

FINANCE COMMITTEE

Tuesday 25 April 2006

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2006.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 25 April 2006

Col.

LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL: FINANCIAL MEMORANDUM.....	3523
TOURIST BOARDS (SCOTLAND) BILL: FINANCIAL MEMORANDUM	3537
ACCOUNTABILITY AND GOVERNANCE INQUIRY	3545
ITEMS IN PRIVATE.....	3546

FINANCE COMMITTEE

12th Meeting 2006, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Mr John Swinney (North Tayside) (SNP)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

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

*Mark Ballard (Lothians) (Green)

*Derek Brownlee (South of Scotland) (Con)

*Jim Mather (Highlands and Islands) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Robin Harper (Lothians) (Green)

Janis Hughes (Glasgow Rutherglen) (Lab)

Alex Neil (Central Scotland) (SNP)

John Scott (Ayr) (Con)

Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Brown (Scottish Executive Education Department)

Louise Miller (Scottish Executive Justice Department)

Mike West (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 25 April 2006

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

Legal Profession and Legal Aid (Scotland) Bill: Financial Memorandum

The Convener (Des McNulty): I welcome people to the 12th meeting in 2006 of the Finance Committee. I issue the usual reminder about switching off pagers and mobile phones. We have received apologies from Wendy Alexander.

Agenda item 1 is consideration of the financial memorandum to the Legal Profession and Legal Aid (Scotland) Bill, for which we agreed to adopt level 2 scrutiny, which involves taking written evidence from bodies on which costs will fall. Today we will take evidence from Executive officials. I welcome to the meeting Chris Graham, who is access to advice team leader; Louise Miller, who is bill co-ordinator; Mike West, who is bill team leader; and Elaine Hamilton, who is from the legal services team. I understand that the Executive does not wish to make an opening statement. Is that the case?

Louise Miller (Scottish Executive Justice Department): We are happy to go straight to questions from members.

The Convener: In that case, I invite John Swinney to start us off.

Mr John Swinney (North Tayside) (SNP): I begin with a general point. I assume that the officials have seen the submissions that we have received from bodies such as the Law Society of Scotland and the Scottish Legal Aid Board. It is fair to say that the Law Society's submission is pretty critical of the financial memorandum. What are your observations on the issues that the Law Society has raised? Do you accept any of its criticisms of the contents of the financial memorandum?

Louise Miller: I make the general observation that our difficulty with the Law Society's written submission is that it does not offer any alternative costings. Although it is critical of our costings in a number of respects, it does not provide us with a concrete alternative basis to go on. We are more than happy to respond to specific questions about where the various figures in the financial memorandum have come from and how we have worked them out.

We readily admit that many of the figures in the financial memorandum are best guesses. There are many imponderables. We do not know how many complaints the Scottish legal complaints commission will have to deal with when it has been set up. For example, we do not know where it will be located and we do not know to what extent it will employ staff who have transferred from the Law Society or the Scottish legal services ombudsman, and to what extent external recruitment will be needed. We have come up with our best guesses and we are more than happy to explain how they have been worked out. If the Law Society has alternative costings, we would be more than happy to examine those, but we have not received anything along those lines to date.

Mr Swinney: Can we consider some specific points about the make-up of the estimates in the financial memorandum? The financial memorandum estimates that the commission will require between 50 and 60 staff. Will you share with the committee the basis on which that estimate was made?

Mike West (Scottish Executive Justice Department): Yes. We based the estimate of 55 to 60 staff on an estimated need for approximately 40 adjudicators, who will be the case handlers. The Law Society of England and Wales consumer complaints service produced the figure that their adjudicators can handle an average of 100 complaints per year.

Our key estimate is that the commission will be dealing with approximately 4,000 service complaints in its first year of operation. That is based on the Law Society of Scotland's figures for the past two years of about 3,700 and 4,700 complaints respectively. Of course, those figures encompass complaints about service and conduct and they reflect a surge in complaints about endowment mis-selling. We therefore think that the estimate that the commission will have to handle 4,000 complaints is realistic and fair.

Mr Swinney: Do you not think that that estimate of 4,000 complaints might be on the high side, bearing in mind what you just said about a peak in complaints relating to endowment mortgages?

Mike West: We expect the current peak of endowment mis-selling complaints to fall away during the next year or two, but we also expect that the creation of the commission will attract new complaints. It will inspire greater consumer confidence and people might be more forthcoming in complaining.

Mr Swinney: So you have taken the view that that level is likely to be sustained, although it might be for different reasons.

Mike West: Yes; it is our best estimate.

Mr Swinney: You mentioned that the Law Society of England and Wales advised that an adjudicator could handle 100 complaints annually. Is the structure for handling complaints in England and Wales similar to the way in which you envisage that complaints will be handled by the commission? In effect, there will be an early assessment of whether a complaint is admissible or worthy of consideration and then more detailed scrutiny will be carried out thereafter. Is the model in England and Wales similar to that?

Mike West: It is broadly similar, but I would not say that it is exactly the same. The other allowance that we have made is that the 44 adjudicators will have senior adjudicators who will be highly experienced, responsible post-holders who will be able to advise the adjudicators on specific cases. That is not set out in the bill because we intend to allow the commission to determine the precise nature of its staffing structure. We think that it is reasonable to estimate that there will be a need for senior adjudicators as well as the overall team of adjudicators. We envisage that they will be split roughly into five teams. Four teams will handle complaints and one team will deal with appeals. That is the provisional structure that we have worked on.

