

FINANCE COMMITTEE

Tuesday 1 March 2005

Session 2

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CONTENTS

Tuesday 1 March 2005

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SCOTTISH PARLIAMENT BUILDING	2405
SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) BILL: FINANCIAL MEMORANDUM	2421
RELOCATION OF PUBLIC SECTOR JOBS	2442

FINANCE COMMITTEE

7th Meeting 2005, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Alasdair Morgan (South of Scotland) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

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

*Jim Mather (Highlands and Islands) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

Dr Elaine Murray (Dumfries) (Lab)

*John Swinburne (Central Scotland) (SSCUP)

COMMITTEE SUBSTITUTES

Gordon Jackson (Glasgow Govan) (Lab)

David Mundell (South of Scotland) (Con)

Alex Neil (Central Scotland) (SNP)

Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

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

THE FOLLOWING GAVE EVIDENCE:

Robert Brown MSP (Scottish Parliamentary Corporate Body)

Paul Curran (Holyrood Project Team)

Sarah Davidson (Scottish Executive Health Department)

Roderick Duncan (Scottish Executive Health Department)

Dave Ferguson (Scottish Parliament Clerk/Chief Executive's Group)

Eric Gray (Scottish Executive Health Department)

Paul Grice (Scottish Parliament Clerk and Chief Executive)

David Palmer (Scottish Executive Health Department)

Chris Naldrett (Scottish Executive Health Department)

Dr Hamish Wilson (Scottish Executive Health Department)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Judith Evans

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 1 March 2005

[THE CONVENER *opened the meeting at 09:43*]

Scottish Parliament Building

The Convener (Des McNulty): I welcome colleagues to the seventh meeting of the Finance Committee in 2005. I also welcome the press and public and apologise for the delay in starting. I remind people to turn pagers and mobile phones off. Apologies have been received from Elaine Murray and Andrew Arbuckle. Jim Mather and Wendy Alexander have been delayed, but we expect that they will join us soon.

The first item on the agenda is evidence on the latest Holyrood building report. Members have a copy of correspondence from the Presiding Officer. I welcome to the committee Robert Brown MSP, who is a member of the Scottish Parliamentary Corporate Body, Paul Curran, who is the head of the Holyrood project team, and Dave Ferguson, who is the Holyrood project adviser. Paul Grice, clerk and chief executive of the Parliament, is expected to join us. Does Robert Brown want to make an opening statement?

Robert Brown MSP (Scottish Parliamentary Corporate Body): Yes. I apologise for being late as a result of train delays. I should have arrived half an hour before the scheduled start of the meeting, but I arrived slightly later. I understand that Paul Grice is stuck in traffic. Those are the reasons for delays, for which we offer our sincere apologies.

The committee has the Presiding Officer's letter of 24 February and the associated schedule. Since the meeting at which the committee considered the previous Holyrood report—in November or thereabouts—the committee has also received the Presiding Officer's letter of 27 January, which dealt with technical issues, such as the effect of the timescale for settlement on the resource accounting requirements of the budget. That letter also informed the committee of an increase in the amount of allowable income to cover the increased income from the shop and guided tours. That is worth mentioning because it reflects the success of the new Parliament building in attracting visitors.

09:45

Today's report shows a fairly static situation with no change in the reported overall cost, which

reflects the fact that only one package has been settled since the most recent report. I think that I am right in saying that another 17 or 18 packages have been agreed and await finalisation of paperwork, which will obviously be reflected in the next report. Members will note that the defective windows have been replaced at the contractor's expense, which I think was reported previously in anticipation of its happening.

I will mention two other matters. First, snagging work is well advanced and I understand that the architects should be able fairly soon to issue the certificate of practical completion. The committee will be aware that issuing of that certificate is an important technical stage because it affects determination of the key date from which retention periods will run.

Secondly, the committee will recall that the contract for landscaping was originally a separate Scottish Executive contract, which was eventually transferred with the main contract to the Scottish Parliamentary Corporate Body. Landscaping has been affected by prolongation costs, as were other parts of the project. There has also been a need to phase in work because of pressure to conclude the project. That is perhaps not the most efficient way of settling the matter, as members will be aware, and there have been some cost implications. The reserve that was specifically allocated to landscaping has been used up, so there has been a call on general contingency to the extent of £1.2 million, as the papers say. That was a predicted risk, although the risk was perhaps a little underestimated vis-à-vis the eventual outcome.

However, the package that has been finalised since November was agreed at 5 per cent below the cost plan allowance. I think that that kind of variation in the final figures will be apparent as the settlement process moves to its conclusion—we are still a little way from final settlement of all accounts.

That is all I want to say by way of introduction. The situation is fairly static in relation to the November figure, but members will no doubt want to raise issues with me or with the colleagues who have accompanied me who can speak on technical matters.

The Convener: I should have mentioned that Fergus Ewing has joined us for this item.

I have a couple of questions, which I hope are fairly straightforward. Is there an end date for completion of snagging at Bovis Lend Lease's expense? A number of issues are still coming to light and it would be helpful to know when Bovis's responsibilities, or those of the trade contractors, will end and future snagging will become the responsibility of the SPCB.

Paul Curran (Holyrood Project Team): There are two elements to snagging. First, the work that is currently known about is programmed and is scheduled to be completed by around the end of April. That work includes, for example, all the small joinery and woodwork jobs that are apparent around the building. The other element is the longer-term emergent defects that will become apparent during the next year or two. The defects liability period will run for one year from the date of the certificate of practical completion, which Robert Brown mentioned. That period will probably expire around the middle of March 2006. During that one-year period, the trade package contractors will continue to be responsible for snagging and for defects that emerge.

The Convener: I want to ask about the process of dealing with contracts. I am surprised that only one contract has reached its completion in three months. How many packages do you expect to deal with during the next three months and how many will remain outstanding?

Robert Brown: The general issue was raised by the SPCB when it discussed the matter. We had perhaps expected rather more packages to be dealt with. However, I mentioned that a number are coming through; perhaps Paul Curran will elaborate on that.

Paul Curran: A number of accounts are financially settled in that the numbers are certain, but I will not report them as settled until a signed-off statement of final account has been presented to the post-completion advisory group and then to the SPCB.

We possess approximately another eight final accounts that total about £23 million and which will definitely be in the next report to the committee. About 10 other accounts are imminent; they await just the final pieces of paper and their settlement will be another significant move. The process can be frustrating because it depends on many people supplying pieces of paper to provide the audit trail and to substantiate claims.

The Convener: You mentioned eight accounts that are ready and another 10 that are almost ready. What is the pattern of settlement? Is it along the lines that you expect, or is there significant variation? I appreciate that, in the round, variations will exist between contracts.

Paul Curran: The eight accounts that we possess are all within or below the cost plan value; none exceeds that value. It is probably reasonable to predict that the remainder—the balance of 10 accounts that I talked about—will be in that category, too. None of the accounts is causing us great budgetary concern.

The Convener: How many accounts will remain outstanding after the eight and the 10?

Paul Curran: About two thirds of the packages will remain, but many are with the same trade package contractors. An awful lot of work has been done to reach agreement on global packages, which involve more than one package with a trade package contractor. About 34 packages will remain.

The Convener: Broadly, what value does that represent?

Paul Curran: Probably about 75 per cent of the costs have still to be agreed.

The Convener: Are those costs of the building?

Paul Curran: Yes. However, a substantial proportion of packages have been settled financially. What remains is to settle the paperwork, which will happen on a longer timescale than we have talked about.

The Convener: Parliament has approved Holyrood expenditure in the year in which it is drawn down. Will the delay in settling the final accounts have knock-on effects on annual expenditure packages?

Robert Brown: Some of that was dealt with in the letter of 27 January about the resource accounting framework, which I do not pretend to understand fully, but which was given the committee's authority.

Paul Grice (Scottish Parliament Clerk and Chief Executive): First, I apologise for being late in arriving because of the snow.

Under the system of accruals, the expenditure will all be accounted for in the current year.

The Convener: I am slightly surprised at that, because we have heard from Paul Curran that agreement has still not been reached on a significant percentage of packages. The annualisation of the budget year by year shows that a significant amount has been paid in this and previous years. I am concerned about the next financial year, in which—I presume—some bills will fall liable.

Paul Grice: I have received specific assurances from our finance team that under resource accounting, expenditure accrues against the year to which it relates, and we are talking about expenditure either previously committed or in this year. Just a week or so ago, I received a note from our finance team that assured me that although the cash will not be spent, for the reasons that Paul Curran gave, it will under resource accounting be accounted for in the current year and will therefore accrue against this year's budget.

The Convener: So, in effect the money is banked until the final deal can be established.

Paul Grice: That is my understanding.

Alasdair Morgan (South of Scotland) (SNP): I have a general question to which the answer is not in the papers that are in front of me. When we examined figures in the first parliamentary session, an amount for each package was always allocated to risk or the risk reserve. I am not looking for a precise figure but, broadly, of all the money that was allocated to risk, what percentage has been spent?

