

FINANCE COMMITTEE

Tuesday 16 September 2003
(*Morning*)

Session 2

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FINANCE COMMITTEE

6th Meeting 2003, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Kate Maclean (Dundee West) (Lab)

*Mr Jim Mather (Highlands and Islands) (SNP)

*Dr Elaine Murray (Dumfries) (Lab)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*John Swinburne (Central Scotland) (SSCUP)

COMMITTEE SUBSTITUTES

Mr Adam Ingram (South of Scotland) (SNP)

Gordon Jackson (Glasgow Govan) (Lab)

Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Arthur Midwinter (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Barbara Brown (Scottish Executive Justice Department)

Lesley Napier (Scottish Executive Justice Department)

Merlin Kemp (Scottish Executive Justice Department)

Lindsey Anderson (Crown Office and Procurator Fiscal Service)

Stephen Woodhouse (Crown Office and Procurator Fiscal Service)

CLERK TO THE COMMITTEE

Simon Watkins

Susan Duffy

SENIOR ASSISTANT CLERK

Jane Sutherland

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 16 September 2003

(Morning)

[THE CONVENER *opened the meeting at 10:02*]

The Convener (Des McNulty): I open the Finance Committee's sixth meeting of this parliamentary session. I welcome the press and the public and remind members to switch off their pagers and mobile phones. We have received apologies from Fergus Ewing.

I welcome Susan Duffy, who has been appointed as the new clerk to the committee. Many members will know Susan from her previous role as senior assistant clerk to the Education Committee and I hope that she enjoys her time with the Finance Committee.

I pay tribute to the outgoing clerk, David McGill, who was an outstanding clerk to the committee and did a tremendous amount of work, not only in facilitating business, but in thinking strategically and critically about the budget process. David did much work with Arthur Midwinter and me on developing the agenda. His contribution was considerable and he will be missed, but I am sure that Susan Duffy will fill the gap ably. If members agree, I would like to write to David to thank him on behalf of the committee for his contribution and to wish him good luck for the next step in his career—he is taking up leadership of the chamber office business team, so we will see him in the chamber.

Budget Process 2004-05

10:04

The Convener: Agenda item 1 starts our consideration of the draft budget for 2004-05, which the Executive published last week. The committee has an introductory paper from the clerk and two papers that the budget adviser prepared. Members should also have received copies of the draft budget directly from the Executive. Although the draft budget looks large and intimidating, it is only about two thirds of the size of the documentation that we had last year, so we are making inroads into how the Executive presents the documents.

I ask the adviser, Arthur Midwinter, to introduce the budget and his analysis of it. After that, members will be invited to direct questions to him.

Professor Arthur Midwinter (Adviser): I will begin the process of probing and questioning the assumptions on which the budget was built and I will flag up points for clarification and issues that we might raise with ministers when they give evidence.

We have an informal arrangement with the Executive that means that I drafted my paper for the committee on the basis of a draft of the draft budget, rather than the published draft budget. As a result of decisions that have been taken in the past fortnight or so, minor differences might appear in sums of money. The only difference that I could find related to the Food Standards Agency, which had a modest increase over the figures with which I worked; the rest of the figures seem to be broadly in line with the draft that I had. If members find something that does not square with the paper that I have written for them, the reason is that I had access to the published draft budget only on Friday, after the speech by the Minister for Finance and Public Services, and I had a hectic weekend in London ahead of me.

I will take my time going through the budget. Some technical aspects might be difficult for members who are scrutinising the budget for the first time, so I will go slowly. If members have any queries, they should stop me.

First, I will talk about the impact of resource accounting and budgeting this year. At the committee's away day in Dunkeld, we were told about a change in the level of capital charges, which is an assumption that is built into the budgets and is based on capital expenditure. Members will remember that we had a lengthy discussion of RAB at the away day. As the draft budget makes clear, that change has no implications for cash, but it makes comparisons between this year's draft budget and last year's

budget inappropriate, because they are on different price bases. All the figures for this year are lower than those in last year's budget, because the provision for capital charges has reduced from 6 per cent to 3.5 per cent. If members intend to make comparisons, they should do so with 2003-04—the first year in the draft budget—as their baseline. They should not look back at last year's budget and say, "This looks really different. Why?"

Having said that, I have several queries about the data that I want to be raised with the minister. For the three budget years ahead, in which the changes take place, all the figures are smaller than those in the same document for last year, despite increased resources.

Mr Jim Mather (Highlands and Islands) (SNP): Was no thought given to restating last year's figures in RAB format so that we could have a comparative baseline?

Professor Midwinter: I am not aware that the Executive considered that. If you want, we could ask for that at our meeting with the Executive.

Mr Mather: That would be sensible.

Professor Midwinter: Obtaining not only last year's figures, but five years of consistent figures, is on our agenda, given that four different price bases have been used. We will raise that with the Executive at our meeting. My experience is that when the Executive is about to publish the budget, everything is in such a rush that the Executive does what it needs to do to publish the document.

Table 0.08 of the draft budget, which concerns annually managed expenditure, shows a significant reduction from last year. I am not sure whether that is the result simply of the capital charges change. The document does not contain enough information to tell us the reason, so I flag that up as a matter that we might want to raise with the minister.

Kate Maclean (Dundee West) (Lab): What was that?

Professor Midwinter: AME is annually managed expenditure, which is not subject to the three-year planning process. We have the figures every year, which are negotiated directly with the Treasury. Some kind of accounting change will have taken place, but I do not think that we have an explanation for it.

The other change that I draw to the committee's attention is the minister's announcement of an increase in the reserve for each year. Perhaps most members will have noticed that. The increase is fairly significant—around £100 million. Personally, I believe that that is a sensible move, given the lowering expectations for future spending programmes. For the moment, I want to

just note that change, but I will return to it when we discuss the uniform business rate, as the two things are linked.

The Convener: When the minister talked about the use of end-year flexibility, he said that some of the money would go into the portfolio budgets over a three-year period. That is a new thing that we have not seen previously. Have you managed to disentangle the various elements that might be involved with that?

Professor Midwinter: My understanding is that, until this year, EYF moneys have been used for the following year. This year's EYF is a 2003-04 supplementary allocation that is based on 2002-03 outturn. The normal assumption has been that EYF moneys must be used in the following year. My guess is that the minister has taken all the resources that are available and said that some will be left over. My understanding is that EYF should be used for non-recurring expenditure and so would be used in the allocations that have gone to departments. However, the figures do not quite tally, so we will need to come back to the issue and get an explanation from the minister.

The Convener: One of the committee's concerns was that, because of the lateness of this year's EYF announcement, the recipient departments and agencies would have only six months in which to organise the spending. In a sense, we need to ask questions both about the time scale—whether departments must spend the allocation within a one-year period that is, in effect, only six months—and about how the roll forward will work.

Professor Midwinter: The EYF announcement is usually made in June. In addition, the document does not tell us whether the 75:25 split of previous years will apply. We will need to have a fairly good session with the minister on EYF if we are to understand that fully.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): From the answer to the question that I asked the minister after his statement in the chamber, I understood that each department has been told how much EYF it will have. The minister told me that each minister will announce to the Parliament where that money will be spent over the next period.

On the reserve, this may just be a feeling but I think that the minister is putting a stash of cash behind for the next three years. That may well be an area for increased scrutiny.

Professor Midwinter: I think that there is another source for what you describe as the "stash of cash"—although the appropriate title is contingency reserve. If EYF has been used for the reserve, that would be a change of practice. Normally, EYF is reallocated to departments for

use. That issue is the next item that I was going to mention. I will go on to that if members are happy enough with our discussion of the reserve.

I want to ensure that everybody knows that EYF is not new money. Sometimes, people present EYF as if it were an additional £500 million, but it is not additional. The EYF announcement comes to the Parliament every year because the minister must get parliamentary approval for expenditure on a yearly basis even though we have a three-year planning cycle.

To give a rough or broad judgment, less than 20 per cent of EYF is actually available for redistribution. The bulk of EYF is tied to existing commitments, such as capital expenditure and contracts. The bulk of EYF is what Peter Peacock used to call "planned underspend". It is planned underspend in the sense that the money will roll on into the new year. Sometimes, when big global sums such as £500 million are quoted in the press, the assumption is that there is £500 million in new money, but there is not. The Parliament is being asked to approve expenditure in the current year of money that was initially allocated previously. Only a small portion of that money is available for redistribution.

10:15

I want to clear up one point about table 0.09, which details end-year flexibility. I have had the benefit of obtaining a copy of Andy Kerr's speech, in which, as I recall, the minister stated that EYF allocations are down from £643 million to £394 million. Do not take that statement to mean that underspending is down from £643 million to £394 million; those figures are simply the allocations that have been made.

