OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 27 January 2022

Session 6

The Scottish Parliament
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PUBLIC AUDIT COMMITTEE
3rd Meeting 2022, 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:

Stephen Boyle (Auditor General for Scotland)
Pat Kenny (Deloitte LLP)
Michael Oliphant (Audit Scotland)
Richard Robinson (Audit Scotland)
Helen Russell (Audit Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit Committee

Thursday 27 January 2022

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the third meeting in 2022 of the Public Audit Committee.

Agenda item 1 is to decide whether to take agenda items 4, 5 and 6 in private. Are we all agreed on that?

Members *indicated agreement.*

Section 22 Report: "The 2020/21 audit of the Scottish Government Consolidated Accounts"

09:00

The Convener: Agenda item 2 is to continue our inquiry into the Audit Scotland report on the Scottish Government consolidated accounts.

I welcome the Auditor General for Scotland, Stephen Boyle, who joins us in the committee room. I am delighted to see you here, Auditor General. Joining him from Audit Scotland online are Michael Oliphant, who is audit director, and Helen Russell, who is a senior audit manager of audit services. They also joined us for last week's meeting.

Before I continue with questions on the consolidated accounts, I will ask the Auditor General, given that Audit Scotland and the Accounts Commission produced an overnight report into social care, to elaborate on the principal lessons from it. Of course, the committee will turn to in-depth discussion of the subject at some point in the future. The thing that struck me about the report was the paragraph that said, in relation to a national care service:

"Regardless of what happens with reform, some things cannot wait. A clear plan is needed now to address the significant challenges facing social care in Scotland based on what can be taken forward without legislation, which could provide strong foundations for an NCS."

Auditor General, do you want to say a few words about the report?

Stephen Boyle (Auditor General for Scotland): Good morning and many thanks. You are right that we are looking forward very much to briefing the committee—at a convenient date for you—on this morning's joint publication by the Accounts Commission and me, on sustainability of social care.

The report highlights a number of components of the circumstances of social care, such as the real challenges that face the sector if it is to be sustainable and, principally, if it is to deliver high-quality care. It touches on some funding aspects and, importantly, on the people component—the recipients of care and those who provide care. As I have mentioned, we might not be able to wait to act in respect of some of the challenges that face the sector while Scotland progresses its thinking around a national care service.

We want to contribute to the debate that the country will inevitably have about delivery of social care and how we overcome the challenges, as a country. The Accounts Commission and I have produced the report, having drawn from the breadth of public audit, which covers its responsibilities in local government and mine in central Government. As I mentioned, we look forward to briefing the committee on the paper, at an appropriate point.

The Convener: Thank you, Auditor General.

We will press on with the committee's questions about the audit report on the Scottish Government consolidated accounts. People who are joining us remotely should type R in the chat function if they want to contribute. Auditor General, as you know, if you want to delegate an answer or ask your colleagues to come in to develop particular answers, we are keen that you do so.

I turn to the section in the report around the Scottish Government's strategic approach to investment in private companies, and I invite Sharon Dowey to open the questioning on that.

Sharon Dowey (South Scotland) (Con): Good morning, Mr Boyle.

Glasgow Prestwick Airport was purchased by the Scottish Government in 2013 for £1, but paragraph 28 of the Audit Scotland report states that

"loan support provided up to 31 March 2021"

came to a total of

"£43.4 million although this was valued at £11.6 million in Transport Scotland's accounts ... following an independent valuation."

Audit Scotland then notes that

"£1.2 million interest charges have accrued during the year resulting in total accrued interest of £6.3 million"

and that

"In keeping with Transport Scotland's approach in previous years, the interest on these loans has been impaired to nil."

What is the explanation for the differences in the figures for loan support and interest charges for Prestwick in the Audit Scotland report and Transport Scotland's accounts?

Stephen Boyle: Good morning, Ms Dowey. I am happy to elaborate on both those points, and I will invite Michael Oliphant to supplement my remarks.

Clearly, there is a long story behind the Prestwick Airport purchase—the Government's acquisition of it and the loan supports that it has provided to the airport. There is an accounting disclosure component to that. At the end of the financial year, all public sector and private sector bodies have to assess the value of assets. In this case, the valuation of the assets is, in effect, valuation of the loans that the Government has provided to Prestwick Airport. The assessment includes the recoverability of the sum. Therefore, although the total loan value was £43.4 million, the Government's assessment of recoverability of that loan—what it is actually worth currently—was down to £11.6 million on the balance sheet, at the end of March.

Before I invite Michael Oliphant to say a bit about the interest, there is an important distinction between the valuation and a write-off. The amounts have not been written off. Rather, the figure is an assessment of valuation at that date. As ever with assets, the value could increase by a future date, or it might decrease further. However, it is an assessment that the Government has made of the value; we, as auditors, are required to form a view about the reasonableness of that valuation. We are satisfied from the information and evidence that we have seen that it is a reasonable assessment. I will hand over to Michael Oliphant to say a bit more about that and to add anything that he wants to add about valuation of the associated interest on the loan.

Michael Oliphant (Audit Scotland): Good morning. I can add only a point for clarification. There is no difference between the valuation in the Scottish Government's accounts and what is contained in Transport Scotland's accounts. In the report, we highlighted that the Scottish Government has provided £43.4 million-worth of loans that, following the impairment, are now valued at £11.6 million. That is the value that is now showing in Transport Scotland's accounts, which is consolidated into the Scottish Government's accounts. Therefore, both sets of accounts show the same valuation. I hope that that clarifies the point.

Sharon Dowey: Thank you for that. What are the financial implications for the Scottish Government of the continued failure to find a buyer for Glasgow Prestwick Airport?

Stephen Boyle: The implications of its remaining an asset in the public sector will depend on what happens next—whether there is a requirement for future loans or otherwise. The fact that the value of the loans can change has been touched on in previous responses. The valuation of the airport could increase. In essence, with regard to the question of what happens next, the answer is that there is uncertainty.

As we say in the report, events came about after publication of the accounts. The Government's plans to sell Prestwick did not proceed as planned; we understand that it is still looking to sell the asset to the private sector. We will continue to track and monitor that through our audit work, and we will report further, as necessary. It is a number of years since Audit Scotland reported specifically on Prestwick and produced a separate report—I think that that was back in 2013-14, which I will confirm. As ever, we have the option of doing further public reporting, if I consider that that would be helpful. However, for the time being, the airport remains a public asset, and the associated value of the loans is subject to change, as events unfold, if there is a subsequent private sale.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Is the impairment process that you described a fairly standard practice that is applied widely across such sectors, or is it unique to Prestwick?

Stephen Boyle: That process is absolutely not unique to Prestwick, Mr Coffey. It is a requirement of the accounting standards that apply to the public sector and private sector. All organisations with financial assets must assess their value at the financial year end. Glasgow Prestwick Airport, Transport Scotland and the Government have done what is required of them for valuation of the asset.

Willie Coffey: So, the process does not highlight a particular issue or problem in relation to Prestwick, but is a standard accounting practice. Is that what you are saying?

Stephen Boyle: Yes—it is a standard accounting practice. In the relevant paragraph, in addition to saying that the Government has rightly followed accounting standards, we highlight that the Government's valuation of the loans is, in terms of their recoverability, considerably lower than the value of the loans that it issued to the organisation. The Government now values the loans at £11.6 million, compared with the £43.4 million that was originally issued.

The Convener: Other companies that are covered in the report are Ferguson Marine (Port Glasgow) Holdings Ltd and Burntisland Fabrications Ltd—BiFab. You told the committee previously that you plan to publish a comprehensive audit report into how things are going with Ferguson Marine. Is that on schedule?

Stephen Boyle: Yes. We expect to publish a report that tracks the progress of the ships, that tracks the loans that were issued to Ferguson Marine Engineering Ltd before it became a Government company, that considers some of the steps, processes and risk management and which looks to the future. We intend to publish that report in March.

The Convener: Are you getting full co-operation from Transport Scotland, the Scottish Government and the people on site? There has been a bit of coming and going of senior personnel at the site, has there not?

Stephen Boyle: Yes. I am pleased to report that we have had full co-operation from the full range of parties to whom we want to speak in our audit work.

The Convener: Okay. I will switch from the Clyde to the Forth and ask about BiFab, which is also covered in your report. What are the Scottish Government's total confirmed and potential losses in relation to BiFab?

Stephen Boyle: I will refer to paragraph 35 and 36 of our report.

There is a history with that investment, convener, as there is with some other interventions that the Government has made in private companies. What was initially loan support was changed to an equity stake. I will quote the exact figures. In the 2018-19 accounts, the Government converted £37.4 million of loans into a 32 per cent equity stake in BiFab. The following year, similar to what happened with Prestwick, the current valuation of that stake was assessed. It was written down—not written off—to £0.

In the financial year in question—2020-21—the Government provided a further £4.5 million of loan funding to support BiFab. However, as we note, in December 2020, the Scottish and UK Governments determined that there was no legal route through which to offer BiFab any further support and the company went into administration.

On the total funding that the Government has provided, the £37.4 million plus the £4.5 million gives us a figure of £41.9 million of public investment in BiFab. There is very little prospect that it will be recovered, although we note in the conclusion that the Government continues to work with BiFab's administrators because it is now a creditor and is looking to recover its losses.