Paul Grice: That is a difficult question to answer, but I would be happy to find out whether we can do that calculation, at least in broad terms. I do not have the figures to hand, but I am sure that we could look back and come back to you with some.

Alasdair Morgan: The reason why I ask is that it seemed at the time as if most of it was being spent.

Paul Grice: My impression is also that most of it has been spent. In some specific cases the risk has not materialised, but in others it has. I would be happy to go away and find out to what extent we can do a general assessment of the percentage of risk that has materialised. I am afraid that I do not have that information to hand.

Robert Brown: It is fair to say that the figure is something of a moving target, in that some risks that are in the risk register at earlier stages drop off and new risks are identified.

Paul Grice: Yes. I suspect that the amount might be difficult to determine in detail, but I am sure that we could find out whether we can give the committee a feel for the percentage or proportion of risk that has materialised.

Alasdair Morgan: Keeping a risk register might be a normal technique in such building projects—I know that, as you make clear in your report, we will not undertake one again in the near future—but to the layman, risk has perhaps a 50:50 chance of materialising, although I suspect that that has not been the case for the risk in this project and that it has not been so much a risk as a near certainty.

Dave Ferguson (Scottish Parliament Clerk/Chief Executive's Group): The problem with the exercise is that items come out of the risk register for two reasons: either they are realised or they are not realised. Therefore, it would be misleading to say that, because the risk started at a certain level and is now at another level, everything in between has materialised. The situation has to be analysed to find out why each risk came out of the risk register. In some cases, that might not be easy, particularly in respect of risks from the early days of the project. We could, however, try to do something on that.

Alasdair Morgan: I certainly do not want to incur even more costs in trying to analyse that.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I have two general questions. I merely want some information and I think that you will be able to handle the questions easily. My first is on snagging, about which we have been told. Throughout the project, a number of members have had reservations about the peculiar angles in the roof of the building and the possibility that in bad weather leaks will appear. That is already happening. I found water coming into my pod; I have heard that other members have had similar problems.

Alasdair Morgan: Does that make you a wet?

Mr Brocklebank: I will leave it to Fergus Ewing and others to decide on that. Are you finding a greater number of leaks than were expected?

Paul Curran: It is always the case that we come across occasional leaks in new buildings. The type of roof that we have creates a higher risk of such occurrences, but I do not think that we have experienced anything that we would not expect. When individual leaks have happened, they have been dealt with by the contractors that are involved because they are defects rather than something for which we would have to pay. It is something of which we are aware and, to be honest, there has not been a massive problem.

Mr Brocklebank: Do you mean that leaks are not an intrinsic design defect of the building because of the angles?

Paul Curran: No, they are not. We need to deal with one or two small areas where there are little bits of ponding—the trade contractor is dealing with those—but the roof design does not create such problems.

Mr Brocklebank: My other question concerns landscaping. We have heard that £1.2 million had to be pulled in because, I presume, the cost of landscaping was greater than had been expected for the various reasons that you have outlined. I understand that before the opening of the building, some lawn and grass was laid for appearance's sake because we wanted Parliament to look as smart as possible for Her Majesty, but that grass was then lifted so that further work could be done underneath it. Is that a correct assumption and are the extra landscaping costs related to that work?

Paul Curran: A small amount of grass had to be taken up because of a drainage problem that was discovered once the grass had been laid. Additional field drains had to be installed to help drainage in the general area, so the grass would have had to be lifted anyway. The amount of temporary turf that was laid for the opening was very small.

Mr Brocklebank: Was that related to the extra cost of £1.2 million for landscaping?

10:00

Paul Curran: Partly, but the main element of the additional cost is to do with prolongation of packages and acceleration of some packages, not just for the October date, but for the move into the building. We had to get some areas, such as fire escapes, to a certain safety standard so that people could escape from the building. Therefore, special measures had to be taken, which was done through 24-hour and weekend working, all of which had to be paid for.

Robert Brown: To echo that point, because the landscaping was done at the end, it was the residuary beneficiary—if that is the right way to put it—of other issues. That meant that the phasing of the landscaping was not ideal. If we had had just the landscaping to do and nothing else, we would have rolled it out and that would have been that, but it had to wait for the completion of other works. As I understand it, that meant that the mechanism for dealing with landscaping was less efficient than it would otherwise have been.

The Convener: We discussed the post-completion advisory group at a previous meeting and were informed that an external individual was appointed to deal with some issues. What has been delivered through the work of that group and that individual?

Paul Grice: Dave Ferguson convenes the group, so he will fill you in on the details, but it performs several key functions. First and foremost, it takes direct reports from the people who lead on claims and it provides a critique and scrutiny of that process. The group gives the SPCB and me professional advice that supports or questions what is coming up the line, which is an important part of good governance.

Secondly, the group helps us to ensure that we get right the strategy that we are adopting, which as you know is difficult and complex. Thirdly, the SPCB met members of the professional group fairly recently and asked them specifically to look ahead to try to provide early warning of difficult issues that are coming up. The group now carries out that horizon-scanning function—it has met several times and seems to be performing that function, certainly at the front end, on matters to do with the strategy. Clearly, as we get further into final accounts settlement, the group's role will increase.

Dave Ferguson: The group started functioning in June, but we took some time to put procedures in place and to get the SPCB to approve a strategy. From a practical point of view, we are a bit concerned about the flow of cases that are

coming through. We have expressed that concern to Paul Curran and other members of the management team. Our action has been to put a little pressure on Bovis by trying to get management to encourage Bovis to move the project on.

The PCAG is also involved in what is called a post-project evaluation. We have started the process of reviewing the project, which means reviewing just about everything that has happened to try to learn lessons or to find out whether we can take any action, legal or otherwise. The PCAG has tried hard to get that review moving. We need to know how contractors and consultants have performed so that we can decide what action may need to be taken in the near future. The general feeling in the PCAG is that we are ready to go; we are waiting for cases to come through, although we are a bit concerned that throughput of cases is not as fast as we expected.

The Convener: Fergus Ewing has questions, but I have one more question. The issue has two dimensions. One is completion of the relatively unproblematic matters that we discussed earlier—the 10 packages and the 8 that are in the pipeline.

I presume that there are more difficult issues to address and it seems to me that the post-completion advisory group and the one external professional are being asked to bear a heavy burden of responsibility. I simply seek an assurance that adequate mechanisms have been put in place to meet what are very complex and, in some ways, diverse tasks.

Paul Grice: It is important to point out that the advisory group is just that; the whole of the project team will be involved in advising on and processing claims. Furthermore, we have brought in claims specialists to support that work. As a result, I expect the burden of work to be borne by the Holyrood project team with input from our own lawyers. It is important that we use the advisory group to provide external quality assurance and challenge functions, but I do not expect it to have to do the legwork.

I also point out that there is more than one external member of the group; Brian Eggleston has just been appointed to it. However, I believe that group members have parcelled up packages among them to ensure that the workload is spread. That is not to say that we do not see the particular strengths that Brian Eggleston, for example, brings to the group; we also have David Manson, who is a quantity surveyor of 30 years' experience. There is a lot of professional experience on the group which, as I said, has allocated among its members packages as appropriate. That is how the workload will be managed.

That said, I acknowledge your point that much work has to be done. Dave Ferguson and I will ensure that, on the one hand, the Holyrood project team has enough resources and that, on the other, the PCAG is able to do its work. In that respect, I would always be open to requests from the group for the membership to be beefed up or for further support.

The Convener: I appreciate that comment and your point that there is a decision-making mechanism through the Holyrood progress group and up to the SPCB. However, given everything that has happened until now with the Holyrood project, we probably need more transparency and information about the on-going process to ensure that the committee can measure progress. After all, it is one thing to say in conversation that eight packages are nearly complete and that 10 are in the pipeline, with another range of packages coming. We would find it helpful to receive more than that description of the process; indeed, we need regular updates of where we are. We might also want to scrutinise the way in which the SPCB and the technical team are going about their business in this area. We are happy to talk to you offline about how best that can be achieved, but we simply need more detailed and analytical information on this important element to allow us to monitor what is happening and whether it is happening effectively.

Robert Brown: One clear difficulty that we face is the confidential nature of the strategy although, in fairness, I think that the committee has recognised that. On the other hand, you have rightly pointed out that we need some transparency and a way of making a critique of what is taking place.

The SPCB and other officials are more than happy to talk to the convener after the meeting to find out whether we can take any worthwhile steps towards introducing the monitoring arrangements that you want. We have a fairly open mind about what is possible in that respect, subject to the difficult issue of the strategy's confidentiality. We just need to find the right balance.

The Convener: I take it from the nods around the table that members are content to receive more detailed information. Perhaps we can bring some mechanism back to the committee.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I had not planned to raise this matter, but I wonder whether Mr Ferguson can explain his remark that pressure needs to be put on Bovis. Are Bovis's construction managers at fault? Are they dragging their feet and delaying matters? If so, will he elucidate his concerns in that regard?

