discussing were way above those that the SFC guidance recommended?

Lorraine Gunn: No, I did not explain it in that context.

Mary Scanlon: So why—

Lorraine Gunn: I made the guidance available. There was definitely a conversation at the remuneration committee meeting when I came into the room in which the chair of the board discussed the conversation that he had had with Mark Batho and talked about the guidance that was available.

Subsequent to that, I made the guidance available to—

Mary Scanlon: Did you give paper copies to each and every member of the remuneration committee, and say, "This is the SFC guidance"? No.

Lorraine Gunn: Mary—

Mary Scanlon: They did not have any information. I am struggling with this. You had a chat with John Gray, the chair, who then phoned Mark Batho, but what advice—written or otherwise—regarding the Scottish funding council guidance did the remuneration committee, which made the decision, have? How did you furnish the committee with that information?

Lorraine Gunn: At Coatbridge College we did not print off board papers and information in hard copy. We put all the information for board members on their board intranet. That is how I made that information available to them. It is a fully accessible—

Mary Scanlon: So you did not give them information. You left it to them to go and flurry around the intranet.

Lorraine Gunn: They were aware that it was there—they were guided to that information at the meeting.

Mary Scanlon: Did you tell them that the Scottish funding council guidance on voluntary severance referred to an amount that was considerably less than—it was less than half of—what they were discussing for John Doyle?

Lorraine Gunn: No.

Mary Scanlon: As HR director, did you not point out that they were making an agreement that has ended up with us all—including you—being here? As HR director, did you not point out that the voluntary severance guidance from the Scottish funding council referred to considerably less than what the committee members were asked to agree to by John Gray?

Lorraine Gunn: I did not specifically point that out, but I believe that I gave them the information, by means of making—

Mary Scanlon: You gave them the advice to look at the intranet when they had the time.

Lorraine Gunn: No, I refute that, because at the end of the day the discussion took place at the committee. The discussion—

Mary Scanlon: Did the chair share that information?

The Convener: One at a time, please.

09:30

Mary Scanlon: It is very important that we know. John Gray was aware of the Scottish funding council guidance, and you were aware of the Scottish funding council guidance, which was that, if someone had been in post for 14 years, they got 12 months' pay. The remuneration committee, which made the decision about the 30 months' pay for John Doyle, was not aware of the Scottish funding council guidance. I am trying to find out where that information is kept.

Lorraine Gunn: I am trying to clarify for you that, as both the then HR director and clerk to the board, I believe that the remuneration committee was made aware of that guidance.

Mary Scanlon: How were its members made aware of it? John Doyle said that they could go and look at the intranet. Was that making them aware?

Lorraine Gunn: The discussion took place at the committee, where John Doyle spoke about the advice that he got from Mark Batho of the funding council.

Mary Scanlon: So, the advice from Mark Batho was that the remuneration committee could pay what the Scottish funding council recommended and that the college itself could pay anything further than that.

Lorraine Gunn: I cannot recall the specifics, because it was two years ago.

Mary Scanlon: It is all in the evidence.

Lorraine Gunn: It is in the email that he subsequently sent to the chair of the board.

Mary Scanlon: The members of the remuneration committee all sat here in good faith and told us that they did not receive that information.

Lorraine Gunn: Likewise, we are sitting here in good faith and doing exactly the same thing—I am giving you the facts as I know them to be, Mary.

Mary Scanlon: You are saying that John Doyle said that the information was on the intranet for the members of the remuneration committee if they wanted to see it. You did not give them a piece of paper that gave them the basic guidance and told them that they could go over that figure but the college would have to pay the additional amount.

Lorraine Gunn: With respect, it was not as dismissive as that. I put it to you that we were very specific. I gave the advice to the chair that the information was available, and I think that the chair fulfilled his role in having that discussion with the remuneration committee. I do not accept what my remuneration committee colleagues have said about their not having that information.

Mary Scanlon: Okay. So, the Auditor General for Scotland has obviously got it wrong when she states that

“it appears that the Chair did not provide the Remuneration Committee with complete or accurate information”—

Lorraine Gunn: It is not for me to conclude that.

The Convener: Ms Gunn, could you allow Ms Scanlon to continue, please?

Lorraine Gunn: Sorry, convener.

Mary Scanlon: I am quoting the Auditor General's report. She states:

“The Chair and Principal ... did not provide the college's Remuneration Committee with advice provided by the SFC”.

You are saying that you provided that advice, but I am hearing that you provided an arrow and told the committee members to go and look at the intranet; you did not give them a copy of the guidance or a verbal update of what the SFC guidance spelled out.

Lorraine Gunn: They were given a copy. I think that that is probably as important—

Mary Scanlon: That is not what they said. You are saying that they were given a copy of the SFC guidance that said that, after 14 years' service, someone could get 12 months' pay. You are saying that they all ignored that guidance and that, when they came here, they told us mistruths about not having seen it. You are saying that they disregarded that guidance and that, instead of awarding Mr Doyle 12 months' pay, they gave him 30 months' pay. I am sure that they have a

different story to tell, because that is not what they told this committee.

Lorraine Gunn: All that I can do is give you the information and facts as I know them to be.

Mary Scanlon: Well, I am sure that we will hear from the remuneration committee.

I have one final question. Ms Gunn, you are probably the only person who had access to John Doyle's contract of employment. Was the 30 months' pay—which was hugely generous at a time of a public sector funding freeze—in line with his contract of employment? Was he entitled to 30 months' pay, which was more than twice what the Scottish funding council recommended?

Lorraine Gunn: I believe that any payments that were made to him were in accordance with his contractual arrangements.

Mary Scanlon: I need to know a bit more about his contract of employment. This is a legal point, and we do not have access to that contract. Did it stipulate that he was entitled to far more than was recommended by the Scottish funding council?

Lorraine Gunn: Far more in terms of what?

Mary Scanlon: I have spelled it out about six times already.

Lorraine Gunn: I am sorry, but—

Mary Scanlon: After 14 years, someone would be entitled to 12 months' pay, but he got 30 months' pay—plus, you were willing to give him an extra £90,000 in pension and so on.

Lorraine Gunn: Forgive me, but his severance arrangement was in accordance with the arrangement that he was offered by the remuneration committee.

Mary Scanlon: Was it in accordance with his contract of employment?

Lorraine Gunn: There was nothing in his contract of employment about a severance arrangement, but there was a clause about payment in lieu of notice. That may be what you are referring to.

Mary Scanlon: Sorry, convener—I said that that would be my final question.

You say that, when you came to look at the 2 per cent increase in pay for the ordinary members of staff at Coatbridge College,

“The Chair said if the College acted in any other way”—

than giving a 2 per cent increase—

“we would look to being flagrant with funds before merger”.

Heaven forfend. You were happy to agree to a 2 per cent increase in salary for everyone else in the college because anything above 2 per cent would

have been being “flagrant” with the funds—that is the word that you use. Why did everyone else get 2 per cent while the severance involved huge amounts?

Lorraine Gunn: You would have to ask the remuneration committee that question, Mary—it is not for me to answer it.

Mary Scanlon: But you are here—it is all about Lorna Gunn.

Lorraine Gunn: Forgive me, but it is Lorraine Gunn.

Mary Scanlon: I am reading the report of the extraordinary board of management meeting that was held on 6 August, which was attended by Lorna Gunn—

Lorraine Gunn: Lorraine Gunn.

Mary Scanlon: Sorry—Lorraine Gunn. That was the advice that was given.

Lorraine Gunn: Sorry—can you repeat the question for me?

Mary Scanlon: You were worried about giving other members of staff a pay rise of 2 per cent in case that might be seen as

“being flagrant with funds before merger”.

Why was a different approach taken to all other members of staff at the college?

Lorraine Gunn: I do not recall writing anything in my statement to indicate that I was worried about anything. That is why I am looking rather puzzled. Can you clarify exactly what you mean by that question?

The Convener: Can we just clarify that that is in the minutes?

Mary Scanlon: I am reading the minutes of the meeting, which show that the chair said that.

Lorraine Gunn: Sorry, but I need a bit of clarification about the question.

The Convener: Ms Scanlon, can you confirm the date of those minutes?

Mary Scanlon: Yes. I am reading from the minutes of the extraordinary board of management meeting of 6 August 2013. I find the language used concerning, given the overgenerous payments that were agreed in January and throughout the year. You were a bit worried about giving a pay rise of 2 per cent to all the other members of staff. You were at the meeting, and I hope that, as the director of human resources, you had advised the chair on his comments.

Lorraine Gunn: Forgive me, but I do not recall that specifically, so I cannot say any more.

Tavish Scott (Shetland Islands) (LD): Can I clarify something? At the meeting of the remuneration committee in January 2013, at which you were present, was the Scottish funding council’s guidance that the college should pay only one year’s salary enhancement specifically discussed by all those who were present?

Lorraine Gunn: Yes, it was.

Tavish Scott: Who introduced that?

Lorraine Gunn: The chair of the board introduced it. He said that he had had a conversation with Mark Batho of the funding council, and he explained at that meeting the advice that he had got.

Tavish Scott: To the best of your recollection, what did the other members of the remuneration committee say in response to that guidance?

Lorraine Gunn: To be entirely honest, I think that there was more discussion at that meeting about the fact that the funding council’s guidance was not available on its main website but was tucked away on its archive site and there was no current guidance available at all from the funding council when we first went.

Tavish Scott: But, as you just said, Mark Batho—

Lorraine Gunn: Mark Batho subsequently clarified that. I accept that.

Tavish Scott: You say “subsequently”. We are talking about the meeting. Prior to the meeting, Mark Batho had spoken to the chairman, and we are led to believe that he had made it abundantly clear that the SFC guidance was that there should be only one year’s salary enhancement. Is that correct?

Lorraine Gunn: Yes.

Tavish Scott: Was that made crystal clear to the remuneration committee?

Lorraine Gunn: Yes, there was a discussion in which the chair explained the advice that Mark Batho had given to him.

Tavish Scott: Who introduced all those red herrings about what was and was not on the SFC website? Was it the chairman who talked about all that stuff?

Lorraine Gunn: I cannot recall.

Tavish Scott: Okay.

Mr Banks, I am trying to clarify some of the evidence that you laid before the convener earlier. You are aware that the guidance said that there should be a business plan for a severance payment.

Derek Banks: A business case. Yes.

Tavish Scott: My apologies—a business case. However, that never happened.

Derek Banks: As far as we are aware, it went to the remuneration committee on 28 January.

Tavish Scott: But we have seen no evidence at all that there was a business case.

Derek Banks: It is my understanding that it went to that meeting.

Tavish Scott: Who told you that?

Derek Banks: It would have been the chair of the board.

Tavish Scott: Quite specifically, he told you that there was a business case for the severance payments.

Derek Banks: A rationale for them. Yes.

Tavish Scott: Did you ever see it?

Derek Banks: No.

Tavish Scott: Would you have had to satisfy yourself that it existed?

Derek Banks: Not necessarily. There had never been an issue with governance at the college in the past, and I would not have expected to see it—particularly as I had never seen any of the minutes of the remuneration committee.

Tavish Scott: Would it be part of your director of finance functions to see that business case justification for a £300,000 pay-out?

Derek Banks: No.

Tavish Scott: No. In your understanding of the internal audit process, should the auditor that the convener asked about have seen that business case?

Derek Banks: Ordinarily, the auditor would be involved in that discussion but not to authorise the payment in any way. The auditor would make sure that the process and guidance were followed.

Tavish Scott: Absolutely. As you now know, that did not happen.

Derek Banks: We discussed on 28 October with a partner and senior manager of Wylie & Bissett LLP the process of bringing in Biggart Baillie, which they were satisfied would meet that requirement.

Tavish Scott: Let us be clear: you were misled by someone who told you that there had been a business case. As we know, that did not happen.

Derek Banks: Given my experience at Coatbridge College, I have no doubt that if I had been told that, I would have expected that to be present.

Tavish Scott: Again, you were misled. You said earlier, just a moment ago, that you were told that a business case process had been carried out.

Derek Banks: All I can say is that I would have expected that to have happened.

Tavish Scott: Right. Earlier on, you clarified what you had meant by saying to the convener that there was no liability for severance payments. What did you mean by that?

Derek Banks: The decisions that were made on 28 January 2013 by the remuneration committee were effectively nullified when Coatbridge College withdrew from the merger on 25 February. There was no merger, so there was no liability at that point. Only after the merger and management group meeting on 7 October, at which the legality of the letters that had been issued was raised, did that become an issue.

Tavish Scott: From the January meeting of the remuneration committee in 2013 all the way through to October, was there no discussion at your senior management level about all this going on?

Derek Banks: No, because we were not in a merger until the board decided to go back into it on 6 August. There would have been no discussion about merger because there was no intention to go back into it.

Tavish Scott: Not even informal discussion?

Derek Banks: No.

Tavish Scott: Were you aware that a meeting had taken place on 28 January to discuss the remuneration of people?

Derek Banks: Yes, I would have known that it had taken place.

Tavish Scott: Did anyone inform you as to what had happened at that meeting?

Derek Banks: I am sure that we got feedback, probably from the principal, John Doyle, on what the outcome had been. Obviously, we received a letter from the chair of the board on 7 February, offering us a package.

Tavish Scott: Did John Doyle meet you and other executive colleagues on, say, a weekly basis?

Derek Banks: Yes, it was very inclusive at the time.

Tavish Scott: Did that happen all the way from January to when he left at the end of October?

Derek Banks: He was off for a period of sick leave. I cannot remember the dates of that, but there were a number of weeks when he was not present.

Tavish Scott: At those regular management meetings, presumably the merger process was discussed every week?

Derek Banks: No, because from 25 February we were not in a merger process.

Tavish Scott: But you were back into it by the summer.

Derek Banks: By 6 August.

Tavish Scott: Okay. From 6 August onwards, it was discussed and presumably one of the things that the management team would have discussed was their own positions, given that it was a private meeting.

Derek Banks: All the management team wanted to be part of New College Lanarkshire. That was the aim: it was not to take a severance package.

Tavish Scott: If I recall from the earlier evidence, after August Mr Doyle certainly knew that he was not going to be and had been applying for other jobs. Presumably some of the rest of you had—quite understandably—been doing so as well.

Derek Banks: I am not aware of anyone applying for jobs.

Tavish Scott: Okay. You gave evidence earlier that the lawyers had replaced the auditors. Is that not an extraordinary situation?

Derek Banks: Not necessarily.

Tavish Scott: But they are not auditors.

Derek Banks: No.

Tavish Scott: Auditors are in charge of money. I have certainly never put my lawyer in charge of my bank account and I am sure that you would not either.

Derek Banks: Auditors do charge money as well.

Tavish Scott: They certainly charge money, but they are not in charge of it. There is a difference.

Derek Banks: Biggart Baillie had the particular expertise to address the HR and legal issues that were arising from the issue of the letters.

Tavish Scott: I am sure that that is entirely true, but it is not the point. Internal audit is a very different function—I hardly need to tell a director of finance that.

Derek Banks: The function of the internal auditor was to go through the process to make sure that the scheme of delegation and control points were adhered to. Biggart Baillie easily had the skills to do that.

Tavish Scott: Do you now feel that the internal audit was a retrospective exercise, as you pointed out about the external audit in 2013?

Derek Banks: We did talk to them before Mr Doyle left, and at that point the payment could still have been stopped. Mr Doyle was an employee up to 31 October, and the meeting on 28 October could have stopped the payment.

Tavish Scott: During those regular discussions with the internal auditor, was the business case ever discussed?

Derek Banks: I am not aware of it being discussed.

Tavish Scott: Can you recall whether they asked whether a business case had been prepared?

Derek Banks: I am not aware of that. Internal audit should have carried out an audit needs assessment once it had been announced that we were going into merger, and that would have changed the focus of the workplan that had previously been agreed by the audit committee. Wylie & Bissett LLP did that for New College Lanarkshire for all three colleges in January 2014. It agreed that workplan, while it was still auditor for Coatbridge College, so I struggle to see why it did not give that advice to us as well.

09:45

Tavish Scott: As the lawyers had now de facto become the auditors, did the lawyers conduct a business case, to your knowledge?

Derek Banks: I am not aware of that.

Tavish Scott: No. Did they ask you about it or what the guidance was that should be followed for those procedures?

Derek Banks: No.

Tavish Scott: How could they be so good at auditing if they did not appear to be aware of any of the guidance that related to how to audit an organisation on an on-going basis?

Derek Banks: Obviously, you will be getting Biggart Baillie in to have a discussion.

Tavish Scott: You were director of finance and had very close discussions with them.

Derek Banks: Yes, but I did not give them their remit.

Tavish Scott: Who gave them their remit?

Derek Banks: That would have been Mr Doyle, in discussion with Mr Gray.

Tavish Scott: Did he discuss that remit with you or other colleagues on the management team?

Derek Banks: Yes, he described it in terms of what they were brought in to do, and he has given evidence to that effect.

Tavish Scott: Can you recall whether it was written on a piece of paper—

Derek Banks: No.

Tavish Scott: Was it an oral arrangement?

Derek Banks: Yes.

Tavish Scott: So at a management team meeting, Mr Doyle said “We are going to bring in these lawyers and this is why—do you all agree?” Is that how it happened?

Derek Banks: Yes. I would have had that kind of discussion with Mr Keenan as chair of the audit committee as well.

Tavish Scott: Was he part of that discussion?

Derek Banks: Not that discussion, but I had a separate conversation with him.

Tavish Scott: Can you enlighten the committee as to the reasons Mr Doyle gave when he told you, “We should bring these lawyers in, and here is why”?

Derek Banks: He is on record as saying when he was a witness a few weeks ago that they were brought in to make sure that the remuneration committee had all the guidance and information that was required for them to make that decision.

