



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 16 December 2021

Session 6



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PUBLIC AUDIT COMMITTEE

12th Meeting 2021, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Craig Hoy (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roy Brannen (Scottish Government)

John Kerr (Scottish Government)

Andrew Scott (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

Virtual

Scottish Parliament Public Audit Committee

Thursday 16 December 2021

[The Convener opened the meeting at 09:14]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning, and welcome to the 12th meeting of the Public Audit Committee in this session.

The first item on our agenda is a decision on taking items 3 and 4 in private. If any member objects to taking items 3 and 4 in private, please raise your hand. I see no objections, so I take that as assent. Thank you.

Section 22 Report: “The 2020/21 audit of the Crofting Commission”

09:15

The Convener: The second item on our agenda is further evidence on the Audit Scotland report on the Crofting Commission. I am pleased to welcome our Scottish Government witnesses, who all join us online: Roy Brannen is the interim director general for net zero, Andrew Scott is the director for agriculture and rural economy, and John Kerr is the head of the agricultural policy division.

To get us under way, I invite Mr Brannen to make a short opening statement.

Roy Brannen (Scottish Government): I am pleased to be here today, along with my colleagues, as the convener mentioned. I have recently taken on the role of DG net zero on an interim basis for six months. The role was created when the former DG economy portfolio was split into two in order to create the DG net zero role, which covers energy and climate change, transport, environment and forestry, marine and agriculture and rural economy. Of course, the reason for our being here today is that the sponsorship of the Crofting Commission falls under the DG net zero portfolio. I know that the committee has already had evidence sessions on the Crofting Commission with Audit Scotland and the commission itself. We look forward to answering your questions today.

The Convener: Thank you. I remind witnesses and members that, if they wish to come in at any point, they should type R in the chat function.

As Mr Brannen has just told us, he is quite new to the post, so he should feel free to bring in John Kerr and Andrew Scott to answer the more detailed questions that members will wish to put to him. If there are any questions that you are not able to fully answer, there is the opportunity for us to receive evidence in writing after today's oral evidence session, if that is a better way of communicating the information that we seek.

I will open with a couple of questions. My first is a fundamental question, which is to ask whether you accept in full all the findings and recommendations of the Audit Scotland report.

Roy Brannen: I do. When I came into the role, I did not have the background on the Crofting Commission, the Deloitte report or the section 22 report, but now, having reviewed both reports and having spoken to the convener and chief executive of the commission, I can see not only how those issues arose but, more importantly for me, the

progress that has been made since those reports in correcting some of the governance issues that were at play.

The Convener: Thank you. We will dig a little deeper into some of those areas around governance, because it is an important concern that we have had in the light of the report that was produced.

One of the things in the report that is exercising us is the relationship between the Crofting Commission's board and senior management team and the sponsor division of the Scottish Government. According to paragraph 14 of the report, the Scottish Government sponsor division

"appeared to view its relationship of consequence as being with the Senior Management Team rather than the Convener."

I wonder what your response to that comment is, Mr Brannen. Please feel free to bring in your other colleagues.

Roy Brannen: I will bring in John Kerr and Andrew Scott, as these are historical issues that we are talking about.

Having seen the report and having spoken to the individuals concerned, I can see how there was a blurring of lines between those responsibilities. For me, the important thing is that the framework document, which has been reviewed and which is currently with our cabinet secretary for sign-off, better reflects what those strong governance relationships need to be. I spoke to the convener and the chief executive of the commission earlier this week, and I received early assurance that they fully understand their roles and responsibilities to each other, the board and us as the sponsor team. I take some comfort in that as a sign that we are moving in the right direction, but it might be worth bringing in John Kerr to speak to the historical elements.

John Kerr (Scottish Government): The points that are made in the report have definitely given us reason to reflect on the relationship at that time. The folk on my team—the sponsor team—certainly have a good relationship with the chief executive officer and the staff, and there was perhaps too much of a relationship through that direct channel of communication. It is probably correct to say that that was operational, but there was also the matter of board oversight. We have reflected on the findings of the report and, in subsequent discussion with the commissioners, we learned that the commissioners felt that that aspect of the relationship with the sponsor was not as strong as it should have been.

The sponsor team felt that it had good communications through the convener at the time, but there was certainly a breakdown in communication from the point of view of the other

commissioners. We fully recognise that it is the sponsor's role to ensure that that relationship is good, and, as Roy Brannen has said, we have taken significant steps not just to improve the relationship with the convener but to ensure that the convener is conveying that communication to the rest of the board and, in particular, the other commissioners.

We have learned from the experience, and we accept what was said in the report. Indeed, the report has been helpful in allowing us to work through the issues with all the commissioners as a group.

The Convener: Did you want to come back in, Mr Brannen?

Roy Brannen: I just wanted to make one more point, convener. What I found really encouraging in my discussion with the convener and the chief executive was the fact that the chief executive himself had been reflecting on how the lines in the relationship had been blurred and fully understood how the relationship needed to be reset in accordance with the new framework.

I also think it important to mention the joint training that has been undertaken with David Nicholl since the report came out, which has helped all three parties in the relationship to re-establish clear boundaries. There is now a much stronger link with the convener of the commission and between the chief executive and the convener and the rest of the board.

The Convener: Other committee members will probe that matter later.

Mr Brannen, you said that the framework document for the commission is with the cabinet secretary for sign-off, but our understanding is that the Crofting Commission's board has not yet agreed the document. Can you clarify the situation in that respect?

Roy Brannen: The board has agreed the framework document, which has now gone to the cabinet secretary for final oversight and sign-off. That happened this week.

