The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 25 November 2015

Session 4

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PUBLIC AUDIT COMMITTEE
19th 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:

Angela Constance (Cabinet Secretary for Education and Lifelong Learning)
John Doyle (Former Principal and Chief Executive, Coatbridge College)
Caroline Gardner (Auditor General for Scotland)
John Gray (Former Board Chair, Coatbridge College)
Aileen McKechnie (Scottish Government)
Gordon Smail (Audit Scotland)
Mark Taylor (Audit Scotland)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Audit Committee

Wednesday 25 November 2015

[The Convener opened the meeting at 09:03]

Decision on Taking Business in Private

The Convener (Paul Martin): I welcome members of the press and public to the 19th meeting of the Public Audit Committee in 2015. I ask everyone to ensure that electronic devices are switched to flight mode so that they do not affect the committee's work.

Item 1 is a decision on taking items 5, 6 and 7 in private. Do members agree to take those items in private?

Members *indicated agreement.*

Section 22 Reports

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

The Convener: Item 2 is oral evidence on the Auditor General for Scotland's report, "The 2013/14 audit of Coatbridge College: Governance of severance arrangements".

Before we begin, I want to say a few words about the email that we received late last week from the Scottish Further and Higher Education Funding Council, which forwarded a copy of the Linkston report. I know that colleagues share my frustration that the report has only now been shared with us by the funding council, particularly as the council was in discussion with the cabinet secretary in July this year about its relevance to the governance issues at Coatbridge College. I appreciate that there might have been sensitive issues around the report, but nevertheless, in my view and the committee's view, it would have been of assistance to the committee had the report been provided to us much earlier in our work.

The funding council also wrote separately last week with information that relates to principals' severance arrangements. The council has undertaken to get the missing information to the committee by 7 December and advised that it did not see business cases because it relied on the audit process. I think that the committee will agree that it is imperative that we receive all the information and relevant documents that have been requested before we move on with our deliberations on our draft report.

I welcome our first panel of witnesses. John Doyle is the former principal and chief executive of Coatbridge College, and John Gray is the former board chair of Coatbridge College. I understand that Mr Gray wants to make a brief opening statement.

John Gray (Former Board Chair, Coatbridge College): Thank you, convener, and good morning ladies and gentlemen.

The last time I was here I talked about setting this inquiry in the context of the college merger process. The merger policy was instigated by the Scottish Government, and once the groupings of colleges that were to be merged had been finalised, very little direction was given as to how the process should be managed. College groupings were left to get on with the process in the best way they could.

In Lanarkshire, the proposal started out being for a federation structure. It then changed to a merger proposal, and in the middle of that Cumbernauld College and Motherwell College agreed a merger without involving Coatbridge College or South Lanarkshire College. Coatbridge eventually capitulated and was, in effect, taken over. South Lanarkshire College, as I understand it, is still not an integrated part of New College Lanarkshire.

As the process evolved, many discussions took place on process and rule setting, particularly with regard to severance payment arrangements for the many staff who were clearly going to lose their jobs through no fault of their own. The board policy from the start was to try to ensure that Coatbridge College staff were fairly treated and given proper job opportunities in the new structure, and that there was a realistic severance scheme for those who would be forced to leave.

As far as I am concerned, the severance arrangements when I left are clearly described in the remuneration committee and board minutes of 23 October 2013. At no time was any suggestion made by anyone that the payment to John Doyle, in particular, was excessive or should be stopped or reconsidered.

In short, the important points for me are that, at the end of the day, all staff in Lanarkshire colleges who lost their jobs were to receive the same compensation. There was no proposal for any enhanced payment to senior managers. There was only one scheme.

For the principal, the contractual entitlement to six months' pay in lieu of notice is a contractual matter and is totally separate from any severance pay agreement. There was no payment made regarding his pension.

The funding council made it clear that it would fund only up to the guideline amount and that if the board wanted to exceed that amount that would be its responsibility, and the college would have to fund any balance that was required. That was understood by the whole board and was agreed without question at the meeting.

I want to clarify one or two other wee points. John Doyle never asked me for a severance package, either verbally or in writing. I served as chairman of the board for almost 12 years without remuneration. I was not entitled to any severance payment and nor did I receive any—contrary to some reports.

The funding council confirmed that other colleges had made severance payments in excess of the guideline amount. Did their auditors comment on that, and will those colleges be subjected to the same audit process to which we have been subjected? I leave those questions with the committee.

In conclusion, I believe that there was on my part no failure of governance at Coatbridge College. The Auditor General for Scotland clearly did not examine the situation in sufficient detail before commenting in her report; she clearly did not see all the relevant documents and, in particular, she made no approach either to John Doyle or to me for explanation or clarification. The Auditor General's comments have no foundation in fact. Her conclusions are entirely her own: they were insulting and damaging and should now be retracted. If they will not be, I would like to know the reason why.

The Convener: Mr Doyle, I will open the questioning. Can you clarify for the record that you were the accountable officer for Coatbridge College?

John Doyle (Former Principal and Chief Executive, Coatbridge College): That is correct.

The Convener: For how long were you the accountable officer?

John Doyle: That was for the period for which I was in post—from November 2004 until I left on 31 October 2013.

The Convener: Is it correct that the responsibilities of the accountable officer are set out in the Scottish funding council's guidance of 2000?

John Doyle: I understand that they are.

The Convener: I take it that that is a document that, as accountable officer, you would have been familiar with. Is that correct?

John Doyle: I made myself aware of the document at the time through the clerk to the board. She sent me a copy—as she did for everyone else on the remuneration committee—and it was put on the board's intranet. I read it at that point.

The Convener: You made yourself aware of it, so can I refer you to paragraph 18 of the document? Part of it states:

> "The college's Accounting Officer has a personal responsibility to notify the Council's Chief Executive if they consider that the college or the Board of Management plan a course of action that is in conflict with, or would infringe, guidance or instruction that has been issued to the college or appropriate best practice. This is particularly important if controversial or novel action is being contemplated in any severance package."

That paragraph makes it clear that because the college was proposing to go beyond the principles of the 13-months severance package, you—as the accountable officer—had a personal responsibility to provide that information to the SFC. Is that correct?

John Doyle: Can I just confirm that everyone here has a copy of the submission that I sent in?

The Convener: We have the submission.

John Doyle: I am going to address that, because I hope that in my submission on Monday I cover part of that. I will expand on that, if I may, convener.

The morning after the remuneration committee meeting—which was on 28 January 2013, if memory serves me right—Mr Gray came to the college and had a meeting with me about that committee and, in particular, the conversation about my proposed severance agreement. I had read the documentation and we had a long conversation about the decision-making process by the remuneration committee, and the rationale behind the decision that it had made. As I said in my statement, I went over every aspect of it in relation to suitability, affordability and the rationale. I thought that I had made that clear in my submission. However, I am happy to expand on it.

I was very aware of the SFC guidance. I wanted to make sure that I was engaged with the remuneration committee, in the context that the guidance provided—if there was something different from that guidance. The explanation that I received from the chair of the board, who had met the remuneration committee, was—

The Convener: Can I just clarify the question that I asked you? I will allow you to come back later to the information that you have provided, but please answer the question that I put to you.

It is very clear that the proposal was to go beyond the 13-months severance package that was recommended by the SFC. Within paragraph 18 of the guidance it is made clear that you had personal responsibility because you were going beyond the recommended 13 months. I cannot find any legislation that says that you could decide at any point during that process that you were no longer the accountable officer. It is very clear that you had legal responsibility, as the accountable officer for the organisation, to advise the SFC that the board was proposing to go beyond the terms that the SFC recommended. Why did you not advise the SFC of that?

John Doyle: On the basis that—

The Convener: You are not being straight with us, Mr Doyle. That is one of the reasons why you are back in front of the committee. You are creating a smokescreen and sending us down all sorts of different pathways. It is a very clear question. Why, as the accountable officer, did you not provide that information to the SFC?

John Doyle: Well—

The Convener: And why did you not also provide it to the external and internal auditors? The SFC guidance document makes it very clear. I expected you not just to be aware of the document, but to know in detail that that was your responsibility as an accountable officer.

John Doyle: I take exception to the idea that I have in some way laid a smokescreen.

The Convener: I think that you have.

09:15

John Doyle: Let me answer the question—if I may, please—directly. I was advised by the chair of the board and the remuneration committee the next day that he had, in accordance with the guidance, spoken to Mark Batho, the then chief executive of the funding council, and advised him of the remuneration committee's decision. It was quite clear to Mark Batho that the remuneration committee, or the board, was going down a path that was in excess of the 13-months guideline. I was made aware of that the very next morning. I had a long conversation with the chair of the board on those aspects, and I was satisfied that the funding council, at chief executive level, was well aware of the detail, because the chair, as per the guidelines, had spoken to the chief executive about it.

The Convener: I refer to paragraph 19 of the SFC's guidance, which says:

> "It is not acceptable for the Accounting Officer"—

you—

> "to abstain from their personal responsibilities by contending that they are not part of the Remuneration Committee or form any part of the decision process. As the intended beneficiary of the severance package, the Accounting Officer will, at some stage, be made aware of the settlement and he/she must then advise the committee on the appropriateness of their intended action."

That makes it very clear that, after the decision is taken by the remuneration committee, you should give advice to the committee on the appropriateness of the action that it has taken. Should not you have advised the committee then that it was going beyond the terms of the guidelines, and that you would have to report that to the funding council? It was not the responsibility of the board chair to do that; it was your personal responsibility. You were paid £116,000 per annum to be the accountable officer—a significant responsibility—for the college. Why not take that seriously?

John Doyle: I take it very seriously. That is why I explained in my written submission—but let me explain again—that I had, before I signed any agreement, a long conversation with the chair of the board, in which we went over all the aspects appertaining to the decision-making process and, in particular, the rationale and affordability of a severance package that was in excess of the guidelines.

Only when I was satisfied—as I have written—that the remuneration committee had covered all the facts, that it had a business rationale for its decision making, that it had looked at the costs and the reserves and that the package was affordable—the chair of the college's finance committee was in attendance—was I also satisfied that I had met, at that stage, all the requirements of the guidance. It was in no way a situation in which I was trying to hide anything. John Gray and I had a long conversation. Only when I was satisfied that everything had been discussed and had been realised by the remuneration committee's members, and they had made a unanimous decision, did I say, "That's fine. I am now satisfied."

The Convener: What is very clear from the SFC guidance is that you had personal responsibility. You were the accountable officer. The committee, the board and the federation were not accountable. That accountability is what you were paid for, but you did not carry that through by ensuring that the funding council was aware that your board—and you were the accountable officer for—

John Doyle: I am sorry, convener.

I had just been briefed by the chair of the board that he had had a long conversation with the chief executive—

The Convener: How long?

John Doyle: I was satisfied that the funding council was aware at the highest level—

The Convener: It was pretty convenient, though, was it not?

John Doyle: I would not say that it was "convenient".

The Convener: It was very convenient for you personally, was it not, not to have to advise the funding council that your board was going beyond the 13 months mentioned in the guidance?

John Doyle: The guidance is quite clear—

The Convener: It is clear—absolutely.

John Doyle: The chair of the board followed the guidance in contacting Mark Batho, the chief executive—

The Convener: I am not referring to that guidance. I am referring to the SFC guidance that refers to you—I will speak to Mr Gray later—as having the accountable officer's role. You had personal responsibility for that, not Mr Gray.

John Doyle: I considered that responsibility to have been met when I was briefed by the chair of the board that he had had that conversation and that the funding council was well aware of what the board proposed.

The Convener: Finally, I move to your evidence to us on 28 October, in which you referred to the "federation action plan". You advised us that that was the terms by which the severance package was agreed.

John Doyle: I am not sure what you mean.

The Convener: You will see in the *Official Report* of our meeting that you referred to your terms being set out in the "federation action plan". Is that correct?

John Doyle: I am sorry, convener; I do not mean to be obtuse, but my terms of what?

The Convener: I am referring to the action plan for Lanarkshire. If you read the *Official Report*, you will see that you referred to the federation action plan at columns 41 and 44.

John Doyle: Do you mean in the context of severance packages for the federation?

The Convener: Yes.

John Doyle: Absolutely.

The Convener: So that document was agreed by everyone in the federation.

John Doyle: From memory, I am sure that I advised you a couple of weeks ago that, in November 2012, South Lanarkshire College proposed a voluntary severance scheme, which was based on the Edinburgh model.

The Convener: So, to clarify, that was a proposal.

John Doyle: Absolutely.

The Convener: To refresh your memory, you referred to

"a federation action plan—a scheme for all staff in all four Lanarkshire colleges—and ... it was the intention of my board for that plan to be made available to all staff".—[*Official Report*, *Public Audit Committee*, 28 October 2015; c 41.]

John Doyle: Yes.

The Convener: So that is the scheme that you eventually took advantage of. Is that correct?

John Doyle: To finish answering your question, once South Lanarkshire College had presented a proposal to the principals forum of the federation, it was—as you correctly said—then given to the federation board, which consisted of the chairs and principals of the four colleges. The board had not had an action plan and, quite rightly, the funding council was asking us to progress the federation along more productive lines. The action plan that was tabled before the federation contained many things, including the severance package that South Lanarkshire College proposed. Coatbridge College intended to embrace that package for all the staff in Coatbridge.

The Convener: Were you the person who proposed the action plan?

John Doyle: No, I did not propose any action plan.

The Convener: New College Lanarkshire advised us that no such plan existed and referred to a

"document prepared by Mr Doyle in 2012".

I understand that New College Lanarkshire will provide us with further information, but it advised us that the action plan was prepared by you and that you circulated it to other Lanarkshire principals.

John Doyle: That is not technically accurate.

The Convener: Well, tell us what happened.

John Doyle: I am happy to do so, convener. What happened was that all the chairs and principals were at a meeting with the funding council, the Scottish Government representative and Linda McTavish. John Kemp of the funding council advised and cautioned the federation board that there was not enough satisfactory progress on achievements by the federation. It was suggested that we required some sort of action plan. Coatbridge College agreed to produce a draft of that action plan, which contained all the actions for all four colleges and for the funding council if appropriate. Coatbridge produced a draft.

The Convener: When you say Coatbridge, you mean you.

John Doyle: I mean John Gray, me and the executive team.

The Convener: It says here that you were the author of that report.

John Doyle: I was not.

The Convener: Was the author John Gray?

John Doyle: No, that is not what I said.

The Convener: Who prepared the document?

John Doyle: The college management team and I did.

The Convener: So it was the management team.

John Doyle: When you are producing something for other colleges—

The Convener: Did that document refer to severance arrangements?

John Doyle: It included a number of things, including severance arrangements.

The Convener: How helpful do you think it was that you were the author of your own severance arrangements? Was that appropriate?

John Doyle: I am sorry, but I was not the author of my own severance arrangements.

The Convener: That is what you said that the action plan referred to.

John Doyle: The action plan contained many things, convener.

The Convener: It also contained the severance arrangements.

John Doyle: Those were proposed by South Lanarkshire College.

The Convener: That is what I am saying. You were the author of a report—

John Doyle: No, that is not true.

The Convener: That is what New Lanarkshire College says. Are you saying that it is lying?

John Doyle: I did not suggest that. Let me clarify quite clearly. There were four colleges in a federation and the funding council advised us that we were not making satisfactory progress and that it was looking for a SMART action plan that would take the federation—which would bring together four individual colleges—towards seeing some collective benefit. There had not been satisfactory progress, according to the funding council, and it was agreed that we required an action plan.

John Gray and I said that Coatbridge would produce a draft. Any of the other colleges could have produced a draft. There were many things in that action plan. One of them was a severance agreement that was raised by South Lanarkshire College. I did not raise it; I did not recommend it to the federation. We simply included it in the action plan. The action plan then went back as a plan some time in December 2012 or January 2013.

The Convener: Was it ever agreed—yes or no?

John Doyle: I cannot remember, to be honest. It was presented—

The Convener: The way that you presented it to us was that you agreed on the deal because it was the federation model, which your severance arrangements were based on, but that was never formally agreed.

John Doyle: I am sorry, convener—you are talking to the wrong person. I did not produce the severance package for myself at all. I had no insight into what was being discussed—

The Convener: You said in your evidence to us on 28 October 2015 that you took advantage of that particular—

John Doyle: I did not say that I took advantage—

The Convener: You said that that was the basis on which you agreed your severance package. Representations were made on your behalf and the agreement was that you would take that package. There were two severance packages—that was one of them, and you took advantage of that one.

John Doyle: What was the other one?

The Convener: You said that there were two severance packages.

John Doyle: No, I did not.

The Convener: I think that I saw that in the *Official Report* of our 28 October meeting.

John Doyle: I am sorry—I did not say that there were two severance packages.

The Convener: You did. You said that there were two severance packages on the go and that was why you had to—

John Doyle: No, I am sorry—I did not say that there were two severance packages on the go. What is the other severance package that was on the go, as you say?

The Convener: You referred to the packages in the *Official Report*.

John Doyle: I have no recollection of another severance package apart from the Edinburgh model.