Tavish Scott: Finally, did you have to prepare or oversee business cases for other areas of expenditure?

Derek Banks: Yes.

Tavish Scott: Was it quite a normal part of the director of finance’s responsibilities?

Derek Banks: Yes, it would have been.

Tavish Scott: The other question that I wanted to ask—sorry, convener—was about the £400,000 that Mrs Scanlon raised earlier. The funding council paid X and there was a gap of £400,000. Where did that come from?

Derek Banks: It would have come from college funds.

Tavish Scott: “College funds” is a loose and amorphous term. What do you mean by college funds?

Derek Banks: We had funds available to us from the income generated through activities.

Tavish Scott: Income from activities is also college income that comes from the funding council because at that time you were paid for student units of measurement. That money could

have gone to enhancing the performance of the college for students.

Derek Banks: No, I do not think that it necessarily had a material impact on them because, at the time I left, I predicted a £34,000 surplus, even with that extra £400,000.

Tavish Scott: But you would accept that the £400,000 could have been spent on lots of things, including the infrastructure of your buildings or—

Derek Banks: The building had already gone through a restructuring costing £28 million, which I was in charge of, so it did not require any further work.

Tavish Scott: So everything was fine—students were hunky-dory and did not need any more money spent on services or courses for them or things like that. It was therefore fine to pay vast amounts of money to senior executives.

Derek Banks: We met our SUMs target and the key performance indicators necessary for the funding council. I do not see that there was any particular detriment to the students.

Tavish Scott: Okay. Thank you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I want to touch on one small point on the business case. Where a business case has a financial implication, would you normally expect the director of finance to be involved in its production?

Derek Banks: Not necessarily. Where individuals were concerned, I would not necessarily agree with that, and that is particularly so in the case of the work of the remuneration committee.

Colin Beattie: Would they not have to take affordability into account?

Derek Banks: Yes, I would have been told the overall value of any business case but not the specifics of it.

Colin Beattie: Does that mean that you were involved in the business case?

Derek Banks: In being told the value of it, yes.

Colin Beattie: Did you agree the financial implications at that time?

Derek Banks: I was aware of them.

Colin Beattie: You agreed them.

Derek Banks: No, it was not for me to agree or disagree with them. The remuneration committee had made those arrangements.

Colin Beattie: You must have signed off on the financial implications.

Derek Banks: I was aware of the funds that were required.

Colin Beattie: That is not the same thing.

Derek Banks: It was not my responsibility to sign it off or make that decision.

Colin Beattie: I was not saying you signed off the business case, but you must at least have acceded to the fact that it was affordable.

Derek Banks: Yes, it would have been.

Colin Beattie: You signed off that it was affordable at that time.

Derek Banks: Yes, I would have told them that it would be affordable at that time.

Colin Beattie: Who said that Biggart Baillie was going to be the substitute for the auditors?

Derek Banks: That would have been in the remit that was given to the auditors by Mr Doyle.

Colin Beattie: Would appointing a substitute auditor not have been going behind your back?

Derek Banks: No. I had a discussion with Mr Keenan, the chair of the audit committee, and once we knew the remit, we agreed that that would be the best approach to take.

Colin Beattie: Was that meeting minuted?

Derek Banks: No, it was a telephone call.

Colin Beattie: It was informal.

Derek Banks: Yes.

Colin Beattie: Biggart Baillie says that it did not take any instruction from Mr Doyle. Is that correct?

Derek Banks: I have no idea. I cannot comment on that.

Colin Beattie: You just told me that Mr Doyle instructed Biggart Baillie.

Derek Banks: Yes.

Colin Beattie: So if Mr Doyle instructed Biggart Baillie, did he then agree the remit with Biggart Baillie?

Derek Banks: He must have, because it was not me.

Colin Beattie: He must have. I say again that Biggart Baillie says that it took no instructions from Mr Doyle.

Derek Banks: I cannot comment on that. I do not know what conversations were had.

Colin Beattie: As director of finance, you did not know the remit that an external party was being given to come in and substitute as auditors for the college.

Derek Banks: No. Mr Doyle had outlined the remit, but your question was whether that remit was communicated to Biggart Baillie and I am not aware of that.

Colin Beattie: That was not quite my question. Biggart Baillie say that it took no instructions from Mr Doyle, which implies that your understanding is incorrect.

Derek Banks: Who did Biggart Baillie take instruction from then?

Colin Beattie: I do not know. I am asking you.

Derek Banks: I do not know. It was not me that gave instructions to Biggart Baillie.

Colin Beattie: To be clear, you believe that Mr Doyle instructed Biggart Baillie and defined the remit, and you were not involved in any other way.

Derek Banks: Yes.

Colin Beattie: I just want to confirm the college's accounting cycle. My understanding is that, in 2013, the accounting cycle finished on 31 July.

Derek Banks: Yes.

Colin Beattie: The following year, it finished on 31 March.

Derek Banks: That is correct.

Colin Beattie: At the famous meeting on 28 January, in your capacity as director of finance, were you aware of the SFC 2000 guidance on severance payments?

Derek Banks: Yes.

Colin Beattie: You were. Were you aware of Mark Batho's email to John Gray on 24 January that stated that the college should notify its internal and external auditors of planned severance payments? That is, of course, backed up by the SFC document.

Derek Banks: Yes I was aware of that.

Colin Beattie: Did you take any action on it?

Derek Banks: Again, I refer back to paragraph 36 of the guidance, which talks about external audit being post-event, so I do not think that that is an issue. The internal audit process was replaced by Biggart Baillie.

Colin Beattie: Biggart Baillie did not come in until much later. The guidance was in place—you had it in your hands—and you knew about the email to John Gray of 24 January, both of which say that colleges should notify their internal and external auditors. Who would have been responsible for doing that?

Derek Banks: You should bear in mind that, as soon as we came out of the merger on 25

February, that was not an issue. There was no agreement and no liability for any severance arrangements.

Colin Beattie: You are saying that everything just fell away.

Derek Banks: There was no requirement to bring in an internal auditor, because there was no agreement after we had come out of the merger.

Colin Beattie: In Lorraine Gunn's submission, under the heading "Due Diligence", there is reference to severance letters that were issued to senior staff, saying:

"The letters were certainly provided on at least two occasions ... they were sent to the auditors"—

who deny receipt—

"as part of the initial due diligence request and then were re-sent when Coatbridge rejoined."

The severance letters were apparently sent to the auditors twice, before and after Coatbridge pulled out and went back in, but we have it in writing that the auditors say that they were unaware of that until April 2014. How does that work? Who sent the letters?

Derek Banks: For clarity, I should say that the auditors on due diligence were different from the college's internal and external auditors. The letters would have been issued to the due diligence team for it to carry out that assessment.

Colin Beattie: Who would have sent the letters?

Derek Banks: We were required to upload documents to a website, so Mrs Gunn and I uploaded them between us.

Colin Beattie: So the severance letters were uploaded to the intranet, which we have explored a little—

Derek Banks: No, it was not to our intranet, it was to the auditors' secure website.

Colin Beattie: Can we clarify that it was the internal and external auditors?

Derek Banks: No, it was not. There were different teams for internal, external and due diligence.

Colin Beattie: There was a different team for due diligence?

Derek Banks: Yes.

Colin Beattie: Who are the auditors for due diligence?

Derek Banks: It was Scott-Moncrieff—and Anderson Strathern for the legal side of things.

Colin Beattie: This is something new that we are getting. What was its function in terms of due diligence?

Derek Banks: The due diligence team was appointed to ensure that Coatbridge was no impediment to merger—

Colin Beattie: Appointed by whom, and when?

Derek Banks: It would have been appointed by New College Lanarkshire shortly after the announcement of the merger on 6 August.

Colin Beattie: Approximately what date would that be? Was it in August?

Derek Banks: It would probably have been mid-August by the time it was appointed and we started carrying out the work, which would have been completed round about the end of September, I think.

Colin Beattie: What was the team's remit, specifically?

Derek Banks: The team has to check that Coatbridge is in a fit state to become part of the merger process.

Colin Beattie: It says in Lorraine Gunn's submission that the letters were sent on

"two occasions as part of due diligence arrangements".

Perhaps you can clarify. I assume that the first letters were sent in January or thereabouts, after the letters were first issued, which I think was on 29 January—

Derek Banks: Not for due diligence—

Colin Beattie: When would they have been—

Derek Banks: I do not know which two occasions Mrs Gunn was talking about, but the letters were issued only once to the due diligence team, between mid-August and September.

Colin Beattie: That is not what Lorraine Gunn said in her submission. Perhaps she can clarify.

Lorraine Gunn: I genuinely thought that we had done that twice. I thought that we had submitted paperwork twice.

Derek Banks: For due diligence?

Lorraine Gunn: For due diligence.

Derek Banks: The due diligence did not start until August.

Colin Beattie: Are you saying that the letters were sent as part of the due diligence after Coatbridge went back into the merger?

Derek Banks: They would have been, yes.

Colin Beattie: And they were sent by Scott-Moncrieff.

Derek Banks: No. They were received by Scott-Moncrieff—

Colin Beattie: They were received by Scott-Moncrieff. Who issued them?

Derek Banks: Mrs Gunn and I would have uploaded them to the website.

Colin Beattie: So that was a reissue of the letters. Were they the same letters as were issued previously? Were there any changes?

Lorraine Gunn: No changes.

Colin Beattie: No changes?

Lorraine Gunn: Not that I recall.

Colin Beattie: So did a copy of the letters that were being issued to senior members of staff go to Scott-Moncrieff, or did the letters go to Scott-Moncrieff for it to issue them?

Derek Banks: A copy would have been uploaded to the website to which Scott-Moncrieff had access, to carry out its due diligence work. As part of that process, Scott-Moncrieff would have contacted both internal and external audit about the due diligence work, to assure itself that Coatbridge College was a fit partner in the merger.

Colin Beattie: But the auditors are saying that they were not contacted—and we have this in writing—and that they had no information on the matter until April 2014, which is substantially after payments had been made and everything had been tied up.

Derek Banks: No, as part of the due diligence work, Scott-Moncrieff would have had to contact internal and external audit, to satisfy itself that Coatbridge College was a fit partner in the merger.

Colin Beattie: And did it sign off in that regard?

Derek Banks: I cannot comment on that.

Colin Beattie: Why not?

Derek Banks: I have no knowledge of whether it did or not.

Colin Beattie: But you were there until 31 March 2014. When did the due diligence process finish?

Derek Banks: It would probably have been at the end of September when Scott-Moncrieff—

Colin Beattie: The end of September 2013?

Derek Banks: September 2013. Scott-Moncrieff would have issued a report to the boards of both Coatbridge College and New College Lanarkshire.

Colin Beattie: Did you see a copy?

Derek Banks: Yes, I did.

Colin Beattie: And did it sign off?

Derek Banks: Yes—

Colin Beattie: And was it unqualified?

Derek Banks: There was no qualification on it. Coatbridge College was deemed fit to be a partner in the merger.

Colin Beattie: I want to come back to another point on due diligence. Lorraine Gunn said in her submission:

“the auditors in a Merger Management Group Meeting on 7 October 2013 presented the Due Diligence reports and highlighted the VS Scheme for Coatbridge College senior staff.”

I presume that by “auditors”, you mean that the internal and external auditors were present at that meeting.

Lorraine Gunn: The auditors—

Derek Banks: I would have thought that it would have been Scott-Moncrieff, as the due diligence auditors, that presented that report. I do not want to put words in Mrs Gunn’s mouth—

Lorraine Gunn: No, no.

Colin Beattie: Are you saying that it would not have been the internal or external auditors who were present at that meeting?

Lorraine Gunn: In the references in that document, I believe that I am referring to Scott-Moncrieff.

Colin Beattie: As auditors, as opposed to—

Lorraine Gunn: Yes. I have perhaps just confused the terminology. Forgive me if I have misled you.

10:00

Colin Beattie: In spite of all the recommendations to involve internal and external audit, that does not seem to have happened—that is the clarification that I am trying to get here. Who would have been responsible for that?

Derek Banks: I think that I said that Biggart Baillie was brought in to replace internal audit. External audit can be post-event, which is recognised in the guidance that the funding council has issued.

Colin Beattie: Biggart Baillie was post-event. It did not report until November.

Derek Banks: Yes, but it was brought in before Mr Doyle left and any payment had been made.

Colin Beattie: Not long before, I have to say.

Stuart McMillan (West Scotland) (SNP): I would like clarification on a couple of areas, the first of which is funding and bank accounts—the issue has come up in previous meetings. Mr

Banks, as director of finance, how many accounts did you work with? Was there one for the main area of business and a second for money that came in through commercial activity?

Derek Banks: There were two accounts: one for student funds and one for the normal business-as-usual running of the college.

Stuart McMillan: Did income from commercial activity that the college undertook go into the main account?

Derek Banks: Yes.

Stuart McMillan: Would there be differentiation in terms of how moneys were paid out?

Derek Banks: No.

Stuart McMillan: Thank you. There was a meeting on 28 January and a decision in February, which my colleagues have asked you about. You have said on the record today that the decision in February not to continue with the merger would have nullified any liabilities. Would it have nullified any agreement or decision that had been reached about severance at the meeting on 28 January?

Derek Banks: Yes. My opinion is that it would—particularly because the letters that were issued to the senior team also had a termination date of 31 July.

Stuart McMillan: So, that is your opinion.

If an agreement had been nullified in February, at what point in the whole process—because various meetings took place and you found out other information, as well—would the final decision have been taken to agree the severance payments?

Derek Banks: As far as I understand matters, the final decision was made on 23 October at the remuneration committee's meeting.

Stuart McMillan: The information about Scott-Moncrieff is new to us today. Was Scott-Moncrieff brought in because of the decision to go into the merger process?

Derek Banks: Yes. Obviously we have to ensure that each partner in a merger is in a fit stage to merge, and that there is no impediment to the merger.

Stuart McMillan: Was Scott-Moncrieff in attendance at all the meetings that took place subsequent to the decision to go into the merger?

Derek Banks: No. Scott-Moncrieff would not have attended any of the college meetings. Specific meetings were set up to discuss the due diligence report, through the merger management group of New College Lanarkshire.

Sandra White (Glasgow Kelvin) (SNP): I want to go over some of the answers that Mr Banks gave to Stuart McMillan and Tavish Scott. From what I can make out, Coatbridge College went into the merger with all the other colleges, then pulled out, and then on about 31 July was looking either to come back in or to get severance payments just for college staff.

Derek Banks: There was no discussion about severance payments at that point. The board decided on 6 August to go into the merger.

Sandra White: You said earlier that during the process of all the colleges coming together it was acceptable for severance payments to be made, but Coatbridge College pulled out and then re-entered, with new negotiations.

We all know that colleges have holidays. Given that we are talking about 31 July and August, it seems that everything was happening in the void when colleges are not in session. When did the college start back again?

Derek Banks: Traditionally, colleges start back at the tail end of August, when they welcome students back and get them on board.

Sandra White: A lot of discussion or movement seems to have taken place when the college was not actually sitting.

Derek Banks: No—the college still sits at that time.

Sandra White: Do you?

Derek Banks: Yes. Most of the team would have been in over the holidays and would not have had academic holidays, so we would have been available to meet. There were extraordinary meetings of the board. The board met on 6 August.

Sandra White: I assumed that you would have had holidays of some sort.

Derek Banks: Yes.

Sandra White: Lecturers and people like that deserve a holiday, so I am amazed that people were there, ready to negotiate a new contract. As you said to Stuart McMillan, the severance pay part fell and you had to negotiate a new severance pay arrangement.

Derek Banks: No. The senior team did not renegotiate anything in terms of their severance arrangements.

Sandra White: So, the arrangements stood. However, you said that the decision not to merge nullified liabilities.

Derek Banks: Yes. As far as I am concerned, there was no agreement with the senior team post 31 July or, actually, post 25 February, because

there was not going to be a merger. The arrangements were time limited up to 31 July 2013.

Sandra White: That is what I wanted you to clarify. There was no agreement, then you entered into another arrangement in that respect.

Derek Banks: Yes.

Sandra White: You mentioned that Mr Keenan did not become chair until 1 November.

Derek Banks: That is correct.

Sandra White: Was Mr Keenan acting chair of the board when the payments were being made? He would not have been responsible; you mentioned that he did not take up the position of chair until 1 November.

Derek Banks: Officially he would not have taken over responsibilities from Mr Gray until 1 November. However, he was the chair of the audit committee at that point.

Sandra White: I am asking about the remuneration committee, not the audit committee. That is separate.

Derek Banks: Mr Keenan would not have been the chair of the remuneration committee at that point.

Sandra White: Mr Gray would have been responsible, not Mr Keenan.

Derek Banks: Mr Gray would have been the chair of the remuneration committee at that point.

Sandra White: That is good. Thank you very much for clarifying that for me.

Ms Gunn—you mentioned that you had asked the chair about convening an extraordinary meeting.

Lorraine Gunn: Can you give me a timescale?

Sandra White: I will just dig out what you said. I do not want to read the whole thing out. You said:

“There was certainly speculation amongst my own senior colleagues and elsewhere within the College at the time that it would only be a matter of time before Coatbridge and South Lanarkshire would be joining and the Chair did ask me to convene an Extra-Ordinary meeting of the full Board to discuss the potential for merger on 16 January 2013.”

Your role was to give advice to that meeting, including advice on

“The role of the Principal and what severance arrangement they would wish to make available in the event that John Doyle did not secure alternative employment as part of future merger arrangements.”

At that time, were you aware that Mr Doyle had applied for another post or posts and had not been successful?

Lorraine Gunn: Yes, I was aware of that.