The Convener: So, there was a board meeting this week at which the framework document was signed off.

Roy Brannen: That is correct.

The Convener: Thank you for clarifying that.

On a number of occasions, our predecessor committee raised concerns about the adequacy of sponsorship arrangements between the Scottish Government and public bodies. Our understanding is that the responsibility for such arrangements is clearly set out in the Scottish public finance manual. To what extent did the sponsorship

arrangements for the Crofting Commission meet the requirements that are set out in that manual?

Roy Brannen: I think that the arrangements did meet those requirements. As John Kerr has said, the lines had probably been blurred a bit, but all the key elements that are set out in the SPFM with regard to lines of accountability, the sponsor team's proper adherence to arrangements for signing off corporate plans and all the other aspects of governance and assurance were in play. Given the historical nature of the relationship between the chief executive and the sponsor team, it was not clear to the board what its role was in holding the chief executive to account.

The Convener: Mr Kerr has indicated that he wants to contribute.

John Kerr: I just want to clarify the process for agreeing the framework document, so that you do not have a false impression. In the past few days, we have worked with the CEO, Bill Barron, and Malcolm Mathieson of the commission to highlight the importance of the pace in settling some of the matters around the document. The board met a week or so ago and raised a number of issues that it wanted to have addressed in the document. We have subsequently done that, and the board has agreed the document in correspondence rather than at a meeting.

Going back to your question of whether the board met to agree the document, I want to make it clear that it has not yet done so. The commission has a process for taking decisions outwith meetings and then ratifying those decisions at the next board meeting, and that is the process that has been used to finalise the framework document. I just wanted to be clear about that.

The Convener: Thank you for that helpful clarification, Mr Kerr.

I realise that, in the tone of what has been said so far, there has been a sense that we are looking back in history, but the fact is that we are concerned about ensuring that, in the contemporary dealings between the sponsor division and the Crofting Commission and in the relationships between the senior management team and the board, everything is in order. The Audit Scotland report has highlighted some quite alarming things about the failure to properly consult internally commissioners and members of the board, which, I have to say, rang alarm bells for us.

Before I bring in Craig Hoy, I will ask one final question. According to the auditor's audit dimensions and best value report, when the CEO asked the sponsor division for backing, it was for "anticipated opposition" from the board when the CEO was attempting to drive through changes. It

was also reported that the sponsor division suggested that

"the CEO ignore the Board's opposition and proceed as he sees fit".

Understandably, the auditor described that as undermining

"the role of the Board"

and overstating

"the role of the Sponsor Division".

Can you explain how such a situation occurred?

Roy Brannen: I will bring in John Kerr and Andrew Scott, as I cannot comment on that particular circumstance. However, I will say that, as we move forward, the proper process for dealing with those issues will be for the chief executive to raise them with the convener and the board, as those matters are set out in the framework agreement. That is what I expect to see as we move into a different environment, with the resetting of those relationships.

John, do you want to talk about the historical element of this issue?

John Kerr: The circumstances were not reported in the Deloitte report as accurately as we would have liked. In fact, what the sponsor team did—correctly—was provide advice to the CEO, when asked, in relation to the structure of the commission's staff and clarity on the role of the commission's executive team compared with the role of the commissioners themselves. The CEO is responsible for managing the staffing and operations of the Crofting Commission, but he does so principally in liaison with his board, and we were there only to provide support and advice, which we did. That advice was to point out that it was the CEO's responsibility to ensure that the commission is appropriately staffed to carry out its duties. When we were asked by the CEO, we also provided advice on what a management structure might look like.

09:30

What we did not do was tell the CEO to proceed against the wishes of his board. That would not have been proper, and we would never have provided advice of that nature to him. Indeed, it was quite the reverse: we worked diligently to ensure that the board saw the merit in what was being proposed. I personally sat through one of the board's meetings, in support of both Bill Barron and the commissioners, to come to a resolution on the matter. A staffing review subsequently took place, at which the issues were brought to the fore in a way that was much more consensual.

I will pause there, although I suspect that we might come back to the staffing review. I could go

on, but I think I have answered the specific question that you put.

The Convener: Thanks, John. I think there will be a return to some of those areas in further questions from the committee.

I wish to move on, and I invite Craig Hoy to ask some questions.

Craig Hoy (South Scotland) (Con): Good morning, Mr Brannen, Mr Kerr and Mr Scott.

At the outset, and for the record, I wonder whether you would like to give us a flavour of the Scottish Government's views on why the leadership and governance arrangements at the commission broke down in 2020-21 after a period of apparent stability.

A fortnight ago, we heard from the chief executive and the board that they thought it was in large part because of the change in circumstances due to Covid, but I am not sure that we necessarily took much assurance from that that there was not a latent dysfunctionality. It would be good to get your impression of why those arrangements, in effect, broke down.

Roy Brannen: In their evidence, Bill Barron and Malcolm Mathieson made it clear that, although Covid played a part in the issue, with the secondment of Bill to the Scottish Government to support the cause early in the Covid pandemic, that was not the entire reason. That is fair to say. It would not be fair to say that the issue was entirely down to that, although it probably brought it to the fore and exacerbated it. The blurring of the relationships and of the clarity, for the board members, of their role and the CEO's role had probably existed before that. Andrew Scott or John Kerr might be able to elaborate on the history of what had gone on up to that point, as it was before my time in the commission.

I invite John Kerr to add something on what happened before Covid.