Dave Ferguson: Bovis is the key player in this operation, because it has to agree final accounts

with the trade package contractors. We rely on Bovis to make recommendations to us; in fact, it is contractually bound to do so. I was simply expressing the PCAG's concern that more of those final accounts, many of which relate to packages that were completed many years ago, have not yet come through.

Because of that, the post-completion advisory group has been asking project management to find out why the packages are being delayed. We cannot get a clear answer to that; we are told only that the project managers are trying to stop the delay. They are 99 per cent there but there is 1 per cent still to go. All I can say is that it is a matter of concern. I could not say whether Bovis has been neglectful or deficient in its performance. However, this aspect of Bovis's performance will certainly be reviewed in our post-project evaluation.

Fergus Ewing: The post-completion advisory group is not new; I believe that it was first mentioned last June, which is almost a year ago. Apparently, however, you have nothing to do. You do not know why you have nothing to do and you do not know who is responsible for that, yet you seem to be approaching Bovis through the project management. Should you not be approaching Bovis directly to get answers as to why the group has nothing to do while the clock ticks on?

Paul Grice: It is not true to say that the group has nothing to do. Obviously, the group has done the most important thing first, which is to set the strategy and the framework and agree those with the Scottish Parliamentary Corporate Body. Secondly, as I have said to the committee—and to answer the convener's point—the PCAG is an advisory group, not an executive body. The SPCB is the ultimate legal authority and it takes the decisions. The staff who are employed by the SPCB have a responsibility to the SPCB. The reason why the group is called the post-completion advisory group is that its job is to advise on strategy and on individual packages. That is exactly what it does. As Dave Ferguson has recognised—and I recognise as well—as the flow of final account settlements increases, the workload of the group will increase. That is as it should be. I do not think that it is necessarily appropriate for the advisory group to deal directly with someone who is under contract to the Parliament. It is important to keep those lines of accountability clear and that would be our intention.

The members of the advisory group have enormous professional experience and we listen to their points of view. The fact that they seem to be comfortable with the way in which they are operating gives the SPCB and me comfort that the set-up is sensible.

Fergus Ewing: Have you, as chief executive, intervened in any way?

Paul Grice: What do you mean?

Fergus Ewing: Mr Ferguson has expressed concerns. Have you, as the chief executive, intervened to bring matters on?

Paul Grice: Yes.

Fergus Ewing: Can you give us some details about when you intervened and what you have done?

Paul Grice: I take reports from Paul Curran, the head of the project team, and Dave Ferguson, the convener of the advisory group. When I heard about their concerns, I agreed a plan of action, as Paul Curran and Dave Ferguson have indicated, to get Bovis to improve the throughput of the claims. That seemed to be the sensible thing to do and was the action that I took quite recently.

Fergus Ewing: I want to raise two other issues, convener, but perhaps other members want to pursue points relating to this particular aspect.

The Convener: Alasdair Morgan would like to ask a supplementary question.

Alasdair Morgan: You mentioned accounts relating to various items that were completed years ago. Could you give us an example of what you are talking about?

Dave Ferguson: I was trying to indicate that, although the work relating to certain packages has been finished for some time, some of them are still waiting for final accounts. Paul Curran can give details of those, but there are a number of them. I expect that those will be the first lot to come through in a batch.

Paul Curran: The packages relate to the superstructure, the concrete frame, the basement, the MSP structure and so on. The costs of those packages have been agreed for some time and all that remains to be done is for Bovis and the contractor to put the final pieces of paperwork together to formalise the cost and set it in stone. However, there has been no variation in the cost of those packages since they were completed.

Alasdair Morgan: In those cases, is any money still to change hands? If so, in which direction?

Paul Curran: Only retention money.

Alasdair Morgan: Okay.

The Convener: Have you set Bovis a target in relation to the completion of that process?

Paul Grice: There is a clear schedule with targets for bundles of packages. I would expect that managing that would be a function not only of project management but of the advice group. We

could discuss with you whether we could strip out any information from that to enable you to view the process in a more systematic way.

The Convener: That would be helpful. Just before I let Fergus Ewing back in, John Swinburne wants to ask a question.

10:15

John Swinburne (Central Scotland) (SSCUP): We would be bowling you a bit of a googly if we did not acknowledge the fact that you had managed to maintain the cost at £431 million. Before the cost reached that level, the escalation was ludicrous, but since September, you seem to have managed to keep well within budget.

On a lighter note, Margo MacDonald mentioned feral pigeons. I found it quite amusing to find out that there are a few nests of feral pigeons right above her office. In its wisdom, the corporate body has strung two wires across to stop them getting in. Do you not realise that these things can fly?

Paul Grice: I will let Robert Brown answer that.

Robert Brown: The corporate body per se has not made an official decision on that. However, the design of the building has given me and other colleagues concerns about the issue. Someone commented on the attractiveness of some of the design features for the pigeons. We are keeping a close eye on the issue. I am not sure whether anyone else can elaborate on that.

Paul Grice: I can say a little bit more. The wires that have been erected are the recommendation of the design team. I, too, have witnessed pigeons deftly hopping over them, so it is patently obvious that they are not always fit for purpose. In conjunction with the facilities management team, the Holyrood project team is considering other possible solutions, including meshing. The matter is under review. At some point, I hope to be able to report to the Finance Committee a successful —

John Swinburne: I thought that I had better apprise you of the situation before Margo MacDonald got hold of you.

Paul Grice: I appreciate the heads-up.

The Convener: We are supposed to be deciding what Scotland's national bird is. I presume that it will be whatever can deal with the pigeons.

Fergus Ewing: I will leave the pigeons behind because I want to raise the litigation by Sir Robert McAlpine Ltd against the Scottish Parliament, which is key, given the committee's concern about future liability and future expense.

The McAlpine action is different from most other actions, if not unique, because it has been

preceded by a public inquiry by Lord Fraser at which many of the relevant facts were canvassed and by the publication of a report in which Lord Fraser concluded that Barbara Doig could provide “no satisfactory explanation” of why Bovis rather than McAlpine was selected as the construction manager, even though McAlpine’s original bid was—according to Davis Langdon & Everest’s assessment—£1.5 million less than that of Bovis.

My question follows on from one that I asked Robert Brown at the SPCB question time. Given that through his use of the phrase “no satisfactory explanation”, Lord Fraser has cast doubt on the credibility and reliability of one of the people who will be a key witness, has the legal team sought to obtain precognitions from Barbara Doig, John Gibbons, Robert Gordon, Alastair Wyllie and all the other people who were involved in the inexplicable decision to pick a contractor whose bid was £1.5 million more than the lowest bid? If precognitions have not yet been obtained, how can the lawyers be doing their job properly, given that pleadings—in other words, the defences—are only as good as the evidence on which they are based?

Robert Brown: I do not want to second-guess the court action in what I say to the Finance Committee, as to do so would be highly inappropriate. At the SPCB question time and perhaps even at our most recent meeting—I cannot remember—I indicated that senior counsel were involved and that we would continue to act on their advice. Frankly, I say that I am not prepared to discuss the details of from whom we have taken precognitions, from whom we might take precognitions and from whom we might not take precognitions. Such matters are for the legal advisers to the corporate body. That information will emerge as the action proceeds. I acknowledge that Fergus Ewing rightly said that the corporate body was not responsible for the original decision that we are talking about, but it must also be recognised that it is the responsibility of the corporate body to be guided by counsel on the progress of the court action. I would prefer to say little more about that.

Fergus Ewing: I understand the position of the SPCB and thought that Robert Brown would give an answer of the kind that he has given. However, in the sheriff court—less hallowed circles than the Court of Session—there was a phrase that we used to use to describe doing a case for which one was unprepared. The phrase was “flying blind”, which is quite descriptive. I understand that we are concerned about the cost to Parliament of the contract that was awarded to Bovis.

The Convener: Try to keep close to that issue.

Fergus Ewing: My question is about an extra £200,000 that no one seems to have noticed yet. I

know that the convener will be extremely concerned about that. In his report, Lord Fraser indicates that the price that was agreed with Bovis was £5.3 million. That decision was taken following the meeting of 3 January 1999, at which the panel decided that Bovis would get the contract, despite the fact that its bid was non-compliant. A month later, in a letter to Bovis, the price was said to be £5.5 million. I do not know why Lord Fraser did not notice that, but why did the price increase by £200,000 within a month? Will the taxpayer get any explanation of that from anyone? Have the lawyers who are preparing the defence been asked to look into that discrepancy and countless others?

The Convener: Again, that is more of an audit issue than a finance issue.

Robert Brown: I cannot answer Fergus Ewing’s question off the top of my head, but there is no doubt that the issue will be looked at. When I last gave evidence to the committee, I invited Fergus to input observations that he wanted to make. If I am not mistaken, that invitation has been taken up. I have no doubt that the point that he makes will be taken on board. However, it is an audit issue. I have no knowledge of the issue at present.

Fergus Ewing: I move on to the last topic that I want to consider. What is the current estimate of the losses flowing from the liquidation of Flour City Architectural Metals (UK) Ltd?

Paul Curran: The latest estimate of additional costs is £3.8 million.