Mr Swinney: What is the envisaged split between senior and more straightforward adjudicators?

Mike West: There will probably be about five senior adjudicators to about 44 adjudicators.

Mr Swinney: Have you estimated the salary cost of those adjudicators?

Mike West: Based on the precedent of the financial ombudsman service, the salaries of the adjudicators would be at about B2 level in civil service terms—higher executive officer level. The salary levels of the senior adjudicators would have to be sufficient to attract the right calibre of people with the right level of experience. We estimate something in the region of £60,000 to £70,000 a year for the senior adjudicators.

Mr Swinney: Are those decisions about salary levels subject to review by the commission once it is established?

Mike West: Yes.

Mr Swinney: Once established, could the commission take a different view on salary structures and levels, which might be higher or lower than the arrangements that are set out in the financial memorandum?

Mike West: That is right. There is a provision in the bill that ministers should be consulted about salaries in prospect, but the intention is to allow the proposed commission flexibility in the light of experience.

Mr Swinney: I want to push you further on your last point because the total cost is a major consideration in the financial memorandum. Would ministers apply a ceiling or cap to the likely budget and composition of the commission and say to it, "You can go to £2.8 million, but you can't go any further than that because that would become an unreasonable cost on the profession"? Are ministers likely to take that approach?

Mike West: It is difficult to anticipate what ministers might do. The annual budget and the work plan of the proposed commission have to be the subject of consultation with the legal profession and the professional bodies each January because it is the profession that will pay for the commission. That is an important mechanism that we have taken from the financial ombudsman service, which carries out an annual consultation, so that there can be a debate between the commission and the profession.

Mr Swinney: Where does the final determination of the budget rest?

Mike West: With the commission.

Mr Swinney: What is the role of ministers in that respect?

Mike West: Ministers' role is fairly remote and hands off in relation to the overall budget because that is for the commission to set up and develop in the light of the consultation with the profession.

Mr Swinney: The point that I am driving at is that everyone across the board wants to avoid the costs of the commission becoming punitive on the profession. Therefore, I am trying to find out what the mechanism is to ensure that that does not happen. You said that there is to be an annual dialogue between the commission and the profession to set an annual budget plan and all that goes with it, but the bill provides no veto for ministers that would allow them to say that the commission has gone too far.

Mike West: No.

Mr Swinney: I have one other general point about the financing of the commission. The Law Society makes the point that all the costs of the proposed commission, with the exception of start-up costs, are to be carried by the profession, but that currently the Executive pays out to the order of £400,000 a year to support the office of the Scottish legal services ombudsman. What thought has the Executive given to whether its present funding for the Scottish legal services ombudsman should continue to flow into the regulation of the legal profession?

10:15

Mike West: Our provisional view is that the input of that funding to the commission seems

anomalous. In five or 10 years, people might ask why the Executive and the taxpayer were contributing to the costs of the commission to such a small extent and purely for historical reasons. Ministers have not reached a conclusive view on the matter but, for the time being, there is a general presumption against a contribution from the taxpayer via the Scottish Executive.

Louise Miller: Two considerations lie behind that. First, the provisional view that has been taken is that the handling of complaints against lawyers should be paid for by the legal profession because that will locate in the right place the accountability for complaints against the profession. Secondly, the state will, indirectly, make a significant contribution through the many public sector lawyers in Scotland who have practising certificates. The normal practice is for employers to pay for practising certificates, so we expect that that is likely to be the case with the annual levy. As an employer of lawyers, the public sector will indirectly provide significant funding to the new body. At this stage, we simply do not envisage a direct financial contribution along the lines of the funding for the Scottish legal services ombudsman, as it is planned to abolish the ombudsman's functions.

Mr Swinney: To follow that line of argument, it is likely that a reasonable proportion of the £400,000 that goes to the Scottish legal services ombudsman will flow from the public sector to the commission through payment of the levy for public sector lawyers.

Louise Miller: That is broadly correct. Under the current system, the Law Society's complaints-handling function is funded through the practising certificate fee. That is less visible than the new system will be, because there is no specific levy for that function—the fees are wrapped up in the practising certificate fee. The new system will be different in that there will be a separate annual levy that is directed specifically toward complaints handling. That will be more visible, but the principle will in essence be the same. As employers normally pay the practising certificate and associated fees, that mechanism provides a substantial public subsidy of the system.

Mr Swinney: Has there been discussion with the Law Society about a reduction in the levies or fees that individuals will have to pay to the Law Society to fund its client relations activity, which will be scaled down? As the Law Society will spend less money on its complaints-handling mechanism, has there been discussion with it about the extent to which the fees and levies that it takes from practising solicitors will be reduced?

Mike West: We expect a reduction in the practising fee, but the Scottish Executive does not have direct influence in that matter, which is for

the Law Society. However, it is clear that when the commission is set up, the Law Society will no longer deal with service complaints, as the commission will deal with them. Therefore, the bill will result in savings for the Law Society, but that is a matter for the society to resolve with its membership.

Louise Miller: The most recent count shows that the Law Society spends about £2.1 million a year on complaints handling. According to the information that we have from the society, about 70 per cent of the complaints that it receives are pure service complaints, about 20 per cent are about conduct and the other 10 per cent are hybrid cases. The Law Society will still need to make provision to deal with about 30 per cent of complaints—the 20 per cent on conduct plus the conduct element of hybrid complaints. However, the figures show that it could save 70 per cent of £2.1 million.