John Kerr: The section 22 report clearly set out the reasons that were identified by the auditor as to why the relationships were not as good as they should have been. We have reflected on that section 22 report, and we concur with the general points that were made in it. We have accepted that point.

You were perhaps not assured by the evidence that you heard that Covid was the root cause of the matter, but I think it was made pretty clear during the evidence session that Bill Barron and Malcolm Mathieson now have a much stronger working relationship. That is certainly borne out by our experience since we went through the training session that Roy Brannen spoke about earlier and in the general day-to-day working between the sponsor division and the commission, with the

joined-up approach and the new convener's absolute adherence to the practice of keeping everybody informed of the process building a strong relationship between himself and the staff of the commission and between the commission and the sponsor team.

Things had gone astray—the Auditor General sets that out pretty clearly. We accept that, we acknowledge that more needed to be done, and we have put training in place to ensure that everybody is familiar with their role. That is now being observed in practice—which, I think, is the key issue that the committee requires to understand—and the sponsor team is working to ensure that that remains the case.

Craig Hoy: How did the Scottish Government respond to the vote of no confidence? What were your views at the time on the reasons why the board decided to pass that vote of no confidence?

John Kerr: At the time, we responded by providing support to both Bill and the board. We also provided advice to the then cabinet secretary, Mr Ewing. We felt that the issues had come to a head at the time of the CEO's Covid secondment to the Scottish Government to protect the health of the nation—which he did, as did many other civil servants at the time.

We felt that we could work through the issues between the CEO and the commissioners once Bill was back in his post. Subsequently, that is what took place, and our approach was to work closely with the commissioners and with Bill to work through the issues instead of doing something more precipitate at that point.

Craig Hoy: Thank you. Mr Brannen, it would be good to get your view, from a sponsoring and oversight perspective, on the action that has now been taken through the framework agreement, in terms of training and so on. Will that be sufficient to rebuild trust in the commission and to rebuild trust in the relationships between the various parties involved?

Roy Brannen: There are a couple of different tests. As the interim DG, I have portfolio accountability across not just this sponsored body but the other sponsored bodies as well.

The test for me is not what has gone on; it is what has now been put in place. It is about how I seek assurance that the measures will ensure that we have the best governance and the best use of the resources that are deployed from the Crofting Commission, as well as the best outcomes for those it serves.

It is early days—I have been in post for just 18 days or so—but a lot of the right things have been triggered by those really good Deloitte and Audit Scotland audits. Malcolm Mathieson felt that those

reports provided a light that allowed him, the commission and the executive team to look at these things in the round and ask themselves how to reset things to ensure that there is the highest standard of governance.

That is reflected in the teams and the board working collaboratively to get the framework document in line with where it should be, using the model that is in the SPFM. The mutual training between all three parties has been extremely helpful. Underpinning all of that are the relationships between people—the openness, respect and mutual support that are required between boards, their sponsor team and their executive team if they are to function properly. I am starting to see those things.

How will we continue to see whether progress is being made? Out of the 41 recommendations, 34 have been implemented already, but the sponsor team and the board will need to be satisfied that those actions are actually completed and followed through. We have seen some of that happening already with training, for example. I could also speak about monitoring the metrics, but I will pause there.

Craig Hoy: Like you, I am new—I am a new member of this committee. One of my early impressions is that, when the full glare of the spotlight from the Auditor General and the committee is on a body, we can get quite a quick turnaround in relation to certain practices—and, potentially, outcomes.

In the longer term, how do you perceive your role and the Scottish Government's role in monitoring implementation of the audit recommendations, and how will you ensure that concerns are being addressed effectively, not just now but in the future?

Roy Brannen: In the longer term, as portfolio accountable officer, the responsibility is for the sponsor teams that work for me, Andrew Scott, John Kerr and others to make sure that they are a direct link between Scottish ministers and the supported body.

The Scottish Government is undertaking a wider piece of work in relation to the earlier report by the Auditor General on public body sponsorship more generally. I have no doubt that, once the report is concluded, recommendations will be shared with the committee.

However, again, the focus is on ensuring that we make the most of the time that we put into sponsor teams' involvement in sponsored bodies, that the frameworks for onboarding, SPFM and proper function and audit committees are applied and adhered to, and that the relationships are strong between the parties that are involved in running public bodies.

Craig Hoy: We seem to be putting quite a lot of store in the training that has been provided to date. How effective has that been in ensuring that staff know what their roles and responsibilities are? How will that be measured in future to ensure that we do not fall back into bad habits?

Roy Brannen: From my discussion with Bill Barron and Malcolm Mathieson, I can see that the training has been beneficial. I will let Andrew Scott or John Kerr comment on their own teams' and, indeed, the wider board's involvement with that. The important thing with the training is that it cannot be a one-off. It will be required for onboarding when the commission changes early next year, and thereafter, so there should be a continuous process of those who are involved coming in to go through the training.

Separately, SG has recently undertaken a variety of training exercises for accountable officers for sponsor teams. The improvement approach will be about ensuring that we continue to embed that training as part of the organisation's ability to move forward. John, do you want to come in?

The Convener: Actually, I think that Andrew Scott wants to come in at this juncture.

Andrew Scott (Scottish Government): The whole point is to keep alive the framework document, which is the embodiment of all the corporate governance. Clearly, there will be a big change in the organisation as it approaches the election and as the result of the election becomes clear. As that time approaches, we have to ensure that the concepts of corporate governance and understanding how to apply it are alive in the mind of everyone who is running the organisation. That important test for us is coming up, and we must prepare for it, which we are doing.

The Convener: Thank you for those answers. Colin Beattie has a series of questions about sponsorship arrangements.