The breakdown for last year's figures—as yet, we have not received this year's breakdown—shows that there were four or five different sources for EYF. The clerk has requested information about the breakdown of the sources for this year's EYF. Once we get that, we will be able to make a more sensible comparison. Last year, EYF included £114 million of additional moneys in unused capital from the water industry that was outwith the direct control of the Executive departments. That was what boosted last year's figure. Members should not assume that underspending has fallen. All that the figures mean, technically, is that the supplementary allocations are smaller than last year. Is that clear?

The Convener: I must say that I am not sure that that was altogether clear from the minister's presentation.

Professor Midwinter: I know. That is why I am trying to clarify the matter. The implication was

that the Executive is managing things better as this year's underspend is only £400 million. That was how I read the situation. However, let us clarify that with the minister so that he can tell us what he actually means.

Jeremy Purvis: How does that affect the percentage that was used? The minister said, in his speech in the chamber, that EYF was 1.9 per cent of the budget. Has the percentage that has been used for EYF over the past few years been on the same basis? Cannot we extrapolate from that percentage?

Professor Midwinter: I can check that. When the Executive explains EYF to us, it distinguishes spending by Executive departments from spending by bodies that are not under the Executive's direct control. I do not know whether the EYF figure represents 1.9 per cent of the total Scottish budget or 1.9 per cent of what is under the Executive's direct control, but I can easily calculate that and drop a note to committee members.

Jeremy Purvis: I imagine that EYF as a percentage of what the Executive has available to it would be a better indicator of the Executive's financial management.

Mr Mather: Taking EYF as a percentage of overall spend may not be a good measurement of performance. It would be better to take EYF as a percentage of the flexibility that the Executive has at the outset. As we have said before, much of the budget is preordained.

Professor Midwinter: However, some of the underspend comes from a fall in demand for particular types of grant. That money could well be in the base already. When the budget is being set, the advice that is normally given to us is that there is no point in putting extra money into the legal aid budget, because if the legal aid budget needs extra money, it will get it automatically because that budget is demand led. A number of budgets are like that.

I have not quite worked out for myself the best way of measuring that competence. Perhaps we can explore that issue with the minister. In percentage terms, I think that the Scottish figure has been roughly in line with that of Whitehall over the years. However, I am not sure what the most sensible way is to discuss that issue.

Another issue is the decision to spread the windfall income of £196 million over three years. That windfall income, which comes from the Treasury's decision to assume within its budget more of the cost of housing stock transfer, frees up money within the Scottish budget. Technically, such allocations are not EYF income in the sense that we know it, but they are always dealt with at this time of the year. The decision has been made that that money will be spread over the three-year

period. My instinct is that the source of the growth moneys is the windfall income plus the growth in non-domestic rate income rather than EYF. However, we will need to look at that issue further.

We need to see the sources of the EYF moneys. We usually get that information at the time of the EYF announcement. Last year, there were four or five sources, but we have not had the information yet this year. We will get that for our meeting with the minister.

The Convener: I think that Wendy Alexander has a question.

Ms Wendy Alexander (Paisley North) (Lab): It is more of a contribution than a question.

I am acutely aware that the development of the budget process took place in a context in which the Scottish Parliament did not exist. Therefore, frankly, thought was not given to the need for longitudinal data to provide a sense of how things had changed over time. The issue was all about how there might be temporal consideration in the current year of what happened in the current year.

As we are now in the second session of the Parliament, rather than the first, we can see an emerging flaw in the process, which is becoming more acute. The convener touched on it, but there needs to be strong direction from the committee. The committee should not be asking nit-picking questions about residual sums of money. Our questions should be about how the way in which we spend taxpayers' pounds in Scotland is changing over time. At the highest level, that is what we should be accountable for. As the budget adviser has suggested, we just do not know the answer at the moment; it is impossible. If we let that situation continue, that will constitute neglect on the part of the Executive and this committee.

I am not asking the Executive to fix the situation yesterday. However, given that in a post-Enron environment we are enforcing incredibly high corporate governance and common accounting standards on the corporate world, we need to apply those same high standards to ourselves in the public sector. We should be asking the Executive to provide trend data down to at least the second level—I will take the advice of the budget adviser on that—on what has happened to public spending in Scotland in the past 10 years, rather than the past five years. Clearly, the baseline should be taken as when there was an Administration of a different political colour in 1996 and 1997. That represented one set of political choices; a different set of political choices was made in 1997 and 1998, which then changed fundamentally with the arrival of the Parliament.

As the Finance Committee in the second session of the Parliament, we should be able to address two big issues that will contribute to the

public finance process. First, what are the long-term trends? How is money being spent differently compared with the last year of the Tories? There is an obligation on the Executive, as there would be on any company in a corporate governance context, to provide consistent runs of data.

I am prepared to give the Executive six months to provide that data, if that is what it will take. If the Executive does that, this time next year we will be asking subject committees not just to say, "Does the residual 0.1 per cent of EYF change your budget?" but, "Has the past 10 years changed, for right or wrong, how we spend money in justice or in lifelong learning?" The obligation on us, as a committee in the second session, is to ask about the long-term trends. We should say to the Executive, "Guys, you have to produce this, or all protestations of transparency count for less."

The second issue, which is for later, is that only when we have obtained consistent runs of data for the Executive's own spend can we explore what happens when the money goes down to local authorities. That issue has been raised continuously in this committee. Is the needs-based distribution that is given by the Executive reflected in the spend by local authorities? Given the rising public interest in needs assessment, unless we are able to say over a 10-year horizon how spending has changed in Scotland, that debate will be mired in ignorance and confusion.

I seek the convener's advice on how we can ensure that such data are available. If we do not obtain them, the risk is that over the next four years consultations with subject committees will state, "Since we don't know what the situation looked like five years ago, we will just ask you to worry about changes at the margins this year." That would not be true to the principles of the financial issues advisory group.

The paper from the clerk for the next agenda item, on the budget process, is all about what we do at stage 2. That is not what the public want to know. People want some of the bigger issues to be addressed, such as how spending is different from 10 years ago. I cite two examples from the budget adviser's paper, the first of which is that we are spending considerably less on enterprise. Is that consistent with the stated goal on enterprise? Similarly, I see that there is a 24 per cent cut in the regeneration budget. Is that consistent with closing the opportunity gap? Those statistics would be more meaningful if we had a 10-year trend, not just a one-year trend.

The Convener: There is a lot in that. I am not convinced that the long-term trend is necessarily the key issue. There are other issues—for example how and when targets are arrived at and how meaningful they are, how money is allocated, and the way in which governance is operated

within the Scottish Executive. In addition, the first Finance Committee deserves some credit for increasing the transparency of the budget process compared with what we had before. We have made some progress on that.

In a sense, you are flagging up a philosophical and technical debate. I am happy to have that debate, the end point of which could be a recommendation within the budget report, but we might want to take time out as a committee and get some advice and assistance to identify the issues that we feel need to be taken forward.

Ms Alexander: With respect, the issue is not philosophical. I simply want 10-year data, which the Executive is prepared to say are consistent, on key areas of public spending in Scotland. Were I, or any other member, to ask for that information in a parliamentary question, the Executive would say that the information was not available. The situation is simple: we need a consistent run of data down to the second level. Without that, any discussions about trends are not rooted in data. Only the Executive can produce those data. It is wrong to expect public representatives to make decisions in the absence of consistent data on spend in key areas. We should make the Executive own the problem of getting data consistency. Without such data, I do not see how we can execute our function appropriately.

The Convener: I do not disagree. I am saying that we need to get other things. I am not arguing against data in any shape or form. I am arguing that not only do we want runs of data—

Ms Alexander: How do we secure those data, given that they are totally absent? The way to do it is to write to the Executive. I imagine that it will take months to produce the data—I will take advice from the budget adviser on that—but how do we secure a consistent run of data on spend on the major functions of the Executive?

The Convener: I am suggesting that we need to take a bit of time to be clear about what we ask the Executive for.

Kate Maclean: Can we hear from the budget adviser?

Professor Midwinter: I have mentioned this problem at every meeting since the committee was established. The issue is on the agenda for discussion at our meeting on 10 November. It would be helpful if a short note could be sent from the convener, on behalf of the committee, inviting the Executive to explore with us the practicalities of delivering that request, so that we can get meaningful data. We can get 10 years of data going back from 1999, because the data were all calculated on the same cash basis and can easily be converted into real-terms figures, but from 2000 we have four different price bases, which means

that each year a portfolio's share of the budget can rise because of the accounting change, rather than because of a policy decision.