The Convener: Do you have a breakdown of how many of the service complaints are about fees?

Mike West: The Law Society does not deal with complaints about fees; such complaints are referred to the auditor of court so that the fees can be assessed. When a solicitor has charged a grossly excessive fee that bears no resemblance to a reasonable fee, it also becomes a conduct matter, which comes within the interest of the Law Society. However, the current system is that complaints about fees go to the auditor of court. That system has been the subject of research, which is to be published next month, by the research working group on the legal services market in Scotland. The group is recommending that the auditor of court system be reformed and modernised, but that will be done on a separate and slower track.

The Convener: If you are dealing with the systems of regulation through a bill, why are you dealing with fees separately and later?

Mike West: The functions of the auditor of court lie in two areas: first, dealing with and assessing judicial fees and, secondly, dealing with solicitors' fees and complaints about solicitors' fees. The Scottish legal complaints commission might not be the obvious body to have both functions in future, but that is still to be determined. Once the research working group's report is published, the plan is for there to be a consultation on the options. The auditor of court function could remain with the court, it could go to a proposed Scottish civil enforcement agency, or it could go to the Scottish legal complaints commission. However, the matter has not been decided and a public consultation is required before a firm view can be taken.

Louise Miller: A substantial part of what the auditor of court does now is not directly related to complaints against solicitors but is instead related to assessing what costs are properly recoverable in litigation once a case has been concluded. It is that dual function that is the difficulty with assuming that everything that the auditor of court does can properly be handed over to the Scottish legal complaints commission. A longer consultation process and further analysis are required to examine what should happen to the different functions that the auditor of court now carries out and to consider whether they should be kept together in the same place and, if so, where that should be.

The Convener: I was not necessarily assuming that all the auditor of court's functions would transfer, but even if just a proportion of them do, it would seem logical to decide how that will be handled before the Executive goes through the process of legislating to set up the Scottish legal complaints commission. Obviously, the Finance Committee is interested in the financial implications. I will leave the issue there.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): The Law Society's submission expresses a fear that there will be a reduction in access to justice, particularly in areas that are often contentious, such as matrimonial law and conveyancing. Many lawyers operate on small margins in legal aid work. The fear is that the proposed levy will lead to practising lawyers withdrawing from those areas of work. How do you feel about that?

Louise Miller: The key point is that there are two levies: the annual levy and the complaints levy. It will be for the Scottish legal complaints commission to decide, on the basis of initial analysis, and then adjust, on the basis of experience, first, what proportion it wants to take from each levy; and, secondly, how much the complaints levy should be in different circumstances. The bill states that the annual levy has to be paid by each practitioner in Scotland and must be the same for everyone, but the complaints levy can be varied. It can be charged at different amounts according to different circumstances. For example, there is obviously the potential for the commission—if it thinks that it is appropriate—to give special consideration to work in remote areas or to lower-value work.

For example, it will be for the commission to decide how much should be charged to firms that operate in areas where the nature of the work is such that it is significantly more likely to attract complaints, even if the solicitor is doing a good job. Such issues can be built into consideration of how much the complaints levy should be in different types of case. There is also the wider

question of how much should come from the complaints levy and how much should come from the annual levy, which must be paid by everyone, including in-house lawyers, large commercial firms and lawyers who tend not to attract many service complaints, because of the nature of their work. The commission will need to consider how cross-subsidy should work in the system.

Mr Arbuckle: However, the bill will not stipulate what should happen or give any advice to the commissioner on the matter. It will be totally up to the commission to decide.

Louise Miller: The bill will not stipulate what should happen. It will give the commission flexible powers in this respect. We think that that is right. We need an independent body that has the expertise to make such decisions and that is able to make adjustments in the light of experience of any effects on the market. It would be wrong for ministers to start by taking a prescriptive approach to the issue that might subsequently turn out to be very wrong in terms of market impact.

Mr Arbuckle: I want to follow up on John Swinney's earlier question about levy setting. We may be guessing that the number of complaints that are made will be 4,000 or so. If there are many fewer complaints, that will obviously have implications for staff and for the levy. Is it possible for the levy to be reduced?

Louise Miller: Yes—obviously that is possible. The commission will need to decide what proportion of its income it wants to take from the complaints levy to begin with. The figures that we have provided are based on 50 per cent coming from the annual levy and 50 per cent coming from the complaints levy. They are purely notional, for the purposes of providing an illustration. The commission could decide that it wants to take much more from the annual levy, as opposed to the complaints levy. It may go down that road if the number of complaints is smaller than anticipated and the fee per complaint gets too high. The commission will need to consider such matters in the light of consultations, research and experience of how the system operates once it is up and running.

Mr Swinney: That goes back to one of the issues that I raised earlier. The complaints levy should be a disincentive for a solicitor to be unable to resolve a complaint with a client. I appreciate that such issues must be left to the commission, but you may need to reflect more on the extent to which the number of staff and personnel at the commission needs to be scaled down. The last thing that we want is to have a complaints commission set up with 60 staff, when its workload really justifies employing only 40, and for no one to bite the bullet and say that the commission does not need to employ so many people and that costs

should be scaled back to minimise the impact on the profession. I appreciate that those are issues for the commission, but it may be important to build into the bill some reflection of the fact that the commission must take account of workload, responsibility and throughput of cases, so that we do not end up creating a big bureaucracy that is serviced for the sake of servicing it, rather than a body that is fit for purpose.