Fergus Ewing: More than two years ago, legal advice was obtained on the recovery of the £3.8 million. For those who have not followed intimately the Flour City fiasco, it involved a company with no assets being given a multimillion-pound contract. Thereafter, the company went bust, leaving the taxpayer out by £3.8 million. The legal advice was obtained more than two years ago and the corporate body has said that it is confidential, so the public have not seen what it says. I have a question for Paul Grice. Have you pursued all recommendations or suggestions that were made in the legal advice?

Paul Grice: The corporate body has been and continues to be guided by the legal advice.

Fergus Ewing: Have you pursued any recommendations or suggestions that were made in the legal advice?

Paul Grice: We are acting in accordance with the legal advice, just as we are acting in accordance with the legal advice in respect of the McAlpine case, as Robert Brown indicated.

Fergus Ewing: You say that you are acting in accordance with the advice. With respect, chief executive, that is not really an answer to the

question. Have you followed up any recommendations or suggestions that were made in the legal advice, given that you have had more than two years to do so? The clock is ticking—the events that we are discussing happened more than four years ago and the taxpayer is out by nearly £4 million. I believe that we should recover that money from the construction managers, because they must have been in breach of their duties under the contract. Have you simply given up on the Flour City losses? Is that the truth?

Paul Grice: Obviously, I am well aware of what you believe. We took legal advice, the corporate body has read it and we are doing what the lawyers have advised us to do. That remains the case—nothing has changed.

Fergus Ewing: Have you been asked specifically by your lawyers to obtain any information from Bovis? If so, have you done so?

Paul Grice: We are acting in accordance with the legal advice. For the reasons that Robert Brown gave in relation to McAlpine and the reasons that we have given extensively on this issue in the past, it would not be wise for us to discuss our strategy publicly. Indeed, part of the legal advice is that we should not do so. I have no more to say on the matter.

Fergus Ewing: I would like to make one final—

The Convener: We have heard three versions of the same answer to your question. We have obtained the answer that you are seeking, unless you want to move on to a completely different subject.

Fergus Ewing: I have one final question. It grieves me that the taxpayer is down by £3.8 million. According to one former employee of Flour City, no attempt whatever has been made to seek evidence from him on what happened. Has any evidence been obtained from anyone involved? For example, has Alan Ezzi been precognosed?

The Convener: It is questionable whether this is a line of questioning for the Finance Committee. If it could be attached to a financial issue that relates to now, it would be reasonable, but I think that you are straying into audit territory.

Fergus Ewing: I appreciate your forbearance. I can see that the chief executive will not provide any answers to the questions. I point out that if there is a case that Bovis is responsible in law for that £3.8 million, it is very much in the interests of the Parliament that we should recover that money. We have been stonewalled by the chief executive for well over two years. This is a serious matter, which I will pursue further.

Paul Grice: I will make a final comment, in the light of that accusation.

First, the corporate body and I are acting in accordance with legal advice. I would have to take that legal advice over Mr Ewing's observations, as the people who give that advice understand the detail of the case. Secondly, Mr Ewing has indicated to me on a number of occasions—for example, when he has talked about pursuing evidence from people in Flour City—that he might have information that would be of help but, to the best of my knowledge, he has not been forthcoming with that information. I echo the offer that Robert Brown made in respect of McAlpine. If Mr Ewing has information that is genuinely of help and which he can deliver on, I am open to that.

I am no less happy than Mr Ewing about the Flour City affair. I will be guided on the matter by professional legal advice—as both the corporate body and I think that we must be. That remains the case—nothing has changed. We will act in the best interests of the Parliament and take the best legal and professional advice that we can. I am afraid that I must object to the use of throwaway phrases such as “giving up on”. The corporate body has not given up on the issue. The corporate body is acting in accordance with the advice that it has received and I think that it can do nothing other than that.

Robert Brown: It is unhelpful to suggest that the chief executive is stonewalling all questions. Rather than stonewalling, he is giving information to the committee to the best of his ability, in so far as it does not prejudice the interests of Parliament. That is done with the entire approval and support of the corporate body. It is important that that be stated.

Matters must obviously be dealt with in the course of time on the Flour City issue and we will report on those to the Finance Committee and the Audit Committee as soon as we can.

The Convener: The Audit Committee in this case more than the Finance Committee.

I thank the witnesses for coming today. I suspend the meeting for a couple of minutes while the witnesses change over.

10:27

Meeting suspended.

10:29

On resuming—

Smoking, Health and Social Care (Scotland) Bill: Financial Memorandum

The Convener: The second agenda item is to take further evidence on the Smoking, Health and Social Care (Scotland) Bill. On 8 February we took evidence from the Scottish Licensed Trade Association, the Convention of Scottish Local Authorities and the Scottish NHS Confederation. We also agreed that we would take further evidence on three parts of the bill only: part 1, on the prohibition of smoking—we will concentrate on the cost of enforcement; part 2, on general dental services, general ophthalmic services and personal dental services; and part 3, on pharmaceutical care services.

We have two panels of witnesses from the Executive. The first panel is here to answer questions on the prohibition of smoking. I am sure that Sarah Davidson is pleased to be answering questions on that, rather than on the Holyrood building. I am pleased to see her before the committee again. She is now the head of the Executive's tobacco control division. Another person who has appeared frequently before the Finance Committee is David Palmer, who is now the team leader of the legislation implementation team. Calum Scott is the economic adviser of the analytical services division of the Scottish Executive's Health Department. I thank you all for coming along and I invite Sarah Davidson to make a brief opening statement, after which we will proceed to questions.

10:30

Sarah Davidson (Scottish Executive Health Department): As the convener said, the committee is considering the Smoking, Health and Social Care (Scotland) Bill and the accompanying financial memorandum. Since those documents were published in December, the new team that I am heading up has focused on developing the detailed regulations and the associated regulatory impact assessment. The second of those documents looks at the full range of the financial and economic implications of sections 1 to 8 of the bill. Both documents are currently with ministers and should be published shortly. The committee will appreciate the fact that, in advance of publication, we cannot go into the detail of either the regulations or the RIA. However, we will be happy to return to the committee as soon as the documents are published to give the committee an informal and detailed briefing on them.

For the purposes of today's meeting, it is worth saying a couple of things about the approach that we have taken to framing the RIA. As required, in that document we have considered three options: a do-nothing option, a completely smoke-free option and a middle option. In attaching suggested costs and benefits to those, we have continued to adopt a central estimate from the range of possible outcomes that have been suggested by the available evidence. The central estimate represents our most realistic view of what would happen under each option, which continues the approach that was taken by the health economic research unit—HERU—at the University of Aberdeen in its initial review of the international evidence, which is summarised in the financial memorandum.

There are one or two exceptions to that, where we have been more prudent or conservative in our estimates. First, in our estimate of the impact on productivity of a total ban, we have erred on the cautious side; secondly, in our estimate of the impact on the bar sector of a total ban, we have continued to assume a central estimate of zero impact. We have also taken a cautious approach to the morbidity gains that may be achieved in the active smoking population and have assumed a central estimate of zero. All of that will no doubt become clearer when you have the RIA before you, and it might be helpful for us to spend some time with you after its publication so that we can go into some of that.

You will have noted that paragraph 210 of the financial memorandum refers to research that will establish the net present value of the health benefits and the potential costs of the legislation over a long period. You should be aware of the fact that the outcome of that work will be contained in the RIA and will be estimated over a 30-year period.

The one other area of assessment to which I want to refer is the estimates of costs to local authorities. The committee has received a submission from the Convention of Scottish Local Authorities on that, which contains some initial returns from individual councils. As COSLA said in its evidence to you, those estimates will require to be refined in the coming weeks in the light of the published regulations. We have now established a working group with COSLA, involving both officials and elected members, within which we will discuss the resources that are required to enforce the legislation. The outcome of those discussions will be reported to you in due course and will be incorporated into the final version of the RIA later in the year.

My colleagues Calum Scott, from the analytical services division, and David Palmer have been closely involved in the economic appraisal of the

policy. The three of us will do our best to answer any questions that you have on the financial memorandum.

The Convener: Thanks very much. One of COSLA's suggestions was that savings to the NHS resulting from the smoking ban should be transferred to local government to help meet the costs of implementing the ban. Is that feasible? What is the Executive's view of that?

Sarah Davidson: We have not discussed that in detail with COSLA, although it is on the agenda for exploration. If anything comes out of our discussions, we will inform you about that in due course; however, it is not something that we have considered in detail yet.

The Convener: It strikes me that the proposed smoking ban might trigger a change in alcohol consumption habits and have myriad effects on where people drink, how much they drink, the circumstances, and so on. Has any broader research been conducted on the impact of smoking bans on patterns of alcohol consumption, as opposed to the more restrictive research that has taken place at the University of Aberdeen?

