

FINANCE COMMITTEE

Tuesday 27 June 2000
(*Morning*)

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FINANCE COMMITTEE

18th Meeting 2000, Session 1

CONVENER

*Mike Watson (Glasgow Cathcart) (Lab)

DEPUTY CONVENER

*Elaine Thomson (Aberdeen North) (Lab)

COMMITTEE MEMBERS

*Mr David Davidson (North-East Scotland) (Con)

Rhoda Grant (Highlands and Islands) (Lab)

*Mr Adam Ingram (South of Scotland) (SNP)

George Lyon (Argyll and Bute) (LD)

*Mr Kenneth Macintosh (Eastwood) (Lab)

*Mr Keith Raffan (Mid Scotland and Fife) (LD)

*Dr Richard Simpson (Ochil) (Lab)

Mr John Swinney (North Tayside) (SNP)

*Andrew Wilson (Central Scotland) (SNP)

*attended

WITNESSES

John Henderson (Scottish Executive Finance Division)

John Wastle (Scottish Executive Education Department)

Eliot Leviten (National Galleries of Scotland)

CLERK TEAM LEADER

Callum Thomson

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Sean Wixted

LOCATION

Festival Theatre

Scottish Parliament

Finance Committee

Tuesday 27 June 2000

(Morning)

[THE CONVENER *opened the meeting at 10:08*]

The Convener (Mike Watson): Colleagues, I call this meeting of the Finance Committee to order and apologise for the slightly late start, which was due to—shall we say—technical difficulties. I issue the usual warning about mobile phones and pagers and, in passing, I record that this is our anniversary meeting. The Finance Committee has been in operation for a full year and some of the business that we will deal with this week shows that we have had a pretty successful first year. We had many things to learn, but we have all gained invaluable experience along the way.

Item in Private

The Convener: Members have received the agenda and I would like the committee to agree to take in private item 5, which is consideration of the draft report of our inquiry into the finance functions of the Scottish Executive. Is that agreed?

Members *indicated agreement.*

Proposed Contingent Liabilities

The Convener: Agenda item 2 is on proposed contingent liabilities. We have two agenda items on that subject today.

The first item is a proposal between the National Galleries of Scotland and the Art Galleries of Scotland Foundation. We have with us representatives of the Scottish Executive finance division and education department and of the National Galleries of Scotland. I understand that Mr John Henderson of the Scottish Executive finance division will say a few words of introduction—further to the memorandum, or minute, that we have received.

John Henderson (Scottish Executive Finance Division): Thank you, convener.

Good morning. I would like to introduce Mr John Wastle, who is on my right. Mr Wastle heads the branch of the education department that has responsibility for the national institutions. On my left is Eliot Leviten, who is the accountant with the National Galleries of Scotland. I am the assistant director of finance in the Scottish Executive finance division and have responsibility for, among other things, spending by the education department.

I do not want to say too much more. I hope that the memorandum sets out the background of why the contingent liability is being pursued. It seems to us that the National Galleries of Scotland is in a disadvantaged position in relation to the Crown Estate commissioners and the lease for the Scottish National Gallery of Modern Art.

In recent years there have been rent reviews that are tied into the value of office accommodation in central Edinburgh, which has been rising quite markedly. If that rise continues at the same rate, or even at a lesser rate, the National Galleries of Scotland will require very high sums to honour its commitments under the lease. Therefore, consideration should be given to alternative approaches to achieve better value for money. The alternative that the National Galleries of Scotland has put to the Scottish Executive is the establishment of a foundation that would buy the property and buy out the terms of the lease from the Crown Estate commissioners.

A bank loan is required to finance that purchase and the banks have requested that the Scottish Executive provide a guarantee to underpin that bank loan. We think that that is reasonable in the circumstances, as that would ensure that the foundation has good terms from the bank.

We have considered carefully the risks involved, as we do not want the contingent liability to arise.

We think that the risks are negligible and that the National Galleries of Scotland will be in a position to honour its new lease with the foundation, because it gets grant in aid from the Executive. Therefore, the foundation will have the funds to meet its commitments to the bank under the bank loan.

That is why we seek the Finance Committee's approval to give that contingent liability. We think that that approach represents good value for money and that the risks of the contingent liability being called are negligible and worth taking.

Andrew Wilson (Central Scotland) (SNP): This is an interesting financial model, in principle. I will ask three quick questions to clarify one or two points. What is the status of the foundation? Is it external to the public sector?

John Henderson: Yes, it is external.

Andrew Wilson: So it is an off balance sheet manoeuvre by the Executive.

