

FINANCE COMMITTEE

Tuesday 16 May 2006

Session 2

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FINANCE COMMITTEE 14th 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:

Mr Robert Black (Auditor General for Scotland)
Linda Costelloe Baker (Former Scottish Legal Services Ombudsman)
Margaret Jamieson MSP (Scottish Commission for Public Audit)
Andrew Munro (Scottish Commission for Public Audit)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 6

Scottish Parliament

Finance Committee

Tuesday 16 May 2006

[THE CONVENER *opened the meeting at 10:04*]

Accountability and Governance Inquiry

The Convener (Des McNulty): Good morning and welcome to the 14th meeting in 2006 of the Finance Committee. I remind members and witnesses that all pagers and mobile phones should be switched off. We have apologies from Wendy Alexander.

For the first item on our agenda, the committee is taking evidence in its accountability and governance inquiry. Today, we will take evidence from the Auditor General for Scotland, the convener of the Scottish Commission for Public Audit and the former Scottish legal services ombudsman. Members have copies of submissions that were sent in response to our call for evidence, including those from today's witnesses.

We will call the witnesses in three separate panels and our first panel comprises Robert Black, Auditor General for Scotland, and Diane McGiffen, director of corporate services at Audit Scotland. I welcome you to the meeting.

Mr Robert Black (Auditor General for Scotland): It is a pleasure to be here.

The Convener: I invite the Auditor General to make a brief statement before we proceed to questions.

Mr Black: I have nothing to add to my written submission, which I hope was of some assistance to the committee. I am happy to answer any questions that the committee may have.

The Convener: Thank you.

Mr Frank McAveety (Glasgow Shettleston) (Lab): Good morning. One of the key issues that the committee is considering is how to achieve shared services across the Executive and the various ombudsman and commissioner offices. In what ways do you think that your organisation should be able to co-operate and share services with other public service bodies?

Mr Black: As the committee will be well aware, the Scottish Parliamentary Corporate Body is responsible for the oversight of the spending of the various commissioners, including the Scottish public services ombudsman. We have just

concluded a piece of work that the accountable officer requested that considers, among other matters, whether it is possible for the various bodies to do more to share services. That report is with the accountable officer and I am sure that he will be happy to discuss it with the committee during its inquiry. Clearly, there is scope for shared services, but it would be more appropriate for the accountable officer to respond to the suggestions that we made in the report.

Mr McAveety: I recognise that someone is in receipt of the report and that there might be a process that you want to respect. However, leaving aside Audit Scotland's particular perspective, how do you envisage Audit Scotland contributing to the shared services debate as an individual organisation?

Mr Black: There is no immediate prospect of Audit Scotland sharing services with any of the commissioners or the ombudsman, but we constantly seek opportunities to achieve economies in that area. The committee will be aware that a body called the Sustainable Development Commission will open an office in Scotland soon. With the Scottish Executive, we are in discussions with that body about establishing its office in one of our Edinburgh locations in order to achieve an economy in shared services. The body is coming to Scotland to be established and developed and we are working with it in that regard, but there are no other current proposals.

Mr McAveety: Are there obvious barriers to existing structures being involved in shared services?

Mr Black: As I am sure the committee is fully aware, the background is that the various commissioners and the ombudsman were set up under separate pieces of legislation at separate times. Each of those people had to work very fast and, if I may say so, very hard indeed to establish their offices and get them up and running within a short space of time. When each individual body was created, probably any one of them would have had real problems in thinking ahead to office co-location or shared services, because the legislation has come through at different times over the past few years.

The Convener: I am not sure that we have quite got the answer to the question that I think Frank McAveety was asking. The question really is whether it is possible for Audit Scotland to incorporate and share services with other public service bodies and if not, why not.

Mr Black: We would need to consider that issue in two parts. One part would be around co-location, which might be rather difficult in the sense that we have scoped the size of our offices

to meet the needs of our organisation, so care and thought would be required to find out whether we could co-locate without relocation. Audit Scotland is tied into long-term leases.