Colin Beattie (Midlothian North and Musselburgh) (SNP): When we met the representatives of the Crofting Commission, I took away a strong impression of complacency and a very strong feeling that that was all in the past and had been sorted. There was a sense of, "What's the problem?" and, "There's nothing to see here; move on." I found that to be disturbing. I have found there to be a slight whiff of that again this morning in one or two of the comments that have been made. I will address my questions to Roy Brannen first, but I ask others to comment if it is appropriate.

I would like reassurance about how seriously this is being taken. Section 22 reports are a serious issue and usually reflect serious problems, which is why this committee becomes involved. I

would like an assurance that the Crofting Commission is taking it extremely seriously and that there is no element of complacency.

Roy Brannen: Let me set out—if I did not at the start—that that is exactly how I treat the matter. It is a very serious issue. I conveyed that to Malcolm Mathieson and Bill Barron, and what I saw in return was an acceptance that they—and the commission and the board members—also see it as a serious issue. If that has not been conveyed in previous evidence statements, I apologise, but it is certainly the case that the discussions that I have had demonstrate very much that they see it as a serious issue. What you are seeing is an organisation that has moved quite quickly on the back of the report to try to make inroads to improvement, which is a welcome position. It is now in a space where it wants to move things forward but recognises how serious the situation was to have resulted in a section 22 report.

09:45

Moreover, the sponsorship team and I are in exactly the same place. It is important to get our public bodies working properly and it is important for us as the sponsorship team to carry out our responsibilities properly, too. In the short time that I have spent with Andrew Scott, John Kerr and the others who sit behind them, I can see that they are very much in that space and are working towards the required improvements, including the joint training, to ensure that we in the role that we play and the board itself are in the best place possible and that we do not find ourselves back here again.

Colin Beattie: The sponsorship side of things clearly did not work as well as it should have. As we know from other reports that have come before the committee, there is a history of failures on the sponsorship side and, from what I can see, that contributed to the issues that arose in this specific case. Let me ask you a very simple question: how is the Scottish Government sponsorship division's relationship with the commission now, and what support does the division consider that the commission needs most at present?

Roy Brannen: In the best relationships between sponsorship team and board, there are openness, mutual respect, trust and support. I can talk only about what I have seen in the colleagues with whom I have been involved—John Kerr and Andrew Scott might want to say more—but the colleagues in this sponsorship team are passionate about crofting and the commission and wish to see it succeed in the outcomes for the people whom it serves. I take comfort in the fact that the sponsorship team and the individuals who are involved in it are interested in ensuring that they are in that mutual support space for the board and the body itself.

The relationships are clear in the framework. The board is responsible for setting the commission's strategic direction and the CEO team is responsible for the board's operations. That is the important thing: we can provide support and ensure that we convey ministers' policy positions, but it is for the board to take those things forward—with our support, if it needs it, with regard to governance, risk or assurance.

Colin Beattie: I specifically asked what support the sponsorship division considers that the commission needs most at this time.

Roy Brannen: I will bring in Andrew Scott to talk about what the commission needs in the next stage of implementation.

Andrew Scott: We need to make very regular use of the channels of communication with the convener and the chief executive and, through them, the board, and we need to pay particular attention to how they cast their workforce plans. We have set aside some money in this year's budget to ensure that, with the workforce planned, a plan can be brought forward that will allow them to look ahead at their functions over the next while. We need to work with them on that so that they can address the issues that they have been struggling with for some time, such as the backlog of regulatory work, grazings and the introduction of a new information technology system. All those matters will be addressed in the commission's corporate planning, and we need to work with it to ensure that it has the resources that it needs in that respect.

Colin Beattie: What specific changes to the sponsorship arrangements with the Crofting Commission have been made in the framework document?

Roy Brannen: From my perspective, they relate specifically to a strengthening of the articulation of the relationships between and the roles of the convener, the chief executive and the sponsorship team. The original framework document covered that, because it was based on the model, but it has been helpful to reflect on and refine that aspect.

John Kerr and Andrew Scott have been more involved in the drafting of the document than I have. Do you wish to add anything more specific about the document itself, John?

John Kerr: What Roy said is correct. When we worked through the training session, which we did over two days spread apart so that we had time to reflect in between, it was clear to everybody that the blurring of roles had occurred over a period of time and that some of us had perhaps slipped into habits that were not conducive to proper working. We put that right and we clarified how it was articulated in the framework document. The

commissioner has requested that we make some other specific key points in relation to where in the legislation the powers are derived from and so on. Everybody should now be comfortable with that document. The key thing was to make clear in the framework document what we had all discussed in the training session.

A moment ago, Colin Beattie asked about what support the commission needs right now. People in crofting communities will be thinking, "What does a framework document mean?". They want to see faster processing of their applications and vacant and derelict crofts being tackled; those are the sort of things that crofting communities press the cabinet secretary on when she meets them. Reinforcing our support to achieve those aims is the key thing.

The other thing that the sponsorship team is helping with, although it is very much driven by the cabinet secretary, is to solidify the relationship between the commission and the cabinet secretary, so that there is clear alignment of shared goals and so that we ensure that the commission discharges its function as it is seen by those who lobby us—the communities that we serve. That is the support that we are trying to provide in the ways that Andrew and Roy have set out.

Colin Beattie: Is the level of sponsorship support that is being given to the Crofting Commission on a par with what is being given elsewhere?