The Convener: You said that DWF Biggart Baillie had to be brought in because there were two packages. Two proposals were on the table and that is why Biggart Baillie had to be brought in to advise the board—

John Doyle: Oh—sorry. You are talking about what happened eight or nine months later, not about what happened in January—

The Convener: Yes, I am—absolutely.

John Doyle: Forgive me—you did not say that. Nine months later, in September 2013, New College Lanarkshire decided to go down another route, which it was perfectly entitled to do. I was not aware that it was going down another route until the information was published. I thought that I had made that very clear.

On 28 January 2013, eight months before that, only one package was being discussed by the four principals and that was the package that South Lanarkshire College proposed. I had no input into its design or its development or indeed into the proposal. It was not until September 2013 that there were two packages. One was the federation package, which was lying there.

The Convener: That is the one that you took advantage of.

John Doyle: I am sorry, convener—I did not take advantage of anything. I did not propose my severance. I did not propose any aspect of my severance package.

The Convener: That was the severance package that you benefited from in the end.

John Doyle: I would have benefited from it, but I did not propose it.

The Convener: I appreciate that but, in the end, the decision was to agree to the package based on that model. Is that correct?

John Doyle: I presume that it was based on that model. That is what the chair has said.

Mary Scanlon (Highlands and Islands) (Con): Mr Gray, did I hear correctly that you said in your opening statement that John Doyle never asked for a severance package?

John Gray: That is correct.

Mary Scanlon: Did you never discuss a severance package with John Doyle prior to the remuneration committee deliberations on 28 January 2013?

John Gray: No.

Mary Scanlon: You never discussed it.

John Gray: No.

Mary Scanlon: I have a letter here—the information is coming in by the hour. The letter was from you to the members of the remuneration committee. In regard to John Doyle, you stated:

> "having talked to John at some length, it is now clear that John's position in Lanarkshire is becoming ever more difficult ... we should now agree a severance package with him on"

that basis. In the letter, you proposed a pay increase of 6 per cent and you said:

> "I am ... happy to recommend ... an arrangement based on 2 years gross salary which I would certainly not consider unreasonable".

You went on to say:

> "I believe that this ... will allow the Board, staff and students to celebrate John's worth and success and would allow him to go out on a high without being 'picked over'".

You sent that letter to six members of the remuneration committee. We have the evidence here, so I thought that I was hearing things when you said that John Doyle had never asked for a severance package and that it had not been discussed. You openly admitted in that letter, in asking for the remuneration committee to agree to have a meeting about the issue, that you had

"talked to John at some length".

John Doyle: But not about the severance package.

John Gray: But not about the severance package. It is absolutely not in that letter.

Mary Scanlon: You talked to John—

09:30

John Gray: We talked to John Doyle about him leaving the college in the circumstances that were on the table. It was my duty to talk to him about his future with the college, which is exactly what that letter said—I talked to him about his future.

Mary Scanlon: The letter to the remuneration committee states that

"John ... now believes that the best way forward for all concerned, and, bearing in mind that there will only be one Principal's job ... that we should now agree a severance package with him".

So you are adamant, despite everything that you said in that letter, that you never ever discussed a severance package with John Doyle.

John Gray: That is correct.

Mary Scanlon: With whom did you discuss the 6 per cent pay increase and the two years' gross salary? There was also a pension figure of £90,000, which in hindsight you decided not to pay. Did you just come up with all that on your own?

John Gray: We discussed it with the remuneration committee, which was always—

Mary Scanlon: Your letter to the remuneration committee asked for a meeting, and you even gave your home phone number. You stated in it:

"If you are happy with the proposal that we offer John voluntary severance as outlined above ... I will of course ask Lorraine to convene a Remuneration Committee meeting".

That was the meeting on 28 January 2013. The letter is your invitation to the meeting that resulted in John Doyle getting £304,000, which is well over what the SFC's guidance recommended. Your letter to the remuneration committee asked its members to come to a meeting, and you put in the letter the exact terms, with no mention of SFC or any other guidance.

John Gray: SFC guidance was available to all members of the remuneration committee and all members of the board.

Mary Scanlon: You never told them that.

John Gray: They did not do their homework as people should do.

Mary Scanlon: You were the chairman. You wrote a lengthy letter to the remuneration committee. Why did you not mention the SFC guidance? You said in the letter that you had

"looked at the Edinburgh model".

Why did you not mention that your offer was well over twice what the SFC's guidance recommended?

We also have a letter from six members of the remuneration committee. I am happy to read out their names, but I think that you are familiar with them. The letter states:

"At the 28th January 2013 Remuneration Committee Meeting the SFC Guidance ... was not given to us at the meeting nor were we signposted to it ... during or after the meeting."

There was no mention of SFC guidance in the notes of the meeting; there is no mention of consideration of SFC guidance in any notes. In my view, you misled the remuneration committee. Its members did not know anything about the guidance. They thought that when they were signing up to "celebrate John's worth", as your letter said, and letting him

"go out on a high",

they were signing up to something that was statutorily acceptable and accurate. Is that correct?

John Gray: The remuneration committee members did not read the papers that were prepared for that meeting, then. Those papers were circulated to them on the intranet; that is what we did with our board papers and committee papers—that information was in circulation. They did not read what was in front of them. They were provided with that information.

Mary Scanlon: They were not provided with it.

John Gray: It was on their laptops.

Mary Scanlon: Six members of the remuneration committee wrote to us on 24 November 2015 and told us that they were not provided with that information—they cannot all be wrong. One might have had a wee memory lapse, but they cannot all be wrong.

John Gray: The information was in the papers that were circulated.

Mary Scanlon: But you have—

John Gray: It was in the papers that were circulated to them before the meeting.

Mary Scanlon: It was not in the papers that were circulated.

John Gray: The papers that were circulated for the meeting were on the board intranet; that is how we circulated papers. We did not provide piles of copies. It was all on their laptops.

Mary Scanlon: In their letter, the six members said, “nor were we signposted”.

John Gray: Okay, that is—

Mary Scanlon: So they are all—

John Doyle: Mrs Scanlon, if I may—

Mary Scanlon: I am asking John Gray.

John Doyle: Of course.

Mary Scanlon: I will give you a chance in a minute.

They cannot all be wrong, Mr Gray. Are they all lying? Did they all come along here and lie to us?

John Gray: No, I do not think that they did. I think that what—

Mary Scanlon: Well, somebody is wrong. Is it the remuneration committee? None of them were signposted; none of them knew anything about the SFC guidance, which would have been far less generous to Mr Doyle than your recommendation, but you said that they did. Someone is wrong. Is it the six members of the remuneration committee or is it you?

John Gray: You can blame me for perhaps chairing a poor meeting, but the members of the committee had the papers in front of them.

Mary Scanlon: But I can also blame you—

John Gray: If they chose not to read the papers, that is their business.

Mary Scanlon: You came up with a 6 per cent pay increase and two years’ salary, which is even more than any Edinburgh model. How did you come up with that very generous severance package for John Doyle? Who did you discuss that with, if it was not John Doyle—despite your talking to him at length? What did you talk to him about, when his position in Lanarkshire was becoming more difficult, if not his severance package? Your letter to the remuneration committee was all about his severance package.

John Gray: I talked to John Doyle about lots of things about the business of the college.

Mary Scanlon: Why then did you say in your opening statement in your letter that you had

“talked to John at some length”

and go on to recommend the severance package?

John Gray: As you have heard many times, the severance package information was based on the Edinburgh model as we understood it at that stage—that is, what people in Edinburgh had been offered and had received. That model had also been tabled by South Lanarkshire College as a proposal for what should happen in the four Lanarkshire colleges.

We were talking and meeting about John Doyle’s severance package at that point. We—you could say erroneously, if you like—thought that the Edinburgh model would prevail, and the board and the remuneration committee were happy to give John Doyle that offer. He did not concoct that offer himself in any way.

If I got information, it would have been not off the top of my head but from the human resources director, who was familiar with the sort of severance schemes that were around and were talked about at the time.

Mary Scanlon: In the same letter, which was all about a severance package, you started by saying that you had

“talked to John at some length”.

We will leave it there. We have the evidence and it will be for our report and for others to look over.

Did you say to the remuneration committee that the SFC had any objections to what was being proposed, or did you say that the SFC had no objections? What did you tell the committee?

John Gray: What I discussed with Mark Batho was—

Mary Scanlon: No, I am asking what you discussed with the remuneration committee. What did you tell its members in relation to the SFC guidance, which you knew about and they did not? Did you tell them that the SFC had no objections to your generous offer to John Doyle “to celebrate John’s worth”?

John Gray: What we talked about was my discussion with Mark Batho, which made it clear that, if we wished to pay more than the guideline, we were responsible for the additional cost ourselves in the college.

Mary Scanlon: Did Mark Batho say that it was fine to give John Doyle a 6 per cent pay rise and that it was fine to pay 21 months’ salary plus three months’ salary plus an extra six months’ salary? Did Mark Batho endorse that?

John Gray: It was in the discussion that I had with him.

Mary Scanlon: Did he endorse the proposal? Did he agree with it?

John Gray: Just hang on a second. I said at the very beginning that the six months’ pay in lieu of notice is nothing to do with the discussion. It is entirely a contractual matter. John Doyle had a contract that said that. I wish that you would not keep putting it all together.

Mary Scanlon: It is in your letter.

The Convener: It is in the Auditor General's report.

Mary Scanlon: It is in the Auditor General's report. We would be failing in our duty as the Public Audit Committee if we did not cover it.

My next question is for John Doyle. As the accountable officer, why did you not inform the internal auditor or instruct the internal auditor to be informed about the severance arrangements and payments until an informal meeting on 28 October 2013, eight months after you had received your signed paper from the January meeting?

John Doyle: As you will have seen from my written submission, I spoke to John Gray on the day after the remuneration committee meeting. We discussed the role of the internal auditors and I was aware that, as always, the dialogue would be between the chair of the internal audit committee and the internal auditors.

As everyone in the room is aware, the internal auditors are appointed by the board and generally report to the audit committee of the college. My understanding is that the audit committee is a separate function from the executive but that it is supported by the executive. Mr Brown—

Mary Scanlon: I do not want a big lecture; I want to know why you, as accountable officer, did not ensure that internal and external audit were aware of your severance package. Why did you not do that?

John Doyle: I am absolutely convinced that internal audit was aware of a severance package. It is interesting that the only people who have not been interviewed by the Public Audit Committee are the two internal auditors themselves. I was well aware—

Mary Scanlon: You got that wrong—

John Doyle: No—

The Convener: We called for evidence from internal audit.

John Doyle: The internal auditors for Coatbridge College did not appear here. It was one of the partners, who actually did not engage—

The Convener: We had two internal auditors—we can clarify that later.

John Doyle: To my knowledge, I have not met the chap who appeared. [*Interruption*.] I think that you are just about to get some—

Mary Scanlon: I am coming on to my final question, but my point is that it was your responsibility as accountable officer.

John Doyle: I am going to explain—

Mary Scanlon: It is an important point.

John Doyle: It is an important point, and I am going to explain in detail.

Mary Scanlon: Can you give us an answer?

John Doyle: Yes, as soon as the convener is quite happy that the two internal auditors with whom I and the board engaged at Coatbridge—

The Convener: Mr Doyle, let me clarify that we ask the questions and you answer them.

John Doyle: I am happy to do so, sir.

The Convener: I will come back to you on the matter that you raised, after the meeting, to clarify the position for the record.

John Doyle: Right. My understanding was—

The Convener: Will you please answer the question?

John Doyle: I will be delighted to do so. My understanding was that in January the internal auditors were engaged with the college as part of the merger programme. I was also aware that the internal auditors were engaged with the audit committee, which Tom Keenan chaired, on the annual audit programme.

I was also very much aware that the internal auditors, with Scott-Moncrieff—who you all found out about a couple of weeks ago—had done extensive due diligence, front and centre of which was the severance package. My clear understanding, right through the period from January, was that the internal auditors were not only aware of but had been engaging in various forms on severance packages.

It was also my understanding that Scott-Moncrieff, who did the due diligence, would have been liaising directly with the internal auditors on the action plan. Scott-Moncrieff cannot produce a due diligence report for merger without talking to the internal auditors about what has been progressing in the college.

You are quite right, in that the very last thing that I did in closing down was to meet the internal auditors—I did that just before I left. That was on the basis that I was not happy that Scott-Moncrieff had put—or I had been advised that it had put—all the costs of the severance package of all the executive team, including all the on-costs, without the SFC contribution. I raised that with the internal auditors. Mrs Scanlon, internal audit was well aware.

Finally, if I may, I refer you to Mr Brown, who said that the internal auditors were well aware of the severance package and that he had spoken to either Mr Gray or Mr Keenan. I spoke to Mr Gray, and Mr Gray will confirm that he did not speak to the internal auditors, which means that, as one would imagine, the chair of the audit committee spoke to the internal auditors.

I was aware that the internal auditors had been engaged in the process since January, all the way through. It is incorrect to say that I did not engage with them or in some way held the information back from them. That is not correct.

Mary Scanlon: It has taken you a very long time—taking up a lot of our time—to talk about awareness and engagement, but you still have not answered the question, which was whether you, as accountable officer, assumed your responsibility and notified the internal and external auditors. You talk about expecting them to be aware and engaged and all around the shop, but the responsibility was yours and Audit Scotland and the internal and external auditors were not aware of your severance payment. I leave it there.

John Doyle: I think that there is something far wrong there, Mrs Scanlon, if the internal auditors were not aware, having gone through a programme from January right through to October and having engaged with the chair of the audit committee throughout the summer and beyond. My understanding is that the internal auditors had a clear duty to protect the board, were well aware that we were going through a merger programme and had carried out similar work with New College Lanarkshire and Motherwell and Cumbernauld colleges, so it is absolutely erroneous to say—

Mary Scanlon: You were well aware that you should have told them.

John Doyle: I was well aware that they were aware. There was no point in writing separately if they were aware.

09:45

Colin Beattie (Midlothian North and Musselburgh) (SNP): Mr Doyle, when you gave evidence to the committee on 28 October, we heard that the events leading up to your decision to leave were the result of a discussion with representatives of the Scottish Government and the SFC. You said:

> "Everyone in this room understands the language of power. When you are invited by the Scottish Government and the funding council to discuss your leaving early, you know that your position is untenable." —[*Official Report, Public Audit Committee*, 28 October 2015; c 48.]

I think that that was in August—correct me if I am wrong.

John Doyle: It would have been in August, yes. That was me leaving early—not leaving.

Colin Beattie: Yet, at the 28 January 2013 remuneration committee, the chair presented a letter outlining your untenable position at that point and the package that was offered. Does that not contradict that?

John Doyle: Not at all. In the context that there can be only one principal when there is a merger and that three colleges were merging, the chair and the board had obviously decided that they would produce a severance package, if it was required for me. At that point there were no structures and no interviews were on the horizon. After discussion with the chair of the board—as per the SFC guidance—I agreed that I would accept that offer.

It was not until mid-July that the Scottish Government representative and Linda McTavish came to the college and, as I wrote in the evidence that I sent on Monday, presented the terms and conditions for a merger to form what was going to be New College Lanarkshire. Contained within that was the fact that I could not apply for the job of principal, because it had been given to Mark McGuire.

I have made that very clear in my correspondence with the committee on a number of occasions.

Colin Beattie: Clearly, the job was given to someone else because Coatbridge College withdrew from the merger at a critical point.

John Doyle: Yes.

Colin Beattie: I return to the letter that you were issued with on 29 January 2013. Was there a termination date on that letter?

John Doyle: I have not looked at it for a couple of years. My understanding is that it was what I would call an enabling agreement, in the context that if the date changed—forgive me if I get this wrong; I cannot remember whether it was March or 31 July—it would allow me to progress. If there was a delay in the vesting day, as it is called, the letter would still be intact. I think that it was a continuation date, not a fixed date. I may be wrong about that; I have not looked at the letter for a couple of years.

Colin Beattie: Other senior members received offer letters that had a termination date of 31 July. I am asking whether your letter had that same termination date.

John Doyle: From memory, it had 31 July. I do not want to get the words wrong. I may get the words slightly wrong, but the message from my understanding is—it is easily enough checked. Do you have a copy of my letter?

Colin Beattie: I do not.

John Doyle: Okay. It would have been helpful.

Colin Beattie: It would have been.

John Doyle: If somebody had asked me, I would happily have provided a copy. I can send a copy to the clerk to the committee this afternoon—I am sure that I have it on file somewhere.

Colin Beattie: I must confess—

John Doyle: To answer your question, my understanding is that it was not a fixed date—it was a date about vesting day, but with agreement from the board it could be later.

Colin Beattie: I get a bit confused by some of the terminology that has been used. I have heard the offer letters being referred to as comfort letters, and you are now talking about them as enabling letters.

John Doyle: I am sorry. I did not mean that it was an enabling letter; I meant that, from memory, there was a flexible date in the letter. I am happy to send the clerk a copy of my letter. I thought that you had a copy of it.

May I also address the term "comfort letter"? I am sure that that term came not from the board of management but from the fact that people took some comfort in having something that enabled them to forget about what would happen if they were not part of the college in the future. They could get on with the job of moving the college towards merger and working with the cohort of students that were studying with us.