Sarah Davidson: We are not aware of any specific research on that, although there has been anecdotal reporting in recent press coverage and so on. Some research has been done on the extent to which smoking moves from public to domestic settings and we seek to build on that research, which suggests that that move has not happened in places where smoking bans have been imposed. However, that is not the same issue as whether alcohol consumption moves. We know that changes in the cost of alcohol in Ireland have led to off-licence sales being slightly higher than on-licence sales in recent years, but there has not been a full appraisal of that to tease out all the implications.

Alasdair Morgan: On the costs to local authorities, you say in the financial memorandum that

"it is anticipated that costs of enforcement will diminish over time as the smoking prohibition becomes established and self-enforcing."

This morning, I listened to a news story about the wearing of seatbelts. Many of us might have thought that that was well established but we find that a substantial number of people do not wear seatbelts. In view of that, it might be a bit optimistic to think that the costs will diminish as much as we think.

Local authority bodies such as environmental health and trading standards, which have comparative regulatory functions, are always complaining that they do not have enough resources to get anywhere near enforcing the current legislation. Are we not in danger of being

in the same position in relation to the proposed ban on smoking? Central Government says that there will be some costs to local authorities but that those costs "will diminish over time" so it will not give them much more money. That will be yet another problem for local authorities, who already say that they cannot fund the burdens that we place on them.

Sarah Davidson: There are two points to make in relation to that. First, one of the things that we have learned from the Irish experience is that we should not assume that high compliance rates are not directly linked to adequate and visible enforcement in the early months of the implementation of a ban. Adequate resourcing and staffing go hand in hand with the achievement of compliance and there is not much likelihood of our matching Ireland's compliance rates unless there is adequate enforcement. I think that ministers recognise that.

Secondly, as I think you know, ministers have established a smoke-free areas implementation group to consider the issues. That group brings together people from the enforcement side, COSLA, the bar and pub sector and the nightclub sector. There are all sorts of places where the ban will have to be implemented. For the group, the ideal is to reach a point where the enforcement authorities have a good understanding of the challenges that they face in policing the ban and where the difficult areas will be. That will allow them to map out the resources that will be required. Certain ministers have indicated that they will take the outcome of that work seriously in considering the resources that need to be available to police the measure.

We are watching closely what is happening in Ireland. We recognise that we can learn only so much from one year, and although the indications are that the requirement for enforcement might drop off, our minds are not closed on the matter.

Alasdair Morgan: I turn to address not resources, but the people who will enforce the ban. If they are new people, is it not rather unlikely that they will somehow drop off after a while? Is there not a pattern when a regulatory regime is established with people to man it, whereby it carries on growing unless something happens to stop it? Like most empires, such bodies tend to build themselves up. If the people who are to enforce the ban are not new people, what existing functions will not be carried out while the smoking ban is enforced? Do you have any ideas about that at the moment?

Sarah Davidson: The short answer is no, but we are opening up that agenda with COSLA. We have had only preliminary discussions so far. We will want to discuss with COSLA the positive opportunities for joint working, particularly in

relation to the new licensing regime, which will come in a bit later than the smoking ban. There are definitely opportunities, but we recognise that there is a lot still to be understood, both on COSLA's side and on ours, about the implications of the legislation.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I presume that we are a year away from potential implementation of the ban. The strong evidence that we received from environmental health officers in a previous evidence session was that their age profile is increasing substantially. What do we do about the level of experience that we will lose between now and next year?

What do we do about enforcement? The police—on this and on many other issues linked to legislation that has been introduced by the United Kingdom Parliament—say that this is not a priority for them. I cannot imagine that they will be keen to police the ban and it strikes me that enforcement will rest with local authorities.

How quickly will the implementation group look at that staffing issue? Are we serious about looking at levels of recruitment? We are talking about trying to upskill some folk, but it is already difficult to recruit enforcement officers in other areas of local government. Where will we get the individuals to play the enforcement role? If we are losing that level of expertise among environmental health officers at one end, we might not have the input of new recruits at the other end.

Sarah Davidson: COSLA raised the subject of recruitment with us around Christmas time. Gordon Greenhill, who has given evidence to the committee, is giving some creative thought to ways of encouraging people into the profession, and we are waiting for advice from him about that.

There is an issue about how to get people in at the right level but, as COSLA noted, one does not have to have a fully qualified environmental health officer to provide corroboration or to serve a fixed penalty notice. COSLA and the Executive have to think about whether there is room for being creative—in the best possible sense of the word—in that area.

However, there is no doubt that there are pressures on the environmental health profession. The implementation working groups will look at those issues in the next couple of weeks. We are clear that by the time the bill has cleared its parliamentary stages by the end of the summer, we need to have a good idea about how everything will work.

Mr McAveety: Will smokers be recruited?

Sarah Davidson: Local authorities will not have much choice about that—as long as recruits do not smoke in enclosed public places, they will be okay.

The Convener: I understand that in Ireland a number of licensed premises have set up external buildings to accommodate smokers. That might or might not be possible in some licensed premises, particularly in the west of Scotland, where many licensed premises are part of tenements. For neighbours of such premises, noise from people going in and out of pubs would be even more of a concern than at present. Is there any evidence from Ireland that might assist us to assess the extent of that potential problem? I can see how enforcement will be carried out inside licensed premises, but I am not sure how you will deal with enforcement around the licensed premises. Noise and litter are the two issues that are most likely to be important.

David Palmer (Scottish Executive Health Department): I am not aware of any research in Ireland that deals with enforcement outside licensed premises. However, we will pursue that with our Irish colleagues in the longer term to get a feeling for changes on the ground.

I think that Gordon Greenhill said in his evidence to the committee that there was already legislation in place to allow local authorities to police areas outside pubs. The issue of litter and litter bins ran through the estimated costings that COSLA presented to the committee on that date, although I do not think that it was separately identified. We are thinking about those matters and we need to pull them together in the implementation group and have a hard think about what we need to do to ensure that enforcement is at as high a level as possible on day one.

The Convener: Being thought about is different from being acted upon. One of my concerns is that I could have constituents—as could other members here—who live in the same block as licensed premises and whose lives might be adversely affected by what we propose. We need to be clear about how the ban will work and, if additional costs are associated with it, we need to be clear about how they can be met.

David Palmer: I rely on Gordon Greenhill's opinion that there is legislation in place for litter and noise nuisance and that we must ensure that that legislation is enforced where there is a problem. I do not know enough about litter and noise in that context and so I cannot give the committee a knowledgeable answer. That said, the framework is in place and we must ensure that it is properly resourced so that litter and noise are not a problem.

10:45

The Convener: I could give you anecdotal evidence that people feel that legislation against noise and litter is not adequately enforced at

present. Instead of taking away from the problem, a smoking ban has the potential to add to it. It needs to be addressed in that context.

John Swinburne: Do you not agree that you are attacking the problem from the wrong end? The big tobacco companies are making enormous profits of the order of millions of pounds per annum. If you have irrefutable proof that smoking damages health and costs the national health service in Scotland millions of pounds per annum, surely the tobacco companies should have to make some redress for that? Surely you should be able to seek reparation from them? You should sue them until they are put out of business. I have been a smoker for 61 years, so it is not as though I do not know what I am talking about. Although I have managed to control it to a degree, smoking is a vile, filthy habit that kills people. If the evidence that you have is proof positive, surely you should go for the jugular? Instead of putting little impositions on people who are just following a particular hobby, you should get right at the tobacco companies.

The Convener: That question is probably one for ministers and not for officials.

John Swinburne: Surely they could pass it on to ministers and get them to move in the correct direction?

The Convener: I think that they could, but you should also raise the question with ministers. I will let Sarah Davidson respond if she wishes to do so.

Sarah Davidson: I think that David Palmer is eager to respond.

David Palmer: The point to make is that the issue is not one of taking away the individual's right to smoke, but of protecting other people from smoke. If we were to take away an individual's right to smoke that could be seen as a fundamental infringement of someone's civil liberties. That said, someone's right to smoke should not be allowed to impact on other people. In terms of the damage that smoking does to people, the relationship is one between the individual and the tobacco company. As has been shown in the United States, it is the individual who has to take the tobacco company to court.

Mr McAveety: Do you accept the evidence that the Scottish Licensed Trade Association provided for an earlier meeting about the substantial disbenefits in terms of jobs and the wider economic impact of the bill?

David Palmer: That evidence certainly took a different slant from what we had seen before. I have seen the Irish figures and the SLTA's view of life and the figures produced by the Central Statistics Office Ireland do not necessarily square up. Anne Ladbroke has written to the committee

about some of the evidence that the SLTA produced. Nonetheless, we must take account of that evidence. Clearly, we have to look carefully at the likely economic impact on the licensed trade and the hospitality sector in general. As Sarah Davidson said in her opening statement, the financial memorandum shows that we took a prudent view of the likely impact on the hospitality sector.

Although the research in Aberdeen suggested that pubs and bars would benefit to the tune of £100 million, we took the benefit back down to zero because we thought that that was the prudent thing to do. We want to ensure that we are prudent and cautious about the estimates that we make.

