



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 20 January 2016

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PUBLIC AUDIT COMMITTEE

3rd Meeting 2016, 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:

Ian Crichton (NHS 24)

Margo McGurk (NHS 24)

John Turner (Former Chief Executive, NHS 24)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Public Audit Committee

Wednesday 20 January 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Paul Martin): Good morning. I welcome members of the press and the public to the third meeting in 2016 of the Public Audit Committee. I ask those present to ensure that their electronic items are switched to flight mode so that they do not affect the committee's work.

Agenda item 1 is a decision on whether to take in private agenda items 5 and 6. Do we agree to take those items in private?

Members indicated agreement.

Section 22 Report

"The 2014/15 audit of NHS 24: Update on management of an IT contract"

10:00

The Convener: Agenda item 2 is evidence on the Auditor General for Scotland's report "The 2014/15 audit of NHS 24: Update on management of an IT contract". We will hear from two panels. I welcome our first panel: Ian Crichton, interim chief executive, NHS 24; and Margo McGurk, director of finance, NHS 24. I understand that Mr Crichton has a brief opening statement to make.

Ian Crichton (NHS 24): Good morning. On behalf of NHS 24, I want to make sure that the committee is clear about just how concerned the NHS 24 board is about where we are, and I apologise unreservedly for where we find ourselves.

From the very start, the organisation vastly underestimated the scale of the work and the complexity involved in bringing such an ambitious programme into service, and it has struggled to cope. An awful lot of very good people have spent a lot of time trying to recover the position. I am sure that we will talk more about that today.

Our challenges have been systemic, in the sense that none of the governance around the programme has successfully mitigated the risk enough to deliver on time and to budget. I take you back to what was planned from inception and the challenges in making that happen. Although many mistakes have been made—and I can understand the committee's extreme concern and dissatisfaction—it is important that you understand that NHS 24 has learned from them. It may not feel like that when you look at the issue from a distance, but if you look at each stage, when we have fallen down, we have picked ourselves up; we have made progress and got to the position today in which the technology works. We were not in that position a year ago.

I want you to be in no doubt about the organisation's resolve to get the programme right. As I said, we have genuinely committed people who, particularly in the past 12 to 18 months, have worked incredibly hard to get the programme into the state that it needs to be in, so that we can launch it. I expect us to do that in the coming year. Thank you.

The Convener: Thank you, Mr Crichton. I have a few questions relating to Audit Scotland's report. Are you the accountable officer for NHS 24?

Ian Crichton: I am.

The Convener: Why are you the interim chief executive?

Ian Crichton: I was asked to take on the role from 1 September 2015. I am also the chief executive and accountable officer for NHS National Services Scotland.

The Convener: What is your annual salary?

Ian Crichton: It is in the zone of £134,000.

The Convener: Do you receive the same annual salary for your other post?

Ian Crichton: No. I have given you my annual salary for my NHS NSS post. I received a 15 per cent uplift to do the NHS 24 role.

The Convener: Will you confirm what the overspend position is, from the time that the project was first developed until present?

Ian Crichton: You have the information on the overspend position as it stands today—

The Convener: Will you confirm what that is?

Ian Crichton: Yes—I just need a sec to pull out the figure. A lot of numbers have been bounced around, so it is important to get them right. Let me give the numbers that have been trailed most in the press and elsewhere. There is the £117.4 million figure, which would indicate a £41.6 million variance with the original programme cost. It is important to understand that that is a 10-year estimate for the system. Therefore, the £41.6 million figure is for an overspend over the 10 years. The sunk cost to date is just north of £70 million.

The Convener: Will you explain what “sunk cost” means?

Ian Crichton: The amount that we have physically spent.

The Convener: So you have already spent £70 million.

Ian Crichton: We have.

The Convener: The overspend is £46 million—is that correct?

Ian Crichton: Yes. I have brought my director of finance with me. If you want to go precisely through a lot of numbers, it may be helpful to have her go through them.

The Convener: Let me clarify this point for the benefit of the public. I cannot think of many people who would argue with the fact that £46 million is a significant sum of money.

Ian Crichton: It is £41.6 million.

The Convener: And £41.6 million is a significant overspend. I estimate that about 1,900

nurses could be employed for that money. Do you find the situation unacceptable?

Ian Crichton: I do.

The Convener: Do you think not only that you should apologise on behalf of the organisation but that the organisation should be ashamed that it has found itself in this position?

Ian Crichton: The organisation is not happy that it is in this position.

The Convener: Should it not be ashamed, though?

Ian Crichton: The organisation consists of almost 1,500 people. Do I think that those 1,500 are responsible for this situation? No, I do not. Do I think that they provide an absolutely first-rate service and that, over the Christmas period, 75,000 people were grateful to them for the support that they got? Yes, I do. Do I think that the individuals on the board who manage the programme are all very unhappy and ashamed of where we are? Yes.

The Convener: You were brought into the organisation in September. Who do you blame? Who do you think is accountable for the organisation's failures? There are 1,500 individuals, and you advised me that not all of them could be blamed. I understand that position, but tell me who is responsible for the failures in the organisation.

Ian Crichton: Blame is a lot less helpful than learning, but, on the question of who is to blame, I told you in my submission that the problem is systemic. I know that is not what you want to hear—

The Convener: I will decide what I want to hear. We will ask the questions and you will answer them. Please do not make assumptions about what I want to hear. Today, the committee is seeking evidence based on a report. Following that report, we want to raise issues about governance.

Is the accountable officer responsible for the systemic failures that you refer to?

Ian Crichton: The accountable officer is responsible for the performance of the board, and the board has responsibility for delivering the programme. The accountable officer absolutely shoulders part of the responsibility. I will not duck it, and I do not expect that my predecessor will duck it.

However, I want to be very clear that governance involves a series of checks and balances to ensure that the accountable officer is doing their job. Manifestly, those did not kick in as they should have done, otherwise we would not be where we are.

The Convener: Are you referring to specific individuals who were part of a management team?

Ian Crichton: No, I do not think that it is about individuals.

The Convener: There is a £41.6 million overspend. Are you advising me that none of the individuals who were part of the management team, or the accountable officer—the former chief executive—have to look at themselves in the mirror and realise that they may have been responsible for some of the decisions—

Ian Crichton: I think—

The Convener: Hear me out.

Do those individuals not have to realise that some of the decisions that they made may have had an impact on this significant overspend? The money was not spent by itself and it was not managed by itself. There was a management team in place to do that work, was there not?

Ian Crichton: There was.

The Convener: It was not an information technology system that took the decisions, was it?

Ian Crichton: No. It absolutely was not.

The Convener: Individuals took the decisions.

Ian Crichton: They did.

The Convener: They were paid to take the decisions. As you have confirmed, you are paid a salary of £130,000, so there is a significant responsibility placed on you.

Ian Crichton: There is.

The Convener: Those individuals are paid to do the work. Did those individuals take decisions that effectively resulted in a £41.6 million overspend?

Ian Crichton: No system should be reliant on individuals to make decisions about that level of money. Individuals contribute to that. The management team owns our current situation. They understand that and they are absolutely gutted.

The Convener: They are gutted by a £41.6 million overspend. Any other organisation would be bankrupt. If this was Apple or another company, it would find the situation unacceptable.

Ian Crichton: I absolutely disagree. There are plenty of companies that have had worse overspends than this and they are not bankrupt. That does not excuse the overspend.

The Convener: But do they provide the funds to keep propping up an organisation that is clearly losing money?

Ian Crichton: Would it help if I explained what the £41.6 million overrun was? I think that that plays into who could do what about what.

The Convener: Very briefly, and then I will move on to Mary Scanlon.

Ian Crichton: All right. The £41.6 million is made up of four core different pieces, the first of which relates to the scope of the redesign change that we needed to make. That represents the business case being weak and not picking up things that we should have picked up at the start. When we talk about overspend, we are talking about overspend against a budget that was approved but which would never have been sufficient to implement the system. That is the £7.6 million.

There are additional 10-year contract costs, which also relate back to the business case—they should have been picked up in the business case and were not.

The Convener: Who should have picked up on that?

Ian Crichton: This is what I meant when I used the word “systemic”. To start off with, the accountable officer—the chief executive—and his executive team should have picked up on that, as should the board, which reviewed that document, and the Scottish Government, which also reviewed it. None of them did.

I do not want to duck the idea that a variety of people are responsible, but if we are to learn from what happened, the important point is that we understand the extremely high-risk nature of undertaking such a project and the need for the governance around it to be proportionate.

To finish off the point about the extra costs, the ones that I have mentioned account for roughly half of the £41.6 million. The other half of it is down to the delays. We activated the contracts for the new system, which we planned to move across to, as well as having the contracts for the old system. Because of that, we are incurring double running costs. Therefore, roughly half the wasted money is the cost of having the old system continuing to go and the new system being paid for in part but not yet ready to use.

The Convener: That accounts for the total amount.

Ian Crichton: The £41.6 million.

Mary Scanlon (Highlands and Islands) (Con): There is one person in NHS 24 who should not be ashamed—that is the person who discovered the omissions in the tender document in August 2011. According to the Auditor General,

“the performance measures specified in the tender negotiation documents”

did not appear

“in the final contract”.

That is the nub of the error. You negotiated a contract, but what you negotiated was not in the final contract. Basically, that is what is costing taxpayers in this country £42 million. Today, councils are considering how they can implement cuts when you have wasted £42 million.

Given that a staff member raised the issue of the contract omissions in August 2011, why did you sign the contract in March 2012? Why did it take 29 months for the NHS 24 chief executive to be made aware of those omissions? What was happening within your organisation? Seven months after the omissions were discovered, the contract was signed. Twenty-nine months after the omissions were discovered, the chief executive was told. That is a bit dysfunctional, is it not?

Ian Crichton: I do not want to duck the question, but—

Mary Scanlon: I hope that you will not duck the question; we do not have a lot of time.

Ian Crichton: I was not there. Later on, you will talk to John Turner, who was.

I will pick up the part of the question on the contract and whether the failure to get the specifications in it is wholly why we are where we are. It is definitely part of the reason, and it was a very bad mistake to make, but the—

Mary Scanlon: It was not a bad mistake; it was pretty serious incompetence. You negotiated something and you did not bother to read the final contract, as a result of which you are costing taxpayers £42 million. That is a pretty high level of incompetence.

Ian Crichton: I do not disagree with you. I think that you need to talk to John Turner, given that he was there.

Mary Scanlon: We will talk to him, but you are the accountable officer and you are responsible for the situation going forward. You did not even listen to a staff member who told you what was wrong.

Ian Crichton: As a matter of course, I do listen to my staff. I guess that what I am trying to say to you on the contract is that the commercial construct around the contract is also an issue; the issue is not just the fact that these things were missed. One of the challenges that we have had in recovering the position has been to do with the way in which the contract deals with the risk. Each time we have hit problems, the contract has provided more protection to the suppliers than to us.

Mary Scanlon: But there are two parties to a contract. You negotiated a contract, but what you

negotiated was not in the final contract, so Caggemini has run rings round you. You really have not fulfilled your part of the contract on behalf of taxpayers in Scotland. You have seriously let people down. That is a fundamental flaw, is it not? That is the core of the problem, is it not?

Ian Crichton: It is a part of it.

10:15

Mary Scanlon: It is a huge part of it.

I have been on this committee now for almost five years. The previous Auditor General spoke to us about IT contracts for Registers of Scotland and various others. He said that there was an issue with governance in Scotland as regards the oversight of IT contracts. The Scottish Government, its digital team and indeed NHS National Services Scotland have all been on hand for the past five years to give you the help, guidance, review, oversight, support and advice that are needed. Either they have let you hang out to dry with the £42 million or they have not given you what we were told they would give you.