If that helps, that is what I think that people meant by a comfort letter.

Colin Beattie: I want to return to something that you discussed a little while ago, in connection with the financial cost of the settlement. You are the accountable officer. Did you discuss with the director of finance the affordability of the package?

John Doyle: I spoke to Derek Banks, the director of finance, after 29 January 2013—it could have been on the same day or a couple of days later, but it was on or around then. We had a financial forecast return for the nine years for which I was the accountable officer. The forecast return was very accurate, we were never below it—if anything, we were above it—and we had nine years of surpluses. We spoke in the context of getting our figures right. I explained the conversation that I had had with the chair of the board.

Colin Beattie: Did you speak to him about the severance package directly?

John Doyle: I did. Just to finish, it had been agreed by the remuneration committee that the chair of the finance committee, Paul Gilliver, would have an on-going dialogue with the director of finance about affordability. I understand from both Paul and Derek that that is what happened.

Colin Beattie: That is not clear from the evidence that was given by Paul Brown. As the accountable officer, you have a responsibility, along with the director of finance, to ensure that it is affordable and that the college can meet the financial obligation.

John Doyle: Yes.

Colin Beattie: It is clear that the college could not meet that obligation, because at the end of the financial year, there was a £1 million deficit, which is partly attributed to the severance arrangement.

John Doyle: I do not understand that, because if you look at the financial forecast return, the director of finance—I think that you heard from Derek Banks last week—had included that cost within the forecast. I left on 31 October, when the academic financial year had just begun. We were forecasting a small surplus and, in the nine years since I took over, we had never been in deficit. I have no idea why we went from a forecast return of a small surplus to being £1 million in debt.

Colin Beattie: It was the severance package.

John Doyle: No. I am sorry, but that is not the case. I have not looked at those accounts. The last set of accounts that I looked at were for 2012-13, when I was the accountable officer, and they were in first-class order, as they had been for the previous eight years. You would need to ask New College Lanarkshire, in detail, what happened when it took over.

Colin Beattie: So you are saying that it happened after your time.

John Doyle: Absolutely.

Colin Beattie: I want to ask you about Biggart Baillie and its remit. Biggart Baillie does not seem to agree the remit that you indicated during the evidence that you gave previously and believes that it was looking at a narrow area. It also said that it was not providing any clerking or other support to the remuneration committee.

John Doyle: I am happy to clarify that. It goes back to what I said to the committee. I made an introductory phone call to Paul Brown—which he has confirmed—in which I conveyed that the chair wished to speak to him. It is a matter of wording. I said that, because the clerk to the board was ill, I was looking for secretariat support. I had said to my senior team that it would be secretariat support. It transpired that it was administrative support and Paul Brown has confirmed that. After I had made the introductory phone call, I had no engagement in the matter at all.

Normally, if you were discussing something with consultants and lawyers, you would be engaged and you would follow it up. However, because I had only made the introductory phone call—and as Paul Brown has confirmed to the committee several times—my engagement was just to say, “Look, the chair is going to give you a call, or can you call him, it will be about this and we are looking for two things.” One of those things, which I did not think was such a narrow remit, and which Paul Brown confirmed last week, was to look at all the processes, documentation and approach by the board on the severance package.

Colin Beattie: But he did not see all the documentation. He made that clear.

John Doyle: I am sorry, but I thought that he had made it very clear that he had seen all the documentation. What documentation did he not see?

Colin Beattie: As far we can understand, he did not see the offer letter to you.

John Doyle: That is right. I do not understand—there is a copy of the offer letter in my personal file. Surely the external auditor had a copy of that? It is not a secret.

Colin Beattie: We have been through that area before. The auditors clearly said that they had no access to the letter and that they did not see it until much later. To return to the question of the role of Biggart Baillie and the scope of what it was looking at, it seems to be a very narrow area.

John Doyle: I am not sure what you mean by narrow in this context. What is missing and what do you think should have been there?

Colin Beattie: It is clear that Biggart Baillie did not see all the documentation and acted on the basis of what it had been informed was the situation.

John Doyle: I am sorry Mr Beattie, but I watched the meeting and read the *Official Report*. Biggart Baillie was quite clear that any information that it had asked for, it had received, with the exception of the severance letter dated 28 or 29 January 2013. That was my understanding; if there is something that I am wrong about there, please tell me.

Colin Beattie: There is probably a little bit of a difference there.

John Doyle: It is a very important point, so if you think that there is something missing that Paul Brown did not get or look at, please tell me.

Colin Beattie: The critical thing is the offer letter.

John Doyle: Again, I thought that that letter was in your domain. The letter is in my personal file. It was a letter that Mr Brown was happy about not seeing. I would be happy to provide a copy of that letter to the clerk, if you do not have it.

Colin Beattie: That would be useful.

John Doyle: I am very happy to do that. I thought that you had asked for it last week from New College Lanarkshire and that you would already have got it. I am sorry; if I had thought that you had difficulty getting the letter from New College Lanarkshire, I would have sent it to the clerk.

Tavish Scott (Shetland Islands) (LD): I want to clarify a couple of matters for the record. First, Mr Doyle, can you confirm that you received an offer letter on 29 January 2013 from Mr Gray?

John Doyle: Yes, that is the one that I was just talking about with Mr Beattie.

Tavish Scott: Can you confirm that, as accountable officer, you did not speak to or contact the Scottish funding council in any way regarding that letter thereafter?

John Doyle: As I have explained, in the context—

Tavish Scott: Yes or no will be good enough.

John Doyle: No, I did not, on the basis of what I have explained.

Tavish Scott: Thank you. Can you confirm that, as accountable officer, you did not contact the internal auditor after 29 January 2013 regarding the same letter?

John Doyle: I am sorry, but could you repeat that?

Tavish Scott: Can you confirm that you did not contact the internal auditor after you received that letter on 29 January 2013? Yes or no will be good enough.

John Doyle: Yes, I had spoken to the internal auditor. I spoke to him personally in October.

Tavish Scott: Did you speak to him after 29 January, yes or no?

John Doyle: No, I did not speak directly—

Tavish Scott: So the first time that you spoke to him was in October.

John Doyle: No, I did not speak to him directly about the subject, although—

Tavish Scott: Okay that is fine. That is on the record.

John Doyle: Well, I think for the record it is important—

Tavish Scott: No, you have answered the question. I am grateful for that.

Do you recognise that the Scottish funding council's guidance includes the requirement for a business case?

John Doyle: It mentions a business case.

Tavish Scott: Do you recognise that it includes the requirement for a business case, Mr Doyle?

John Doyle: Yes.

Tavish Scott: Thank you. Was there a business case for your severance payment?

John Doyle: My understanding was that there was a business case.

Tavish Scott: Where is it?

John Doyle: As I have explained, I do not have any documentation.

Tavish Scott: So you do not have it and you never saw it.

John Doyle: The business case was explained to me by the chair of the board, who discussed it with the remuneration committee.

Tavish Scott: But there is no document that you can point the committee to that illustrates that business case.

John Doyle: I would not have any documentation for that.

Tavish Scott: So you could not present that to the auditor when you met him in October to discuss the matter.

John Doyle: Do you mean the internal auditor?

Tavish Scott: Correct.

John Doyle: When I met the internal auditor—

Tavish Scott: Can you just answer the question? In October, did you give the internal auditor a business case for your severance package?

John Doyle: I did not have the business case from the remuneration committee.

Tavish Scott: So you did not. Do you recognise that the guidance said that you, as accountable officer, had to ensure that there was a business case, and that that did not happen?

John Doyle: The business case, in the context that we are talking about, was in the remuneration committee discussion and was contained within the letter and its detail.

Tavish Scott: Which letter?

John Doyle: The severance letter.

Tavish Scott: Does it include the business case?

John Doyle: It includes the rationale for it.

10:00

Tavish Scott: That is not what I am asking. You said to the convener that you are very clear about the guidance that the funding council issued. You know what a business case is. You were a very experienced principal. You are now saying that there was a "rationale". That is not a business case, Mr Doyle, is it?

John Doyle: When I spoke to the chair on 29—

Tavish Scott: I do not care about what you said to the chair. Will you answer the question? Was that a business case or not?

John Doyle: I understood that it was a business case, yes.

Tavish Scott: You "understood" that there was a business case, but you cannot give us any indication of where it is or even that it exists, other than in a paragraph in your letter. That is what you think is the business case.

John Doyle: No. I am sorry, Mr Scott, but I did not say that.

Tavish Scott: You did, actually. That is exactly what you said.

John Doyle: Well, when I spoke to Mr Gray the day after the remuneration committee meeting, I asked about affordability and accountability in the context of a business case, and he said that they had covered all that. I did not get a copy of that business case from the remuneration—

Tavish Scott: But it does not exist, Mr Doyle. The minutes do not reflect that. You have seen them and you know that.

John Doyle: Well, Mr Paul Brown said that there was a business case, and you had said—

Tavish Scott: And he cannot give us it either.

John Doyle: Oh, right. Okay. So why did he say that there was a business case?

Tavish Scott: Can you stop asking questions? You are here to answer questions—okay?

John Doyle: I am sorry.

Tavish Scott: So there is no business case. You are the accountable officer, but you fail to alert the funding council, you fail to alert the internal auditor, and you fail to ensure that there is a business case. Is that not a clear failing of the accountable officer?

John Doyle: No. I am sorry, Mr Scott, but I disagree. The funding council was aware and there was no need for me to make it aware, because the chair—

Tavish Scott: Yes there was, because it was in the guidance, which you claim to know about. There was an absolute requirement on you, as accountable officer, to make the funding council aware of the letter that you got on 29 January that had details of your severance payment in it—£304,000 of public money. You should then have phoned or contacted the funding council to say that the letter had been received, should you not? That is what the guidance says.

John Doyle: Well, my understanding was that that was taken care of by the long conversation that John Gray had with Mark Batho.

Tavish Scott: You can understand all you like. Read the guidance, Mr Doyle. What it says is very clear, isn't it?

John Doyle: I have not read the guidance for a while, but if you say that that is the case—

Tavish Scott: I have no further questions.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I served on a university court for nine years and I have chaired a charity, too, so I am interested in the charity side of the issue. Were you both trustees of the Coatbridge charity?

John Gray: Are you asking me?

Dr Simpson: I am asking you both.

John Gray: All directors of college boards are, by definition, trustees of the charity. Each college is a charity, so we are all trustees.

Dr Simpson: Did the board at any point have a discussion about the charitable side of the making of significant payments? You are shaking your head, but we need to hear your response for the record.

John Gray: No.

Dr Simpson: Mr Doyle?

John Doyle: No.

Dr Simpson: So there was no discussion of your responsibilities as trustees in relation to the charity.

I want to go back to the meeting of 28 January and the letter of 29 January. I have to say that, in my experience, I have never heard of a major decision being communicated to the individual who is affected by the decision within 24 hours of a committee meeting, without the committee approving the minutes. I find that really quite interesting.

Mr Gray, I want to know why you felt it necessary to rush into sending a severance letter to Mr Doyle, which we have not seen, of course, within 24 hours of the meeting, without the committee approving the minutes—and you will remember that there was some dispute about them when it came to the meeting on 23 October. We will hear from Mr Doyle about his response, but you sent the letter within 24 hours of the meeting—why?

John Gray: Each visit to the college involves me in a 130-mile round trip. I happened to be in Coatbridge on the day following the committee meeting. The letter was there and had to be signed by me, so I signed it. It was not done because it was the next day. There was no haste involved necessarily; it was a convenience for me, because I was there at the time, and I signed it on that basis.

The dispute about the discussion at the remuneration committee concerned not John Doyle's package but the package that might have prevailed for senior managers, which at the end of the day did not prevail and was withdrawn. As far as I am concerned, the remuneration committee, in the minutes and in future meetings, was content with the amount that John Doyle was to be paid.

By the way, 40 per cent of that goes straight back into the public purse via the Inland Revenue.

Dr Simpson: I do not think that that is particularly relevant.

John Gray: Maybe not.

Dr Simpson: So, immediately after the meeting on 28 January, you dictated a letter, which was then typed up.

John Gray: Yes.

Dr Simpson: You signed it the next day because you happened to be in. You did not think that this was such an important decision that you should actually get the minutes signed off before proceeding with such a major decision, which was outwith the guidance that you were aware of from the Scottish funding council.

John Gray: I had the verbal agreement of the remuneration committee that it was happy with what was being offered to John.

Dr Simpson: Did you have the agreement of the funding council?

John Gray: As I said earlier, I discussed the guideline in my meeting with Mark Batho. His advice to me was that if we wanted to pay more—this is relevant to other colleges as well—we should be clear that SFC would refund us only the guideline amount.

Dr Simpson: There was no objection from Mr Batho that you were paying—

John Gray: No, there was no red line.

Dr Simpson: Okay, that is fine. The other issue is the additional money being paid out and the severance letter. Mr Brown told us that when he drafted the severance agreement—which I presume he did on your instructions—he had not actually seen the severance letter.

John Gray: I cannot answer that.

Dr Simpson: Was the business case, to which my colleague Tavish Scott referred, presented to the remuneration committee?

John Gray: I get a bit thrown by the business case question. There is not a piece of paper that says "business case" at the top of it. I think that we discussed the implications in a business fashion as to what was being offered, what the implications were and what the justifications were.

Dr Simpson: The Nolan committee was set up because of scandals in relation to various things occurring within businesses over the years. The Nolan guidance says that, if you are going to make significant payments to someone, you have to present a business case to justify it. That is Nolan, and the Scottish funding council also makes it very clear that you are required to do that.

The Office of the Scottish Charity Regulator charitable guidance makes it very clear that if you are spending charitable funds, which you were, you are required to present a comprehensive case as to why you are doing it. You are required to justify, to the public and to OSCR, the use of public money—far less to us than to the taxpayers.

On every issue where there were requirements, you, as an experienced person—I have seen your CV: you are a very experienced individual in business—were not aware that you were required to produce, not a rationale for or a discussion about it, but a firm business case, and you did not do so.

John Gray: Correct.

Dr Simpson: Okay.

Mr Doyle, as the accountable officer, you were also required, under the terms of the three sets of guidance that I just mentioned, to produce a firm business case for any significant expenditure within the college that was outwith normal guidance, and you did not do so.

John Doyle: That is correct.

Dr Simpson: Thank you. That makes that all very clear.

Nigel Don (Angus North and Mearns) (SNP): Good morning. I am very grateful that we have now established that there is no piece of paper with "business case" written at the top of it. That is very helpful.

Mr Gray, I would like to come back to your comments about your proposal in the email to the remuneration committee before it had the meeting in January, in which you suggested terms that clearly were very generous and may well have reflected your own view about what Mr Doyle had done. Now that you have had a little while to think about it, I would like to return to the question of who you discussed the issue with before you actually came up with the terms that we just heard about.

John Gray: As I have said several times, the terms were based on what was initially called the Edinburgh case. The proposal that went to the federation board of the Lanarkshire colleges was an entirely independent proposal. As far as Coatbridge College was concerned, we thought that that was the game plan for the sector at that time. That is what we decided to go with, and that is what John Doyle was offered.

Nigel Don: Forgive me, but I am trying to work out who the "we" was, before you wrote that letter to your colleagues. Was it just you?

John Gray: It was certainly not just me—I am not the fount of all wisdom. The HR director would be involved. I cannot say for certain, because I cannot remember all the details of the discussions that go on round about these subjects—I would talk to people all the time about things. I am pretty certain that I would mention it and discuss it with members of the remuneration committee, but I cannot prove that.

Nigel Don: So your proposal to the remuneration committee, ahead of the suggestion that there should be a meeting to agree it, would already have been discussed with, for example, at least the HR director.

John Gray: Yes. Definitely.

Nigel Don: On the meeting in January, you have just told us quite animatedly that the members of the remuneration committee did not do their homework if they did not know about the guidance from the SFC. Would it not have been your job as the chairman of that meeting—never mind the chair of the board—to ensure that that discussion was held, and therefore to raise the issues rather than just to go down one tack?

John Gray: Clearly, with hindsight and given what was said and what was minuted, I did not draw that to the attention of the committee, and that could be a failure on my part as chair and a poor performance on my part, but there was certainly no intent behind that.

Nigel Don: Okay. We could reasonably draw the conclusion that the discussion at that remuneration committee was on your proposal. I take the point that it was not specifically about Mr Doyle but about senior management in general—I think that I have heard that—but it is perfectly reasonable to draw the conclusion that there was no comment whatsoever about the SFC guidelines.

John Gray: Obviously not at the meeting because the minutes are quite clear about that, but it does not mean to say that members of the remuneration committee were not aware of that, because they had that in their papers for the meeting. I did not draw their attention to it, but it was there, if they cared to read the papers. I would assume that committees generally read the papers that they are presented with.

Nigel Don: Yes, some of us do; clearly, some do not.

What was the purpose of a conversation with Mark Batho shortly beforehand, if what he said was not going to be taken into account?