Does having the contingent liability against an external organisation have any implications for our position in relation to the Treasury?

John Henderson: No.

Andrew Wilson: What is the limit of the contingent liabilities into which the Executive can enter? Is there a legislative limit?

John Henderson: There is no legislative limit—it is up to the Parliament to decide whether approval is given to the Executive to enter into such liabilities.

Andrew Wilson: Is there no policy constraint on such a manoeuvre?

John Henderson: If one were being theoretical about the situation, one clear constraint would be the overall size of the budget available to the Executive for expenditure. However, £7 million is a relatively small part of that overall budget.

Andrew Wilson: Quite.

Why is the loan to purchase the property £7 million if the current value of the property is £1.5 million?

John Henderson: I will ask Mr Leviten to explain that.

Eliot Leviten (National Galleries of Scotland): The real reason is that the lease that we have with the Crown Estate, which was negotiated some 23 years ago by the Property Services Agency, is exceedingly—incredibly—onerous. The main element of the lease that makes it onerous is the sum of £1.5 million that was advanced 23 years ago. The initial interest rate charge of 8 per cent has been linked to changes in commercial rents in central Edinburgh. The lease includes the right to

repay the £1.5 million loan, but the capital sum that had to be repaid was also tied to commercial rent levels in Edinburgh. At the moment, we are paying 28 per cent interest on that £1.5 million and we must repay £5.5 million if we want to redeem the loan. Otherwise, we will have to keep paying for the remaining 76 years of the lease. Basically, the £7 million is the £5.5 million that we would be required to pay to redeem the loan plus £1.5 million, which is the approximate value of the building. The sum of £7 million represents very good value.

Andrew Wilson: Whoever made that decision 23 years ago has been proved somewhat imprudent.

Eliot Leviten: I agree.

10:15

Mr Keith Raffan (Mid Scotland and Fife) (LD): Who made the decision 23 years ago?

Andrew Wilson: And where do they live? [*Laughter.*]

Eliot Leviten: The Property Services Agency negotiated the lease exclusively; the National Galleries of Scotland did not have any part in negotiating its property ownership. I do not know who was involved, as I have been with the organisation for only five years.

Mr Raffan: Andrew Wilson has raised a very interesting point about paying £7 million for a building with a value of £1.5 million. Whichever bank is involved could then turn to the Executive for the rest of the funds.

Eliot Leviten: I have calculated that if the rent reviews for the remainder of the 76 years change in line with the changes in the past 20 years, we will have to pay £1 billion.

Mr Raffan: Have you considered moving to another building? I know the building quite well. The Crown Estate commissioners might have difficulty finding another occupier, although maybe members of the Scottish Executive could use it. It is not really a multi-functional building, is it?

Eliot Leviten: Absolutely not, but we are committed to the lease whether or not we are in the building. We would not avoid the terms of the lease if we moved out of the building.

Elaine Thomson (Aberdeen North) (Lab): The lease is for 100 years. Was the lease that was taken out 23 years ago typical of leases that are negotiated?

Eliot Leviten: The lease was perhaps more typical of what the PSA did than what other bodies did.

Mr David Davidson (North-East Scotland)

(Con): To help some of my colleagues, who seem mystified by the style of the lease, I should point out that in commercial properties in parts of England it was quite normal to link long-term loans to a particular long-term bond so that people were paying the return on the bond investment. I understand the principle, although I disagree with the reasons for doing it.

I am concerned about the fact that the whole project is geared around grant in aid remaining at a certain level to meet the flows required to establish a new system. Grant in aid is not set in stone, which is presumably why you are seeking the guarantee.

John Henderson: I want to put the matter another way. If we did not do this, the grant in aid to the galleries would have to rise sharply to ensure that it could honour its commitments under the lease. Our approach ensures that the grant in aid for this purpose does not have to change, because we have security that the size of the payments will not change over the 30 years of the bank loan. It seems very likely that, under the present arrangements, that liability will increase sharply, which means that grant in aid would have to rise just as sharply to give the galleries the funding.

Mr Davidson: That is the point. This exercise is based on grant in aid of £550,000, or whatever the figure is, which means that if we agree these arrangements, the Executive is guaranteeing that future Scottish Executives will give that money annually at whatever rate is required to receive the same net result. Is that what we are agreeing today?

John Henderson: Yes, but that money is part of an overall grant that goes to the National Galleries of Scotland. One could argue that if the Executive were not able to give a sufficient grant to the organisation to ensure that it could operate its main gallery at the Mound, the organisation would be in difficulty. The proposal presupposes that there is an organisation called the National Galleries of Scotland and that it receives a certain level of grant to ensure the operation of its collections and buildings.