Sandra White: You mentioned the fact that John Doyle was upset, and you said:

“I did however have a conversation with John Doyle prior to my departure to put arrangements in place that I believed would protect the governance arrangements going forward.”

That arrangement was to get legal representation. Was that representation by Biggart Baillie at that point?

Lorraine Gunn: Yes.

Sandra White: You seem to have been pretty upset about Mr Doyle possibly having been mistreated before leaving. Is that a correct assumption, based on the written evidence that you have given us?

Lorraine Gunn: No. I was particularly upset about how some of my board colleagues dealt with me.

Sandra White: Oh. Could you expand on that?

Lorraine Gunn: On a professional level I was keen to ensure that there was as much clarity as possible for members of the team. That is probably the best way of describing it. It was a difficult time. When an organisation is involved in a merger there is scope for senior staff and the team to be concerned. I wanted to ensure that, if possible, enough information was provided in that environment.

It is fair to say that Mr Doyle was upset, in as much as lots of conversation was going on in the background with organisations including the funding council. I was aware that discussions were taking place on the possible early departure of Mr Doyle. People in the organisation were feeling vulnerable already, and those discussions sort of promoted that vulnerability: people had the idea that they were losing their chief exec and were changing arrangements.

Sandra White: Were you not aware that Mr Doyle had said that he knew that he would not be getting the job and had indicated—months and months before—that he was going to depart? That is why he had applied for another job.

Lorraine Gunn: My view was that individuals felt vulnerable in circumstances in which there was not clarity. If opportunities were coming up, all of us had to think whether we should protect our futures and move forward into other opportunities. Mr Doyle was no different. You would have to speak to him to find out more specifically how he felt about that and anything related to that. I do not wish to put words in his mouth.

Sandra White: Absolutely not. I will leave it at that. Thank you very much.

Dr Richard Simpson (Mid Scotland and Fife (Lab)): I would like you to confirm one or two things, so that I have them clear in my mind.

On 16 January, the chair asked you to call a meeting of the remuneration committee. Your role was then to prepare the agenda and the papers, although the papers were not in hard copy.

Lorraine Gunn: We were moving towards that. Sorry, can you clarify—

Dr Simpson: On 16 January, the chair asked you to call a meeting—

Lorraine Gunn: Are you talking about the meeting of the remuneration committee on 28 January?

Dr Simpson: I am talking about the remuneration committee.

Lorraine Gunn: Right. The chair said that he wanted to talk to the committee about the principal post and the rest of the senior team. He asked me to get him some information in advance of that meeting. He anticipated that he might want to talk about severance arrangements, so I highlighted the need for him to speak to the funding council, read the guidance and make sure that the committee members were aware of all of it. As I understood it, it was a single-item agenda to discuss the way forward.

Dr Simpson: It was a single-item agenda, but you did not have to issue that agenda. I understand your role was to provide secretariat support to the remuneration committee. Does that mean that you normally issued agendas for those meetings?

Lorraine Gunn: I was comfortable about doing the agenda for them, but I would not have been comfortable attending the meeting, unless it was just in an information-giving capacity. There would have been a conflict of interests for me, in terms of the decision-making process, had I participated in discussions.

Dr Simpson: Who was responsible for preparing the minutes for normal remuneration committee meetings?

Lorraine Gunn: Normally, the chair would summarise the meeting and give me the summary after the event. I would then put that into minutes format, which the chair would ultimately circulate for approval. I would not actually table those minutes until another meeting came up.

Dr Simpson: So, it was the chair's responsibility to do the minutes for the committee, not yours.

Lorraine Gunn: Will you clarify what you mean by "do the minutes"? I acted as the secretariat for the committee and put the minutes together.

Dr Simpson: You acted as secretariat for that committee, although you did not attend the meetings.

Lorraine Gunn: That is right, although I attended on that occasion, because I was asked to give advice.

Dr Simpson: That is very interesting.

Lorraine Gunn: If I have not clarified that, I am happy to clarify any aspect—

Dr Simpson: Yes, thank you.

You said that normally the papers for the committee were put on the intranet; they were not hard-copy papers. Was that standard procedure at all remuneration committee meetings?

Lorraine Gunn: It was standard procedure at all board meetings.

Dr Simpson: That was the case for all board meetings: you were paperless.

Lorraine Gunn: Yes.

Dr Simpson: Great stuff. However, that means that the remuneration committee had an obligation always to look on the intranet, to see the papers.

Lorraine Gunn: Yes.

Dr Simpson: That clarifies that the remuneration committee should have had available to it the guidance that you put on the intranet after having dug it out of the archive.

Lorraine Gunn: Yes. If I had not made that clear before, I hope that it is clear now.

Dr Simpson: I think that that is very clear now.

Mr Banks, am I reading correctly that the financial statement at the end of 2013-14 showed a deficit of £1.002 million?

10:15

Derek Banks: I have not seen the accounts.

Dr Simpson: You have not seen the accounts?

Derek Banks: I did not prepare them or see them.

Dr Simpson: I am reading from my papers, which say:

"The college's financial statements 2013/14 show that the college had a year-end deficit of £1.002 million".

However, you were predicting a £34,000 surplus.

Derek Banks: Yes, I was.

Dr Simpson: You were still in employment on 31 March.

Derek Banks: I left on 31 March.

Dr Simpson: You predicted that the college could afford those generous payments. By the time the accounts were completed, things had swung from a £34,000 surplus—predicted by you—to a £1.002 million deficit. How do you account for that?

Derek Banks: I cannot. I was not there.

Dr Simpson: You were there until 31 March and you were, I presume, preparing financial statements regularly. You would be tracking all your budget items and saying what was above budget and what was below budget. Would that be done quarterly or weekly?

Derek Banks: That was done monthly.

Dr Simpson: So, every month you would be making predictions. As you went through to the end of March, your accounts were still showing a £34,000 surplus. The actual accounts, though, when they were finally produced, showed a £1 million deficit. Can you explain that?

Derek Banks: No, I cannot.

Dr Simpson: As a finance officer, should you be able to explain it?

Derek Banks: No. There are always post events that happen through an audit process and those can vary. However, I was not there for that process. I offered to stay to complete the accounts, but that offer was rejected.

Dr Simpson: I see.

The Convener: By whom was the offer rejected?

Derek Banks: I requested it through Tom Keenan, who I think talked to New College Lanarkshire. My offer was rejected, which is why I was then on a retainer, to try to help out.

Dr Simpson: That is quite helpful.

Let us just be clear. We have an internal auditor who was effectively sidelined and replaced by Biggart Baillie and we have an external auditor who would not normally be involved until post the accounts. I understand that. We have now discovered that Scott-Moncrieff was doing due diligence. Would it be your understanding that, as part of that due diligence, Scott-Moncrieff would be checking your view that it looked as though a £34,000 surplus was coming along? Would Scott-Moncrieff be looking at the severance payments? Were those payments included in your £34,000 surplus?

Derek Banks: The answer is yes to both questions. At that point in time—it would have been September of that year, so only a couple of months into the financial year—the forecasts would have been difficult. I cannot remember

whether Scott-Moncrieff did a further check closer to the vesting day in March. However, it would have checked that our predictions in our previous performances were consistent with what we were saying at the time. Letters were issued to Scott-Moncrieff, which included all the severance arrangements.

Dr Simpson: I have one final question. It is really for Ms Gunn. Would a severance payment normally be issued by you, or by Mr Banks, or jointly? We are told that the meeting on 28 January made decisions about the principal's severance arrangements. A letter was issued on 29 January from John Gray, as chair, to John Doyle. It was responded to on 29 January to say, "We're accepting it." The whole deal was sewn up within 24 hours of that remuneration committee, even before the minutes were approved, which we now know would have gone through you. Do you have any comments on that procedure? Is that the procedure that you would have expected to be followed?

Derek Banks: Is the question about the timing or about who authorised the payments?

Dr Simpson: It is a question both about the timing and about the fact that the severance payment was issued not by you, Ms Gunn, as head of HR, or by you, Mr Banks, as the finance officer, in terms of the remuneration committee having decided that and approved the minutes.

I am trying to get to the issue of governance here. It seems to be extraordinary that the severance payment would be rushed through and that there would be a letter from the chairman to the principal and back again within 24 hours of a committee meeting, the minutes of which had not been approved. Furthermore, you, Mr Banks, as finance officer, and you, Ms Gunn, as the head of HR, were not involved in the governance.

You are silent. Are those the governance arrangements that you would have expected? It is what happened. Do you have a comment on that?

Derek Banks: It was certainly a quick turnaround but—

Dr Simpson: "Quick" is about it.

Ms Gunn, would you normally issue the severance letters?

Lorraine Gunn: Let me use pay as an example. The remuneration committee would do letters to senior staff about offers that the board was making on pay. In that context, I would provide secretariat support on behalf of the chair for those arrangements, but it would be the chair who would sign off the documentation. I would merely be providing the secretariat support.

Dr Simpson: On this occasion, you did not provide the secretariat services for the letter—you did not actually have the letter prepared for Mr Gray to sign.

Lorraine Gunn: I assisted by ensuring that the letter was all put together, but its content was on instruction.

Dr Simpson: We hear that the minutes did not really come out until October.

Lorraine Gunn: That was standard practice. As I understood it, that was how it would normally be.

Dr Simpson: So the minutes were not circulated, even for technical approval. Given such an important event, involving £304,000 of college money, the minutes were not sent back to say, “This is what we’ve agreed. Are we all signed up to it?”

Lorraine Gunn: As I say, it was the custom and practice to do it that way. I recall that, at the end of the meeting, the chair did a summary, with everyone round the table, where he said, “Right. We are confirming the following for this committee meeting.”

Dr Simpson: Mr Banks, you have said repeatedly that your understanding was that after the college withdrew from the merger process on 25 February 2013, all bets were off; all the letters issued were null and void. On what basis do you say that? The information that we have, based on Biggart Baillie’s advice, is that the document offered to the principal was legally binding. It was extant in October and could not be reversed. The remuneration committee was faced with a fait accompli, to which it subscribed. Nevertheless, it was all done and dusted and could not be altered. Your view and that of the next panel are in complete and utter contradiction.

Derek Banks: The severance arrangements were made on the basis that we were going to merger.

Dr Simpson: And once the merger was off—

Derek Banks: Clearly, we did not know until later that that was going to happen. As far as I was concerned, there would be no liability then.

Dr Simpson: Ms Gunn, you are the expert on HR and we are not. As HR director, once the college pulled out, would you regard it as appropriate for any severance documentation that related to matters prior to that to be null and void? Would that be your opinion?

Lorraine Gunn: As I recall, there was a date in there, in terms of the severance arrangements letters, where it was linked to—

Dr Simpson: July 31.

Lorraine Gunn: Yes. I thought that the letter was legitimate but I was not sure what it would constitute in a court of law. You would have to ask a lawyer whether it would stand.

Dr Simpson: Thank you.

The Convener: We need to move on.

Nigel Don (Angus North and Mearns) (SNP): Can I just pursue those two themes? First, if I can carry on the conversation with Lorraine Gunn, I want to ask about John Doyle’s severance letter of 29 January 2013. Apart from the fact that the numbers would have been different, would that letter have been any different from the ones that were given to the other senior staff?

Lorraine Gunn: I do not recall it being different but I am sure that that information will be made available to you.

Nigel Don: It would be enormously useful if somebody could make that information available to us because it would be nice to know what is there.

Lorraine Gunn: I would imagine that Mr Doyle’s file will be with New College Lanarkshire, so the file will be available and all the information will be on it. At the moment, though, without looking at the detail, I would not be able to comment on that.

Nigel Don: Could I then ask you whether you would have seen that agreement? You may not be able to remember every detail of it, but was it a letter that would have come across your desk before it got to Mr Doyle?

Lorraine Gunn: Are you talking about the letter or are you talking about the legal compromise agreement? Will you clarify for me what you mean by agreement?

Nigel Don: I am assuming that they are the same thing. I am looking at the compromise agreements or whatever it was that Mr Doyle would have been able to sign, which would have turned into the contract that could not subsequently be changed.

Lorraine Gunn: I believe that they are, in the main, standard documents. I imagine that the only thing that would have differed in Mr Doyle’s agreement would have been the termination date.

Nigel Don: And the numbers, which were always unique.

Lorraine Gunn: Yes, the numbers would have been different.

Nigel Don: I come back to my question. Did you see that document?

Lorraine Gunn: I would have seen it at one point in time, I would have thought, to make it part of the record.

Nigel Don: You would not have seen it before the chairman put it in front of Mr Doyle and he signed it, so it would not have needed your agreement.

Lorraine Gunn: Yes, I did see it before. I am sure that I did see it before, in terms of timing, because I would have facilitated getting that agreement from the lawyers for him to sign it. On instruction, I would have assisted the chair in doing that. It would have been my role to contact Biggart Baillie to get them to complete a draft agreement for Mr Doyle to sign.

Nigel Don: Did that all happen within 24 hours, on 28 and 29 January? We have been told that it was signed and dusted on 29 January. Is that normal practice?

Lorraine Gunn: I would generally try to turn things around as quickly as I can.

Nigel Don: Okay, I do not want to be unkind, but was it so important that you needed to get agreement from the lawyers and get everything done in 24 hours? I am slightly surprised that it was suddenly deemed to be that important, as very few things in life seem to move quite that fast.

Lorraine Gunn: I was satisfied that we met all the requirements in terms of due diligence, signatures, what needed to be done and what the content of the documents was going to be, so the fact that it took 24 hours is just a matter for the record now.

Nigel Don: That is fine. Can I take you back to the meeting on 28 January 2013? Your view of the information that was given to members of the committee and their statements last week seem to be different. I think that you said that the chairman had passed on the contents of his conversation with the head of the funding council. Can you give me any clues about who on the committee introduced the alternative numbers that were agreed to, or how the committee decided to do something else?

Lorraine Gunn: That discussion was led by the chair of the board himself. He was chairing the meeting and he was the one who introduced the discussion around a potential severance arrangement for the principal.

Nigel Don: So he would have introduced both the current, relatively low funding council numbers, which he had just discovered, and also the relatively high numbers that were actually agreed?

Lorraine Gunn: Yes.

Nigel Don: So he would have led the whole of that discussion.

Lorraine Gunn: Yes.

Nigel Don: Okay.

Lorraine Gunn: I must clarify, though, that I was not there for the first 15 or 20 minutes of the meeting, so I do not know whether there was any prior discussion. You would have to speak to other committee members about that part of the meeting. I did not join until about 15 or 20 minutes in.

Nigel Don: In that case, how much of the discussion about the lower or higher number occurred while you were there? I accept that you will not know what happened in the 20 minutes you were not there, but you are suggesting that both possible sums were discussed by the chair. Did that happen in the time that you were there?

Lorraine Gunn: Yes, and while I was there the main discussion was around prevailing practice in the sector and what other colleges were doing. It was my opportunity to go in and give the committee members that information. I did not participate in the decision aspect of it. My role, as I saw it, was to go to the meeting and provide them with that external information.

Nigel Don: I recognise the conflict of interests for you and I do not want to disagree with that.

I come back to Mr Banks. Would you have seen Mr Doyle's severance agreement, Mr Banks?

Derek Banks: No.

Nigel Don: At any point?

Derek Banks: No, I did not see it. It would not have been appropriate for me to see it; it is a personal arrangement.

Nigel Don: Right. I think that that covers all my questions.

The Convener: I shall allow very brief questions of one minute at the very most from other members.

Mary Scanlon: Were you the two senior managers who were still in work at the end of March 2014 and who proposed that two senior managers receive a pay uplift of £4,000? Were business cases regarding the pay uplift and its inclusion in severance payments produced and considered by the remuneration committee?

10:30

Derek Banks: It was myself and Mrs Linton.

Mary Scanlon: Yourself and Mrs Linton?

Lorraine Gunn: Sarah-Jane Linton.

Mary Scanlon: Right, so you take full responsibility for that. Were those pay uplifts considered by the remuneration committee?

Derek Banks: Yes, they were agreed through Mr Keenan.

Mary Scanlon: What happened to the £90,000 pension that was offered to Mr Doyle?

Derek Banks: That was withdrawn.

Mary Scanlon: Why was it withdrawn?

Derek Banks: I think that the remuneration committee met and agreed that it should be withdrawn.

Mary Scanlon: Did you sign confidentiality clauses as part of your severance agreements and, if so, why? I also want to ask you, Mrs Gunn, do you have, or did you have, any grievance actions against Coatbridge College following your departure?

Lorraine Gunn: Yes, there was a confidentiality agreement, but that was standard with any arrangement that was being made in the college so it was not unique to senior staff.

Mary Scanlon: What did it prohibit you from talking about?

Lorraine Gunn: It prohibits me from talking more generally about the details appertaining to the severance arrangement.

The Convener: Tavish Scott can ask his question now.

Lorraine Gunn: Do you want me to answer the question about whether or not I have a grievance at this moment in time?

Mary Scanlon: Yes.

Lorraine Gunn: At the point at which I left, I had unresolved issues with my board about how certain board members were handling some of the governance arrangements. To date, I would say that I have still not fully resolved those.

Mary Scanlon: Is legal action still on-going?

Lorraine Gunn: No.

Tavish Scott: Mr Banks, the letters that were issued to Scott-Moncrieff, the due diligence lawyer, were issued on what date?

Derek Banks: Between mid-August and the end of September. I could not give you a date.

Tavish Scott: Is it the case that those letters included the totality of the severance payments that you, as director of finance, expected to have to pay?

Derek Banks: I think that it was just the letters that were issued, which would have said 21 months or 30 months, or whatever, and I think that it was actually the auditors who calculated the value of that.

Tavish Scott: The auditors being who?

Derek Banks: Scott-Moncrieff.