Michael Oliphant will come in to provide additional context or clarity.

Michael Oliphant: I will say something about the total loan support. As the Auditor General mentioned, two loan facilities were provided. The first was a loan facility of £41 million to support key contracts that BiFab had. There was a further loan facility of £10 million for restructuring.

As the Auditor General said, £37.4 million of the first loan facility was drawn down and converted to equity, and that has been fully written down to £0. The second loan facility was extended to £15 million, of which the Government has, over the past couple of years, drawn down £13.5 million, which includes the £4.5 million that the Auditor General mentioned.

09:15

The total amount of Government loans to BiFab is £50.9 million and their current value is nil. However, it is important to note the subsequent sale of the business, and that the Scottish Government continues to work with the administrators to maximise recovery of public money. It remains to be seen how much of the £50.9 million it can get back.

The Convener: I presume that if the business is sold on, it will be possible to recover some of that funding.

Stephen Boyle: That would depend on the nature of the sale, the structure of the subsequent business and whether the business or the assets were acquired. In many cases, when an organisation goes into administration it is not the full pre-existing business that is purchased—it might be components of it or its assets. Typically, the losses of the previous business remain with the business in administration.

Nonetheless, Michael Oliphant is right that—as we touch on in the report—the Government is still working with the administrators to maximise its return in order to offset any losses that were noted.

The Convener: I turn to another aspect of the report, which is the arrangements between the Scottish Government and GFG Alliance Ltd in relation to the Lochaber aluminium smelter. There is particular reference to the power-purchase agreement, which has been the subject of some interest. Could you explain to us the implication of quadrupling from £37 million to £161 million that provision in the accounts? What does that mean?

Stephen Boyle: A provision in an accounting context is a provision for a call on a guarantee. That is its fullest sense. The Government provided, as part of the transaction, a guarantee for its role in purchase of the power obligations. It is a complex set of circumstances. We have tried in the report to bring some clarity to the nature of the transaction and the arrangements that followed; the Government's role in the disposal and the role of GFG—in particular, the role of the funder of GFG, which was Greensill Capital, and the financial challenges that it has had, which have been well documented over the course of the past 12 months.

The provision for the call on the guarantee, as you mentioned, convener, has increased and now sits at £161 million. That reflects the likelihood, in the Government's assessment, of the guarantee being called and, therefore, of the potential Government exposure. In our audit work, our role is to assess the reasonableness or completeness of that provision. It is worth noting—to put it in straightforward terms, as well as we are able—that there is an increasing likelihood that the guarantee will be called upon. The Government has reflected that likelihood in numbers by the provision going up from £37 million to £161 million over the course of the past 12 months.

The Convener: The minister told Parliament yesterday that

"The note in the consolidated accounts for 2020-21 was merely a technical assessment of a range of credit risk scenarios, which is an accounting standards requirement."—[*Official Report*, 26 January 2022; c 21.]

You are describing something that is a bit beyond that, are you not?

Stephen Boyle: I do not think that I am contradicting what was said. We are saying, and the Government has put in its accounts, that it has to make an assessment of that likelihood under international financial reporting standards. The provision is, in effect, the likelihood that the guarantee will be called upon.

That assessment is technical, and it is to do with the Government's compliance with the "Government Financial Reporting Manual" and its accounting obligations, but the number has changed significantly. Typically, the basis for that will reflect the level of risk or certainty about what the call on the guarantee might be, in the circumstances.

The Convener: I do not want to put words in your mouth, but are you saying that the risk and uncertainty is being fuelled by the collapse of Greensill Capital, which was the primary funder of GFG Alliance? GFG Alliance itself is the subject of a Serious Fraud Office investigation, because issues have been raised about its governance structure, which one UK minister described as "opaque". Concerns have been expressed about changes to the accounting periods that the company is using. Auditors have resigned and finance directors have left. Is all that fuelling the assessment of heightened risk to which the Scottish Government is now exposed?

Stephen Boyle: As you are, convener, we are aware of all those factors behind the circumstances of GFG and Greensill Capital. As you would expect, our focus is on the Scottish Government and the nature of the transaction. We note in the report that there is a complex group and funding structure, incorporating acquisitions and Government guarantees. In and around that, we seek to set out in the report some of the history related to potential financial exposure. At paragraph 38, we quote a very significant figure of £586 million, but that is offset by the Government's fee for provision of the guarantee and a range of security packages. The Government takes security over land and assets on the site.

One cannot get away from the fact that the Government's assessment of its exposure has changed over 12 months. We know that there are related events, to which you have referred. Looking at all that in the round in our work, we formed an assessment that the Government's own valuation of its provision and its call on the guarantee is reasonable, and it has cited that as being £161 million this year.

The Convener: I have one final question on the matter. Is the £586 million figure now an accurate assessment?

Stephen Boyle: The £586 million was the original potential financial exposure; the quantum of that was offset by security packages and so forth. That figure does not represent the Government's actual exposure—it was a potential maximum, and steps were taken to offset that with security packages, call on assets, fees for the guarantee and so forth. All of that reduced it to an annual exposure, which, as we started our work, was between £14 million and £32 million.

In the round, we are saying that this is still a complex transaction, with challenging circumstances for the funders of the GFG group. The Government's exposure has increased in the light of a variety of circumstances, and we are seeing that that figure is reflected appropriately in the accounts.

The Convener: In general, but also with particular reference to this arrangement, is there enough transparency and openness about the financial arrangements that have been entered into? I presume that that is also part of your inquiry into what is going on at Port Glasgow.

Stephen Boyle: In our reports, I and my predecessor have called for greater transparency on Government's interventions in private companies, including more communications about the risks, the anticipated outcomes and the likely call on public resources for such interventions. As we touch on in our report—I am happy to say more about this—we welcome some of the progress that we are seeing, and the steps that the Government is taking to bring in additional transparency.

That is particularly relevant in the case of Lochaber. It is such a complex transaction, and the likely call on the guarantee, as we have seen through the Government's own assessment of it, can change quite significantly from one year to the next. From our perspective, that validates the need for transparency and for a suitable framework that allows the Government to manage its risk and be clear on what the intended outcomes are from such investments.

The Convener: My understanding is that the Scottish Government is now looking at the production of such a framework. As you mentioned, there has been a long-standing call for that from Audit Scotland, from you and your predecessor. Do you know when that framework will be published?

Stephen Boyle: I ask Michael Oliphant to update the committee on the progress that the Government has made and on when it intends to make that publicly available.

Michael Oliphant: We are not aware of that framework having been published as yet, but we expect it to be published soon. Our understanding is that it will form part of an extension of the existing guidance, as part of the Scottish public finance manual. We anticipate that it should include more on the Government's principles, its approach, the policy rationale, the planned outcomes and the relevant types of business—in particular, those that are deemed to be in the national economic interest.

The areas that we have encouraged the Scottish Government to consider include its tolerance of and appetite for risk in investing in such private companies, as well as the financial capacity to do so, the outcomes that it expects to achieve and any form of exit strategy—in other words, an indication of at what point it will step back when it provides loans, guarantees or support to a private company.

The current guidance focuses on the decision-making process and some of the governance arrangements, records management and legislation that need to be adhered to, but we would like a framework to extend that to cover some of the principles of risk tolerance and appetite, and information about the expected outcomes that the Government hopes to achieve. As the Auditor General said, that should provide greater transparency about the Government's role in financial interventions in private companies.

The Convener: Thank you—that is very helpful.

Another long-standing request—or demand—of Audit Scotland has been for the accounts of the whole of the public sector to be published. To move from one subject to the other, would the publication of the accounts of the whole of the public sector also allow for better scrutiny of the Scottish Government's investments in private companies?

Stephen Boyle: You are right, convener. There have been many conversations at meetings of this committee and its predecessors about the need for progress in bringing transparency to the scrutiny of this committee, the Parliament and users of public services through having a single source that sets out Scottish public bodies' assets, liabilities, revenue and costs. In the report, we note that progress is intended this year.

There is a two-stage process. The Scottish Government intends to prepare a public sector account for the Scottish Administration by the end of next month. We look forward to auditing that. Later this year, it will look to bring into that, on a staged basis, the wider public sector bodies; that will incorporate local government spending. If that is delivered, it will be welcome. It will be an important signal that will aid the transparency of bodies that are not in the Scottish Government consolidated accounts.

As we have touched on in previous conversations, the Government determines the accounting boundary, which is informed by the nature of public bodies, the nature of the Scottish Administration and so forth. That means that a number of important bodies are not included within the boundary; you have mentioned some of those, and they are covered in our paper.

It is important to have a complete picture. That will be delivered by a public sector account for Scotland that is akin, almost, to what is done on a UK basis in the whole-of-Government accounts. Of course, it is important that that is done properly, is subject to audit and is delivered in a relatively timely manner. We know that the Government is working on all those things. As I have said, we look forward to the publication and auditing of that account.

09:30

The Convener: One outstanding question is what difference that would make to your ability to scrutinise the whole of the public sector in Scotland. I presume that it would open up opportunities for you to get a better sense of what you have previously described as what we own and what we owe.

Stephen Boyle: It would be important certainly for me but also for Audit Scotland in supporting the committee's scrutiny—and, by extension, that of the Parliament—to have that complete picture.