The situation is not good enough. Officials are aware of that, because we have raised the point with them informally. The fact that the committee has had a lengthy deliberation on the issue today should be noted in a letter to the Executive, and we should ask the Minister for Finance and Public Services to ensure that his officials are briefed on the nature of the problem and what they can do about it.

Mr Mather: I am very taken by Wendy Alexander's point. It makes eminent sense, and will make us auditable by external bodies. We can make eye contact with people if we do it on that basis, especially if we take it to the next stage and start to map the data on outcomes against the spend, which would be more practical. Then we will start to see things in a proper context.

John Swinburne (Central Scotland) (SSCUP): I would like to endorse everything that has been said, particularly by Wendy Alexander. As a new member of the committee, I am disappointed to find out that we are not even tinkering at the edges; we are tinkering at the margins of the edges. We are talking about 1 per cent and yet we should be looking at the whole broad canvas.

10:30

The Convener: There seems to be a consensus that we should take Arthur Midwinter's advice on how we can push forward—

Professor Midwinter: The issue of targets is also on the agenda for the meeting with the Executive.

The Convener: That is right.

Professor Midwinter: If the committee expresses its concern before the meeting, that would give an added edge to the issue.

The Convener: Are we agreed that I should write to the Executive to highlight the issue? I am keen that targets, as well as data, should be added into the equation. I suggest that we tell the Executive that we want the meeting on 10 November to be an informal discussion of some of the issues. We can pursue the matter, perhaps by means of a note in our budget report or by some other agreed mechanism, but we will need to bear in mind the time scale of the process. Is that agreed?

Members indicated agreement.

The Convener: I suggest that, before we discuss EYF, we talk about advice to the subject committees. Does that suit you, Arthur?

Professor Midwinter: Okay, although, in the light of that discussion, I have finished with EYF. I was about to talk about the mismatch between spending and income, but if you would like to deal with advice to subject committees first, convener—

The Convener: No, carry on.

Professor Midwinter: Thank you.

My next point is linked to EYF. When the money that is applied as EYF allocations is added to the Treasury windfall and to the growth in non-domestic rate income, a total of something like £738 million is available for use—some of it in the current year and some of it spread over the three-year period. The figure of around £340 million is not EYF, but new money from last year. The sums of money are significant.

The minister announced £525 million extra spending, but he did not say precisely what the sources of that sum are. He also said that he has included around £100 million in the reserve each year, which means that, of the £525 million, £100 million is to be kept in reserve for allocation as necessary over the period. When I was reading over the figures yesterday, I found it difficult to be absolutely sure about where the money was coming from. Again, as with EYF sources, the committee needs to have a written explanation.

Most of the additional money can be attributed to the growth in non-domestic rate income. Over the past year, growth has been significant. The figure of £168 million is more than was planned for at this time last year; the yield from the tax has been greater than was anticipated. Given that all the public investment into major buildings contributes to the non-domestic rate income, that is not a surprise. The figures are guesstimates rather than accurate, however.

In order for the committee to understand the situation fully, I should point out that non-domestic rate income must be used for local authority services. I ask members to look at the local government table—I think that it is on page 173 of the draft budget. In the small print below the table, members will see an explanation of how the figures have been squared.

As I said, non-domestic rate income must be spent on local authority services. That means that, if there is a growth in the yield, it will feed into the figures showing in the table. The result is that the minister can reduce the revenue support grant to local authorities, which frees up moneys for use elsewhere in the budget. Technically, the source of the new money is the drop in the revenue support grant, but what triggers the drop is the growth in non-domestic rate income.

Members will see that estimates for NDR income have been increased by £158.61 million,

£100 million and £100 million respectively over the three years. If the figures are combined and added to the Treasury windfall figure, the total is roughly the same as the £525 million extra expenditure that was announced. I do not think that that is made explicit enough in either the budget document or the minister's statement. Members need to remember that the moneys are coming on top of significant growth in the current year.

It is clear that the decision on how to spend the extra money over the next three years is a political one. It is a matter for each member whether they support or disagree with the decision, but I want to be sure that the committee understands fully the budget arithmetic.

Jeremy Purvis: Do I understand correctly the small print underneath the table, which seems to say that the Executive plans to spend a further £100 million of NDR income in each of the two subsequent years? Is that in addition to the £525 million?

Professor Midwinter: Yes. The NDR income figure rises from £1,873.82 million in 2004-05 to £2,008.82 million in 2005-06—those are big increases. I not sure that we have fully accounted for how the £525 million is to be spent and what the sources of the money are. That issue needs to be untangled and laid out for us in black and white.

Members seem to be indicating that they are clear on the issue. The subject was not as difficult as I thought it was going to be. I will summarise by saying that, as NDR income grows, the revenue support grant falls. That releases into the system the money that is to be spent over the next three years.

As it was not possible to compare directly the two documents, I tried to look at changes in trends. Roughly speaking, on the basis of last year, I think that the trends are the same as we expected. They show real growth of around 4 per cent in each year. The pattern of increases does not seem to have changed.

The draft budget document shows significantly above-average increases in the budget for education and young people. There is a change in the tourism, culture and sport figure, as the trend was for it not to rise so quickly. There is the normal increase for health, but lower increases for justice, communities and enterprise and lifelong learning. Local government also has a lower increase, but it is hidden within the finance and public services heading, where it takes up the bulk of that budget.

The pattern is similar to last year's, apart from the communities budget, which is falling even further than I remember from last year. The committee might want to ask the minister about

the lower increases. Is the Executive really treating crime as a priority if the justice budget is not rising as fast as the other budgets are? What does the low priority that has been given to enterprise and lifelong learning tell us? Is the figure consistent with a strategy of economic growth? I do not know the answers to those questions; the issues need to be probed with the minister. Similarly, is the low priority that has been given to communities consistent with the Executive's social justice agenda, especially as the bulk of the recipients of the communities budget are people in low-income households? Those are the sort of issues that I want to flag up immediately. I am sure that members will have others.

Two different approaches are taken to cross-cutting priorities. For the benefit of members who are new to the committee, I should say that we had a lengthy discussion about whether equality was part of the policy on closing the opportunity gap or whether it was a subject in its own right. We asked the Executive to produce a separate report in the same way as it produces strategic planning documents.

Interestingly, hardly any information is given this year about the actual expenditure on closing the opportunity gap or sustainable development. Each chapter sets out a list of what I would call statements of policy and practice, with no numbers attached, no sense of whether things are to change over the years and no sense of how much is to be spent on those targets. All that we have is a "we do this and we do that" list.

The equality sections are the best that I have seen on the subject since I became involved with the committee. A series of projects are listed, with about £400 million identified as the expenditure that will help to tackle equality issues. I would not have been able to tell the committee about expenditure on equality issues this time last year.

Again, we need to have a discussion with ministers about that section. I am not sure how the dynamics of the process operate in the production of the document—I am not sure whether departments can be given instructions to provide information or whether they are given broad guidance and provide what they wish. However, there is a standardisation. Almost all the opportunity gap and sustainable development sections have no money attached to them; they are all statements of policy.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I have gone through the draft budget in some detail. I focused on education and lifelong learning to see whether there was any indication that the Executive was looking ahead at what Scottish universities might require. You will have heard the university chiefs' pleas about top-up

fees, given that we have turned our back on tuition fees and so on. How will we retain the same quality of academic excellence that exists elsewhere in the United Kingdom unless the Executive starts to address that issue? Do you see any evidence of the Executive tackling the problem? You said that you had some idea about where the contingency £100 million a year might be being squirreled away. Did you have the universities in mind?

Professor Midwinter: No, I do not know what the Executive is planning to use that contingency money for. I said that I thought that it had come from the NDR income and the windfall. I was talking about the source of the contingency fund, rather than what it would be used for. In my experience, the contingency fund tends to be used mainly to deal with unforeseen events. If an unforeseen event is UK wide, we can tap into the Treasury's contingency fund; if it is a distinctively Scottish issue, we must go to our own contingency fund.

I do not think that the Executive has begun to address fees in the way that you suggested. I refer you to the paper that I wrote for the Enterprise and Culture Committee on the nature of the problem. I am sure that someone in the Executive is thinking about the issue, but it does not feature in the budget document yet. I heard on the news this morning that the principals have asked for £100 million extra. That will become an issue if top-up fees are introduced in England.

Mr Brocklebank: It is already an issue for university principals, who are trying to direct the Executive's thoughts towards that area.

Professor Midwinter: Yes, they are.

We have tried to reach a position in which the targets are more meaningful, but there are still problems in linking the objectives, the money and the targets. It is impossible to draw a clear link between them. That is a particular problem with the health budget—it is difficult to link the new moneys that are being spent and the target outcomes for improved health in specific areas, because the Executive cannot identify how much it spends on cancer care, for example. It can identify new money but cannot trace what happens overall when the money gets to the health boards.