Louise Miller: I will need to check the text of the bill to be sure, but I think that Scottish ministers have powers specifically in relation to the staff of the commission—the number to be employed and the terms and conditions of staff.

Mike West: There is also a provision in the bill that states:

“The Commission must secure so far as is reasonably practicable that, taking one financial year with another, the amount of the annual general levy and the complaints levy is reasonably sufficient to meet its expenditure.”

Mr Arbuckle: The issue is who determines what is “reasonably sufficient”. I am concerned that the commission is in the driving seat with regard to the determination. However, I will put that issue to one side for the moment.

You said earlier that you would give backing for several matters that were not clearly defined. Can you justify the figure that you have allocated to accommodation?

10:30

Louise Miller: I will deal briefly with the previous point that we discussed, as I have now found the relevant provision. Paragraph 8 of schedule 1 to the bill says:

“The Commission may (subject to any directions given ...) appoint such other employees on such terms and conditions as the Commission may determine.”

The paragraph empowers the Scottish ministers to give directions on matters that include the number of appointments and the terms and conditions of employment. Although the general intention is to take a hands-off approach to how the commission raises and balances its budget, ministers will have the power to ensure that staff numbers do not get out of hand, for instance.

Mr Arbuckle: What is your justification for the figures on the commission's premises?

Louise Miller: Those figures came from internal advice from the Scottish Executive's property division. According to the advice that we have received, the estimate is fairly generous. We are told that it is based on Edinburgh premises towards the upper end of the scale, so if the location review went in favour of a different and less expensive location, savings could be made.

Dr Elaine Murray (Dumfries) (Lab): I will follow up questions about the complaints levy. Solicitors have told me that they are concerned about the financial impact on them if they are subject to vexatious complaints. If a person continually complains about a solicitor who is exonerated, the solicitor will still be required to pay the complaints levy. Solicitors are anxious about that and the commission will not want such vexatious complaints to add to its workload. What protection will be available to solicitors and the commission against vexatious complaints?

Mike West: First, the commission will sift incoming complaints and will dismiss vexatious or frivolous complaints, on which no levy will be payable. The profession has asked why the complaints levy should be payable if the solicitor is exonerated, which is a good question. It is important that the complaints levy should still have to be paid if a solicitor is exonerated because the commission would otherwise have, or might be seen to have, a financial interest in upholding complaints. To put the commission in that position would be unacceptable. Although reasonable people would not accuse the commission of upholding complaints in order to attract revenue, the idea would be damaging.

Mr Arbuckle: I will ask about two other expenditure proposals. The Law Society of Scotland describes your figure of £40,000 for training staff as “hugely optimistic”. On what basis was that figure calculated?

Louise Miller: That was an attempt to split the difference between two figures that we have. The Scottish legal services ombudsman does not spend much on staff training—about £300 per annum per member of staff—whereas the consumer complaints service of the Law Society of England and Wales spends about £1,000 a year per member of staff, which would take the commission's cost to £60,000. We have split the difference, but towards the more generous end of the scale. The figure is a bit of a guesstimate, but it is reasonable in the circumstances.

Mr Arbuckle: The Law Society of Scotland has expressed concern about future costs as a result of subordinate legislation and has said that £20,000 is a grossly low estimate. What is your view?

Louise Miller: I think that that figure is for consultancies; it is difficult to estimate what the commission will spend on that and the amount could fluctuate greatly from year to year. The consumer complaints' service in England and Wales has said that it has had little need so far to take external legal advice, so it does not have significant costs for that. On the other hand, if somebody took the commission to judicial review in a particular year, £20,000 might consume much,

if not all, of the budget for that. We think that the cost might be a lot less than £20,000 in many years, but we accept that it could be significantly more in years when there is a particular need for expert legal advice.

Mr Arbuckle: We have concentrated on expenditure, but the financial memorandum indicates that considerable savings could be made. Where would they be made and can you quantify them?

Louise Miller: Can you point us to the relevant paragraph in the financial memorandum?

Mr Arbuckle: It is certainly in the financial memorandum, but I might have to come back to you on where it is.

Louise Miller: The savings might refer to the Law Society of Scotland's savings from not handling service complaints any more.

Mr Arbuckle: So it would be a transfer of costs rather than a saving.

Louise Miller: It could be, but I would need to look at the precise paragraph in the financial memorandum and ascertain to what it refers.

Mr Arbuckle: Perhaps we can come back to this question, convener.

The Convener: We can deal with it in correspondence.

Mr Swinney: On the training costs that Andrew Arbuckle mentioned, the financial memorandum assumes that there will be a low turnover of staff, but the Law Society disputes that. Intriguingly, it says in its submission that there is a high turnover of staff in its client relations office because it is a stressful situation in which staff

"deal with difficult complainers and indeed it must be said, difficult solicitors."

I thought that the latter point was an interesting observation on the situation.

You estimated a £40,000 budget for training costs, which would be roughly £1,000 per member of staff per annum. Is that a robust estimate, given the Law Society's observation that there is a propensity for high staff turnover, which would have an implication not just for training costs but for recruitment costs in subsequent financial years?

Louise Miller: That estimate could be optimistic, but the basis of our approach is that the staff will perform a specialist function. I imagine that many of them would be recruited because they had a background of handling consumer complaints. That is a stressful job, but many of the staff will be accustomed to dealing directly with dissatisfied members of the public and with people who might be aggrieved that complaints had been made about them.