You mentioned assets and liabilities; Scotland has many billions of pounds of assets—and, by extension, associated liabilities—that are not reflected in the consolidated accounts that the committee is considering this morning, and it feels necessary for the Parliament to have a more rounded sense of the associated assets and liabilities, alongside its revenue and capital considerations, in future budgets. Indeed, Audit Scotland, with the committee's support, has been pushing that point for many years, because we feel that it is an essential component of what would be a complete suite of financial documents to aid transparency and understanding of Scotland's public finances.

The Convener: Let us hope, then, that the timetable that has been set out is met this time.

I invite Craig Hoy to ask some questions.

Craig Hoy (South Scotland) (Con): Good morning. As far as financial management is concerned, it has been broadly recognised that, because of Covid, the Government's budget was going to be fluid and perhaps more complex. However, I want to look at last year's underspend of about £518 million, which comes principally from the health and sport and transport, infrastructure and connectivity budgets. In the light of Covid and the associated fluid situation, do you consider the level of underspend that has been reported to be reasonable?

Stephen Boyle: I will ask Helen Russell to supplement my response. Although the quantum of underspend is bigger than in previous years—there are a couple of relevant factors in the portfolio directorates that you mentioned—in percentage terms, the figure is relatively consistent with underspends in previous years, when we take into account the scale of the increase in the Scottish budget as a result of the Covid moneys that have come through.

Certain circumstances arose in the health and transport budgets in particular. With health, for example, Barnett consequentials were received relatively late in the financial year. What is important—this builds on conversations that I have had with the committee in recent weeks—is not just that the money is spent in a timely fashion, but that it is spent well. That was a cause of part of the health underspend in the year. Money is typically carried forward through the Scotland reserve and available to be spent in this financial year.

With regard to the transport portfolio, there were Covid-related factors, such as the uptake of Covid grants and the call on subsidies. As users' habits and the provision of public transport changed during the Covid pandemic, that changed the budget assumptions that were made earlier in the year.

To answer your question directly, Mr Hoy, I would say that although the overall quantum of the underspend is larger, the overall percentage has not necessarily changed from what we have seen in previous years.

Craig Hoy: It is less than 1 per cent of a change.

Next year's budget is being debated in Parliament at the moment, but the Government has flexibility in where it can direct the underspend. Have you looked sufficiently at the budget to know whether the money will be moved to other portfolios, or are we confident that it will stay broadly under the health and transport headings?

Stephen Boyle: I am mindful of my responsibilities because, ultimately, it a policy choice for Government and Parliament to determine where best to apply the Scotland reserve or any underspend that has gone into the Scotland reserve in previous years. We will, of course, audit the reported results of that spending in the annual accounts.

Craig Hoy: This might be a more abstract and philosophical question, but, as you look forward, what level of underspend would give you cause for concern?

Stephen Boyle: There is always a balance to be struck with regard to the extent to which the budget is spent in its entirety, and we need to be mindful of the fact that the Government is not able to overspend. At a Scottish Administration level, it has to remain within the approved budget. As part of our work, we are required to make an assessment of that, informed by the audit opinion that we give. Given the size of the Scottish budget—which, in the year in question, was more than £50 billion—we would encourage the Government to spend that money well. The fact is that a degree of underspend is to be expected in any financial year.

You can probably sense that I am reluctant to name a figure for an acceptable level of underspend. The fact that the Government now has mechanisms in place through the Scotland reserve to allow it to apply underspend and to carry forward components of that into future years gives it more flexibility. That means that, rather than public sector bodies making rash spending decisions at the year end—which a stereotypical assessment of public sector spending might suggest would happen—there are mechanisms that allow them to defer spending, if that is the right thing to do.

Craig Hoy: The overspends are relatively modest. Do you have any comment to make on the overspend in the economy, fair work and culture portfolio—which was £53 million—and the overspend in the education and skills portfolio? Have you had the opportunity to drill down into the reasons for those overspends?

Stephen Boyle: I will ask Helen Russell whether she wants to provide any details on those particular portfolios. The only thing that I would draw to the committee's attention is that, in its narrative that accompanies the accounts, the Government set out particular reasons for some of the overspends in portfolios. We can see that, in totality, there is an underspend.

Do you have anything to add, Helen?

Helen Russell (Audit Scotland): Good morning. There is a range of overspends and underspends across the expenditure areas. I do not have anything specific to add at this point.

The Convener: I think that Willie Coffey has some questions about the performance report sections of the consolidated accounts.

Willie Coffey: Thank you, convener.

Before we come to that, Auditor General, I noticed that, last week, we did not touch on the European structural funds and their replacement. Did you make any comment on the replacement funds and where, within that, the audit process for Scotland sits? We are unclear about that so far, but can you update us on your perspective on what your role will be, if you will have one, and whether there will be a role for the Parliament and this committee?

Stephen Boyle: Regrettably, Mr Coffey, I am unable to provide the clarity that you and I are looking for.

I will step back for a second: it is within the gift of the UK Government to determine what the successor arrangements will be. That also relates to any audit and assurance component and how that flows through to my role. My statutory powers are clear, but, because it relates to the audit of European funding, that has been a more discretionary component of Audit Scotland's work. We have spoken previously about the fact that we discharge some of that through our audit of the agricultural funding. It is also reported through our audit of the Scottish Government on the European structural funds, albeit that the audit of the European structural funds is undertaken by both the European Commission and the Scottish Government's internal auditors.

Therefore, we are not yet sighted on the associated audit arrangements for what will come. As I have mentioned in previous discussions, we remain in contact with the other UK audit agencies, notably the National Audit Office, but we do not yet know whether that will mean that there will be a specific direct role for me or Audit Scotland in auditing the successor funds. However, you can rest assured that we will stay in touch with the committee and that we are seeking clarity on what comes next.

Willie Coffey: Thank you for that. On the issue of performance reporting, the consolidated accounts is a huge document full of numbers. It is the annual statement of accounts that tells how the Government has spent the money that it has had at its disposal. However, in your report, Auditor General, you make some comments about performance reporting. You say that the first 50 pages of the accounts are devoted to performance reporting but you also say that it is difficult to disentangle that and see clearly the performance of various policy areas or spending lines.

How might we improve that? It comes up often at the Public Audit Committee that we want to see how well the money has been spent and the outcomes that that spend has achieved.

Stephen Boyle: We recognise the need for public money to be closely related to outcomes—what has been achieved from that spending. There have been some improvements this year in the performance report, which is welcome. The Government has added some narrative on the impact of Covid. As you would reasonably expect, it has set out how that has affected some of the different directorates.

We note that there are many disclosures—associated links to other documents—that show how the consolidated accounts have been spent and the associated performance. Although there is progress, it is still challenging for the reader to piece all that together and see what has been delivered from the £50 billion that has been spent. Although we welcome the progress, more could be done to make it an easier journey for the reader of the consolidated accounts to form a rounded perspective on how the Government has performed and what it has delivered from public spending. As we note in the report and have mentioned in our discussions, the Government equally recognises that.

I invite Michael Oliphant to comment because, from his close audit of the work, he will have a perspective on that, too.

Michael Oliphant: Certainly, more information has been produced in the accounts this year, Mr Coffey. It is a big document—I think that there are just shy of 180 pages—and the performance report is a key part of that. In particular, the performance analysis section, which is the best part of 30 pages, outlines not only some of the planned deliverables and contributions to primary and secondary outcomes but, this year, additional information about the impact of Covid, which is important.

However, the volume of information in the document does not make it accessible to the reader. Greater links are needed to the financial statements that follow the performance report. In particular, further work is required to tie some of the amounts in the individual portfolios that we have mentioned to the intended contributions towards the outcomes.

The Scottish Government is aware of that and, in the past couple of years, has worked to improve it. It is fair to say that it is not easy but there is more that the Government can do and it recognises that. Further refinement of the type of information that was produced for this year's accounts is required.

It is important to say that the performance report has to meet certain requirements of the financial reporting manual. We are content that it does that. However, it needs to be extended and improved upon further to make it more accessible to the reader, because although it is a set of financial statements, it is more than just the numbers, as you will be aware. There is a story to be told around the numbers about what the Government has achieved over the financial year.

There is certainly room for improvement.

Willie Coffey: Are the consolidated accounts the place for that or do we need something different on performance in specific policy areas? Should it be woven into the consolidated accounts or should we ask the Government to consider a separate performance report or document, which we have never had? Is that where we are going? Does the Government recognise that there is an issue?

Stephen Boyle: It is not one or the other but both. I agree with Michael Oliphant's point that there is an obligation on any public body that follows the financial reporting manual—any set of accounts, really—that the organisation's performance be described in a balanced way that includes the pluses and minuses and that it be clear what has been spent and what has been delivered. Although we recognise that there has been progress on that front, there is a way to go to bring clarity.

09:45

I do not underestimate the challenges. The Government is a large and complex organisation. As Michael Oliphant has mentioned, the accounts stretch to 180-odd pages. Much of that content has to do with compliance and is prescribed, but organisations have more licence in their performance report to be creative and to find ways of telling the story of the financial year that describes their performance, connects to the spending and gives a rounded and balanced picture.