Roy Brannen: I will let John Kerr come in in a minute. I can speak from the experience of my previous role in the sponsorship of some of the transport bodies. The level of support is probably on a par with what we see in other parts of the Government. A mix of resource is allocated to different sponsorship bodies, but it feels as though the commission has the right level of support and resource from the sponsor team to undertake the work that the sponsor team requires. I am keen to keep that issue under review to ensure that there is no weakness on our side that hinders the progress that the commission needs to make.

Colin Beattie: My next question has been answered in a general way, but I would like a simple assurance that the framework document sets out the roles and responsibilities of those who are involved in the governance of the commission, particularly the board's responsibility for strategic, as opposed to operational, decision making and the chief executive's accountability to the board for performance. Is that adequately sketched out in the framework document?

Roy Brannen: I believe that it is. That is exactly what has occurred. There is now good clarity on

the chief executive's responsibility for accountability.

Colin Beattie: In discussions with the commission, it became clear that it is entirely staffed by Scottish Government officers—I am not clear about whether they have been seconded or permanently transferred—and there is no direct recruitment outside of that particular pool of available staff. That formula is not common. What are the advantages and disadvantages of that approach? Is it particularly efficient?

Roy Brannen: You are right that it is not common, but it is not uncommon. The evidence that Bill Barron and Malcolm Mathieson gave in a previous committee meeting indicated that there are benefits to that approach—for example, you do not have the central corporate responsibility for human resources or payroll.

The staff are SG employees on the basis of their terms and conditions. It is done that way by dint of the legislation, although I understand that there is provision in the legislation for the commission to appoint its own resource. To date, it has not chosen to do that.

Colin Beattie: I presume that that is because it simplifies the payroll process and the terms and conditions.

Roy Brannen: I suspect that there is an element of that.

Colin Beattie: Is there any real disadvantage to that format?

Roy Brannen: No, not if the roles are understood by those who are employed in the roles and if they work in accordance with the frameworks. It is entirely right to have a mechanism of pay and resource through the Government and for the individual and their work to be accountable to the established board. We are covering it again, but, as I said, by and large, that is where the reset has occurred over the past few months.

Colin Beattie: Those staff could therefore go back into the main body of the civil service.

Roy Brannen: Yes. Andrew Scott or John Kerr could probably provide clarity on that, but my understanding is that, if an individual wished to transfer back, that could happen.

Andrew Scott: [*Inaudible.*—the Crofting Commission.

Colin Beattie: You were on mute for the start of your answer.

Andrew Scott: Staff can go from the Government to the Crofting Commission and back again. It is a mutual—[*Inaudible.*] When they are at the Crofting Commission, they are working for the

Crofting Commission; the new framework document makes that very clear.

Colin Beattie: I will move on to the “National Development Plan for Crofting”. What discussions have been held with the commission about implementation? What actions have been prioritised? Is additional funding needed for the Crofting Commission?

Roy Brannen: I will hand that question over to John Kerr, if that is okay.

John Kerr: Thanks, Roy.

We consulted really widely during production of the “National Development Plan for Crofting”, including detailed consultation of the commissioners as a body and individually. Development of the document was taken forward through discussion with crofting communities and the Crofting Commission, particularly in respect of its role in delivery of what is in the plan.

It was seen as a key strategic development that the Crofting Commission should take a more active role in the development and regulation of crofting. That consultation went into some detail and included discussion of the resources that would be required to undertake the new functions. Some additional commission posts were recruited as a result of those additional roles. That was done directly, in discussion with the commission. Therefore, from the sponsoring point of view, the dialogue that went into creating the national plan was robust; we felt that the process of getting to the final document was done consensually with all parties, including the commissioners.

Colin Beattie: Would I be correct in saying that there has been clear prioritisation of the steps that the commission requires to take and that there is no additional funding required beyond the additional staffing, which has already been absorbed?

John Kerr: That is not quite correct. We are engaged in dialogue with the commission about how and within what time frame we will deliver the development plan. There is an operational matter to do with working through the commission’s backlog of cases, which is partly due to the slowing down of processing of applications during the pandemic. The commission needs to work through a number of things; what is in the national development plan is among them.

10:00

As you will be aware—indeed, the matter came up in your evidence-taking session with Bill Barron and Malcolm Mathieson—the Crofting Commission has reviewed its workforce plan in its staffing review. It is currently considering that document, which was done by Glen Shuraig

Consulting, so it has yet to engage formally on that with us, as the sponsor team. It would therefore be fairer to say that we are in on-going dialogue about the appropriate level of staffing for the commission to deliver its functions in their entirety. However, both sides are open to having that dialogue, and we have been keeping each other informed as the process has developed.

Colin Beattie: So, as things stand, we do not yet have clear prioritisation of the next steps to be taken and we are, at this point, uncertain of what the bottom line will be with regard to additional funding requirements.

John Kerr: It is for the board to set its priorities. It has discussed with the committee some of its backlog issues, and I mentioned a moment ago some of the priority issues for the crofting communities. As for the budget that will be required to discharge the commission’s functions, we were made aware of what the workforce review was likely to recommend and what the budget requirement would be and, as Andrew Kerr has said, the budget that we have just published provides cover for us to discuss with the Crofting Commission exactly what resource it needs. We have taken steps to ensure that funds are available, should the commission decide that it needs them.

We are in a fluid position, but we are also in a position of strength to be able to move forward with some flexibility in how we deploy resource. It is really up to the commission to bring forward its plans, but we have taken the necessary steps to ensure that there is cover in that respect.

Colin Beattie: You are working with the commission on that.

John Kerr: That is right.

Colin Beattie: So, it would perhaps be more correct to say that we do not have the priorities yet and that that is part of the dialogue that is going on.