Tavish Scott: Right, and that was after the point that you made earlier—which I thought was exactly right—that you thought that the severance payments agreed at the meeting in January were null and void, because the merger had not taken place.

Derek Banks: Yes.

Tavish Scott: I am struggling to understand why, then, letters were issued to Scott-Moncrieff saying, “Here’s the potential liability for severance payments,” when you had very fairly said earlier on that there would not be any.

Derek Banks: I did not think that there would, but we gave them all the historic documents as well—anything within that year—because there was a time limit on how much evidence we had to give them. I think that it was all the evidence within that year that we had to give them.

Tavish Scott: I am not really following what evidence that would have been.

Derek Banks: Any documentation relating to that year that could have had an impact on it.

Tavish Scott: So they saw the agreements agreed by the remuneration committee in January 2013.

Derek Banks: Yes.

Tavish Scott: We were told that the minutes did not come out until much later in the year, so what documents would they have seen?

Derek Banks: The actual letters themselves.

Tavish Scott: That went to Mr Doyle and other people.

Derek Banks: Yes.

Tavish Scott: That is very helpful. Thank you.

Sandra White: I have a very short question. We have been talking about letters and you mentioned “letters of comfort”, Mrs Gunn. You drafted a letter for the principal and senior staff with a signature on 28 January. You have stated in your evidence:

“but I would stress that they were considered by the senior team to be ‘letters of comfort’”

and that you

“did not consider the letter as an offer as such.”

That was a letter that was sent to senior managers and to the principal by Mr Gray on 29 January 2013, which he signed, and on that basis he was looking at the severance pay, but you state in your evidence that you

“did not consider the letter as an offer as such.”

Is that the case?

Lorraine Gunn: Yes.

Sandra White: That is fine.

Stuart McMillan: I come back to the February meeting. Mr Banks, you said that it was your opinion that it would nullify the decisions taken in January. Did you make your opinion known to others within the college?

Derek Banks: I am sure that I would have, but I cannot be specific about when that was or who I made my views known to.

Stuart McMillan: Can you give us any indication about it? Was it verbally or in writing? Was it in emails?

Derek Banks: It was more likely to have been verbal.

Stuart McMillan: It would have been verbal, so there would have been no record of that whatsoever.

Derek Banks: I do not have access to any information from my time at the college. That was part of the compromise agreement as well.

Stuart McMillan: Okay. Thank you.

The Convener: I have two final questions. Ms Gunn, you referred to confidentiality clauses and you advised that they were common practice across the—

Lorraine Gunn: I understood it to be a standard confidentiality clause.

The Convener: Are you aware that the SFC submitted the document “Guidance on severance arrangements to senior staff in Scottish further education colleges” in 2000? I take it that you are familiar with that document, so you must be familiar with paragraph 32, which starts:

“Colleges must not agree to confidentiality clauses within severance agreements except where it is necessary to protect commercially sensitive information.”

Am I correct that you and Mr Banks are subject to confidentiality clauses?

Lorraine Gunn: Yes.

Derek Banks: Yes.

The Convener: As the HR adviser, Ms Gunn, you said that you were aware of the SFC document. However, you did not ensure that its terms were followed through. Somebody with as significant experience as you have was responsible for preparing the documents but you did not ensure that the SFC guidance was carried through. Why not?

Lorraine Gunn: I have no specific explanation for that, other than to say of my due diligence of the documents that I believed that I had fulfilled the requirement of putting them through our

lawyers to make sure that everything in them met the requirements.

The Convener: You should have been aware and, given your significant responsibility within the college, you needed to be aware of the SFC document. It was not a bowling club that you were running. Actually, bowling clubs have more measures in place to ensure proper arrangements. This is pretty poor practice—

Lorraine Gunn: I appreciate that, Mr Martin, and I did take my responsibilities very seriously.

The Convener: You did not, because you did not ensure that the guidance that was set out clearly in the SFC document, of which you should have been aware, was carried through. I think that we need to accept that while you took your position seriously, you did not carry through on that.

Finally, I refer you to paragraph 27 of the document, where it says

“There are few occasions where payment of salary in lieu of notice represents value for money.”

Our information is that a significant number of arrangements involved payment in lieu of notice. Again, clear guidance from the funding council sets out that that does not represent value for money.

Did you ever listen to anything that the Scottish funding council said? Did people just say, “That is all very well, but we will put in place our own arrangements”?

Lorraine Gunn: All I can say is that I did take my job and my responsibilities very seriously.

The Convener: Then I am glad that you did not not take them seriously, because otherwise there would have been even more of a concern to the committee today. Surely basic errors have been made on your part.

Lorraine Gunn: I do not accept that I did not take my job seriously.

The Convener: I am advising you that I do not think that you did. Here we have a Scottish funding council document that should be your bible—it should be the absolute basis on which you go about your business—and clearly it was not.

Finally, Mr Banks, you referred to paragraph 36 in the document.

Derek Banks: In relation to external audit.

The Convener: Which element of paragraph 36 were you referring to? That paragraph does not say that severance arrangements should be referred to an audit committee.

Derek Banks: No. The reference was to demonstrate that normally the practice is for external audit to happen post event.

The Convener: The paragraph says that there must be a review in relation to senior staff, and goes on:

"Such a review will normally take place after settlements have been agreed ... If the final settlements do not ... conform to the guidance in this document, the auditors should report the facts to the college in their management letter."

Did that actually happen?

Derek Banks: Yes, it did.

The Convener: Are there any other parts of the guidance in this document that you ensured happened? Did you ensure that all parts of this document were taken forward?

Derek Banks: I think so, in terms of taking forward external and internal audit, although the internal audit process used Biggart Baillie.

The Convener: Okay. I thank you both for your evidence.

10:39

Meeting suspended.

10:47

On resuming—

The Convener: I welcome our second panel of witnesses: Paul Brown, a former partner, DWF LLP Biggart Baillie, and Alasdair Peacock, a partner, DWF LLP. We are tight for time this morning but I hope that some of the issues that come out during the questions will replace an opening statement.

Mr Brown, can you confirm the basis on which you were appointed as legal adviser to the former Coatbridge College?

Paul Brown (Former Partner, DWF LLP (Biggart Baillie)): For the benefit of the committee, I will explain the various names that are being bandied around. I became a partner in Biggart Baillie back in 2000. In 2012, Biggart Baillie merged with DWF. For a while, it traded as DWF Biggart Baillie. The firm was Biggart Baillie. I left Biggart Baillie to join another firm in April this year. Mr Peacock is still a representative of DWF.

I became involved in October 2013. I received a call on or around 11 October from John Gray, basically saying that they had received a letter from the Scottish funding council, that the board needed advice on it and that I would be getting a call from John Gray, who was the chair of the board. I was asked to speak to him and to help, assist and advise them on it.

The Convener: The information that we have from Mr Doyle is that you provided both legal and HR advice. Is that correct?

Paul Brown: Essentially. Just so that you are clear, my background is that I am an employment law specialist. I have specialised in employment law for 18 years. My involvement with the college historically had been ad hoc HR advice on equality and discrimination issues. That is the advice that I gave. We were not lawyers for the college beyond that remit. That was the only remit that Biggart Baillie—or DWF—had for the college.

The Convener: Okay. You received a call from John Gray on 10 October. Who provided the information that you would have required to allow you then to provide advice to the remuneration committee and, I take it, to the board? Did Mr Gray—I am sorry, Mr Doyle—provide that advice to you, either formally or informally?

Paul Brown: I did not take advice or instructions at all from Mr Doyle. As far as I can recall, the information may have come through his personal assistant but she was also the PA to Mr Gray. I think that the actual administration function was carried out by Mr Doyle's PA.

The Convener: Did you see it as your role to ensure that that information was objective and that it was not being provided purely for you to reach a certain conclusion?

Paul Brown: Mr Gray provided me with a copy of the letter from the Scottish funding council; I think that the letter had been issued by Mr Howells. That was on or around 10 October. My instructions were to review the decision that had been made back in January 2013 and to advise the college on the legality of that decision and on what followed from it in relation to payments that were being made to Mr Doyle and possibly to other senior members.

The Convener: During that process, did you see any evidence of collusion to reach a certain arrangement whereby Mr Doyle would enjoy—

Paul Brown: No, I did not.

The Convener: You did not see any evidence of that?

Paul Brown: There was no evidence and it was not apparent to me that there was any suggestion of collusion, necessarily—no.

The Convener: You will have seen from the *Official Report* of our meeting on 4 November that we had discussions with the remuneration committee.

Paul Brown: Yes.

The Convener: One of the questions that I put to the remuneration committee was whether you,

as the legal adviser to the remuneration committee, provided the committee with the SFC guidance from 2000. That guidance is a significant document, which is discussed in all our evidence sessions. It covers the principles that should be set out. The remuneration committee members advised us that that document was not put before them and that you did not advise them on it. Is that your recollection?

Paul Brown: Having read what Mr Doyle said and, indeed, having heard what Mr Banks said this morning, as I understand it, what Mr Banks is saying about my remit or my role reflects what was reported to him by Mr Doyle.

My understanding of what Mr Doyle suggested is that Biggart Baillie was brought in to advise the committee going forward about its role and remit and so on. That was not the case at all. I was not brought in—in any way, shape or form—to replace the auditors and I would not have been able to do so. I was brought in to advise on a decision that had been taken back in January 2013—essentially, to advise on the legality of that decision. I was not an internal auditor—

The Convener: Why do you think that Mr Banks referred to that? We found it pretty amusing and unusual.

Paul Brown: As I understand it, Mr Banks said that that was what was reported to him by Mr Doyle.

The Convener: My real question is about the SFC guidance document. It is a significant document. When you researched the matter—I take it you did that prior to being appointed, or after your appointment—the first thing that you would have looked at was the SFC guidance to see what it said. We are talking about a significant amount of money—sums of over six figures. Should you not have referred to the SFC guidance and said to the remuneration committee, “This guidance places a number of requirements on you—I need to make sure that I steer you through this”? Why did you not—

Paul Brown: Mr Doyle seemed to suggest that Biggart Baillie was brought in as a clerk to the committee—he did not use the word “auditor”—in an advisory role. That was not my role or remit at all. My role and remit were to consider the implications of the decision that the committee had made back in January 2013 and the legality of that decision.

The Convener: I understand that, but you have not answered the question. The question is, why did you not provide a basic document in this discussion—the 2000 SFC guidance document? That is the very basis on which colleges should operate. Why did you not ensure that the remuneration committee members were briefed on

it and that they had it before them when you were advising them?

Paul Brown: My understanding was that they had all the documents before them and that they were aware of them.

The Convener: We have had all the members of the remuneration committee before us, as you will see from the *Official Report*, and I showed them the guidance document. They all said, “We’ve never seen that document—nobody placed it before us.”

Paul Brown: There seems to be major confusion over timelines. The problem is that the investigation that I was carrying out was retrospective—it related to a decision that had been taken some time earlier.

In October 2013, I was provided with a bundle of documents that I was informed had been made available to the remuneration committee in January of that year. That included a copy of the SFC guidance.

The Convener: Did you brief the remuneration committee on it? Did you discuss it with the members of that committee?

Paul Brown: I had discussions with them about the guidance and, indeed, all the obligations on them as members of the remuneration committee in relation to the decisions that they took and what they needed to be cognisant of in taking those decisions.

The Convener: What kind of issues did you refer to? Can you give us a specific example? Is there anything that you can say that you specifically advised them of in relation to what was required of them under the SFC guidance?

Paul Brown: As I understand it, one of the key issues here—and an issue that seems to be in debate—is the payments that were made to Mr Doyle. Throughout my investigation into the matter, on reviewing the documents and going over them with the individual members of the remuneration committee and discussing their understanding and knowledge of them, at no point in time did any member of that committee alter their view on the payments that were to be made to Mr Doyle. The discussion and debate surrounded the other members of the senior management team.

The committee members all confirmed and satisfied me that they were aware that, when they made the decision in January 2013, they were all clear that what they were making in relation to Mr Doyle was a commitment for those payments.

The Convener: You provided different kinds of informal advice to the college over the period from January 2013 up until Mr Doyle’s departure at the

end of October. Did you have any informal discussions with Mr Doyle about his severance arrangements during that period? Did he never say to you, "It looks as if I'll be out the door and there are issues with my severance package"? Was that never discussed with him?

Paul Brown: Just to be clear, I provided advice to the college on a very ad hoc basis—the requirement for me to provide advice to it was very rare. As far as I can recall, I did not provide any advice to the college in that period. I reiterate that I was not involved in any way, shape or form in the decision in January 2013, nor was I involved in providing advice to or having discussions with Mr Doyle about his arrangements or otherwise. At no time did I have any such discussions.

The Convener: There was no level of contact.

Paul Brown: There was no level of contact at all.

The Convener: How were you appointed? Was that done through correspondence? Did Mr Gray ask to exchange contracts in relation to the process? Did he confirm that in writing? Would we not expect there to be some kind of exchange to confirm the terms on which you were being appointed?

Paul Brown: Not necessarily. As long as the instructions to the lawyers were clear, I would not have had a concern.

The Convener: So that was done only verbally.

Paul Brown: Yes, it was done orally, and my firm would have written a letter to the college to confirm the terms on which we were engaged—to provide advice in relation to the decisions that were taken by the remuneration committee in January 2013.

The Convener: Can you provide us with the exchange of correspondence that took place?

Paul Brown: I assume that that must be in the file. I make it clear to the committee that I have left the firm. Although I have been provided with copies of what I understand are the papers in the file, I do not have entire access to the file.

The Convener: I take it that we can make a request to the firm to provide the exchange that took place in which the terms on which you were to proceed with the process—and perhaps the cost, as I take it that your provision of advice would have had cost implications—were clarified.

Paul Brown: That would be in our standard terms of engagement.

The Convener: Can you recall what the costs were?

Paul Brown: Not specifically. The costs were certainly in excess of £1,000, and it is possible that they were more than that.

Mary Scanlon: We have had written submissions and oral evidence from the remuneration committee, and it was certainly not aware of the SFC guidance. Some members of the remuneration committee said that they were not aware that any guidance existed. Six members of the committee appeared before us. Others said that they thought that what they were being asked to agree to—the very generous severance payment to Mr Doyle—was in accordance with the guidelines.

Earlier, we heard from Lorraine Gunn. She said that, at the time, people were a bit worried about their future and a bit uneasy about what was going on. We have heard from the remuneration committee about the meeting on 28 January. The director of human resources said that the letter to Mr Doyle—which, basically, is why we are all here—was a letter of comfort.

In your view, how did that letter of comfort become a legally binding document? That was not the committee's understanding. Given that the merger was a bit on and off, it was a letter of comfort saying what might happen if Mr Doyle were not to get a job in the new set-up. How did a letter of comfort become a legally binding document, whereby a man became entitled to hundreds of thousands of pounds above the recommended guidelines?

11:00

Paul Brown: I do not recall the members of the remuneration committee referring to it as a letter of comfort.

Mary Scanlon: That is what we were told in evidence by the human resources director.

Paul Brown: I accept that, but I am not sure that that is how the remuneration committee viewed it.

My role was to advise the college on the terms of the letter that it received from the funding council in October 2013 and to advise it, in light of that letter, on the decisions that had been taken in January and whether they were legally binding. Ultimately, as my report and the minutes of the meeting as eventually ratified by the remuneration committee confirm, the members of the remuneration committee all accepted that at the January meeting they had agreed, legally, to provide Mr Doyle with an enhanced severance package in the terms that they discussed.

Mary Scanlon: So the letter that Mr Gray wrote to Mr Doyle a day or so after the meeting on 28

January 2013 was the legally binding document that others thought was a letter of comfort.

Paul Brown: I cannot speak for anyone else.

Mary Scanlon: You said that it was a legally binding document and that the college had to pay the money.

Paul Brown: Indeed. In my opinion, what the committee agreed at that time was legally binding.

Mary Scanlon: Which of you wrote the advice in respect of the liability of board members that was dated December 2013? The letter was from DLA Piper, which took over from Biggart Baillie, and it was dated 18 December 2013. Did either of you write that letter?

Paul Brown: We are not members of that firm. As I understand it, it was advising the Scottish funding council.

Alasdair Peacock (DWF LLP): That is a completely different firm. The Scottish funding council sought legal advice from a different firm after the event.

Mary Scanlon: Given how many lawyers and auditors and accountants were involved, you will have to forgive us if we get a wee bit confused. If there is a legal firm in Scotland that was not involved in the Coatbridge College case, it deserves a gold medal for keeping out of it. It looks as if we will need to ask DLA Piper to give evidence.

I have some general questions on the advice that was given. My daughter is an employment lawyer, and I dare say that what applies to one firm applies to another.

An issue that has been raised is that there was insufficient and inadequate paperwork. Concerns have also been raised about the lack of a business case and the lack of an audit trail. Apart from the very overgenerous payments to Mr Doyle and all the uplifts—it would take us all day to talk about the money that was handed out—the Auditor General's report is about the lack of a business case and the inadequate paperwork. In your role as an employment lawyer, did you at any time say to Mr Doyle, "The payments are in order, but you really must get your admin right in order to satisfy the good governance guidelines"?

Paul Brown: It was not my position to speak to Mr Doyle. I was advising and taking instructions from the board.

Mary Scanlon: Did you advise the board on that?

Paul Brown: Yes, I did. Indeed, that was the very issue that I was required to look at.

Mary Scanlon: Why were you advising the board when the other firm that I mentioned was providing the same advice? Was the college paying two separate sets of lawyers for the same advice?

Paul Brown: I cannot speak for the other firm, which, as I understand it, was instructed by the Scottish funding council rather than Coatbridge College. I cannot speak for that other firm on the advice that it provided.