On your other point, many organisations do both things: they accompany the annual report and accounts with a good performance report, alongside, maybe, an annual report of some description. Similarly, organisations have much licence to do that in the way that best suits them.

The Government has, rightly, made much of the national performance framework and the national outcomes as a way to best describe progress on that front, too. That matters, but what also matters is that there is a connection between spending and performance. We are keen to see progress on both fronts.

Willie Coffey: Are you saying that that is recognised by the Government, or do we have to persuade the Government that it might want to adopt such an approach?

Stephen Boyle: We know that the Government is thinking hard about its performance framework, the national outcomes and how it can best describe those and make them into an accessible document. Where it becomes harder is on having more qualitative measures and outcomes, and on the various means of moving beyond outputs against budget to ask what is actually being delivered—what the outcome was. Rightly, that will have to draw from a range of sources, to tell the story of Scotland's national performance.

The Convener: Colin Beattie has a series of questions on governance.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Governance has always been a big issue in connection with the component parts of the Scottish Government. I am concerned about three statements in your report. First, in paragraph 70, you state that

"There remains scope for greater clarity on the impact of planned actions on reducing risk levels",

and so on. Secondly, in paragraph 74, you talk about limiting

"the use of interim appointments to ensure greater stability and certainty within its leadership group",

and you seem to be encouraging the Scottish Government to improve its arrangements, in order to ensure that they are fit for purpose. Thirdly, in paragraph 75, you say:

"The Scottish Government's arrangements for sponsoring public bodies remains an area of concern."

The committee has looked at sponsorship on a number of occasions, and there have been question marks.

You have talked about improvements to risk management processes within the Scottish Government. Will you give more detail on the measures that are being provided, and whether they are considered to be adequate? Is it just a matter of quality? Are they in place but maybe not as sharp as they should be, or is there a serious gap?

Stephen Boyle: In a moment, I will ask Michael Oliphant to describe the risk management arrangements and the progress that is being made, because, when it comes to risk management, we are talking about progress.

As the committee will know and expect, we interact closely with the Government's governance arrangements when it comes to the attendance of executives and non-executives at the Scottish Government's audit and assurance committee, and to some of what are known as the director general assurance committees that the portfolios lead. There is a very significant structure of both governance and associated risk management within the Scottish Government.

Some of that has evolved, over recent years, from a different base, in terms of the adequacy of arrangements. If I remember rightly, it was three years ago that we were really quite critical of some of the components of governance within the Scottish Government. We commented adversely on the Government's audit committee and on the level of challenge that it made in fulfilling its purpose of supporting the permanent secretary in its advisory capacity.

We are talking about progress. The role of the Scottish Government is one of key leadership to all public bodies in Scotland in risk management and governance—it should be an exemplar. In order to do that, there are additional steps to take in relation to how the Scottish Government translates its risk management arrangements and what it intends to do, so that it is possible for non-executive and executive members of committees to say, "Did you do what you intended to do to manage that risk?"

Michael Oliphant will want to say more about the specifics of risk management, then I will come back to your other questions.

Michael Oliphant: Over the course of the past year, there have been improvements in aspects of risk management, particularly in relation to the escalation of risk throughout the organisation, the ownership of each risk in the Scottish Government and some of the important components of risk management, away from the actions and the numbers. That improvement has been about the culture that exists in the organisation. It is important that it is not only senior civil servants who are risk aware. There have been improvements in the culture of risk management and identification at all levels of the Government through training and so on.

We would like to the Scottish Government do more on its planned actions against risk to reduce its exposure and to be clear on how those planned actions will deliver a lower risk score. Sometimes, the target date and target score that it intends to achieve can seem overambitious in relation to the time that it will take to deliver. Greater reflection is required on the length of time that it will take to reduce the risk, and a bit more clarity is needed on the actions that it is taking to demonstrate how it will address the risks that are there.

The Government has improved in relation to cross-cutting risks. You mentioned one about sponsorship, which the Scottish Government has been well aware of. That is not a risk that sits in any one portfolio; it cuts across Government. There are a number of risks like that—for example, risks in relation to the response to Covid and those around Brexit need to be seen through one lens rather than the lenses of several portfolios. There is a decent amount of work going on to identify those cross-cutting risks.

Stephen Boyle: I will cover Mr Beattie's other points. There are changes in leadership within the Scottish Government—for example, a new permanent secretary started at the beginning of this month. In the report, we also note the changes at director-general level and the use of interim appointments. Some of those interim appointments were a consequence of the process of change and others were due an inability to appoint someone at the end of the recruitment process. We also draw attention to some of the changes that will happen in the non-executive cohort of the Scottish Government.

In effect, we say that having a lot of change happening at the same time can be challenging for an organisation. We are not saying that it is destabilising, but the process needs to be managed, because there is a loss of stability and corporate memory that goes alongside that. For the Government to manage that change, it needs to support induction processes, as we know that it is thinking about.

The Government is going through an unusual volume of changes in its leadership—higher than has been the case for a number of years—and we will monitor that closely.

Colin Beattie: Do you think that the present governance arrangements—I use that term in its broadest sense—are fit for purpose?

Stephen Boyle: Yes; nothing that we have seen suggests that there are fundamental deficiencies in those arrangements. The current arrangements in relation to the overarching role of the Scottish Government audit and assurance committee, which is supported by the director general assurance groupings, probably stretch back six years. Michael Oliphant mentioned the escalation arrangements. Alongside all of that are the roles of the executive team, the corporate board and various subject governance groups. For example, in its scrutiny of major capital projects, the committee heard about the role of the infrastructure investment board and economy groupings. Although it is a complex set of arrangements, we see no deficiency or anything that suggests that it is not fit for purpose.

However, there is no cause for complacency. We expect that the adequacy of the governance arrangements will be tested and reviewed. There is a fundamental component that relates back to the consolidated accounts: as the principal accountable officer, the permanent secretary is required annually to make an assessment of the adequacy of the governance arrangements. Our work takes us there too, and we similarly have to form a view about the fullness of the disclosures and what has been said. We were content with what was said in the governance statement.

Colin Beattie: Michael Oliphant specifically mentioned target dates. As he raised that matter, I presume that, in a significant number of cases, they are unrealistic. Have you had a discussion with the Scottish Government about that? Is there any prospect of more realism? It will always be thrown up as an anomaly. If someone does not meet their target date, that is bad and it is a black mark against them.

Stephen Boyle: Michael Oliphant can give details of the discussions that he has had.

You are right. There is always a temptation for public bodies—or any organisation, really—to set an earlier target date than is realistic so that they can seemingly address the issue and so that the risk de-escalates, the action is done and they can move on to the next thing. It is harder to set a longer date and to be realistic about how long the work will actually take and the work that is necessary to address the risk. We are keen that that should not be a pattern, so that the Public Audit Committee and the experts round the table at the Government's audit committee can be satisfied that appropriate steps have been taken.

Colin Beattie: Does that happen at the moment?

Stephen Boyle: Michael Oliphant will speak about the extent of that. As I said, there is a temptation to set target dates that are not realistic or to plan action that does not give enough detail so that it is not sufficiently clear. I will allow Michael to answer on the specifics of the Government's work.

Michael Oliphant: I attend each of the director general assurance meetings. There is one for each of the main Scottish Government portfolios. The realism of target dates is an issue that not only I have raised throughout the year but non-executive directors have raised as part of their scrutiny and challenge role.

To be fair, we are seeing improvements. The Government recognised that it needs to improve on the realism of target dates. It is not necessarily easy to do. I absolutely agree with the Auditor General's assessment that, sometimes, the problem is just overambition. The Government wants to reduce risk scores and plan actions that will address that. Our role in groups such as the assurance meetings is to pass comment and challenge from an external point of view where we think that a target date looks overambitious. It is partly about the timeliness of documentation.

The matter is part of a continuing discussion and we want to see further improvements on it over the next year.

Colin Beattie: We talked about sponsorship bodies. They cut across the whole Scottish

Government. What are the specific concerns about sponsorship? Individual matters have come to the committee, but you see the full picture across the board. What is the fundamental problem with the sponsorship of public bodies?

Stephen Boyle: Michael Oliphant mentioned that the Government notes the risks of sponsorship, so there is a response to that. I will touch on some of the response that we have seen and welcome without overplaying the idea that it somehow removes the challenge that still remains.

We welcome the governance hub that the public bodies unit has established. It is, in effect, an overall source of induction, training and reference to allow the non-executive members of the boards of public bodies to discharge their responsibilities as part of the governance arrangements. We also welcome the additional training that there has been. Some of it was interrupted by Covid, which was reasonable, but has now restarted.

In addition, we mention in the report—as we have touched on in previous discussions with the committee—that the Government commissioned a consultant to review its overall arrangements. It received that review, with associated recommendations, towards the end of last year. We are awaiting sight of what steps the Government plans to take.

10:00

As I note in the report—and as I have said in verbal evidence to the committee in recent weeks—I am keen to see that progress and what steps the Government plans to take, which will inform what I plan to do next in relation to audit work on the sponsorship of public bodies in Scotland. The committee will forgive me for repeating a point that I have made on a number of occasions, but sponsorship generally works well in public bodies.