What is the Scottish Government's part in this? Did it let you down? Did you ask for advice and not get it, or did the advice lead to you overspending by £42 million?

Ian Crichton: As we discussed at the start, as accountable officer, ultimately, I am responsible for delivering and the board is responsible for discharging and executing the programme. For the Scottish Government's part, it has oversight and it uses various checks and balances to check the direction of travel. It also relies on our external auditors and so on.

As regards support from the Government and NSS, again, John Turner will be closer to the exact history than I am, but we got to a point in 2014 when we went to use the technology and it did not work. That was a seminal point in the journey. That is when we understood the issue around the contract very clearly and that is when help was sought at any kind of scale. We looked for help and at that point in time, the Scottish Government was understanding and helpful and it provided support.

Mary Scanlon: So if the Scottish Government and its digital team are helping you and there is a new chief information officer, why has this happened?

We have been given all those assurances for five years that this kind of mess and overspend was not going to happen again because Government oversight would be sufficient to make sure that people were on the right track. Why, five years later, with all that help and all that understanding, has this happened?

Ian Crichton: I think—

Mary Scanlon: Why are we still looking at a £42 million overspend?

Ian Crichton: I think that help is different from a governance framework. Fundamentally, in my view, the governance framework around IT is deficient—

Mary Scanlon: The governance framework is deficient.

Ian Crichton: Around large-scale IT programmes.

Mary Scanlon: Why is it deficient? That is a serious allegation. We have a lot of money going in to help you guys. Why is it deficient?

Ian Crichton: I will give you a parallel example. The way that property is managed by the public sector today is very different from the way that it was managed five or 10 years ago. There is a robust framework around it; there is access to significant expertise; and there is the capital investment group, which is expert in that kind of capital investment and reviews all the big things that are coming through. The boards are accountable but there is a route to take. If we look at performance today in relation to capital that the national health service manages through framework Scotland or capital that goes through the non-profit-distributing model and is managed through the Scottish Futures Trust, there are robust checks and balances and significant access to expert advice.

What is in place for IT today is quite different. The picture is variable across the sector. Again, you will need to check this with John Turner but my understanding is that the approval for the programme went through the capital investment group, which is a body that primarily understands property, not IT. The question for me around the framework is whether we have the right framework in place to make sure that these programmes progress safely and that organisations will not be stretched to put them in place.

For NHS 24, this is a once-in-a-decade event. It is not something that we do regularly. We do clinical triage regularly. This is a once-in-a-lifetime event for chief execs or executive teams, so is the framework around it strong enough to be able to compensate for any weakness that will be there? Patently, given the overspend, it is not.

Mary Scanlon: I know that other colleagues will want to pursue this question, but I got quite annoyed when I read paragraph 1.9 of your submission to the committee, where you basically blame Capgemini, saying:

“The failure of Capgemini to meet their commitment to supply a working solution in 2013 manifested these weaknesses.”

Is that fair?

Ian Crichton: For the avoidance of doubt, I do not blame Capgemini. With that statement I am saying that the issue was brought to a head in the way that it was because we ended up in a position where we could not implement the system because it did not technically work.

Mary Scanlon: That was because Capgemini was fulfilling the contract as it was signed. What NHS 24 had negotiated for—what was in the tender—was not in that contract. Is it unfair to blame Capgemini, as you have done in your submission, for the £42 million overspend?

Ian Crichton: I have been quite clear that the board has apologised. We would not have apologised if it was Capgemini's fault. The issue with Capgemini relates to the contract and where, when things went wrong, the risk flowed. That is not Capgemini's issue; that is our issue.

Mary Scanlon: Your submission refers to

“The failure of Capgemini to meet their commitment”.

Will you retract that statement?

Ian Crichton: I do not retract it. Capgemini failed to deliver the agreed spec. Although I agree with you that the spec was not in the contract—public sector tendering is a complex process—the expectation around system performance was quite clear from the earlier documentation. It did not deliver what we needed.

The purpose of the Ernst & Young support given to us by the Government was to try to get us and Capgemini to a better place, so that we could work together to resolve the matter and ensure that the technical solution worked. That was difficult, because clearly we were not happy that the technical solution was not ready to go.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Was there ever a point in the sequence of events when you thought that you should call it a day and start again?

Ian Crichton: If I depersonalise the question and make it about the board, it is clear that, once we understood that there were problems, the board had a long, hard look on at least one occasion at whether we should proceed. Since my arrival, we have gone through a similar exercise around implementation. To my knowledge, we have looked at least twice at whether we should continue or abort.

Colin Beattie: Is there a final cost for the project?

Ian Crichton: I think that it will be between £117 million and £125 million.

Colin Beattie: What is still under negotiation at this point?

Ian Crichton: I want to make sure that I understand your question.

Colin Beattie: What elements of the project are still not finalised and are under negotiation with Capgemini or internal bodies?

Ian Crichton: Having launched before Christmas and having had to go back, we are working on relaunching as soon as it is practicable to do so. The lion's share of planning and negotiation at the moment is about getting that implementation done.

Colin Beattie: At this point, we do not have a final figure, and negotiations are still going on.

Ian Crichton: I want to be clear on the final figure, because such matters are quite complex. On the cost of the overall programme, there is flexibility around the £117 million figure that we are talking about. We are working on that, because we have a duty to recover what public money we can over the duration. There are tolerances in how the system is used and everything else that afford us some flexibility.

The most concrete matter that we must work up is the cost of implementing the programme from now until the point when we go live, which we estimate to be about £7.6 million. That budget has resilience and provision built into it. I cannot tell you what the exact number will be, but I can tell you that that is what we believe we will need, in the worst case, to launch successfully.

Colin Beattie: I am looking at the contract negotiation, which I must confess seems very odd. I was involved in negotiating many contracts when I was in the private sector, and I have never seen a negotiation in which the business side has not read the contract, which is what our papers say.

The lawyers said:

"omissions 'not an unusual event' so matter not escalated to Chief Executive or Board".

How can people sign a document that they have not read?

Ian Crichton: I find the lawyers' comment extraordinary. I have dealt with a lot of contracts, and I have not seen that before. That is highly unusual. I believe that people had read a lot of drafts, and I understand that NHS 24's lawyers drafted the contract. I think that it was read, but I do not think that proper due diligence on the sign-off protocols was gone through. I am not convinced that that was sore-thumbed properly.

However, you would need to ask the previous chief executive about that.

Colin Beattie: What about the question of truncated text and truncated contracts? I have never heard of that, either.

Ian Crichton: There were an awful lot of changes and there were a lot of associated change control notes for which accessibility would be normal. We see an awful lot of moving parts around the time that the contract was signed. I was not there, but that is my working assumption.

Colin Beattie: How big was the contract physically? Was it 500 or 1,000 pages?

Ian Crichton: I think that it was just under 1,000 pages.

Colin Beattie: That seems extraordinary. Was each and every requirement included in the body of the contract, or was it an overall contract with sub-agreements beneath that?

Ian Crichton: I am not as familiar with the contract as my predecessor was. I do not know whether Margo McGurk knows about its construct.

Margo McGurk (NHS 24): There were two documents: the BT contract and the Capgemini contract. The Capgemini contract was separated into two documents. One was the front end, which contained all the clauses around the contract, and the second was the detailed output-based specification. That is the part of the contract in which the omissions occurred.

Colin Beattie: Who negotiated the contract?

Margo McGurk: You will have to check that with the previous accountable officer, but my understanding is that the previous director of finance and advisers did so.

Colin Beattie: The director of finance negotiated the technical contract.

Margo McGurk: Working with advisers.

Colin Beattie: Who were the advisers?

Margo McGurk: There were technical, legal and procurement advisers.

Colin Beattie: Who were they? Were they in-house or external?

Margo McGurk: It was a combination.

Colin Beattie: Did we spend money on external advisers to help us to put together a contract that does not seem to have worked?

Margo McGurk: We did.

Colin Beattie: Who were the external advisers?

Margo McGurk: I was not in post at the time, but I can give the information that comes to mind. I

understand that we worked with the Scottish Government, NHS National Services Scotland, Pinsent Masons, which is the solicitor firm that drafted the contract for us, and Deloitte, which is one of the big accountancy firms. Those were the key advisers.

Colin Beattie: We would expect a competent lawyer to put together the legal side. Who signed off the technical elements?

Margo McGurk: You will have to speak to the previous accountable officer about that. I was not involved, as I was not in post in the organisation at the time.

Colin Beattie: Who decided that the contract should not be read because it was too difficult and too big?

Ian Crichton: As Margo McGurk said, neither of us was in post at the time, so we do not know who said that.

Colin Beattie: You have said that you are not having a go at Capgemini. You said that its solution failed and that it failed to deliver, but somehow it is not responsible. NHS 24 engaged Capgemini—rightly or wrongly—deeply into the project, basically to act on behalf of NHS 24. Therefore, the supplier was determining to some extent what would be delivered. From an IT point of view, that is extraordinary. Who decided that that was the right way to go?

Ian Crichton: I do not think that it is extraordinary that an organisation that has not specialised in something relies on the supplier, but I completely agree that we were overly reliant on it. Part of what is bought when such contracts are put in place is the expertise. We failed manifestly to have a good enough construct around Capgemini so that, if it did not deliver, we could do something about it.

10:30

Colin Beattie: Did NHS 24 understand what it was proposing?

Ian Crichton: You should confirm that with Mr Turner later, but I think that we understood what was being proposed, although nobody understood the technical difficulty of getting the two proposed applications to work together.

Colin Beattie: Did Capgemini not have the information to enable it to say that the two applications would not work together? Surely that is what you hired it for.

Ian Crichton: It can do that—that is what it currently does—but it did not do that at that point.

Colin Beattie: It did not do that previously. Capgemini, with its technical expertise and the

position in which it had been placed—a position of trust to deliver—should have done that but failed to do so.

Ian Crichton: Yes.

The Convener: It would be helpful if I make it clear to all that the witnesses can provide an opinion on what happened previously, but it will be for the next panel to give specific factual information about the project.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I appreciate that neither of the witnesses on the panel was in post when much of the work went on. You have taken on a somewhat poisoned chalice.

I will concentrate on a couple of areas. The Government's August 2013 gateway review said that the programme was

"a particularly strong exemplar of good practice that would be transferable to other programmes".

As the incoming interim chief executive, you will have looked at that review. I find it difficult to understand that that was the situation then when, by March 2014, we were into the Ernst & Young review, which was looking at whether the project could go ahead.

This is not the first programme that has gone badly wrong. The eCare programme was supposed to solve all our data communication problems in the health and social care service, but it was abandoned completely after seven or eight years at—we are told—a cost of £56 million, although I suspect that the cost was substantially more.

Here we are with another set of circumstances in which the governance has been wholly inadequate. When you started in September 2015, you were expecting the programme to function in October. It was tried for a weekend in October. At that point, I presume that the system was being tested in parallel. Will you explain what went on then? What failed? Why did it fail?

Ian Crichton: There was a lot in that, so let me know if I miss anything. I will start with the gateway review. I am not sure that people always understand what gateway reviews do—they have their limitations. The gateway review did what I believe it should have done: it looked at the programme construct, satisfied itself about the general approach and made recommendations.

A gateway review is not in itself an effective form of governance of a project of such complexity and scale. From memory, I think that two people carried out the review. Their expertise would definitely not be in call centre implementation. They would be in a position to form a view on, if you like, the general programme construct but not

much more than at. However, on the broader IT governance, much more than that would have been required.

Dr Simpson: Did the Government look at the review and think that the programme was okay and functioning? In the past few months, the Government has given us—after the Auditor General's second critical report—a new governance system. That is so complex that I do not know who is responsible for what. If I had been the responsible minister and I had seen the gateway review, would I have said, "This NHS programme is doing fine. It's an exemplar of good practice. I don't need to worry about it; I can cross it off my list of worries when I go to sleep at night"?