Mary Scanlon: Okay. You advised Coatbridge College that it should have a business case and that it should be able to justify all the payments that were well above the guidelines, so why did it ignore all the advice that you gave it?

Paul Brown: I was advising retrospectively. I was there to assess whether, historically, the college had done that. I was provided with papers that included a business case, as it were.

Mary Scanlon: Oh. We have never seen a business case. Maybe you could provide us with that.

Paul Brown: I am happy to do so.

Mary Scanlon: The timeline is important. You got a call from Mr Doyle on 10 or 11 October 2013 and you went in in October. The auditors then went in in April 2014, which is when we discovered that there was no business case and nothing to justify the overgenerous payments. What advice did you give Coatbridge College between when you went in and when the auditors found a lack of evidence?

Paul Brown: I cannot speak for the auditors, nor for the Auditor General, as no one has asked me for that.

The Convener: You said earlier that you had received a call from Mr Gray—is that correct?

Paul Brown: Yes.

The Convener: It was a call from Mr Gray rather than Mr Doyle. I just wanted to clarify that.

Paul Brown: It is confusing. There are a lot of Johns as well.

Alasdair Peacock: I think that the first call was from John Doyle.

Paul Brown: The first call was from John Doyle, who said that I would get a call from John Gray. Instructions were taken from John Gray, who was the chair of the board.

Mary Scanlon: John Doyle phoned you and told you that you were about to get a call from John Gray. Did he tell you what John Gray was likely to be calling you about?

Paul Brown: He said, “We have received a letter from the funding council and John Gray will be calling you to discuss it.”

Mary Scanlon: Mr Doyle said that they had received a letter from the funding council, that they were in a bit of trouble because it did not really like the payments that they were recommending and that they needed a bit of legal advice to help them out. Was the phone call along those lines?

Paul Brown: No. That is not what he said at all. There was no reference to being in trouble or otherwise. All that he said was that they had received a letter from the funding council, that the board would need our advice on it and that Mr Gray would contact me to discuss that.

Mary Scanlon: We have heard about so many people offering advice to Mr Doyle and the board, including Scott-Moncrieff and all the rest. Apart from telling the board that it really needed a business case to justify what it was doing, did you give it any advice about personal liability for the decisions that it was making? Did you give it legal advice on acting as a charity? We have been told that information was withheld from the remuneration committee. We were told that it made a decision on the basis of the information that it had, which did not include the Scottish funding council’s less than generous guidance on payments. The Auditor General’s report says that it seems to be a case of information having been withheld. Do you think that the Auditor General’s report is accurate in that sense?

Paul Brown: I cannot comment on the Auditor General’s report. I was not asked to provide any information to the Auditor General. I can, however, talk about the information that I was provided with at the time. I was provided with a pack of papers that included a business case, the funding council guidance, the letter that the college had received from Laurence Howells of the funding council in October, an email exchange that had taken place in January of that year with Mark Batho of the funding council and the draft minutes of the remuneration meeting, among other documents.

Mary Scanlon: Given that we do not have access to the business case that justified the £304,000 payment to Mr Doyle, can you give us a verbal account of that business case?

Paul Brown: The document that I was informed had been presented to the remuneration committee at that time made reference to—

Mary Scanlon: Was that in January? Was the remuneration committee given the business case in January?

Paul Brown: Yes. I think that Mr Gilliver referred to that information having been provided to it on 25 January.

Mary Scanlon: Who provided that business case? Was it Lorraine Gunn?

Paul Brown: I am not sure. I understand that it was prepared by Mr Gray, but I could not say for certain.

Mary Scanlon: Perhaps you can tell us how that business case justified the exceptionally high payments to Mr Doyle.

Paul Brown: It was not for me to say why the payments were justified; it was for the remuneration committee to decide that.

Mary Scanlon: I appreciate that, but perhaps you can tell us what was contained in the business case.

Paul Brown: It contained an explanation in general terms—I am happy to provide a copy—from the chair of the college. He explained the difficulties that existed with merger et cetera and the sterling work—that phrase was not necessarily in there; I am paraphrasing—that Mr Doyle had done for the college. The chair explained that, to ensure that the students and staff of Coatbridge College were protected, it would be beneficial to ensure that an arrangement was in place for Mr Doyle to see the whole process through. That is my understanding of what the business case was.

Mary Scanlon: Does it concern you that that business case was not part of the information that was given to either the internal or the external auditor? We do not know about the due diligence, or whatever part you played in the accounts and so on—it is all very confusing. Does it concern you that the business case for Mr Doyle’s departure has not been seen by any of us or, as I understand it, by Audit Scotland?

Paul Brown: I was not aware of any of that until I read—

Mary Scanlon: I am not asking whether you are aware. I am asking whether it concerns you that the Scottish Parliament’s Public Audit Committee and Audit Scotland, as I understand it, do not have a copy of the business case that was used to justify the £304,000 to Mr Doyle.

Paul Brown: It is not for me to provide an opinion on that—it is a matter for the committee to determine.

Tavish Scott: Mr Brown, you just said that there were three grounds in the business case. I am talking about the business case that none of us has seen before; that the Auditor General says does not exist; and that all our previous witnesses have said did not exist. I am flabbergasted that you have a business case. We do not, and the Auditor General does not. No witness whom we have had in front of us in the past month has said that there is a business case.

Paul Brown: What I am telling you is that I was provided in confidence with a bundle of papers that included a document headed “Private and confidential: members of the remuneration committee only”.

Tavish Scott: So that was from 28 January 2013.

Paul Brown: It was on or around 25 January, as I understand it. Please bear in mind that I was also provided with documentation in October.

Tavish Scott: I quite understand.

Paul Brown: Just to be clear, for the committee’s benefit, I was also provided—as I said—with other documentation. Again, to be clear, I have mentioned three excerpts from the document.

Tavish Scott: Correct me if I am putting words in your mouth, but your interpretation is that you saw three grounds that could be considered to be a business case. Another person, such as an auditor, might say that a business case would have numbers, timelines and explanations—detail, in other words—and that only such a document might normally, particularly in the context of the funding council advice and guidance, be considered to be a business case. Would that be fair?

Paul Brown: It may be that an auditor would have a different opinion on what amounted to a business case. On the subject that Ms Scanlon mentioned, my advice was, as I said, essentially retrospective. I was provided with information and, as part of my investigation, I spoke to the members of the remuneration committee. I wanted to be certain that they understood what their obligations were in terms of charitable and other organisations. All of them were experienced members of committees, and they all assured me that they understood and that they knew what their obligations and responsibilities were.

In the information with which I was provided was a copy of the guidance. In the minutes, there is reference to the funding council guidance. When I spoke to the members, they all assured me that they were fully familiar with their obligations and had all the information that they needed. I cannot comment any further on what they have said about whether they had that before.

Tavish Scott: I am not asking you to.

Of the three grounds for the business case that you mentioned, the third was that Mr Doyle would—I think that these were your words—see the process through. Well, he did not, because the proposed merger came to an end in February.

Paul Brown: But Mr Doyle did not leave in that time; he remained with the college.

Tavish Scott: Indeed. I suggest that the basis for Mr Doyle’s severance package, which was agreed on 28 January 2013—on the information that you have given us today, which I am sure is entirely right—was that he would see the process through. However, that process was not seen through, because it came to an end in January when he and his board withdrew from the merger process. That is presumably a matter of record.

Paul Brown: My understanding—indeed, it is what Mr Banks suggested earlier this morning—is that everything was void as at that time. That is not the case at all in relation to Mr Doyle. The business case, as you will see, had nothing to do with an assumption that the merger would go ahead at that particular point in time. Indeed, there was—in my understanding, which is all retrospective—a debate about whether there was to be a federation or a merger. Coatbridge was in, then it was out, and then it went back in. In my opinion, that did not alter the decision that the remuneration committee had come to in January 2013, which obliged it to provide Mr Doyle with that severance package.

11:15

Tavish Scott: In that case, the business plan—if it existed—did not stack up at all. If one of the grounds for the payment was that Mr Doyle would see through the process and that ground was now not material to his severance package, it cannot be considered to be part of the business plan, can it?

Paul Brown: As I understand it, the committee made the decision based on the decision plan at that time. My opinion was that there was still a contractual obligation on the college to provide that severance package to Mr Doyle. I confirmed that opinion in October 2013.

Tavish Scott: Did the contractual obligation exist because the remuneration committee had written that letter to Mr Doyle after the meeting on 28 January 2013?

Paul Brown: The decision had been taken, as I understand it, by the remuneration committee, and that decision had been conveyed to Mr Doyle.

Tavish Scott: Therefore, the advice that we had earlier that there was no financial liability cannot be considered to be the case.

Paul Brown: Again, I will just explain that. I appreciate that the timescale is very confusing for everyone on the committee and perhaps for some of the witnesses, too, as there were independent bits of knowledge. The advice for the senior management team was different from the advice for the principal. The minutes of that meeting and the meeting confirmed that the arrangement would

be for the principal. There seemed to be concern and confusion over how or whether that arrangement applied to other members of the senior management team. Ultimately, the debate arose around whether the arrangement should be applied to the whole of the college's staff and not just simply to the management team.

Tavish Scott: Absolutely.

Paul Brown: But, in relation to Mr Doyle, the arrangement was applicable at that time; that obligation was made at that time. As I understand it, the letters to the senior management team referred to the arrangement being dependent on the merger completing as at 31 July 2014. That is not my understanding of the position for Mr Doyle. His arrangement was dependent just on him being there to continue to run the college until such time as the college no longer effectively existed.

Tavish Scott: There were different letters for Mr Doyle on the one hand and for senior members of the management team on the other.

Paul Brown: As I understand it.

Tavish Scott: That is very helpful.

Paul Brown: On that point, I was able to provide advice on whether the arrangement would be void or otherwise to the remuneration committee and the board in October 2013. I was able to reach that view having examined all the paperwork retrospectively, taking into account that the arrangement for the senior management team was time limited. I was not involved in any discussions at that time and I was not aware of anyone making the decision in February or otherwise.

Tavish Scott: You have very helpfully clarified that you were not the auditor; rather, the role that Mr Doyle had asked you to take forward was to provide HR advice. Bearing that in mind, in short, your advice in October 2013, when the remuneration committee met again, was that the binding agreement that it had entered into on 28 January 2013 stood, and therefore it just needed to get on with it, commit to it and pay it.

Paul Brown: Yes, indeed. As I said, I did not just rubber stamp the decision. I examined all the information that was available to me and the further information that I had requested of the remuneration committee. I also spoke to its members.

It was mentioned that the remuneration committee was paperless. My first involvement was at the October 2013 meeting. As I recall, all members had iPads. I was issued with a set of papers. My understanding was that all the papers relating to committee meetings, whichever it be, were uploaded on to iPads.

Tavish Scott: We could probably go round and round in circles on who saw what and when—

Paul Brown: Yes, indeed.

Tavish Scott: —and we will get nowhere on that one, but what—

Paul Brown: I am sorry but, just to be clear, when I spoke to the remuneration committee members, having reviewed the paperwork and ensured that the decision had been, in my opinion, taken legitimately and legally, I was satisfied that they were all aware of their obligations as members of the committee, which included the obligation to be fully familiar with all the information.

Tavish Scott: Were you satisfied that the remuneration committee also knew that Mark Batho had said in his discussion with Mr Gray before the meeting in late January 2013—this is in your submission to the committee—that he would

“encourage you strongly to stay within these parameters for the voluntary severance arrangements”.

Paul Brown: As I understand it, what had been discussed with Mr Batho was relayed to the remuneration committee.

Tavish Scott: Did that matter come up again at the October 2013 remuneration committee meeting?

Paul Brown: No. The October remuneration committee focused very much on the minute that was taken in January—

Tavish Scott: Which was disputed, of course, was it not?

Paul Brown: Yes, it was disputed in some respects, but not in respect of Mr Doyle. There was no dispute about the arrangement for Mr Doyle; the dispute was just about the senior management team.

Tavish Scott: I have two final questions. First, did you advise on confidentiality agreements?

Paul Brown: As I understand it, the college had a standard settlement agreement.

I am sorry but, just to be clear, I did not provide advice in January 2013. If anything, I would have been advising at October 2013 on the terms of a settlement agreement—that is, the formal severance agreement—and there was a confidentiality agreement within that.

Tavish Scott: Despite the fact that that is incompatible with Scottish funding council advice and guidance.

Paul Brown: My understanding was that that agreement was in there to encourage people not to disclose the information to others, not that they

should not disclose it to those were entitled to be aware of it.

Tavish Scott: That does not seem to have been a policy that has worked very well, does it? There we are.

I appreciate that you had to review a multitude of papers, but were you aware of the funding council's guidance that said that an internal auditor had to be involved in any voluntary severance proposals and arrangements?

Paul Brown: The funding council guidance makes reference at paragraph 36 to an external auditor reviewing severance arrangements post the event. As I understand it, paragraph 35 talks about the internal auditor reviewing decisions.

Ultimately, as has come out in my report, I was informed, having requested the information, that the internal and external auditors had been informed.

Tavish Scott: Who informed you of that?

Paul Brown: I cannot recall at the moment.

Tavish Scott: Could it have been Mr Doyle perhaps, or—

Paul Brown: No, it would not have been Mr Doyle, because I did not take advice or instructions from him.

Tavish Scott: Was it the director of finance?

Paul Brown: I do not recall speaking directly to him. Mostly, my instructions came from either Mr Gray or Mr Keenan.

Tavish Scott: At some stage in October, they told you that the internal or external auditor—or both—had been or were involved in that process.

Paul Brown: My recollection was that I had asked them to confirm that they had complied with the guidance and that audit were aware of this, and they certainly were.

Tavish Scott: Of course, what “aware” means is—

Paul Brown: Again for the committee's benefit, I should say that Mr Doyle suggested that Biggart Baillie was acting as the secretariat to the board meeting, but that is not correct. I was there in my capacity as legal adviser and to survey what had gone on. At the remuneration committee meeting, I was there very much to provide advice. My trainee at the time was there in a note-taking capacity because, at that stage, Lorraine Gunn was no longer there to provide—

Tavish Scott: That is fine; that is very fair. I will conclude on the question that I forgot to ask about the business case. You have said that there was a business case and that that was presented on 28

January 2013 to the remuneration committee. My understanding is that that case must have been presented orally. Was there a paper? You have referred to a document or some paper that you are going to give to the committee.

Paul Brown: I was provided with a paper of what I was informed the committee was aware of when it made its decision. Again—Paul Gilliver referred to this—I think that there was another email somewhere from Tom Keenan from some time in October with his understanding of what the committee was—

Tavish Scott: Mr Keenan was not at the 28 January 2013 meeting as we know, so his view is frankly neither here nor there in the context of that meeting. To be absolutely clear, your understanding is that a paper was somehow tabled—it was perhaps on members' iPads—at that meeting that constituted, in your view, a business case?

Paul Brown: That was my understanding; that is what I was advised.

Tavish Scott: Thank you very much.

The Convener: Before I bring in Colin Beattie, it would be helpful to the committee if we go back to your point about the remuneration committee advising you that external and internal auditors had been made aware of the arrangements with Mr Doyle. You mentioned Mr Keenan and Mr Gray. Can you confirm that once again? You were being pretty vague about that, and you are a legal practitioner, so you know what position we are in. If we are to prepare a report, we need to be clear about the information that you are providing.

Paul Brown: When I was first instructed, which I say again was about 11 October, the initial instructions came from Mr Gray. There was then a transition arrangement essentially because, by the time of the board meeting, which I think was on 23 October 2013, Mr Gray was effectively demitting office and Mr Keenan was taking over. There was certainly an element of liaison with both of them.

The Convener: You will understand the point that it is quite a significant statement to make, though, that both of them made you aware, or advised you, that the external and internal auditors were aware of these arrangements. I need you either to withdraw that statement or to confirm that it is correct.

Paul Brown: I cannot confirm which one of them—or that either of them—said it. All I know is that, when I was investigating the matter, someone informed me that the internal and external auditors had indeed been informed.

The Convener: Is it something that there would have been email exchanges on?

Paul Brown: Not that I am aware of. It was oral information. Again, I was not reviewing the decision as at 23 October; I was reviewing the decision that had been made as at 28 January. I am not suggesting that I was advised that, prior to the meeting on 28 January, internal audit had already been made aware of, or approved, that decision. I am not aware of that. My understanding was that, in reviewing the payments—the guidance says that internal audit will review decisions that are made—internal audit was made aware of it at some point in time.

The Convener: Okay.

Colin Beattie: The remuneration committee met on 28 January and did not meet again until October. A letter was issued on 29 January that was signed off, which I presume is the one that you were involved in scrutinising.

Paul Brown: No. Just to be clear, I was not involved in that letter at all. I think, again, with regard to Ms Gunn, there is some confusion about time and involvement. I was involved only in relation to very brief advice on the settlement agreement, which was given in October.

Colin Beattie: Did you see the letter?

Paul Brown: No.

Colin Beattie: In her written submission, Lorraine Gunn said that two letters were issued. It appears that the first letter was assumed to have expired on 31 July. A second letter was then issued that was, I presume, given what I see in the submission, written in the same terms. However, it is not clear on what authority that second letter was issued, because there was no remuneration committee meeting.

Paul Brown: I cannot speak about that. I do not know anything about that.

Colin Beattie: That information was not shared with you at the time.

Paul Brown: I am not sure which letter you are referring to.

Colin Beattie: It appears to be the letters to the senior staff.