I prepare reports—as I have done this year and in previous years—to highlight examples of where that has not been the case. I will continue to do that as necessary where sponsorship is not working as intended. The desired effect of that—or what I hope—is that that contributes to the Government's overall arrangements and improves whatever is happening in a public body, and also that that learning is spread out so that we do not see some of the examples of where sponsorship has not worked and, instead, there is an overall growth in the quality of sponsorship arrangements across public bodies.

The thinking is in the right place, and the recognition of the risk and the on-going need for improvement is part of the Government's arrangements. As I said, I will take a view on sponsorship as soon as I see the Government's planned next steps.

Colin Beattie: You have answered my next question—I was going to ask when that review would come forward and what you would do when it did—so thank you for that. Obviously, this committee will take a close interest in that. Of course, we only see the bad side—we only see the section 22 reports and so on, and we do not see the good cases, where it is working well. Nevertheless, there has been sufficient evidence that sponsorship in some cases has not been as effective as it should be. Obviously, we have a concern about that, and I am sure that the committee will come back to that in the future.

I have a question that comes back to the risk management process. Do you consider that, overall, the risk management process is adequate?

Stephen Boyle: That is a big question.

Colin Beattie: I was kind of hoping that you would say yes.

Stephen Boyle: I am perhaps reluctant to give you that unqualified assurance. What is on my mind are the perhaps more remote but very significant risks, as we have seen through the course of the pandemic.

Before the Covid pandemic, the Government's thinking—and that of all public bodies, to be reasonable—was that a pandemic event would be a flu-like pandemic. Although it featured on its risk register, it therefore did not necessarily have prominence. It was not a near risk, in those terms. That is the level of thinking and risk analysis that the Government and other public bodies need to be doing. I would like to come back to the committee in future discussions on risk management about how those risks are being managed—risks that will have a very significant impact but whose likelihood might be distant or which might not happen for many years. For me, it is therefore a qualified assurance at this stage, which we will continue to monitor and report to you on.

Colin Beattie: Would it be correct to say that day-to-day risk management is adequate, and that you are talking about more remote possibilities? You quoted the question of a pandemic, which is clearly not something that anybody hoped would ever happen and the preparations for which are obviously very different. Would that be a fair analysis?

Stephen Boyle: That is a fair conclusion. Notwithstanding the points that we make in the report and Michael Oliphant's observations about the timeliness and adequacy of steps, in the round, the Government's risk management arrangements have improved, and it has plans to do more. As we have talked about, we are thinking about our audit work in relation to those really remote but very significant risks. We know that the Government does deep dives and takes topics that it explores with its audit committee, which is all good practice. However, as we have all seen, there are also those remote risks, and there has been learning for all of us—auditors as well—about how a public body might respond to them. I would like to give that more consideration.

Colin Beattie: That is something that this committee might want to keep an eye on.

The Convener: Thank you very much indeed. I would concur with Colin Beattie on that final point.

That is the end of the questions that we have on the consolidated accounts. Thank you, Auditor General, for once again giving us the benefit of your wisdom and analysis. I also thank Michael Oliphant and Helen Russell, who joined us online.

We have a changeover of witnesses now, so I will suspend the meeting until that takes place.

10:05

Meeting suspended.

10:06

On resuming—

Section 22 Report: "The 2020/21 audit of the Commissioner for Ethical Standards in Public Life in Scotland"

The Convener: I welcome people back to the second half of this morning's committee meeting. In this part of the meeting, we are taking evidence on the Audit Scotland section 22 report on the office of the Commissioner for Ethical Standards in Public Life in Scotland.

I welcome back the Auditor General, Stephen Boyle. He is joined remotely by Richard Robinson, senior manager, performance audit and best value, Audit Scotland. We are also joined by Pat Kenny, director at Deloitte LLP, who was involved in putting the report together. I invite the Auditor General to give an opening statement.

Stephen Boyle: Many thanks, convener. I am presenting this report on the 2020-21 audit of the Commissioner for Ethical Standards in Public Life in Scotland under section 22 of the Public Finance and Accountability (Scotland) Act 2000.

The commissioner's office plays a vital role in upholding public trust in ethical standards in public life through investigations into the conduct of MSPs, local authority councillors and members of public boards. My report draws attention to significant concerns about the operation of the commissioner's office in 2020-21.

Both the commissioner's office annual report and accounts and the auditor's report highlight ineffective governance arrangements and a breakdown of relationships with key stakeholders.

During the year, the Standards Commission for Scotland issued statutory directions to the commissioner's office for the first time. That was to provide it with assurance that the commissioner's office was carrying out its functions in accordance with legislation. Had governance been operating effectively, many of the issues in my report might have been identified and addressed more quickly. In particular, there was no defined performance management framework; risk management was ineffective; and there was no internal audit function. In addition, the audit committee did not operate effectively during the year. Action is also needed on workforce planning and training.

The auditor recommends that all eligibility decisions and investigations carried out since August 2020 be reviewed by an appropriate external investigator. There is a significant risk, with funding and staffing implications. Improvements are needed for the commissioner's office to operate effective strategic leadership, fulfil its statutory duties and restore confidence in the effectiveness of this essential public office.

I am aware that the commissioner's office is taking action to address the issues that have been identified and it is vital that progress is made so that the public, the Parliament and public bodies can have trust and confidence in the organisation.

I will continue to monitor and report on the performance of the commissioner's office, with a view to further public reporting. As ever, convener, my colleagues and I look forward to answering the committee's questions.

The Convener: Thank you very much indeed. Sharon Dowey has a series of questions to ask.

Sharon Dowey: We note that the commissioner was appointed as commissioner and accountable officer on 1 April 2019. Paragraph 8 on page 3 of the section 22 report outlines that

"The Commissioner has been on extended leave since early March 2021."

We also note that the Scottish Parliamentary Corporate Body appointed the public appointments manager as acting commissioner and the head of corporate services as acting accountable officer on 20 April 2021. Do you know the reasons why the acting commissioner is not also fulfilling the role of accountable officer?

Stephen Boyle: That situation is not unprecedented. As we saw in some of the evidence that the committee took last week, there are circumstances where the roles of head of the organisation—for want of a better term—and accountable officer reside in different posts. Ultimately, that is a choice that the Scottish Parliamentary Corporate Body took when it allocated those responsibilities. However, as you note, that operated differently with the commissioner, who is currently on leave.

Does Pat Kenny have any insight into the distinction between the roles of commissioner and accountable officer?

Pat Kenny (Deloitte LLP): Good morning. I do not have much to add on that. As the Auditor General mentioned, that situation is not unprecedented, and it was felt that that was the appropriate decision, given the circumstances that the organisation was in at that time.

Sharon Dowey: Okay—thank you for that.

Paragraph 28 of the section 22 report refers to 22 separate recommendations that the external auditor made. Those recommendations can be found in the auditor's annual audit report, which the commissioner's office has accepted and is progressing.

We also understand from the external auditor's annual report that a "separate detailed draft report" by the auditor to management was considered by the advisory audit board in June 2021, which set out its findings and conclusions on each audit dimension. Is that report publicly available?

Stephen Boyle: I am happy to start on both those points and I will invite Pat Kenny to come in. As the author of those reports, Pat will be able to update the committee. The 22 recommendations are very significant recommendations on the steps that needed to be taken to address many of the issues; some very important work needed to be undertaken. Pat has seen the progress that has been made and the progress that is planned, and he can update the committee on that in a second.

Pat Kenny also prepared a wider scope report to accompany the annual audit report, and there is a very clear overlap between them. The recommendations and conclusions in the wider scope report in effect form the action plan that you referenced with the 22 action points. The wider scope report is not yet a finalised report because, as auditors, Pat's firm follows the same processes that I do in Audit Scotland—for clearance and factual accuracy, we give organisations and people who are referenced in the report the opportunity to comment. Pat has been unable to take all those steps because, as noted in the report, the commissioner is currently on sick leave, although that has not stopped Pat preparing the annual audit report and it has not stopped me preparing a section 22 report.

For my section 22 report, I have drawn on the annual audit report, but there are two other important and key sources for my report. I referenced the very significant disclosures that are made in the commissioner's office's annual report and accounts, and the other source of evidence is the minutes of the Standards Commission for Scotland and some of the judgments that it has made. Therefore, I have drawn on a range of sources.

I will pause and invite Pat to say more about the status of his work.

Pat Kenny: Thank you, Auditor General.

That was the reason why the draft wider scope report has not yet been finalised. I still hope to do that, but we have not been able to have feedback from the commissioner on the findings of the report to date. That is the reason why it is still in draft form.

To give the committee some assurance, I can say that the recommendations are very much in line with the wider scope report. I think that there was one additional recommendation in the wider scope report, but it related to wider governance implications, which were more relevant to the

SPCB. The recommendations that form the publicly available report and the Auditor General's section 22 report are pretty much the same recommendations that are included in the draft wider scope report.

Sharon Dowey: That is fine. Thank you.

10:15

The Convener: Craig Hoy has some questions that follow on from that.

Craig Hoy: To delve a little bit deeper on leadership and governance, paragraph 9 on page 4 of the section 22 report highlights that the acting accountable officer of the commissioner's office concludes that she is

"not satisfied that an effective scheme of governance operated during 2020/21."

