



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit and Post-legislative Scrutiny Committee

**Thursday 10 May 2018**

**Session 5**



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Pàrlamaid na h-Alba

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**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**  
**12<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

- \*Colin Beattie (Midlothian North and Musselburgh) (SNP)
- \*Bill Bowman (North East Scotland) (Con)
- \*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- \*Iain Gray (East Lothian) (Lab)
- \*Alex Neil (Airdrie and Shotts) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Paul Gray (Scottish Government and NHS Scotland)  
Christine McLaughlin (Scottish Government)

**CLERK TO THE COMMITTEE**

Lucy Scharbert

**LOCATION**

The Sir Alexander Fleming Room (CR3)



## Scottish Parliament

### Public Audit and Post-legislative Scrutiny Committee

Thursday 10 May 2018

*[The Convener opened the meeting at 09:02]*

### Decision on Taking Business in Private

**The Convener (Jenny Marra):** Good morning and welcome to the 12th meeting in 2018 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone in the public gallery to please switch off their electronic devices, or switch them to silent so that they do not interfere with the committee's work

Item 1 is a decision on taking business in private. Do members agree to take items 3 and 4 in private?

**Members** *indicated agreement.*

## Section 22 Report

### “The 2016/17 audit of NHS Tayside: Financial sustainability”

09:03

**The Convener:** Item 2 is consideration of the 2016-17 audit of NHS Tayside. I welcome our witnesses: Paul Gray, director general of health and social care in the Scottish Government and chief executive of NHS Scotland; and Christine McLaughlin, director of health finance in the Scottish Government. I will ask Paul Gray the opening question.

Mr Gray, we have received a letter from you that sets out all the on-going investigations into NHS Tayside, and also a list of timescales. There are about half a dozen of these investigations. Some of them are statutory and clearly you could not hand them over to anyone else, but are you at all tempted to pull all the issues into one big investigation for clarity? That is my first question.

Will you take us through the investigations, your understanding of what they will cover, when they will report and your anticipated timescales?

**Paul Gray (Scottish Government and NHS Scotland):** Thank you, convener. I will bring Christine McLaughlin in on some of the detail, if I may.

Your first question was: would it be better or simpler to bring them all into one? We have thought about that but, as you say, there are a number of statutory aspects with which we should not interfere. When I have received the main reports that I am expecting to receive in the next few weeks, I propose to review the whole.

I will say quite frankly to the committee that, although I expect what we receive to be sufficient in its coverage, if I feel that something is missing from what has been done, I will ask for it to be followed up. We will work on the basis that what has been commissioned is sufficient but, if it appears not to be or if the committee was at any point to raise questions that we thought would not be adequately covered by what we have done, I am not resistant to the idea that we might need to extend the scope a little. However, to stop at this point and decommission what is already being done would do much more harm than good. That is my broad answer to your first question.

I am anxious not to repeat unnecessarily what is in my letter to the committee, so I will step very quickly through the main components. However, I am happy to take further questions as we go.

The first investigation is the external review by Grant Thornton of

“NHS Tayside’s financial governance, reserves and use of deferred expenditure, and the Board’s response to the initial independent review into the allocation of e-Health monies”,

and that is due on 15 May, which is next week. That will be shared with the committee and decisions about any further action will be informed by the findings of the review. That is a pretty broad-based review by Grant Thornton into what Tayside has done and is doing.

The second investigation is the

“formal inquiry under section 28(1)(a) of the Charities and Trustee Investment (Scotland) Act 2005”

by the Office of the Scottish Charity Regulator. The timing of that is for the regulator and I understand from Christine McLaughlin that it has written further to the committee. In one sense, any follow up action will be a matter for OSCR, but if OSCR makes recommendations that go beyond Tayside, we will want to take them pretty seriously. We are already considering better separation between the oversight of endowment funds and the responsibilities of non-executives on the board, so I am quite happy to place on the record that that is firmly in our view.

Thirdly, and as we say in our letter,

“Professor Sir Lewis Ritchie will continue as the Chair of the Assurance Advisory Group”

and report to me by 15 October. I am not waiting for that to arrive before I do the other things that will come out of Grant Thornton and OSCR.

I also have returns from the chairs of all the national health service boards on their use of endowment funds. OSCR will respond to me initially on that by the end of May, but I do not expect that to be the final response and I am happy to give the committee more detail on those responses should it wish. I will probably do that in writing rather than try to go through them line by line today but, again, I am happy to take it as the committee prefers.

NHS National Services Scotland commissioned work by its internal auditors, KPMG, and that has reported. I was due to meet the chair and the chief executive of NSS last week to discuss that but—as the committee knows, I think—my mother passed away and that meeting had to be cancelled, so I will be meeting them shortly. Again, I will be happy to report to the committee in more detail once I have had the opportunity to discuss that with them.

The Scottish Government’s director of internal audit is due to report to us on 4 June on her review of actions taken by Scottish Government e-health and health finance. I thought that we needed to have a separate look at that and the adequacy of what we had done.

Those are the main things that are in train at the moment and, as I say, I am happy for Christine McLaughlin to go into more detail should that be helpful. Christine, have I missed anything?

**Christine McLaughlin (Scottish Government):** You have not missed anything but it might be helpful to just clarify that the e-health issues, which Grant Thornton looked at, and the endowments issue are separate issues. They are all related to the position in Tayside but they are separate. Grant Thornton’s review was of the Scottish Government, e-health leads, NSS and Tayside. As a result of that, we are following up on the actions that are required for all three parties.

Although there are lots of pieces of work under way, three of them are about the follow-up to Tayside and more detail on its financial governance, the follow-up on NSS controls, and the follow-up on the Scottish Government.

On the endowments issue, we took the opportunity to ask Grant Thornton to broaden the initial e-health work that it was doing to include a review of the board’s side of the endowments issue. While it is doing that work, Grant Thornton cannot look at the role of the trustees. That is for OSCR to do. However, that gave us a good belt-and-braces approach to the full aspects of the role of the non-executives as members of the NHS Tayside board, post OSCR, and to look at their role as trustees of the endowment fund.

If you look at the pieces of work individually, it looks as though a lot of things are now joined up, but some of them follow on from the first piece of work and then the endowments work, if that helps to clarify things. At the end of that, we will be able to consolidate all the actions and make sure that we have a comprehensive approach to how we tackle this going forward.

**The Convener:** I am a little concerned about the OSCR report. Last week, I wrote to David Robb to ask for clarity on the timescale on this, because we will hear back from Grant Thornton on Tuesday, 15 May. In his letter, David Robb said:

“At the current stage of the inquiry it is not possible for us to set a particular timescale”,

and he goes on to say that he would

“expect to be in a position by 31 May to report to the Committee on the inquiry’s progress and its future direction”.

Given that the endowment fund issue was the thing that precipitated the change at NHS Tayside, and the fact that there is huge public interest in this, I am a little concerned about the lack of clarity over timescale and how this is going to progress. Do you share that concern?

**Paul Gray:** I would like to see as much information as quickly as possible. For public

confidence, it is important that we resolve these issues in a way that is transparent and speedy. OSCR operates independently under its own legislation but I can assure the committee that we are keeping in close touch with OSCR. I know that Christine McLaughlin spoke to the chief executive yesterday, and OSCR knows very clearly that we are anxious to see material, including any recommendations, as quickly as it can feasibly do that.

As with other public scrutiny bodies, such as Audit Scotland, we cannot direct OSCR. It is for OSCR to decide the pace at which it will do the work. However—and again I think that this is on the record already—we have offered to fund any backfill within OSCR if it needs to release people to do the work. Should the chief executive decide that additional resource would help, as accountable officer for the NHS, I am willing to fund any costs that he faces. We are doing everything that we can to support OSCR but clearly it must maintain its independence from us.