John Kerr: Prioritisation is really a matter for the board and the commissioners.

Colin Beattie: Sure—they will sign prioritisation off, but I hope that the sponsor will be in there, too, working with them to come up with the right answers.

John Kerr: It might be helpful if I tell you that, at a meeting a week or so ago, the board and the Cabinet Secretary for Rural Affairs and Islands had a really good exchange about how the commissioners feel they will develop the commission’s work to support the crofting communities. They also had a good exchange of views on the overall policy framework for crofting. It is true that the board has still to set its priorities, but it is pretty clear to the commissioners and the

Government that they are doing so in close dialogue with the cabinet secretary in support of the communities whom they serve.

Colin Beattie: That is understood.

We have had a period in which the relationship between the commission and the sponsoring division has not worked all that well. We hope that that has been rectified and that we now have in place a good solid process. Will there be, after a suitable period, a review of how the new—or, at least, revamped—relationship is working and of whether it is delivering what is necessary?

John Kerr: I will make two comments. First, it will be for the Auditor General and Deloitte to take a view on whether the plan that is put in place by the commission and us meets their expectations. They will report back to the committee on that in due course, and we stand ready to engage in that process.

The other key issue that I will draw attention to relates to the fact that individuals will be changing. The Crofting Commission elections are coming up relatively soon, and some of the appointed commissioners will be changing relatively soon, too. At that point, we will take stock of relationships and ensure that new commissioners undertake a training exercise that will be similar to the one that we went through a few months ago. Furthermore, we will ensure that we return to that training at some point after the appointments are made.

One thing that came out strongly in the discussion at the training session with the commissioners was that they felt that although they had a lot of training up front, there was relatively little that would solidify that learning following on from it three to six months afterwards. They also felt that they did not have lived experience of working as commissioners or of doing a stocktake, and the key messages were not reiterated. We plan to factor that into the training of the next cohort of commissioners. Getting that right will be key to ensuring that we are not here discussing similar issues again in the future.

Roy Brannen: I was going to articulate the same kind of approach. Prioritisation is a matter for the commission in the longer term, given the change that is occurring.

More generally, there is, from my perspective as the portfolio accountable officer, on-going regular engagement between the cabinet secretary and the convener and between ourselves, the convener and the chief executive. Continuing feedback in that space, with openness, mutual respect and trust, will be so important. I will stay close to what is happening to ensure that the intelligence that comes through from the sponsor team, from Andrew Scott and from John Kerr gives

me the assurance that I need in order to say that things are on the right track towards improvement.

Colin Beattie: I have a random question, which has nothing to do with sponsorship. I hope that you have an answer. I have just picked up something in the audit report about the commissioners having to go into the office to service crofters' needs during lockdown. That seems to be a bit odd. Where was the chief executive? Why did that happen? What arrangements were, supposedly, in place to cover that? Do you have any knowledge of that?

Roy Brannen: I will ask John Kerr to come in on that, but I suspect that that was related to the upheaval that all organisations faced in those early weeks—dealing with mail, the need for IT and office equipment and so on. There was a fair amount of upheaval in how I ran our organisation at that time, and it took a bit of time for it to settle down. I do not know, but I suspect that the explanation might be in that kind of territory.

John Kerr: Malcolm Mathieson covered some of this when he gave evidence to you at the previous evidence session on the subject. The previous commission convener felt that he could play a role in moving things out of the commission's building to staff. I say to be fair that he was a pretty hands-on guy who felt that he could just get on with that as part of the response to what was a pretty unusual situation. That was one of the things that the auditors felt stepped outside the boundaries of the convener's proper role.

However, everybody acted with the best intentions at the time—that is how Malcolm Mathieson phrased it—and he was closer to things than the sponsor team was. The sponsors were aware of what was being done at the time and felt that it was unusual, but helpful in the circumstances. We were sighted on it. The convener was making himself available to do useful work and to support the commission's staff in a way that, I think, they appreciated at the time. It was outside what would be his proper role in normal times, but it was done with the best intent. I reiterate that we were sighted on it.

The Convener: We have a series of questions on business planning. Willie Coffey will come in, but I call Sharon Dowe first.

Sharon Dowe (South Scotland) (Con): I wish to consider some of the issues that were raised about weaknesses in business planning. The Auditor General's report outlined that the auditor was unable to conclude that the commission would be in a financially sustainable position over the medium to long term because of weaknesses in its overall business planning. That included a need for the commission to further develop its

medium-term financial plan and to develop its workforce planning and staffing structure, which you mentioned earlier.

At the evidence session on 2 December 2021, the chair and chief executive of the Crofting Commission explained how the commission intended to develop its medium-term financial plan and said that it had appointed consultants to review its staffing structure. Is the Scottish Government content with the commission's on-going financial position and the steps that it has taken to improve its medium-term financial plan?

Roy Brannen: I discussed that with Malcolm Mathieson and Bill Barron, who were at pains to say that the quality of the financial information within the organisation is very good, so the information that comes to the board on the current financial management position is excellent. They both acknowledged that the commission needs to do more on medium-term financial planning to move it from a horizon of three years to one of five years and beyond, in order to accommodate whatever might come about. The budget is heavily influenced by staffing: 75 per cent or 77 per cent of the budget is staffing costs. A small amount is left for reprioritisation and the ability to deal with things as they come up, which makes it even more important that the medium-term financial planning is strong.