John Gray: I think that the discussion with Mark Batho was to fulfil our obligations in terms of ensuring that the funding council knew what we were doing, which I think is part of what you are all talking about. I know him of old—I have known him for a long time—and we had a very level discussion. He laid out what the score was, and I told him what we were proposing. He said that that was up to us, if we wanted to do that, but that we would have to meet the cost.

Nigel Don: Indeed. We have just had a discussion about the letter that followed shortly afterwards, which Mr Doyle was given and signed. We have had some helpful discussion about whether there might have been a date on it, which is news this morning. My understanding, from previous evidence, is that any letters that were sent to other senior managers—no doubt just a little later—included the same severance date of around 31 July.

I think that that is the date that we are working on. What I would like to understand is why, in Mr Doyle's case, that seemed not to matter. Mr Brown came to the conclusion that your agreement had to be honoured, whereas other senior managers, who must have received very similar letters with the same severance date, could have their offer withdrawn. What is the difference between those two offers?

John Gray: I cannot say that there is a difference, but I can tell you the facts behind the withdrawal of the offers to the senior managers because I was involved in that.

Nigel Don: Okay. I guess that my question is not directly that but what the difference is between that and Mr Doyle's position. He would apparently have been sent a similar letter and similar terms.

John Gray: All that I can say is that Mr Doyle's offer stood, for whatever reason. I think that the board was happy with it. As I said in my opening remarks, nobody ever questioned the value of the package—guidelines or no guidelines. Nobody suggested at any point that it should be stopped, withdrawn, adjusted or amended. They were all content to sign on to that agreement and for it to proceed.

10:15

Nigel Don: Which of you then decided that, on 11 October, you would have to get a settlement agreement signed so that Mr Brown knew that it was a fait accompli?

John Doyle: I am not sure that that is entirely accurate, Mr Don. As Mr Brown has said, I was working my notice at that point and had a couple of weeks to go; there was a pay run due and I had to sign a settlement agreement, which had to go to the lawyer, so due process was taking place. As an employee, I was leaving in a matter of weeks. I was given a letter and a settlement agreement to pass through my lawyer, which I did, and I signed that about 10 October 2013, a couple of weeks before I was due to go.

Nigel Don: Which would, coincidentally, be the point at which Mr Brown is engaged to make sure that the board gets the advice that this contract is different.

John Doyle: Mr Brown was engaged by the chair and the board on the basis that we had received a communication from the funding council and the Scottish Government about, as Mr Martin said, two severance schemes being in existence at that point.

Nigel Don: Thank you.

Stuart McMillan (West Scotland) (SNP): With regard to the meeting on 28 January, among the papers that we have received for this meeting is a copy of a letter signed by the former Coatbridge remuneration committee members. On the paperwork that was available to the committee, the letter states:

> "The emailed link took members to a specific part of the intranet where the associated papers and documents were located and was not focused on any other part of the site unless specifically directed to go there. On some occasions the documents were attached to the email message for convenience."

The letter goes on to say:

> "It was never intended to use the intranet as the means of communication of important information or to replace raising issues in discussion at meetings held in the college but as a means of quickly and efficiently disseminate documents for discussion at the appropriate meeting."

On the information about the SFC guidance, we have heard today that there is no reference to the guidance in the minutes of the meeting of 28 January and that it was not discussed at that meeting. You said earlier, Mr Gray, that if the remuneration committee members did not look at all the paperwork, that is their responsibility and not so much yours. However, on an issue of such importance, some would argue that it would have been beneficial and essential for reference to the SFC guidelines to have been clearly stated in the papers that were issued to all remuneration committee members, instead of the information just being on the intranet and members being expected to go and search for it themselves.

John Gray: For clarification, quite a long time previously we had introduced the iPad and the intranet as a means of communicating papers to board members, so the papers were circulated in that way for every board meeting. We did that to cut down costs, and saved 7,500 quid a year by not having to churn out piles of paperwork to send round all the board members. Using computers and the intranet was an integral part of the board process—I will just leave it at that.

You are quite right in that I did not specifically point the committee to the SFC guidelines. Can I just fast forward a bit, if that will answer the question?

Stuart McMillan: Okay, then we might come back.

John Gray: At the point when we had the 23 October 2013 minutes of the remuneration committee and the board, all of that—what the limitations were and what the implications were—was absolutely and abundantly clear to everybody round the table and nobody demurred. As far as I am concerned, at that point—which was a bit after the original offers and so on, but time moves on—what was important was what the final situation was for everybody. We know that the senior managers were happy—well, not exactly happy, but they withdrew their requirement and they were happy to go along with a single scheme for Lanarkshire colleges; and that John Doyle was happy to along with his package, although you might ask why he would not be, and nobody demurred from the agreement or questioned it in the light of the guidelines and everything else that was on the table at that time.

Stuart McMillan: We will go back to 28 January 2013. Clearly, no link to the guidelines—which had been there since 2000—was provided to the members. We have discussed the use of iPads, laptops and the intranet, but I imagine that there was a fair amount of paperwork for that particular meeting. Surely it would have been advantageous for all concerned if specific points had been highlighted or if links had been provided prior to the meeting, when the agenda and papers were being issued, so that all members could have accessed the particular information easily, instead of them being expected to go and look for it themselves. These were busy people and they may not have had the time to attempt to search for that particular information.

John Gray: It is a statement of the obvious, quite frankly, that had it been spelled out in words of one syllable, it would have been a lot clearer.

Stuart McMillan: That is unfair. Certainly as a member of this committee and a member of this Parliament, I can say that we receive huge amounts of paperwork and of information, particularly for this inquiry. You can see the pile of papers beside me and that is just some of the paperwork that we have received.

It can be advantageous if specific points or specific paperwork are highlighted. It ensures that we, as committee members, look at those specific things. I imagine that it would be the same for other committees inside and outside the Parliament. People can be directed to ensure that they know about something. They can be told, “That is an important piece of information—make sure you look at it.”

John Gray: I accept the comment, clearly, but some people are more thorough than others. Perhaps we should play to the lowest common denominator and spell it all out in piles of paperwork. I am happy to admit that I did not spell out the guidelines at that remuneration committee meeting. Looking back, I can say okay, that should have been done and I did not do it. However, to me, in the fullness of time, it all got overtaken by events. I regret the fact that that meeting could have been better, but following meetings were better and everybody understood what all the rules were.

Stuart McMillan: As for the actual package that was discussed on 28 January 2013 and the signing-off of that package on 29 January 2013, I am just a wee bit unclear on whether that package was designed because, at that particular point in time, Coatbridge College was in the merger discussions. If that was the case, surely the package should have been withdrawn when the college came out of those discussions later and a different severance package should have been issued.

John Gray: I do not think that it is as black and white as that, to be perfectly honest. With Coatbridge being in and out and in and out, as you have rightly identified, the whole process was part of the merger activity. We were desperately trying to make sure that Coatbridge got proper representation in the merger. We were not getting any satisfaction on that because we were being told by Motherwell College and Cumbernauld College, once they had merged, “If you want in, you’ll do what we tell you and you’ll take what you get.” That was basically it. There was a lot of heat and there was a lot of anxiety, particularly on my part, about ensuring that the staff at Coatbridge College got proper representation.

Looking back over the whole period, I see that things could have been handled differently and papers could have been more freely available and so on, but that does not mean that people did not know what was going on.

The Convener: Can we make sure that we do not repeat what has already been asked?

Stuart McMillan: Sure. My final question is about the business case situation. We are aware of Mr Doyle offering a member of staff in his office an 18-month severance package in February 2013 without a business case and without the authority to do so. Was it common practice for severance packages or enhanced packages to be offered to people without making a business case?

John Doyle: The member of staff's post was associated with mine and, after I had received the offer from the board because my post was going to be lost if the colleges merged, I looked at the member of staff's contract, which was a separate contract, and I produced a short business case, which was put in their file. It gave the rationale and the costs and so on for that business case.

As you have heard from Mrs Docherty, the chair of the board's human resources committee, the standard operating procedure was that I would brief the board on any aspect appertaining to that business case. I fully intended to that but, unfortunately, I had a very severe accident in May that required a lot of facial reconstruction and I was off for a considerable period of time, so I missed that set of committee meetings. That briefing therefore did not happen and I take full responsibility for missing that link in the chain. It was not done deliberately. The case was made on the basis of best employment practice and, as I say and as Mrs Docherty has explained, it would normally have been picked up in the HR committee cycle but I was very ill at the time.

David Torrance (Kirkcaldy) (SNP): I want to go back to Richard Simpson's earlier point about the charitable status of Coatbridge College and you and Mr Gray being trustees. I quote OSCR's evidence:

"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."—[*Official Report*, *Public Audit Committee*, 18 November 2015; c 91.]

As trustees, how can you justify the use of charitable assets to pay for Mr Doyle's enhanced payment?

John Doyle: I am happy to kick off if it helps. We were one of the last colleges to merge. As the committee has heard several times, the Edinburgh college model was the original model for the severance package. I might be wrong, but I understood quite clearly at the time that college funds could be used to support severance packages above and beyond. That had been demonstrated in the Edinburgh colleges merger. That was my understanding.

David Torrance: As a charity trustee, do you not have a moral obligation to make the best use of the charity's assets rather than using them for enhanced payments?

John Doyle: I think that we have demonstrated that, during my nine-year tenure, we had gone above and beyond by creating alternate income sources, developing the college estate and the student learning experience, and producing a surplus every year against the backdrop of many colleges producing a deficit. Our accounts came to this committee every year, they were unqualified every year and the college continued to grow.

David Torrance: So you believe that you fulfilled your duty as a charity trustee.

John Doyle: In the context that you are talking about, yes.

David Torrance: Thank you.

10:30

Mary Scanlon: I would like not to talk about the money for the moment, although we all know that you got £304,000. As the accountable officer and principal of the college, do you accept that you had a duty of care to all your staff? In that context, the committee has recently been provided with the Linkston report—

John Doyle: I am sorry—I have not read it.

Mary Scanlon: Well, I can tell you what is in it.

John Doyle: Okay.

Mary Scanlon: It talks about

"poor governance and decision-making which appear to have had a cumulative and negative impact on senior staff."

It says:

"certain decisions, practices and behaviours fell short of what I would expect in a well governed college."

Mr Doyle and Mr Gray, both of you were in charge of that college. We are not likely to see you in front of us again. I give you this opportunity to apologise for your "poor governance" and for failing in your duty of care to the other members of staff. We know that you are happy with your pay-offs and everything, but would you like to apologise to the other members of staff at Coatbridge College, who faced the same uncertainty about their future as you did? Would you like to apologise for taking so much money—£304,000—and would you like to apologise to the other members of staff at the college for failing in your duty of care to them?

John Doyle: In the first instance, you are raising an aspect of a report that I have not had the opportunity to read.

Mary Scanlon: I have read it to you.

John Doyle: I presume that you have based these questions on the report. I remind everybody that we left on 31 October and the college went on until 31 March. I have not read the report, but my understanding is that it covers the whole period, including after we left, so—

Mary Scanlon: I am giving you a chance to apologise.

John Doyle: I am not sure, in the context of what you are saying, whether you are asking me to apologise because I accepted a severance package that was legal and appropriate, or for something else. I was losing a job that I loved and was very successful in. I was losing five years' salary and seven years' pension. In the context—

Mary Scanlon: That is all about you, Mr Doyle, but I am asking about your staff. They faced the same issues as you faced. Did you fail in your duty of care to all the staff who you were responsible for?

John Doyle: No, I most certainly did not. There was a change in severance policy, which reduced the scheme for all those staff from a potential 21 months' pay to a maximum of 13 months' pay. I did not introduce that change of severance policy. I would have liked to have seen, as was the board's stated intent—

Mary Scanlon: So you are content that, leaving the money aside, as principal, you fulfilled your duty of care to every member of staff at the college.

John Doyle: Is there an example that you would like to raise?

Mary Scanlon: I am asking you.

John Doyle: Unless you can give me an example where I did not—

Mary Scanlon: I am asking: did you fulfil your duty of care?

John Doyle: Yes—the answer is unequivocally yes.

Mary Scanlon: You did. Okay—thank you.

Dr Simpson: I have a question on the same topic. The report that Mary Scanlon mentioned states:

> "The cumulative effect of these events and in my view, the manner in which the senior team had operated and been led under the outgoing Principal appear to have caused the senior management team to collapse resulting in a team of seven being reduced to two. It is difficult to come to any further conclusions on the specific impact upon senior staff of these matters given that the reasons for the absence of some senior staff was not objectively assessed by occupational health as was required under the Coatbridge rules."

You have made it clear that you have not seen the report.

John Doyle: No, I have not.

Dr Simpson: It seems to me that the author of the report believes that the way in which you acted contributed to the problems after you left for the senior team, which effectively collapsed from seven to two.

John Doyle: One member of staff—the director of HR—was off, through stress, which had nothing to do with me. As she has told you, the issue was the relationship with the board. Other members of staff were sick after I had left. Under no circumstances did we have a poor management team. The college had been highly successful because of the hard work and professionalism of the senior team. We had all gone through extensive leadership training. There were no issues—we won awards every year and continue to win them. I do not recognise that description of the senior management team. Every single thing that we did in the college was well received by students and staff. I am sorry, but I do not understand why someone would say that there was a problem with leadership.

I left on 31 October. My senior management team were not happy, because they were very unsure of their future. However, unfortunately—and I mean unfortunately—that future was not dependent on Mr Gray and me.

Dr Simpson: Thank you. For the record and for balance, it says at the end of the section in bold type,

> "Whilst it is true to say that Coatbridge had many successes to be proud of, there were nonetheless weaknesses in governance and leadership which had a negative impact at a key moment in their evolution."

Colin Beattie: Would you agree that funds from any source coming into the college were charitable funds?

John Gray: The answer to that is clearly yes, because the college is a charity and anything coming in is part of that.

Colin Beattie: I agree, yet we are told that the resources that the college was to put against Mr Doyle's severance package came from commercial work, and not from public funds. Frankly, it does not matter. It is all charitable money.

John Gray: I agree totally. It also has to be agreed that the college over many years, as John Doyle has said, raised significant additional funds—call them charitable or what you like—beyond those given by the Government—

Colin Beattie: Yes, but Mr Doyle was not operating on a commission basis.

John Gray: No, and those funds were ploughed back into the college for the advantage of staff, students and everything else. I agree with all of that.

Colin Beattie: The main thing is that you accept that it was all charitable funds.

John Gray: Yes.

Colin Beattie: Do you believe that the money that was paid to Mr Doyle was compensation for constructive dismissal? I have an email in front of me from you in which you refer to that.

John Gray: Did I actually use the words "constructive dismissal"?

Colin Beattie: You did. You refer to

"compensation for constructive dismissal".

John Gray: If you want to argue the point, I could say that, yes, it was constructive dismissal, because John Doyle was not given any opportunity to apply for a job in the new college. He was out of a job, through no fault of his own, and that was the end of that.

Colin Beattie: In your mind, it was compensation for constructive dismissal.

John Gray: Well, call it constructive dismissal, termination or whatever. You can play with whatever words you like. He was out of a job through no fault of his own as a direct result of the Government's policy on college mergers.

Colin Beattie: Mr Doyle, did you sign a compromise agreement?

John Doyle: I signed a settlement agreement, which was standard operating procedure for the college.

Colin Beattie: On which date was that?

John Doyle: It would have been about 11, 12, or 13 October.

Colin Beattie: It was early in October.

John Doyle: It was about mid-October.

Colin Beattie: And yet we have an email from Pauline Docherty referring to the fact that you would be signing a compromise agreement. Did you ever sign a compromise agreement?

John Doyle: There is again some confusion in the language, and I fully understand why. At the committee last week, Mr Paul Brown was talking about settlement agreements. He was asked the question on a compromise settlement and I thought that he clarified that the settlement agreements that were used were there to protect the institution, not in any way to prevent people from talking about what had happened. They were standard agreements that all staff signed from the principal down when they were leaving the college. They were not meant in any shape or form to stifle discussion, for example at today's committee meeting.

The Convener: Mr Gray, you said earlier—I think that we recognise your humility in doing so—that you could perhaps have signposted more effectively to the members of the remuneration committee in the information that you provided to them. We referred specifically to the business case, which does not appear to have existed.

Do you not feel let down by that? Do you not feel that the information provided to you should have been clear and that Mr Doyle should have briefed you on what should have been provided to the committee?

The committee recognises that you showed humility earlier in saying, "Maybe I have got some of this wrong and in hindsight I should have provided more information to the board." Let us recognise your humility on that issue, if not on others. Do you recognise that you could have been better supported through the process? It was not your responsibility to provide a business case.

John Gray: No.

The Convener: Someone needed to provide a business case to you. As you said, you were not paid to be the chairman of the board. You made a 120-mile round trip to get to the board, so you are obviously a committed individual, who wanted to better the college. Should you not have been provided with the appropriate material by the accountable officer so that you could be briefed?

John Gray: Sitting here today and looking back—hindsight is a great thing—we could argue that a lot of the cases that you are asking about should have been handled better. I admit to that, totally.