Ian Crichton: What the minister thinks is a question for the minister. A lot of different set pieces were done that people took comfort from but, because they were individual pieces that sat in isolation, that comfort was misplaced. That is what I meant when I made my point about the programme's governance. The question is how to have sufficient checks and balances that, taken together, allow people to be more comfortable.

The point that I made about the Capgemini issue is that, if its solution had worked when we looked at accepting it into use, a lot of the other things that subsequently happened would not have happened. That is why the issue is so stark.

As I said, the Ernst & Young review focused on what was needed to get the programme moving forward.

Dr Simpson: You needed to take that approach because the system had not worked at that point.

Ian Crichton: Yes. We needed to solve the technical problem and we managed to do that. A solution architect was brought on board and did a phenomenal job of solving the problem in a way that Capgemini had not been able to. Good progress came out of that. Another thing that needed to change was the relationship with the supplier because, having looked at the withdrawal options, we realised that, if we were going to continue, the idea that we would continue to fight our way through that process made no sense.

That was in the Ernst & Young review. On the launch and implementation, an awful lot of the risk management and the concerns were about the technology, because that is what had failed. When we went to implement, we had done dress rehearsals—we had done testing at a reasonable scale—but hindsight makes us all very smart and, unfortunately, it is clear that that testing was nowhere near good enough. When we went live, the system essentially halved our productivity, and because of that we did not have enough people to staff it safely. I therefore took the decision to roll back.

It was a high-risk decision to launch in winter, which as you will know is our busiest time of the year. Had the system worked as intended, we felt that we could have toughed it out. In our view, it was worth taking the risk, given the costs of double running for a continuing period. However, it became patently obvious that we were not ready, which is why we rolled back. That lack of readiness was not to do with a technological failure. We need to make sure that the way in which the system works and the way in which my staff need it to work dovetail better than they do.

Dr Simpson: I understand why you do not want to relaunch in January or February, but you are talking about June. If there is no technological problem, why do we have to wait until June to relaunch, particularly given that there is a cost for every month of double running?

Ian Crichton: I agree that it seems like a long time. The challenge is getting the system teed up right so that it works. The board has not yet agreed on when we will launch, and I am sure that board members will ask me a similar question when I meet them at the end of the month. The challenge is that our priority needs to be patient safety. We have adjustments to make to the system. Any member who is familiar with IT will know that, once a system is adjusted, it needs to be tested.

One of the few advantages of having let you down by not launching the system before Christmas is that we have now done a very large test—more than 30,000 people went through it—and we have a comprehensive list of what went wrong. Because the technology works, we know that we can get the system to work but, this time, we need to take enough time to test it properly and get it right. The running cost is not the only cost of doing an implementation; there is also the cost of getting people trained, lined up and ready to go. We need to take enough time to do that. June seems like a long time away but, for the programme, it is quite a short period, given the need to get things teed up right.

Dr Simpson: Okay—

The Convener: This is your final question.

Dr Simpson: I will leave it, then, and maybe come back in later, to allow other members to come in.

Stuart McMillan (West Scotland) (SNP): Paragraph 1.9 of your submission highlights that the programme's governance was

"ineffective, commercial management was weak, too much reliance was put on suppliers promises and the organisation had insufficient understanding of call centre system implementation to successfully launch."

What research did NHS 24 undertake in putting together the requirements for a new system? To get an understanding, did representatives of NHS 24 speak to other large call centres in the public or private sector—particularly those in companies or organisations that had recently upgraded their systems?

Ian Crichton: I am not aware of what was done on that back at inception. That is a matter for my predecessor to comment on.

Stuart McMillan: The third bullet point in paragraph 1.13 says:

“expertise is being used to provide effective commercial management and expertise is currently being sought to support system implementation at launch.”

Will you provide further information on that? We have not heard much about it today.

Ian Crichton: NSS, which is my other organisation, provided procurement advice to the NHS 24 board, but it was limited to what the board asked for. The board tried to manage the programme commercially. My view is that it did not have the right expertise to do that, and in particular to negotiate a contract of such a scale. It is unlikely that the executive team would have had such expertise for a once-in-a-lifetime event that was not part of its core business. You can check that with my predecessor, but I think that that would have been the fundamental failing. When I talk about the need for support and governance, that is what I mean.

NSS has significant commercial expertise. It belongs to the public sector and it exists to support organisations such as NHS 24. However, whether an organisation seeks that help is completely at its discretion. I guess that I question whether that is a sensible approach. Sitting in NSS are some of the best contract lawyers in Scotland, who understand the public sector and can help managers to manage contracts; people with expertise in the national integration of IT who can help with difficult IT problems; and a procurement department that spends more than £1 billion a year and understands what is necessary to offset, if you like, private sector expertise in contract management and negotiation. That expertise was not used in the way that it could have been and, from where I sit, I cannot see evidence that the team in NHS 24 had that expertise.

Stuart McMillan: The aim in the immediate future is to get the system operational and delivering for NHS 24, but what will happen after that? As you said, the project is a once-in-a-decade event. Once the system is operational and you are satisfied with how it is working, at what point will planning start for the next IT roll-out or the next improvement?

Ian Crichton: We were asked earlier about expertise in call centre implementation. NHS 24 has expertise in spades in running a call centre, but that is not the same as implementing a call centre. The board of NHS 24 is now extremely strong, but the same board has not been in place throughout the project. The committee has asked me from the start how bad people feel about where we are, and the answer is that they feel extremely bad. That is a credit to them, because they are not part of the reason why we are where we are. They absolutely recognise the need to get very good implementation expertise in place, and that work is under way.

The intent has been to have a staged implementation. There is an awful lot of discussion about the money, which I understand, but the big idea behind the system was not just to save money but to provide a much better service to patients. It was to provide a safer service that is less repetitive in the questions that we ask people when they are at their most vulnerable. Rather than just being an IT system like the old one was—that was basically a call centre system—the new one has potential to be a decent digital platform that we can build from. That is one reason for the complexity that has been incurred in getting us to this point.

We have a programme team that is well blooded and knows what it is doing. I hope that you have picked up the fact that we are learning a lot of lessons from this, which will be incorporated into how we formulate the business case for the next stage. That stage clearly needs to be more incremental and different from what we have done over the past five years.

The board is absolutely committed to ensuring that the asset is sweated as hard as it can be for Scotland. I hope that it will be a significant period before we are back on the marketplace to procure something new. We need to think about how we can make better use of NHS 24 and provide a much more effective service to the people of Scotland.

10:45

Stuart McMillan: I accept what you have said, but I understand that IT software and hardware can go out of date extremely quickly. As soon as hardware leaves the factory it is out of date, because of the pace of the sector.

I heard what you said about lessons being learned for the future, but I urge you to be very aware and vigilant about the software and the hardware. In 10 years' time, the world of IT will be a totally different place.

Ian Crichton: I agree that technology ages quickly. However, the NHS is a very bad place to

cut teeth on brand new things. We need to focus on using tried and tested technology, evolving and making the best of it. What we have procured from the market is very current. At the beginning, we were overly ambitious about what could be achieved, so we have path found. One of the few benefits of that is that what we have is fairly current and will serve the NHS very well through the next decade.

Tavish Scott (Shetland Islands) (LD): As Richard Simpson did, I acknowledge that both of you were not there at the outset of the project. Ian Crichton said at the beginning of his remarks that the project went wrong at the very start. Can you clarify that?

Ian Crichton: I encourage the committee to ask my predecessor about the matter; if he says something different I will agree with him.

From where I sit, looking back I say that the business case was not broad enough in scope, it did not work through all the things that a system of that scale would require, so the amount of money that was asked for was well short of what it should have been, and there was no provision in case things went wrong. Those kinds of things were the problems.

Tavish Scott: Did that lead you to the point that you made to Colin Beattie about the Scottish Government's assessment process being aimed more at dealing with property issues than with IT issues? Did I misunderstand that?

Ian Crichton: I was not in post at the time. The interesting question for me is whether the project would go through were it subject to current processes. I am not convinced that it would.

Tavish Scott: Do you mean that the project would not have been sanctioned?

Ian Crichton: Yes. However, we are talking about the situation five years ago and I am not sure what was in place then. I do not know that the project would get through what is in place today, and I know that the outline business case definitely falls short of what one would expect it to look like for such a programme.

Tavish Scott: Is that because of Stuart McMillan's point that the project was far too ambitious and was quite the opposite of being off the shelf—a bespoke solution that no part of the NHS had ever tried before?

Ian Crichton: The very ambitious concept was part of the problem and another part was lack of understanding of the risks around something that is so complicated because of all the moving parts. The project grew arms and legs as it went along. Once people had started, they rightly realised that the project is not just about IT, but about the service that we design and how things work. That

expanded the scope of the project. The question is whether there was ever a requirement to come back, once the scope had broadened, to take another look before spending all that serious money and development resources.

Tavish Scott: If we build a new sports centre, as we are about to do in Shetland, and we add lots of things as we go along, the costs will go up and up. The builder, architect and other professionals would love us for it. Is that what happened?

Ian Crichton: We have talked about Capgemini; there is an element of what you suggest, but there is also a huge cost to us not getting it right and therefore having to run two systems. There is also a huge cost to us in picking up things that were not in the original outline business case. For me, the two big things are the initial failure to scope out the project properly and the failure to get it in place when we thought we would. Those two things are the cost drivers.

Tavish Scott: You helpfully told the committee that the project could still cost £125 million. Is that the top end of your expectation of what the budget might end up being?

Ian Crichton: Yes. I was serious about the quality of people who are working on it, so I believe that it can be done for less, but I think that the committee has had enough unpleasant surprises.

Tavish Scott: That would mean that the overspend would end up being £50 million.

Other colleagues have asked about lines of responsibility for the public sector. I have a lot of constituents who have just lost their jobs in the oil and gas industry—they have not lost £41 million, but they have lost their jobs. Did anyone lose their job over what happened?

Ian Crichton: I guess that that depends on how you define "lose a job".

Tavish Scott: Did anyone get sacked because they wasted £41 million of public money?

Ian Crichton: Various people have left and the bases for their leaving is a matter for them. The chair of the board is no longer there, the chief executive is no longer there, the director of finance is no longer there and there have been six programme managers.

Tavish Scott: You and Margo McGurk were brought in to improve or, rather, to sort out the situation. Were you both given that specific remit by your board and by ministers?

Ian Crichton: My job is to get the new system launched and to protect the public purse as best I can.

Tavish Scott: Thank you very much.

The Convener: I have some brief final questions. Have you put in place measures to ensure that the errors that were made are never made again? We have discussed the contract flaw. Can you give us an assurance that for as long as you are the accountable officer there will not be a recurrence?

Ian Crichton: I can absolutely assure you that for as long as I am the accountable officer there will not be a recurrence. The committee needs to reflect on the fact that at some point the system will need to be reprocured. I am more optimistic than Mr McMillan. Let us say that the system will last for another 15 years: in 16 years there will be a need to reprocure.

The Convener: As the accountable officer, how many contracts have you signed since September?

Ian Crichton: Do you mean for NHS 24?

The Convener: Yes.

Ian Crichton: None. I have signed adjustments and amendments to the present contract to get things done.

The Convener: Have you personally reviewed every document that has been signed that is similar to the flawed contract with Capgemini?

Ian Crichton: Yes.

The Convener: What has been put in place to ensure that your director of finance, who is with you today, provides you with necessary information?

Ian Crichton: The director of finance not providing me with the information that her role requires her to provide me with would be unacceptable.

The Convener: How do you prevent that? Can you?

Ian Crichton: I think that it is possible to do that. In any organisation, it is necessary to have checks and balances, but it is also necessary to have a decent values set and to have people who are pulling with you, as well as a degree of team spirit. Checks and balances, effective audit and effective risk management are all necessary.