Mr Brocklebank: I still have some difficulties getting my head around the role of the environmental health officers and the whole business of enforcement. From an earlier response, I picked up the feeling that it might be appropriate in some circumstances to have fewer fully trained environmental health officers. However, given some of the complexities of enforcing a total ban, particularly in private clubs, it seems that a lot of expertise will be required of environmental health officers in terms of legally gaining access to private clubs. I can see that it might be possible to gain access to public houses and so forth but, as far as I am aware, there are smoking clubs in Edinburgh—clubs that are set up for their members to do nothing else but smoke. How would environmental health officers have either the legal ability or technical knowledge to gain the evidence required in such clubs? I would have thought that that would be a fairly complex job.

Sarah Davidson: I agree that a framework must be established to examine how each of the inclusions in the bill will be policed, for want of a better word. The bill gives environmental health officers the right of entry to private clubs. However, as you rightly say, there are many other issues around how they gain information. Officers would not just walk into a private club in the speculative way in which they would walk into an open licensed premises on the high street. Part of the discussion in the implementation group and in COSLA is about working through that and developing a training package for environmental health officers, so that by the time the legislation goes live all those issues have been resolved and people know what their rights and responsibilities are.

I want to counter any impression that we are suggesting that partially trained people should be doing things for which they have not been trained—that is not the case. The environmental health officers group has made the point that, particularly in outlying areas, there will have to be

joint working to deal with a lot of the work. We would look to COSLA and its chief officers for advice on the various grades at which that work could be done and where a fully trained senior environmental health officer might be backed up in his duties by either another appointed officer of the council or someone else who was deemed appropriate. We need to explore those issues with COSLA so that we can understand fully what the costs will be.

Mr Brocklebank: You have not turned your back on the Executive funding the training costs; that will not be left entirely to COSLA. Is that right?

Sarah Davidson: We have said that we will discuss that with COSLA.

The Convener: We have finished our questions on part 1 of the bill. I thank the witnesses for coming along. We will take a couple of minutes to swap over witnesses.

10:52

Meeting suspended.

10:53

On resuming—

The Convener: We will now take evidence on parts 2 and 3 of the bill from Roddy Duncan of the tobacco control division who is also the bill team leader; Dr Hamish Wilson, head of the primary care division; Eric Gray, team leader of dental and ophthalmic services in the primary care division; and Chris Naldrett, team leader of the pharmacy issues team in the primary care division, all of the Scottish Executive Health Department. The titles of some of those divisions should be shortened. I invite Roddy Duncan to make a brief opening statement before we proceed to questions.

Roderick Duncan (Scottish Executive Health Department): The Smoking, Health and Social Care (Scotland) Bill is wide in scope and, in addition to the provisions on smoking in public places, comprises a range of measures aimed at improving the delivery of health and social care and continuing the modernisation of the NHS in Scotland. The financial memorandum has outlined the costs associated with the provisions of the bill, the largest of which are those associated with the introduction of free eye and dental examinations for all. Most of the other provisions incur relatively small costs or are cost-neutral in respect of implementation of the bill. My colleagues will be happy to address your questions on parts 2 and 3 of the bill.

The Convener: I want to ask a basic factual question at the outset. How many extra dentist hours per year will be required to fulfil the measures in the bill?

Dr Hamish Wilson (Scottish Executive Health Department): I cannot give you a straightforward or precise answer to that question. The bill seeks to introduce a new form of oral health assessment. However, as that assessment will be more extensive than the current dental examination, there will be consequences for the man-hours needed to deliver it. We are still working through with the dental profession the details of that oral health assessment and any possible manpower consequences.

At the moment, approximately 70 per cent of adults pay for their examinations and 30 per cent are exempt. Simply making those examinations free to the existing registered population would place no additional requirements on dentists. However, we appreciate existing difficulties with access and if we are trying to encourage more people to attend dental practitioners we will certainly need more dentists. As far as providing current NHS services is concerned, we have estimated that, across Scotland, we are approximately 200 to 250 dentists short. Oral health assessments and dental examinations are part of that overall gap in service that we are trying to fill.

The Convener: You will appreciate that the committee is faced with some difficulty. As you have rightly pointed out, the bill is trying to introduce an improved form of oral health assessment for people. We know that a significant group of people do not attend the dentist and that a number of people in some areas of Scotland are unable to do so. I presume that, even without the introduction of this oral health assessment, you have a calculation for the current shortfall. To some extent, it could be argued that this new measure will compound rather than alleviate the problem. However, in any case, you are unable to quantify either element, because you have not yet completed your deliberations with the dental profession.

Dr Wilson: As I have said, an external quantification of the current gap in the number of NHS dentists has come up with a figure of 215. We are already making inroads into that matter. This year, more dentists are coming into the NHS in Scotland.

I should point out that the introduction of the oral health assessment is not the only issue that has to be considered. The modernisation of NHS dental services, which ministers have been considering and to which they will shortly announce their response, is intended to include a package of measures that will attract new dentists into the NHS and encourage some dentists, who might in recent years have moved in a different direction, to return some of their hours to the NHS.

In addition, we are training a larger number of professions that are complementary to dentistry. For example, dental therapists and hygienists can undertake certain treatments that have traditionally been carried out by dentists. Moreover, south of the border, the National Institute of Clinical Excellence has recommended a different way of approaching dental examinations. Instead of the traditional dental examination every six months, NICE has said that the matter should be considered on an individual basis, which means that the interval between examinations could vary between three months and two years. That might in turn release some time in the dental profession that could be devoted to oral health assessments.

You are right to say that the situation is complex. However, our starting point for addressing it is NHS Education for Scotland's well evidenced figure that we are 215 dentists short.

11:00

The Convener: Forgive me, but I want to pursue the issue. You said that we are short 215 dentists, but you could not say how many extra dentist hours per year will be needed to implement the bill. I am concerned about that. I bumped into a colleague from the Scottish Commission for the Regulation of Care this morning; I am concerned that the route down which we are going is similar to that which we went down with provision of free personal care; somebody thinks the measure is a good idea, but nobody has modelled the consequences of, or piloted, the proposed legislative provisions. Can you give me a better idea of how many dentist hours might be required, where the dentists will come from, what the costs would be of putting them in place and how the mechanisms that you say would release dentist capacity will work? The financial memorandum contains no hard evidence to support the claims that you make on that.

Dr Wilson: To clarify, the financial memorandum was constructed on the basis of the existing service because that was the only relevant information that we had. To look ahead to the different set of arrangements that we have discussed, it has been roughly calculated that about 1 million examinations might be substituted by new oral health assessments. At present, approximately 2 million examinations are done under the NHS. Given the change in the frequency of examinations that the measures might produce, given that not everyone will wish to or be able to attend in any one year and given that it will take an average of, say, 20 minutes for an oral health assessment, we might be talking about 300,000 hours of dentist time, which might come down to about 150 dentists. That is a rough approximation of the time that would be required if we were to introduce only oral health assessments.

However, as I said, other factors come into play, such as the opportunity for professions that are allied to dentistry to take over part of the dentist's role—not in carrying out oral health assessments, but in follow-up treatment—which would relieve existing dentists in respect of the time that they currently spend with patients. Also, dentists undertake examinations at present, which is offset against that figure. We need to work back from the gross figure.

The Convener: You said that you have not completed your discussions with the dental profession about the implications of the introduction of oral health assessments. Have you completed discussions about the work that is to be done by professions that are associated with dentistry? Are people in training and in the pipeline so that they are ready to take up that responsibility?

Dr Wilson: Yes. We are increasing the number of dental therapists who are trained in Scotland to 45 per annum. Traditionally, no dental therapists were trained in Scotland; it is only recently that we have started such a programme in Scotland. Also, there are several hundred dental hygienists throughout Scotland who could be used more effectively.

Alasdair Morgan: Many members struggle with the fact that, when we talk to our constituents, we hear that more and more of them cannot get any dental treatment at all. You talk about more dentists coming into the NHS, which may be true, but all we hear about is dentists who leave the NHS to go to private practice. At the end of the day, the measures might be a publicity own goal. The quid pro quo for offering free dental checks is that people will get them at a frequency that is four times lower than was the case previously—every two years instead of every six months—which may well be medically justified, but I suspect that it will be difficult to convince a sceptical public about that. That is just a comment.

We are 200 to 250 dentists short at the moment and we are going to introduce examinations that may take longer, certainly to start with. I hope that the new system will bring in lots of people who do not have examinations at present, otherwise there would not be much point in the exercise. Presumably—otherwise the exercise would be futile—some of the examinations will result in treatment, which will take up more dental hours. Again, I point out that those dental hours are not available. It does not seem that the costs in the document go any way towards recognising the reality of the situation on the ground.

Dr Wilson: We totally accept that what is in the financial memorandum is a cost that is based on dental examinations for the existing number of registered patients. We indicated what the cost

might be under current circumstances if that number increased by 25 per cent, so we have given some such costs in the financial memorandum. The difficulty that we had at the time was that we had not entered into detailed discussions with the profession about the new form of oral health examination and what that might entail.