**The Convener:** That is good to hear because, as I say, in terms of public interest, the OSCR report will be one of the key reports that the committee receives.

Colin Beattie will ask the next questions.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I would like to start by clarifying the current status of the previous chief executive officer.

**Paul Gray:** Do you mean Lesley McLay?

**Colin Beattie:** Yes.

**Paul Gray:** Ms McLay is off sick at present.

**Colin Beattie:** What are the financial implications for the NHS of that?

**Paul Gray:** Any person who is an employee of the NHS in Scotland will have the prospect of being paid while being on sick leave within their normal terms and conditions. Ms McLay is signed off sick by a doctor and we must accept that. As anyone else would be, she will be paid her current salary while she remains on sick leave up to a point in time, at which time any person—again, without reference to specific individuals—would go on to half pay and then they would go on to no pay over a defined period of time.

09:15

**Colin Beattie:** What is her current status within the NHS?

**Paul Gray:** She remains an employee of NHS Tayside.

**Colin Beattie:** But not the CEO?

**Paul Gray:** That is correct. She is not the accountable officer. That is Malcolm Wright.

**The Convener:** Can you just clarify for the record, Mr Gray, what the CEO's salary is?

**Paul Gray:** I can get that information for you. I could give you an estimate, but I will get you an accurate statement. It will be in last year's accounts.

**Colin Beattie:** I would like to turn to the terms of reference for the Grant Thornton audit. The internal auditor for NHS Tayside is Ernst & Young. In the case of NSS, the internal auditor is KPMG. You said that KPMG was carrying out an internal review of NSS.

**Paul Gray:** Yes.

**Colin Beattie:** Why is Ernst & Young not doing something similar for NHS Tayside?

**Christine McLaughlin:** Just to clarify, Ernst & Young is not the internal auditor for Tayside. It was brought in to do a particular piece of work for us at a point in time—a diagnostic piece on the financial position. An internal, in-house NHS consortium called FTF provides the internal audit services in NHS Tayside.

**Colin Beattie:** That is a little different from my understanding. When you say an internal consortium, what does that mean?

**Christine McLaughlin:** Internal auditors are either external audit firms that are commissioned by boards, or they can be in-house or employees of the NHS. FTF is a consortium that is employed by NHS Fife. It provides audit services through service-level agreements to a number of boards in Scotland. It is an in-house team that provides that internal audit service.

**Colin Beattie:** So it is an internal audit team?

**Christine McLaughlin:** That is correct.

**Colin Beattie:** That is not what I understood previously.

**Christine McLaughlin:** Ernst & Young was commissioned by us when Sir Lewis Ritchie did the initial review of Tayside, to give us an independent due diligence of the financial position in NHS Tayside, but it is not the internal auditor of NHS Tayside.

**Colin Beattie:** You said that this internal audit function operates out of NHS Fife—

**Christine McLaughlin:** That is correct.

**Colin Beattie:** Does it provide audit services elsewhere in the NHS?

**Christine McLaughlin:** It provides audit services to NHS Fife, NHS Tayside, and NHS Forth Valley, and it provides a service on a

combined basis for NHS Lanarkshire; it provides oversight to the in-house team in Lanarkshire. Across the country, there is a mix of different audit providers. Every board commissions its internal audit individually.

**Colin Beattie:** How is this particular in-house group structured? What is its composition? Is it a separate company or is it simply a division of—

**Christine McLaughlin:** They are employees of NHS Fife. I can get you more detail if you would like.

**Colin Beattie:** I would be very interested.

**Christine McLaughlin:** It is an in-house team and it works on a service-level agreement, but it follows the same code of conduct for any internal audit. That situation is not uncommon. The Scottish Government has an in-house internal audit service.

**Colin Beattie:** Would you say that this internal audit group works on an arm's-length basis in the same way as, for example, Ernst & Young or KPMG in terms of providing an internal audit function?

**Christine McLaughlin:** It provides a service, to agreed terms, for the board. I can get you details about that if you would like. I do not have those details to hand. It has been a long-standing arrangement within the NHS for a number of boards.

**Colin Beattie:** So the board negotiates with that organisation to receive a specified audit?

**Christine McLaughlin:** Yes, to the same standards as the whole NHS. The same internal audit accounting standards would apply to any public body, and they apply to Tayside, as they do everywhere else.

**Colin Beattie:** Are the terms of the internal audit uniform across the NHS?

**Christine McLaughlin:** The standards to which the internal auditors operate are uniform. The boards would have a procurement process, so if they were using a firm such as KPMG or Ernst & Young, they would tender for services for a period of time. Using an in-house team is equivalent to using an external firm.

**Colin Beattie:** Does the in-house team take part in tender procurement?

**Christine McLaughlin:** I can follow up with details of the arrangement within Tayside but it is an arrangement that covers more than Tayside. It covers three or four boards.

**Colin Beattie:** I am looking at different layers here. We seem to have been throwing a lot of money at auditors. You have your internal team;

you have had EY in; and now we have Grant Thornton. I am looking at the terms of reference for the Grant Thornton review and it all seems a bit airy-fairy to me. The review will provide

“an assessment and opinion on the design of the new control measures”.

Really? The terms of reference also state:

“We will ensure that processes are in place ... and ... a clear description on the purpose of the allocation”.

All this should have been in place already.

You have people coming in again and again to look at processes. What I would like to see is who did what, and when. Where does the responsibility lie? Where is the investigation that will bring that out? I assume that processes are right but, even if you follow the process and tick the box, that does not mean that you will come up with the right answer. Therefore, where is the review to establish dates, times, what happened, who did what, and who was responsible?

**Paul Gray:** Is that in terms of the endowment in particular or more generally?

**Colin Beattie:** More generally. Something went wrong and the assumption seems to be that the process may have failed and that, if the right processes are in place, you will get the right answer. That is not always the case. In this particular case, something went wrong—maybe deliberately, maybe not. There was certainly misreporting. How did it happen? I would like to know dates, times, who did what, and when, and who was responsible.

**Paul Gray:** OSCR is doing a report on the endowment situation in Tayside. It will be for OSCR to decide what goes into that report. What I can say is that a substantial body of documentation has been shared with OSCR, including minutes of meetings and background paperwork. I have seen some of that and I am perfectly clear that it tells you exactly on what dates things were done, who was present, and so on and so forth. I do not think that there is likely to be a difficulty in establishing the facts of the matter. Indeed, I think that they are probably fairly clearly established.

**Colin Beattie:** What about the misreporting in relation to NSS? This review will not cover that.

**Paul Gray:** No, it will not. That is why, as I have said, I intend to meet the chair and the chief executive of NSS to review what it has produced by way of an internal review by KPMG and I will discuss that with them. I have not read it, Mr Beattie, because I only came back to work this morning, so I cannot answer your question.

**Colin Beattie:** I accept that OSCR has its own area to look at and it will come up with the

answers that it needs on that. However, there are far more fundamental failures within the system, and I do not see an investigation taking place that will bring out exactly what went wrong, and why, and who was involved. We are looking at designs of controls and processes. That will not bring out the information that is needed.

**Paul Gray:** Work has already been done on NSS and e-health and the Tayside transfer of funds. That is separate from the endowments, as Christine McLaughlin has explained, but I think that we know fairly clearly what happened, in what sequence, in that setting.

**Colin Beattie:** Where is the document that lays all that out?

**Paul Gray:** We can provide that.

**Colin Beattie:** It would be interesting to see that.

**Christine McLaughlin:** The Grant Thornton report did that. I do not know whether you feel that that is sufficient, but the Grant Thornton report did set out the sequence of events. The KPMG internal audit of NSS does that in more detail in relation to the involvement of NSS.