The Convener: I asked a specific question. If the director of finance, who is sitting next to you, decided not to provide you with information because of a contract flaw that she thought it would not be in her interests to report, what would happen?

Ian Crichton: That would be a failure in me, because public service requires people to do the right thing. There is no check or balance in the world that can stop someone hiding something

from you. At the end of the day, the question would be why they would want to. Things that drive that kind of behaviour include blame.

I have no doubt that the director of finance who is sitting next to me would not do that. I have absolutely no doubt that, since she took up the post—she has been there longer than I have—she has done an amazing job in putting in place the right kinds of checks and balances to ensure that things involving much smaller sums of money are properly supervised and that financial control in the organisation is good. One of the fundamental requirements of the accountable officer is to ensure that that is the case; I can give you that assurance.

The Convener: If the Scottish Government were to say, “We’re not giving you the money”, where would you go from there? Would the organisation be bankrupt?

Ian Crichton: No.

The Convener: As we know, the Scottish Government has asked a number of boards across the sector to make cuts. I know that £60 million-worth of cuts have been proposed in the budget of NHS Greater Glasgow and Clyde over the next five years. How can the Government possibly guarantee that you will be provided with the necessary funding? What would happen if it were just to turn off the tap and say, “Sorry, we’re not going to provide it”? Where would you go from there?

Ian Crichton: If the Government turns the tap off, we will need to consider what we will do. It would be a decision ultimately for my board, but pragmatically it would mean having to stay with our previous system until such time as money became available to do something. The Scottish Government would need to reflect on the £70 million of sunk investment, the fact that no more than another £7.6 million should get us home, the fact that once the system is in place its recurring cost will be less than that of the system that it is replacing, and the fact that there will be an increasing role for NHS 24 in trying to help the rest of the system cope with the increasing demand that we know the ageing population is generating for us.

Mary Scanlon: I want to ask a very brief but important question. In paragraph 1.9 of your submission, you mention Capgemini and state:

“the organisation had insufficient understanding of call centre system implementation to successfully launch.”

That is a rather brutal and defamatory statement against a global company. Do you wish to apologise for or retract it?

Ian Crichton: I do not think that I said that Capgemini did not have that understanding.

Mary Scanlon: What organisation were you talking about?

Ian Crichton: NHS 24.

Mary Scanlon: So NHS 24 “had insufficient understanding of” call centres.

Ian Crichton: Of “call centre system implementation”.

Mary Scanlon: You talk about Capgemini in the first part of the sentence. Are you saying that NHS 24 does not have sufficient

“understanding of call centre system implementation”?

NHS 24 is a call centre. Did NHS 24 not actually understand itself?

Ian Crichton: I think that NHS 24 understood itself very well, and it delivers a first-rate service.

Mary Scanlon: That is not what you say in your submission.

Ian Crichton: What I say in the submission is that, as far as implementing call centres is concerned, that is not what NHS 24 does.

Mary Scanlon: So, that is why you wasted seven years and £42 million.

Again briefly, convener, I want to ask a question that has not been asked yet. You served a default notice on Capgemini and the case ended up in the High Court up the road, but you withdrew from it, having already spent £38 million. Why did you withdraw?

My second question could be covered in written evidence. Pinsent Masons, PricewaterhouseCoopers and Ernst & Young were all called in, which incurred, I presume, substantial legal costs. Can you give us—if not today then in writing—the costs of bringing in all the experts to try to sort this out? First of all, though, can you tell us why you withdrew from the court case after serving a default notice on Capgemini?

Ian Crichton: You can ask my predecessor, who will be up next, because he is the person who made the decision.

As for my perspective on why NHS 24 withdrew, I think that it was because the contract construct would have meant that any damages that were secured in court would have been very small relative to the investment that had been sunk. My predecessor would therefore have understood that he was better off reaching an agreement with Capgemini on how it and NHS 24 could make a solution work instead of fighting it out in court, which would have meant another couple of years’ delay and everything else.

Mary Scanlon: So that was another waste of time and another delay to the project that led to

legal costs, but to no advance in implementation and no benefit to people in Scotland.

Ian Crichton: I think that you would need to ask my predecessor the reasons for that.

Dr Simpson: I, too, have a very brief question. We have talked a lot about Capgemini and the software, which is obviously the main issue, but can you confirm that there have been no problems at all with the BT side of the project, which actually amounted to £55 million compared with the £20 million for Capgemini?

Ian Crichton: There absolutely have been problems with BT, and we have had to work our way through them. This takes me back to my point that I do not think that you can blame Capgemini for why we are where we are; after all, we own this project.

As I have said to you, commercial management is one of the things that were deficient, and the scoping in total of what would be required was not where it should have been. The BT element that has been particularly challenging for us is the post-go-live model, by which I mean the idea of what the world will look like once this thing is finally in place and how the costs and contracts work. That has been challenging, because of how contracts and so on were established and the up-front business case.

However, although we have had challenges, they have been easier to manage. Indeed, this brings me back to the point that I was trying to make about Capgemini. With BT, there has been nothing that, if you like, absolutely cannot be done; with Capgemini, when we came to use the solution it just did not work.

11:00

Dr Simpson: You said that there was expertise in NSS. I wonder, though, whether something needs to be done about one-off projects involving subsidiary organisations, including NHS boards. I am thinking in particular of the problems with the TrakCare contract, as a result of which clinical systems can be closed down for 24 hours for routine upgrades. That seems to me to be a disgraceful contract—not for TrakCare, of course, which is perfectly entitled to do these things. It is just ridiculous that someone in the first place signed off a contract that leaves clinicians without their electronic back-up for 24 hours just for a routine upgrade.

Should not all such contracts be signed off by NSS Scotland? Should not it be the repository of expertise? After all, this sort of thing is just going to continue. We have a devolved system that tries to prevent major losses, although it has not done so, and we have what I think is, to be frank, a

fractured and dysfunctional system across the whole NHS. The NHS Education for Scotland portal system is a disgrace and a complete mess; it is shocking for the clinicians who have to go in and out of it. Given how far we are behind in IT, should NSS not have much greater control of and say in signing off of contracts? Should it be the case that no one can undertake a contract without agreement from the centre?

Ian Crichton: For contracts of scale, NSS should definitely play a more involved role. We should also give thought to private sector expertise; sometimes the public sector tends to think that the private sector is bad or that only the Deloittes of this world can be used, but there is a range of expertise out there that would never be worth bringing in-house to NSS because it would not be needed often. That expertise exists; companies that are bigger than NHS 24 use such people.

The question is this: what is the checklist that you would need to go through with such a programme, and how would you, as accountable officer, be able to assure your board that you had complied with it? What expertise would you need? I do not believe that at the inception of this project there was such a checklist.

Dr Simpson: And you are not totally convinced that such a checklist exists today.

Ian Crichton: No.

Dr Simpson: I think that that is the most important point. Thank you.

Colin Beattie: The evidence makes it quite clear that during a very critical period for the memorandum of understanding and the contract itself, the chief executive, Ms McGurk—as incoming director of finance—and the board were not made aware of the problems. Were they deliberately kept from you?

Margo McGurk: At the board's request, a full investigation was carried out to determine why the minute of amendment process was not brought to the attention of the chief executive and the wider executive management team. That report was part of a disciplinary process, but I would prefer that question to be referred to Mr Turner. However, there was a review.

Colin Beattie: So the result of that investigation or review was that information was deliberately withheld.

Margo McGurk: No—it was not deliberately withheld.

Colin Beattie: You just were not told.

Margo McGurk: Not deliberately.

Colin Beattie: You were not deliberately not told.

The Convener: We should be careful here, colleagues. Asking the panel to comment on previous events is acceptable, but I think our next witness will be able to answer questions about specific events.

Colin Beattie: The incoming director of finance was involved in this specific aspect.

The Convener: Okay.

Margo McGurk: I was not actually involved in the investigation—

Colin Beattie: But you were in post for part of the time.

Margo McGurk: In effect, I uncovered that the minute of amendment process existed at that point in time.

Stuart McMillan: I have two very brief questions. First, has NHS 24 recovered any costs from Capgemini or BT?

Ian Crichton: Yes—in the sense that we have actively negotiated with them over the period. We also have the potential to do so in the future. It is difficult to comment more in such an open forum; I am happy to give you more details outside the committee.

Stuart McMillan: Okay. My second question is more of a point than a question. Earlier, you highlighted my apparent lack of optimism. I am accused of many things, but lack of optimism is not one of them. In my earlier question, I was quoting your own comment about the system lasting a decade. I note that later you talked about a potential 15-year period. I just want to point out that I was quoting you earlier.

The Convener: I thank Mr Crichton and Ms McGurk for their contributions this morning. I suspend the meeting for five minutes before we move on to the next agenda item.

11:05

Meeting suspended.

11:09

On resuming—

The Convener: We will continue with agenda item 2, which is on the AGS report entitled “The 2014/15 audit of NHS 24: Update on management of an IT contract”. I welcome John Turner, the former chief executive of NHS 24. I understand that Mr Turner has a brief opening statement.

John Turner (Former Chief Executive, NHS 24): Thank you and good morning, convener and

committee members. I am the former chief executive of NHS 24 and accountable officer for the organisation from September 2008 to July 2015.

The NHS 24 future programme was established to enable continuous improvement in patient care, to meet the requirement to procure technology contracts and to build a better technology platform in support of the Government's 2020 vision for health. The drive behind it was to make services better for patients. Since 2010, a large number of dedicated NHS 24 staff and service partners have worked on the programme, which has received significant investment in the form of brokerage from the Scottish Government.

I am very sorry for the fact that implementation of the future programme has been delayed so much, meaning that patients and staff are not yet receiving all the additional benefits and that there has been a considerable overrun on the public purse. That is a matter of disappointment, frustration, and deep regret. I absolutely accept my responsibilities as accountable officer at the time and offer my full apology. Patient care and safety is the highest priority, and NHS 24 was able to maintain, improve and expand services to the public during that time.

I have sent a brief factual submission to the committee, noting the four main phases and key points of the programme during my time as chief executive, which I hope is of some assistance. I have followed the work of the committee on the matter to date and I would be happy to explain the facts relating to the contract development and contract signature that have been previously discussed. I would also be pleased to explain to the committee the core problem at the heart of the delay that we experienced with the Capgemini technology that rendered it unsafe and how we managed and challenged that.

Finally, I would not wish any other part of the public sector in Scotland to go through the difficulties that NHS 24 and its staff have had with this technology programme. I have been able to reflect on the experience that I have had and have given it much thought, and if there is anything that I can contribute or assist the committee with in regard to the wider consideration of the lessons learned, I am certainly most willing to do so.

The Convener: Thank you, Mr Turner. I will open the questions by confirming that you were the accountable officer.

John Turner: That is right.

The Convener: Was that between 2008 and July 2015?

John Turner: Yes.

The Convener: What was the salary that you received when you left in 2015?

John Turner: It was approximately £110,000.

The Convener: On what terms did you leave the organisation? Were you asked to leave or were you offered a voluntary severance scheme?

John Turner: I reached agreement with the organisation to leave. I had been there nearly seven years. It is a tough role anyway and, with the future programme, the last two years were exceptionally difficult. In discussion with the chairman of the board, it felt appropriate for me to leave the organisation.

The Convener: So you did not leave with an enhanced package or anything like that—basically, you left the organisation. How much notice did you give?

John Turner: No, I left the organisation with a settlement agreement in line with my contractual terms.

The Convener: Can you confirm for the record what that sum was or what the agreement was?

John Turner: The agreement was six months' notice and some annual leave that I had not taken.

The Convener: We have heard from your opening statement that you accept responsibility.

John Turner: Yes.