The assumption that there will be little or no turnover applies only to the early years of the new organisation. It has been assumed that there will be new members of staff in post who will perform a specialised role. We did not anticipate there being a large exodus of staff in the first few years of operation. Inevitably, as the life of the commission wears on, staff turnover will kick in. After a few years, people might move on to pastures new. They will think about finding other employment—for example, a job with a better salary or a different experience. We do not assume that there will be zero turnover for all time. Our estimated training budget is for the commission's initial phase of operation, so we could be wrong about the cost—it is difficult to tell.

Mr Swinney: There is an implicit assumption in the financial memorandum that some of the people who are working in the Law Society's client relations committee will transfer to the Scottish legal services commission. What financial assumptions have been made about that transfer, bearing in mind the need to maintain levels of remuneration, pension entitlements and so on when staff transfer from one organisation to the other?

Louise Miller: At the moment, the financial memorandum makes no assumptions about that. We know that the level of salary that we have assumed for the case investigators is broadly similar to what the ombudsman's staff will be paid. We do not have detailed information about what the various members of the Law Society's complaints handling staff are paid and you are right to suggest that that could significantly affect the figures. However, we have no idea how many people will transfer to the new body. I suspect that that will very much depend on the outcome of the location review. If the location review does not suggest that the body should be located in Edinburgh or somewhere close by, I suspect that very few of the Law Society's staff will transfer. The assumptions in the financial memorandum are based on the civil service B2 pay scale, which is what we would be looking at with regard to external recruitment. We also believe that that is broadly right with regard to the ombudsman staff. However, if lots of the Law Society's staff transferred, our figure might not be correct.

Mr Swinney: Paragraph 125 of the financial memorandum gives a figure of £38,000 for recruitment. You are talking about recruiting about 60 staff, so that figure strikes me as being a bit light. I am not quite au fait with the newspaper advertising costs in Scottish newspapers, but I daresay that they are pretty significant. What is the basis of your assumption?

Louise Miller: We estimated advertising costs of £32,000. In fact, we factored in the same

advertising costs in relation to the commission members. That sum is based on recent experience of running a recruitment exercise with advertisements in two editions of *The Herald* and *The Scotsman*, which cost £32,000. Inevitably, our estimates might be slightly out of date by the time we come to place the adverts. That is a risk in relation to all of the costs that we are discussing.

Mr Swinney: Is that £32,000 estimate based on a comparable media advertising campaign?

Louise Miller: I think that the estimate is based on the advertising that we did to recruit a replacement for the outgoing Scottish legal services ombudsman.

Mike West: It was for the staff of the Scottish legal services ombudsman.

Louise Miller: Yes, that is correct. I apologise.

The Convener: Did you have any thoughts about a mechanism that would lead to a significant reduction in the number of complaints and, therefore, to a significant reduction in the cost of dealing with the complaints? To pick up Jim Mather's repeated phrase, was the mechanism designed with continuous improvement in mind? How will what you are doing result in a better system?

Mike West: The overall policy that underlies the bill is that, wherever possible, complaints should be resolved at local level by the lawyer or the legal practitioner, which will mean that complaints will not come to the commission in the first place. The commission has the power to refer premature complaints back to the local level if the complainer has not taken up the complaint with the legal practitioner. That is an important part of the policy. Lawyers should, increasingly, deal with complaints locally. Of course, the complaints levy provides an incentive for them to do so, but the Law Society has strongly supported that development. The fact that it has a practice rule for law firms that requires them to have a complaints partner is evidence of its vigorous promotion of that initiative.

The Convener: You have described the mechanism through which complaints are handled. How can we improve the system such that fewer complaints are generated, and how will the system that the bill creates for dealing with complaints impact on that?

Mike West: The bill sets out a number of functions for the commission on the dissemination of good practice. Each year, the commission will assess what comes from the profession by way of complaints and will analyse the issues that cause problems. It will give feedback to the profession and the professional bodies by disseminating the good practice that emerges from that experience.

The Convener: I will finish with a comment on how the financial memorandum has been put

together. It would have been helpful to have the basis on which some of the assumptions have been made—which you have told us about in your answers to our questions—spelled out much more clearly. For example, the memorandum does not deal explicitly with the possible implications of the commission's location in Edinburgh, or the grades at which you assume staff will join the commission. Such issues' having been dealt with explicitly would have alleviated the need for us to ask questions about them.

I thank the witnesses for coming along. We will have a brief suspension before we move on to the next item and our next witness takes his seat.

10:46

Meeting suspended.

10:49

On resuming—

Tourist Boards (Scotland) Bill: Financial Memorandum

The Convener: Item 2 on the agenda is consideration of the financial memorandum to the Tourist Boards (Scotland) Bill, on which we agreed that we would carry out level 2 scrutiny. I welcome John Brown, who is the Executive's head of tourism policy, and invite him to make a brief opening statement, which will be followed by questions.

John Brown (Scottish Executive Education Department): My opening statement will be very brief. The financial memorandum, which is part of the paperwork that is attached to the bill, sets out the position.

The direct costs of the changes that the bill will bring about will be very small—I refer to the costs of additional board members. The memorandum sets out the transitional costs of creating the integrated tourism network that arose in the financial years 2004-05 and 2005-06 and which are therefore in the past—a line has been drawn under them. It also refers to local authorities' voluntary contributions and states:

"The Bill will not impose any additional costs on local authorities."