The external auditor also concludes in the annual audit report that the governance and scrutiny arrangements were ineffective during that period and that they are not currently sufficient to deliver best value.

Noting those very serious issues in relation to leadership and governance, to what extent is the 2020-21 picture different from the assessment that was made in the prior reporting period?

Stephen Boyle: Those are very significant statements that the acting accountable officer has made. It is incredibly rare to see as clear a judgment from an accountable officer that their organisation did not have sufficient arrangements to deliver best value.

In the report, we identify a number of factors relating to what has contributed to those circumstances—inadequate performance management, risk management, governance and scrutiny arrangements and the absence of an internal audit function—all of which were factors behind the accountable officer's own assessment of governance arrangements.

Pat Kenny can give some of the detail behind the progress that has been made this year. I will highlight two things—first, the advisory audit board, which is the name of the organisation's audit committee, has been re-engaged. That is now working again, which is an essential component of any organisation's oversight, support and scrutiny function. They have also made progress in steps to appointing an internal audit function. That is all necessary progress.

You may wish to come back to this, but although we are pleased to see action being taken on the 22 recommendations, that will get the organisation back up to a baseline and it is perhaps too early to draw any definitive conclusions about how well those arrangements are working.

Pat Kenny will want to say a bit more about what he has seen since the conclusion of last year's audit.

Pat Kenny: As the Auditor General says, it is early days, but I am satisfied that the acting commissioner is making good progress in implementing our recommendations. For example, there is a new risk management policy and a much more detailed risk register is in place, so there has been good progress there.

There has also been good progress on the performance management framework, which has been encouraging. Progress has also been made with the new investigation manual in terms of getting an established template for how investigations are conducted within the organisation.

It is early days, but the early signs are that the organisation is making reasonable progress. It is something that I am keeping under constant review and, as a matter of course, we will do a follow-up on the progress made to date in this year's audit.

Craig Hoy: In paragraph 23 of the report, you set out rather clearly that some of the most basic governance processes and functions were absent from the commissioner's office during 2020-21. Indeed, we just heard, there was no defined performance management framework, risk management policy, risk register or internal audit function. Did the auditors have any growing concerns about the way that the commissioner's office was operating before the 2020-21 reporting and performance period?

Stephen Boyle: Again, Pat Kenny will want to talk the committee through some of the chronology in relation to the previous audits and how we arrived at some of the fairly stark circumstances that we are reporting on.

Overall, we saw a very clear deterioration in circumstances during the year. There are a number of components to that, but overall there was a deterioration in relationships between the commissioner's office and its key stakeholders, and certain events that were particular to the year in question such as changes to investigations processes, a restructuring of the organisation and a stepping back from advisory audit board arrangements led to some of the very significant circumstances that are set out in the report.

As for what went before and how things unfolded and escalated to the current situation, Pat Kenny can say a bit more about previous audits up to today. [*Interruption*.]

The Convener: I am sorry, but we cannot hear Mr Kenny. I do not whether he has muted himself or whether we have muted him at this end.

Pat Kenny: I have unmuted myself, convener—apologies for that.

There were a few warning signs in the prior year's audit of what might have been about to happen, but nothing on the scale that we identified in the current year's audit. The main issue was the breakdown in relationships with the advisory audit board—obviously there were difficulties in that respect. The commissioner was minded to appoint new members to the board and was in discussion with the SPCB on that, but no agreement could be reached on such changes.

It transpired that, when the accounts were signed off in October 2020—the year before—that was done without the involvement of the advisory audit board. Although there was nothing statutory that required the board to be involved in the sign-off process, I was significantly concerned about the situation at the time, and I had to consult and take a view internally on whether it was still appropriate for me to sign off the accounts for that year. I concluded that it was possible to do so. As I have said, there were some signs in the previous year that things were not moving in the right direction.

The Convener: Colin Beattie has a series of questions.

Colin Beattie: I have to say that the report came as a bit of a surprise, and I am reminded of Juvenal's famous phrase, "Quis custodiet ipsos custodes?" It seems to fit very well in this particular situation.

The Convener: Are you going to provide us with a translation, Mr Beattie?

Colin Beattie: It means, "Who watches the watchmen?"

The Convener: Thank you.

Colin Beattie: Paragraph 19 of the report talks about the remedial action that the commissioner's office is taking to address the issues. What confidence do you have that these actions will be enough to address the scale of the problems that seem to exist in the office?

Stephen Boyle: Our assessment would be that it has a credible action plan, with 22 recommendations being subject to scrutiny and challenge with the re-engaged advisory audit board as appropriate. That is welcome progress.

However, some of the recommendations therein are significant. We have already referred to the fact that the commissioner's office will not be able to solve all of these challenges on its own, and it needs to repair relationships with the Standards Commission for Scotland, the SPCB and, indeed, its own staff. All of those components will give it the platform for delivering on the progress that is needed, but some of them will potentially require additional funding if concerns about loss of public, parliamentary and local authority confidence and trust in the process are to be addressed.

We have already touched on the fact that addressing the challenges and putting in place the recommendations will not happen overnight, but what we have also seen—and Pat Kenny can come in on this point if he so wishes—is that the organisation, through the acting accountable officer and the acting commissioner, has engaged fully and is taking the matter really seriously through what we think is an appropriate action plan. However, it will not be able to address everything entirely on its own accord.

There are signs that the seriousness of the situation has absolutely been recognised, and as we have said already, we will continue to do our work and report publicly on the progress that is being made. Again, I invite Pat Kenny to give his own assessment.

Pat Kenny: I just want to emphasise that I am satisfied that the acting commissioner is taking these issues very seriously indeed and is working hard to address them. As I have said, it is still early days, and we will keep the matter under constant review, but from my perspective the indication is that the acting commissioner is keen to get these issues resolved as soon as he possibly can.

Colin Beattie: You have said that the commissioner's office cannot do all this alone and will have to engage with outside partners. Does it have the skills internally to do so? Given the situation that the organisation got itself into, perhaps it did not have the skills in the first place. Does it have the skills now?

Stephen Boyle: It is worth emphasising that this is a small organisation. Pat Kenny can confirm this, but I think that the number of people who undertake what is a really important statutory function is barely into double digits. We have also seen changes in the volume and complexity of complaints cases that it is asked to look at in what is a difficult environment. It is also worth recognising the nature of the case load.

There are two components to this, the first of which brings us back to Deloitte's recommendation that some cases between August 2020 and the end of the year be revisited. That will require additional financial—and potentially resource—support, and part of the recommendation is about whether independent resource is needed to support that review.

Secondly, we say in the report that restructuring and workforce planning have to come together in a way that has not happened up to now. Any organisation's workforce plan must be aligned with corporate plans, strategic objectives and the financial position, and that has to be done to allow the commissioner's office to assess whether it has the resources and the right people or staffing cohort to deliver what is being asked of it in very important and challenging circumstances. As a result, I am perhaps not able to give you the assurance that you are asking for at this stage.

Colin Beattie: It is perhaps early days, but has any commitment been made by the Scottish Government with regard to the financial support that the office needs or providing it with additional skills and support to get through this?

Stephen Boyle: I would draw a distinction here, as this is a parliamentary body rather than a Government organisation. As a result, any discussion on the financial position and any support and resources that the commissioner's office might need would be between the office and the Scottish Parliamentary Corporate Body. The last I heard, those discussions were still on-going, but Pat Kenny might have a more up-to-date position in that respect.

Pat Kenny: First, I just want to go back and confirm that there are 10 employees in the organisation.

The big outstanding recommendation that requires SPCB finance is the re-investigation of the complaints process and the external examination of the complaints that were made during that defined period. My understanding is that there has been no agreement on the financing of that outstanding recommendation, but I still think that it is the one that needs to be addressed as a matter of urgency.

10:30

Colin Beattie: That brings me to my next question. Paragraph 28 of the report says that the external auditor made 22 separate recommendations. You have already said that there needs to be collaboration with the Scottish Parliamentary Corporate Body and others in order to implement those. What engagement has Audit Scotland had with the corporate body about the report and its role in addressing some of the issues that have come up?

Stephen Boyle: My engagement is in the receipt of the annual audit report and my decision on whether there is sufficient public and parliamentary interest to report to the Public Audit Committee on the content. I have done that today, and I published the report at the end of last year to highlight the risk of the loss of public confidence and concerns.

We have said that many of the recommendations can be dealt with by the commissioner's office and that some require parliamentary consideration and the corporate body's view. There are two angles to what that means for Audit Scotland's role: the public reporting that I do through the preparation of section 22 reports and so on, and my audit work as the auditor of the Scottish Parliamentary Corporate Body. The work in question is a small component of that work, and we continue to have regular discussions with the Parliament's audit and assurance board and through my direct engagement with the chief executive of the corporate body.

Colin Beattie: Should I interpret from that that you have had specific discussions with the corporate body in connection with the issue?

Stephen Boyle: Not directly with the corporate body. I have regular engagement with the Parliament's chief executive on a range of factors. You will, of course, be aware that the chief executive and the corporate body are well sighted on the circumstances. As we have mentioned, it will be for the corporate body to take a view on what steps, if any, it chooses to take on any of the resource requirements and relationships that are cited in the recommendations in the report.