As John Kerr has already said, the commission ordered the Glen Shuraig Consulting report, which looked into workforce planning. That gives me comfort that the commission is thinking about the corporate plan, the outcomes that it is seeking and the resource that it needs to take that forward, which links to the last thing—the medium-term financial plan that will take us beyond the immediacy of the next financial year. I expect to see that coming forward much more strongly as the work is progressed internally.

Andrew, do you want to add anything?

Andrew Scott: There is nothing in particular that I would add, except to say that I agree with all that. The workforce plan will be the single most important element of how the commission goes about its business in the future. We will help to bring the plan to the cabinet secretary for approval as soon as possible. The workforce review was delivered in November, and the board has to consider the consequences of that review. When it has done that, we will put proposals to the cabinet secretary. We have already set aside some money in the budget to pay for that work. All the time, the board is thinking about its risk register and key performance indicators as part of its normal business, so the production of a properly resourced corporate plan, with adequate consideration of all the resources, is an on-going

process. However, the necessary increase in the workforce will soon be the subject of attention.

Sharon Dowey: Thank you. A lot of work is going into the workforce plan. The issue of input to the budget was highlighted in the previous report. What is being done to ensure appropriate involvement of the board and others in setting the commission's budget?

Roy Brannen: In the previous evidence sessions there was an indication that the board's audit and finance committee was not heavily involved in setting the budget, and that the chief executive had played a bigger role in setting the budget than he should have played. Therefore, I sought assurance in my discussion with Malcolm Mathieson, who has an accountancy background. He is now confident that the board's audit and finance committee is well resourced and clear about its responsibility to oversee engagement on budget setting and to bring that to the board for final sign-off. That weakness was highlighted and picked up, and is being addressed by the activities of the convener, as well as in the chief executive's recognition of how budget setting should work in the future.

Sharon Dowey: Thank you. This is my final question. What further update can be provided on implementation of the recommendations in the consultant's report on the commission's workforce structure and the financial implications that will arise?

John Kerr: I said a moment ago, in response to Mr Beattie's questions, that the workforce plan has been received by the commission, and the sponsor team was invited to participate in the process of its being drawn up by Glen Shuraig Consulting. It has been a really helpful process that everybody has been involved in.

The workforce plan is sitting with the commission. I believe that the board has done its first consideration of it at a meeting and will, as part of the formal process, come to the sponsor team for further discussion. As Andrew Scott said a moment ago, that will generate the advice for the cabinet secretary.

10:15

The facts that we have been well sighted on the conduct of the review and its implications, and that what is proposed was well costed by the independent consultants who drew it up, have allowed us to make well-informed budget provision for taking forward recommendations, based on the views of the commissioners and the commission staff. We should be in a really strong position to take the work forward; however, in formal terms, the plan is still sitting with the commission.

Sharon Dowey: Are you quite happy that once the plan is implemented there will be a system of on-going review to ensure that issues can be highlighted and acted on immediately?

Roy Brannen: Yes. It all comes back to relationships. Success is built on relationships that work correctly and are based on openness, mutual respect and support. The duty of the sponsor team is to maintain that position with regard to ministers, us, the board and the executive team. What Sharon Dowey has outlined is how we intend to approach the issue.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Having listened to the discussion, I realise that I have been in this position many times in this committee. An organisation is not performing—let us say—at its best; the Auditor General and Audit Scotland intervene; new documents emerge; and everything seems fine from that point on. Why should we believe this time round that the experience that we are discussing today will lead to successful outcomes in future? What assurance can you offer the committee that errors have been corrected and that we can look forward to the future with confidence?

Roy Brannen: It is a valid question; indeed, as someone who was new to this, I asked the same thing myself. How could I be assured that a serious report was being taken seriously and that actions were being progressed?

First, the report did what it was intended to do, which was to highlight weaknesses in governance, structure and relationships. A series of actions has stemmed from that, and those actions, which include the improvement plan that has been put in place and the combined training that has been undertaken to move on issues such as the redesign of the framework document, have been evidenced and documented.

The proof of the pudding will be the 34 of the 41 recommendations bedding in and that behaviour remaining in place. From my early introduction to Malcolm Mathieson and Bill Barron, I get the sense that they are certainly in that space and are determined to ensure that these things will be a change for the better in the organisation's future performance. The test of that will come when Audit Scotland and Deloitte produce their follow-up report.

Other assurance from my side comes from those close relationships, the discussions with the cabinet secretary and the engagement between Andrew, John and the team, and the convener and the chief executive, which should alert us to anything that might not be in the right space with regard to improvement or, indeed, which might need to be realigned. That will be an on-going process.

Assurance at this early stage, I guess, can be found in the progress towards improvement. The key ingredients are there, and we are continually monitoring the situation to ensure that we can correct any misalignment as we move forward.

Willie Coffey: When you look back, though, you see an original framework document that everybody at the time must have thought was fine, substantial, correct and proper. Nobody seemed to see us hurtling towards a section 22 report. That is what comes up again and again at this committee—initially, nobody noticed that things were going wrong or, if they did, they did not say anything. When were the issues that were developing brought to the attention of ministers, for example? Was it when the letter went to the cabinet secretary about the vote of no confidence? When did the Scottish ministers get notified that things were not quite as they should be?

Roy Brannen: You are right—the paperwork and the governance structure can all be in place but then, at times, there is a drift away from those proper relationships. It is entirely the responsibility of all three parties—the board, the executive team and the sponsor team—to maintain those relationships and to ensure that things do not drift in the way that they have in this case. That is an honest challenge to us to ensure that, at times, we stop and reflect to make sure that we are still on track and that things are still in the right order, in accordance with our governance documents and that corporate governance set-up. We need to keep those check points in place, not just for this body but for others.