I am aware of the written evidence that the committee has received from the Convention of Scottish Local Authorities and VisitScotland and am happy to answer questions.

Dr Murray: There are a couple of familiar faces here for you, John.

You rightly said that the transitional costs have been paid, but why did those costs rise by almost 50 per cent over two years?

John Brown: You will recall that the Cabinet decided in March 2004 that it wished to merge the area tourist boards with VisitScotland largely because it wanted to improve the service to tourism businesses. That decision underpinned the Executive's ambition to increase revenues from tourism by 50 per cent over the next decade. The estimate that was made right back at the beginning of how much the process would cost was necessarily an initial estimate, and a budget of £4 million was set, which was increased to £5 million during the first year. I recall giving evidence on that to the Enterprise and Culture Committee in January 2005. Subsequently, the budget was increased to £6.5 million as VisitScotland got into the second year of the transition.

At the beginning of the process, many of the costs were difficult—I was going to say

impossible—to calculate. We did not know how many staff would take voluntary severance or how much that would cost, for example. The costs depended very much on how the process unrolled, so the initial budget of £4 million ended up at £7.4 million. VisitScotland has tightly controlled the costs, which have been fully accounted for. As I said, those costs are now in the past.

Dr Murray: How were the additional costs funded? Were they funded from VisitScotland's budget or did the Executive provide additional contingency funding?

John Brown: All the funding has come from the Executive and VisitScotland's baseline budget. No money has been diverted from tourism marketing or from any of VisitScotland's other activities to pay for what has been done.

Dr Murray: At what stage are the negotiations on harmonising staff terms and conditions? Is the process nearly complete?

John Brown: It is pretty much complete. It has been a big job. There were about 65 different pay grades and staff levels in the tourist information centre network of about 125 tourist information centres, for example. Those are in the process of being harmonised which, as you can imagine, is a major job for VisitScotland's human resources team. The process is well under way, the unions are being kept fully informed of what is happening and terms and conditions will be finally harmonised during the 2006-07 financial year.

Dr Murray: Are there likely to be any additional costs? Do you expect the costs of the merger to increase?

John Brown: No. We are clear that the costs of bringing about the new integrated tourism network are fully sunk. Some small costs may arise in the normal course of operations this year and in future years, but they will simply be absorbed in the normal course of business.

Dr Murray: Any additional costs will be absorbed by VisitScotland.

John Brown: Yes.

Dr Murray: VisitScotland raised one or two concerns in its submission, one of which is that an unintended consequence of abolishing the two network area tourist boards might be that VisitScotland could face an additional annual tax payment of up to £2 million. What is your response to that concern?

John Brown: We have been discussing the VAT situation with VisitScotland since the inception of the project. In fact, the area tourist boards had managed to negotiate a very good deal with HM Revenue and Customs on VAT. The ending of the ATBs through the statutory

instruments that went through Parliament in late 2004 threw that into relief and HM Revenue and Customs began to speak to VisitScotland about it. VisitScotland is negotiating intensively with HM Revenue and Customs, but those negotiations have a long way to run. Although I am not so optimistic as to assume that there will be no additional tax liability, £2 million is the worst-case scenario and I would be extremely surprised if it was anything like that.

Dr Murray: Does the Executive have a role in helping VisitScotland in the negotiations to try to reduce its VAT liability?

John Brown: We will stand pretty close beside VisitScotland as it takes up the issue with the Government department.

Dr Murray: VisitScotland also raised the issue of the anticipated pension liability of £7 million.

John Brown: Again, that is very much the worst-case scenario. In fact, that figure has been rounded up from £6.3 million, which is a financial reporting standard 17 figure. I am not an accountant, but I believe that FRS 17 sets out the accountancy rules for companies to follow in reporting on financial matters in their annual reports and accounts. VisitScotland is pursuing four different options for the treatment of pensions liabilities, at least one of which would result in there being no liability at all. Without being over-optimistic, I think that the preferred option is feasible. VisitScotland is discussing it with pensions people and a firm of actuaries, which it is paying to undertake a complete actuarial review of its pension scheme. I am reasonably optimistic that the outcome on pensions will be that there is no additional liability.

Dr Murray: When do you think that the pensions issue might be resolved?

John Brown: The actuarial review by Hymans Robertson LLP is due to conclude in January 2007. Assuming that the provisions of the bill will come into force at some stage in early 2007, I would expect the review to be done and dusted by then.

Dr Murray: VisitScotland has disagreed with the statement in the financial memorandum that local authorities have continued to fund the network tourist boards during 2005-06; it argues that funding to the VisitScotland network—not necessarily the local organisations, which might be funded by local authorities, too—has decreased by £2.1 million. Do you have a comment to make on that?

John Brown: Sure. The answer to that apparent dichotomy is the difference between total local authority funding and core funding. Local authority core funding to ATBs was sustained into the first

year of the transition, which was 2005-06. However, the City of Edinburgh Council and Glasgow City Council previously paid quite large sums of money—£1.5 million in all—to their ATBs and their business tourism convention bureaux. As members might be aware, the convention bureaux have been reorganised in Edinburgh and Glasgow as separate companies. In Edinburgh, the bureau is a joint venture between the City of Edinburgh Council and VisitScotland and in Glasgow the bureau is a stand-alone company that is owned by the city, for which VisitScotland provides funding.