The Convener: So, in a sense, that is accepted. You have shown humility, and people would see that as a step forward. Earlier, we heard that there were some issues concerning the way in which the system operated in your organisation, particularly with regard to governance. Who do you think was responsible, apart from you?

11:15

John Turner: I was the accountable officer at the time. I took my responsibilities as an accountable officer seriously. My career is in NHS management; I am not an expert in IT or clinical matters. The approach that I took was to surround myself with a governance framework in the organisation. That started with the NHS 24 board. We had a dedicated committee and we had a programme board, which I chaired, with partners and the suppliers. The Scottish Government was part of that. We also had a detailed management and project management system. It was a detailed and comprehensive approach. I brought in external experts to assist and advise, where that was appropriate, and I brought in additional staff to provide more capacity for the organisation in the work that was undertaken.

I also sought external views. We had a number of what are called key stage reviews—four in total,

I think. One was undertaken by PWC and there was the gateway review, which was referred to earlier. Further, as chief executive, I was in continuous discussion with others around the system and was, indeed, taking advice—

The Convener: Can I just reiterate my question? I understand what you are saying, but I think that it would take us a considerable time to clarify all the arrangements that you had in place.

I am speculating here, but do you feel let down by some members of the team who were around you at that point? All of the issues appear to stem from the contract that was signed. There was a contractual flaw, which, to the public, is just unacceptable. Did you feel let down by any particular group of advisers or whatever?

John Turner: Yes, I did.

The Convener: Could you be specific about that?

John Turner: Specifically, I felt extremely let down by my director of finance and technology—

The Convener: Did he fail to advise you of the contractual flaw?

John Turner: Yes, he did.

The Convener: When did he advise you of the flaw?

John Turner: He did not advise me at all.

The Convener: So when did he become aware of the flaw?

John Turner: I signed the contract in March 2012—

The Convener: Did you review the contract?

John Turner: Could I park that issue just for a moment?

I signed the contract in March 2012. My understanding is that NHS 24 staff identified the gaps in the contract in April 2012. I was not informed until 22 months after the signing of the contract—that was in January 2014. By that time, the director of finance and technology had retired from the organisation. I absolutely felt let down when I found out, because there had been many opportunities to inform me, the future committee of the board and, indeed, the board itself.

I am sure that we will come on to this, but there was also a fundamental issue with the technology solution that Capgemini provided to us. I am not for one moment ducking my accountability for the organisation, but we encountered a severe technology problem. At one point, the senior executive of Capgemini said to me that he believed that there was a fundamental flaw in the system that it was providing to NHS 24. That was

at an advanced stage of the programme. I felt let down that it had taken that amount of time for Capgemini to identify that fundamental flaw in the system. That situation continued for quite a while, until it was resolved.

Would you like me to come back to the contract signature?

The Convener: Yes.

John Turner: I will begin with a bit of background and then deal with the signing of the contract on the day. Two contracts were signed. Lot 1 was the software contract with Capgemini for approximately £20 million. Lot 2 was the contract with BT for the hardware, which was £55 million and included a 10-year prime provider service.

As has been alluded to, the contracts are thick technical documents. The Capgemini one is just short of 1,000 pages in two volumes. It has 28 schedules to it. One of the volumes contains all the legal and substantive terms and the other contains NHS 24's 640 requirements and Capgemini's response to each of those requirements. Broadly speaking, there are clinical, service management and technical requirements.

I established a team, led by the NHS 24 director of finance and technology, to take forward the contracting and procurement process. We had advice and input from Pinsent Masons—a leading law firm—and, specifically, a partner who specialised in IT contracts. A lot of other NHS 24 staff and others were involved in the process. Capgemini was appointed preferred provider in August 2011 and BT in September 2011. There were then six months of detailed negotiations leading up to the final contract signature in March 2012.

When it came to the contract signature, I was in the position that the NHS 24 team, led by the director of finance, with the support of the specialist lawyer, had written the contracts and managed the whole process. Six months of detailed negotiations had followed the procurement exercise. I had been kept regularly briefed on those negotiations and I knew that the 640 requirements had been specified by NHS 24 itself. On the day of signature, I took assurance from all of those sources. On that day, the lawyer gave us a brief walk-through of what was in the contracts, so I felt assured that I could sign off on them.

The Convener: Let us say that I sign a mortgage agreement with my bank, but my solicitor has given me incorrect advice and I end up signing for something that I was not advised of when I signed the contract. If I subsequently find that I am responsible for something that I should not have been—there is something in the contract that should not have been there—my

understanding is that I can take action against the solicitor who gave me advice. Why did that not happen on this occasion? You obviously feel let down by the director of finance, and I can understand that—you have made that issue clear, and that is for further discussion. However, let us deal with the legal advice that you received. A specialist solicitor was providing you with advice. What would the legal adviser have been paid?

John Turner: It would certainly be several hundred thousand pounds.

The Convener: A company that had been given several hundred thousand pounds' worth of work provided advice specifically to you to say, "We're more than happy for you to sign this document, Mr Turner. This is our legal advice." However, something was omitted from the final document. Is that company not responsible for that?

John Turner: Yes, and—

The Convener: Why did you not take action against the company when that became apparent?

John Turner: That was considered by the board. When I left the board, it was still under consideration. We received separate legal advice that we had up to five years to raise an action. Again, that is what the board determined that we should do—

The Convener: But that would have been within the five years.

John Turner: Yes. At the time, we felt that it was right to put all of our energies and focus on the programme.

The Convener: With respect, I understand where you want to focus your energy and resources. However, the organisation now finds itself in £41.6 million-worth of debt. If that overspend was not provided by the Scottish Government, the organisation would need to close down and people would lose their jobs. Should pursuing the matter of the incorrect legal advice that you received not have been a priority?

John Turner: That was carefully considered by the board—again, I was the accountable officer with the board—and it decided that it wished to investigate the matter further, but it was felt that the priority at the time was to focus—

The Convener: You are just repeating what you said, Mr Turner. I am just making a point that seems pretty straightforward to me. You are advising me that the solicitor provided advice to you that subsequently led to you signing a document, which has now cost the public purse £41.6 million, and you are advising me that it is not a priority to pursue that legal adviser. Again, that is a failing on your part. I accept that you have shown humility today. However, you are the

accountable officer and you tell me that you were incorrectly advised, so why not take action against the solicitors who are responsible and, for that matter, your director of finance? What happened subsequently?

John Turner: I can only repeat myself. That was a matter that the board was considering and certainly when I—

The Convener: What advice did you give the board? Did you not say to the board, "We should be pursuing the two individuals who advised us to sign the document"?

John Turner: We had taken advice from other legal advisers, and their advice was that there was a case that we should seriously consider in relation to—

The Convener: So is it still being considered?

John Turner: Yes—that is my understanding. It was being actively considered by—

The Convener: Finally, what was your advice to the board?

John Turner: I thought that we needed to take a careful look at all of the circumstances. The further legal advice that we had taken and the central legal office of—

The Convener: I understand, but I am asking a straightforward question. You find yourself here today and you have lost your job as a result of a document that was signed that, looking at it now, really should not have been signed. Did you not say at the time, "Listen, we're facing significant challenges because of a flawed document that you asked me to sign"? What was your position on that? Forget about the legal advice that you received—what was your personal advice to the board?

John Turner: My position would be that we should seek every opportunity that we can to address that issue.

The Convener: Okay.

I pass over to Mary Scanlon.

Mary Scanlon: Mr Turner, am I correct that you said that you were let down by your director of finance, who knew about the omissions from the document of matters that were agreed verbally but not written into the document? Did you say that you were let down by your director of finance?

John Turner: That is certainly how I feel, yes.

Mary Scanlon: Right. The timeline that we have from the Auditor General—this might involve a new director of finance—shows that the date when you as the NHS 24 chief executive and your director of finance were made aware of the size and nature of the flaws was January 2014.

John Turner: Yes.

Mary Scanlon: So the timeline information is that the director of finance was told only in January 2014, but we know that the matter of the omissions in the tender document was raised by a staff member in August 2011. So, three years later, you and your director of finance were told, but the contract was signed in March 2012. Can you explain why you said that you were let down by your director of finance, who knew about the omissions? The document that we have states that the director of finance was told about the flaws on the same day as you.

John Turner: Yes.

Mary Scanlon: I am trying to reconcile that.

John Turner: Okay.

Mary Scanlon: Was it a different director of finance?

John Turner: Yes. There was a previous director of finance and technology.

Mary Scanlon: So that director of finance left without passing on—

The Convener: Can you be clear about names as well? Can you provide names rather than titles, please?

John Turner: Yes. The previous director of finance was a Mr Robert Stewart, who was Mrs McGurk's predecessor.

Mary Scanlon: Okay. So when did Robert Stewart leave?

John Turner: He left in the summer of 2013.

Mary Scanlon: The summer of 2013. Was Mr Robert Stewart aware of the omissions from the tender document that were discovered by the staff member in August 2011? Was he aware of those omissions before the contracts were signed in March 2012?

John Turner: The—

Mary Scanlon: You said that you were let down by him, so can we just get a yes or a no? Was he aware?

John Turner: I understand that he was aware of the omissions in the final contract, which I signed in March 2012.

Mary Scanlon: You signed that contract.

John Turner: I signed it in March 2012, and I understand that he was made aware within, I think, six weeks of my signing those contracts, so that would have been April 2012.

Mary Scanlon: So NHS staff identified that sections were missing a month after you signed the contracts.

John Turner: That is right.

Mary Scanlon: But this Robert Stewart did not know about the staff member discovering the omissions in August 2011. Was the staff member so irrelevant that nobody paid any attention to him or her?

11:30

John Turner: I think that, in August 2011, the contract was still in a process of negotiation. The required—

Mary Scanlon: Yes, but omissions were highlighted in August 2011 by a staff member. That is in a paper that we have from the Auditor General.

John Turner: Yes, and that was part of the negotiation process, so it should have been picked up at the time.

Mary Scanlon: It was picked up by a staff member.

John Turner: Yes. The staff member raised the issue with Pinsent Masons, the lawyers. What transpired was that, although the omission was picked up then, it was thought that it had been corrected. It had not been corrected—

Mary Scanlon: So the staff member raised it with Pinsent Masons but did not bother to tell the director of finance, who seemed to be in charge of the negotiations with BT and Capgemini. The staff member was negotiating with Pinsent Masons. You did not know anything about it, and nor did the director of finance, Robert Stewart, know anything about the omissions in the contract. That seems pretty dysfunctional to me.

John Turner: I do not know whether Mr Stewart knew about the omission in—

Mary Scanlon: You have just told me that Mr Stewart knew about the omissions one month after the contract was signed, which was in April 2012. That is when NHS 24 staff identified that some sections were missing from the signed contract.

John Turner: Yes.

Mary Scanlon: The previous director of finance was told one month after the document was signed.

John Turner: Yes.

Mary Scanlon: But he did not bother to tell you until two years later.

John Turner: He did not tell me at all. I discovered this 22 months later—

Mary Scanlon: In January 2014.

John Turner: Yes.

Mary Scanlon: Okay. You were the boss at the time. It is pretty serious stuff. The Auditor General has told us that there were omissions and that sections that were negotiated were not in the document. As the accountable officer, were you not accountable for every member of staff? Were you not in touch with all the members of staff? Were you not aware that the member of staff had highlighted something pretty significant? Did that single member of staff have authority from you to go to Pinsent Masons, negotiate with that firm and get legal advice without telling anyone? It does not add up. Can you tell us the name of the member of staff who was ignored and had to go off on his own and get legal advice from Pinsent Masons?

John Turner: In August 2011, when the member of staff identified an omission in that one requirement—

Mary Scanlon: There were omissions—plural—not just one.