On the support services agenda, there probably would be opportunities to think about that if Parliament were minded to move in that direction. I know that the Scottish public services ombudsman has been having discussions with the various commissioners about the opportunity of doing some shared services activity. That could be taken a stage further.

Mr McAveety: Your organisation produced a paper called "Public Service Improvement: The conditions for success and the Scottish experience". How would you apply that experience to your organisation? How would you apply the principles of scrutiny and better performance to Audit Scotland?

Mr Black: In that paper, I have suggested that now—six years after the establishment of Audit Scotland, during which period a number of new organisations have been created and the role of some of the inspectorates has been redefined—would be a good time to see whether there are opportunities to operate more efficiently and effectively across the scrutiny landscape. In the paper, I made some suggestions about the key questions that could be asked and some of the principles that could be applied.

Mr John Swinney (North Tayside) (SNP): Where does the responsibility for driving that agenda lie? Does it lie with the Scottish Parliamentary Corporate Body, the Scottish Executive, the Finance Committee or the Auditor General?

Mr Black: In order to answer that question fully, I will take a moment to remind you of the range of bodies that we are talking about. The first distinction that I find it helpful to make is between bodies that report primarily to Parliament and bodies that report primarily to the Executive.

In the Executive cluster is a disparate range of bodies, which, I believe, is outlined in the evidence from the permanent secretary. It includes, for example, the Accounts Commission for Scotland, with whom I have a close working relationship. It is a creature of statute but its members are appointed by ministers and the main line of reporting is to ministers rather than to Parliament. The cluster also includes a category of bodies that could be called the inspectors. Those bodies are set up in various ways but, fundamentally, they are parts of the Executive machinery, albeit that they have a significant degree of independence from the Executive. Primarily, again, they report to ministers. A third category of bodies that report to the Executive is made up of those bodies that I

would call regulators. One of the principal examples of that would be the Water Industry Commission. Of course, under the new regime, it makes the water determination and reports to ministers. Given that set of arrangements, it is probably appropriate that any review of those bodies' activities should be initiated by the Executive.

The cluster of bodies that report to the Parliament includes the Scottish public services ombudsman, the Scottish parliamentary standards commissioner, Scotland's commissioner for public appointments in Scotland, the Scottish information commissioner and the commissioner for children and young people. It would be appropriate for Parliament to take the lead in any review of their activities.

My position is distinct from other people's in that my post was created by the Scotland Act 1998, which required the Parliament to make appropriate arrangements to provide me with the resources that I need to fulfil my duties. Under the Public Finance and Accountability (Scotland) Act 2000, Parliament created Audit Scotland to provide me with the services that I need.

The landscape is quite complex.

Mr Swinney: I quite understand the distinctions that you draw between the clusters of organisations. You said that it was up to the Executive to review any opportunities for co-location or rationalisation of services that might arise in relation to the bodies that report to ministers. Is there a role for the Auditor General for Scotland in undertaking such exercises?

10:15

Mr Black: My statutory role is to arrange for the audit of those public bodies and the laying of reports that accompany those bodies' audited accounts. Of course, my second major responsibility is to undertake value-for-money studies in relation to all public bodies in Scotland, which includes the Executive and the commissioner and ombudsman bodies.

We have the capacity to consider the issues that you mention and to help with the analysis. It is quite properly prohibited by statute for me to have an involvement in policy making or policy advice in any shape or form, but we have the capacity to undertake objective analysis of what is happening and whether value for money is being delivered.

Mr Swinney: You have the capacity to become involved in such activity, but are you tempted to do so?

Mr Black: Mr McAveety mentioned the discussion paper that I recently produced. The time is right to encourage the Executive and the

Parliament seriously to consider whether a review of the whole area is needed.