The £1.5 million contribution that previously went to Edinburgh and Glasgow ATBs to fund business tourism now goes to the convention bureaux, which explains most of the apparent difference. The rest is explained by project funding, which was going to end anyway. For example, in 2004-05 East Lothian Council provided the Edinburgh and Lothians Tourist Board with money for golf tourism, under a European Union project that finished at the end of that year. I assure the committee that every local authority in Scotland sustained its core funding through the transition. I have checked that twice with VisitScotland.

11:00

Dr Murray: So the money is going to the same place, just by a different route.

John Brown: Exactly. A small part of the difference is accounted for by projects that were coming to an end anyway.

Mr Swinney: Can you clarify the composition of the ATBs' overall deficit of £1.7 million?

John Brown: I do not have a breakdown with me, but I can provide one and will do so as soon as possible after the meeting.

Mr Swinney: I would be grateful if you could do so. I asked my question because the issue was briefly raised at a committee meeting a few weeks ago, and the following day an article appeared in *The Herald* about the overspend. It indicated that the area tourist boards in Fife and Perthshire

"each owed more than £500,000".

I have a more than material interest in the activities of Perthshire Tourist Board. One of the individuals involved in the board was advised by the journalist who wrote the article that the figures were supplied by VisitScotland. I am advised that, when Perthshire Tourist Board was dissolved on 1 April, it had a surplus of approximately £30,000, which was transferred to VisitScotland, and that, on 31 March 2005, the Kingdom of Fife Tourist Board had reserves of £123,565. Both statements cannot be correct. The journalist who wrote the article maintains that VisitScotland gave him the

information that he cited. There is a need for brisk clarification of the point. If the information that was given to *The Herald* newspaper was incorrect, VisitScotland should be required to correct the record and to apologise to the individuals concerned.

John Brown: The figure of £1.7 million is an aggregate of the ATB accounts for 2004-05. I will provide members with a breakdown of the reported aggregate deficit, which was an in-year trading deficit. I take Mr Swinney's point that some ATBs—although by no means all of them—also had cash reserves, which are stated separately in their accounts, just as any company can trade at a loss while having balances in the bank. I will bring out that distinction in the information that I provide.

Mr Swinney: The presentation of the information in that fashion has a rather pernicious character, if I may put it so bluntly. I would appreciate clarification as soon as possible for the sake of individuals who, in my opinion, served the tourism industry in Perthshire extremely proficiently. I have less information about Fife, but I am sure that the service provided there was also very good.

Jim Mather (Highlands and Islands) (SNP): I am keen to return to the issue of the cost of the merger. Has there been an analysis of the overspend—the difference between the original estimate of £4 million and the actual figure of £7.4 million—to explain how it accumulated?

John Brown: I can tell you what the transition funding paid for—in other words, we can account for the money that has been spent.

As I said, the initial estimate was just that—a very initial one—and was done on the back of what were at the time some necessarily broad-brush assumptions about how much the project would cost. The transition funding paid for short-term project implementation costs that VisitScotland incurred in managing the integration of the network. For instance, in the financial year 2004-05, VisitScotland paid some of the ATBs to put staff on the transition team, because it wanted to ensure that the team had good strong representation from the ATBs. VisitScotland did not expect the ATBs to do that for nothing, so it paid for those people. VisitScotland incurred other staff and consultancy costs.

Jim Mather: While that was happening, was VisitScotland aware that the Executive would bail it out? You said earlier that additional money came from the Executive. Was VisitScotland aware when it was shelling out that additional cash—going over the £4 million and moving toward the £7.4 million—that additional money would be forthcoming from the Scottish Executive?

John Brown: VisitScotland was doing what the Executive asked it to do. The project was

promulgated by the Executive and was the result of the Cabinet decision in March 2004 and the subsequent parliamentary statement. The Executive decided to merge the ATBs with VisitScotland to create an integrated tourism network. At that stage, with VisitScotland we made our best estimate, which developed as the project proceeded. During 2004-05, the project was led by the Executive. The Minister for Tourism, Culture and Sport chaired the steering group that oversaw the implementation of the project and I chaired the progress group, which met twice weekly to consider more workaday issues. We worked closely with VisitScotland throughout the process. At the start, we knew that the initial estimate was just that. As the work progressed, other factors arose. The area tourist boards said that we needed to do this or that and, when costs arose from that work, they had to be budgeted for.

Jim Mather: In essence, you are saying that the actual cost and the budget evolved simultaneously—in other words, there was no budget.

John Brown: There was no clear view at the outset of what the eventual cost of the transition would be. However, we worked closely with VisitScotland as the budget position developed.

Jim Mather: Last week, Ronald MacDonald of the University of Glasgow produced a paper on Scotland's economic management. One of the key points that he made was that, if there is a permanent bail-out, the possibility of spending wisely evaporates. How would you address that comment?

John Brown: The term “permanent bail-out” would be an inaccurate way of describing what happened. We embarked on a two-year process, with an initial view of how much it would cost, which developed as the project proceeded in its first year, under Executive leadership. We put in money from the Executive's spend-to-save project. We should remember that the investment will come back to us through long-run savings. The two years of the project are now over and the savings have started to come through; indeed, they are earlier and greater than was initially anticipated.

Jim Mather: Would you do anything differently if you had to carry out the project again?

John Brown: I have thought about that question often. We and VisitScotland realised at the time that, as the minister said to Parliament a year ago, in May 2005, there were lessons to be learned from the implementation of the project about better communications. Of course, better communications cost money. However, the structure, the way in which we tackled the implementation and the project methodology all

worked well. I know that my minister's view is that the integration of 15 separate cultures and organisations into one organisation that is still there doing its best for Scottish tourism has been a success.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I should declare an interest because I was a member of the Cabinet when the process started.