John Turner: That was an omission in one requirement out of 640 that were being negotiated and discussed with Capgemini at that time. We had several teams, including technology staff, service management staff and clinical staff, working through all the requirements. The system that we had in the programme management at that time was that, as issues were identified and negotiated, all the changes were put through to Pinsent Masons. We had an approach, I think, through the board secretary, who managed all of that from NHS 24's perspective.

Mary Scanlon: So, you were aware that this person had raised the omissions. You were aware that the person had gone to Pinsent Masons. You were made aware that everything was sorted out, so you happily signed the document in March 2012 and, one month later, NHS 24 staff identified that some sections were missing from the signed contract. That is the critical part.

John Turner: I—

Mary Scanlon: Were you aware of the person going to Pinsent Masons? Did someone mislead you and say, "The omissions"—plural—"in the tender document have all been sorted out, Mr Turner, so you can happily sign it" and then tell you a month later that they were not there? I am not getting this.

John Turner: I had no knowledge of the omissions from the contract until January 2014. I—

Mary Scanlon: You did not know that a member of your staff was talking to a legal firm—Pinsent Masons. You did not know that.

John Turner: At the time, Pinsent Masons was working with us on the contract day in, day out. It had not just a lawyer but its own legal team

supporting us, and there was regular contact between the NHS 24 contracting and procurement team, which I have previously described, and Pinsent Masons. At that time, there was almost a daily exchange of information.

Mary Scanlon: Okay. You have apologised for your lack of oversight, which is reasonable because there was undoubtedly a lack of oversight. However, to be fair, NHS 24 does not bring in new IT projects every year.

In his evidence to the committee, Fraser McKinlay of Audit Scotland spoke about how public sector IT projects should be

"supported by the wider environment".

He said that the Scottish Government and the digital team should be coming in to help. He added:

"We also have NHS National Services Scotland, which has a big procurement function and is experienced in IT, so there is a wider system question about how we bring the experience in the system to bear on big contracts".—
[Official Report, Public Audit Committee, 2 December 2015; c 26.]

We have heard your comment, but the truth is that, for a huge, multi-million-pound contract, you needed more help and the help should have been there. Did you feel let down by the Scottish Government, NSS or the digital team? When you had problems, did you go to them for help, and was the help there?

John Turner: I took a best-endendeavours approach in seeking regular advice and external input. That is what I did, and that is described in my submission.

Mary Scanlon: Was that advice from the groups that I mentioned?

John Turner: Yes, and from others as well. The point that I have reflected on, which is similar to a point that Mr Crichton made earlier, is that each authority is required to determine its own arrangements—

Mary Scanlon: I just want to know whether you got the help. We have to move on to other members' questions, and the convener is pushing me to finish. Can I please get an answer? Did you get the help that you needed from the Scottish Government, the digital team and NSS, which were all there to help you? Did they give you the help that you needed and that the taxpayers needed in order not to waste £42 million?

John Turner: I received a lot of help from the Scottish Government and from NSS. I am happy to detail that.

Mary Scanlon: Their contribution led to a £42 million overspend. That was the kind of help that you got. It does not sound very helpful to me.

Colin Beattie: Let us continue down the well-worn track of the contract. Do you consider that information was deliberately withheld from you, from the board and from the incoming director of finance?

John Turner: That is a conclusion that it is difficult not to come to, certainly. In January 2014, when I was made aware of the omissions, I met Mr Robert Stewart to ask him directly about the matter and, of course, to check whether he had raised it with me or with anybody else within NHS 24. He confirmed to me that he had not. He said that he had taken the advice from Pinsent Masons that it would resolve the issue through a process called a minute of amendment.

There were many opportunities for him to tell me. Also, as the director of finance and technology, he was leading the contract. When Mrs McGurk came in, there was a handover of responsibilities and arrangements, and there was an opportunity to inform her then. I find it very difficult to come to a conclusion other than that information was withheld from me.

Colin Beattie: Robert Stewart left in the summer of 2013. You did not become aware of the issues until January 2014. When did Mrs McGurk take up her duties?

John Turner: In the summer of 2013.

Colin Beattie: Someone else must have taken the decision not to pass information to her in addition to you and the board. At what level was that decision taken?

John Turner: Mr Stewart was the executive director with lead responsibility for the contracts.

Colin Beattie: But he had gone, and you were not advised of any of the issues until January 2014. Nor was Mrs McGurk, apparently. Who, at a lower level, decided not to communicate that information to you? How would that have happened?

John Turner: When Mr Stewart left, in order to keep his knowledge of and expertise on the contract available to the organisation, I came to an arrangement with him whereby, for a couple of months, he undertook some further work for NHS 24 specifically on the management of and advice around the contract, for a smooth handover. Indeed, I asked him to write up the history of the procurement and contracting process, in a sense.

Colin Beattie: Did he do that?

John Turner: Yes, he did.

Colin Beattie: Within two months?

John Turner: He did.

Colin Beattie: Did that document mention any of the problems?

John Turner: No, it did not.

Colin Beattie: That still leaves a gap between the two months when Mr Stewart was still overseeing the project, so to speak, and January 2014, when you became aware of the issue. Someone somewhere still made a decision that that information did not require to be passed on.

John Turner: When the issue emerged, in January 2014, from the discussions that I had with more junior staff it was clear to me that they believed that Mr Stewart had briefed me on it.

Colin Beattie: For a project of such a size, you must have received regular briefings from the project team on how it was going on both the technical side and the legal side.

John Turner: Indeed. Yes.

Colin Beattie: Someone took a decision not to pass on the information in those briefings, otherwise you would have known.

John Turner: The omissions had, of course, been raised way back in April 2012. My interpretation of what I was told at the time was that it was believed that Mr Stewart had made me fully aware of that information over a year earlier.

Colin Beattie: There must have been a document in which all those things were tracked, which you would have had access to and would have inspected from time to time. The issue would have come up in the briefings—it was a big project.

John Turner: Other staff at a more junior level within NHS 24 were aware of the omissions, but they did not tell me. When I found out and asked them, I got the impression from those discussions that they believed that Mr Stewart had told me about them some time before.

Colin Beattie: How often did you meet the project team?

John Turner: Very regularly. The project team base was set up, and we had a dedicated space for that. I was in and around that very regularly.

Colin Beattie: None of those issues was tracked by the project team.

John Turner: No.

Colin Beattie: They were not.

John Turner: No.

Colin Beattie: How were they handled? Were they handled on an ad hoc basis by a member of staff? How was the process controlled?

John Turner: The responsibility for the overall management of the contract was with Mr Stewart. When he left the organisation, it become the responsibility of Mrs McGurk. I arranged for a period of handover between the two.

Colin Beattie: Mrs McGurk said that she did not become aware of any of the issues until January 2014, at the same time as you did.

John Turner: That is correct.

Colin Beattie: Although she was managing the contract, she still did not have access to information that would have alerted her to the fact that there was a problem. Who did not pass that information on? Where did the communication break down?

John Turner: I can only repeat myself: Mr Stewart did not tell me or Mrs McGurk.

Colin Beattie: But he was not there by that point—he had gone.

John Turner: There had been a process of handover from him to Mrs McGurk, and he had written up—

Colin Beattie: I repeat that Mrs McGurk did not become aware of those issues until January 2014. Clearly, the handover was incomplete or inadequate.

John Turner: Yes.

Colin Beattie: Someone somewhere knew about that. Someone somewhere was tracking the matter, dealing with the lawyers and so on but not feeding into the project team. Is that correct?

John Turner: Yes.

11:45

Colin Beattie: There was no overall document that captured all the issues around the project, otherwise the omissions would have been picked up—is that correct?

John Turner: We had a detailed management plan that was tracked and monitored almost daily throughout 2013. Everyone was working on the software, the hardware and the builds. I think that everyone assumed that Mr Stewart had sorted out the contract issues.

Colin Beattie: None of the contract issues appeared on any of the briefings that you received or in the documents tracking outstanding issues that went past you.

John Turner: Not in relation to the specific performance metrics, which was one of the omissions from the contract.

Colin Beattie: That was only one omission. Are you talking about the traceability matrix?

John Turner: No, I am talking about the performance metrics to do with how quickly the system worked.

Colin Beattie: It sounds as though those metrics were restricted to the technical side and not the admin side, which was just as important for the programme.

John Turner: Yes. Given his expertise, Mr Stewart led on and managed the contract. The majority of the staff were focused on the builds and the development of the technology solution, which was regularly managed and monitored.

Colin Beattie: It seems that there were big gaps in how the project was managed, to be honest.

Dr Simpson: We are clear on your point about your not being informed about matters. My understanding, from reading the papers, is that the original gap was discovered because specifications in the tender were omitted from the contract. Pinsent Masons said that that was not unusual—that it was almost a regular occurrence—and that it could be dealt with through a minute of amendment. Capgemini was happy with that. The issue was compounded, however, because the next document—the one that you signed—still had the specification omitted from it.

John Turner: That is correct.

Dr Simpson: How significant was that? I think that we are confusing the failures of the Capgemini software system and the omission. You have repeatedly said that it was a single omission out of 640 requirements, but it seems to us highly significant that any specification was omitted. That must have had an effect when you got into a confrontation with Capgemini.

John Turner: Yes. I will try to be as clear as I can be on that matter. When the contract was printed in the NHS 24 lawyers' offices, it was printed from a system called the extranet. The extranet was where each of the 640 requirements were kept and, as they were negotiated, changed and updated, there was almost an ever-moving version of each of the requirements. They eventually went into a final folder and, when it came to printing out the final folder, not all the final requirements were printed—at least several dozen pages were not printed. One of those pages was about the performance requirements of the system. In essence, it was about how quickly the page turns when a staff member has a patient on the phone and the system in front of them.

Dr Simpson: That was critical.

John Turner: It is a fundamental part of the system, and it was in the pages that were not printed.

Dr Simpson: It was omitted. It was in the tender document but not in the contract document—is that correct?

John Turner: Yes. It was in the very first requirements document that NHS 24 took to the market.

Dr Simpson: Would you say that Capgemini was certainly aware of that?

John Turner: Yes.

Dr Simpson: The speed of turnover was one of the reasons for the project—it was intended to reduce duplication in the system and speed up the process.

John Turner: Indeed. There are five performance measures for the specific tasks, each of which is approximately a second or less. There is a Capgemini response to that requirement from early on in the procurement process.

Dr Simpson: You said that you chaired the programme board—is that correct?

John Turner: Yes.

Dr Simpson: But the issue was never brought to the programme board.

John Turner: No.

Dr Simpson: That seems to have been a fundamental flaw. Neither Pinsent Masons nor Robert Stewart, who were aware of the omission, brought the matter to the programme board and said, “There’s an omission that has occurred twice and has not yet been corrected.”

John Turner: That is correct.

Dr Simpson: That is fairly clear. Is it correct to say that that was all related to Capgemini and there were no problems with the contract with BT at that point?

John Turner: It later transpired that there had been a similar issue with the BT contract in that not all the pages that should have been printed were printed. However, that was resolved through a minute-of-amendment process with BT, which was rolled out by Pinsent Masons.

Dr Simpson: But the Capgemini contract was not dealt with in that way and there was no separate minute.

John Turner: It later transpired that Pinsent Masons had tried to resolve the issue with Capgemini through a minute-of-amendment process but had not achieved sign-off, whereas sign-off had been achieved with BT.

Dr Simpson: Was that because Capgemini was not prepared to sign up to it, despite the fact that that was the basis on which it had tendered?

John Turner: On investigation, there seemed to have been one point, which was not related to the performance metrics, that Capgemini had sought to re-open in that process. However, because that was not reported to me, the future service committee or the board, we did not have the governance oversight to ensure that it was handled and closed off satisfactorily.

Dr Simpson: What about the advice that you were getting from NSS and the Government experts? Did they attend the programme board?