I will use an example from last week's statement by the Minister for Finance and Public Services to illustrate the problem. He said:

"We are increasing funding to secure more police to help drive down crime".—[*Official Report*, 11 September 2003; c 1669.]

I am not sure that that connection exists. Police numbers have risen throughout my lifetime and people have been worried about crime throughout my lifetime. I am not sure that there is a direct

connection between police numbers and increases or reductions in crime. There are several similar cases in the draft budget. The problem is what social scientists call “intervening variables”. Other factors, as well as the Executive’s action, can affect such issues. It is difficult to separate the impact of what the Executive does from changes in social behaviour and economic trends, for example. There is still a problem with targets.

On 10 November, we will have a discussion about what up-to-date performance information we can get before the next spending review. Some of the targets look four or five years into the future, so it is difficult to link the budget to them, but that is the basis of the model that the Minister for Finance and Public Services supports.

10:45

Mr Mather: Scottish Enterprise is a good example of an organisation that trumpets a large number of targets—I think that there were 22 of them in its most recent report. Do we get a chance to query those targets or to suggest more meaningful targets? Some of them lack the classic criteria of being specific, measurable and commonsense, to say the least.

Professor Midwinter: When you said “we”, did you mean the committee?

Mr Mather: I am asking you whether there are any mechanisms that allow us to ask such organisations to produce simpler, crisper and more meaningful targets instead of such a plentiful array of somewhat woolly targets.

Professor Midwinter: There has been a continuing dialogue for as long as I have been involved with the committee. Every year, the Finance Committee queries targets and most of the subject committees raise issues on the targets that are relevant to them.

There is a distinction to be made. You will find that delivery agencies have limited operational targets, which they can probably meet. They say, “We will do X by such-and-such a date.” That might involve paying grants, processing applications or dealing with phone calls, for example. Those are routine tasks that have to be done, but they are not central to the budget process; they are not the strategic targets that we should be examining.

Last year, the committee commissioned work on the measurement of outcomes. That research sent back the message that measuring outcomes was a problem everywhere, that the process did not work as crisply and neatly as we would all like it to and that continuing refinement was necessary. When ministers appear before the committee, members are free to raise all those issues, with examples.

The Convener: Two kinds of issue are at stake.

The first is to do with the appropriateness of specific targets as effective measures of outcome or activity. In the first instance, that is probably an issue for the relevant subject committee to take up. For example, I presume that the Enterprise and Culture Committee will focus its attention on the lifelong learning targets.

The broader issue concerns the mechanism through which targets are set and the consistency of approach in setting targets across departments. We will need to discuss that in the longer term, in the same context as the production of longer-term data, which Wendy Alexander mentioned. That is about improving, and making more effective, the transparency and management of the budget. Perhaps we can begin to pursue that at the briefing meeting on 10 November.

Ms Alexander: I thank the budget adviser for his report. We could pursue a huge number of issues with the minister, so we need to consider how we can focus on those that are most significant. A number of such points arose from the background briefing that the budget adviser helpfully gave us.

First, we must ask the Executive whether it is acceptable that the sources of funds are not clear to an expert adviser. If an expert adviser who has spent a number of days studying the documents is unable to establish the sources of funds, what chance does a member of the general public have of doing so?

My second question is for the Minister for Finance and Public Services. How do we know that we are closing the opportunity gap if the Executive is unwilling to identify how much it is spending on that? We should ask whether the Executive will consider that issue in the coming year.

Given that growth is apparently the Executive’s top priority, we could ask for an explanation of the real-terms cuts in the funding for Scottish Enterprise, Highlands and Islands Enterprise, regional selective assistance and the European structural funds.

Finally, we should ask how much of the rise of 32 per cent in the education budget reflects McCrone costs, which were costed wrongly in the first instance. Those are high-level issues and it would be fruitful for us to pursue them.

The Convener: We will have the opportunity to pursue those issues with the minister on 10 November. We should take the opportunity of the informal briefing—scheduled, I think, for 8 October—to pursue some of the strategic issues.

Professor Midwinter: I already had those areas in mind. Before the meeting, I will prepare a draft paper on issues to be raised with the minister.

On Wendy Alexander's final point, the 32 per cent increase applies to a small amount of money. The bulk of the McCrone money is in the RSG, which is rising by only 10 per cent. Additional money is going in this year as a result of the new partnership agreement. That is to fund the continuing shortfall over McCrone. Somewhere in the small print, there are transfers involving the education central budget, which is the one that is growing, and the special funds.

Ms Alexander: So the 32 per cent is to do with the central budget?

Professor Midwinter: Yes.

Ms Alexander: I understand. Delete my previous comment.

Professor Midwinter: Spending growth in education is not nearly as big as growth overall. If we build in the RSG figure, consider higher and further education spend as education spend and put everything together—defining education in that full sense—I am not sure that education would be growing at above the average rate.

Ms Alexander: I might wish to inquire about whether such a figure is useful, when we consider total education spend in Scotland from its two departments and local authorities. I am grateful to Professor Midwinter.

The Convener: We should move on and reach a conclusion. Arthur, are you ready to discuss advice to subject committees?

Professor Midwinter: Yes. The paper that I have prepared for members is fairly straightforward. The questions provided for the subject committees acknowledge the fact that the process has been truncated in the absence of an annual expenditure report. I have tried to ask questions that seemed to relate to strategic matters of interest to the Finance Committee.

The first question is on accountability. The Finance Committee is central to the process. However, since working with the committee, I have found that outstanding issues from previous years might never be answered unless they are pursued. I advise all committees to ask ministers about things that were not resolved last year. On a number of issues, ministers promise to get back to the committee. The committee has to ensure that they do so.

The second question for each subject committee—I would now prefix the question with the words, "If the committee can understand them"—is whether the committee is content with the additional funding proposals made by the

Executive under the partnership agreement. I have tallied up the figures somewhere in my head and they come to roughly the same as the minister's figures. However, even on reading the budget document, I was not sure whether all the new resources are partnership agreement extras or whether there are other items in there. Each subject committee should consider its portfolio in detail.

Some EYF money is unallocated. Some departments deliberately do not put figures on that because they are going out to competitive tendering for the uses of the money. However, we should certainly get a view from the subject committees on their priorities for the use of any unallocated EYF that has gone back to the departments. That is one of the few areas in which the committees can have influence.

I am keen that committees should start to think about the choices within their budget portfolios. Last year, we were keen that committees should make recommendations, so we focused on the fact that there was a £1 billion growth a year for three years and on what the priorities for that would be. This year, if committees want to make any recommendations for change, they will have to say where, in their portfolios, they would make the compensatory adjustment. Those will be hard choices. I see that you are wriggling, Jeremy. Are you not happy with hard choices?

Jeremy Purvis: Liberals never are. I should not say that—it is on the record, is it? *[Laughter.]* We are stricken by conscience, you see.

There seems to be a slight inconsistency with what has been said before. The minister has said that there is unallocated money to be allocated over the next three years. The subject committees perhaps have an opportunity to say where they would like the additional spending to go.

Professor Midwinter: There is only £100 million, which is nothing when we consider that it is spread across the committees. The contingency fund looks large because it is much bigger than it was before. However, compared with the size of the budget, it is tiny.

My instincts are that things will be tough for the next couple of years. The quicker committees start to address the issues the better, so that they have clear views of their priorities. They have to know from where in the outside world the most pressure on their budgets will come.

Jeremy Purvis: The minister said that there was £500 million.

Professor Midwinter: The additional funding is over three years; it breaks down to about £200 million a year. It is not that there is an extra £500 million in one lump in the budget.

Jeremy Purvis: Plus, there is the £100 million—

Professor Midwinter: The £500 million is allocated. It is already in the new resources. The question is whether the committees are happy with that pattern of allocation or whether they would suggest something else in their portfolios. The £520-odd million is allocated apart from the additions to the reserve.

The Convener: Did you intend that people might question the appropriateness of specific projects? I am thinking of big transport projects and whether there might be a debate over Waverley station and the Aberdeen ring road or whatever.

Professor Midwinter: Not again!

Some questions from the old Health and Community Care Committee were on level 3 issues. The Executive was able to deal with them, so I see no reason why committees should not raise such issues. If a committee thinks that an issue at level 3 is a priority and—whatever other priorities there may be—it wants that issue to be dealt with, it ought to say so.

The next point in the paper is on portfolio priorities, which is new in the budget. I am not sure whether the portfolio plans are to be published. When we last met, we assumed that they would be. However, last week I was told that decisions had yet to be taken. Not publishing the plans would not be great practice.

The Convener: I will write to the minister for clarification on that.

Professor Midwinter: This is the first time that we have had a such a statement on portfolio priorities. We would want to hear each subject committee's comments on that.