John Kerr might want to say a little bit more about when issues became apparent and when ministers were advised.

John Kerr: It is fair to say that the vote of no confidence letter was a key trigger point and we provided detailed advice to the cabinet secretary at that stage. It is not quite correct to say that we were not sighted on the issues before that. From a sponsor's point of view, we were aware that there were some tensions between the board and the staff, particularly the chief executive, in advance of the Deloitte report. We were seeking to work through some of those issues, particularly around the staff structure—although perhaps not so much in relation to the content of the national development plan and the grazings issue. However, we were reasonably well sighted on some of the issues and the cabinet secretary was made aware of the fact that, although we wanted the commission to take more of a role in the development of crofting, and there was an opportunity for that to happen, there was a question about whether the commission was adequately resourced and in strong enough shape to do that work. We felt, as sponsor, that we could

help the commission get into a position to do that and that having that function would meet some of the concerns of the commissioners.

There was a process of building towards a better position and, at that point, the cabinet secretary supported that approach, although there was some caution around it, as the commission was also working through an issue about the turnaround time of some of the regulatory functions.

The audit report has helped us to progress some of the more difficult issues because it has opened everybody's eyes to the underlying issues, some of which we were sighted on and some of which became clearer as a result of the audit process. I hope that that honest reflection of where we were helps you to build a picture of the ongoing process.

We are now in a much better position but we are not complacent about the fact that we got into a position which was not as good as it should have been. We have really had our eyes opened to that. Some of the assurance that Roy Brannen is talking about is now taking place through those check-ins with the commissioners, as well as with the CEO and the convener.

Willie Coffey: Just to clarify, was the vote of no confidence letter the first time that ministers got wind of issues within the Crofting Commission or did the sponsor division alert them to the issues prior to that? Did you raise matters with the cabinet secretary before that letter was sent?

John Kerr: In formal terms, it was the vote of no confidence letter that triggered that more escalated discussion with the cabinet secretary, so I think—

Willie Coffey: If the sponsor division knew that the relationships were not the best, why was the cabinet secretary not alerted before that letter?

John Kerr: The cabinet secretary at the time would have been aware of the tensions within the commission, but we had not escalated it to the cabinet secretary for his immediate concern because we felt that we were managing the relationship at sponsorship level and keeping the cabinet secretary informed in a more routine way.

Willie Coffey: It still ended up in a section 22, though, did it not?

John Kerr: Yes, it did. It is fair to say that we did not anticipate that that would be the outcome of Deloitte's more detailed review into the governance arrangements. In that sense, your earlier point to Roy Brannen was well made, but we have built in checks to ensure that we are not caught off guard in that way again.

Willie Coffey: I have a final point on the Deloitte recommendations. Last week, we were told that the commission had completed 33 of the 41 recommendations, and I think that Roy Brannen said that it is now 34. Are you satisfied that those recommendations have been completed satisfactorily or are you just receiving reports that says that they have been? Have you looked at them in any depth?

John Kerr: I agree with what Malcolm Mathieson said to you on the issue. We have taken forward 34 of the recommendations—one more has been done since you last checked in—in terms of the documentation, but the lived experience of implementing those recommendations will be the acid test of whether they are working. We expect that Deloitte and Audit Scotland will take a view on that, which will give you independent assurance.

The most important thing that we have done is reset the relationships between us, the CEO and Malcolm Mathieson, but also between Malcolm and the other commissioners and their roles. That has been an important step. I can genuinely say that there is a real understanding of each other's roles and positions, including the close interaction with the cabinet secretary. Those relationships are in a much better position.

The Convener: I finish by reflecting on my first question, which was to ask Roy Brannen whether he accepts in full the findings as well as the recommendations of the Audit Scotland report, and I think that he said that he does. However, I want to revisit a couple of points that came up during the evidence this morning. At one point, there was a suggestion that there was a failure of active engagement by the audit and finance committee in the drafting of the 2020-21 budget, but that is not how I read Audit Scotland's report, which suggests that the audit and finance committee was sidelined and there was minimal involvement of the senior management team, outside of the finance director and the chief executive. That is what led to recommendations of a greater degree of key stakeholder involvement.

The other point that I come back to is the suggestion that some of the blurring of roles and responsibilities was the product of Covid and people stepping into the breach when needed. Paragraph 13 of the Audit Scotland report states that some members of the board

"excessively involved themselves in matters that would typically be the responsibility of the Senior Management Team",

and says that large amounts of board time were spent

“discussing individual grades that new staff positions should be at within the organisation, including for junior positions.”

The report suggests that those criticisms are not just a function of Covid but predate it. Mr Brennan, can you give us any reflections on those points?

Roy Brannen: On the last point, I tried to set that out in my evidence. I said that that was not entirely as a result of Covid and that some of those issues had emerged prior to it. I apologise if that did not come across, because that is what I intended to say.

On the first point, I tried to reflect exactly the point that you make about the Audit Scotland report highlighting how the relationships in relation to finance and budget setting functioned. If my choice of language was different from how you interpreted it, I am sorry. I was trying to say that the chief executive had a stronger influence over budget setting than we would normally have anticipated from the audit and finance committee.

The Convener: My final question is: could we receive a copy of the final framework document when it is signed off by the cabinet secretary, please?

Roy Brannen: Of course.

The Convener: I thank Roy Brannen, John Kerr and Andrew Scott for giving us their time and for answering our questions on the wide range of topics that are covered in the report.

I now close the public part of the meeting.

10:30

Meeting continued in private until 11:33.

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