In parallel with that, ministers have said that they will shortly respond to the consultation on modernisation of NHS dental services. That response is likely to be to target an increase in the number of dentists and allied dental professionals who we can bring into the service in order to deal with the problem that you described, which relates to the new form of assessment and the consequent treatment.

There is strong evidence from elsewhere that a more extensive oral health examination is a potent prevention measure and that, although it might reveal the need for additional treatment in the short term, it will turn the system around over time and will put in place a more prevention-focused outlook.

Alasdair Morgan: There will be a considerable hump before we reach that longer term goal. It strikes me that it would be fair to assume that a large proportion of people who do not get dental examinations at the moment need treatment, but currently seek it only when faced with an emergency. We will strike a big hump if we are successful in encouraging those people to come in for examinations. Having created that expectation and demand, how on earth are we going to meet it?

Dr Wilson: We will do so by using the increased number of dentists and allied dental professionals.

The Convener: There are two problems. One is the unidentified cost and the second is the feasibility of delivering the increased number of dentists and dental support staff. I am not sure that you have convinced us on that.

Ms Wendy Alexander (Paisley North) (Lab): I start by saying that I appreciate Dr Wilson's candour. I hesitate to suggest that it is because you come from a professional background, but you have been candid about the difficulties that might be experienced in fulfilling the bill's legislative obligations. However, in your candour, you have given us something of a constitutional difficulty. What is the purpose of a financial memorandum in a unicameral system? A financial memorandum should fully scope the financial costs that are associated with fulfilling the legislative provisions of any bill. However, your testimony this morning has convinced Parliament's Finance Committee that this financial memorandum does not fulfil the legislative purpose that is laid down for it

constitutionally. As we all know, there have previously been examples of inadequate financial memorandums—the one that springs to mind is the one for the Education (Additional Support for Learning) (Scotland) Bill, which made wonderful promises about integrated learning without ensuring that the resources existed to support it. In that case, the financial memorandum did not fully scope the associated financial costs.

We are keen to avoid a future Auditor General for Scotland saying that this financial memorandum was inadequate and that the Finance Committee, whose job it is to scrutinise the adequacy of the financial memorandum, was remiss in its duties.

In fairness, I do not expect you to provide an answer now. However, the committee is inviting you to go back to consider whether the financial memorandum fulfils its constitutional purpose of itemising fully the financial resources that will be required to implement the provisions in the bill. Perhaps you will then write to the committee to say whether the Executive considers that the financial memorandum is adequate, or whether it wants to take advantage of the recently created provision that allows the Executive to submit an alternative financial memorandum that would more accurately meet the constitutional obligation to scope fully the resources that are required to fulfil the bill's provisions. It would be prudent for all of us, given the committee's scrutiny function and the officials' responsibilities in relation to the purpose of the financial memorandum, if you were to reflect on the document's adequacy and perhaps to take advantage of the opportunity to resubmit it.

Dr Wilson: We can certainly consider that.

The Convener: There might be a bigger issue than has so far been raised, because the British Dental Association suggests that there needs to be "a threefold increase"—to £520 million—in the funding of NHS general dental services. The profession's view is that very large sums of money are required. We might respond, "They would say that, wouldn't they?" However, such a huge gulf between the costings of the professional body and those of the Executive does not give the Finance Committee great comfort that what is suggested can be managed within the envelope of resources that has been set out.

Dr Wilson: An issue that we face is that ministers have not yet announced their overall response to the consultation on modernising NHS dental services in Scotland and the resources that will be attached to that response, which might in part address the points that members have made.

It is fair to point out that the BDA based its estimate of additional costs on consideration of the situation in a particular area in Scotland. The BDA

considered the differential between the arrangements for the salaried service and those for the independent contractor service and then extrapolated figures for the whole of Scotland. We do not necessarily accept that that was a reasonable basis on which to determine the resources that are needed for NHS dentistry throughout Scotland. However, as I said, ministers will very shortly announce their response to the consultation and the resources that will be attached to that—we might ally that point with Ms Alexander's comments.

The Convener: You say that the BDA based its argument on what is happening in one area of Scotland. An equivalent piloting or mapping process from the Executive might have given us a greater evidence base on which to make a judgment. However, the Executive does not provide either basis for analysis.

Dr Wilson: We are moving beyond the issue of free dental checks to the broader issue of dental services. The resources that will potentially be attached to the ministerial announcement will be targeted at specific areas in the way that you suggest. I should add that the intention has been to introduce oral health assessments initially for older people, which might offer the kind of piloting experience that you describe. However, the system has not yet been introduced.

Jim Mather (Highlands and Islands) (SNP): I am keen to build on the dialogue about planning the resources. I would derive a lot more comfort from the situation if I had a clearer idea of the current demand in relation to the various roles in dentistry and, beyond that, a clear understanding of the future additional demand that is envisaged so that we could consider the total resource that will be required in the context of what is available, the current shortfall and the additional resources that would be provided. If we had a clear picture of the situation, particularly if figures were given for each NHS board area, I would be enormously comforted.

As a representative of the Highlands and Islands, I have grave concerns about the implications of the bill, especially when we start to scratch the surface of latent demand and, once that demand has come through, of the additional remedial work that may need to be done for many people.

11:15

Dr Wilson: Again, the issue that you raise will be addressed partly by the ministerial response to the consultation. I am sorry that I am not able to give more information at present.

Jim Mather: I understand that. However, the implication that we are launching measures in the

dark without concrete figures is a material worry. I am keen to put that on the record.

Dr Wilson: We will seek to address the issue in the response that you have invited us to make.

The Convener: Is legislation necessary to do any of the things that you are suggesting in part 2 of the bill? Could those measures have been wrapped up in a more general modernisation programme for dentistry? I am not sure whether the bill is a convenient peg on which to hang the measures. Technically, do any of the provisions in part 2 require to be legislated for in this context?

Dr Wilson: The clear advice that we have received from solicitors is that we should take powers to implement the partnership agreement commitment to free dental and eye checks for all. That provision requires to be made in legislation.

The Convener: Surely the introduction of free dental and eye checks for all is a matter of money; legislation is not required to make it possible.

Eric Gray (Scottish Executive Health Department): The advice that we have received is that primary legislation is needed if we want to introduce free checks for everyone.

Ms Alexander: If the advice from solicitors is that legislative provision is required, concomitant with that the financial memorandum must cost fully the financial implications of the provision. It is not possible to say, "We will separate it out and deal with it in our programme for modernising dentistry." Our job is to ensure that the financial memorandum covers fully the costs that are associated with any proposed legislative changes. I accept that the argument could go either way. However, because advice has been received from solicitors, we are unable to pick and choose the coverage of the financial memorandum. No doubt it will be easier to reflect the costs of the provision in the financial memorandum after the statement on dentistry has been made.

Dr Wilson: We believe that the measures in the rest of part 2 are required under primary legislation to deliver some of the changes that ministers are considering under the modernising agenda. Much that can be done in dental services does not require primary legislation. Many of the responses to the consultation on modernising NHS dental services made proposals that we can implement through changes either to secondary legislation or to the way in which dental practitioners are paid. Those changes can be made through directions, rather than primary legislation.

Alasdair Morgan: The information on provision of general dental services refers to new arrangements that have still to be agreed with the profession. Our experience of new arrangements in the health service, such as the consultant

contract and the arrangements for out-of-hours working by GPs, is that none of them has been implemented at no cost; all have been implemented at vast cost. However, we are assuming that the new arrangements that the bill will introduce will be entirely cost neutral. Can you put your hand on your heart and say that that will be the case?

Dr Wilson: The specific costs that are allied to changes under the heading of "provision of General Dental Services" can be regarded as neutral. They do not in themselves require additional expenditure. I am sorry to keep coming back to the impending ministerial announcement on modernising NHS dental services, but the measures that ministers are considering in relation to improving NHS dental services throughout Scotland will have a cost, although those measures will be much broader than the specific measures that have been included in the bill. As I have already said, a number of measures can be introduced in NHS dentistry in Scotland that do not require primary legislation but will have a cost.

Alasdair Morgan: Perhaps I am picking this up wrongly, but the financial memorandum states:

"the new arrangements would be nationally agreed".

Agreed with whom?

Dr Wilson: They would be agreed with the British Dental Association on behalf of the profession.

Alasdair Morgan: We are talking about changes in the system of "fees, capitation and allowances".

Dr Wilson: That is correct.

Alasdair Morgan: Is there any other trade organisation that, when asked to consider a change in its arrangements, will not wish to come out of that change with more money in its pockets? That has not been the case in other sections of the medical profession.

Dr Wilson: That has been made quite clear in the evidence that the British Dental Association has given to the committee. There is a process of negotiation, which is continuing.

Alasdair Morgan: Higher expenditure will, I presume, be a result.

Dr Wilson: Potentially, yes. If the proposals are agreed by the Scottish ministers, they will provide the funding for them.

Alasdair Morgan: Is not that a consequence of the bill?

Dr Wilson: No, it is not a direct consequence of the bill.

Alasdair Morgan: So, is it an indirect consequence of the bill?