Mr Davidson: I thank you for the fullness of your answer, because we are talking about two different elements of Government policy. The first is the principle of having a better deal than the present one; the other is the long-term commitment to the National Galleries of Scotland. I just wonder whether other agencies will seek similar guarantees in future.

John Henderson: Any guarantee would have to be considered on its merits. For example, is it sensible? What are the risks and benefits for the

taxpayer?

Mr Davidson: Quite.

Mr Kenneth Macintosh (Eastwood) (Lab): Who will appoint the trustees of the new foundation?

Eliot Leviten: We have played a part in suggesting who will be the trustees of the foundation. In effect, it has been independent and therefore been formed by a group of people, including the director of the National Galleries of Scotland, an existing trustee and two previous chairmen who are no longer trustees.

Mr Macintosh: Will the Executive have final approval?

John Henderson: No, it is a matter for the organisation itself.

Mr Macintosh: So it is self-appointing?

John Henderson: Yes, because it is a private organisation.

Mr Macintosh: So the Executive has to decide whether the organisation will be in charge of the repayments. The memorandum says:

"Trustees are appointed for a term of five years but are eligible for re-appointment."

That means that the trustees will either reappoint themselves or be replaced. Is that correct?

John Henderson: Yes.

Mr Macintosh: The foundation's remit seems quite wide. Will it have any other duties, apart from paying off the loan?

John Henderson: I cannot say what activities the foundation might want to undertake. It might receive donations from the private sector or others to engage in other activities.

Mr Macintosh: How will the foundation work with the National Galleries of Scotland?

John Henderson: Eliot Leviten might have something to say on that point, but I would envisage a lease between the foundation and the National Galleries of Scotland for the building, which the NGS would have to honour. Of course, as it is a contract, the foundation has to honour its side of the lease as well.

Mr Macintosh: I was just worried—well, not worried as such—about who will inspect the foundation if it takes on a wider role.

Eliot Leviten: The foundation will act as the landlord. We feel that we will have a better relationship with the Art Galleries of Scotland Foundation over the lease than we have had with the Crown Estate. Our rent will go into an account that is earmarked for repaying the foundation's bank loan, and we are taking every step to ensure

that the guarantee will not be needed.

John Wastle (Scottish Executive Education Department): There are precedents for this sort of body. For example, the National Art Collections Fund, which operates on a UK basis, is a similar charity and receives its income from the private sector and individuals. The body pays out money to help national museums and galleries acquire works of art.

Dr Richard Simpson (Ochil) (Lab): You said that the income from the National Galleries of Scotland to the new foundation will be earmarked. How tightly will that happen? If the foundation starts to undertake other activities, will it be able temporarily to employ those earmarked funds? In other words, is there a legal constraint on the money towards the bank loan?

Eliot Leviten: As both we and the bank are obviously concerned about the situation, the bank has set up a serviced account on which it has explicit rights to transfer sums from the account at its own request. We have agreed, as part of the terms of the lease, to pay our funds into the account maintained by the bank; we will not pay the money to the foundation. The bank will be able to use those funds immediately to repay the loan.

Dr Simpson: I understand your position and the bank's position, but will the foundation be able to change the nature of that serviced account?

Eliot Leviten: A term of the facility that the bank is granting the foundation is that that is how the rent will be paid.

Dr Simpson: I am not sure that that answers the question. Can the foundation change that account?

Eliot Leviten: The condition of the bank granting the loan was that the lessee would pay the money into a serviced account that is specially earmarked for that purpose.

Dr Simpson: So the lessee will have to maintain those payments or it will default.

Eliot Leviten: Yes.

Dr Simpson: That partly answers my question.

What sort of life expectancy does the property have?

Eliot Leviten: I am not really equipped to answer that question. However, as the building is very well maintained, I imagine that it has a substantial life ahead of it, certainly 76 years at least.

Dr Simpson: Will the building meet the galleries' requirements for the foreseeable future? I presume the answer must be yes, but is the building suitable for you to occupy?

Eliot Leviten: Indeed, yes.

Dr Simpson: So we are not changing a lease system purely for financial reasons but leaving you in unsuitable premises?

Eliot Leviten: No. We are very satisfied with the building.

Dr Simpson: That is fine.

Andrew Wilson: What assessment have you made of the saving you will make in bank interest charges with the Executive guarantee in place, compared with the cost without that risk cover? What is the bank doing for you?