Paul Brown: As I understand it, letters were issued to senior staff on, or around, 7 February. I was supplied with two of those letters, which more or less said that the remuneration committee had met and those were the packages, assuming merger on 31 July. By October, when I was required to provide advice on that subject and spoke specifically to Mr Keenan, Mr Gray, Mr Gilliver, Ms McCarthy and others, my opinion was that those letters were not enforceable because they were time dependent on a specific date. My understanding is that Mr Doyle's was not.

Colin Beattie: Those letters were allegedly reissued after 31 July. On what basis would that have been done? Could they have held the original remuneration committee decision as still valid?

Paul Brown: I am not aware of those letters having been reissued after 31 July.

Colin Beattie: That information was never shared with you.

Paul Brown: No. I am aware that letters were written by—I think—some members of the senior management team into October, which purported to accept the decision that was made back yonder.

Colin Beattie: No, this appears to be a separate issue. Perhaps Mr Peacock might be able to comment on it. According to Lorraine Gunn, those letters—both sets—were sent to the auditors. Have you seen copies of either of those sets?

Alasdair Peacock: No, I have not seen any of them.

Colin Beattie: So, it is incorrect to say that those letters were ever shared with you.

Alasdair Peacock: My understanding of what Ms Gunn said is that it was part of the due diligence exercise. Let me help you to understand that. For the due diligence exercise, there will be accountants—I would not call them auditors, because they are not doing an audit—who are usually the reporting accountants, and they will ask a range of questions about a range of subjects. A typical question would be, "Can you provide us with copies of any communications to the senior management?" From the evidence that I have heard this morning, I assume that copies of the letters would have been uploaded to the due diligence site, which is basically just a pile of information. I thought that Ms Gunn said that she had done that on a couple of occasions instead of there having been two separate letters.

Colin Beattie: Her written evidence makes the matter rather clearer.

Alasdair Peacock: I have not seen that.

Paul Brown: I should make it clear that I have not seen the written evidence, either.

11:30

Colin Beattie: Apparently, there was a merger management group on 7 October 2013 at which auditors were present and at which this information was, apparently, again shared. Are you aware of that, Mr Peacock?

Paul Brown: It might be of benefit to the committee if I clarify that Mr Peacock was not involved in the process at all. I was essentially the

one who was providing the advice. I think that Mr Peacock is here as a representative of the firm, in which I am no longer a partner. I suspect that, except for that, he would not be here.

Alasdair Peacock: I have read through the file. Paul Brown might have given that advice personally but the advice was given by the firm, so the firm is responsible for it.

Colin Beattie: You were not part of the merger management group at all, Mr Brown.

Paul Brown: No, not at all.

Colin Beattie: In the report that you gave to the college, you said:

"I am advised that this arrangement was approved by the Colleges internal and external auditors."

Who advised you of that?

Paul Brown: As I have said to the convener, my understanding is that that was relayed to me by either Mr Gray or Mr Keenan, but I cannot be absolutely certain who told me that.

Alasdair Peacock: That was included in Paul Brown's report, which I have seen. It said that the arrangement had been approved. Everyone saw that, and no one came back and said, "Hang on a minute. This is wrong." That was one of the assumptions on which Paul was reporting.

Paul Brown: That is exactly right. As lawyers, we are able to give advice only on the information that we are provided with, and the report was written on that basis. No one ever came back to me and said, "That's wrong" or otherwise. Indeed, the letter of 12 November to Mr Keenan was written in similar terms.

Colin Beattie: I have to say that the remit for your involvement seems to have been very narrow.

Paul Brown: It was.

Colin Beattie: That is completely at odds with what the college seems to be indicating.

Paul Brown: It might be at odds with what Mr Doyle seems to be indicating, but my remit was very much to examine the decision that had been taken in January by the rem com, whether or not that decision was effectively legally binding on the college and whether the college was effectively obliged to provide a severance package in those terms to Mr Doyle and, indeed, the other members of the senior management team. My advice was that the college was not obliged to provide those payments to the members of the senior management team but that it was obliged to provide a payment to Mr Doyle.

Colin Beattie: Your evidence to the Public Audit Committee states that you did not take any

instructions from Mr John Doyle, but the finance director appeared to think that that was who you were dealing with.

Paul Brown: Indeed. I heard Mr Banks's evidence, and it seems that Mr Banks believed what was reported to him by Mr Doyle. However, it is not the case that I was instructed by Mr Doyle. Initial contact was made by Mr Doyle but, beyond that, all and any instructions that I took were from the chair and the board.

Colin Beattie: What makes you believe that Mr Doyle had misled Mr Banks?

Paul Brown: I did not say that Mr Doyle had misled Mr Banks.

Colin Beattie: You said that the information—

Paul Brown: I am not saying—

Colin Beattie: I just wondered whether you had some information in that respect.

Paul Brown: I am not saying that Mr Doyle misled Mr Banks; I am saying that that is my understanding of what Mr Banks reported this morning. All that I can tell you is what I knew my remit to be, and that was my remit—I have no understanding or otherwise of what Mr Doyle might have relayed to Mr Banks or how he relayed it.

Stuart McMillan: Mr Brown, you highlighted four documents that you received: the business case, the SFC guidance, the SFC letter and an email exchange between Mark Batho and the rem com. You said that those were just some of the papers that you received. Are you, or is Mr Peacock, in a position to provide the committee with all the relevant documentation that you received at the time?

Paul Brown: Absolutely. Do you mean copies of the actual documents rather than a list?

Stuart McMillan: Possibly, although it would certainly be useful to have a list. We might already have some of the documents but, if you were prepared to provide all the documents, that would be useful.

Paul Brown: I have authority to disclose information in documents, so I am quite happy to do so.

Stuart McMillan: Thank you.

Mr Banks told us earlier that his opinion is that the decision that was taken on 28 January should have been nullified. Did you have discussions with Mr Banks or anyone else, or did you see any paperwork from anyone, in which it was suggested that anyone thought that the decision that was taken in February to come out of the merger

process nullified the decision that had been taken on 28 January?

Paul Brown: Just to be clear, I should say that I was not at any point involved in any negotiations or discussions as to whether the college was in or out of the merger. I think that, in October, I was provided with copies of the merger minutes from October and, I think, September, but I was not involved in any discussion in February or otherwise in which it was suggested that the decision was void.

Ultimately, I provided advice to the remuneration committee, and that advice was that, in my opinion, the senior management team contracts or letters were not necessarily void but were not binding because we could avoid the terms of them.

Stuart McMillan: Did anyone from the remuneration committee or management team raise with you the possibility that the decision that had been taken was void?

Paul Brown: Forgive me, but which decision are you talking about?

Stuart McMillan: I am talking about Mr Banks's opinion in relation to the decision that was taken in February. You were not around at that point, but, when you became involved and provided legal advice to the committee and the management team, was the issue of the nullification or voiding of the decision ever raised? I imagine that, if someone was of the opinion that the decision that was taken on 28 January was potentially void, there would have been legal implications.

Paul Brown: Sorry—I want to be clear. I was not providing legal advice to the management team, as such, at that time. I was not involved in, or aware of, any discussion that might have taken place in February or otherwise that suggested in any way, shape or form that those decisions were void.

Stuart McMillan: Okay. Thank you.

Dr Simpson: Convener, we have not seen the severance letter, have we?

The Convener: No.

Dr Simpson: My question to Mr Brown is this: you have seen the severance letter—

Paul Brown: No, sir, I have not.

Dr Simpson: So, you have given a legal judgment on the basis of a severance letter that you have not seen.

Paul Brown: Yes, because I was not aware of the severance letter at the time. The information that I was provided with did not include a severance letter for Mr Doyle; it included

obligations, and the instructions that I took and the information that I received were based on decisions that had been taken by the board.

Dr Simpson: I am really confused now. On 29 January, a letter was sent—rather precipitously—by John Gray after a remuneration committee meeting, the minutes of which had not been confirmed, and it was accepted. Is that not the document that led you to say that the remuneration committee, having made its decision, having made the offer and having had the offer accepted, must stand by the offer? Or are you saying that the mere fact of its having made the offer, no matter what the offer contained, was sufficient?

Paul Brown: The decision had been made and was conveyed, as I understand it, to Mr Doyle by Mr Gray. Therefore, that decision had been made.

Dr Simpson: How do you know that that severance letter did not contain a time-related element in the same way as the senior management document did? Were you simply told that?

Paul Brown: I was informed of that. I was advised that—

Dr Simpson: But you did not see the letter to check it.

Paul Brown: I was not advised that there was a letter, as far as I can recall.

Dr Simpson: So, we have a severance letter that was written on the basis of a merger that then did not take place, which you were informed included terms that said that the severance payment should include a cover for seeing the merger through. The merger was then not seen through, yet, in your view, the severance letter was still valid.

Paul Brown: The minute—which, in effect, is the report to the board—says that the arrangement for Mr Doyle was different because it was not based on a merger necessarily taking place by 31 July 2013. As I understand it, one of the parameters for Mr Doyle's arrangement was that, although it was not envisaged that there would be a post for him going forward, he would have to continue to manage the college and lead it through the period of a merger, whenever that took place.

Forgive me if my timelines are wrong, but, as I understand it, in January 2013 the merger was still going ahead. Subsequently, the college withdrew from the merger.

Dr Simpson: That is correct.

Paul Brown: It then re-engaged with the merger.

Dr Simpson: That was in August.

Paul Brown: Mr Doyle's package was not dependent on the timing.

Dr Simpson: I understand that. However, you have told us—and we know—that his package included a requirement to see the merger through. I understand that the merger did not take place until March/April 2014. Therefore, that part of the severance agreement in the letter—which you advised was valid—was never actually fulfilled, so why would you suggest that the payment had to be made?

Paul Brown: By October, when I was instructed, it had been determined that Mr Doyle was going to leave and proceedings were already in place for that. As I understand it, the reason why he was leaving at that stage, rather than at 31 March 2014, was political with a small P. It was not appropriate for him to remain there in the long term or, indeed, to see the transition through because of the relations that existed between him and other principals, and so on. Therefore, at that time—and, indeed, prior to my instruction—the board had already determined to allow Mr Doyle to go with that package. Instead of being required to work until 31 March 2014—that was no longer appropriate—he was to receive payment in lieu of notice.

Dr Simpson: That was a new decision that was separate from the severance letter—which you have not seen—that required him to see the process through. That is the basis on which you said that the college had to comply. It made a separate set of decisions with regard to that payment.

Paul Brown: The decision to make a redundancy or settlement agreement was taken back in January 2013, and it was not wholly dependent on his seeing the merger through. That was one of the parameters in the business case. It said, "We need to encourage him to see the process through"—I am very much paraphrasing; you can read the letter yourself. Mr Doyle remained as the principal of the college throughout that period, and, when Coatbridge College was back in the fold, as it were, there were various joint meetings of principals, merger committees and so on. He was continuing in that regard.

By October, when I was appointed, the board had determined that it was no longer appropriate for Mr Doyle to be there. However, that did not nullify the agreement that was in place, which was that he would see the merger through.

I can clarify that the advice that was being sought from me was on the legality of the agreement and what its implications could be. On my advice, the college was able to extract itself from the arrangements for the senior management

team but the arrangement for Mr Doyle had already been negotiated and made. He was working his notice and he was, in effect, on a timeline for going. In my opinion, there was a commitment to that arrangement and the college had to stick to that. Had it not done so, inevitably that would have led to legal proceedings, further costs and so on.

11:45

Alasdair Peacock: The point is that Mr Doyle relied significantly on that set of circumstances right up to virtually the week before he was to go. The whole point of paying somebody a package of some description is to keep them on board. That is why it is done quite far in advance: to keep the person on board and committed throughout a period of time. These things are not black and white, but, if you tried to change the package at the very last minute, you would have a claim against you—with all the costs and disturbance that would go along with it—that would have a reasonable chance of success.

Dr Simpson: I still find it extraordinary that you were able to make a very clear decision without having seen the letter and the terms in it. Can you guarantee that that letter did not have a date on it at all, or is that simply what you were told?

You know very clearly that there was a date in relation to the senior management offers, but, in relation to Mr Doyle, the basis for your opinion was that there was an undated element. In other words, the letter related to a merger that would take place at some point and stated the terms that would follow. You are very clear that the severance letter will—when or if we ever see it—state clearly that that was the merger in question but will not have within it the date of 31 July or any other date.

Paul Brown: As I said, I cannot comment on that because I have not seen the letter. I was advising on the decision that had been taken by the remuneration committee in January that a settlement arrangement was going to be given to Mr Doyle. The agreement was made at that stage. The governance arrangements for the remuneration committee meant that the chair would convey the outcome of those meetings, and the chair himself informed me that he had conveyed the outcome to Mr Doyle and confirmed that the arrangement had been put in place for him.

Dr Simpson: This may not be a fair question for you, Mr Brown, but can you understand why senior management were made an offer with a date on it while Mr Doyle was made an offer that was undated?

Paul Brown: As I understand it, part of the rationale was that it was inevitably unlikely that Mr Doyle would obtain a post in the new college.

Dr Simpson: Whereas the others would.

Paul Brown: Whereas the others would. Yes.

Dr Simpson: Thank you.

Sandra White: The answers to Richard Simpson's questions have clarified a number of points that I was going to ask about.

We have not seen any business case or letter. You have not seen a letter either. We really need to see the letter. Can you answer this in a couple of words: if Mr Doyle had not got that pay-off package—bearing in mind that he was the only one who got it—would he have taken the college to a tribunal?

Paul Brown: I cannot speak for Mr Doyle.

Sandra White: In your opinion—

Paul Brown: In my opinion, there was a real risk to the college that, if it did not pay what it had agreed to pay Mr Doyle some considerable time earlier—

Sandra White: But you did not see the letter.

Paul Brown: There was a real risk that, if the college had not followed through on what had been reiterated in negotiations that took place in October, before I was instructed, which was at that time confirmed as the package that was going to be given to Mr Doyle, Mr Doyle would have raised proceedings in which there would have been difficulties for the college.

Sandra White: You had been giving legal advice. You were asked to come in to give legal advice to the board. Did that legal advice pertain to the fact that, if Mr Doyle did not get the settlement, the college could be taken to a tribunal?

Paul Brown: The advice—

Sandra White: Is that why you were asked to come in?

Paul Brown: No, it was not. The advice that I was asked to provide was in relation to a decision that had been taken in January. I was effectively advising on a decision that had been taken back in January in relation to Mr Doyle and other members of the senior management team—on what its effect would be.

Sandra White: You were brought in retrospectively with regard to the letters, which—as we have heard from others—were letters of comfort and were not necessarily legally binding, but Mr Doyle had already got his payment. You were asked to come in to advise specifically on the

two different letters. We have not seen any of the letters. How could you give advice when you did not see—

Paul Brown: It was not in relation to Mr Doyle.

Sandra White: What information did you get at those meetings to enable you to advise that, if the payment was not paid out, the college could be taken to a tribunal?

Paul Brown: I clarify that I was not asked to provide advice in relation to Mr Doyle, because Mr Doyle by that stage—

Sandra White: But you just said that you were asked to give advice on the remuneration and the severance.

Paul Brown: The advice was in relation to the decision that was taken previously. By October, when I was instructed, Mr Doyle was already in receipt of a draft settlement agreement that included the agreed terms. As I understand it, by that stage it had been confirmed that he would be entitled to receive and would receive the package and a settlement agreement.

Sandra White: Who confirmed that? Did you see the letter?

Paul Brown: Mr Gray.

Sandra White: Mr Gray, the chair, confirmed that.

Paul Brown: That is who I was receiving instructions from.

Sandra White: There was nothing in writing—it was done verbally.

Paul Brown: There was already a draft settlement agreement in writing that confirmed those terms.

Sandra White: Nobody saw the draft settlement agreement.

Paul Brown: Ms Gunn would have done.

Sandra White: I asked Ms Gunn about that. She mentions in her written evidence the letter of 28 January that she drafted to the principal and senior staff. She says that it was looked upon as a letter of comfort. Did Ms Gunn give you that letter when you went to give advice or had she left by that time?

Paul Brown: I cannot recall when Ms Gunn was off sick.

Sandra White: She states in her written evidence that it was a letter of comfort and the staff

“did not consider the letter as an offer as such.”

Paul Brown: My understanding of the situation is that that is not entirely true.

I was not involved at that time; I was involved when the settlement agreement was produced. I was not involved in any letter that might have been drafted in January 2013.

Sandra White: I understand that.

Paul Brown: In relation to the confusion about the 24 hours and taking legal advice, I did not give any legal advice on that in January. I did so in relation to the settlement agreement at some time in October.

Sandra White: I am sorry to interrupt, but in essence you were brought in by the board to give legal advice on the settlements after a telephone call from Mr Doyle to say that you would be getting a telephone call because the Scottish funding council was looking at the matter. Is that the correct timescale?

Paul Brown: Essentially, I was drafted in because, by that stage, the college had received a letter from the Scottish funding council. It referred to the senior management team; it did not refer specifically to the principal. The remuneration committee was concerned about the terms of that letter and asked me to look at the decisions that it had taken back—

Sandra White: Did you see that letter?

Paul Brown: Which letter?

Sandra White: The one that you just referred to.

Paul Brown: Yes. I saw the letter of 10 October from the Scottish funding council. It was in the papers that were provided to me at the time.

Sandra White: Did you never think of asking for the letters that were sent out by the remuneration committee?

Paul Brown: I was provided with a bundle of papers that included some of the letters that were issued to the senior management team, but not the principal's letter.

Sandra White: I will finish in a moment, convener, because I know that there are lots of questions, but I find it really strange that an employment lawyer would not look at letters about remuneration. I understand that Mr Brown was told that if Mr Doyle did not get the settlement that he was expecting he would take the college to an industrial tribunal. He can correct me if that is the wrong way to put it.

Paul Brown: I was not told that.

Sandra White: Was that your opinion?