The Convener: Do you not look back on that and say, "Mr Doyle, I tell you what. I went into that board meeting and I had to make those very important decisions. I now know that you were the accountable officer and you should not be able to excuse yourself now from the responsibility of ensuring that I had objective information before me to be able to take that decision properly. Mr Doyle, that was your responsibility"? You have shown humility. You have come here in public and said that you could have got some of that right—that in hindsight you should have done this and should have done that. Should Mr Doyle not have been placed in that position as well? After all, he was paid for it and you were not.

Let us not look at Mr Doyle. Let us be clear—

John Gray: As far as I am concerned—

The Convener: I will come to Mr Doyle in a second.

John Gray: Over the years that John Doyle was at the college, nine years during my whole period of chairmanship—

The Convener: You were let down, though.

John Gray: —we had a very good working relationship.

The Convener: We understand that.

John Gray: We discussed all things to do with the college on a regular basis. If there were weaknesses on that particular matter, I did not see them. I thought that we were carrying out our responsibilities in a proper and responsible fashion.

The Convener: I understand that, Mr Gray, and I respect that, but now that you can look back on it, you could say, "I tell you what, John: you could have done a bit more for me. You could have ensured that I was in a position to be able to take that decision and that everyone was briefed accordingly, because I tell you what: I do not want be placed in this position. I have had a career in private enterprise over the years." As Richard Simpson said, you have a good CV. "I have had an unblemished career. I went into this position as a charity trustee. Why have you done this to me?" Have you not had that conversation with Mr Doyle?

John Gray: No.

The Convener: You should have, should you not—on reflection?

John Gray: You can say that.

The Convener: Mr Doyle, do you not feel that you have let Mr Gray down?

John Doyle: As Mr Gray said, hindsight is a great tool. In hindsight, when one picks over all the various details, including access to the guidance for the board members, which was there on the intranet—it was easily found and that is where I got my copy of the guidance—none of us would have wanted to be here, looking in detail at errors that have been made.

The Convener: You accept that there were some failures.

John Doyle: On the basis—

The Convener: Should you not? Mr Gray has done that.

John Doyle: Absolutely. On the basis that they were omissions and—

The Convener: Can I just ask a final question? Why not pay back the £304,000? Why not pay it back and let us start again with an objective process and do what should have been done at the outset? That would allow you to make the case that you should have been paid £304,000. It would allow the present board, properly informed, to make that decision. Why do you not pay the £304,000 back, Mr Doyle?

John Doyle: Mr Martin, if I had had an opportunity to be at the new college, I would not be in this position. I left a successful career through no fault of my own. I lost five years' salary and have a much reduced pension.

The Convener: That is not the question that I am asking you.

John Doyle: I am answering it.

The Convener: I am asking why you will not rewind.

John Doyle: If we could rewind—

The Convener: I could ask the minister whether we can rewind. She might say, "We will see what we can do. If Mr Doyle pays the money back, we will allow a proper due diligence process to be followed and then we can move forward." Perhaps the committee could make that recommendation. Would you not go for that process?

John Doyle: No, I would not go for that process, on the basis of what I have just said. I lost a successful career through no fault of my own.

The Convener: I am not talking about your career. I am talking about the fact that you have let Mr Gray down—you did not provide the objective information that you should have as accountable officer. Do you not feel for this man, who has had an unblemished career in private enterprise and who travels 120 miles to get to the college without being paid for that? You are saying that, as somebody who has received £304,000, you are not willing to rewind to ensure that we get a proper process in place.

John Doyle: I am very willing to rewind in the context of learning lessons.

The Convener: Should you not be ashamed that you are not willing at least to rewind, to look at it again and to have a proper objective process that allows Mr Gray's career to be looked at again?

John Doyle: Mr Martin, I lost my job through no fault of my own. I lost an income source. I have no other income source apart from my reduced pension. As an employee, I feel let down. As a principal and chief executive, I feel that we could have got things better. In hindsight, I would have made it watertight: the members of the remuneration committee would have been signing in blood that they understood the guidance—as Mr Brown had said several times that they did—and the business case would not have been produced by the remuneration committee, as was explained to me the next day, but would have done in the context of the executive.

The Convener: So, in short, you will not pay the money back.

John Doyle: There is no reason for me to pay the money back.

The Convener: So you will not be paying it back. Mr Gray, do you think that he should pay it back?

John Gray: No.

The Convener: For the record, I confirm that Allister Gray, from Wylie & Bisset, attended the committee. He made it clear that he was responsible for the overview, but he was not, as you confirmed, Mr Doyle, the auditor who was personally responsible for the college. In saying that, we were provided with an overview of responsibilities.

John Doyle: In terms of the internal audit function, it is important that the two internal auditors who operated the college and worked directly to the college audit committee and its chair, were not questioned. You did not have an opportunity to ask them about that.

Tavish Scott: What is important, convener, is that the internal auditor was not told by Mr Doyle on 29 January 2013 that he had entered into the severance arrangement.

Mary Scanlon: Exactly.

John Doyle: Except there were several—

The Convener: Mr Doyle, we will take advice from the clerks on how we go about getting information and what needs to be signposted to us, rather than from you.

John Doyle: Of course.

The Convener: There are a number of issues with how information was signposted to the board that you were responsible for, so let us deal with how we pursue information that it is the responsibility of the committee to pursue.

I thank you both for your time this morning.

10:46

Meeting suspended.

10:51

On resuming—

The Convener: I welcome to the committee our second panel of witnesses. Angela Constance is the Cabinet Secretary for Education and Lifelong Learning and Aileen McKechnie is the director of advanced learning and science at the Scottish Government. I understand that Angela Constance would like to make an opening statement.

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): Thank you, convener.

I welcome the committee's scrutiny of the voluntary severance arrangements at the former Coatbridge College, which is rightly a matter of considerable public interest. We must understand the detail of what happened so that there is no repetition. Fundamentally, the issue is a failure of governance.

My college governance task group will take full account of the Public Audit Committee's report on Coatbridge College, and its previous report on North Glasgow College. I chaired the first meeting of that task group last week. The group will move swiftly and will produce recommendations early in the new year.

Our college reform had three priorities: learner and employer needs, value for money and stronger accountability. We wanted a regional structure, with colleges of scale and influence delivering coherent high-quality provision. The mergers meant there would be voluntary redundancies. With the SFC, we found funding to help that process. As a result, we now have a sector that is generating significant efficiency savings year on year.

Improvement of standards of governance was central to our reforms. In 2011, we commissioned an independent review, led by Professor Griggs. He concluded that the structure and governance of the sector were not fit for purpose. In particular, he said that college governance needed greater public accountability that is consistent with the evidence and the significant investment that we make.

The events at Coatbridge College reinforce the case for improving governance. The way in which decisions were made was appalling, and those who were entrusted with stewardship of public funds fell well short of what is required. The funding council has set out the action that it took, which was consistent with the guidance at the time, although it acknowledges that it could have been more proactive. That is something that the task group will consider, along with early-warning mechanisms.

However, we have to recognise that the position has already changed—and markedly so. The Auditor General has confirmed that the new controls are much more robust. Before reclassification, decisions on severance were the sole responsibility of colleges, taking into account SFC guidance. Following reclassification in April 2014, incorporated colleges must now seek approval from the funding council for severance and settlement arrangements. Doing so is a condition of grant, and ministers now have more explicit powers to remove incorporated college boards for serious or repeated breaches of terms and conditions. The funding council's forthcoming guidance will reinforce that and the process that colleges must follow, and the Public Audit Committee's report on Coatbridge College will help to inform that guidance.

So, the essential elements of good governance and improvement are in hand, which is as it should be. Colleges are delivering for students and our key indicators are improving. The overwhelming majority of colleges are well led and well governed, but all colleges need to be led and governed to high standards. Through my task group and other relevant work, I will ensure that we have greater confidence in the required standards, and that they are met across the sector.

The Convener: I think that you said in your statement that you found the governance arrangements to be "appalling". Is that correct?

Angela Constance: Yes.

The Convener: Do you think that Mr Doyle should pay back the £304,000?

Angela Constance: As I said, I am appalled by the poor governance and lack of stewardship. If I could, I would, of course, rewind the situation to ensure that payments in excess of £300,000, which are completely exorbitant, were not met from the public purse. It is clear to me that there has been a lack of stewardship of public funding. Of course I would want Mr Doyle to pay back money that he has received at the expense of the public purse. Whether there is a mechanism to do that is, of course, a different question.

The Convener: From a personal point of view, do you think that Mr Doyle should pay back £304,000?

Angela Constance: Yes, I do.

The Convener: Okay

You have advised us that the funding council could have been more proactive. Did Laurence Howells advise you of that, or is that your opinion?

Angela Constance: That is my opinion, convener.

The Convener: Can you give me two examples of where you think the funding council could have been more proactive?

Angela Constance: When I look at the timeline of events, I can see that the funding council issued guidance on severance at the start of 2013, and that was right and proper. When I look at the timeline of events that the committee has been studying very carefully, I see that the decision about payment to be made to the former principal was made at the beginning of the year, but that sight of that decision was not evident until much later in the year, in October. I am keen that my task force looks at what would be reasonable for the funding council to do proactively and what more could, realistically, have been done.

I know that much of this is said with the benefit of hindsight. However, although it was right and proper that guidance was issued, the question is whether there should have been follow-up procedures to ensure that the guidance was getting to the right people.

The Convener: Let us be clear here. Mike Russell announced the decision, which received political support, for the college mergers, so it would have been no surprise to Mike Russell, or any minister, that there would be voluntary severance packages. They must therefore have seen the possibility of colleges, or possibly college principals, taking advantage of the arrangements that were put in place. Did not Mike Russell say "I'm really concerned about this. I want a consistent scheme across the board, and I'll tell you what—I make the point to every one of you that if you don't adhere to that, we'll not make the payments"? Those schemes required Scottish Government funding to be successful, so why not just say to the colleges "We're just not going to give you the money when you try and draw it down"?

11:00

Funding council officials asked in Mr Doyle's case, for example, when to arrange payment. We have an email exchange between Mr Kemp and Derek Banks, who was the director of finance at Coatbridge College, making the necessary arrangements for the money to be drawn down from the funding council after Mr Doyle was paid off. There seems to be a relaxed attitude along the lines of, "You can make your own arrangements. We'll pay our share but anything above that has to come from somewhere else."

Angela Constance: My predecessor, Mr Russell, senior civil servants, and the funding council were clear about the conditions on, and expectations around, use of strategic funds that were to be made available to support voluntary severance schemes. The detail is that payments were not to be in excess of 12 months' salary. Mr Russell had been clear that restraint was needed. One of the deeply disappointing aspects of the appalling set of affairs around Coatbridge College was that the severance scheme for the principal was different from that of other members of staff—

The Convener: That happened in other colleges, too. It is not just Coatbridge that we are talking about.

Angela Constance: I am more than aware that the Auditor General has pointed to isolated examples of poor governance and poor practice around severance, and that she has made two section 22 reports. The fact that she has had to make two reports on isolated examples is not acceptable. In my current position, I will not tolerate poor governance. However, we should not let the actions of a few individuals tarnish the reputation of the whole sector.

The Convener: Let us try to keep the exchanges as clear and succinct as we can. People at other colleges—leaving aside North Glasgow College and Coatbridge College, which have been subject to section 22 reports—received packages of 21 months or 24 months, or received payments in lieu of notice of more than six months. Indeed, some of them received packages that are not far off what Mr Doyle and Mr Knox got. Do you find those sums to be unacceptable, too?

Angela Constance: I do not find them acceptable. However, I have to go on the concerns that have been raised by the Auditor General. Two section 22 reports raised significant concerns about serious failings in governance—

The Convener: So it is okay as long as you tick the boxes.

Angela Constance: No—it is not

"okay as long as you tick the boxes."

The Convener: Well, that is what the others have done.

Angela Constance: No, well—

The Convener: The other colleges have said, "Yeah, we've ticked the box, here's the business case." What business case could possibly say that somebody should get more than 13 months' salary? Can you give me one example of that?

Angela Constance: No, I cannot.

The Convener: This is an important part of our work. Mr Doyle can say, "Yeah, the others received 21 or 24 months. I've just bumped it up to 30. We were told to keep it to 13, but the others are just doing what they want anyway."

If you find the situation in the other colleges to be equally unacceptable, why not take them to task, too? That was not what Mike Russell envisaged, was it? Did he want principals to get payments of more than 21 months when all the other staff were given the basic terms?

Angela Constance: I am saying that I do not think that it was acceptable or fair—particularly given the challenges on the public sector—that senior staff got preferential voluntary severance schemes that were out of kilter with the rest of the sector, region or organisation. There was clear guidance on and expectations around the use of the strategic funds.

However, the reality is that prior to reclassification by the Office for National Statistics colleges had discretion in those matters. I am glad to say that that is now not the case. Although they had discretion, it was for the colleges to make clear business cases, but we know that, in some cases, that did not happen, which is not acceptable.

Tavish Scott: Did ministers approve the budget for severance payments that the funding council then allowed to be spent on those deals right across Scotland?

Angela Constance: Yes.

Tavish Scott: You will be aware that 14 such deals have been brought to our attention by the Scottish funding council, which is your body. The total claim from the funding council so far—we do not yet have the full figure, although it is not clear to me why—is £1.081 million. That is the contribution that your budget made to those severance deals. Were ministers briefed on that as the process continued from 2011-12 onwards?

Angela Constance: Ministers would have been in regular contact with the funding council and would have discussed those matters. It is important to remember that the Auditor General for Scotland has confirmed that the merger process—we acknowledge that voluntary severance has been part of that—has been well planned and implemented and that, overall, the voluntary severance schemes have been appropriately implemented and savings have been made. We are now in year 3, and it will take three years for the costs of voluntary severance to be paid back.

Tavish Scott: We have been given advice on 14 severance payments, four of which were of more than 20 months' salary, and Mr Doyle's was not the dearest. One came in at a whacking £314,946, of which the funding council contributed £133,788. Were ministers told about that one? Did the funding council tell ministers about the payments?

Angela Constance: The funding council would have been in regular contact with my predecessor, as it is with me, and they would have discussed the progress that had been made through the merger programme. They would, indeed, have discussed any concerns that were emerging at the time.

Tavish Scott: So, it feels as though it was a price worth paying. The merger process was the Government's objective and it had been approved by Parliament. Therefore, the budget, which you have helpfully confirmed was agreed by ministers, was a price worth paying to get the merger deals done.

Angela Constance: No. We are living with the reality of a set of arrangements and ministers do not have the power to direct college boards in those matters. That is something that my governance task group will revisit. The power to direct colleges was given away, if you like, in 2006.

Going forward, we want to ensure that we have the highest standards. You must remember that, overall, the merger programme has been a success and is a good example of public sector reform, in which the college sector is delivering more for learners and is making a bigger impact.

Tavish Scott: Forgive me if I stay on the issue that the Public Audit Committee is responsible for. You will appreciate that those are wider points for other committees, not ours.

Angela Constance: Sure.

Tavish Scott: Ministers could have decided not to have a budget line for severance payments from the funding council. You could have decided that those were, as you correctly said, matters for the college boards. There was no need to have a budget line for severance payments from the Scottish funding council, was there?

Angela Constance: There was recognition that voluntary severance would be part of the merger programme, as would be expected in any major programme of reform of that nature. It was important that the Scottish Government and the funding council allocated the funds to assist the merger programme for the overall good of the sector. In essence, it was about investing money to save.

Tavish Scott: I totally agree, and I quite understand the need to invest in the merger process. However, the bit that the committee and I cannot understand is investing to provide 14 enormous pay-offs to former college principals and other key staff.

Angela Constance: I am saying that there have been cases of unacceptably high severance payments. I assure you that none of us like that. I certainly do not approve of or appreciate the poor stewardship of public funds, but the funding council acted within the powers available to it at the time. The matter is—rightly—being scrutinised. I tried to indicate to the convener that there is a case for looking at where the funding council and, indeed, ministers can be more proactive to ensure that there cannot and must not be a repetition of the poor governance, leadership and stewardship of public funds. I am absolutely determined to look at that, building on the success of the changes that have taken place as a result of reclassification.

Tavish Scott: I am sure that we would all agree with that, but we are concentrating on what happened from 2011-12 onwards. I want to be very clear that ministers were informed by the funding council that the 14 separate severance payments were taking place and that the scale of the contribution incurred from the minister's own budget was brought to ministers' attention.

Angela Constance: The information available to me would suggest that ministers would have been advised of concerns, but not at the time when the decisions were being made or when the problems had arisen. Coatbridge College is an example of that. A decision was made in February 2013 but that did not come to light until October 2013, so the funding council and ministers were not aware of the decision until that time. It is in that regard that we need to look at what proactive processes could reasonably be put in place to ensure that that does not happen again, bearing it in mind that the funding council now has, in effect, a veto over severance arrangements.

Tavish Scott: I understand that. Are you satisfied that in each of those 14 cases there was a business case that would stand an Audit Scotland test? I am not referring to those cases that you have mentioned and that Audit Scotland has looked into. In the other cases, are you satisfied that the business case exists and is a matter of public record that we could see and be satisfied by?