John Turner: Yes, two Scottish Government staff members attended the programme board through 2012 and 2013.

Dr Simpson: What was their expertise?

John Turner: One member of staff was from the performance management directorate and had oversight of NHS 24 and the other was from the e-health directorate of the Scottish Government.

Dr Simpson: I presume that, if we were to ask the e-health directorate officials, they would say that they were not informed about any of this either.

John Turner: No, they were not.

Stuart McMillan: I have a couple of brief questions. After what we just heard about the printing out of the contract, I am trying to understand what happened. The sheets were printed out and the contract was put together but, by the sounds of things, there was no final check of what was printed out before it was put in front of you to be signed. Is that an accurate assessment of what happened?

John Turner: Yes, it is. There was no page-turn or equivalent exercise to ensure that everything that had been agreed and should have been printed off had been printed off.

Stuart McMillan: Why did that not happen, given that the contract was worth such sums of money?

John Turner: That question has tormented me since the issue came to light. I regarded that as a basic administrative function of the offices of the lawyers and their team. I regarded it as a basic process that, before a contract would be put in front of a client for signature, it would be checked to ensure that it was full and complete. It transpired that the contract had not been checked.

I understand that all the final versions on the extranet had been read and checked, but when the document was printed out, that page-turn exercise was not carried out.

Stuart McMillan: It really surprises me that, at the most important stage, that basic element of

governance—for want of a better word—did not happen.

John Turner: I was astounded when I found out about it.

Tavish Scott: You answered the convener's questions about what happened when you left the organisation and your discussion with the board chairman. Did the board chairman tell you that you had to leave the organisation because of the situation that we are discussing?

John Turner: It was a very personal discussion with the board chairman.

Tavish Scott: I do not want to know about that—it is not appropriate for me to know about that. I am interested only in the business that you were employed to do and how you performed that function. Was that the main reason for your leaving the organisation?

John Turner: It was a key factor.

Tavish Scott: Was it the main reason?

John Turner: I would say that it was a key factor.

Tavish Scott: I do not know what a key factor is. Were there lots of key factors?

John Turner: There were other points.

Tavish Scott: What were they?

John Turner: As I said earlier, I had been there for seven years and I had had two really tough years with the programme leading up to that point. From a personal point of view, I needed to step back and refresh a little.

Tavish Scott: Sure, but I want to be very clear—because we are trying to identify what went wrong—whether the board chairman asked you to leave because of the situation with the project.

John Turner: That was part of the discussion that we had, so yes.

Tavish Scott: Do you understand the public outcry about settlement agreements for people who leave public sector jobs in such scenarios?

John Turner: Absolutely.

Nigel Don (Angus North and Mearns) (SNP): Good morning, Mr Turner. I want to take you back to a subject that I have still not settled in my mind. The timeline tells me that omissions in the tender document were discovered in August 2011, that you signed the contracts in March 2012 and that shortly thereafter, in April 2012, people identified that sections were missing. I think that those are totally different issues. The fact that sections were missing relates to the fact that documents just were not printed out and therefore apparently did not become part of the contract. I presume that the

identification of omissions in the tender document, which took place before it was printed, was a very different issue from the issue that was spotted in March 2012.

Will you go back over that and explain the differences?

John Turner: I will start right at the beginning, when NHS 24 first went to market with the page-turn—or screen-turn—requirement. As I said, there were five specific requirements in relation to how quickly the page-turn took place. The page-turn requirement was there at the beginning, but as the documentation was managed through the process, it got cut in a transition from one software system to another. Instead of saying that we wanted the system to do A, B, C, D and E, the requirement just said, “We want the system to do,” and that was it. That is how it became truncated.

I understand that in August 2011 a member of NHS 24 staff spotted that the requirement had become shortened and raised that with Pinsent Masons to rectify the situation. Capgemini was notified of that and responded to it. What then happened is that the full version of the requirement did not remain in the updated versions of the contract as it went forward. The final version on the extranet was the truncated version, rather than the full version with Capgemini's response, which was part of the pages that were not printed out.

12:00

Nigel Don: Under those circumstances, having responded to a requirement that it knew was there, why would Capgemini, as a contractor, not recognise that fact and simply say, “That's what we discussed and therefore that's what we are going to do”?

John Turner: The working relationship with Capgemini through the whole of the build process was extremely close. By that, I mean that Capgemini staff, BT staff and NHS 24 staff were all working in the same space. We had a shared plan that everybody was working to, which was managed on a daily basis. On a weekly basis, I held a senior executive escalation meeting with senior executive colleagues in Capgemini and BT.

As the implementation went forward, NHS 24 identified and escalated in the summer of 2013 a particular issue with one element of the software. That was escalated to the NHS 24 board chair and the chair of Capgemini in the United Kingdom in terms of the totality of how that element of the software was being developed. That remained a critical factor through July and August 2013. In September 2013, following a dress rehearsal exercise that NHS 24 had done, the senior executive of Capgemini said to me that the

problem remained and that he was concerned that there might be a fundamental flaw in the system. He undertook to have a specialist technical review of that.

At no point in that process or in the regular meetings that took place as part of the intense work that we were doing was the issue of performance metrics brought up by Capgemini. Only when the element did not function correctly—it just did not work—and when the speed at which it was working was not acceptable was a spotlight shone on the issue.

Nigel Don: I understand that. If those who are sitting outside the process do not get told, they do not get told. What I am trying to understand is how those who were actually engaged in writing the software and literally looking at the screens somehow failed to pick up the fundamental problem, because looking at a screen is exactly what the person using the software is going to do. With the benefit of hindsight, can you give me some clues about how those who were actually at the chalkface—that is, sitting in front of a screen—failed to see the problem with what they were producing?

John Turner: There were many elements to the software that we were extremely pleased with and which worked excellently. We consistently heard that from all the staff who were testing it. However, with regard to the element around the clinical content piece, which was called Arezzo, the staff raised concerns with me, I raised concerns with Capgemini and the NHS 24 board chair raised concerns with the chair of Capgemini in the UK.

Capgemini was developing it as we were going along and, as we kept testing it, it kept not working. The issue remained a critical factor through July and August 2013 to the extent that, in September 2013, Capgemini identified it as a potential fundamental flaw in the system.

The Convener: I ask you to reflect on the fact that you were at NHS 24 from 2008 to 2015. During that time, the accountable officer's role changed from being that of an NHS manager, in effect, to that of somebody who was in charge of a significant IT project. That is really what happened. You became responsible for something that, when you signed up for the job, was perhaps not such a significant part of the role. Were you out of your depth? We can blame the director of finance, and you have taken responsibility as well, but is the issue not just that you became unable to manage the project? As we have heard, there were issues about tracking the decisions that were taken and the process of managing the contract. Did it not just get out of hand?

John Turner: When we knew that we were going to go through the procurement and

contracting process and needed to get new technology, we were very aware that it was a high-risk programme. We were very up front about that. With best efforts, we brought in external expertise and used the expertise that we had in the organisation.

The Convener: However, you needed somebody to manage the project, did you not? You could bring in all sorts of expertise but, at the end of the day, it became a major IT project. We are talking about significant sums of public money being spent, for which you became ultimately responsible. You have a track record as an NHS manager and in managing staff in different ways, but you did not have any experience of managing a significant IT project, did you?

John Turner: No, I had not, sir, which is—

The Convener: Should you not have reflected on that and said that you were maybe not the accountable officer to oversee the project? I ask you that question because you said that you were willing to be part of the process of reflecting on the matter. Was it not that you simply did not have the expertise and too much pressure was placed on you? Hence the management of the project got out of hand. People were not reporting things to you.

John Turner: As I reflect, sir, I see that, at a micro level, we could have done many things better in NHS 24. We have touched on some of those and there will be many more.

The Convener: You overspent £41.6 million, so you could have done a lot better. If the tap had been turned off—if the Scottish Government had said that it was not giving you any more money for your IT project—1,500 people would have lost their jobs, so should you not have reflected on the significance of the project and said, “I really can't do this”? You demonstrated humility today—after the event—but could you not have looked ahead and said that you were not in a position to manage it and it was not for you?

John Turner: One element that has not come out is that we created a programme director post as part of the programme. As has been reported to the committee, I think, we struggled to recruit to that post.

The Convener: Yes, but I am asking about you. You were the accountable officer. If you asked me to be the manager of Manchester United, I could not. I do not think that there is anybody in this room who could do that. We are not qualified to do it, and it is a significant task. I am asking you whether you should have said, “Wait a minute. This is significant. I do not have expertise in this IT project. I am a manager of NHS staff. That is what I do and where I come from. Really, this is not for me”?

John Turner: As I look back, I can see that, despite the fact that I took external advice, there were external reviews and I brought in external staff, we would really have benefited from the services of somebody who had been through such a project.

The Convener: At the end of the day, you had the responsibility. You had to ensure that those advisers were brought in. You can bring in all the players that you want, but you were the person who needed to manage the players whom you brought in and you did not do that effectively, because they did not feel that they had the confidence to come to you. Mr Crichton advised us that there would be no blame game and that staff could advise him that there had been faults in the system. That did not happen on this occasion, did it?

John Turner: No, it did not.

The Convener: The staff did not feel that they could advise you, so the management process that was in place was not as effective as it should have been. Is that not the case?

John Turner: Had it been, the issues would have been raised earlier.

The Convener: I want to ask a final quick question about the legal advisers. I take it that, when the flaw in the contract was uncovered, the legal advisers had to start making representations to the various parties to find out whether the contract could be reconciled. Is that right?

John Turner: Yes.

The Convener: Did they charge for that work? Did they bill the organisation for that?

John Turner: By January 2014, when the issues with the contract omissions emerged, NHS 24 was working with the solicitors Anderson Strathern. We changed from Pinsent Masons in October 2013, and Anderson Strathern went through the contract.

The Convener: But my question is this: you have advised us that Mr Stewart had instructed the solicitors to look at ways in which the contract could be clarified, but did the legal advisers bill NHS 24 for undertaking that work?

John Turner: I am sorry—I misunderstood the question. The legal advisers agreed that that was their issue and that they would seek to resolve it at no charge to NHS 24.

The Convener: If they had agreed that that was their issue, where is the legal argument? If they accepted that that was their issue, why are we worrying about who is responsible? Is it not very clear that all responsibility should have been placed on the legal advisers, who at that point had admitted their own responsibility? Why was there

any debate on the matter? After all, they would have billed you if they had not been responsible.

John Turner: I am sorry—I have not quite caught your question.

The Convener: I think that the question is crystal clear; in fact, you have actually answered part of it. You have just advised me that the legal advisers uncovered a flaw in the contract and that they said that they were aware that they were responsible for it. Is that correct?

John Turner: Yes.

The Convener: And they did not bill accordingly. Surely when, later on, the board was considering what action it could take with the legal advisers who provided the advice, it must have been a no-brainer. The argument must have been pretty straightforward; after all, the legal advisers had already advised you that they were responsible for the flaw in the contract. Why was there an argument about taking further action against the solicitors? Earlier you said that when you looked at it you were not really sure whether or not you could take action; you were still considering that, because you were still within the five-year period. However, is the situation not pretty straightforward? They had advised you that they were not going to bill you, because they were responsible.

John Turner: Yes.

The Convener: So why was there any debate about taking action against them? We are talking about £41.6 million of public money, and you are debating whether to take action against legal advisers who have already admitted internally that they were responsible.

John Turner: The board would clearly need to take legal advice on the strength of its case. Before I left, it had received advice from Anderson Strathern and was in the process of taking further advice from the central legal office.

The Convener: The board is taking its time, though, is it not? Has it not been reflecting on this for quite a long time now? We are talking about £41.6 million of public money, and it seems to be saying, "Let's have a think about this."

John Turner: Yes.