It is important that internal auditors feel that they have a role to play in the lines of defence within an organisation, so it is right and proper that an internal audit looks at the control environment and the ways in which you can assess the actions of individuals and system management within a system and then provide that independent assurance. I take quite a lot of comfort from the extent to which the remit does what we need it to do. It is not a review of individuals' performance; it is a review of the control environment within the organisation. That is what they set out to do with the work, so I think that we need to be clear that it is not about looking at people and what they did.

**The Convener:** Colin Beattie raised the point about the internal audit. You have clarified that it is done by an internal consortium. That came to light in Helen McArdle's original report in *The Herald* newspaper regarding the endowment fund issue. The journalist's source said:

"It's easy to threaten internal auditors with the suggestion that they will lose the contract if they rock the boat—they are treading the fine line between being employees and independent arbiters."

The source said that internal auditors from NHS Fife and NHS Forth Valley questioned how endowment fund cash was being used, but they were warned that they risked losing their contract with NHS Tayside unless they backed off. That is unsubstantiated; it was reported in the newspaper. I assume that internal consortiums are being used by the NHS all across Scotland. To follow on from what Colin Beattie was saying, is it a concern to

you that, according to the source, an internal consortium can so easily be threatened with losing its contract by speaking out? Is that something you are concerned about?

**Paul Gray:** Anyone who threatens anyone else in the NHS is breaching the values of the NHS and the terms and conditions of their employment, so if that has been done, it is utterly wrong and completely unacceptable. I wish to place that on the record.

If the work that we are doing with OSCR shows that inappropriate pressure was put on internal auditors, that issue will be dealt with. It is not acceptable. The only way that these things can function is if people are able to do their professional duties without fear of censure or losing their jobs. I am very clear about that.

**The Convener:** If something does not come out in the reports, Mr Gray, I think that you gave a commitment at the start of the meeting to look at any such issues.

**Paul Gray:** If there are issues that are not covered and which remain of concern to us or to the committee, we will pursue them.

**The Convener:** Okay. Bill Bowman has a short point on that specific issue.

**Bill Bowman (North East Scotland) (Con):** I refer members to my entry in the register of members' interests. KPMG has been mentioned. I used to be a partner in KPMG but I have had nothing to do with any of this work.

To come back to Colin Beattie's point on the scope of the Grant Thornton review, I took some comfort from the section under financial governance, which says that the work will include

"the circumstances related to the retrospective use of endowments ... and the circumstances in relation to the use of deferred expenditure."

To me, that does not just mean the process of who did what, and when, but why somebody did something. I just want to be clear that if that is not covered in the report, you will look to what I would call the root cause—somebody did something for a reason. The timeline is just the timeline. The protective measures you may put in place are the protective measures, but until you get back to why it happened—what caused it—I do not think that we have the full situation. Can you give an undertaking that, if that is not covered in the report, you would find it out?

**Paul Gray:** We want to understand the root causes, Mr Bowman, because we do not want this to happen again. It is as simple as that.

**Bill Bowman:** Okay. I have made my point and we will see what is in the report.

**Christine McLaughlin:** I would also clarify that I have been in contact with Grant Thornton about the work that it is doing and I am clear that it is looking at internal audit reports, what risks were flagged, how they were followed through, and the differences between draft reports and final reports, so I expect that the allegations that were made will be looked into too. Grant Thornton will be looking at internal audit reports—

**The Convener:** Are those internal auditors being spoken to by Grant Thornton?

**Christine McLaughlin:** Yes.

**The Convener:** So they will be interviewed. They will get to put their point of view.

**Christine McLaughlin:** Yes.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Good morning to you both. The issues that have come up about NHS Tayside have come up while, as we understand it, there have been robust systems of internal audit, scrutiny, risk management and so on in place. We do not know what the reports on the investigations that are being carried out just now are going to say, but I guess that they will probably point to the need to tighten up systems and processes and things like that. Is it your view that the systems and processes that we have at the moment are effective enough? If not, what would you change or tighten up so that we had a better chance of catching some of the issues that we have heard about before they arise?

09:30

**Paul Gray:** Unless you correct me, Mr Coffey, I will assume that you are asking me not just about Tayside but about the NHS more broadly.

**Willie Coffey:** Yes, that would be fair.

**Paul Gray:** The committee has already made the point that we can have all the systems and processes in place but things can still go wrong. That generally has more to do with culture and leadership. However, the way to be absolutely certain that something will go wrong is not to have the systems and processes in place—that guarantees that something will go wrong. Therefore, we want to make sure that we learn from this.

As I have said, I do not think that there is adequate separation of governance between the endowment funds and the board funds, and we have a strong intention to proceed further with that.

Some lessons to be learned from what has happened in Tayside will be more generally applicable, and we will want to be together with everyone who is involved in providing assurance

on risk and the audit of board funds in reviewing any lessons that we can learn. However, I do not want to lapse into platitudes about lessons that will be learned. What has come to light in NHS Tayside is the result of a systemic failure to address the underlying funding issues. By that, I mean specifically that assumptions have been made about asset sales that did not materialise.

There is also the issue of what was done with the endowments funds, which I will come back to briefly in a second, and what was done with the transfer of e-health funds. Such approaches provide short-term relief but not a long-term, sustainable financial solution. That is what NHS Tayside is now addressing under its new leadership, but it did not address the matter systemically over a number of years.

As I am the accountable officer, that raises a question for me about whether there were more things that I should have noticed. I take personal responsibility for that, and it is one of the things that I want to review in the reports. Were there signals that I, as the accountable officer, should have picked up? If there were not, is there something that I can do—with the support of Christine McLaughlin and internal audit as well as our external auditors—to make sure that such signals are brought to the surface in a clearer way earlier so that we can do something about the situation? I will be specifically looking for assurance that, as the accountable officer, I can better fulfil my role, because the evidence before us suggests that things that should not have happened did happen and we were not alert to them.

I said that I would come back to the endowment funds. Again, this moves us away from the lessons-learned theme. The NHS Tayside board has agreed to repay money from resources into the endowment fund, which provides a clear signal that it does not believe that the process that was followed was the right one.

**The Convener:** Forgive me, Mr Gray, but you said that there were perhaps signals that should have been picked up. The Auditor General has done section 22 reports on NHS Tayside for the past five years, and the chief executive and chairman have come to you—I think for the past five years—looking for brokerage. My take on it is that there were signals about the long-term sustainability of the funding situation at NHS Tayside. Why were they not picked up?

**Paul Gray:** The two things that I was referring to were, first, the use of the endowment funds, and secondly, the use of the e-health funds. Were there things that I could have picked up on earlier? I want to know if there were, but, as yet, I do not know.

In general, there is something about the way in which we address boards' financial sustainability, and that was part of my response to Mr Coffey. I want to make it clear that, if there are other things that we could know that we did not know, we will find a way of knowing them. You are absolutely right in saying that the Auditor General has done section 22 reports, and I have already mentioned the issue around asset sales that did not materialise.

I think that we can say very clearly that we had picked up at least some of the signals well over a year ago, when, on 29 March 2017, we asked Sir Lewis Ritchie to go in with the assurance and advisory group. I am not saying that we did not hear anything and that we did not do anything. At that point, over a year ago, the situation in NHS Tayside was escalated, and, as you know, it has since been escalated further on our ladder of escalation.

I am trying to be as honest and straightforward with the committee as I can be. There may be more things that we can learn. I am not in defensive mode.