Angela Constance: No, I would not be.

The Convener: Will you clarify what you mean? Are you saying that you would not be able to clarify whether there were business cases in all instances?

Angela Constance: I am very conscious that the Auditor General has provided two section 22 reports, and that she has highlighted four other colleges on which she did not produce section 22 reports but where practice had fallen short of what was expected, whether that was in and around processes.

The Convener: Will you clarify the position on the other colleges that were part of the merger process? We have asked the funding council to send us the business cases, which we have not received. Would you expect there to be a business case for each of those colleges?

Angela Constance: I would expect a business case to have been followed and presented. That would clearly be our expectation.

The Convener: Would it also be your expectation that the funding council, which made the money available, would have a copy of the business cases?

Angela Constance: I would indeed.

The Convener: You would expect that.

Angela Constance: I would.

Colin Beattie: Cabinet secretary, we heard from Mr Doyle and Mr Gray an acceptance that charitable funds were used for the severance payments, despite their attempt to obfuscate and say that the funding on the college's part came from commercial sources. Are you concerned about the use of charitable funds for such payments?

Angela Constance: Members of boards are charity trustees and they must comply with legislation on charities. OSCR also has a role to play in this area. Irrespective of the source of funds and whether they come from the public purse or charitable or commercial activity, we have to recognise that some of that commercial activity will come from the public sector. Therefore, the issue is the same. Where there has been poor stewardship of funds, it does not really matter whether those funds come from charitable or commercial activities or are public funds. At the end of the day, poor financial governance is poor financial governance.

11:15

Colin Beattie: Is there a case for legislating to cope with situations in which excessive payments have been made from the public purse and clawback is needed or appropriate?

Angela Constance: In these circumstances, we should always consider what would be helpful or appropriate. I know that OSCR is reviewing the evidence that has been given to the committee very carefully and is following matters. OSCR currently has powers relating to disqualification, and it presents an annual report to the Scottish ministers, which is laid in the Parliament at the same time. In previous years, that has focused on more technical aspects, but it is an opportunity for OSCR to make recommendations about charities legislation. We want to ensure that that legislation is robust and fit for the future.

Obviously, many of the issues around clawback relate to employment law. We do not have any facilities just now to make changes to employment law, but legislation is going through the United Kingdom Parliament. There is the Enterprise Bill and the Small Business, Enterprise and Employment Act 2015. The parliamentary process that the UK Government has to go through will not be complete until March and, obviously, the Scottish Government is following that carefully. There is a proposal for a cap on voluntary severance and a proposal on clawback when people who have worked in the public sector and have earned more than £100,000 turn up in employment in the public sector 12 months later. There is scope for other matters to be considered.

Colin Beattie: You have a working group at the moment that is looking at various aspects. You have said that, even under the present arrangements, it would be difficult for such a situation to be repeated. Are you satisfied that the present structure will prevent the same situation from arising again?

Angela Constance: I am given some reassurance by the evidence and comments of the Auditor General for Scotland, who acknowledges that the new arrangements are far more robust. We are dealing with the actions of a few individuals, and we cannot legislate or have policy and procedures that will remove all risk of individuals in future behaving inappropriately or exercising poor judgments or poor governance. However, I am absolutely determined to ensure, as far as humanly possible, that we have no repetition of what we have seen at Coatbridge College and the other colleges where there has been concern. I will not tolerate poor governance. I assure the committee that the task force is looking at all these matters closely and it will of course pay close attention to the forthcoming report from the committee.

Colin Beattie: I have one final question, which is on the SFC.

One of the frustrations that the committee has had is that the only mechanism for penalising appears to be to cut college funding and claw back from the college, which nobody wants to do because that impacts more on the students than it does on the people who have crossed the line. Is there some comfort coming down the line on that particular issue? Will the SFC have more teeth?

Angela Constance: There are two things that I want to highlight in response to Mr Beattie's question. It is important to point out that the funding council can currently introduce financial sanctions, but that that would be at the expense of the college or institution itself, or of the students or of day-to-day operations. It is understandable that the funding council would not want to implement a draconian measure that would have an impact on learners, through no fault of their own but as the result of the actions of individuals. That prompts, however, a question about what other sanctions the funding council should have at its disposal, because sanctions should be a deterrent but they also need to be workable, if required. That is something that we will look at closely through the work of the task group but, to go back to my earlier point, we obviously want to nip any difficulties in the bud and we want to consider what proactive, preventative action can be taken to ensure that the funding council does not have to use its veto powers or use sanctions.

Dr Simpson: The phrase that you used, nipping in the bud, is just what I want to address. In 2011-12, Stevenson College and Telford College operated a scheme, known as the Edinburgh scheme, with a 21-month redundancy package. We do not have the details from the funding council as to how much it contributed towards that, but the sums were substantial—£249,000 in one case and £202,000 in another being the total cost of release in those two colleges. The evidence that we have been getting on Coatbridge College, which also refers to involvement in other college mergers, indicates strong Government involvement, and Mr Mullin, as the point person for Mr Russell, appears to have been very engaged in the matter, to the extent of writing papers for the merger boards and providing support of various sorts. The Government would surely have been aware in 2011-12 that Stevenson College and Telford College had operated a voluntary severance scheme on the basis of 21 months and not the 13 months that the funding council recommended. What was Government's reaction to that?

Angela Constance: I am not aware that the Government was aware prior to decisions being made either at Telford College or at Stevenson College, although we could go back and scrutinise the detail on that point for Dr Simpson and other committee members.

Dr Simpson: It would be helpful to know whether Mr Mullin was involved in those two early schemes. If he was, he would perhaps have appreciated the difficulties that were arising when he was involved in severance arrangements at Coatbridge. One of the defences that Mr Doyle and Mr Gray were putting up was that the Telford scheme—or the Edinburgh scheme or the South Lanarkshire scheme, as it has been variously called—had been operated, so why should it apply to one set of principals and not to others? Leaving aside the governance arrangements, which we have agreed were very poor in reaching those decisions, that strikes me as a not totally unreasonable defence, so I do not understand why, if that was unacceptable—and you have said that it was unacceptable to have those exceptional payments—it was not picked up and run with. It would be useful to see a diary of Mr Mullin's involvement in all the colleges' mergers, because that would give us an understanding of the minutes of the merger committees and of exactly what was going on and what information was being passed to the Government.

Angela Constance: There are two things that I would like to say to Dr Simpson. I am not sure that it is a defence to say that, because something happened elsewhere, it can automatically happen in one's own institution. The Government and the funding council were clear about the restraint that should be shown over the use of the strategic funds to assist with voluntary severance. We have rehearsed a lot about the powers that existed then and the tighter controls that now exist.

It is important to stress that Roger Mullin had no role in decisions around voluntary severance. Those were matters for boards of management—

Dr Simpson: Sorry to interrupt; I am not suggesting that, if that is the impression that I have given. I am not saying that he had that role. My concern was that he was at all those meetings; he would be aware of what was being discussed. You have said that there were concerns and that it was unacceptable that those arrangements took place. However, those arrangements were in place for Telford College and Stevenson College.

I accept that Mr Mullin was not at all involved in the decisions and I can understand that the Government would not be aware of those arrangements. However, if Mr Mullin was involved in the Stevenson and Telford mergers and was at the discussions about the voluntary severance payments for Brian Lister and Miles Dibsdall, whether that was a concern or not, the Government, or at least a Government point person, would then have been aware of what was going on.

I am not saying that Mr Mullin was responsible in any way for the decisions, but he could have been aware of them. I would like to have it made clear that he was not aware of them by seeing diaries that demonstrate that he was not involved in the Stevenson or Telford mergers when severance payments were in any way discussed.

Angela Constance: We have to be careful about making assumptions about what people knew—

Dr Simpson: I am not making any assumptions. I am asking a question. It is not an assumption, minister.

Angela Constance: Of course, Dr Simpson, if there is more information that we can give about the role of Roger Mullin, we will. However, his contract of employment was due to his specific experience and expertise in change management and organisational change.

We know that an important part of a successful merger is about establishing the culture of new organisations. Mr Mullin was involved in completing culture studies at the request of institutions that wished for them. That was to assist with the merging of organisations to ensure that they had the best chance of success and were on a solid footing. If the committee wishes, I would be happy to send the committee an example of the sort of work that Mr Mullin was involved in and to establish what other information we have about activities and meetings if that is helpful.

Dr Simpson: I want to make it absolutely clear, convener, that I am not being critical of Mr Mullin or his CV or his experience. I would like to know when he started his job. He obviously finished at the end of the process—or certainly in May this year—but I would like to know when he started and whether he was present at merger discussions at Stevenson College or Telford College when severance payments were discussed.

I reiterate that his job was about the culture and I have read the papers. There are some useful and interesting papers about developing the culture of a merger for the Lanarkshire colleges and the Ayrshire colleges. There is not a problem there. My question is whether he was present when severance payments were discussed. If he was, he would have had knowledge of them. If concerns were being expressed, he should have passed on his knowledge of the issues, because they were outwith the funding council's guidance.

My final question is about the Linkston report, which we have just been supplied with. When did you become aware of that? When did you receive that report or have knowledge of it?

Angela Constance: I personally was aware of the Linkston report in advance of my meeting with the family of Francis McGeachie. The family requested a meeting with me to ask what progress had been made in implementing the report's recommendations. I will check the date that the report was provided to my predecessor, but it would have been in 2014. The report was produced in November 2014.

Dr Simpson: Thank you. That would be very useful.

The Convener: Do you have confirmation of when you met the family—just roughly what month it was?

11:30

Angela Constance: I will check my diary, but I am sure that it was 4 November.

The Convener: Was that this year?

Angela Constance: This year.

Dr Simpson: So the Government was aware of that report and also that that committee had begun an investigation of the Coatbridge situation, but nobody thought to give us the Linkston report until this week—was it this week, convener?

The Convener: Yes.

Dr Simpson: We have been looking at the matter for a considerable time and that report is a highly pertinent document. Your officials must have been following the evidence. Did nobody think to say at some point, "Hang on—they have clearly not got the Linkston report, which has quite a bit of information in it about the situation"? I am not saying that it was your responsibility, minister. I am not saying that at all. I am just asking why nobody thought to help the committee by pointing out to the Scottish funding council that they should ensure that that report was in front of us.

Angela Constance: Perhaps I can clarify some aspects of that. My understanding was that the SFC was in touch with the committee in October. The background is that the SFC commissioned a review of the management of the merger process in Lanarkshire and its impact on senior staff and completed a report.

You will appreciate that the backdrop was highly sensitive, because of the tragic death of Francis McGeachie. My predecessor met the family, or representatives of the family, and it was agreed that, at least in the first instance, the report would have a limited circulation. The report went to the principal and the chair of the newly merged college, and when the Auditor General requested access to the report, that was facilitated. External auditors also had access to it.

The family of Francis McGeachie said to me at our meeting that they were comfortable with the report being made available to the committee—they had never intended it to be confidential. They had been watching the proceedings and investigations undertaken by the committee and were content for the report to be released.

Dr Simpson: In fact, as you know, convener, the family provided us with that report.

The Convener: I confirm that we received the report not in October but on the 20th of this month, from the Scottish funding council. It was attached to a letter. I do not know where October comes into it.

Mary Scanlon: Given that ministers appoint the chairs of college boards, which creates a direct line of accountability to ministers, it concerns me—and, I think, the public, who have taken a fair interest in the Coatbridge situation—that, if it had not been for the Auditor General's section 22 report, we would know nothing about John Doyle's £304,000.

We have gone down from 30-odd colleges to 13, so only one in three of the previous principals will have a job after that. Every party supported the mergers, but we supported the policy on the basis that it would lead to higher-quality education, that there would be efficiency savings and that it would reduce duplication. We were looking forward to quality education but also efficiency savings.

Surely, in all of that, there must have been discussions about severance payments. Do you have the minutes of a meeting of the college board chairs and the accountable officer in the Government at which severance payments were discussed and advice was given to the board chairs?

Angela Constance: It is important to point out that the Government had no role in appointing the individual who was the chair of Coatbridge College at the time of these appalling events. Arrangements have now changed, because—

Mary Scanlon: Did the Government appoint John Gray?

Angela Constance: No.

Mary Scanlon: Was John Gray appointed by ministers?

Angela Constance: No, he was not. The situation that you refer to, in which the Government appoints regional chairs and chairs of college boards, is a result of legislation. That is the practice now. One of the benefits of the Post-16 Education (Scotland) Act 2013 is that there is now a more regulated process for those very important appointments. Those jobs are done by volunteers, but we nonetheless expect the highest of standards. The Government did not appoint John Gray.

Mary Scanlon: Okay, but given that the line of accountability of the chairman of the board of Coatbridge College was to ministers, were there regular meetings during the merger process—to ensure that it was a success—with officials and with the Government, and were severance payments discussed?

Angela Constance: It is the funding council's role to take on the monitoring process that you describe, as opposed to—

Mary Scanlon: So the funding council was overseeing the process towards the merger, including the severance payment arrangements.

Angela Constance: Yes.

Mary Scanlon: Quite a lot has been said about the fact that the Scottish funding council has the ability to claw back money, which it did not use. Therefore, in a sense, it failed in good governance. Could I ask—in retrospect as well as for the future—why the Scottish funding council's pay-out was not on the condition that severance payments were in line with its recommendations and guidelines? It did not say to Coatbridge College, "We will pay out only if you adhere to our guidelines". Was such a condition in place? Is it in place for the future under the new arrangements?

Angela Constance: There are three aspects to your questions. The pay-out was made on 25 October 2013, and funding council funds were not released until March 2014. One of the aspects of the affair that is completely unsatisfactory—apart from the fact that the decision on severance packages was made a way back at the beginning of 2013 but was not visible to the funding council until October 2013—is that, despite a concerted level of activity between 10 and 24 October 2013, when the funding council communicated in writing and in person that the current package was not acceptable, the decision was made on 23 or 24 October and the payment was made on 25 October. I am told that the normal practice is that payments are made a month in arrears, so a very hasty decision was made about the payment—about public money leaving the college and going into an individual's bank account.

The funding council could have clawed back the money from the college, but that would not have penalised the individual with £300,000 in their bank balance; it would have penalised the college. A judgment had to be made about the impacts on the college at that time.

Under the new arrangements, as the Auditor General has said, the funding council in effect has a veto over proposals, because approval must be sought before decisions are made and money is paid. A different set of arrangements is now in place. That veto exists irrespective of whether commercial or public funds are being used for a severance package.

Mary Scanlon: I am aware of all that. Rather than pursue clawback, could the Scottish funding council not have said to Coatbridge College, "We will not pay our £1.3 million unless you adhere to our guidelines"? Could it have done that?

Angela Constance: In correspondence of 24 October 2013, the funding council said:

"you should not pay, or take any further steps to commit to, any deal along the lines you indicated to me ... until you have reassured me ... that the VS arrangement is in accordance with good practice".

Mary Scanlon: Yes, but the funding council still did not say that it would not pay more than what was set out in its guidelines. Did it have the ability, the responsibility and the power to say that? Could it have withheld any funding that was over and above what was set out in its guidelines?

Angela Constance: The fact of the matter is that, in March 2014, the funding council did not pay over and above what its guidelines said. It was from its own resources that the college paid the excess, if you like. That is still unsatisfactory in the sense that the payment was taken from college funds, but the funding council did not pay in excess of what its guidelines said.

Mary Scanlon: We are all very grateful to the family of Francis McGeachie for giving us sight of the Linkston report. I am totally outraged at the amount of money that John Doyle walked away with, but the lack of compassion and empathy for staff at the college, which is evident from reading the Linkston report, is not only tragic but horrendously sad. I will read one sentence of that report to you:

"poor governance and decision-making ... had a cumulative and negative impact on senior staff ... certain decisions, practices and behaviours fell short of what I would expect in a well governed college."

The colleges are totally funded by the taxpayer. We have heard about John Doyle's lack of responsibility and of duty of care to his staff. We put on record how much we value every person who teaches and gives their time in the national health service and particularly in colleges, and we give them our grateful thanks.

What duty of care did the Government have? You must have been aware that many people were facing uncertainty about their future incomes, their future roles and their future careers. The Linkston report is quite devastating about the effect on the staff. Did that form part of the Government's discussions? Was any pastoral care suggested? What was the Government's role?

Angela Constance: The report that Alex Linkston prepared makes for salutary reading. He said that, overall, the New College Lanarkshire merger process was comprehensive and sound—

Mary Scanlon: We are talking only about Coatbridge College.

Angela Constance: However, he highlighted a number of significant weaknesses in governance and leadership. I found it very troubling, and I know that the report's author found it very troubling, that there were so many differing accounts of a very significant matter. That demonstrates the extent of the dysfunction and disharmony in the college.

There were very high levels of sickness among members of the senior management team and there are lessons to be learned in that regard. We need to find ways of being more vigilant about levels of sickness absence, particularly in senior management teams, because a high level should set alarm bells ringing about how an organisation is coping or performing.