The next question to be put to the committees concerns cross-cutting issues. Some committees have made pertinent comments on them in the past, but others have just ignored them as being a wider issue for the Finance Committee.

I would like Kate Maclean's advice on the last question in the paper. How will the Equal Opportunities Committee regard the new information in the budget document? Will it want to comment on the spending recommendations? The numbers are large now. In the past, the committee concentrated on the process. However, we are no further forward with mainstreaming or equality proofing than we were six months ago. At a meeting last week, we were told that the Executive had a working group that was doing studies but that there would be no immediate conclusions.

Kate Maclean: The Equal Opportunities Committee commissioned research and will, I think, bring something to Parliament when it can

get committee time. That will take things forward. I am not sure what the Executive is doing. I imagine that it will be doing work on the back of work that the committee has already done.

In the meantime, the committee will be happy that each chapter in the budget contains a new section on equality. The committee felt that, in relation to equality, the budget improved slightly every year. Some of the committee's concerns have been addressed. It was said earlier that changes were obvious in equal opportunities but not in sustainability; that is because there is an Equal Opportunities Committee that has done quite a bit of work on the issue. We would have to ask the committee, but I imagine that it would be happy with the new sections. However, that is not what the committee ultimately wants in relation to mainstreaming. It hopes that things will progress over the next year or two, but there is no expectation that things will happen straight away.

Professor Midwinter: It is interesting that we have information in the budget about progress in appointments within the Executive. That is a fairly small share of the Scottish cake. In a meeting last week, I asked someone from, I think, the equal opportunities advisory group whether the same progress could be made in the major quangos and agencies. The question was taken away to be thought about, which is extremely useful. At the moment, the Executive is talking about promoting posts for women and people from ethnic minorities, but the big-spending agencies are not saying anything.

11:00

Kate Maclean: On behalf of the Equal Opportunities Committee in the previous session, I attended the Local Government Committee and tried to get amendments accepted seeking at least an audit of all local authorities, which are huge employers. Those amendments were turned down, but the Executive said that it would consider making recommendations to quangos and local authorities about audits. The Executive also committed to auditing its staff and monitoring what is happening.

The Convener: Do members agree that the committee should forward the advice and questions to the subject committees? They might help to shape the work that we get back from those committees.

Members indicated agreement.

The Convener: Members will see from the papers that the budget timetable constrains what we can do before the subject committees report to us. There is also a recess in October. That means that we have a meeting on 30 September and one on 28 October in which to take evidence.

The paper from the clerks on stage 2 consideration makes three suggestions and I want to cover each of them in turn. The first suggestion is that we call the minister to give evidence on the EYF figures that were announced at the same time as the budget. Do members agree that we should invite the minister to attend the committee on 30 September so that we can ask questions about EYF?

Members *indicated agreement.*

Ms Alexander: Would that be in addition to the meeting on 10 November?

The Convener: Yes.

The paper also suggests that we take evidence from external commentators. That has been done in previous years and has proved to be very useful. Are we agreed in principle to take evidence from external commentators?

Kate Maclean: What kind of commentators? Could you give examples of people who have given evidence in the past?

The Convener: In the past, we took evidence from academic commentators, from representatives of business and the trade unions and from people who have a focus on the broader budgetary issues.

Professor Midwinter: We took evidence from representatives of the banks. For example, at Dunkeld we had the Royal Bank of Scotland, and the Bank of Scotland has been at the committee in the past. We have had economists considering the impact of the Scottish budget and they are useful for a discussion about economic growth.

One of the people mentioned is Peter Wood of DTZ Pidea Consulting, who is excellent. He does a lot of consultancy work for all the devolved Administrations I believe, and certainly for the UK central Government. He gives useful insights. I cannot recall our having another academic, but perhaps we did before my time.

Last year, the committee had the Confederation of British Industry Scotland considering the budget as a whole. We invited the Scottish Trades Union Congress, but it did not come, and we had Campbell Christie on behalf of the Scottish Civic Forum. We want to speak to people who do not have only a narrow interest in one part of the budget but who are interested in the whole thing.

Ms Alexander: Given the complexity of the issues, I am strongly in favour of having Peter Wood. Less is more. We need to speak to a couple of people who can go into the issues in some depth rather than to many people who can give only a superficial view. We could get such a view from any of our colleagues.

If we ask Peter Wood to give evidence because he has experience of the other devolved Administrations, we should ask him to consider as far as he can some of the long-term trends and where those budgets are going, in addition to suggesting that he focus on the committee's future cross-cutting expenditure reviews.

The Convener: The suggestion was that we take Peter Wood and another economist from one of the major banks on 28 October. That would give us a purchase on that aspect of the budget. I suggest that we focus some attention on the performance-monitoring aspects of the budget in our second evidence session. We could look at the health service, in which the process of performance monitoring is at its most developed but is also most in need of being looked at in detail. We could invite a couple of experts to give us a background briefing, so that we have a better understanding of the issues.

Professor Midwinter: We could look at whether lessons from health are capable of being used elsewhere. The health service has hundreds of performance indicators. I am not sure of the total number, but a lot of time has been invested in developing the system.

Mr Mather: In addition to that suggestion, has any thought been given to inviting a written submission from potentially interested parties such as the Scottish Council for Development and Industry, the Scottish Council Foundation, the Scottish economic policy network and so forth?

Professor Midwinter: Those who come to give evidence usually supply a paper. You want to widen the net by inviting written submissions. In principle, that is a good suggestion although, given the tightness of time, some people might have difficulty in making submissions in time.

Jeremy Purvis: I agree in principle with everything that has been said, but I wonder where we are coming from with regard to the performance indicators and the targets. I am not sure that we would gain too much by receiving evidence only from those who are, in effect, implementing them on the ground. Our role should be to talk to those who are putting together performance indicators and targets. I am thinking about NHS Quality Improvement Scotland, which is a new body that has received very little scrutiny but which is now responsible for many of those health indicators. As well as scrutinising its budget, it would be good to understand where it is coming from.

The Convener: A balance needs to be struck between taking oral evidence from people who have the particular expertise that we are anxious to get and taking submissions from other bodies. I am happy to pick up on Jim Mather's suggestion

that we ask some of the relevant bodies to make a submission on the budget.

However, I am concerned that, because almost everybody in Scotland could be said to have an interest in the Executive's budget, it might be difficult to draw boundaries or to avoid being swamped with returns. It could end up that the people from whom we need to have returns do not make them. We should be a bit cautious in starting that process, but perhaps we could work towards it.

Mr Mather: I think that it would go down well. We could specify that we are looking for a response that is fairly terse and crisp.

The Convener: Can we discuss offline the mechanics of how we take that forward? As far as Jeremy Purvis's point is concerned, I see our consideration of the performance indicators as the first step in a longer-term examination of the issues. Although it might be difficult to have a lengthy session on performance monitoring with all the interested parties in place, it would be helpful, particularly in respect of health, to have an overview of performance monitoring. We can continue to discuss the issue as we progress our task.

Do members agree on the broad format for the two budget sessions and that, at our session on 28 October, we should focus on the implementation of performance assessment in the health sector of the budget?

Members *indicated agreement.*

Draft Reports

11:09

The Convener: We move on to item 3 on the agenda, which concerns the question whether draft reports should be discussed in public or in private. At our previous meeting, we agreed to discuss in private consideration of draft reports on the Vulnerable Witnesses (Scotland) Bill, but I agreed to put the wider issue on the agenda for discussion at this morning's meeting.

As I understand it, the legal situation is that it is up to the committee to decide whether it considers draft reports in private or in public. Although the committee can consider reports in private, it must decide formally to do so. That safeguards against committees acting inappropriately.

Across the range of parliamentary committees, the general pattern is that draft reports that have been prepared by clerks—and, occasionally, advisers—are dealt with in private. That ensures that as far as possible the committee achieves consensus and clarity in developing its report. Indeed, when I raised the matter at the Conveners Group away day on Friday—which most conveners attended—the unanimous view was that consideration of draft reports should usually be in private. Brian Monteith made perhaps the most interesting point when he mentioned that, although consideration of draft reports can be taken in public, doing so generally promotes a party-political approach and allows members to divide down party lines and to state party views. If the objective is to achieve consensus on a report within the committee, that is better done in private.

I believe that, as most draft reports that we discuss will be concerned with the scrutiny of financial memorandums to bills, we will usually strive to achieve consensus in our consideration. In fact, there have been very few party-political or partisan divisions over these reports. As a result, I feel that it is better to deal with draft reports in private with the safeguard that we must agree to do so in each case. If members feel differently, they can raise their objections in relation to the specific report that we are considering.