Eliot Leviten: We are pressed for grant in aid, so it was important to us that the amount that would be required to repay the loan and pay the interest on the loan would be broadly equivalent to what we pay under the current lease. As a consequence, we required a good rate of interest from the bank. John Henderson referred to the bank offering the best rate of interest with a Government guarantee; that is perfectly true, but it is also true that the bank would not have advanced any money at all, at any rate of interest, without the guarantee.

Andrew Wilson: I understand that, but it would be useful for us to know the specific differential that a guarantee would release—would it be 1 per cent, 2 per cent, or what? Perhaps that is a question for John Henderson.

John Henderson: My understanding is that the galleries would be in virtually the same position as at present as they move to the new arrangement. They would have the same outgoings but, as I explained earlier, that position is not stable but would change over time. We are getting a substantial benefit for the taxpayer.

Andrew Wilson: It may not be germane to our discussions or decision today, but could you let us know later what percentage saving you can obtain as a result of providing an Executive guarantee? That would be of significant policy interest.

John Henderson: The way to answer that would be to show you the net present value over the terms of various scenarios, rather than for the present position. For the present position, we think the move is neutral; the advantages will accrue over time.

Andrew Wilson: Of course. That information would be of interest, in policy terms.

My final question relates to David Davidson's point. In effect, the proposed arrangement ties the Executive into funding over a period of 30 years. As far as I can see, that will bind future Executives to the funding of the galleries. Does that mean that it will be impossible to effect a policy change? I realise that such a change is unlikely.

John Henderson: The other way of looking at it is to say that the galleries have a lease that runs for 70-odd years and that if the galleries were wound up, that lease would still have to be disentangled. There is no escaping it.

Andrew Wilson: That is reasonable.

Mr Raffan: The Dean Gallery is on the other side of the street, is it not?

Eliot Leviten: Yes.

Mr Raffan: Do you own that outright, or have you entered into a similar lease for it?

Eliot Leviten: No. I think we have that on a lease for £1 a year from City of Edinburgh Council.

Mr Raffan: That sounds like a slightly better deal.

Eliot Leviten: Yes. We can afford the payments under that lease.

Mr Raffan: Is there a huge maintenance cost for that building?

Eliot Leviten: No. The building was renovated completely, with the help of the Executive and lottery funding.

Mr Raffan: In the memorandum, the minister states that the present deal represents

"very poor value for money".

Why, in that case, did it go on for 23 years? Why was the issue not addressed earlier?

Eliot Leviten: Perhaps it did not start off by being bad value. It has become increasingly—

Mr Raffan: But rental values in Edinburgh have been going up for some time. The situation must have become apparent some years ago.

Eliot Leviten: Yes. We considered the matter a couple of years ago, but it has taken some time to go through all the necessary procedures.

John Wastle: There was an examination of the deal in the early 1990s, as I recall. The cost of purchasing the building was broadly the same, at £1.5 million, but the circumstances at the time in relation to rents suggested that the buy-out of the improvement loan would cost in the region of £6 million or £7 million. That would have made the cost of the whole deal £9 million or perhaps even £10 million. As we can see, the cost is now £7 million, so over the years there have been fluctuations in what it might take to buy out. Certainly, on the basis of the calculations that were done in the early 1990s, £10 million was not available for the buy-out.

10:30

Eliot Leviten: An important point that follows on

from that is that it is only by virtue of the fact that long-term interest rates have become lower that the proposal has been feasible. At any time, a capital sum could have been used, but the proposal is a way of reducing our long-term liabilities without any current cost and without any cost to the Executive.

Dr Simpson: Does the interest rate on the bank loan fluctuate?

Eliot Leviten: No. We would not take that chance. The rate is fixed for the whole 30 years.

The Convener: If there are no further questions, I thank Mr Henderson, Mr Leviten and Mr Wastle for answering our questions so fully. I now invite the committee to approve the contents of the minute that was submitted to us. Is that agreed?

Members indicated agreement.

The Convener: Thank you.

Before we take the next item on the agenda, I should say that I have been slightly remiss. I should have announced that we have had apologies from Rhoda Grant, George Lyon and John Swinney.

Agenda item 3 is the proposed contingent liability between the Scottish National Blood Transfusion Service and the Indian company, Life Medicare and Diagnostics PVT Ltd. Again there is a minute for this item, which members have before them. This is similar to the proposed contingent liability that we dealt with in May in respect of a Turkish company. The only slight difference appears to be in paragraph 6 of the minute, which talks of SNBTS restricting

"the mark up on the products supplied by including a clause restricted the profit margin to a reasonable figure."

I think there is a misprint there and that it should read "restricting the profit margin to a reasonable figure". I do not know what a reasonable figure would be but, with that exception, the minute is very much the same agreement that we dealt with last month.

Again, we are required to approve the minute. Does anyone have any comments?

Mr Davidson: We covered this pretty thoroughly last time around. I presume the clerks have done a comparison with the previous case that we discussed. Have they come up with any differences?

The Convener: Only the point that I mentioned, in paragraph 6.

Mr Davidson: On that basis, the only thing I would be concerned about would be linking the pricing to any particular future Indian Government policy. I would like to be certain that the wording ensures that there is an uplift that is reasonable to

SNBTS, so that there is a return on whatever it does to cover its costs and that it does not get into a loss-making situation.

Dr Simpson: I think that is a misunderstanding. The minute is saying that the control on the prices is at our end, to prevent SNBTS being exploited. That is absolutely appropriate. The Indian Government has lifted price restrictions on a number of its drugs. India has gone out of a pharmaceutical price regulation scheme arrangement because its market is not working very well, but the Indian company could put a 100 or 200 per cent mark-up on our products. The minute is saying is that we will control that mark-up. There is nothing in the minute about controlling the price at which we sell to the Indian company.

Mr Davidson: I do not disagree with Richard Simpson at all on that, but my concern is that if any contract includes an upper limit—even a voluntary upper limit—it should similarly include a recovery of costs minimum.

Mr Raffan: My only concern is that the minute says:

“SNBTS will seek to restrict the mark up”.

It will “seek to” do so, but it cannot guarantee that it will be able to. There is some uncertainty in that phrase.

Dr Simpson: I assume that the contract will be written in such a way that if the mark-up became unreasonable, the contract would be cancelled.

The Convener: That seems to be the intention of the SNBTS. It “will seek to restrict” the mark-up, and if it does not get that it will not go ahead with the contract.

Dr Simpson: That is correct, and it is an excellent principle on which to operate.

Mr Raffan: I would prefer that to be more clearly stated.

The Convener: We have one further meeting before the recess. We could ask the SNBTS, without requiring its presence here, to confirm in writing that if it does not get those assurances on profit margins it will not proceed with the contract.

Dr Simpson: Or that it will have an opt out.

The Convener: We should phrase the question differently and ask what its response would be if it did not get the assurances that it is seeking. We can deal with this again next week. We will not take a formal position at the moment.

Budget Process Draft Written Agreements

The Convener: Item 4 concerns the written agreements on the budgeting process, which have been circulated to you. You have also received a copy of the minister’s letter to me, with the proposed addition. It was uncontroversial, so I took the decision on behalf of the committee, which I hope you will endorse, to agree to it. That enables the agreement to be addressed in the debate on the budget proposals tomorrow.

Three motions will be taken without debate tomorrow afternoon; two in my name and one in the name of Andrew Welsh on behalf of the Audit Committee. Although they will be taken without debate, there will of course be the opportunity to raise in the general debate any matters relating to the agreements. I will certainly refer to them in my remarks.

I hope that the committee is happy with the agreements. It has been a long road to get these agreements finalised, but we have done so and the Parliament will formally approve them, I hope, tomorrow afternoon.

Andrew Wilson: Is the agreement on in-year changes to expenditure allocations in the agreements that will be formally approved tomorrow afternoon?

The Convener: Yes.

Andrew Wilson: What else?

Callum Thomson (Clerk Team Leader): The agreement on the budgeting process and the agreement on budget documents. From the audit perspective there is the agreement on the format of accounts and powers of direction.

There is the agreement between the Finance Committee and the Scottish Parliamentary Corporate Body on budgeting arrangements and, likewise, the agreement between the Finance Committee and the Scottish Commission for Public Audit, which the committee discussed last week.

Andrew Wilson: I am not sure whether my records are amiss. Have we signed off the final agreement on the budget process? Did the Minister for Finance agree to everything?

The Convener: Yes.

Andrew Wilson: That is the end of a long year.

The Convener: Yes, but one that has been fairly successful in that we are where we want to be; perhaps not quite as soon as we would have liked, but we have got there. Is there anything else on item 4?

I have been advised that I should get formal agreement on the in-year changes to expenditure allocations agreement. Is that agreed?

Members *indicated agreement.*

Scottish Executive Finance Functions

The Convener: As we previously agreed we will go into private session to consider agenda item 5.

10:38

Meeting continued in private until 12:09.

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