Colin Beattie: Following the convener's comments about lawyers and from the evidence that I have seen, I have to say that there are questions in my mind about the activities of Pinsent Masons and how much value it added to the process. Did you meet the lawyers at any point?

John Turner: Yes, I did, from time to time.

Colin Beattie: On a regular basis? What were the subjects of those meetings?

John Turner: The director of finance was the executive lead who had most regular contact with the lawyers. As I have said, I met them from time to time to discuss oversight of the contract, various other issues and the progress that we were making.

Colin Beattie: So they would have updated you on issues to do with the contract.

John Turner: Yes.

12:15

Colin Beattie: They did. Let me just clarify that. You said that you met the lawyers from time to time, presumably for the purpose of giving you briefings on where things were.

John Turner: Yes.

Colin Beattie: Although there was more of a daily contact with the director of finance on issues.

John Turner: Yes.

Colin Beattie: So they briefed you periodically.

John Turner: Yes.

Colin Beattie: And they would have covered issues on the contract.

John Turner: Yes.

Colin Beattie: So you were aware of the problems in the contract.

John Turner: No. I was not aware of the omissions.

Colin Beattie: Are you saying that the lawyers also withheld that information?

John Turner: They were certainly not forthcoming with it, so, yes.

Colin Beattie: Your opinion is that, during the briefings that you got from the lawyers, which covered the contract and presumably any legal issues around that, at no point did they indicate that there were any problems.

John Turner: No.

Colin Beattie: You say that several hundred thousand pounds was spent on Pinsent Masons. Is that correct?

John Turner: Yes.

Colin Beattie: What was the basis of the payment? Was it a fixed payment for the work done, or was it an hourly billing?

John Turner: It was an hourly rate.

Colin Beattie: Very nice. Who signed off on that?

John Turner: The director of finance. I believe that I am right in saying that, when I joined the organisation, NHS 24 already had a legal advice arrangement in place with Pinsent Masons.

Colin Beattie: Was there a budget?

John Turner: Yes. It was within the overall budget of the organisation.

Colin Beattie: But presumably there was a specific budget for legal advice and support.

John Turner: There certainly was in the future programme overall budget.

Mary Scanlon: I have two very brief questions. What job are you doing now, Mr Turner?

John Turner: I am looking for work at the moment.

Mary Scanlon: Have you been looking for work since you left NHS 24?

John Turner: No, only for the past month or so.

Mary Scanlon: Can I ask about Robert Stewart? That person has had to shoulder a significant part of the blame for the huge, multimillion-pound overspend on the project. Were disciplinary procedures taken out against Robert Stewart prior to his leaving NHS 24? Was the overspend of £42 million a key factor in his leaving?

John Turner: No.

Mary Scanlon: So he did not accept any responsibility for the project. You have fairly—well, I do not know whether it was fairly, but you have squarely laid the blame on his shoulders. Did he choose to leave of his own volition?

John Turner: Yes. He retired.

Mary Scanlon: There were no disciplinary procedures taken out against him, given that his action or lack of action was a key factor in the huge overspend.

John Turner: No.

Mary Scanlon: Did you not talk to him and say, “Why didn’t you do this? This is a very serious omission”? You are in the public eye—and I have no doubt that Mr Stewart will be looking in—and you have laid the blame on his shoulders. Did you ever speak to him about his knowledge of the omissions in the contract that he failed to bring to your attention as accountable officer? Did you ever have that conversation with him?

John Turner: Yes, I did. In January 2014, when the matter came to my attention—actually, in the week that it came to my attention—I met Mr

Stewart. I asked him whether he knew about the omissions in the minute-of-amendment process and he said to me that he did. He advised me that he had had discussions with Pinsent Masons about it and that they had agreed to resolve the matter through a minute-of-amendment process, that it was an administrative matter and that he had not raised it with me because there were other things going on at the time and he thought that it would be resolved by the lawyers. Subsequently, as Mrs McGurk highlighted earlier, the board chairman commissioned a review of that from PwC as auditor. PwC interviewed Mr Stewart, who repeated what I have just said to you.

Mary Scanlon: Did he get early retirement and a severance package when he left? What age was he when he retired?

John Turner: Oh, gosh. I think that he simply retired—he was in his early 60s.

Mary Scanlon: There were no disciplinary proceedings. It is quite shocking for you to come to the Public Audit Committee of the Scottish Parliament and to lay a huge amount of blame on that man's shoulders without having taken the action that an accountable officer would be expected to take. You are saying that the responsibility was his and that he was aware of omissions that were not brought to your attention. That is quite defamatory and damning, is it not?

John Turner: Yes. None of the issues was brought to my attention until Mr Stewart had retired.

Mary Scanlon: But he was aware of them—that is my point.

John Turner: Yes, but I did not have knowledge of them at the time. I accept my responsibility—all of it happened on my watch, when I was accountable officer—but I am just trying to explain to the committee the facts and the series of events as I experienced them.

Mary Scanlon: Thank you.

The Convener: Thank you, Mr Turner.

Section 23 Report

“NHS in Scotland 2015”

12:22

The Convener: Item 3 is responses from the Scottish Government and Audit Scotland on the Auditor General for Scotland report, “NHS in Scotland 2015”. I ask colleagues for their comments.

Dr Simpson: I do not quite understand one of the comments in Mr Gray's response, which refers to

“demand at A&E departments continuing to increase”.

I have printed off the Information Services Division reports from April 2010 to November 2015 of the attendances at accident and emergency, and at no time between April 2015 and November 2015—that is the last monthly report that we have—was the number of attendances the highest for that month in the past five years. If you look across the years at the month of April, you see that the highest number of attendances was in April 2011. For the month of May, the highest attendance by quite a margin was in 2010; in May 2015 there were 138,077 attendances, but in May 2010 there were 149,538.

It is not indicated that some of the problems that we are experiencing in accident and emergency, which were again evident in last week's report—now that we get weekly reports—are due to an increased level of attendance. There may be other reasons for the problems, but an increased level of attendance is not one of them. I have tried to look back at the Auditor General's paper and I cannot see that it suggests that there is a substantial increase in demand, so why was the question of increased demand raised?

My second point is that I put in a freedom of information request to all the boards about the alternative access routes. That arose from the problems that we were having at the Queen Elizabeth university hospital with the so-called acute assessment unit, which is a different route by which patients can come in and which is not subject to waiting times targets or even any sort of monitoring. In fact there is a huge list of such units, which I can supply to the committee. Those are called various acronyms—CPDUs, GPAUs, MRUs, SAUs and, in the Highlands, RAMA, whatever that is. I could go on and on. Each of the boards has alternative assessment units, some of which have a four-hour target but most of which do not have a target at all.

The situation for accident and emergency is a lot more complicated, and I wonder whether other

members feel as I do that we are not getting a clear picture. Many acute assessment units, which are also known as intermediate assessment units, although there are, as I have just highlighted, lots of other names for them, have grown up since the waiting times scandal of 2011. They may be being utilised appropriately or inappropriately, but I am not convinced that they are a part of the system that we understand fully.

The Convener: Before I bring in Mary Scanlon, I ask colleagues to give an indication on how they wish to progress our work on the issue.

Mary Scanlon: I want to ask for further information in order to get clarity. I wrote down the words “fudge” and “waffle” after I had read Paul Gray’s letter about three times.

We had asked for information on Audit Scotland’s submission to the committee on accident and emergency, as well as on targets and the purpose of assessment units. In the third paragraph of Paul Gray’s letter to the convener, he states that he does not know the reasons for the referrals. He states:

“We do not collect specific data on number of referrals or reasons for referral”.

We understood that the acute assessment units are not subject to the four-hour A and E target and that they are a way of sidelining the target.

I remember clearly that a previous Audit Scotland report to us had a page setting out who referred people to accident and emergency departments. It was general practitioners, the Scottish Ambulance Service and NHS 24. Our concern as a committee—Hugh Henry was then convener—was the huge increase in self-referrals. We were trying to understand that better and we spoke to ISD and others about the matter. I am not satisfied with the information that we have. It does not fully answer the questions that we were asking. The Audit Scotland report set out what percentage of A and E visits were self-referred, and the number has increased hugely on previous years. I do not accept that the director general of health and social care does not have that information given that we have had it in a previous report.

Colin Beattie: To follow on from Richard Simpson’s comments, it would be interesting to see what figures Paul Gray has. If we are to consider the matter, we need to have sight of all the figures.

Looking at the “NHS in Scotland 2015” report, I think that the backlog maintenance issue is answered fairly well. Leaving aside the possibility that we may ask Paul Gray to provide one or two pieces of information, we have probably gone

about as far on the issue as possible, given the stage that we are at before dissolution.

Dr Simpson: I do not totally agree with that.

The Convener: I remind members to be clear about the information that they want.

Dr Simpson: The Government has previously given us targets for dealing with the high-risk backlog maintenance. Those targets were not met. I want to see what the current targets are and when they are likely to be met, so that the successor committee can hold the Government to account.

We have a definition of “high risk” from the Auditor General. That includes the possibility of considerable clinical risk. That concerns me; we should be carefully looking at the matter. This is, obviously, a moveable feast—new items will be added and there will be a redefinition from significant to high risk as time progress. We must understand what is happening in far greater detail than has been provided to us if we are to do our job in protecting the public.

The Convener: We are clear on what further information is to be sought from Paul Gray. It would also be helpful if Richard Simpson could provide the information to which he referred.

Dr Simpson: I will pass it to the clerks.

The Convener: Is it agreed that we will seek further information?

Members indicated agreement.

Section 22 Reports

“The 2014/15 audit of NHS Highland: Update on 2013/14 financial management issues”

“The 2014/15 audit of NHS Tayside: Financial management”

12:29

The Convener: Item 4 is a response from Audit Scotland on its reports on NHS Highland and NHS Tayside. Do colleagues have any comments?

Mary Scanlon: We have been pretty harsh on NHS Highland, but that was because Audit Scotland brought a section 22 report to us. It has reasonably addressed many of the issues to do with poor financial management that the report described.

The report said that spending on agency staff increased by 2.8 per cent. If we are sitting here criticising NHS Highland, we should highlight that spending on agency staff in territorial boards across Scotland went up 17 per cent. I want to highlight that we heard that NHS Highland undertook vacancy management in order to save money. At the same time, we have territorial boards that are spending eight times more on agency staff.

Given that the Government's priorities are dementia and cancer, I am concerned about recruitment in radiology, clinical oncology, rheumatology, and old age psychiatry particularly. As a Highlands and Islands MSP, I appreciate that there are issues in recruiting people in remote and rural areas, as Tavish Scott will know, but I have always thought that the people in the Highlands and Islands should have the same access to the national health service as the people living in the rest of Scotland. We are talking about serious diseases. We know that cancer does not wait.

Colin Beattie: I am less concerned about NHS Highland, as it seems to be addressing most of the issues, although there are minor points about its sickness absence rates and so on. I am still a wee bit concerned about NHS Tayside in connection with the sale of the Ashludie hospital land and how key that is to the board reaching its financial targets. Perhaps we just need to keep an eye on that and maybe get a report back on how that is going. Without the sale, it will struggle over the next few years.

The Convener: I am not clear on what you mean by “a report back”. Should we ask the Auditor General to consider a report? How do you want the report back?

Colin Beattie: I do not think that we need the Auditor General necessarily to report back. Can we not just ask NHS Tayside to come back and tell us when the issue is resolved?

The Convener: We can do that, or we can flag it up in our legacy paper, if that would be helpful.

Colin Beattie: Maybe we could do that, too—it is an on-going issue.

The Convener: Do members agree to note the response and to flag up the issue in our legacy paper?

Members indicated agreement.

The Convener: As agreed, we move into private session for items 5 and 6.

12:32

Meeting continued in private until 13:07.

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