Unfortunately, Fergus Ewing, who raised the matter, is not present today. However, I am very happy to take comments from other members.

Mr Brocklebank: At heart I am very sympathetic towards what Fergus Ewing is trying to achieve, because the more transparency that we have in parliamentary committees, the better. However, this committee deals with financial matters and always discussing draft reports in public might occasionally give rise to political grandstanding.

Certain members will feel that it is important to discuss a particular report in public. However, if you are suggesting that we take each matter on its own merits, I think that we should probably retain the right to discuss reports in private.

Mr Mather: I think that it should be broadly assumed that these matters will be considered in public. Indeed, we could do so and discipline ourselves against any possibility of political grandstanding by exposing that behaviour for what it is. In any case, given that we are all under the scrutiny of the Alf Youngs and Bill Jamiesons of this world, the more we do in public, the better.

Kate Maclean: I understand why Jim Mather makes those comments. However, from my experience of committees, I think that there would be far more political divisions if we discussed reports in public. Committees end up with far better reports if draft reports are discussed in private because we can sit down, take on board one another's points of view and seek advice from clerks on specific technical issues. All those things would be harder to do in public.

This discussion is a bit of a waste of time, because the fact that the committee must agree whether to take discussions in private item by item means that we will probably have to vote every week on whether to take an item in private or public. The experience has been that committees produce far better reports and can feed into the legislative process better if they discuss draft reports in private, which is probably why the Conveners Group reached its conclusion at its away day. The statistics from the past four years show that committees meet far more in public than they do in private. The record of many committees is very good.

The Convener: That includes this committee's record.

John Swinburne: Everything should be in public. I am totally opposed to any privacy. If anyone has anything to hide, they should be exposed. That is what the committee should be all about.

11:15

Kate Maclean: I object to that. It is not a case of people having something to hide, because the reports that are discussed are published, ultimately. I object to Mr Swinburne's insinuating that people are being underhand, because that is not the case.

John Swinburne: The general public's perception is that things happen behind closed doors. Everything should be overt. If someone is grandstanding, so be it. They can be exposed for grandstanding. Everything should be in the open.

Ms Alexander: I share Kate Maclean's view. The Parliament's status is enhanced when committees reach unanimity on an issue, despite the fact that, with perhaps four exceptions, everybody in the Parliament was elected with a party-political label. I will pose an analogy to John Swinburne. The appropriate analogy comes from a court of law. When a jury withdraws to consider its verdict, the verdict is certainly public, but the evidence is discussed in private in an attempt to reach a majority view. The analogy is not total, but it has some bearing on what we are discussing.

Of course it is proper that all evidence should be given in public, but discussion in private provides the space in which to see whether a majority view can be reached. In any group dynamic where a majority view is sought, give and take are required. Although views are strongly felt on both sides of the argument, it would be a mistake to portray discussions in private as secrecy. When a jury withdraws to consider its verdict, that is not secrecy; that is an attempt to reach unanimity. At their best, parliamentary procedures parallel that situation when the committee withdraws to consider whether it can reach unanimity on an issue that has hitherto been bedevilled by party advantage. That does not represent a desire for secrecy per se.

The Convener: We need to reach a conclusion. We might have to have a vote, but I suggest that the committee agree that although there are sometimes good reasons for taking draft reports in private, the committee will continue its current practice of considering how to deal with reports case by case. If anybody has an alternative proposition, they are open to make it. Failing that, do we agree to my proposition?

Members indicated agreement.

Vulnerable Witnesses (Scotland) Bill: Financial Memorandum

11:19

The Convener: Agenda item 4 is on the financial memorandum on the Vulnerable Witnesses (Scotland) Bill. I apologise to the witnesses from the Scottish Executive and the Crown Office for keeping them waiting and thank them for coming along. Everybody now has a name-plate in front of them so I shall not go through the process of reading the names out. Do the witnesses want to make a brief introductory statement?

Barbara Brown (Scottish Executive Justice Department): We have no particular desire to make an introductory statement. We are happy to go straight to questions and to help the committee as much as we can.

Stephen Woodhouse (Crown Office and Procurator Fiscal Service): The same applies for us.

The Convener: Thank you. The first set of questions is from Jeremy Purvis.

Jeremy Purvis: Will you run through the consultation that was carried out when you put together the financial memorandum? In particular, what was your relationship with the Scottish Legal Aid Board?

Merlin Kemp (Scottish Executive Justice Department): We worked closely with the key agencies. The table on the back page of the financial memorandum gives a breakdown of where the main costs fall. We worked closely with colleagues in the relevant agencies on all the cost areas that are listed. In particular, we worked with the Scottish Court Service and the Crown Office and with colleagues in the Scottish Executive Justice Department who deal with the police and legal aid. We also dealt directly with the Scottish Children's Reporter Administration.

As part of our broader consultation, from the beginning of the year we had a series of meetings with a wider range of bodies, including organisations from the voluntary sector, such as Scottish Women's Aid and the rape crisis network. We discussed with those organisations in a more general sense the impact of the bill in policy and financial terms. That is the general context of the consultation.

You asked about consultation with the Scottish Legal Aid Board—I know that the issue came up at the committee's meeting last week. We did not formally consult SLAB. We worked closely with our Justice Department colleagues, who work on a

daily basis with officials from the board, and we came up with the costings for the financial memorandum in partnership with those colleagues.

We felt that, in our consultation, we had done everything that we needed to do and a bit more. We genuinely tried to cast the net as wide as we could.

Jeremy Purvis: If you were carrying out the consultation again, would you consult the Scottish Legal Aid Board? SLAB may not account for the lion's share of the costs—the legal aid figure in the financial memorandum is limited, but the sum is still substantial.

Merlin Kemp: Yes, I probably would. Obviously, it would also be up to SLAB to decide to what extent it wanted to be involved in the drafting of the financial memorandum before the document was placed before the Parliament.

I see the document as just the beginning. Looking forward, I think that there is a huge amount of work to be done. Some of the estimates in the document will be clarified as implementation goes on. For future work, we definitely want to involve all the key bodies, including SLAB.

Jeremy Purvis: You will be aware that the board has doubts about the estimates that are given for summary cases.

Merlin Kemp: SLAB raised a number of issues, including its concern that we had not costed for the number of defence witnesses. In fact, we tried to assess the overall number of witnesses, so in a sense we have costed for the sum total—there is no increase in the number of witnesses.

We have also assumed that, in general, the vast majority of witnesses will be Crown witnesses. I think that that is borne out by anecdotal evidence from the Crown Office. In the research that I did in association with colleagues, we looked at things such as the witness service database, from which it appeared that the very small number of witnesses who could be vulnerable were defence witnesses.

A range of factors must be taken into account. As for the costs in summary cases, the concern was that if many vulnerable witnesses were routinely being called, the fixed-fees payment as it operates now might not cover the work, so the costs associated with vulnerable witnesses would be seen as additional. I am not a legal aid expert, but I think that that is roughly what the problem was.

There are two answers. One is that legal aid fixed fees are regularly reviewed, so there may be some scope for reviewing them in future, taking into account a wide range of issues, including the impact of the Vulnerable Witnesses (Scotland) Bill

on legal aid costs. The other issue is that, until we get a feel for the actual numbers and the volume of work associated with them, it would be hard for us to start allocating fixed fees or any other kind of fixed payments. We shall need to work with SLAB on that.

Jeremy Purvis: When in the lifetime of the legislation would you expect to have enough data to be able to review that? Would it be three months or six months in, or is there a constant programme?

Barbara Brown: What data are you talking about—the number of cases?

Jeremy Purvis: Yes.

Merlin Kemp: We are thinking in terms of phased implementation, but that does not mean that work will not start straight away, particularly on summary cases, because those, more than High Court and sheriff solemn cases, are an unknown quantity. We need to start doing whatever monitoring we can as soon as possible—right from the word go. If we can arrange some sort of monitoring and data-gathering exercise even before implementation commences, we will. The aim is to get the ball rolling as quickly as we can. Implementation for summary cases will be phased, after High Court and solemn cases, so there will be time for that review process to provide some evidence to inform the roll-out.

The Convener: Most of our questions are geared towards the Executive, but the Crown Office witnesses are welcome to pitch in. You may wish to say something specific about the appropriateness of the estimates in the financial memorandum, because your office probably has the biggest impact.

Lindsey Anderson (Crown Office and Procurator Fiscal Service): We do, but we have been in close consultation with the bill team, with fortnightly or monthly meetings to discuss the figures. At this stage, all we can give is an estimate, especially in relation to adult vulnerable witnesses. The bill extends the criteria and therefore increases the number of adults eligible for special measures. We have no knowledge of what the impact of that will be, but we hope that the phased implementation will inform the implementation group, especially concerning summary cases.