Colin Beattie: I assume that the report has been agreed and accepted by the commissioner's office.

Stephen Boyle: Indeed. The recommendations in the report, along with the full disclosures that the commissioner's office made in its annual report and accounts, reflect the significance and seriousness of the matter. I do not think that there is any debate or ambiguity about the fact that there were very significant challenges in the organisation in the year in question.

Colin Beattie: The report highlights the breakdown in working relationships between the commissioner's office and other external bodies, and you have again touched on that. Can you give some details on how that breakdown happened, what external stakeholders the commissioner's office should have engaged with, and how that led to the lack of scrutiny that one would have expected?

Stephen Boyle: I highlight to the committee exhibit 1 in the report. We set out how the process of investigations of ethical standards complaints works in the structures in Scotland, how that relates to the investigations that are undertaken by the commissioner's office, and the dual reporting lines to the Standards Commission, which is responsible for complaints about members of public boards and local authority elected members, and to the Parliament's Standards, Procedures and Public Appointments Committee, which is responsible for complaints that have been received about members of the Scottish Parliament, lobbyists and the public appointments process.

We note that the breakdown in relationships is one of the key themes of the report. I will focus briefly on the Standards Commission for Scotland. For the first time since the creation of the Parliament, the Standards Commission for Scotland saw it fit to issue a direction to the commissioner's office in respect of the office's role, and its concerns about the information that it was being provided with and the nature of the investigations that were being undertaken.

The Standards Commission three separate directions to the commissioner's office—that is most unusual and that is significant in and of itself. In particular, it determined that the provision of information direction had not been met. Those directions are all a consequence of non-compliance with the direction and judgment of the Standards Commission, as it has minuted officially. They are part of a wider picture of concerns and the breakdown of relationships. Many issues such as these, where two organisations have to work closely together, as these two do, would typically be resolved through discussion and negotiation, as opposed to getting to the stage where one body issues an official direction to another.

Colin Beattie: To turn this on its head, so to speak, what could have been done differently by all the external bodies that deal with the commissioner's office in relation to the relationships that broke down? They must have known that there was a problem, and that problem did not happen overnight—it happened over an extended period. What should the external bodies have done to raise a flag about the issue? One external body raised a flag with the commissioner's office. Did it go anyplace else? Did anybody else have sight of that?

Stephen Boyle: I will give a perspective on that and Pat Kenny will want to offer one as well.

As we have touched on already, there is a context of matters being escalated quickly during the course of the year in question. As was mentioned, typically, where there is a need for organisations to work closely together, whether through preference or statutorily, in this regard, it is by a process of negotiation, with a memorandum of understanding if they need to formalise it along with regular meetings and so forth. Those all allow for the business to be undertaken quickly.

What is particular to the commissioner's office is that some of the more typical routes through which organisations can engage with one another were not available. The presence of an audit committee was missing. There were not those avenues, other than perhaps through the commissioner's office itself, through which to raise those concerns. The fact that those avenues were missing gave fewer opportunities to raise those concerns.

That is perhaps as far as I am able to go, Mr Beattie, in saying what the experience of those organisations was like and what they might have wanted to do. This might be a question to put directly to the other organisations identified in the report so that they can offer their own perspectives, if that would be of value to the committee.

Colin Beattie: The commissioner's office is a small organisation. Pat Kenny said that there were only 10 employees. Who would have provided its internal audit function?

Stephen Boyle: As we have touched on, it would be for the commissioner's office to determine who would be best placed to undertake an internal audit function. Pat Kenny can provide an update on that, but our understanding is that the commissioner's office has now gone out to tender for the receipt of internal audit services, as many organisations do to best procure such services.

Colin Beattie: So the organisation did not have internal audit oversight.

Stephen Boyle: It is clear that that was one of the key components that were missing in the organisation. An internal audit of its arrangements and all the value that that brings to any organisation was not a feature of its internal control and scrutiny arrangements. Pat can comment on progress on that front.

Pat Kenny: Yes, there has been progress. It has been out to tender and I think that an appointment will be made in the short term. There have been discussions over quite a sustained period on internal audit and I have raised the gap in prior year audit reports. Previously, the commissioner wanted to go for a shared-service arrangement with another commissioner's office, but that did not transpire. That was a bit of the reason for the delay, but good progress has been made on that and I expect the new arrangement to be in place soon.

It is important for the committee to understand that the advisory audit board is not the equivalent of an audit committee in other public sector organisations. It does not have the clout of those. It is an advisory body; it is light touch. Although the absence of the advisory audit board did not help in terms of that engagement, it is important for the committee to realise that it is not the equivalent of a normal public sector audit committee with which members would be familiar.

Willie Coffey: Auditor General, you have referred several times to the Standards Commission's directions. A moment ago, you said to Colin Beattie that it had issued three directions and that that was the first time that that had happened. In so far as you can, will you tell us what brought that about? What were the directions and were they carried out?

Stephen Boyle: Richard Robinson has some of the detailed analysis on the specifics of each direction. He can update the committee on whether they were achieved. The important thing to note is that, in overall terms, they were not achieved, Mr Coffey. The Standards Commission still had concerns and formally raised them with the Scottish Parliamentary Corporate Body, noting that the direction had not been complied with.

It is most unusual that the Standards Commission sought to issue a direction. In terms of the relevant legislation and regulations, to do so is indicative of significant issues. Normally, we would expect organisations that are obliged to co-operate and work closely together to resolve issues through more informal means, such as clarity around shared objectives and delivery. For the situation to escalate to a stage at which a direction was issued is indicative of the breakdown of relationships that we note throughout the report.

I ask Richard Robinson to set out some of the detail behind each of the directions.

Richard Robinson (Audit Scotland): Good morning. As we see in paragraph 11 of the report, the commissioner's office is independent but the Standards Commission has the opportunity to issue statutory declarations to provide it with assurance about activities.

As the Auditor General said, three directions were issued in the year. In effect, they built on each other. As set out in the commission's annual report and accounts, they were about the need to provide a list of complaints and what happened with them. The need for letters detailing the reasons why complaints were deemed ineligible or inadmissible was one of the themes of the March 2021 direction.

As we can see from what is included in the section 22 report, the auditor's report and the minutes of the Standards Commission, by the end of the year there was a feeling that the directions had not been complied with and that further action was needed. That is why it is so important that the relationships are re-established and that there continues to be a sense of trust and checks and balances between the organisations.

Willie Coffey: The notes that we have say that the outcomes of those directions were not reported back to the commission because the commissioner's office did not carry them out. I suppose that that is what you are saying—they were not carried out, so how could they be reported back to the commission? That led to the complaint to the SPCB about the matter. Has that been resolved? Have the directions been carried out satisfactorily, or are we still debating the matter?

Stephen Boyle: I cannot give a definitive answer on whether the Standards Commission is satisfied that the directions have been complied with. I understand that negotiations continue on that front. That does not detract from the point that there are signs of progress. There is an action plan to address many of the concerns and to rebuild the important relationships. Ultimately, it will be for the commission to reach a view on whether the directions have been met.

10:45

Willie Coffey: Your report says that the legal advice that was obtained by the commissioner's office confirmed that the investigation process, which we understand was amended in 2020, and the assessment process did not comply with the legislation. Was the process compliant before 2020? Is it compliant now? Where are we on that?

Stephen Boyle: That is a hugely significant issue. The legal advice determined that the investigation process was not compliant with the legislation. There are very significant risks associated with that and with what that might mean for previous investigations and any associated judgments. There were factors that led to changes in the investigation process. On that basis, Pat Kenny has made recommendations on what that means for cases and investigations between August 2020 and the end of the year. There is a clear connection between changes in the investigation manual and the associated timescale that followed. I will ask Pat Kenny to update the committee on the status of the manual.

Pat Kenny: The investigation manual is still work in progress, but that work is moving forward. The acting commissioner has agreed the assessment criteria for complaints with the SPCB, which is a positive step forward. Historically, the issues related to the fact that it appeared that complaints were being dismissed at the eligibility stage, which should not have happened, and that informal investigations were often carried out into certain complaints. Under the terms of the directions, that should have been communicated to the Standards Commission, but that was not happening.

The fundamental reason that the directions were issued—this goes back to an earlier question—was that the Standards Commission was asking for certain information but it was not forthcoming.

Under those circumstances, the commission felt that it had to issue the directions.

Willie Coffey: You are talking about a change in the way in which complaints are assessed. Has it been agreed that that process has to be changed? Is the new process now being followed?

Pat Kenny: Yes. That is right.

Willie Coffey: Your report tells us about the substantial increase in the number of complaints against councillors and board members. Are we embarking on a new process for the future, or will we revisit the complaints that perhaps should have been followed up but were not?

Stephen Boyle: That is central to the recommendation. The commissioner's office is considering the best way to do that. Pat Kenny's recommendation is that that work should be supported by an external assessor, but the commissioner's office's view is that it will do that internally, in the first instance, and then take a view, following further discussions with the Scottish Parliamentary Corporate Body, on whether to involve any external support as part of the reviews.

Willie Coffey: Is there any indication of when there might be a resolution to that?

Stephen Boyle: Our report gives the most up-to-date position, as far as we are aware. That question is probably for the commissioner's office, as it might be able to share the status of those discussions with the committee.