We are looking at a figure of £7.4 million at the moment. Are you confident that there is now a brake on any increase in costs? Even if we accept the point that the £4 million was an estimate to begin with, do you think that the £7.4 million is a brake figure or might issues still emerge?

John Brown: No. I can assure the committee that the costs of transition are now over with. The network has been built, and the staff belong to one organisation. The tourism businesses that receive services from the new network are getting them for less than before. That is quite an important point. The customers—the tourism businesses—that are benefiting from the work of the new network are paying less than they did, in aggregate ATB membership fees, for roughly the same services. That is an example of the efficiencies that are coming through as a result of the integration of the network.

Mr McAveety: The second point that you made in response to Jim Mather's questions was about the communications strategy and how to get information out on what changes are meant to be about. I am concerned that the VisitScotland submission to the committee would give anyone who is coming to the issue fresh an alarmist view, whether in relation to VAT and pension liabilities, the contribution by local authorities or the information provided about ATB deficits. The agency that has been charged with making the change seems to be shooting itself in both the foot and the head in its remarkable submission to the committee. Has anything been done behind the scenes to resolve the issue? The submission could work against the very positive message that you tried to get across in your response to my first question. Is anyone sorting it out? The situation is frustrating.

John Brown: There will be contact this week between the chief executive of VisitScotland and my minister about the wording that VisitScotland chose to use in its written evidence to the committee.

Mark Ballard (Lothians) (Green): I want to follow up the point about the wording and take up a point that was raised by Dr Elaine Murray earlier.

The VisitScotland submission discusses local authority contributions and gives a total funding figure for VisitScotland from local authorities in

2005-06 of £6.9 million. That figure is made up of project funding as well as core funding. The figure is then compared with the funding that is expected in 2006-07 of £6.6 million, including £0.5 million of project funding. VisitScotland says that that represents an overall reduction of 4.4 per cent. Given that the committee has heard evidence that there will be a potential squeeze on local authority funding during the next few years, do you have any concerns about the decline in local authority funding for 2006-07, which VisitScotland has pointed to?

John Brown: What can I say about local authority funding? Local authority budgets are clearly under pressure, as are those of most organisations. I have a detailed local authority by local authority breakdown of which local authorities are considering or have signalled reductions in the current financial year compared with what they paid VisitScotland last year. Although VisitScotland has signalled how things might work out, we are still very early in the financial year. In fact, one or two authorities have not yet finally agreed their contribution for 2005-06, so there is a bit of work to be done yet on the numbers for 2006-07. Although there will undoubtedly be downward pressure, COSLA's general view is that local authorities will sustain the funding to the tourism industry because they recognise its value to their areas.

11:15

Mark Ballard: Given the uncertainty that you have highlighted, if the downward pressure to which VisitScotland points is realised, will the result be a cut in VisitScotland expenditure or an increase in central Government funding to make up any deficits that are caused by a cut in local authority funding? In other words, will the permanent bail-out to which Jim Mather alluded continue or will there be a cut in VisitScotland expenditure?

John Brown: The VisitScotland baseline budget was set as a result of the spending review 2004 and it is what it is. Indeed, the Scottish Parliament information centre briefing on the bill that members received sets out the budget. You can see that it includes a line of Executive funding—that is our budget for VisitScotland up to 2007-08. We will talk to VisitScotland if it encounters drops in local authority contributions but, at the moment, there is no commitment to making up any fall in such funding. However, I emphasise that we are only just into the new financial year and a lot of water has still to flow under that bridge.

The Convener: On behalf of the committee, I thank you very much for coming and answering our questions. We will prepare a report on the financial memorandum, which I anticipate will be published in a couple of weeks.

Accountability and Governance Inquiry

11:17

The Convener: We press on to agenda item 3, which is our accountability and governance inquiry. We held an informal seminar yesterday to allow us the opportunity to discuss some broad themes before we start to take formal evidence, and I place on record our thanks to Professor Robert Hazell of University College London, Oonagh Gay of the House of Commons research service and Barry Wintrobe of Napier University Edinburgh for attending and giving us the benefit of their advice. I also thank the two MSPs who are not on the committee who attended—Jackie Baillie and Margaret Curran. It was an extremely interesting afternoon, was worth while and will be of considerable assistance to us when we take our formal evidence.

The submissions that we have received are on our web pages. We are expecting a small number of late submissions, which will be circulated to committee members and put on the web as soon as they are available.

At present, our evidence-taking sessions are scheduled to take place on 16 May, 23 May, 6 June and 13 June. As can be seen from the agenda, the committee will discuss later on whom it would like to invite to give evidence. That item will be taken in private at the end of the meeting.

Items in Private

11:18

The Convener: The fourth item on our agenda is to decide whether to take in private at next week's meeting our draft report on the Criminal Proceedings etc (Reform) (Scotland) Bill and a paper from Arthur Midwinter on the best-value element of the Executive's management of public finances, which would inform future questioning of the Minister for Finance and Public Service Reform. Are members agreed?

Members *indicated agreement.*

The Convener: Agenda item 5 is an opportunity for us to discuss witnesses from whom we might hear on our accountability and governance inquiry. We have already agreed that we would take that item in private.

11:19

Meeting continued in private until 11:46.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 3 May 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron