

AUDIT COMMITTEE

Wednesday 7 November 2007

Session 3

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AUDIT COMMITTEE

6th Meeting 2007, Session 3

CONVENER

*Hugh Henry (Paisley South) (Lab)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*Claire Baker (Mid Scotland and Fife) (Lab)
*Willie Coffey (Kilmarnock and Loudoun) (SNP)
*George Foulkes (Lothians) (Lab)
*Jim Hume (South of Scotland) (LD)
*Stuart McMillan (West of Scotland) (SNP)
*Andrew Welsh (Angus) (SNP)

COMMITTEE SUBSTITUTES

Derek Brownlee (South of Scotland) (Con)
James Kelly (Glasgow Rutherglen) (Lab)
Iain Smith (North East Fife) (LD)
Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Robert Black (Auditor General for Scotland)
Caroline Gardner (Audit Scotland)
Barbara Hurst (Audit Scotland)

CLERK TO THE COMMITTEE

Tracey Reilly

SENIOR ASSISTANT CLERK

Joanna Hardy

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 5

Scottish Parliament

Audit Committee

Wednesday 7 November 2007

[THE CONVENER *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Hugh Henry): Good morning and welcome to the sixth meeting of the Audit Committee in this session. I have received no apologies and everyone is now here.

Item 1 is to seek members' agreement to take items 7 and 8 in private. Is that agreed?

Members *indicated agreement.*

Section 22 Reports

10:01

The Convener: Item 2 is on section 22 reports. We will consider first "The 2006/07 Audit of the Scottish Arts Council" and then "The 2006/07 Audit of the Western Isles Health Board". I invite the Auditor General for Scotland to present his report.

Mr Robert Black (Auditor General for Scotland): As, I am sure, members of the committee are aware, I may make reports to accompany the accounts laid in the Scottish Parliament once they have been audited. I have decided that I should make the section 22 report on the Scottish Arts Council's accounts for 2006-07 to draw to the attention of Parliament the auditor's qualified opinion. The qualification relates to the council's failure to comply with the requirement in the "Scottish Public Finance Manual" to obtain the approval of the Scottish Executive for certain payments that were made to its former chief executive when he terminated his employment. The council made such payments following an approach by the chief executive to leave his post on early retirement.

The Scottish Arts Council and Scottish Screen are to be merged to form a single body called creative Scotland. Since February 2007, their boards have been operating as a joint board. The joint board agreed that the early departure of the council's chief executive would help the two organisations work more closely in advance of the merger, so they set up a sub-committee to review the options for terminating his employment. The sub-committee rejected the early retirement proposal because it decided that the sum involved, which was £120,000, was too great. As an alternative, it recommended that the chief executive resign voluntarily in exchange for payments totalling £70,000. That comprises £40,000 in lieu of taxable salary for outstanding notice and an ex gratia payment of £30,000.

Under the "Scottish Public Finance Manual" rules, compensation is payable only in exceptional circumstances to staff who resign from their posts voluntarily. Any such payments must be approved by the Scottish Executive finance officials before any offer is made. The auditor did not find evidence that the Scottish Executive had given approval and concluded that the council had not complied with ministerial guidance in that respect. The auditor has qualified the regulatory opinion, which is the opinion about whether all spending has been in accordance with statute and required guidance.

In its report to me, the council's board auditor also commented on other aspects of governance arrangements relating to the agreement to terminate employment. He noted in particular that the council did not have a remuneration committee and that the important meetings of the joint board and its sub-committee were not minuted, which meant that major decisions were not taken in an open and transparent way.

The auditor has made a number of recommendations to improve the governance arrangements, which the council has accepted. We will be following up progress on those recommendations as part of the on-going audit process. My colleagues and I are happy to answer any questions.

The Convener: Thank you. The report highlights a couple of different issues. One is that small publicly funded organisations often have insufficient expertise and knowledge to handle significant sums of money. What systems are in place and what guidance does the Scottish Executive provide to such organisations? What are the rules within which they operate? Are such organisations sufficiently knowledgeable? Are the rules applied rigorously? Should ministers revise the relationship with, and the advice and assistance that are provided to, such organisations to allow them to use public funds?

What sanctions pertain when an organisation or individuals in it flagrantly or blatantly use public moneys in a way that is outwith the rules? Whether in the committee or in other roles that I have had, I would be uncomfortable about being asked to nod through something that was wrong—for example, a mistake that had been made, or money having been spent that should not have been—and about taking the view that we should learn from that and move on.

We are talking about public money and a situation that should not have happened. It is clear that the Scottish Arts Council did not follow the rules, but nothing seems to have been done. Are questions being asked about the competence of the management or the board? Should the board of this or any similar organisation be left in place when it has done something wrong? Mr Black said that the Arts Council had no remuneration committee, which is but one aspect of the issue. People should be held to account when such incidents happen. It is not good enough just to say, "Oh—sorry. We shouldn't have done it. Let's move on." Public money is involved and taxpayers have a right to expect that money to be managed properly.

Murdo Fraser (Mid Scotland and Fife) (Con): I agree with the convener, particularly on the second point. I am interested in the Auditor General's view on sanctions. When a public body

has clearly breached the "Scottish Public Finance Manual" rules, what sanction applies, other than an auditor making a report to Audit Scotland and the Auditor General reporting to us?

Mr Black: We need to distinguish the relationship that local authorities have with the Scottish Government and treat that as a separate case that is not relevant to the circumstances that we are discussing, because that relationship is different from that which all other public bodies have with the Government: all such public bodies are accountable to the Scottish Government—usually to a particular minister. I am not sure whether the language has changed, but normally a sponsor department looks after a public body's interests.

It is clear that the Scottish Arts Council should have advised the relevant tourism, culture and sport group in the Executive and given it the opportunity to comment and to guide the board before the decision was taken. That did not happen. The then Minister for Tourism, Culture and Sport wrote to the chair of the joint board of the Scottish Arts Council and Scottish Screen to draw his attention to the fact that the decision breached the "Scottish Public Finance Manual". The minister said:

"The Auditor General for Scotland has a statutory duty to report whether expenditure and receipts have been incurred or applied in accordance"

with the guidance. She also said that

"should any similar circumstances arise in future, the Board ... have a responsibility for"

taking "proper account" of the guidance, which involves consulting the Scottish Executive in advance. The joint board's chair acknowledged that letter, accepted that what had happened was inappropriate and said that it would not arise again, so the issue has been left lying.

The "Scottish Public Finance Manual" is the recognised document to which all public bodies must adhere—that is not optional. The guidance on the issue is clear.

George Foulkes (Lothians) (Lab): Am I right to say that the minister's letter was sent after the event?

Mr Black: Yes.

George Foulkes: Surely officials in the department must have realised what was happening. They have day-to-day contact with the Scottish Arts Council.

Mr Black: That would best be put to the Scottish Executive—we have no knowledge of informal verbal contact. On the basis of the information that is available to us, we believe that the Executive was not aware in advance that the board was minded to make that decision.

George Foulkes: There is a general point to be made, convener. It is not within the competence of the Auditor General—I do not know whether it is within our competence—but everything that we look at seems to be after the event. We are picking up the pieces: we say that taxpayers' money has been badly spent and we discuss whether we should rap people over the knuckles, but how can we prevent such things in advance of their happening?

Surely officials in the appropriate Executive Department must know what is happening. They are in regular contact with the non-departmental public body, or they ought to be. Sometimes, these things are reported in the newspapers and people know that they are happening. I have a bee in my bonnet because I think that money is being spent ultra vires at the moment, but nothing can be done about it. After the event, Mr Black can look into the matter and say, "Hey, that shouldn't have been done." By that time, however, it is too late and the taxpayer has had to foot the bill.

The Convener: I accept the point that George Foulkes makes. In my opening remarks I identified two separate issues. First, what can we do to ensure that bodies such as the Scottish Arts Council have regular systems in place, receive adequate support and understand the guidelines? How can we ensure that the officials in the Administration are adequately training and preparing people to know what is expected of them? That is about trying to prevent something from happening.

Secondly, there is an issue about holding people to account when they use public funds inappropriately. I am uncomfortable with our simply noting that money has been wrongly spent and moving on in the hope that it will not happen again. If nothing ever happens—if no one is ever held to account—why would we expect anyone to worry in the future if anything goes wrong again?

George Foulkes: Will we consider under item 7 how we might deal with the issue?

The Convener: Yes.

Andrew Welsh (Angus) (SNP): We are discussing matters after the event, although before Audit Scotland existed, none of this was ever known about. One of the strengths of the Scottish Parliament and its investigatory system is that the committee can rely on receiving reports from Audit Scotland. In that way we can, I hope, cure the problems.

There has been a clear failure to follow the "Scottish Public Finance Manual" rules. I seek advice on the consequences of that, legal or otherwise. Obviously, the body must now follow those rules and we must ensure that that happens. However, there was, or is, an organisational

problem in that there is no remuneration committee and no minutes of decisions exist. The matter can be dealt with and the body must do something about that. There are also practical issues, which the convener mentioned. What sanctions can the committee encourage to be taken against the organisation so that it mends its ways and conducts its business properly?

The other issue is how we can monitor the problem as a live matter. Surely, that is up to the appropriate Government department—we should seek reassurances that, where monitoring is taking place, it is working. What has happened is clearly unacceptable, so the committee should seek reassurances that things will change.

The Convener: Andrew Welsh makes a valid point that echoes the point that George Foulkes made. Administration officials have a responsibility to ensure that there is adequate and proper liaison with such outside organisations, so that we are not left to pick up the pieces after the event. It is not good enough just to allocate the money and say that we will bother with the organisations only once something has gone wrong. Everything must be in place to ensure proper rigour.

Jim Hume (South of Scotland) (LD): I agree with what has been said. I have sat on Scottish Enterprise boards and endured many boring days of good governance. Unfortunately, there is not much of an excuse for what has happened in this case, so we must act strongly.

I have a point about the £70,000, £40,000 of which was an exchange payment in lieu of taxable salary and £30,000 of which was an ex gratia payment. Did both those payments go against SPFM advice, or was it just the ex gratia payment that did so?

10:15

Mr Black: Both payments were unusual because they amounted to payment of compensation to someone who had intimated that he wanted to resign voluntarily. Neither element was an entitlement.

Willie Coffey (Kilmarnock and Loudoun) (SNP): Further to Jim Hume's question, does the SPFM contain guidance on acceptable levels of remuneration? I know that you said that such guidance did not apply in this case, but are there guidelines about what level of payment is acceptable? It seems that the SAC arrived at two fairly arbitrary and significantly different figures during its proceedings.

Mr Black: As I think I mentioned, one of the problems is that there are no adequate minutes to refer to, from which one could better understand the reasoning of the people on the board when

they took their decision. I hesitate to use the word “arbitrary”; I am sure that they thought about what they were doing, but we are not party to what was in their minds because it has not been recorded. The fact that the payment was purely discretionary and outside normal provisions means that no guidance would have been appropriate.

Andrew Welsh: Could a case for the defence be that the SAC thought that it was making a saving to the public purse, albeit that it was not following the rules or the proper procedure? It would be interesting to find out what motivation the decision makers had, although they should—regardless of that—have acted within the rules. I hope that we act to receive assurances that the organisation will be run properly. We are talking about the problem of quangos—Scotland is quangoland—many of which appear to operate in their own ways. Before Audit Scotland existed, quangos could do that, but now, thankfully, their actions are picked up in audit. That must be translated into ensuring that the SAC follows proper procedures in its live activities throughout the year.

The Convener: I understand that, but I suggest that the problem does not lie only with quangos. In Government—I speak as someone who knows what goes on—decisions are often made that are allegedly in the public interest and which should lead to savings, but which turn out to benefit a small group of people who happen to be at the centre of things. That happens in local government, too. There has been publicity recently about the case of one local authority that I am sure is by no means unique in having made financial decisions that were supposed to be about long-term savings, but which happened to benefit a handful of individuals.

The only common feature of such cases is that, in one way or another, the public purse—or, in some cases, pension schemes—ends up picking up a significant part of the tab. There is a bigger issue at stake and it would be wrong to suggest that the fault lies purely with the non-departmental public bodies.

Andrew Welsh: The committee has come across the issue before, whereby people in an organisation make genuine efforts to deal with a problem, but lack the experience or the back-up to do so. We have found that in further education. In that case, the Scottish Further Education Funding Council was able to give advice.

Is guidance available to people who run organisations such as the SAC and who find themselves in a similar situation, whereby they lack the necessary expertise? Do they have their legal advisers or a system to which they can turn? If we set up such bodies and just leave them to get on with things, in some cases they will simply lack

the necessary expertise. If there had been a mechanism through which the SAC could have sought the advice that it needed to help it to follow the rules, that might have pre-empted the problem.

Mr Black: Advice would undoubtedly be available from the Scottish Executive should such bodies seek to obtain it. Part of the problem in this case is that, because the Scottish Arts Council did not contact the appropriate department in advance, it could not obtain the best possible advice. It would probably be unreasonable to expect all public bodies in Scotland, including the very smallest, to have in-house advice on all issues.

Jim Hume: We have Audit Scotland’s report. Has the Scottish Arts Council responded to Audit Scotland officially in its own defence, or has it put its hands up and said sorry?

Mr Black: The Scottish Arts Council has received the final audit report and has had the opportunity to comment on the report that I have made to Parliament. I think the council accepts that the report is accurate. As I think I mentioned earlier, the chair of the council has written to the relevant minister, acknowledging that the matter was not handled properly.

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