The Scottish funding council has made a commitment, which I will oversee, by accepting all the recommendations in the Linkston report. Some recommendations have already been implemented and others are still to be implemented—for example, the funding council has not yet issued further guidance on severance. It has explained to the family of Mr McGeachie that it wants to see the Public Audit Committee's report and ensure that the committee's findings feed into any subsequent guidance that it issues.

11:45

Mary Scanlon: I will leave it there.

The Convener: Before we move on, may I clarify something? The cabinet secretary referred to the payment being processed by the funding council. The committee has been provided with a copy of an email dated 10 December 2013 that John Kemp from the funding council sent to Derek Banks, the college's finance director. John Kemp said:

"I am happy to confirm that we will pay 13 months salary subject to a valid claim being made against our VS funding for the merger. I anticipate Council will agree the transitional funding requested for the merger at its meeting this Friday (13th)."

Angela Constance: My understanding is that the payment was not made until March. We will double check the accuracy of that.

The Convener: To be fair, cabinet secretary, what we have here is a senior official of the funding council making it clear that the payment would be made. He was not saying, "Let's not make this payment."

John Kemp went on to say in his email:

"Given that in almost every other merger I have been involved in the due diligence has been finalised prior to the amount of transitional funding being available from SFC being confirmed, I cannot see the fact that Friday's meeting has not yet taken place being an impediment. If however it is, please let me know and I will arrange that either Sharon or I phone you on Friday to tell you of the outcome of the meeting."

The email is pretty clear. John Kemp was saying, "You're going to get the money." Nobody was saying that that would not happen; there was a clear commitment.

Angela Constance: Yes, but that was on the basis of 13 months' salary, not 24 months' salary.

The Convener: Yes—but still, the payment was being processed.

Nigel Don: Cabinet secretary, you have said that this kind of thing will not be able to happen again. I will explore some of the detail of that. We have in our papers a helpful table of previous payments, which refers not just to voluntary severance lump sums but to pension contributions, including some eye-watering amounts. Will you reassure us that pension contributions will also be covered by the new governance arrangements?

Angela Constance: It is important that we look at everything in the round when we consider processes that lead to costs to the public purse. A change was made to the severance package that the then principal of Coatbridge College received to show restraint on the pension aspect. Nonetheless, the principal still received an eye-watering overall package.

Aileen McKechnie will comment on pension contributions.

Aileen McKechnie (Scottish Government): As part of the task group's considerations, we absolutely will take into account the widest implications of funding contribution to voluntary severance. Pensions absolutely will come into that.

Nigel Don: I am grateful for that reassurance. In the case that we have been considering, the sums were paid by the college rather than the SFC, but it was all still public money, which cannot be used twice.

Stuart McMillan: Cabinet secretary, you said that the task group's work is under way. Will the group's focus be on the college sector or will it include the university sector?

Angela Constance: We will look further afield. The task group's first meeting was last week, and we agreed that we would look at a range of sectors outwith education. A representative of OSCR is on the group, and there is interest in governance developments in the financial sector that appear to be quite apposite for us to look at. We will look at good practice in the health sector and we will also look outwith Scotland.

We are conscious that the task group wants to come to a view on clear actions and report back to Parliament on them. We do not want the task group to meet for ever and a day; it is a short-term working group. However, we are looking further than the world of education and Scotland to inform best practice and how we will build on the work that is done by the sector-led good governance group.

Stuart McMillan: Will the action points after the work and the report be aimed at the college sector solely or at the college and university sectors?

Angela Constance: The task group is focused solely on the college sector, for very good reasons. It follows on from recent decisions that I took on Glasgow Clyde College, from the two section 22 reports that the Auditor General prepared and, indeed, from the committee's report on North Glasgow College. The group is focused on the issues and difficulties that the committee and the Auditor General have highlighted.

Stuart McMillan: You mentioned OSCR, which provided evidence to the committee. I asked it about further powers or tools that it would like in its armoury. Have there been discussions between you or your department and OSCR about its current powers and any additional powers that it could obtain to help it to fulfil its roles and responsibilities more effectively?

Angela Constance: There is on-going dialogue between Scottish Government officials and OSCR, and between the funding council and OSCR. As I said, a representative of OSCR sits on the college governance task group. Those issues are part of our wider considerations, but it is of course for OSCR to bring forward proposals as well. It has an opportunity to do that in the annual report that it brings to the Scottish ministers and lays in Parliament.

Stuart McMillan: Has OSCR proposed any particular additional powers that it would like so that the Government could consider them for any future legislation?

Angela Constance: To the best of my knowledge, OSCR has made no formal requests of the Government to legislate in and around its powers as a regulator. However, as always, we are vigilant and open to any consideration.

The Convener: I have a brief final question. This is the last evidence session that we will have on the subject. A theme of the sessions has been management versus other staff, who received just the basic terms. Management staff received enhanced terms. Is your position like ours? Would you have liked parity across the board for all members of staff? I take it that your predecessor would have thought the same.

Angela Constance: I am very clear that we should not have one scheme for one set of staff and another scheme for the other set of staff. There needs to be parity.

The Convener: So we all agree on that. Would that have been the same for your predecessor, Michael Russell?

Angela Constance: He was very clear about the need for restraint and good business cases in relation to the strategic funds for voluntary severance.

The Convener: Was it Michael Russell's position—and, I take it, the Scottish Government's position—that everyone should receive the same deal, regardless of whether they were a principal or a member of catering staff? Whoever the staff are, they all play a role in the college, and they should all receive the same deal.

Angela Constance: That is my view, and I hope that I am expressing it clearly to the committee.

The Convener: I am asking whether it was Mike Russell's view.

Angela Constance: It is a bit difficult for me to say what my predecessor's personal view—

The Convener: Can any colleagues advise us of the position?

Aileen McKechnie: I am afraid that I do not know the detail of that. I expect that that would have been our collective view.

The Convener: It would be helpful to see an audit trail of that principle. While acknowledging that the mergers were going to take place, we would have had an argument that the minister, who was leading the process politically, should have said that in principle he expected everyone to receive the same settlement. However, from the various strands relating to what took place, we can see that the Scottish funding council was implicated in a process whereby, somehow, senior managers received a better deal than the other members of staff at the college did—despite all of us, as politicians, saying that that is a disgrace.

I am making a point in relation to the minister who was responsible at the outset—Mike Russell. It would be helpful for the committee to be clear about the audit trail of information that was provided to the Scottish funding council to make clear to it what you are saying to us today, which I suppose we all agree on: that everyone should receive the same deal, regardless of who they are.

Angela Constance: It is important to recognise the limitations on ministerial powers. As we look to the future, it is important that I and the Scottish Government are clear about standards, leadership and what is expected. We acknowledge that new tighter and sharper controls are in place post reclassification, and we are vigilant about what more can and should be done to ensure the highest standards across the college sector.

The Convener: I thank the cabinet secretary for her time.

11:57

Meeting suspended.

11:58

On resuming—

"The 2014/15 audit of the Scottish Government Consolidated Accounts"

The Convener: We now move to agenda item 3, which is oral evidence on the Auditor General for Scotland's report, "The 2014/15 audit of the Scottish Government Consolidated Accounts". I welcome Caroline Gardner, the Auditor General for Scotland, Mark Taylor, who is assistant director of Audit Scotland, and Gordon Smail, who is a senior manager at Audit Scotland. Caroline Gardner will make a brief opening statement.

Caroline Gardner (Auditor General for Scotland): As the committee knows, the Scottish Parliament is currently developing its approach to scrutiny in order to reflect its increasing financial powers. The Public Audit Committee's taking evidence on the Scottish Government's consolidated accounts is an important part of that. This is the right time to strengthen parliamentary scrutiny of the consolidated accounts; I have provided the report to support your process.

12:00

The consolidated accounts are a critical component of the Scottish Government's accountability to Parliament and the public. They cover over 90 per cent of the spending that is approved by Parliament each year and show the amounts that the Government spent against each main budget heading. They also show the assets, liabilities and other financial commitments that are carried forward to future years, and contain an annual report in which the Government gives a high-level account of its activities and performance.

My independent opinion on the consolidated accounts is unqualified, which means that I am content that they provide a true and fair view of the Government's finances.

I will briefly highlight four areas that I address in my report. The first of those is financial management and reporting. The majority of the budget that is approved by the Scottish Parliament relates to spending programmes and administration costs that are covered by the Scottish Government consolidated accounts. The Scottish Government managed its budget for 2014-15 within the overall limit that was set by Parliament, and the accounts meet legal and accounting requirements. They show the financial position and budgetary performance from the perspective of the Government's role in managing the budget that it controls directly.

However, it is becoming increasingly important also to understand the overall position of the devolved Scottish public sector as a whole. I have previously highlighted that there is no single set of accounts that shows that position, which means that it is difficult for the Scottish Parliament and taxpayers to get a full picture and understanding of the longer-term implications for public finances. It remains firmly my view that the case for enhanced reporting of Scotland's public finances has never been stronger. Accounts for the whole of the devolved public sector would also complement the Scottish Government's own accounts.

The second area that I will address is corporate governance. A governance statement that is prepared by the permanent secretary is a key feature of the consolidated accounts. That statement summarises how the core organisation is controlled and directed. In my view, the overarching governance arrangements that were in place during 2014-15 were generally effective and provided an appropriate framework for organisational decision making.

The third area in the report is performance. As I said, the consolidated accounts contain an annual report that summarises financial performance for the year, with particular emphasis on performance against budget. That report also signposts where more performance information is available, and refers to the Scottish Government's national performance framework. The Government has been building on its arrangements in order to report better how it is directing resources towards its desired outcomes, and the impact that that is having. In my view, a more rounded account of the Scottish Government's overall performance as part of an expanded annual report would enhance that reporting and help to strengthen accountability and scrutiny.

Fourthly, the other three significant issues that I highlight in my report are the continuing risk to the common agricultural policy futures programme, the suspension of European structural funds programmes, which provide financial support for improvement, and the ONS classification of non-profit-distributing projects and the potential implications for capital budgets.

Overall, the Scottish Government has a good record of financial management and reporting. Governance arrangements are generally effective and the national performance framework is well established. Together, those form a strong base to meet the challenges of tighter budgets and increasing financial powers. Nevertheless, my audit work has identified a number of areas for improvement from that base. We will continue to support independent scrutiny of Scotland's public finances through all our work and through our engagement with the committee.

As always, convener, my colleagues and I are happy to answer the committee's questions.

The Convener: Thank you for your opening statement, Auditor General. We will go straight to questions.

Mary Scanlon: I was surprised to read in paragraphs 34 and 35 that Scotland still does not have a balance sheet. We do not know our income, our expenditure or our pension liabilities in the public sector. I think that I have raised the matter with you before, but I have a serious concern about local government debt, which must be recognised somewhere.

Forgive me, convener, but we have been through a referendum campaign to which deliberations about Scotland's balance sheet were pertinent, and we will face another referendum campaign sometime in the future, yet after nine years of a Government that is looking for Scotland to stand on its own, to have its own balance sheet and to be financially and otherwise independent, we do not know what Scotland's income and expenditure are. Why is that?

Caroline Gardner: One of the main messages of my report is that there is a need for that overall picture of Scotland's public finances. A picture of both liabilities and assets would help Parliament to make better decisions for the longer term, and help taxpayers and citizens throughout Scotland to understand the risks and opportunities that we face. The new financial powers that are coming to Parliament under the Scotland Act 2012 and the Scotland Bill mean that the importance of that information is heightened.

I understand that the Government has accepted in principle the need to develop a more comprehensive picture. What I call for in this report is a more detailed plan and timescale to take that forward as a matter of urgency.

Mary Scanlon: With all due respect, Auditor General, you have called for that before.

Caroline Gardner: I have been reporting on the matter since July 2013, which is why I am now looking for—

Mary Scanlon: I think that you are right; it is not just politicians who want to see the information. Scottish taxpayers have a right to see that information. When do you expect to get that information from the Government and why is there a delay?

Caroline Gardner: The question why there is a delay is one that you might want to pose to the permanent secretary when you take evidence in December. My view is that the matter is becoming increasingly urgent, given the new financial powers that are coming to Parliament as we speak.

Mary Scanlon: Absolutely.

I will just put my final two questions together, which are on European funding and the common agricultural policy. We are about to discuss information communications technology. The futures programme is now three times over budget—it was to be £62 million and the forecast is £178 million. Paragraph 50 in the report says:

"There remain significant risks to successful delivery."

Paragraph 51 says that the

"risks will remain until full implementation and beyond."

We have talked about that before. An update would be helpful.

I am very concerned about paragraph 55, which talks about

"the robustness of information being retained by some grant recipients about how ESF funds were being spent."

Is there likely to be a clawback of funds? Your language is always very polite. Are you implying that funds have not been spent on what they were drawn down for? Would you give the committee a bit more clarity on that?

Caroline Gardner: Certainly. You have asked about the CAP futures programme and the structural funds. I ask Mark Taylor to pick up the CAP futures programme first, then we will come back to your second question.

Mark Taylor (Audit Scotland): As Mary Scanlon said, we have brought information on the CAP futures programme to the committee before. Our intention is to report in the new year on progress on the system. We have previously identified concerns and we continue to have concerns that the project is facing significant risks. The Government recently set out its timeline for payments; we hope that arrangements will be in place to make those payments—

Mary Scanlon: Will the payments be made in instalments?

Mark Taylor: We will stay close to that and report to the committee more generally in the new year.

Mary Scanlon: How significant are the "significant risks"?

Mark Taylor: There are two issues that the committee will be aware of, but I will provide some confirmation. There are issues around delivery and value for money of the project in terms of how quickly systems can be put in place, how effective the systems are and the associated costs and management of the project. The committee has an on-going interest in that area.

I clarify that it is important to get the systems into play so that the Scottish Government can demonstrate to the European Commission that it is following the rules that it means to follow. As well as making payments to farmers, the real test of the systems will be whether the Government can demonstrate that it has followed the rules and has in place appropriate control systems. We have, as part of our wider programme of work, a responsibility once payments have been made to look at the controls and to report on them to the European Commission.

Mary Scanlon: I know that other members want to come in, so I will leave that one for now. Could I get a response on ESF?

Gordon Smail (Audit Scotland): It is right that we highlight structural funds. A substantial amount of money flows from the European Commission in them—something like £81 million in the 2014-15 accounts that we are looking at today.

There have in the past been what are called "interruptions": they are quite a common occurrence in schemes across Europe. What we are reporting is an escalation in a category called "suspension". In direct answer to the question, I say that there is uncertainty about the implications of the situation. In an interruption, the managing authority—the Scottish Government—can self-correct for a relatively small amount, which can be recycled through the process. In a suspension, the managing authority—the Scottish Government—has to do a lot more; there are a lot more tests for the Government. For example, it has to produce an action plan for how it will resolve matters.

I explain all that to underline the uncertainty. At the moment, the action plan is with the EC, which will consider it and then decide what to do. It has a range of options available to it, including the self-correction option that I mentioned and the option to apply penalties to the Scottish Government. I emphasise that that will take some time to come through. If penalties are suggested, there will be negotiation between the Government and the EC about what they might be. However, it is a serious situation that we wanted to highlight.

Mary Scanlon: Can you share with the committee today examples of projects in which funds that have been accessed through the ESF have been misused?

Gordon Smail: I will go down a level in order to provide a bit more detail. Audit is done of individual projects on the quality of evidence supporting expenditure and the procurement rules that were applied. On the basis of a sample, the audit work produces what is called an error rate, which determines the action that is to be taken.

Mary Scanlon: Has the error rate increased in recent years?

Gordon Smail: It has. That is one of the reasons for the escalation from interruptions to suspensions.

Mary Scanlon: Is that a result of the mismatch between what the funding was meant for and what it was used for?

Gordon Smail: That is exactly right. There is then a discussion about what the error rates mean, which relates to the amount of money that has to be either self-corrected or corrected through penalties. I am not avoiding your question about individual cases—I could not name any today, so I want to give you a sense of how the process works and how we got to this situation with our concerns about the funding.

Colin Beattie: The report is, as you might expect, a fairly good one for the Government, but with a few questions coming out of it. The figures that you have given for the CAP futures programme have not changed since your previous report, have they?

Caroline Gardner: No.

Colin Beattie: The figures are the same. If I remember correctly, you said that you would come back to us on that at some point. When is your next follow-up due?

Mark Taylor: There are two critical dates. The first is the one that Mary Scanlon alluded to, which was for the initial payments to farmers. The Government's intention is to get as many payments out the door as possible in December. There is a hard deadline at the end of June 2016, by when, under European rules, all payments must have been made. Our intention is to report to the committee more generally between those dates, when we have real evidence and are able to comment on the Government's overall progress in advance of the June 2016 deadline. We will need to manage the timing in respect of the election and when we can report around that, but we have set out in the report that we want to report back in spring 2016.

Colin Beattie: Paragraph 29, which is on page 9 of your report, mentions £302 million for NHS clinical and medical negligence claims. I was quite surprised to see such a large figure. Is that directly linked to a potential liability, or is it a pot that is there just in case?

Caroline Gardner: That relates to the scheme that is used to manage medical and clinical negligence across the NHS as a whole. It is always one of the largest provisions in the accounts. As always, I ask Mark Taylor or Gordon Smail to pick up on the detail of that to keep the committee straight on it.