Mr Mather: Given the uncertain nature of some of the data used in the bill in relation to the number of cases and their cost, would it not have been better to provide a range of costs rather than an estimate?

Merlin Kemp: We discussed that matter. We had regular meetings with the Crown Office and

the Scottish Court Service, in particular, and the issue came up once or twice. There are a couple of areas in which a range of figures might be most appropriate, one of which is summary justice. For instance, we came up with a figure of 6,000 for child witnesses, which was based on a Crown Office analysis of numbers of cases and other bits and pieces of information from the Home Office and elsewhere.

An alternative source was the witness service database. However, because the database records only the number of witnesses who are referred to the service, it will always underestimate. It came up with the figure of about 4,000 child witnesses, so we could have considered a range between 4,000 and 6,000. We knew that 4,000 was definitely an underestimate, so we opted for what we thought was the best figure.

Mr Mather: At our meeting last week, witnesses from the Scottish Court Service were rather surprised by some points that SLAB raised. John Ewing has written a letter about that. I do not know whether you have seen it, but the final sentence reads:

"The figures used in the Financial Memorandum can only be an estimate at this stage since the eventual impact of the legislation will be influenced by a range of unquantifiable factors, including future decisions by the courts on the acceptability of the use of special measures in individual cases."

That could mean taking civil proceedings and family cases into account, or even vulnerable defence witnesses. Taking Mr Ewing's response and those two additional issues into account, do you think that there is any mechanism for specifying those "unquantifiable factors"? Has the likely cost been calculated? Could there be a map of the range of uncertainties so that we can quantify matters?

11:30

Lesley Napier (Scottish Executive Justice Department): The difficulty that Mr Ewing refers to may be the possibility that, when the measures in the bill are first implemented, they will be new and may therefore entail additional hearings. Sheriffs and judges will always want to hear from both sides when deciding whether to grant an application for special measures. That will happen less often once people get used to the special measures and understand that they are simply a way in which certain people will give evidence. That will lead to a reduction in costs. Part of what the bill is trying to do is to change the culture. If that happens, there will be less need for hearings.

Mr Ewing is raising the possibility of additional hearings, but that is difficult to quantify. Only when the provisions of the bill are put into practice will

we see how solicitors and the judiciary react. During the implementation, we will have to be involved with all those parties to ensure that the measures bed down as quickly as possible.

Mr Mather: I acknowledge the difficulty in quantifying the factors, but are there any fallback mechanisms or recommendations to reduce uncertainties and risks and to control costs, to ensure that things do not run out of control?

Merlin Kemp: SLAB also raised the issue of the number of hearings that might be needed and we have looked into that. In the financial memorandum, we have costed for far more hearings than the policy would envisage. As Lesley Napier said, we acknowledge that while the measures are bedding in there are likely to be more hearings than there will be in future. Any predictions would probably be based on the present situation and a consideration of the reduction in the number of hearings that we expect year on year. I do not expect that there will be more hearings. We have started with a high estimate, but we expect that costs will reduce over time.

Mr Mather: How confident are you that you can keep within the stated upper limit?

Merlin Kemp: The witnesses from the Crown Office may want to comment on that. In considering whether we can deliver the policy, we have worked closely with the Crown Office. A lot of work will have to be done on the implementation. However, the Crown Office seems content that the first phase of the implementation process is manageable.

Stephen Woodhouse: We believe the process to be manageable in the way that Merlin Kemp suggests. We have to allow time for changes to systems, training and procedures—in the rules of court, for example. That cannot happen tomorrow. However, we believe that it can happen in the time scale that we are proposing.

Mr Brocklebank: I have one or two questions about work load and fees. At last week's meeting, the committee was, to say the least, mildly sceptical about some of the figures. Given the extra work that may be created by taking additional precognitions, attending additional hearings and so on, what consideration did the Executive give to increasing the fixed payments that are made to solicitors?

Barbara Brown: We will have to see how that works out in practice. We do not expect an enormous amount of additional work involving defence witnesses because, as we understand it, there are not that many vulnerable defence witnesses. The fixed fees can be reviewed and we may have to consider the matter in future.

Mr Brocklebank: What kind of issues would determine that final decision?

Barbara Brown: I am not an expert on legal aid, so I do not know how the process would work, but I think that the legal profession would be consulted on what the additional work load might be. However, we do not think that a great deal of additional work will be involved on the defence side; most of the additional cost will fall on the Crown side.

Mr Brocklebank: Has the Executive given any thought to creating a separate block fee for work done in connection with child witness notices?

Merlin Kemp: From a policy perspective, that is not something that we would want to happen. Our view is that dealing sensitively with vulnerable witnesses should be part of the main stream of the work of the legal profession and the police; we would not want to flag up the sensitive treatment of vulnerable witnesses as somehow being additional work.

Mr Brocklebank: Last week, SLAB told us that the estimated £500 cost of a commission was questionable, given that such work could be undertaken by an advocate. Having considered SLAB's misgivings, do you think that the costs relating to commissions have been underestimated?

Merlin Kemp: There might be a slight misunderstanding of what the figure of £500 represents. It represents not the total cost of a commission but the cost to the legal aid fund of sending a solicitor to that commission and is based on the understanding that, as the Crown Office would make most of the applications, it would pick up the tab for the other expenses, such as paying someone to operate the necessary equipment and so on. On the other hand, SLAB has rightly pointed out that the figure does not take into account factors such as travel and various other supplementary expenses. The figure, therefore, could be a little higher. However, I stress that £500 is an estimate of an average fee that a solicitor might charge. Depending on who the lawyer is, the cost could be higher or lower—it would be higher if counsel were involved and lower if a solicitor were involved.

Mr Brocklebank: Do you think that the figure is realistic? Could there be a tendency to lower staff costs by referring such work to less costly staff? Could the system therefore lead to such staff being overburdened?

Merlin Kemp: I do not think so. Taking evidence on commission is as important an exercise as taking evidence in the court, so that work would not be delegated to a subordinate, lower-paid member of staff.

John Swinburne: If the vulnerable witness were a defence witness, who would be responsible for absorbing the costs for the provision of closed-circuit television for the supporter and so on?

Lesley Napier: There are no costs attached to the supporters who are currently available in the court system. Supporters tend to be friends or relatives of the witness. Sometimes, the supporter is a social worker, but that work tends to be undertaken as part of their job. Supporters are not paid any expenses and, although the bill will give a statutory basis for supporters, it is not planned that that will alter the situation in that regard.

John Swinburne: Are there any restrictions on who can be a supporter? Is there any guidance on what might be considered to be reasonable expenses for a supporter who was not in the categories that you mentioned?

Lesley Napier: We plan to prepare some kind of guidance for supporters. There might also be a need for rules of court. Our basic policy intent would be that supporters would not be paid. That might exclude people who want to be what we might call professional supporters. A supporter's presence is supposed to have a positive effect for the child or other vulnerable witness and, therefore, the supporter would tend to be someone to whom the witness was close. That is probably not an issue, but we will keep a close eye on the matter in case we have to make further provision to make it clear that supporters are not to be paid.

Jeremy Purvis: I have a brief supplementary question on supporters. Is any consideration given to the role of advocates in mental health cases? Mental health legislation now establishes advocates who have almost quasi-legal responsibilities. Was that considered?

Barbara Brown: If a vulnerable witness has an advocate working with them on a daily basis, that advocate might be a good person to act as a supporter. However, as a supporter in the court setting, the advocate would not be able to speak on behalf of the witness—that is not the supporter's role. The supporter is supposed to be there to give a sort of moral support, which is a different role to that of an advocate.

Kate Maclean: I understand that supporters would not be paid. Obviously, if a child is a vulnerable witness, parents or guardians would be expected to provide support. Would travel expenses and so on—not pay—be paid to a supporter of an adult vulnerable witness?

Lindsey Anderson: Such expenses would be paid to the supporter who has brought the vulnerable witness to court. Expenses claim forms are attached when witness citations are sent out. A witness who was cited by the Crown would have their travel expenses reimbursed by the Crown.

That is built into our budgets.

Kate Maclean: So the situation of supporters will be the same as that of witnesses. Would the supporter be reimbursed for such expenses as travel expenses and lost wages?

Lindsey Anderson: Those expenses would be reimbursed if that person brought the vulnerable witness to court.

Kate Maclean: Last week, the committee heard that 19 courts will be upgraded to offer a closed circuit television service to vulnerable witnesses. In response to one of my questions, I was told that those courts had been chosen after analysis of previous patterns of use.