The Convener: We will continue on the theme of workforce issues.

Craig Hoy: Paragraph 17 of the section 22 report refers to the acting commissioner's assessment that

"staff were not equipped fully to fulfil the Office's statutory functions."

The external auditors therefore recommended in their annual audit report that a formal training programme and workforce planning arrangements should be put in place. In light of that, can you confirm whether a skills gap exists in the organisation and, if so, in which specific areas?

Stephen Boyle: I will ask Pat Kenny to update you on the nature of those concerns. As he mentioned, the organisation has only 10 employees, and there is a correlation between the volume and complexity of the cases that come to the organisation and its ability to field all that work in a timely way. There are other factors relevant to an organisational restructure. The commissioner's office made an important disclosure in its annual report and accounts that one of the circumstances that contributed to the challenges that it found itself with was long-standing and experienced members of staff leaving the organisation during the year. That loss of corporate memory prevented it from taking forward its statutory functions in the way it wanted to.

What comes next is a feature of some of Pat Kenny's recommendations and the commissioner's office's response in relation to skills, training and workforce planning. Pat will say more if he is able to.

Pat Kenny: We identified that there was a clear lack of a workforce plan. The recommendation was made that that should outline the current workforce, the future workforce and how it will get there, and identify any actions that are required to rectify those skill gaps. There has been a bit of progress on the interim plan that is being put in place by the acting commissioner, but it is fair to say that further progress is required on workforce planning, which we will follow up in the course of the next year's audit.

Craig Hoy: There was a view that there was a clear need for training. Has that training started in a meaningful way and are you assured that it will meet current needs and concerns?

Stephen Boyle: Pat Kenny can talk about how that is progressing. I have some reluctance to be definitive that any one component of the recommendations will be enough to address all the significant concerns that are in the report. It matters that training underpins recruitment for vacancies in the organisation and that there is an effective workforce plan that is linked to the financial and corporate objectives. All those things have to be run in a wider sense to address the issues that have been noted. Pat may have an update on what that means in relation to training.

Pat Kenny: There has been some progress there, but there is an on-going issue that links back to workforce planning; my understanding is that there is only one individual in the organisation who has experience of dealing with MSP complaints. Obviously, the organisation would be totally exposed if that individual leaves, so an overarching plan is required to match organisational needs to its statutory functions. I am confident that the acting commissioner understands that and accepts that there is a need for further progress, and we will keep that under review.

Craig Hoy: I go back to the size of the organisation. I will not fall back on my rusty Latin to make the point, but I am thinking of an old episode of "Yes Minister" in which Sir Humphrey Appleby explains to the minister the full structure of permanent secretaries and undersecretaries and the full complexity of Government. The minister asks, "Do they all type?" and Sir Humphrey answers, "No. Mrs McKay is the typist."

Considering the complexity that the organisation deals with and the fact that only one individual has experience of MSP complaints, is there a concern that it is not properly resourced to do its job, and would vacancies have a significant negative impact? Should we be looking longer term at the resource that the corporate body provides to the organisation?

Stephen Boyle: In the year in question, vacancies were a contributory factor in affecting the organisation's ability to deliver what it is intended to do—following the restructuring, unfilled posts and a loss of corporate memory were unquestionably key components of that. As Pat Kenny mentioned, there are key person dependencies in the organisation, too. All those things create risk for the organisation's ability to deliver what it is intended to deliver.

With regard to what comes next, it will be a matter for the commissioner's office and the Parliament to determine the resource component that the organisation has at its disposal and the financial consequences of that. As we have mentioned, we understand that those discussions are continuing. Ultimately, when it comes to the resource that is provided and the expectations in that regard, how to align those two points is a policy consideration for the Parliament to decide on.

The Convener: I want to finish the session with a few short questions. You have catalogued the challenges that the organisation has faced as a result of staff training issues and staff vacancy issues. Arguably, there continue to be significant workload burdens on the staff. There are also issues with funding, and approaches have been made to the corporate body to increase funding. At the same time, the audit report recommends that important pieces of work be carried out, which I presume would be quite substantive, such as the drafting of a full investigations manual. There is also a proposal to bring in an external investigator in order to address some of the deficiencies in the organisation.

In the light of all that, do you think that that will be achievable?

Stephen Boyle: It is clear that it will be very challenging to do all those things. As we have mentioned, the response to the recommendations and to our report and Pat Kenny's audit report, along with the clear disclosures in the organisation's annual report and accounts, all point to a recognition of the challenges that exist. Many organisations do not even get to the point of accepting the challenges that face them.

That, coupled with the organisation's action plan, gives it a platform to restore confidence in its work. As we have touched on, it cannot do that alone. It will need to rebuild trust and its relationships with its key stakeholders. The other component, as you mentioned, is the financial circumstances of the organisation. That latter point is perhaps a policy matter, which relates to the choices that the Parliament will want to make, in conjunction with the commissioner's office.

To answer your question directly, that work is achievable, but the timing of it will be dependent on some of the factors that I have outlined.

The Convener: Earlier, Colin Beattie asked you about where the negotiations between the commissioner's office and the corporate body on the release of more resources lie. I think that you said that that was still the subject of negotiation. Is that correct?

Stephen Boyle: Yes, that is my understanding.

The Convener: So nothing has been finalised yet.

There is a section on whistleblowing in the report. I want to get this right: that refers to whistleblowing for employees of the organisation, not whistleblowers who have a part to play in complaints that come to the organisation. I am sure that there is a Latin equivalent of this. Given that I presume that the organisation deals, from time to time, with complaints by people who are covered by the public interest disclosure legislation—people who are whistleblowers—that begs the question why there is not, within an organisation that looks at those matters, an effective whistleblowing policy. A recommendation has been made that that needs to be addressed. Where are we with that?

11:00

Stephen Boyle: Pat Kenny can tell you about the progress that is being made on the recommendation, but first of all I will provide some context.

You are right that, under the Public Interest Disclosure Act 1998, the commissioner is an identified person with whom external members of the public can raise concerns. Indeed, that is, as it were, the very nature of the organisation. The organisation also has a whistleblowing policy for its own employees, but the audit found a lack of awareness of the policy and the routes and options for employees in the commissioner's office to raise concerns.

To touch on Pat Kenny's earlier point, the audit noted that there were not the typical avenues for employees to raise concerns. In other organisations, you would have a route through the audit committee—or its chair—a board member and so on, and there would be more than one source through which to whistleblow, if an employee felt that that was necessary. In this organisation, the route was through the commissioner. In light of that, what comes next will matter with regard to the re-establishment of the advisory audit board and, alongside that, ensuring that staff have greater awareness of and tools for whistleblowing, should they need to do so.

I ask Pat Kenny to talk about the promotion of the material and any other considerations.

Pat Kenny: The whistleblowing policy has been updated and the process to be followed has been communicated to staff. One improvement that has been made relates to an option in the policy for staff with any concerns to go to Audit Scotland; we found that staff in the organisation were not aware of that, and it has now been highlighted and communicated to them. There has been some progress in that respect.

The Convener: So is it that there was a policy, but it was not fit for purpose, or is it that there was a policy, but people were not sufficiently aware of it?

Stephen Boyle: It is both of those factors, convener.

The Convener: We will end where we started, with the comment in the Auditor General's opening statement that this is all about public trust in the complaints system and how complaints are dealt with. What stands out in the report are recurring phrases such as "substantial weaknesses" and the need for "significant improvements", and in paragraph 26, the report concludes:

"The overarching risk is a loss of public trust in the ability of the Commissioner's Office to properly investigate and consider complaints made against the conduct of individuals in public life in Scotland."

What is your assessment of where things stand today? Is there an existing crisis of confidence in the system?

Stephen Boyle: Bearing in mind the volume of content in the audit report, the disclosures in the annual report and accounts and my section 22 report, I have to say that, although all of those things are necessary forms of public reporting to ensure openness and transparency, an unavoidable consequence and risk is that members of the public will question whether they will be heard adequately, that their complaint will be investigated sufficiently with proper levels of rigour and that matters will be dealt with as they would expect.

We are not concluding that that specifically has happened and are not pointing to any cases where those circumstances have unfolded, but the fact is that any organisation has to have sufficient governance, leadership and scrutiny arrangements, because they are all the typical components of a well-run organisation. Given that so many of those components have been missing in this organisation, there is a risk that it is unable to do what it is there to do and, if that sense pervades, there is also a risk that members of the public will disengage from the process and will not have trust and confidence in the public complaints process.

The Convener: As well as any internal reforms, what external changes are needed for the commissioner's office to address that?

Stephen Boyle: That is probably a very direct question for the commissioner's office. As with all our reports, this report has been cleared for accuracy and tone. As well as addressing the recommendations, the commissioner's office might reflect on whether there is anything that it can do to give members of the public reassurance. Today's discussion is clearly part of that process, as will be any follow-up work or public reporting that the organisation might wish to carry out about how it has addressed the weaknesses that we have discussed.

The Convener: As always, Auditor General, thank you very much for the frankness of your replies. I also take this opportunity to thank Richard Robinson as well as Pat Kenny of Deloitte, who have joined us online this morning.

That ends the public part of the meeting, and we now move into private session.

11:05

Meeting continued in private until 11:46.

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