Gordon Smail: The provision is an estimate of the amount that is liable to be paid out for medical and clinical negligence cases that have already been brought against NHS bodies. There is a well-established process, which is managed through the NHS's central legal office, to risk assess each case—in essence, to assess the probability of its succeeding—and to assess the amount that might be payable in each case. That allows the Government to prepare an overall best estimate—I stress that it is an estimate—of how much it expects to have to pay out over time in respect of cases that have been raised.

Colin Beattie: So the figure is not an annual figure; the pot is an accumulation of potential liabilities.

Mark Taylor: It is a balance-sheet figure. It is the current balance; it is built up over a number of years and will be met over a number of years.

Colin Beattie: Approximately how many cases are there? Can you give me a ballpark figure?

Mark Taylor: I am afraid that I do not have that information. I can come back to you on that.

Colin Beattie: It is just out of interest. To me, £300 million is an awful lot of money.

12:15

Caroline Gardner: As Mark Taylor said, it is an accumulated figure for all the cases across NHS boards in Scotland. It is updated at two levels—at the level of the Scottish Government's balance sheet and at individual board level. However, we do not have to hand the figure on the number of claims.

Colin Beattie: Paragraph 35, on page 10, is about pension liabilities. In recent years, pension liabilities have become a problem because of changes in accounting and the way in which actuaries now treat some of the funding. Is there no feel at all for what the figure is nationally? In a small way, I am involved with local trusts and they are crippled by the costs of pension funds.

Caroline Gardner: You are absolutely right about the scale of the liability. The Scottish and UK Governments have taken action to try to manage that liability in the longer term. I ask Gordon Smail to say a bit more about the figures that are available and what is not available in Scotland.

Gordon Smail: It is right that we raise the issue. In fact, it is a good example that shows why we think that, across the public sector, we need such information to be available in a transparent way so that informed decisions can be made. In our report "Developing financial reporting in Scotland" back in July 2013, we were able to do that calculation based on good-quality audited information and, at that time, the accumulated liability was £66 billion, so it is a substantial figure.

Colin Beattie: Is that just for Scotland?

Gordon Smail: Yes.

Colin Beattie: Gulp! Thank goodness that we are not likely to become liable any time soon.

In the consolidated accounts, the value of the assets has been increasing over the years as a result of capital investment, but you say that the liabilities have stayed broadly consistent. Why is that? I would have thought that the liabilities would edge up proportionately with the assets.

Mark Taylor: I think that the asset increase is largely to do with capital budgets being applied and expenditure through the NPD programme and other similar programmes. That increases the amount of public funds that are invested in assets that will have a continuing benefit, which is what the asset balance measures. The liabilities are largely but not exclusively independent of that. In the report we highlight how those liabilities are established in the general business of Government and the organisations that are part of the consolidated accounts.

As part of the overall picture, it is important to understand some of the individual trends within the liabilities that Mr Beattie has highlighted. Clinical medical negligence is one of the areas. We have also highlighted the area of provisions, for example. It is important that there is an understanding of what is happening at the headline level and in the individual balances. Again, through good reporting on the balance sheet, there is an opportunity to have a greater understanding of that.

Tavish Scott: I have a couple of questions. The first is on paragraph 29, which mentions

"early departure costs of £155 million".

I presume that that is not just for John Doyle, and that there are a few others in there.

In paragraph 38, the Auditor General makes a point about the need for the Government to come up with a clear plan and timescale for a single set of Scottish accounts. Is it for the Government to produce that single set of accounts or should it be the Scottish Fiscal Commission? Ultimately, should the accounts be independently produced to allow the openness, transparency and scrutiny that you described in your earlier remarks?

Caroline Gardner: I absolutely think that it should be the Scottish Government that does it. There is a useful parallel in that, for a number of years, the UK Government has produced UK whole-of-government accounts, which carry out that consolidation. Indeed, they include the Scottish elements. However, we do not have that picture at a Scottish level, and it is increasingly important that we should have that.

Tavish Scott: What about the £155 million for early departure?

Caroline Gardner: The £155 million does not relate just to Mr Doyle. It is the figure across the accounts, which are consolidated to the Scottish Government's consolidated accounts at the moment.

Tavish Scott: It is a pretty big number.

Caroline Gardner: It is a large number.

Tavish Scott: Has it gone up?

Caroline Gardner: I do not know. Perhaps Mark Taylor can add to that. I put it in context by saying that we are at a time of reducing the scale of public services and there is a cost associated with that.

Tavish Scott: Sure—thank you.

Nigel Don: Hello again, Auditor General. I want to pick up again the issue of the balance sheet. From the helpful background information that the Scottish Parliament information centre has given us, it looks as though two thirds of the assets are the road network and a substantial other part is buildings. Given that one of the NHS's on-going problems is valuing its buildings, so that it can balance its books—we will explore that matter again soon—are you comfortable that the buildings' valuations are meaningful? I do not doubt that they are professionally done, but what assurance can we have that the buildings' valuations are realisable if needed?

Caroline Gardner: I will ask Mark Taylor, who is my expert on these matters, to respond.

Mark Taylor: We have of course confirmed that the valuations are professionally and appropriately prepared. To answer the question on meaningfulness, those valuations estimate how much it would cost us to replace the buildings, the road networks and the bridges. That is the fundamental basis on which most of the operational assets, but not all the assets, in the accounts are valued. It gives us a sense of what the cost would be to replace them in their current state of repair if they disappeared tomorrow. That is meaningful in giving a sense of the investment that was made previously in those assets and their value to the public sector.

Nigel Don: So they are not assets in any realisable sense, nor do the estimates value what you might be able to get as income if you were to part with them to somebody else; it is actually a shadow liability for what it would cost to replace them.

Mark Taylor: I do not know whether I would recognise the term “shadow liability”, but it would be the cost of replacement.

Nigel Don: No accountant would recognise that term.

Mark Taylor: We make it clear in the report that the assets that are declared as surplus get valued on the different basis of how much they would bring if they were actively marketed, which is an estimate of what they would realise. From memory, I think that the figure for that is £42 million. However, the vast bulk of the assets have been built and are established and will continue to be used for public services.

Caroline Gardner: Can I just add to that very briefly, Mr Don? It is worth noting that, as we say in the report, because there is no single picture of the overall assets and liabilities for Scotland’s public sector, the figure for assets is not complete. Probably the most obvious example of why that does not quite make sense is the roads network, in that the national roads network is on the consolidated accounts balance sheet but a large chunk of the roads network is the responsibility of local authorities and is on 32 different balance sheets and valued on a different basis. There is a real need to pull that together.

Nigel Don: Thank you for pre-empting my next question.

Dr Simpson: I suppose that the same thing applies to the figures for the private finance initiative in respect of schools and hospitals, because one is on the local balance sheet and one is on the national balance sheet.

Caroline Gardner: Local authority assets and liabilities are, for good reasons, on local authorities’ own financial statements. NHS assets and liabilities are within the consolidated accounts, but we do not have an overall picture of them.

Dr Simpson: That makes the same point. One of the largest aspects of the sum for financial liabilities is of course PFI. The figure for the early PFI contracts, and even some public-private partnership contracts, will be reducing, but of course there is the additional sum for new NPD contracts. Is the overall figure increasing or decreasing?

Caroline Gardner: The reports that I have published on developing financial reporting have included a graph that shows, by year, the pattern of committed liabilities that are in place. As you would expect, it moves up towards a peak in the early 2020s, and then it starts to tail off. However, it is added to as new commitments are made.

Dr Simpson: I want to ask about financial assets. The largest financial asset is the student loan sum, which is £2.685 billion. What are the risks associated with that? Have you calculated how much of that sum is likely to be collected and how much is not?

Caroline Gardner: That is a particularly complicated area. I ask Mark Taylor to do his best to talk you through it.

Mark Taylor: Thank you, Auditor General. [*Laughter*.]

Dr Simpson: Sorry, Mark.

Mark Taylor: Briefly, that liability is estimated on collectable debt, and we are happy with the Government’s estimated figure for that and are happy that that amount is currently collectable. There are provisions against non-payment of debt in the estimate of that amount.

Dr Simpson: So the £2.685 billion excludes a certain amount. Do we have a figure for that?

Gordon Smail: I do not have the figure for it, but I can provide a bit more depth. Modelling is done that looks at a range of things, including the profile of people who still have amounts outstanding, which covers things such as their income and their likely income. We do a lot of work on that model to satisfy ourselves that the figures that the Government produces and includes in the accounts are materially correct. There is a process for doing that.

Dr Simpson: Do we have a figure for the amount that is being written off every year, for whatever reason?

Gordon Smail: Yes—it is in the accounts.

Dr Simpson: I missed that.

Gordon Smail: There is a movement shown in the accounts for that.

Dr Simpson: I have another question about the on/off issue. With the European system of accounts 2010 process, the ONS is looking at whether assets should come on balance sheet or go off balance sheet, and that is holding up a number of projects. Is that having any effect on the consolidated accounts?

Caroline Gardner: For complex reasons, that is an issue that affects budgeting much more than it affects financial reporting. I will ask Mark Taylor to talk you through it.

Mark Taylor: The question of whether assets are on balance sheet or off balance sheet is one for the accounts. Generally, the answer to that question is that they are on balance sheet and are recognised in the accounts. As the Auditor General says, the ONS issue relates to the way in which budgetary control and spending controls are currently applied. In effect, the accounts already adopt the approach that the ONS is moving towards.

Dr Simpson: Are the problems with VAT and the centralisation of the police service and with the fact that it has been announced that the colleges are on rather than off balance sheet having any effect? Those are separate issues.

Mark Taylor: You raise a whole bunch of questions. Essentially, those bodies currently fall outwith the consolidation boundary for the accounts, so the extent to which the accounting for those issues applies to those bodies lies outwith the consolidation framework. To come back to one of our central points, a wider set of accounts would wrap those up in one place.

Dr Simpson: That point has been made three or four times, and I think that it needs to be addressed urgently.

Stuart McMillan: I found the report very useful. There is something in it for all of us. You are complimentary about what the Government does. In paragraph 60, on the national accounts classification, you say:

"The Scottish Government has applied the correct accounting treatment in preparing the accounts."

However, there is the issue of ESA10, and in paragraph 64 you say that the Scottish Government

"is currently in discussion with HM Treasury on contingency arrangements".

Are you aware of how those discussions are progressing?

Caroline Gardner: I think that that is a question that it would be best for you to explore with the permanent secretary next month.

Stuart McMillan: Okay.

Notwithstanding the balance sheet issue that has been raised, in paragraph 67, which forms part of the conclusion, you say:

"The Scottish Government has a good record of financial management and reporting, governance arrangements are generally effective and the National Performance Framework is well established."

Given that additional powers are to come to the Scottish Parliament through the Scotland Bill, are you content that the existing arrangements represent a good framework to build on, albeit that some additional reporting mechanisms will be required as a consequence of those further powers?

Caroline Gardner: I should make it clear that I am focusing on financial reporting and that there is a much wider framework to be agreed around the new financial powers.

My conclusion is that what we currently have in place on financial reporting and performance reporting provides a good basis, and I have identified a number of areas in which improvement is urgently required in order to underpin the new powers and the decisions that the Parliament will have to make about them.

The Convener: I thank the Auditor General and her team for their evidence. We will consider the evidence that we have received in private under item 5.

Section 23 Report

"Managing ICT contracts in central government: An update"

12:29

The Convener: Item 4 is consideration of the Scottish Government's response on the AGS report entitled "Managing ICT contracts in central government: An update". Do members have any comments?

Mary Scanlon: Yes, I have a comment to make. I remind the committee that the current Auditor General's predecessor, Bob Black, identified information technology as one of his most serious legacy issues. That was more than four years ago. To be honest, I am not impressed with the response that we have had from officials. We keep thinking that something will be done and it never is. Today, we have been looking at the IT system for CAP payments, the cost of which is predicted to be three times more than planned. We have also heard about significant risks. Last week, we heard that the IT system for NHS 24 appears to have collapsed. I will not outline any more problems.

We always hear from officials, but I spoke to an IT company last week, which told me that, of the 15 companies on the Government's procurement list, one is Scottish, and that the Scottish IT sector gets 4 per cent of the public sector spend. I suggest that we take evidence from representatives of a small and medium-sized enterprise and a larger company to try to get a better understanding of why that continues to be a problem. In my time on the committee, we have never taken evidence from a company. We have heard only from officials and cabinet secretaries. I suggest that we hear from some companies on 9 December, which is the same day that the permanent secretary will attend the committee. That is the only way in which I would get some sort of insight and, I hope, be able to understand what is happening in IT in Scotland. Huge amounts of public money are going on IT systems rather than on the front line of public service.

Colin Beattie: I understand where Mary Scanlon is coming from, but I am not sure what we would ask these companies. They do not know anything about the Scottish Government's systems.

Mary Scanlon: We could ask them why IT systems cost so much and always go wrong.

Colin Beattie: I think—

The Convener: One at a time, please.

Colin Beattie: It is going to be difficult to get somebody in for that and get meaningful evidence from them. I am concerned about what has been previously stated about the bureaucracy, the multiplicity of different layers that have been put in place and the knee-jerk reaction to try to manage that. That cannot be efficient. We need to pursue that piece of it. Although we should raise the bigger picture about IT with the permanent secretary, we should specifically target what we now know is a problem.

Tavish Scott: I rather think that Colin Beattie has asked exactly the questions that would be good to put to some businesses. Those businesses will be well placed to answer questions about the Government's procurement mechanisms and whether they are good, bad or indifferent. The company that I would like to have before us is the one that spent £178 million not delivering farm payments. It may be the considered view of the convener that that is not for now because that process is still under way. However, if ever there was a company that deserved scrutiny—from the Government's point of view but also from that of Audit Scotland and, more to the point, the committee—it is that one, because its system is so far over budget.

Dr Simpson: I would add to that the NHS IT because it is massively over budget and has been delayed three years. I agree with Colin Beattie about the structure—it is grossly overcomplicated. I raised that issue at First Minister's question time and asked the First Minister to look at it.

I have two other issues. One is that there is, quite rightly, a requirement in some procurement contracts that SMEs should be given some of the subcontracting work. However, in at least one example, a significant SME has promptly been taken over by the central company and therefore the delivery by the SME was in effect nullified.

The other thing that I have discovered—are we still in public session?

The Convener: Yes, we are.

Mary Scanlon: We are live.

Dr Simpson: We are live. I will not get into that then.

The Convener: I remind colleagues that we are in public session.

Dr Simpson: I will anonymise the contract. In the case of one very major contract, the bidder that won the contract promptly subcontracted to the loser. I find it extraordinary that the main contractor was unable to deliver without going to the subcontractor. Who is making money out of that? There is something very wrong with our procurement system.

The Convener: I remind colleagues that this is about where we go after receiving this response. I take it that colleagues are concerned that the response does not meet expectations.

Dr Simpson: Absolutely.

The Convener: If we are looking to attract businesses to come in and speak to us, we could have a round-table discussion, which is an approach that other committees have taken, maybe not this year but next year, before we finish up for the Scottish Parliament elections. That could help with the management of what is quite a difficult issue to deal with. The proposal is that the permanent secretary will come to the next meeting, along with the chief information officer, which would allow the Government to respond to the report on information and communications technology that the Auditor General has laid before us. The committee would then be in a position to hold a round-table discussion at a later stage.

Stuart McMillan: I have huge sympathy for the concerns that colleagues have raised. However, we must also recognise that when it comes to the delivery of ICT contracts, ICT unfortunately moves on at quite a pace. I have said before in the committee before, by the time you ship a box of ICT equipment out of a factory, it is already out of date. One of the concerns that I have raised in the past is that specifications might change while a project is under way—we are sitting in a building where that happened. That point has to be included in our consideration of this issue.

The Convener: I remind colleagues that we are just talking about how we manage taking evidence on this. We can get into those details if we have a round-table discussion.

Nigel Don: I am entirely with colleagues who want to talk to the people who are delivering these contracts, but I am conscious that there will be commercial limitations on what they feel they can say. In the real world, it is extremely difficult for contractors to talk about their position with potential suppliers of further contracts. I wonder whether there are academics—for want of a better word—who have some understanding of this. Perhaps I mean consultants rather than academics—people who are not directly involved with any particular contract.

The Convener: I want to draw this discussion to a close, because we could talk about it for—

Nigel Don: Those are the people who might be able to give us unbiased advice.

The Convener: The clerk will come back to us with a paper suggesting how we proceed with a round-table discussion. We will have a session with the permanent secretary and the chief information officer, at which we can take evidence.

Dr Simpson: Nigel Don makes a good point. None of us is an expert in this field. It is a very complicated field and, frankly, no one has it absolutely right. I think that we need an adviser on this issue, and I have a name to suggest to you.

The Convener: I suggest that we do not name names at this stage. Let us first have a paper from the clerk and then we can discuss how we proceed. Is that agreed?

Members *indicated agreement.*

The Convener: As previously agreed, we now move into private session.

12:38

Meeting continued in private until 13:09.

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