Are there any plans to provide additional funding, or for a rolling programme to improve more courts than those initial 19? It would be easier to deal sensitively with vulnerable witnesses if they did not have to travel too far to go to court. Aside from that, there are bound to be financial implications because witnesses and supporters have to receive their expenses and travel costs. Will those expenses be monitored to assess additional cost? Are there any plans to provide additional funding to roll out CCTV services in more courts? I know that there are mobile CCTV services for remote areas, but I was thinking more about the less remote areas in the central belt, the Highlands and the Borders.

Merlin Kemp: There are two elements to that: meeting the needs that come from the volume of business, and the geographical spread. We have addressed those issues.

The question is really for the Scottish Court Service; it is a matter for that service to decide which courts to equip and furnish. We have costed the additional work that will result from the bill. However, there are lots of benefits to having improved technology in courts and to modernising the courts' estates. The SCS has plans to do that kind of work and there might be benefits for vulnerable witnesses as a result of that work.

Kate Maclean: I understand that it is a matter for the SCS, but the Executive is, I presume, providing the funding for 19 courts. If any other court had to be upgraded, the court service itself would have to bear that cost. There are no plans to provide any additional funding, but there are no plans not to provide additional funding.

Merlin Kemp: There are no such plans at the moment.

The Convener: If your estimates for case numbers are shown to be too low during the phased implementation of the bill, how will you deal with that? Will you be able to secure additional funding? Is such funding available to enable you to make up that gap?

11:45

Barbara Brown: The first phase that we have talked about is within the year 2005-06, which falls within the current spending review and budget periods. We are satisfied that the first phase can be met within existing funding. As we advance towards that period, more work will be done on gathering estimates and producing more detailed figures. Obviously, the budgets for the years beyond 2005-06 still have to be finalised and, if the figures showed markedly different costings, that would be fed into the future budgeting process.

The Convener: You are introducing legislation that will be implemented in a number of phases. The Finance Committee has known the Executive to introduce bills that have future costs which it says it cannot quantify at the time. Such costs could turn out to be very expensive but, because they are not in the current budget, the Executive cannot answer questions on them. On the later phases of implementation, are you clear about the time scales and are you sure that the steps that you will implement beyond the first phase are genuinely affordable?

Barbara Brown: The Executive is committed to achieving full implementation as soon as possible. We want to start planning that as soon as we can with the agencies that are involved, but there is a lot of work to be done and we cannot with any great certainty predict what will happen two or three years in advance. We are reasonably satisfied that the costs of the bill are supportable within the current spending plans.

Merlin Kemp: The issue is not just about the money. We have spoken frequently to the Crown Office and to people from the different police agencies, such as the Association of Chief Police Officers in Scotland. A wide range of people in the justice system are very keen for the measures in the bill to be implemented, because they know that that is the right thing to do. The fact that there is a lot of support for the bill in the justice community is an important element of ensuring that it proceeds.

John Swinburne: Given the tendency of members of the legal profession to spin things out ad nauseam—because the more they spin things out, the more money they make—have you taken into consideration the fact that lawyers will often call in criminal psychologists or psychiatrists in cases involving vulnerable witnesses, and that that might have a very high cost?

Merlin Kemp: The Scottish Legal Aid Board raised a similar issue. It was concerned that it might face expensive requests. It will depend on the context. As we do not think that many vulnerable defence witnesses will be called, we do not anticipate that the costs will be huge in the

grand scheme of things. If you are talking about reports to counter applications and so on, the bill is drafted in such a way that the defence will not have a locus to lead such expert reports, unless the sheriff or the judge is not satisfied with the application that has been made to the courts. There would be no point in commissioning an expensive report and going through the whole process if such a report could not then be used. I hope that that allays some concerns in that area.

Ms Alexander: I invite the Crown Office to comment on an observation that I wish to make, which might be as uncomfortable for the Crown Office as it is for us.

As the Finance Committee, we are charged with ensuring that enough money is put aside for policy decisions. There is great anxiety about recent reports by the Auditor General for Scotland on special needs education and so on. There is also an obligation on us to ensure economy and efficiency in the use of public funding. Let me pose to you the genuine dilemma that I face as a committee member who has listened to the evidence.

It is clear that it is in the interests of the public purse to resist professional special pleading. We have heard that there is a desire to change the culture and that people should not be paid additional money for being sensitive to witnesses. Similarly, if the technology in a workplace is changed, people should not be paid extra money for making use of it. The vast majority of the Scottish public have to deal with technology changes in their work and they have to change their working practices to suit such a changing climate.

To pursue the analogy further, the British Medical Association is not invited here to say, "Now that our surgeons are going to perform keyhole surgery, rather than traditional surgery, please can they have more money for it." I accept that the analogy is not complete, on the basis that lawyers are not salaried, but receive fees. However, the point is that the amount of time that a surgeon spends in the operating theatre is the same whether they are performing keyhole surgery or conventional surgery. We expect members of that professional group to update their *modus operandi* according to the needs of the time.

You will be getting a sense of the dilemma that I am posing. The essence of the challenge for the committee—I need your guidance on this—is that if the issue is essentially about modernising working practices and use of technology, but there is not a huge additional time component involved, we should resist special pleading by professional groups, which is of course legitimate. If, on the other hand, the professional bodies are identifying

significant additional workload, it is probably appropriate that there be financial provision for that. Do you have advice for those of us who understand nothing of the minutiae of the criminal justice system and are confronted with that dilemma after two hours of evidence-taking?

Stephen Woodhouse: I might have to think about that. As Merlin Kemp said, the issue is about changing the culture and it is about working differently. There are practical stages at which there will be extra work; there might be extra hearings, which we will have to man and which the defence will have to man. There is obviously a cost associated with that. We do not want that to become a professional issue, as Merlin Kemp said. We expect that we will commission reports from psychologists in a number of cases in order to protect ourselves from the defence's challenging the decisions with which we are going to court. We hope to avoid the problem of their wasting their money. That was a rather rambling answer.

Ms Alexander: Are you comfortable that the balance between that which is changing working practices and that which is genuinely additional has been struck in large part by people of good will in the Executive, or should the committee reflect on that balance? That is the decision that we have to reach after you leave in about five minutes.

Stephen Woodhouse: The balance is broadly right. It has been acknowledged that there are extra costs in the system and that the money is not the be all and end all.

The Convener: On behalf of the committee, I thank you for giving evidence. As you know, we are writing a report on the financial memorandum; that will go to the relevant justice committee relatively quickly because we are working to fairly tight time scales. No doubt some of you will appear before that committee in due course.

At our previous meeting, Wendy Alexander requested that we have a brief discussion of the evidence that we have received on the bill before the clerks start to make sense of it.

Ms Alexander: My last question to the witnesses summed up the issue. The BMA does not get to say, "Please can we get more money because we are changing how we perform surgery." It has the right to lobby for extra money, but we do not give way. We have two obligations: one is to ensure that the Executive does not under-cost provisions and the other is to not respond to every special interest group that appears before us. I was slightly nervous about such precedent's being set. I just wanted to put that on the record.

In relation to the tone of our report, we have to

be discriminating about evidence and, although special pleading by professional groups is what their members pay their subscriptions for, we do not necessarily have to respond to that pleading in every instance. I am struck by the extent to which we are talking about culture change. There is some provision for what is genuinely additional. I will leave it to the clerks and the adviser to try to reflect that balance in our report.

The Convener: That point relates particularly to the bill, but it applies to a lot of the evidence that we receive. Witnesses come here with an agenda, which is sometimes professional. Sometimes there are financial aspects to that and sometimes we are dealing with interest-group agendas. One of our tasks is to separate the wheat from the chaff and to determine whether legitimate concerns are being expressed or whether we are part of a negotiating process. We need to be cautious about that.

A related issue came out of the bill. Although the bill might not be a focus of significant changes in the way in which professional fees and obligations are sorted out, it gives us an insight into areas where there might be concerns. There might be issues about the way in which costs are controlled and negotiated in that setting, which we or other committees want to address. We can prepare a draft report. Does the clerk have a notion of when we might do that?

Simon Watkins (Clerk): It will be next week.

The Convener: We will have a draft report to read next week. Do we agree to deal with it in private?

Members indicated agreement.

Budget Process 2004-05

The Convener: Item 6 is to agree arrangements for the committee's external meeting on 10 November. At our previous meeting, members asked Fergus Ewing and me to come up with an acceptable proposal. We agreed to opt for Lanarkshire. Following investigation by the clerks, the suggestion is that we meet in Motherwell, using the same format that we have used successfully in the past.

We require the committee's formal agreement to the proposal in order to proceed to the Parliamentary Bureau and the Conveners Group, which must give their assent. Do we agree to the proposal?

Members *indicated agreement.*

The Convener: I thank members for being so disciplined and for allowing us to finish the meeting before 12 o'clock.

Meeting closed at 11:56.

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