**The Convener:** Hindsight is a marvellous thing, but the committee took evidence in Dundee a year past Christmas and I think it was only last March that you escalated the matter and Sir Lewis Ritchie's report was commissioned. Do you think that your directorate should have taken action earlier on the situation in NHS Tayside?

**Paul Gray:** As you say, convener, hindsight is a marvellous thing, but we did set up the AAG and that did not happen in a day. I do not want to be facetious, but I did not decide on the morning of 29 March to put it in place and announce it in the afternoon. That took some time to do. You can be assured that, early in 2017, we were carrying a range of concerns that led us to that point. We obviously listened to the evidence that was given to the committee and what the committee thought about it, which I think was an appropriate and proportionate response in the circumstances.

**Liam Kerr (North East Scotland) (Con):** Good morning, Mr Gray. You talked about the endowment funds and suggested that the actions of the new board suggest that there was some misuse, if I can put it in that way. However, is there not some ambiguity in the guidance on the use of the endowment funds? If so, or in any event, how confident are you that the same practice is not happening throughout other boards with perhaps the same consequences?

**Paul Gray:** I have asked for assurances from all the board chairs, via the chairs of the endowment committees, that retrospection has not been applied, and I have been given those assurances. As I said earlier, I have not had the opportunity to

read all the letters yet, but I will. I understand that they provide assurance that similar action has not been taken in other boards. Given the prominence that the issue has, I am confident that the matter will have been taken pretty seriously.

**Liam Kerr:** No doubt. However, just to press the point, is there ambiguity in the Government's guidance?

**Paul Gray:** I do not think so, but, if we discover from the work that OSCR is doing that we could clarify it in any way, we will. It is worth remembering that, in order for the retrospective payment to be made, NHS Tayside had to suspend its own constitution. That was a fairly significant step that other boards have not taken.

**Iain Gray (East Lothian) (Lab):** Mr Gray, the convener has referred to previous section 22 reports from the Auditor General. The Auditor General reports annually and across the board on the NHS. In an earlier evidence session on these issues, she made the point that she has repeatedly warned about the risk to the financial sustainability of the NHS Tayside board—and not just that NHS board. In her view, there is a risk in focusing on achieving short-term financial objectives rather than on achieving long-term financial sustainability. You have talked about a failure to resolve fundamental underlying problems. That rather implies that the Auditor General thinks the fundamental underlying problem lay with the requirements that were placed on NHS Tayside rather than with what the board itself did. What is your reaction to that?

**Paul Gray:** My initial reaction is not to try to decide what the Auditor General thought, but—

**Iain Gray:** That is what she said.

**Paul Gray:** What I was saying is that there was an underlying issue with financial sustainability that NHS Tayside sought too often to fix by short-term means. That is why we sent the AAG in and why other steps flowed from that.

The issue that presents in NHS Tayside, which has broader applicability, is the importance that we attach to the pace of transformational change in the NHS and in the wider care system. The committee will know that NHS Tayside had undertaken to do some work on prescribing, for which we had released some funds, but that did not happen at the expected pace and had to be revisited. I sent the deputy chief medical officer to support the board with that. What was happening was a series of short-term fixes instead of the transformational change that was—and remains—needed at a sustainable pace in order to deliver the necessary financial sustainability.

All the health boards in Scotland are going through a process of transformational change.

That is necessary because of where we are, because of the demographic trends in the country and because of the changing patterns of demand and treatment. We have opportunities to treat people in better and different ways and to access things digitally rather than have people coming to surgeries and hospitals. I would say that the key response to the need for financial sustainability is the transformational changes that we are pursuing, and the rate of those changes is important.

**Iain Gray:** Let me approach the same question from a slightly different angle. We have talked about a series of inquiries and investigations into what happened at NHS Tayside—what went wrong and, to a degree, who was responsible and who did what. To a significant degree, a number of those involved have been found accountable already. Those include the chief executive, the chair and, arguably, the finance director, who retired earlier than expected.

The investigations are looking at what happened, what was done, what went wrong and what should have been done differently. A possible explanation is that NHS Tayside and the board had been asked to do something by the Scottish Government and the health and social care directorate that was simply impossible because they did not have the resources to deliver the service that they were required to deliver. Is that a possible explanation of what went wrong?

**Paul Gray:** It is theoretically possible. I would be a foolish person to say that such a thing was impossible. However, if an accountable officer is asked to do something that is impossible, the first thing that they will want to do is say so. That is true in the health service and in any other service. That would be true of me as an accountable officer in the Government. If you are asked to do something that is simply not possible, you are required to say so.

**Iain Gray:** The Auditor General suggests that the current system in the NHS does not make it possible for the NHS to achieve financial sustainability into the future. Should you not be looking into that? Perhaps what has happened in NHS Tayside is a signal that there is a systemic problem that goes wider than just that board.

09:45

**Paul Gray:** The NHS in this country—as in, I think, every other developed country—will not be financially sustainable if it does not transform itself. To that extent, I agree with the Auditor General. If we carry on doing what we are doing, that will not be financially sustainable. Transformation is essential.

Other boards are not in the situation of having information concealed from the board by the finance director. Other boards are not in the situation of applying retrospectively funding from endowments. There were a number of things in NHS Tayside that we did not consider acceptable, and, as you have rightly said, persons have been held to account for them. There are substantive differences of material fact in the case of NHS Tayside that make the situation somewhat different.

**Iain Gray:** However, a number of other boards are seeking brokerage in order to balance their books.

**Paul Gray:** That is absolutely correct. I think that interyear transfer of money is a sensible way to balance a £13 billion budget. I would be very surprised if we came to the conclusion that not allowing us to manage money across the year end was a good thing to do. Audit Scotland makes a number of important points about multiyear funding, which is, in effect, what is being done through brokerage.

**Iain Gray:** You seem quite confident, Mr Gray, that the kind of things that NHS Tayside did as it tried to balance the books—not necessarily exactly the same things, but those kind of things—are not happening in other boards. Have you taken this opportunity to check that—to survey and to look for it?

**Paul Gray:** I will ask Christine McLaughlin to come in, as she meets the finance directors monthly. I meet the chief executives monthly, and I assure you that the issues that have emerged in Tayside are well understood by the board chairs in conversation with the cabinet secretary and me, the chief executives and the finance directors. There is no doubt whatsoever in anybody's mind that, if similar issues are extant in any other board, we will want to know about it.

Have I surveyed it? We have done what we have done on endowments. We have written to all the boards and have got responses back. I have also made it clear in person to the chief executives that there is acceptable accounting practice that I expect everyone to follow and that, if there is any suggestion that it is not being followed, further action will be taken.

Can I assure the committee—or anyone—that there is nothing happening in any board anywhere in a system that has 156,000 employees and a budget of £13 billion? Again, I would be foolish to say that there was nothing happening anywhere, but I think that we have taken very serious steps, following the NHS Tayside situation, to assure ourselves as fully as we can about what is happening. Audit Scotland is taking these issues very seriously, and it is entirely a matter for Audit

Scotland to decide what it does and does not include in its audits. I am perfectly clear about that, but I cannot imagine that it will overlook the circumstances that have arisen this year.

**Liam Kerr:** I will develop the points that Iain Gray has just made. It seems fairly plausible that no one has gained personally from the situation in NHS Tayside. Therefore, if NHS Tayside was not doing what it was doing out of any kind of malice or mischief, the conclusion must be that it was doing it out of need. If I am right about that, as Iain Gray suggests, the issue with NHS Tayside is one of financial sustainability.

We have had years of management changes, and we have had transformative talks since about 2001, I think, but NHS Tayside is still, I believe, 1 per cent below NHS Scotland's resource allocation committee funding level and it has—as Mr Gray identified—a much bigger cost base. However, the narrative that we are given is that local management is the problem. Local management is carrying the can. Is there a possibility that we are isolating NHS Tayside? Are we isolating the former management to distract attention from a wider narrative of underfunding and long-term failure in the system?

**Paul Gray:** No. I would like to think that the committee accepts that, whatever flaws I have, cowardice is not one of them. If I thought that I had done wrong in this, I would take responsibility for it.

The NHS in Scotland is under pressure—I am in no doubt about that at all, and I do not think that anybody is—but that is why we have developed a transformational change approach. We have not simply said on a piece of paper that we are going to transform. We have regional leads; we have a regional structure coming in, in the sense of regional delivery; we have local delivery plans for each of the health boards; we have a new and developing approach to recruitment; and we have a workforce plan. I think that we are addressing the issues that we face as comprehensively as any health service in the developed world. Every health service that I know of struggles to recruit in some specialties, and every health service that I know of would be delighted to have more money, but every competent health service that I know of is transforming, and that is what we are seeking to do.

I will stop there. I am happy to answer more questions, but I do not accept the proposition that we have somehow made scapegoats of the leadership of a particular board.

**Liam Kerr:** Before we come back to the transformational change, I note that Mr Gray asked about the brokerage in other boards. Can

you elaborate on how many other boards are going to need brokerage this year or next?

**Paul Gray:** I can. We can give the committee the information in writing, but I ask Christine McLaughlin to go over it for you. The position for the current financial year is yet to be settled, but we can say what we had last year and what we see in prospect for this year.

**Christine McLaughlin:** The year 2017-18 is still subject to the annual audit process, but we have formally agreed brokerage with NHS Ayrshire and Arran and NHS Highland. We have an indicative figure of £12.7 million for NHS Tayside, but we are awaiting confirmation from the chief executive on that and it is subject to some further discussions with audit. The figure for NHS Ayrshire and Arran is £23 million and the figure for NHS Highland is £15 million, so we have a total of just over £50 million for 2017-18 at present.

The difference is the cumulative position in NHS Tayside; since 2012-13, there has been brokerage of about £45 million, cumulatively, so it is in a different position. On the point that Liam Kerr made about NRAC funding, I note that NHS Tayside was actually an NRAC gainer until 2017-18, when changes in the formula flipped NHS Tayside into being a board that was below parity, and it received additional funding. It is not in a similar position to some boards that have been below parity for five or 10 years.

In relation to underfunding, let us be clear that NHS Tayside has received its fair share based on the formula of funding for the board. I can see nothing to suggest that anything at NHS Tayside is disproportionate compared with other boards. The NRAC situation came into play in 2017-18 and NHS Tayside received £8 million of additional funding as a result of the formula change. It is worth being clear on that point.

**Liam Kerr:** I would like to follow that up, again just to be clear. You said that NHS Tayside received its fair share of NRAC funding. I believe that NHS Grampian has not received NRAC funding for a considerable time.

**Christine McLaughlin:** As you know, our approach was for no board to be less than 1 per cent from its funding target, and we have moved that to 0.8 per cent. I am trying to differentiate that NHS Tayside has not been in the same position as boards such as NHS Grampian and NHS Lothian. Also, as we have discussed with the committee before, things such as the cost base, the cost per head and the proportionate share of spend on things such as workforce and drugs have been disproportionate in NHS Tayside. There is some evidence to back up the argument that the underlying cost base of NHS Tayside has not

been resolved in a sustainable, recurring way over the period since 2012-13.

**Liam Kerr:** Thank you. Mr Gray, you said that transformation is essential. We can all understand that, but the public will want to understand or at least have confidence that transformation is happening and is going to happen at the pace and scale that are required. Do you have any key milestones, if I can put it in that way, that will show that that is happening?

**Paul Gray:** Yes. The best evidence that the public can be given is what is in place. We can promise to do things, but people in Highland, for example, instead of travelling long distances, are having their consultations by videolink, supported as necessary by local clinical staff. That is not something that will happen tomorrow or next week; it has begun to happen now. Similar things are happening in Ayrshire. For example, people who live in Cumnock and suffer from chronic obstructive pulmonary disease—lung disease or heart disease—can be supported at home, whereas before they had to be admitted to hospital.

In addition, some very significant transformations are in train in the integration of health and social care. In West Lothian, there is a rapid elderly assessment care team that now goes to the houses of elderly people who would otherwise have had to be admitted to hospital. We are spreading such good practices across Scotland. I will not give you a great long list, but we can provide the committee with more detail if that would be helpful.

As I have said, we have put in place a three-part workforce plan in consultation with the Convention of Scottish Local Authorities and others, which is important, and we have added to the recruitment of general practitioners. We have said that we will add 800 mental health professionals into the staffing, and we have done work to enhance health visitors.

We are doing all of that. It is not all a future prospect. People can see the reality of it on the ground, although we have to keep it moving. If the committee would find it helpful, I will be happy to provide you with a detailed update on the transformation plans. We have just had the regional plans in from the three regions and also from the national boards. If the committee would like an update on that, I will be more than happy to give it.

**Liam Kerr:** I think that that would be beneficial. My final question is again on the transformation. You mentioned the financial position, and I think you suggested—or perhaps it was Iain Gray—that part of the difficulty is that a lot of what has been going on has been about short-term financial

management rather than long-term financial sustainability. I think you said, “We need to shift that focus”, and I think we would agree. Is that happening? Will it happen? What needs to change overall to allow a long-term financial sustainability view to take root?

10:00

**Paul Gray:** One thing that needs to happen—it goes back to the points that Mr Beattie and others made about why this happened, as opposed to what processes we have in place—is that we need to make absolutely sure that individuals who are concerned about things have a way of raising them that they genuinely believe will be effective and will not cause them any difficulty. We have done some work on whistleblowing, but that is at the far-away end of the spectrum. I hope that we will rarely have to go there, but that it will be safe for people if they do. However, it has become evident from looking at some of the issues around NHS Tayside that some people were concerned. Ms Marra mentioned concerns by internal audit, for example. We need to be absolutely sure that, if people have concerns, they are able to raise them.

We also need to be absolutely sure that we do not include optimism bias in our predictions. That is an issue that besets the situation around prescribing in NHS Tayside. It was absolutely right about what it was trying to do, but there was optimism bias in the point by which it said it could do it. We need to weed that out.

We also need to accept that, sometimes, change is hard and will involve us discussing with national and local politicians changes to the way that services are provided. Doing something better may also involve stopping doing something that happens at the moment. The problem that we sometimes beset ourselves with is that we lead with the negative rather than with the positive. Instead of saying, “This is what we can provide and here are the changes we need to make in order to provide it”, we start with the “Here’s what we’re going to have to stop doing” sentence, and that gets people off on the wrong foot.

We need to get better at being clear about what we are going to do. That is why I have given you some examples of things that are actually happening as opposed to examples of things that might happen. We need to get better at being really clear with folk—by that, I mean citizens as much as anything else—about what can be done. I generally find the citizens of Scotland to be a fairly sensible and very bright lot. They understand very clearly what is put in front of them if it is done properly. We just need to get better at that.

**The Convener:** On that point, do you think that what NHS Tayside is doing on the prescribing of

paracetamol undermines the Government's policy of free prescriptions?

**Paul Gray:** No, I do not think that it does. I certainly do not think that it is intended to do that.

**Alex Neil (Airdrie and Shotts) (SNP):** I want to go back to the first question that Colin Beattie asked, just to clarify the position of the chief executive. My understanding and, I think, the understanding of the committee is that the chief executive was dismissed as chief executive. Is that right?

**Paul Gray:** Not exactly, Mr Neil. I will explain the process for the committee. On escalation to level 5 on the ladder of intervention, I met the chief executive to inform her that that was the decision that the cabinet secretary had taken.

**Alex Neil:** To dismiss her?

**Paul Gray:** No—to escalate to level 5. I also informed her that the consequence of that was that her accountable officer status would be removed. That does not cause her to cease to be an employee of NHS Tayside—

**Alex Neil:** But it stops her being chief executive.

**Paul Gray:** Indeed.

**Alex Neil:** What was the date of that?

**Paul Gray:** It was Thursday 5 April. I have a timeline, which I am happy to share with you. I met her on the Thursday afternoon and explained the cabinet secretary's decision and the consequence of that. She understood what I had said to her—Christine McLaughlin was also present for part of the discussion—and she asked that she be allowed to go back to Tayside to let her team know. She undertook to revert to me the following day. I thought that giving someone 24 hours to reflect on that was not an unreasonable thing for me to do.

On the morning of the following day—that is, the Friday—the medical director of NHS Tayside, Dr Andrew Russell, contacted me to say that Ms McLay had been to her doctor that morning and was signed off sick. When I spoke to her, she was not off sick, but she was signed off sick by her doctor the following morning.

**Alex Neil:** As of the Friday, was she no longer the chief executive?

**Paul Gray:** That was the effect of the decision, and we put that formally in writing. Malcolm Wright was appointed as the accountable officer.

**Alex Neil:** At what point—at what hour on which of those two days—did she technically stop being the chief executive?

**Paul Gray:** Technically, it was when I wrote to her, but the fact of the matter was established on the Thursday afternoon.

**Alex Neil:** Right. How does anybody get dismissed as chief executive and remain an employee? If somebody is dismissed from a job, they are dismissed.

**Paul Gray:** No. If their accountable officer responsibilities are removed, they can no longer function as chief executive, but in order for a person to be dismissed, a process has to be gone through. Again, that is standard employment practice. She remains an employee of NHS Tayside.

**Alex Neil:** You may remember that, when I was the cabinet secretary, a similar situation arose—for different reasons—in Grampian.

**Paul Gray:** That is correct.

**Alex Neil:** And the chief executive was dismissed.

**Paul Gray:** No, he retired.

**Alex Neil:** Ah, he retired.

**Paul Gray:** Well, he went, but he retired.

**Alex Neil:** Yes.

**Paul Gray:** I did not remove his accountable officer status. He decided to go.

**Alex Neil:** He decided to go voluntarily. If Ms McLay is still with NHS Tayside, what is her job today?

**Paul Gray:** She does not have a job today because she is off sick, but when she is able to return to work, we will agree with her what her future employment status should be. That will be done appropriately.

In the interests of transparency, I should make it clear to the committee that Ms McLay's representatives are in touch with us, but I cannot say more than that just now.

**Alex Neil:** If I was a nurse and I was not up to the job, and if I was told that I was not up to the job and that I was going to be dismissed as a nurse, I would not be offered any alternative employment in the national health service. Does this great rule apply just to chief executives?

**Paul Gray:** As I do not yet know what is going to happen, I cannot answer that question abstractly. If someone is an employee of the NHS and they are taken through a disciplinary process and dismissed, that is quite a different thing from someone being told that their accountable officer status has been taken away. Even if someone does go through a process, it is not impossible for

them to be offered another role at a different level elsewhere in the service. What will not happen—

**Alex Neil:** Is there not one rule for chief executives and another rule for everybody else?

**Paul Gray:** No. It is the same employment contract.

**Alex Neil:** How many nurses who are sacked for not doing their job then get an offer to stay on?

**Paul Gray:** I cannot say because I do not know.

**Alex Neil:** I suspect that the answer is none.

**Paul Gray:** What I would say, though, is that it is important that we go through a proper employment process with every employee. I know of situations in which an employee who has not been able to fulfil one role has nevertheless been offered an alternative role that better matches their skills.

**Alex Neil:** My point is that the examples—those that I know of, anyway—have all been in senior positions. We seem to have a two-tier system. If someone is in a senior position, even though they have not done the job properly in the view of senior management and the board, they can be offered another position—possibly with a protected salary; I do not know. However, if they are down the line—a porter or a nurse, say—that does not happen and they are off the premises more or less straight away. That is not the right way to run a health service, is it?

**Paul Gray:** The right way to run a health service is to observe people's terms and conditions of employment. That is what we are seeking to do in this case, as we should in every other case.

**Alex Neil:** What is the process from here on in? Presumably, the disciplinary process can start only when Ms McLay returns to work.

**Paul Gray:** That would be correct.

**Alex Neil:** Depending on how seriously ill she is, she could theoretically be off for a year. Is that right?

**Paul Gray:** That would be the same for any other employee, yes.

**Alex Neil:** Any other employee, after being off ill for a year, would normally have their contract terminated.

**Paul Gray:** I would need to check on the specifics of all the contracts, but that is my general understanding, yes.

**Alex Neil:** I presume that you come to a severance arrangement.

**Paul Gray:** Again, that would all depend on the circumstances. Without access to specific circumstances, I cannot say.

**Alex Neil:** You can see the concern that arises when someone is being dismissed from their job, it appears that they will possibly be offered alternative employment or will possibly get a severance payment, and before any of that happens they could be off sick for up to a year—at taxpayers' expense, obviously. I realise that that is employment law, but those circumstances create a lot of cynicism among other health service employees, particularly those who are further down the ladder. They do not get that treatment, yet they see senior people getting treatment that they would see as favourable.

**Paul Gray:** I cannot really comment without specific detail. A person who is off sick is entitled to their terms and conditions; I cannot go beyond that.

**Alex Neil:** Just for clarification, as the accounting officer and as chief executive, you hold two positions: you are chief executive and you are a member of the board.

**Paul Gray:** That is correct.

**Alex Neil:** I take it that Ms McLay is no longer a member of the board.

**Paul Gray:** That is also correct.

**Alex Neil:** Okay. I will move on to another subject. We have been talking about section 22 reports for the past five years, and we have had a lot of external auditors. Two or three reports are going on at the moment, which are being done by large accountancy companies. What has been the total cost of that work over the past five years, including the current investigations? Is that financed out of NHS Tayside's budget or out of the Scottish Government's budget?

**Paul Gray:** The last time that I was here, I think that I gave the committee a figure of £211,000 for the EY work that was done. If the committee would like an update on the cost of the various reviews, I am more than happy to provide them. Clearly, I cannot do all that until they are finished.

**Alex Neil:** You know how much they will cost, or at least you know how much the contracts are worth, obviously. It would be helpful to have a list, over the past five years, of all the external work that has been commissioned as a result of the problems in NHS Tayside. Who did what and when, and how much did it cost the taxpayer? If the contract is current, what is the estimated cost? I realise that such a list may not be accurate to the penny when it comes to expenses and stuff, because the work has not been completed, but I think that it would be useful to know the order of magnitude of the costs. We are an audit committee, so we should be looking at those things.

**Paul Gray:** That will be no problem.

**The Convener:** On a separate issue for NHS Tayside, a new review of the Carseview unit is about to start. For clarity, and to follow on from Mr Neil's point, will the cost of that review be met by NHS Tayside or by the Scottish Government?

**Paul Gray:** I think that the chairman of NHS Tayside announced that review, so the expectation would be that Tayside would meet the costs.

10:15

**The Convener:** Thank you. I want to follow up again on the issue of the endowment funds, and I refer back to the initial report by Helen McArdle in *The Herald*. I have been concerned about this issue since the story broke. The journalist's source said that

"the actual sum signed off was £4.3m"

—signed off by the board for transfer into the endowment fund—

"although only £2.71m of it was spent in 2013/14."

If £4.3 million was signed off, was that sum transferred from the charity pot into the core funding pot, or was only the £2.71 million transferred? I raised that issue with Malcolm Wright at the NHS Tayside briefing for MPs and MSPs a week past Friday; Bill Bowman and Liam Kerr both heard me raise it on the record. Malcolm Wright, the chairman of NHS Tayside, said that the £4.3 million figure did not mean anything to him. I am concerned that the £1.6 million that has not been spent might still be in the core spending budget, having been transferred from the charity endowment budget. Can you give me any clarity on that?

**Paul Gray:** We have followed that up and Christine McLaughlin can give you some detail. We had anticipated that the question might come up.

**Christine McLaughlin:** We have asked for a formal position from the board; I am still waiting for that, because it has been looking at it in detail. To clarify, the total level of potential bids—possible propositions that could be funded from endowments—that went to the endowments committee at the beginning of the process was closer to £6 million. The endowments committee made decisions on things feeling appropriate or not appropriate. The accounts for the endowments quoted two figures—£3.6 million of funds that were approved and £2.7 million that it believed were retrospective. We have asked the board to confirm the value and it has been doing due diligence on those figures. My understanding, verbally—we are still waiting for this in writing—is that the board understands that the total sum that was

transferred from NHS board expenditure to endowments in that year was £3.6 million.

I do not expect the figure to be £2.7 million; I expect it to be higher. It seems as though it is in the region of £3.6 million. The board is looking at whether any of that was expenditure that then took place in the following year, because we want to ensure that we have one number and that we understand the total. That is where we are today with the figures.

**The Convener:** There are two questions on that. I think that you just said that funds were transferred from NHS core funding to charity. Would it not be the other way round?

**Christine McLaughlin:** I guess that it has the same ultimate effect—it is about whether the expenditure is sat in the accounts and funding is transferred. I think that the expenditure was transferred to endowments. The point is how much of the financial position at the year end was then charged to endowment funds, and it looks as though it is more than the £2.7 million. It is around £3.6 million, but the board is clarifying that for us.

**The Convener:** Okay. Let me see whether I understand that correctly. You are waiting for confirmation from the board, but it looks like £3.6 million was spent or transferred. Is it possible that more than that was transferred and is still sitting in the wrong budget?

**Christine McLaughlin:** That is what the board is clarifying. The understanding today is that it is £3.6 million. I think that there was a bit of an issue, in that there are different categories of endowment funds—restricted funds and general funds—and the board needed to look at both together. We have asked the board to clarify the total amount and also whether anything was expenditure that then took place in the following year—in 2014-15. We will get the total picture. The board is very keen to get that clarified with us, too, and it will write to us formally with the position. We have asked it to ensure that its endowment auditor is comfortable with that figure, too.

**The Convener:** Okay. For me, this is a key point because the endowment issue was a breach of public trust. If there is any uncertainty about how much money was transferred and where it is sitting, I think that it needs to be made really clear—for the people, especially the nurses, who go out and raise the money for Ninewells hospital and the other hospitals—how much money was transferred, how much was spent and how much is being repaid. Which of the six pieces of work that are being done will outline that?

**Christine McLaughlin:** To be clear, the work that Grant Thornton is doing will look at that. If you think about it, this was expenditure that had already been recorded in the accounts of the

board, and then there was a decision to be able to seek funding from endowments for it. The Grant Thornton work will look at what is in the accounts of the board and what expenditure was then transferred to endowment funds. I expect the Grant Thornton work to be able to clarify that position. However, I have asked for the endowment fund auditor to verify that figure, particularly if it is different from what was in the accounts at the time.

**The Convener:** Do you mean the Grant Thornton report that will report on Tuesday?

**Christine McLaughlin:** The report on Tuesday will be a draft report to me.

**The Convener:** Will it be made public?

**Christine McLaughlin:** As with any report, I would expect to have a period of review for probably another week beyond that, but certainly no more than that. The report will be made public—we would expect all the reports from this work to be made public—but I would expect that to happen a week beyond the date given. Tuesday next week is the date for the draft report.

**Alex Neil:** Convener, could I ask that the committee has sight of that report before the cabinet secretary comes to the committee?

**The Convener:** I was just about to say that. The cabinet secretary is coming to the committee on 24 May and we had anticipated having the Grant Thornton report on 15 May. I had certainly anticipated that.

**Christine McLaughlin:** I certainly undertake to have the report turned around as quickly as we can. The draft is due in on Tuesday of next week, so I can let you know then what the turnaround period will be to close that off before the committee appearance on 24 May.

**The Convener:** Okay. To be clear, you said the board was writing to you with clarification on this issue, too. We will have two pieces of evidence: what Grant Thornton makes of the transfers from endowment to core expenditure, and what was spent, what was transferred and where the money is currently sitting.

**Christine McLaughlin:** Yes.

**The Convener:** We will also have the reply from John Brown, the chairman of NHS Tayside, to you, Christine McLaughlin, with details of that. Is that correct?

**Christine McLaughlin:** That is correct.

**The Convener:** Can that correspondence be made available to the committee as well?

**Christine McLaughlin:** The default position is that all of this correspondence would be made available to you.

**The Convener:** When do you expect to receive that reply?

**Christine McLaughlin:** To be honest, I had hoped to have it before coming here today so that I could give you a firm position. I expect it any day. I would hope to get it today or tomorrow.

**The Convener:** Do you know what processes are being used to look at this? Is it internal audit or has someone been brought in to help clarify what has happened with the money?

**Christine McLaughlin:** The finance team has been going through all the transactions that went through the finance ledger in that period so that it can do the review. The board has had its own internal audit look at it as well. It is really important that the endowment fund auditor looks at it, too, because it needs to correspond with what was in the accounts. If it does not, we would like to understand the reasons for any discrepancy.

**The Convener:** Is that the same endowment fund auditor who was in charge when the constitution was suspended and the money was transferred?

**Christine McLaughlin:** Yes.

**The Convener:** Is that satisfactory?

**Christine McLaughlin:** On its own, probably not, but with those other pieces of work I think that it will get us to the bottom of the issue. It should not be a hugely complicated piece of work. There were around 30 transactions that were agreed to be funded from endowments in that period, so they literally need to look at every one and understand what expenditure was agreed to be transferred to the endowment fund. In the scheme of a board dealing with £700 million of expenditure, it should be relatively straightforward to follow those transactions through. The final piece of assurance that I will get is from the Grant Thornton oversight of that work.

**The Convener:** I agree that it should be relatively straightforward, but it should have been relatively straightforward from the start that the money should never have been transferred. I will be satisfied only once we have the figures in front of us and we know that there are no charitable funds resting within NHS Tayside's core budget.

**Christine McLaughlin:** That is why I would rather have one figure, and agree what that figure is, than have something that moves. It was important to give the board time to ensure that it had done that full review, but I would expect the reply today or tomorrow.

**The Convener:** Okay. I have another point on this topic. Mr Gray, you said in response to a question from one of my colleagues earlier that you—I cannot remember the exact words—anticipated some sort of separation in the future between health board trustees and endowment trustees. I have a couple of questions about that. From the evidence that your department has gathered from around Scotland so far, the arrangement seems to be working well in other places. Are you concerned that the rules might change just because of the issue in NHS Tayside, which I think occurred as a result of a lack of governance when the constitution was suspended? If you were to put in changes, would we then see two boards: one to manage the endowment funds and one to manage core business?

**Paul Gray:** First, you are right to ask the “If it isn’t broken, don’t fix it” question. However, I think that there is an issue here of public confidence, and the way to address that is to ensure that there is visible separation. What we do not want to do is to create some enormous additional bureaucracy around all of this, so I accept that that is an important point. Clearly, people who are employed by the board and some of the non-executive members of the board may still be required to attend the meetings of the endowment committee. I would not propose to take them all away, as they are support for that committee. However, I think that having that visible independence is important.

It is really important that we also use this opportunity to re-emphasise that the constitution of endowment committees must be set up in a way that makes sure that ministers can have no influence over what those committees decide. That is the case at the moment, so this is not some future proposition, but I think that the point may also have been somewhat lost in all of this.

I just want to make it as clear as I can to the public that the endowment funds are entirely separate and that they are free from any potential conflict of interest. Certainly, in terms of applying the Nolan principles, it is not enough simply that there should be no conflict of interest; there should not be a perception of one, either. I want to avoid that perception. You have made the point, convener, about the importance that the public attach to seeing that the money that they have donated is spent in ways that they would expect, and I think that that only adds to the strength of my view that, working with OSCR, we ought to make that separation as clear as possible.

**The Convener:** You are going to wait for OSCR’s recommendations on this.

**Paul Gray:** We will certainly wait for OSCR on that, although if it believes that some detailed work is needed on things that it finds, I do not think that

we need to wait until all the detailed work is done. There is a decision of principle here, which is about the separation of the endowment oversight from the oversight of the board. To be frank, bearing in mind all the points that you have made, I think that we should just go ahead with it. I do not see any reason to wait around unduly.

**The Convener:** I agree. That is also the impression that I got from the cabinet secretary when she gave her statement in the chamber.

When the cabinet secretary gave her statement, I asked her to do a skills audit of the board of NHS Tayside. I think that she said that the chairman, John Brown, is already undertaking that work. In what form do you expect to receive it? I presume that it does not come under any of the six pieces of work that are going on. Will it be reported to you separately?

**Paul Gray:** Yes. In terms of the public record, that is something we shall have to be thoughtful about, as I do not think that it is routine to place on the record an assessment of individuals. As I think that I have said in response to questions at committees before, we do not generally conduct individuals’ appraisals in public.

There will be two parts to that work. One will be the non-executive component of the board and the chairman’s assessment of that. As I made clear to the members of the board on John Brown’s first day there, when I went to meet them, I expect any incoming chair to make an assessment of the capability and capacity of the board as a whole, not least for succession planning purposes. The second part, of course, is an assessment of the capability and capacity of the executive members of the board, which would be routinely delegated to the chief executive to do.

10:30

I can give the committee the assurance that both I and the cabinet secretary have already discussed these matters with the chair and the chief executive. We expect to hear from them before the end of June on their assessment of all of that, not least because, if we need to carry out further recruitment, we will want to do that expeditiously.

**The Convener:** Okay. You said that not a lot of these appraisals can be made public, so what information will the committee get about that process, so that we are satisfied that it is being done and looked at properly?

**Paul Gray:** I do not want to pre-empt what John Brown and Malcolm Wright do, but I would expect to be able to tell the committee that the process has been completed and that, if it has concluded

that some recruitment or additional resourcing is required, what that requirement is.

**The Convener:** Thank you.

The transfer of endowment funds was made back in September 2014, and only came to light in April 2018—three and a half years later. I think that part of the issue is the lack of transparency. Anyone who goes online and looks at health board papers for any meeting will find that there are well over 100—often over 200—pages, and it is extremely difficult to make head or tail of what is being talked about at the board. It is my opinion that the papers are designed to obfuscate. It is very difficult for politicians, journalists or any member of the public to actually know what is going to be discussed at the health board. Following the suspension of the constitution and the transfer of funds, are you concerned about that? Have you made any recommendations to health boards that they should try to make their papers a bit more understandable?

**Paul Gray:** First, I acknowledge that some of the papers that I have seen are opaque. I will not argue about that. It will be important that, as part of learning from this situation, we try to make things a bit clearer and simpler. Again, if I might express a view formed by experience, agendas with 15 or 20 items on them are not actually going to lead to the conduct of particularly successful business. I think that we should try to keep things simple. I also think that we should keep in the forefront of our minds the fact that, although as accountable officer I am of course accountable directly to Parliament, we are accountable to the public for how we spend the money that they give us in their taxes. We ought to be clear with them about what we are doing, so I do not object to your point.

**The Convener:** Do members have any further questions?

**Bill Bowman:** I have, I hope, a relatively straightforward one. We were speaking about board members. Are all board members equal? Do they all have the same legal responsibility for the actions of the board?

**Paul Gray:** There are executive and non-executive members. They are jointly and severally accountable for the board, but the accountability runs from the chair to the cabinet secretary and from the chief executive to me.

**Bill Bowman:** I understand that, but if something like this happens, a board member presumably cannot just stand back and say that they are on the board because they were appointed by the local authority or because they represent some faction. Do the board members realise that they are all, as you say, jointly and severally liable?

**Paul Gray:** I would hope that they do. As it happens, I have a meeting with a wide range of non-executive directors on Monday 14 May.

**Bill Bowman:** I suspect that they might realise that.

**Paul Gray:** Yes.

**Bill Bowman:** Perhaps when issues such as this come up, they realise that it is a group or collegiate situation.

**Paul Gray:** Indeed, although I do not think that that detracts from the point that individuals are accountable for their own actions, which has perhaps crystallised somewhat in Tayside.

**Bill Bowman:** But you need to watch out for who is sitting next to you then, perhaps.

**Liam Kerr:** The convener has talked about the senior management, and we talked earlier about transformation and how we move to the future. On a general level, the committee has been rather concerned about boards, the constitution, the talent and what they are doing. Obviously, we are in a situation at the moment where we have a reducing pool of very good-quality senior management, who are taking on a number of different roles. What is the Scottish Government doing to ensure that the leaders of the future are coming through and are being recruited, and that those who aspire to those roles are being groomed for them, if I can put it that way?

**Paul Gray:** Are you thinking about the health service in particular, or the wider public service in general?

**Liam Kerr:** I will put it as a question about the health service, given your current role.

**Paul Gray:** Certainly. We have developed a leadership development programme, because I think that we had some way to go in having a proper succession planning and talent management approach in the NHS in Scotland. That programme is now developed, in place and up and running. It is supported by something called project lift, which is intended to work in a way that brings people from within the system and beyond it into positions of leadership. I am pretty clear that that represents a considerable step forward from what we had in the past. If the committee would find it helpful, I am happy to share brief—not long and opaque—details of that programme, how it works and who is engaged in it.

I want to make the point that that fits within a broader leadership development programme, which the permanent secretary herself has been sponsoring with some determination, to ensure that we are developing senior leaders across the

whole public service in Scotland, not just exclusively in organisational silos.

**Willie Coffey:** Forgive me—I should have asked this question earlier, when I asked you about the adequacy of internal audit systems and processes. The paper from Colin Sinclair, from NHS National Services, refers to a report to that board that

“highlighted specific areas of possible risk which would benefit from additional internal audit attention during 2018-19”.

The board agreed that arrangements have to be implemented immediately. If you cannot tell us now, could you write to the committee and tell us what those areas are and what the significance of the additional measures is?

**Paul Gray:** Certainly. I intend to cover that in my meeting with Elizabeth Ireland and Colin Sinclair—I mentioned that it had to be cancelled—because I wanted to understand more about that and how they were proposing to respond. I know that they have taken the matter very seriously—I have already had that assurance from the chair and the chief executive—but I want to understand more clearly what the areas of risk are and whether they have general applicability or whether they are specific to NSS. I will certainly write to the committee following that discussion with them.

**The Convener:** As members have no further questions, I thank you both kindly for your evidence. I now close this public session.

10:38

*Meeting continued in private until 11:18.*



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