The Convener: That is probably not a question for the officials. Having listened to this evidence, it strikes me that it might have been better if the ministerial announcement had been made by now, so that we could be clear about the overall framework. We would then have been able to consider the legislation in that context. There seems to be a cart-before-the-horse element to the way in which the process has developed. Perhaps the issues that we have raised need to be conveyed back to the minister.

A further question arises from the experience of the general medical services contract and the process for hospital consultants. In those cases, negotiation took place at United Kingdom level. By the minister's own admission, that did not necessarily lead to the best outcome as far as the Scottish context was concerned. Are we to have a repetition of that with the negotiations involving the British Dental Association that you mentioned?

Dr Wilson: The negotiations on the position in Scotland are being conducted purely for Scotland. The desired changes to dental services in England have already been announced, and those changes will be implemented south of the border with effect from April 2006.

The Convener: Can we quantify what the English changes would mean in a Scottish context and then identify the potential implications of having separate Scottish arrangements?

Dr Wilson: There are no direct implications for Scotland from the English changes.

Alasdair Morgan: I will switch briefly to pharmaceutical care services, referring to paragraphs 234 and 235 of the financial memorandum. Paragraph 234 contains additional costs of £500,000 for health boards as a result of the new arrangements. However, I am not clear about the costs under paragraph 235. As far as I understand it, it refers to health boards filling gaps in the current provision under the current pharmacy arrangements. Would such costs also be funded by the health boards from their existing budgets, or would Government funding be available?

Chris Naldrett (Scottish Executive Health Department): The expectation is that those costs would come out of health boards' existing allocations or their uplifted allocations. It is a bit of a chicken-and-egg situation for us: until the boards take up the duty to identify need and plan the required resources, we cannot quantify the figure.

Alasdair Morgan: The £500,000 that is mentioned in paragraph 234 is not a huge sum in the context of the health service budget, but we are talking about individual health boards, some of which are struggling to stay solvent. Most break even only with difficulty. Is it really sensible to tell

boards, "Here's some extra responsibilities. Fund them out of your existing budgets"?

Chris Naldrett: You need to consider the arrangements in the round. In modernising pharmacies, we are trying to introduce a different way of working.

That is not to say that all services will add cost, because there are different ways to do the same job—I think the expression is "doing it smarter". Economies of scale could arise from the new set-up. I will echo a comment by Dr Wilson. We are about a year away from the contract's implementation—it is still being negotiated—but if resource implications are identified when that happens, we will take them to ministers and address them.

Alasdair Morgan: I return to Ms Alexander's comments about the financial memorandum's purpose. Will the bill force health boards to spend money or will expenditure be optional?

Chris Naldrett: Health boards will have a duty to identify and provide the necessary services.

Alasdair Morgan: In that case, we need to be clear about the costs.

Dr Wilson: The £500,000 is for support staffing in health boards. As for additional service costs, the planning process that health boards will be required to follow will identify gaps. We cannot quantify those gaps at present because that planning process has not taken place. That is the chicken-and-egg situation again.

In general, it is recognised that we have a good network of community pharmacies throughout Scotland. That was reflected in the debates in Parliament when the Office of Fair Trading pharmacy services report was produced. I think that members want that network to be protected. We consider the planning arrangements against that background. We have a network that is generally regarded as being good, so we do not expect to find huge service gaps.

The Convener: I thank the witnesses for giving evidence. The committee expects to consider a draft report on 15 March.

Ms Alexander: Could the clerks examine the scope of financial memorandums before that meeting? The information could by all means be shared with the Executive. Increasingly, the question whether a financial memorandum covers all of a bill's provisions comes into play. It would be helpful to have circulated to the committee information on the purpose of financial memorandums, but it would also be helpful if clerks and subsequently conveners were to discuss the matter.

I worry that we will create a future backlog for the Audit Committee if our consideration is

anything less than rigorous. By signing off a financial memorandum, we collude in it or signal our satisfaction that it is comprehensive. This is not the first time that we have not felt wholly comfortable about that signing off.

It is fair to say that the matter is further complicated by the opportunity for the Executive to provide revised financial memoranda. We welcome revised financial memoranda, because without them, how would we have an accurate picture? However, we want to ensure that the parliamentary process does not simply allow for a variety of financial memoranda as they suit the Executive when, for example, it might be better to have heard the dentistry statement first, as has been said. We do not want to fall into a pattern of events in which the true financial memorandum does not materialise until later in proceedings, which would undermine our scrutiny function.

Those generic considerations are rising up the agenda. Perhaps the clerks and the convener could examine them and report on their observations in due course, later in the spring. As I said, we are on the boundary of not fulfilling an obligation to the Audit Committee, albeit through no fault of our own.

11:30

The Convener: I agree. One of the problems is that in a sense we have made stipulations to the Executive about what we expect in financial memoranda. As we have seen today, the Executive does not always live up to what is required either by our stipulations or by standing orders. We will have to deal with the issue in the context of our report on the bill. The matter is further complicated by the fact that we are waiting for a regulatory impact assessment on the smoking side of the bill.

I take the general point, which is an important one. Over the past two years the committee has done a considerable volume of work on the financial memoranda and it has flagged up the issues that have arisen. We must ensure that when bills come in, and in particular when they have substantial financial implications, those implications are properly mapped out. We may have to call a halt at some point and say that a bill can go no further until the financial issues are put in place. We perhaps need to have that dialogue with the Executive.

Ms Alexander: I agree whole-heartedly, but I think that prior to that we need to do a bit of work with the parliamentary authorities. You raised a fascinating point when you suggested that there might be no need for a legislative provision and that it could be argued that the matter falls outside legislation. However, the Executive officials said

that the Executive solicitor told them that the provision has to be in the bill and the financial consequences follow from that.

It seems to me that to ensure that we fulfil our scrutiny function we are required to be clear about what a financial memorandum should do and also to have a protocol with the Executive and its solicitors about the scoping and coverage of financial memoranda. This is an interesting one-off case, but I am anxious that the parliamentary authorities examine the implications of allowing a revised financial memorandum to be submitted. The parliamentary authorities must consider at what stage in the process such financial memoranda are submitted and, if they are subsequently published, whether there is any guarantee that they come to the committee for due process to ensure that they are comprehensive. I am not sure that there are as yet any rules that govern when and how a revised financial memorandum is published and scrutinised.

The Convener: Susan Duffy can perhaps answer the point about a revised financial memorandum.

Susan Duffy (Clerk): Changes that were made to standing orders at the start of the year allow for a revised financial memorandum to be brought forward if an amendment is agreed at stage 2 that alters significantly the financial implications of a bill. That provision has now been placed in standing orders. The committee has agreed that where that occurs it will endeavour to take evidence, as we did on the Water Services etc (Scotland) Bill. In standing orders, that is the only point at which the Executive is obliged to bring forward a revised financial memorandum.

Ms Alexander: Clearly, the issue that we have on this bill is nothing to do with an amendment at stage 2. We just think that there is a risk that the financial memorandum is inadequate to cover the provisions in the bill. Am I right in saying that in these circumstances the only thing that we can do is reject it? It appears that we may not have an appropriate mechanism for dealing with a situation that we see with increasing regularity, which is that the financial memorandum is not adequate. I do not want to be in the position that the only club that is available to us is to halt the whole process. It seems to me that there is a desperate need for a set of protocols and procedures when we feel that the scoping coverage of the financial memorandum is inadequate for the legislative provisions.

The Convener: We have had the discussion before, but perhaps we can have it again in stronger terms in order to achieve a better resolution than we have had up until now.

Relocation of Public Sector Jobs

11:34

The Convener: Item 3 is to invite members to consider what issues we would like to raise with the Executive in our response to the relocation guide, following on from our evidence-taking sessions on the relocation of public sector jobs. I intend to consider a draft report at our meeting on 15 March and I thought that it would be helpful to take the opportunity to highlight broad issues that we want to include.

I will get the ball rolling by saying that there are three issues that we will certainly want to highlight. The first is to do with consultation. The unions raised the issue of delays in the decision-making process and their impact on staff morale. Also, it is not quite clear what the consultation mechanism was for non-departmental public bodies, as opposed to that for the mainstream civil service, or how the staff, the unions and the Executive were involved.

The second issue is transferability. Staff in NDPBs have a different set of rights from those in the mainstream civil service and the unions raised a number of issues to do with specialist staff, but we suggested in our previous submission that there might be an opportunity to put in place more creative arrangements that would avoid compulsory redundancies and allow experience and expertise to be retained in the public sector.

The third issue, on which the Executive began to shift, was the use of triggers other than lease ends for the consideration of relocation. The minister seemed to adopt a more open stance on that than did John Elvidge in his evidence.

Those are three issues that we might explore if members agree to do that. If there are any other issues that I have not highlighted, we can incorporate them into the report. Are members content with that?

Members indicated agreement.

The Convener: Okay. We will draft something and bring it to the committee on 15 March for approval.

We now move on to agenda item 4, which is consideration of a draft report on our cross-cutting review on economic development and which will be taken in private.

11:36

Meeting continued in private until 12:22.

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