Paul Brown: Yes, it would have been my understanding that there was perhaps a likelihood of that, but by the stage at which I was involved, Mr Doyle was already negotiating and had a draft

settlement agreement. The decision had been made in January 2013. That is the difficulty.

I looked at—and was asked to provide advice on—the decision that had been taken previously only because of the concerns that were raised by Laurence Howells in October about the impact that it could have on the senior management team. Ultimately I was able to advise that we did not have to rely on the January letters; we could alter our opinion on them and not be obliged to comply with them. In relation to Mr Doyle specifically, the package that had been agreed with him had been agreed by the board.

Sandra White: Did you ever see that in writing?

Paul Brown: No. The discussions that I had at that time, the instructions that I received from the remuneration committee, the chair etcetera, the advice that I sought from them and the further information that I asked of them related to their understanding and knowledge at the time that they made the decision.

The minutes record the fact that no one had any question about the package that was put together for Mr Doyle. They all ratified it and were happy to confirm that they accepted that the package would be put to Mr Doyle. That decision had been made in January and, in my opinion, the college was obliged to comply with it.

Nigel Don: I am grateful for all the evidence and I think that we have got it all, but I would like to make sure that I understand the timeline correctly. My understanding is that you were instructed around 10 October.

Paul Brown: It was 10 or 11 October.

Nigel Don: Yes—we are not quite sure about that. So we are really talking about what happened in the 10 or 12 days after that. You have said several times that you spoke to the members of the remuneration committee about their understanding. Was that during that period or was it at the meeting on 23 October? Was it ahead of that meeting or at the meeting?

Paul Brown: It was ahead of the meeting. I cannot remember specific dates, but there was quite a bit of activity between 11 and 23 October. As I recall, I spoke to the members of the remuneration committee, although I cannot be absolutely certain when that was. Obviously, I highlighted to them their obligations in relation to the Office of the Scottish Charity Regulator and other things, and they all confirmed that they were experienced committee members and were aware of their obligations.

Nigel Don: Right. Were those telephone conversations?

Paul Brown: No—I had meetings at the college.

Nigel Don: So you went along and spoke to them. Was that individually?

Paul Brown: I spoke to some of them individually, I think, but there were general meetings. I cannot remember exactly with whom, on what and when, but I had meetings with various members of the remuneration committee.

Nigel Don: You have talked about “the members”. Do you believe that it was all the members?

Paul Brown: I believe that it was, but I cannot recall exactly. I particularly recall meeting four members, but I cannot remember whether the others were there. I could not say for certain that every one of them was there at the time, but my overall understanding was that they all understood what the obligations were.

Nigel Don: That is fine.

Given the evidence that you, and they, had in front of you at the time, you were clearly asking about what they thought had happened on 28 January. You said that you had not seen the exchange of letters on 29 January between the college and Mr Doyle. Therefore, I presume that no members of the committee were aware of that either.

Paul Brown: I cannot speak for the committee.

Nigel Don: So it was not discussed.

Paul Brown: Just to be clear, I cannot recall having seen a letter from the principal. That was not disclosed to me as far as I can recall. It is certainly not in the papers that were provided to me—it is not in my file.

Nigel Don: So, as you have said, what you discussed with the members was their understanding of what they had agreed at the meeting rather than any paperwork from in between, which they had no more seen than you had.

Paul Brown: Correct.

Nigel Don: If I have understood aright, even the minutes of that meeting were not available. Did you discuss that with the members?

Paul Brown: Yes, we discussed the minutes. Indeed, as I think that Ms Gunn confirmed, and as was relayed to me, the arrangements for governance at the college were such that minutes of meetings were provided in advance of a subsequent meeting of the committee, at which they were approved. Again, as I was informed, the remuneration committee did not meet very often, because it really dealt only with senior members of staff. As I understand it, following the meeting in January, the next meeting ended up being on 23

October. I believe that it was called as a result of the letter from the funding council.

Nigel Don: Yes.

You said that Mr Doyle was already negotiating a settlement agreement. That is the first time that anybody has said that to this committee, which is kind of interesting at this stage of the conversations. Can you give me some clues as to at what point in the period between 10 and 23 October—the period when you were involved—that became known to you?

Paul Brown: It may have been on or around 10 or 11 October.

Nigel Don: So you talked to the members of the remuneration committee on the basis that they knew that what they had discussed in January was being worked up as a document that Mr Doyle had.

Paul Brown: Yes. By the time that I spoke to the remuneration committee members, the basis was that he had an agreement that was in effect and that I was discussing that with them.

Nigel Don: That would have made the exchange of letters on 29 January redundant, in your opinion, which perhaps explains why you are not so upset that you had not seen those letters—

Paul Brown: Indeed.

Nigel Don: Actually, those letters had been overtaken by the draft settlement agreement, which was being discussed.

Paul Brown: Correct.

Nigel Don: That makes perfectly good sense.

You have suggested throughout, including in writing, that you felt that the decisions that were made were not ultra vires, which implies that you felt that they were intra vires. Were you at any stage asked to make any other comment on whether they were wise or appropriate, or was it simply a matter of whether the college would be in trouble if they were not honoured?

12:00

Paul Brown: I was not asked to provide an opinion on the figures or on the decisions that the college made at that time; I was just asked to confirm whether they were, effectively, legal decisions that the college was obliged to comply with.

Nigel Don: Are you still comfortable with the decision that you made?

Paul Brown: With the advice that I provided?

Nigel Don: Yes.

Paul Brown: Yes. It was not up to me to decide whether the amounts were reasonable. The advice that I provided was on the basis that it was the remuneration committee that determined those issues and, as I understood it, the committee was aware of the guidelines. I was not advising on the amounts, or otherwise.

Mary Scanlon: There is an appendix 2 and an appendix 3 to the minutes of the 4 November 2013 meeting. Paragraph 3.1 of appendix 2 refers to

“voluntary severance arrangements for senior staff which were not available for other staff and exceeded greatly the maximum reimbursement available from the Scottish Funding Council.”

Appendix 3, “Legal Advice from Paul Brown, Biggart Baillie”, says:

“Paul said the Head of the Funding Council’s letter was a panic reaction”.

Do you think that the head of the funding council got it wrong?

Paul Brown: It is not my opinion—

Mary Scanlon: It is your opinion, according to appendix 3, “Legal Advice from Paul Brown, Biggart Baillie”, in the minutes of the meeting of the remuneration committee of Coatbridge College held on 4 November 2013, which read:

“Paul said the Head of the Funding Council’s letter was a panic reaction”.

So you were really—

Paul Brown: Bear in mind, retrospectively, the decision taken on 28 January 2013. My understanding was that, as is outlined in the guidance, there is an obligation on the remuneration committee—it is in my report—to discuss matters with the funding council, which at that stage it did. The then chief executive was Mark Batho.

As I understand it and as has been confirmed and discussed today, the issues were discussed at the meeting on 28 January 2013, when Mark Batho had not said at any point, “You can’t make these payments.” Indeed, as I understand it from Mr Howells, I am not sure that Mr Batho ever said, “You can’t make these payments.” It was essentially, “We won’t fund payments beyond a certain level.” My advice was in relation to the decisions that were taken in January 2013 and Mark Batho’s comments at that stage, which confirmed that committees were independent and were entitled to make such decisions.

Mary Scanlon: There is quite a significant audit trail from Laurence Howells, which I will not go over again today, throughout October 2013, which was the month before the 4 November meeting.

A couple of paragraphs down in appendix 3, the document says:

“There followed some discussion on an appropriate letter for staff following the withdrawal of the aforementioned college voluntary service scheme, any new scheme will be in line with previous arrangements, applying to all three colleges”.

At that time, John Doyle had left. He had his letter of comfort with his very generous payments from January. At that point, you were asked to draw up a letter. The appendix says:

“Paul confirmed the letter would bring any potential problems to a head. It was agreed that Paul would advise if the letter was obtained.”

You were to draft a letter to the funding council and to all staff on the withdrawal of the voluntary severance scheme. That was after Mr Doyle had walked away with his £304,000. Can we get that information from you? Can we get copies of those letters?

Paul Brown: I am sure that copies are available. Again, I want to be clear. I do not know exactly when the funding council and Mr Howells became involved, but his letter was from October. By that stage, a very different arrangement was going on from the one that existed back in January. All that happened subsequently was retrospectively looking at what might have happened.

The criticism that seems to be levelled against the college at that stage is about not having arrangements that complied with those of Motherwell College and Cumbernauld College, and a set arrangement across all three colleges was wanted. Ultimately we achieved that, and I drafted letters that, in effect, were required to get the management team to confirm that it was not able to enforce the previous arrangements that had been made, but that did not alter Mr Doyle’s position. Mr Doyle already had his position.

Dr Simpson: I just want to be clear. I am still astounded that you did not see the severance letter. You saw the draft settlement agreement. Is that correct?

Paul Brown: Yes.

Dr Simpson: You are clear that the draft settlement agreement followed accurately and in detail every element of the severance letter, which you did not see.

Paul Brown: That was the information. To be fair, I am not aware of the numbers. I did not fill in the numbers, but, as I understand it, yes it did.

Dr Simpson: The terms of what applied to what and what was for what purpose were followed.

Paul Brown: Correct. The terms of what was applied and what was agreed were all contained in the settlement agreement.

Dr Simpson: So if we got the severance letter and the settlement that was made and found a substantial difference between the two, what would you feel about that? We must assume that there is not a difference; you have assumed that there is not.

Paul Brown: I assumed that because, as I understand it, the settlement agreement and the figures and arrangements in it were in line with what was agreed in January for Mr Doyle. I think that the only variance was that he got a payment in lieu of notice because he was required to leave earlier than his notice period.

Dr Simpson: He was no longer getting a payment to see the thing through; he was getting a payment in lieu.

Paul Brown: No—not at all. It was not one or the other. The arrangement existed and his settlement agreement existed regardless. He was not able to work out his notice period. I am paraphrasing but, as I understood it, people did not really want him around at that stage. However, those are very different payments. It is not either/or.

The Convener: I have two final brief questions. You advised us that, as far as you were concerned, you were not responsible for producing minutes of any of the meetings that you attended.

Paul Brown: No—that is not correct. I was not the clerk or the secretary to the board. At no point in time was I required to have that role.

Mr Doyle referred to my having access to the intranet.

The Convener: He said:

“There was only a matter of days for Biggart Baillie to produce a set of draft minutes and circulate it to the remuneration committee. I would not have had any locus in that.”—[*Official Report, Public Audit Committee*, 28 October 2015; c 53.]

He was referring to the meeting on 23 October 2013.

Paul Brown: I am sorry, but who said that?

The Convener: Mr Doyle.

Paul Brown: I do not recall mentioning that there was only a couple of days for draft minutes, but we were there in a capacity. I was there. Was that the board meeting or the remuneration committee meeting?

The Convener: It was the remuneration committee.

Paul Brown: On 23 October, I was there in a capacity to advise the remuneration committee. I was in attendance at the board meeting. I think that Lorraine Gunn was off sick at the time, and John Gray asked whether it would be possible for

DWF to provide someone to take the minutes. My trainee came along and did that.

The Convener: Did the reason why you were called in never occur to you? As far as I am aware, no other colleges have used legal representation in the form that you provided. Did it never occur to you that maybe Mr Doyle was bringing you in for cover?

Paul Brown: Never at all. It is not for me to question why clients call me in.

The Convener: Not at the time—I understand and respect that. However, on reflection now, it does not look as if your advice was absolutely necessary, given that you were already there to provide ad hoc advice. As far as I am aware, all the other colleges in a similar position went about the processes—I do not know whether you advise other colleges—and none of them had to specially appoint a legal practitioner to go through them. Did you not feel that that was a wee bit over the top at some point?

Paul Brown: Not at all. It should be borne in mind that it was Mr Gray who appointed me. The catalyst for that was the letter from the funding council.

The Convener: Everybody received a letter.

Paul Brown: I am not aware of that. All that I know is that a letter from the funding council was received that people were concerned about, and they wished to seek advice on the decisions that they had taken, their legal impact and how binding they were, in effect.

The Convener: You said that the information that you were provided with was provided on a number of occasions by Mr Doyle's PA. Is that correct?

Paul Brown: I do not know about that being on a number of occasions. I cannot be specific about who sent the information. I recall that Mr Doyle's PA tended to act as a PA for Mr Gray as well.

The Convener: Did you have situations in which you said, “Look, I am attending the committee. I need to get some information here”? Who provided you with that information? I take it that it did not just appear.

Paul Brown: It did not. Usually, that information would come through Mr Doyle's PA—or, indeed, Mr Gray's PA.

The Convener: Where did you think that Mr Doyle's PA got the information from?

Paul Brown: I did not know. Mr Gray was the one who was instructing. When I asked for information, I was provided with it.

The Convener: I am not asking you to play detective, but you must have thought, “Who’s giving me this information? Is it as objective as it should be? Should they be providing this information to me?” Some of that information might have been to other people’s advantage. Did that never occur to you?

Paul Brown: When I spoke to Mr Gray, I would check with him what information I had received and discuss it. Overall, I was discussing with the remuneration committee all the information that I had received. It was aware of what I was dealing with.

The Convener: To be fair, I think that you would have known that Mr Gray was not creating the information. That would not be his full-time job; he was the chair of the board. He would be depending on information that was provided to him. Did it not occur to you that Mr Doyle might be providing the information, even though he was not meant to be involved in the process?

Paul Brown: It is not for me to question where I get the information from. I asked for certain information from time to time—

The Convener: What kind of information did you ask for?

Paul Brown: Possibly minutes of earlier meetings, merger meetings and so on.

If I asked for information, I was provided with it, as far as I know. It was not for me to question where it came from. Mr Gray was aware of what information was being provided to me. If I was being misled by others, I would not know that.

It is difficult for lawyers in that they always have to rely on information that is provided by their clients. Mr Doyle was not my client. I was not requesting information from Mr Doyle; I was requesting it from Mr Gray and, subsequently, Mr Keenan.

The Convener: To be fair, though, you were appointed as a result of Mr Doyle saying that he wanted nothing to do with the process—he said that he wanted to put clear blue water between him and the remuneration committee. We have been advised that he perhaps did not need to go about that in the way that he did. He made that statement to you, and you needed to be clear about the fact that he would not be giving you any information, because he wanted to put clear blue water between him and the committee. I am saying that I cannot see how Mr Doyle’s PA would be providing information to you without somehow referring to Mr Doyle.

Paul Brown: I do not know about that. My understanding was that Mr Gray was providing the information. He might have shared the resource of Mr Doyle’s PA, but the important thing is that I was

making a request of Mr Gray and/or the remuneration committee, not Mr Doyle. If Mr Doyle had any influence on the information that was being provided to me, I was certainly not aware of that, and it had nothing to do with me. As far as I am concerned, when I requested information, it was provided to me either orally or in written form by members of the remuneration committee.

The Convener: I thank you both for your time. We will have a short suspension to allow for a changeover of witnesses.

12:13

Meeting suspended.

12:14

On resuming—

The Convener: I welcome our final witnesses today, who are from the Office of the Scottish Charity Regulator. David Robb is the chief executive, and Laura Anderson is the head of the enforcement office.

I understand that Mr Robb would like to make a few opening remarks.

David Robb (Office of the Scottish Charity Regulator): We are grateful for the opportunity to expand on the written evidence that we submitted in support of your inquiry into this very serious matter. Members have had the opportunity to read the submission, so I will just highlight two things by way of introduction.

First, I should perhaps say something about the charity regulator’s role in relation to colleges. We regulate almost 24,000 charities in Scotland and for the majority of those charities we are the principal—and often the only—regulator. However, for some charities on the register we share the regulatory role with others, such as the Scottish Housing Regulator and the Care Inspectorate.

In the case of universities and colleges, we operate alongside the Scottish funding council. In line with the “Scottish Regulators’ Strategic Code of Practice”, we seek to minimise the burden on colleges by trying not to duplicate reporting and monitoring activity. Nonetheless, many colleges have charitable status and, as is recognised in the “Guide for Board Members in the College Sector”, all charity trustees are bound by charity law and are therefore expected to fulfil their duties as trustees and act at all times in the best interests of the charity, protecting its assets and its reputation.

As we said in our written submission, we are concerned that the actions of some trustees of the former Coatbridge College might have fallen short of that standard. We wanted to advise the

committee of the implications of charitable status for the conduct of trustees.

As the regulators who are charged with upholding public trust in charities, we have been following the Public Audit Committee's inquiry extremely closely and we have begun collecting evidence and making inquiries of our own. The information that is emerging—a lot of it has emerged very recently—is forming an important part of our consideration, but we have not yet reached a point at which a decision about enforcement action can be made.

That brings me to my second point. I have given the convener notice of this, through the clerk: in view of the on-going nature of our investigation there might be questions on which we cannot be as fulsome in our answers as we would otherwise want to be. We trust that the committee will understand that.

The Convener: Thank you for your notice in that regard. I am sure that committee members will take the point into consideration when they ask questions.

We have heard evidence, particularly from Mr Gray, who was chair of the former Coatbridge College, that the college could afford to make the severance payments that it made because surplus funds were available in the college accounts. I am not asking you to talk specifically about Coatbridge, but in your experience of dealing with colleges, do you think that many colleges were able to accrue surplus funds as a result of being registered charities?

David Robb: In general terms, I think that that is right. We would not make a distinction between the resources that are generally available to a college to pursue its functions. We would regard the resources as—in the language that we use—assets of the charity.

The Convener: It has been suggested that funds that are raised through commercial activity are not subject to public scrutiny. I am not saying that that is what Mr Gray said, but there seems to be a perception that moneys from such activity are not subject to scrutiny, because they go into a different college fund and people say, "Let's just pay out what we need to pay", whether it is for severance arrangements or whatever. Are you concerned that that seems to be the culture in the college sector?

David Robb: In our view, that would be a dangerous misunderstanding. We would regard the assets of a college to be charitable assets, whatever the subsidiary trading arrangements, and we would expect the trustees to have the same duty of care over assets such as you describe as it would have over other assets.

The Convener: In general terms, on the governance arrangements that should be in place in relation to severance agreements, you will know that the May 2000 guidance from the Scottish funding council sets out principles. Do you see that guidance as the very minimum that would be expected? How can charitable organisations, if they do not meet those expectations or follow the guidance, continue to operate or expect not to be subjected to legal recovery?

David Robb: We would place heavy reliance on that guidance as being what trustees should have uppermost in their minds when making those decisions.

The Convener: Finally, then, without referring to any specifics—let us be general—if an organisation such as the college is provided with clear guidance from the Scottish funding council but does not follow that guidance, is the option available to your organisation to recover funds? Who would the funds be recovered from? Would it be the individuals who have enjoyed the benefits of such funding decisions or the trustees who took the decisions?

David Robb: We have had some difficulty in the past recovering funds in such circumstances. The powers available to us under our legislation are somewhat limited in that respect. We are able to initiate proceedings against trustees where we find that there has been mismanagement or misconduct but, much to our regret, the option to recover funds is sometimes not available to us.

The Convener: Would it be possible for you to recover the funds directly from whoever has benefited from such payments, such as a former employee?

David Robb: I ask Laura Anderson whether there is such a mechanism.

Laura Anderson (Office of the Scottish Charity Regulator): No, not under our legislation.

The Convener: So it is only the trustees—or the former trustees—from whom the funds could be recovered.

Laura Anderson: That is not something that we could initiate under the Charities and Trustee Investment (Scotland) Act 2005.

Mary Scanlon: I appreciate that you are investigating, if that is the right word, the situation. You are certainly taking a keen interest in the information that we have gathered.

Legal advice that was provided to the Scottish funding council highlights

"Payments made over and above basic contractual entitlement"

and

"Insufficient and inadequate paperwork".

We have also heard about the withholding of information. The legal advice continues:

"There may be the potential to raise a claim ... around negligence and omission".

Paragraph 25 of the section 22 report is a summary of all the serious concerns raised by the Auditor General. I am quite surprised, therefore, that when the legal advice talks about

"Enforcement by OSCR against board members",

it says that

"Such action is likely only in exceptional cases where there is considerable financial mismanagement".

It goes on to say:

"Even then, there is little, if no, precedent in this area meaning that any legal action would be a test case which will inevitably mean arguing over unsettled areas of law with a potentially high legal cost"

and that

"legal action may be an expensive empty victory."

That does not paint a very good picture of rigorous enforcement by OSCR. I say that as one of the members of the Parliament who set up Scotland's charity regulator, as a member of the Communities Committee in 2005. I was expecting a bit more.

According to that legal advice, you are dismissed as being almost toothless. These guys can get away with it because you are not very rigorous in your enforcement. Perhaps you could take advantage of being at the committee today to tell us where you have found mismanagement and misconduct in the public sector, and where you have taken the action that we expected you to take when we set up OSCR.

David Robb: The 2005 act gives us some powers; although we would not accept that we are toothless, those powers are limited. The act tends to bear on the actions of trustees, with a view to protecting further risk to charity assets and reputations.

Where we find misconduct, including mismanagement, we can disqualify or suspend a trustee, thus reducing the risk to the assets. However, the powers that the legislation gives us to recover sums are fairly limited. That has been a source of frustration for us and others.

The Parliament's aspirations 10 years ago might not have been fully realised. The jurisdiction is relatively new and we do not have many legal test cases to rely on. In a number of areas of our operation, we find ourselves breaking new legal ground. It may well be that, in the fullness of time, we discover that we want to revisit the powers, as there are some limitations.

Mary Scanlon: Have you ever applied to the Court of Session to retrospectively disqualify the trustees of a charity? Notwithstanding that the charity no longer exists, quite a few of the people who made decisions are now working elsewhere in the public sector. Have you ever taken that action in the 10 years of your existence?

David Robb: Not to my knowledge.

Laura Anderson: We have not done that. It might be helpful if I highlight that that power was not in the Charities and Trustee Investment (Scotland) Act 2005 as passed; it was in an amendment that was made by the Public Services Reform (Scotland) Act 2010. We have not had occasion to use it to date.

Mary Scanlon: Please tell me if I am not allowed to ask this question, as I am not quite sure. Notwithstanding what the committee is doing, what can the Office of the Scottish Charity Regulator do to send out a signal that public funds are simply not there for people to help themselves to with no business case, no justification and no audit trail? You have heard the rest of the evidence. We are doing what we can, but what can you do in this instance to put that message out to Scotland and say that taxpayers' money is being scrutinised? Some people are facing difficult times, and we are doing our best to ensure that people are not walking away with two or three times the amount of money that they should get. We are doing our bit. What can you do in this case to help to send out that message?

David Robb: I think that you have put your finger on the point. That is really what motivated us to send evidence to the committee: we wanted to flag up that, in addition to all the Government's normal expectations around the public sector, an extra level of care is expected because the college was a charity and the members of the board of management were charity trustees. That set a requirement for a higher standard on the part of those individuals. They are expected to exercise a duty of care that is above the normal standard. We want to take opportunities such as this one, as we investigate what can be done, to remind everyone who is a charity trustee of that. We make no distinction between the kinds of charities on the register; the law binds and bears on them all in exactly the same way. We need to send out a clear message—

Mary Scanlon: People such as you and the Public Audit Committee of this Parliament must stand up and say, "This is unacceptable and it must not happen." Audit Scotland has done its bit and we are now doing ours. You are here because you are part of the statutory mechanism for scrutinising the spending of taxpayers' money and the management of charities in Scotland. If these guys walk away, someone else will say, "Look at

Coatbridge College. People tried their best, but nothing happened.”

I ask you finally, because time is getting short, what you will do to get the strong message out there that people cannot behave like this. What can you do?

David Robb: This is exactly what we are looking at—

Mary Scanlon: Yes, but I am just asking what powers you have. If you find exactly the same things that we are finding and that the Auditor General has found, what is the maximum that you can do to get the message out there that such behaviour and conduct are unacceptable?

David Robb: If Laura Anderson answers the specific question, I may make a more general comment.

12:30

Laura Anderson: If we conclude that there has been misconduct in the running of the charity—as it was then—the only power that is available to us is one that we highlighted in our submission, which is the power to apply to the Court of Session to have those individuals treated as though they have been disqualified as charity trustees. That would have the practical effect of disallowing them from being trustees of any other charity. That is the only power that we have in this situation.

Mary Scanlon: Have you used that power?

Laura Anderson: No, we have not.

Mary Scanlon: Would you be willing to use that power, should the case justify it?

Laura Anderson: If we conclude, after having heard all the evidence, that there is a case of misconduct to answer, we would be prepared to use that power and to apply to the court.

Tavish Scott: I have two questions. First, what is the principal financial advantage to a college of being a charity?

David Robb: There are advantages in relation to rates relief and, possibly, to access to some forms of funding.

Tavish Scott: So, removal of an institution's charitable status means that there would be a financial cost to that institution and that it would have to find funds in other ways.

David Robb: In broad terms, yes.

Tavish Scott: Secondly, could you say for the record who the trustees of Coatbridge College were in 2013?

Laura Anderson: The trustees would have been the entire board of management of the

college. I do not have their names to hand, but the last annual report explains that the board of management was the governing body. We would consider all the board to be the charity's trustees.

Tavish Scott: Were there executive directors on that board as well as non-executive directors?

David Robb: The board certainly included the principal.

Laura Anderson: Yes.

Colin Beattie: This may be a point of semantics, but can you confirm that you are currently pursuing an investigation into Coatbridge College?

Laura Anderson: We are in the process of making inquiries. The evidence that the committee has heard and will hear next week will form part of those inquiries.

Colin Beattie: Are you just gathering information in the lead-up to an investigation, or is a formal investigation in place?

Laura Anderson: Gathering of information is an active part of the investigative process. That is the situation that we are in at the moment.

David Robb: The powers that are available to us retrospectively are slightly more limited than they would be for an existing charity. However, we are actively pursuing the concerns.

Colin Beattie: How long do you anticipate the investigative process taking?

Laura Anderson: That rather depends on how much more evidence is heard by the committee and how much more evidence becomes available to us. At the moment I am not able to say exactly how long the process will take.

Colin Beattie: How many people work in enforcement in OSCR?

Laura Anderson: About 11 people work in enforcement.

Colin Beattie: How many prosecutions or effective actions have you taken since 2005?

Laura Anderson: Do you mean actions of our own making or actions in which we have applied to the Court of Session?

Colin Beattie: I mean both.

Laura Anderson: I can recall two specific actions at the Court of Session.

Colin Beattie: Were those successful?

Laura Anderson: Yes. I cannot recall an exact figure in relation to powers that we have used of our own volition. I can provide that information to the committee at a later date.

Colin Beattie: I am just curious to see the depth of experience and history.

Laura Anderson: Of course.

Dr Simpson: I am interested to know—not on Coatbridge College specifically because you are carrying out an investigation—whether a business plan would be a critical factor in determining whether trustees have acted responsibly? In other words, would you expect to see a very detailed business plan, when the situation would lead to the provision of moneys to one of the trustees? Would you expect the plan for a charity to be more detailed than for a company or another public sector body that was not a charity? Is there any additional requirement for a charity?

Laura Anderson: I would certainly expect to see a very detailed business case—particularly when amounts of the magnitude that we are talking about are being discussed—because charity trustees have a legal duty to act with appropriate care and diligence: a high-threshold duty of care is placed on them.

Dr Simpson: Would the duty of care be even higher because payment was going to one of the trustees—the principal?

Laura Anderson: In terms of the care and diligence that trustees need to exercise, that situation would have dictated that there be a very high duty of care, that particular care should therefore be taken over the business case and that prudence be exercised when making the decision.

Dr Simpson: We have had some discussions about, for example, university principals receiving significant rewards. I presume that they, too, are trustees. Have you had similar cases anywhere else in the public sector, in which you have had to scrutinise business cases, been asked to scrutinise them, or have had to intervene to say that you want to look at a business case?

Laura Anderson: No—we have not had something that is comparable to the situation that we are dealing with here.

Dr Simpson: That is not quite the answer I am looking for. Has it happened? Are there any other public sector bodies where you know that there has been a severance, or where the charity is going to be dissolved and people are leaving, or trustees are leaving and they have been rewarded from the funds in that institution?

David Robb: There is a public body that springs to mind. It was not a university—to my knowledge, we have not had to look at any such situations—but a regeneration agency, where a departing senior official, who was perhaps not a trustee—

Laura Anderson: The official was not a trustee.

David Robb: There was an enhanced severance package there, which we investigated and found misconduct. I do not recall whether a business case was part of our investigations or not.

Laura Anderson: I cannot recall, either. It was some time ago.

Dr Simpson: Let me phrase my final question like this. If a trustee is receiving a severance payment from a charity, is it required that that be reported to you? If not, should it be?

Laura Anderson: Such a payment's being reported would be required in the course of the normal monitoring arrangements that we have.

Dr Simpson: So, you would get that in a body's end-of-year or annual report.

Laura Anderson: We would. However, the Coatbridge College case was a winding-up situation, so the monitoring information that would have highlighted that payment did not come to us because the body had, essentially, been removed from the Scottish charities register by that time.

Dr Simpson: Is that a flaw? Even if I am the trustee of a charity and we are winding up, we should still have to produce the final report, should we not? Are you saying that when a charity is dissolved, the trustees could misbehave as much as they liked in its final year and could get away with it, unless Audit Scotland or this committee happened to find out by chance?

Laura Anderson: There are duties on the auditors of charities under section 46 of the Charities and Trustee Investment (Scotland) Act 2005 that require them to report to us where there are matters of concern or matters that may be considered to be materially significant for the exercise of OSCR's functions. That is a duty on all auditors and on independent examiners of all charities.

Dr Simpson: But we know—or we are being told—that the severance payments that were made by the remuneration committee were entirely intra vires, and that an auditor would therefore not necessarily report that unless the Auditor General found that the process was wrong. If the decision was valid—even if there was a massive payment that got rid of the final funds—it would not be reported to you.

I hope that you see where I am coming from. I am trying to understand whether you are being reported to appropriately on severance payments to trustees.

Laura Anderson: The winding-up situation that we are talking about was not normal because the body was entering a merger with other bodies, so we had a proportionate information requirement of

that charity. It would not necessarily be the same if we were dealing with a body that was simply being removed from the register and we had more questions about how its charitable assets would be used and moved. In this case, we were told that the charitable assets were being moved to another charity—New College Lanarkshire.

David Robb: There are powers in the 2005 act to examine charities retrospectively. When a charity has come off the register, we have a duty of care to look back and ensure that things have been wound up appropriately and that charitable assets have not disappeared. As Laura Anderson explained, that is not exactly what happened with the college, but we do have some ability to examine matters retrospectively.

We are working on a toughening-up on notifiable events that we expect charities to bring to us, so we can certainly consider enhanced severance payments.

Dr Simpson: That is welcome. I will be interested to see the draft of that.

Nigel Don: Paul Brown observed that he felt that what the remuneration committee had come up with was not ultra vires but was, therefore, intra vires. I presume that he was thinking as widely as he could. It seems to me that he was talking in the context of funding council rules. As you heard him say that, did it concern you that he was perhaps not thinking about charities?

Laura Anderson: I hesitate to comment on what Mr Brown was thinking at that stage. It might be helpful to the committee for me to say that although it might have been within the remuneration committee's powers to make the payment, I expect all charity trustees to think hard about whether such payments would be actively in the charity's interests, because that is one of their duties under charity law.

Nigel Don: In that context, can you suggest any reason why an enhanced payment might be in a charity's interests?

Laura Anderson: In the situation that we have in front of us, evidence is still being presented. Some of the evidence that the committee has heard today conflicts somewhat with that from witnesses whom the committee heard earlier today and previous evidence. Some of it is rather confusing. At this stage, I am not clear as to exactly what case could legitimately have been made for the payment.

Nigel Don: I agree with that, but I am trying to stand back from the particular case—although that is what we are addressing—to consider the generality. I am still struggling to find anybody who can tell me why an enhanced payment might be reasonable anyway, and even if somebody could

give me such a reason, I wonder whether it could be the case for a charity. From your experience and—for the sake of its legalities—ignoring the case that we are discussing, are you able to give me any reason why an enhanced payment might be appropriate in a charity?

Laura Anderson: The only reason that I could venture is that it might be thought that it would be, because of a personality clash for example, detrimental to the body for an individual to stay in post; it might be in the charity's best interests for that individual to be removed from the organisation earlier rather than later. That is the only circumstance that I could possibly offer, but I cannot say whether it would be appropriate in the situation that we are discussing.

Nigel Don: I am not asking for comment on the individual case. However, in the example that you describe, how much somebody was being paid in lieu of notice might be relevant in calculations. If somebody was to be paid quite a lot in lieu of notice, it might be difficult to justify. Is that fair?

Laura Anderson: I would not disagree with that.

Stuart McMillan: Are there additional powers that would be useful for OSCR in dealing with situations along the lines of the one at Coatbridge College, or which would have been useful in previous examples that you have managed to address but not in the way that you wanted to do?

David Robb: I am tempted to ask, "How long have you got?"

The Convener: About 30 seconds.

David Robb: We regularly push up against the frontiers of what is possible and we are in regular dialogue with our policy colleagues in the Scottish Government about tweaking parts of the 2005 act that might not work properly or about introducing entirely new powers. One measure that we considered in the wake of the example that I gave about enhanced severance payments was whether it might be possible for us to have, in certain circumstances, a positive power of direction. At the moment, we have powers to direct charities and their trustees not to do things. Perhaps we might, in some limited circumstances, have a positive power to direct repayment of money, for example. We are not sure how that would be achieved legally, but we have been pursuing it.

12:45

The Convener: I thank the witnesses for their contribution.

Before we move into private session, I draw members' attention to the last page of the letter of

12 November from the funding council in response to the points that were raised at our evidence-taking session on 28 October. Colleagues will recall that, during that meeting, we asked for details of all college voluntary severance schemes that exceeded the SFC guidance, for details of the number of individual payments that exceeded that guidance and for the business cases that were provided for each of those voluntary severance packages.

I find the response unacceptable. I remind Mr Howells for the record that when we seek specific information—I requested it specifically and he agreed to provide it during the public evidence-taking session—we expect it to be provided to the committee. We require information on the severance arrangements for all the principals who were part of such arrangements as a result of the college mergers. At the same time, the business cases for the arrangements that were made for each of those individuals should be provided. That information should also be provided in the format that the Auditor General used for Coatbridge College, which confirmed the sources of funding that funded those packages. I also expect that information to be provided within days, not weeks, because it is in response to a request on 28 October.

I also remind the funding council that if it fails to provide the information—it is basic information that should be provided for the public record—we might ask it to report back to the committee in person on why it cannot provide that further evidence. It is important that the committee be given an opportunity to scrutinise properly all the information that has been put to it as a result of the section 22 report. For the committee to do that properly, the SFC needs to take seriously the requests that are made to it.

If colleagues do not want to add to that, do they agree with that way forward?

Members *indicated agreement.*

The Convener: I clarify for the record that we have the unanimous support of members present that we seek that information and that it be provided within days. I will report back to the committee or, I hope, we will receive it and there will be no requirement for me to report back.

We move to item 3, which we agreed to take in private.

12:47

Meeting continued in private until 13:12.

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