Mr Swinney: On the parliamentary bodies, in paragraphs 2.1.3 to 2.1.5 of your submission you set out procedural points and the authority for the setting of budgets by commissioners and other office-holders who are accountable to the Parliament. The committee has been vexed about the extent of the Parliament's ability to exercise budgetary constraint in relation to commissioners who are set up by statute to exercise independent functions. I took it from your submission that you think that it is perfectly permissible for the Parliament to define a budget for such organisations, in the context of the Parliament's duty to steward public finances. The Parliament's judgment can be questioned, debated, criticised and squealed about by commissioners if they think that they do not have enough money, but ultimately the Parliament determines the issue. Is that a fair reflection of the opinion that you express in your submission?

Mr Black: Yes, but I will expand my answer slightly. Effective accountability comes in two parts for commissioner and ombudsman bodies. The first part is the account that such bodies give to the Parliament of their professional work and their need for resources; the second part is to do with how the Parliament receives and considers the account appropriately.

I am struck by the question whether the architecture of accountability is yet fully established and settled. For example, the Scottish public services ombudsman's annual reports are extremely useful and give a good account of what is happening in relation to standards in the ombudsman's field of interest across the public sector. The reports generally draw out useful lessons for the public sector that should be applied and I encourage my auditors to take seriously the systemic issues that emerge from the reports. I use the example of the Scottish public services ombudsman, but what I am saying could apply to any commissioner. It occurs to me that there might be a need for the Parliament to consider more formally how it receives such reports each year, because the need for resources must be related to the delivery of resources. Perhaps there is a bit of joining up to be done between the annual reporting and the budgeting of those bodies, so that submissions for resources are related to what is delivered.

Mr Swinney: Do statutory or legislative issues need to be addressed to complete the architecture, or does responsibility just need to be spelled out more clearly within the architecture of parliamentary governance?

Mr Black: I am not an expert in the law of the Parliament, so I am hesitant about answering that

question. My impression is that quite a lot could be done without legislation by adjusting the custom and practice of the interaction that takes place with the Parliament.

Mr McAveety: Audit Scotland produced a paper that states that we need to have effective scrutiny and accountability. The purpose behind my question was to establish how you see Audit Scotland operating in three years' time if the principles that have been identified in your paper are applied to your own organisation. I do not have a sense of how its operation will develop.

Mr Black: That is a large question, which I will answer as succinctly as I can.

I would see Audit Scotland continuing, first and foremost, to fulfil its statutory duties, which are to audit public bodies, to provide the audit opinion on their accounts and to draw to my attention, so that I may report to Parliament, any matters that arise from those accounts. That is the core business of audit.

In addition, I see us continuing to develop the programme of performance audits in a variety of ways. Committee members may be aware that I actively encourage the Parliament, including the Finance Committee, to make use of the performance audit reports that we produce. That whole agenda will continue to develop. I envisage that our reports will increasingly be of interest to the Finance Committee because we will examine the use of resources in the round in major areas of public spending, such as the transport budget.

A very interesting area of development is the best-value regime, which is now bedding down successfully in local government. That is probably the matter on which I can give the best answer to Mr McAveety's question. Under the best-value regime, a local authority is required to give an account every three years of its performance in the round and of its stewardship and governance arrangements. Audit Scotland, on behalf of the Accounts Commission for Scotland, undertakes an independent review of that performance. I see that regime developing into one in which there is good joined-up working between the auditors and the inspectors and regulators. Therefore, in years to come, the best-value review of a local authority will take full account of the strengths and weaknesses, as reported by the inspectors, of the various local authority services. That means that in future years we will be able to encourage and challenge the local authorities to address any areas of weakness. That is a good example of the joined-up work that is essential and is in the public interest.

I make no secret of the fact that not necessarily the letter of the legislation, but the principles of best value are equally applicable across the rest of

the public sector. In other words, it is perfectly possible to envisage a regime in which each and every public body is required to publish every few years—not annually, as that would be too frequent—a statement of account of its performance in the round, and to have that assured and challenged through the audit process. That statement would be available to the Parliament and it would give a good account of the standards of performance delivered by those bodies.

The Convener: Would Audit Scotland be included in that regime? Would you do a best-value analysis of your own work and produce a report on your performance?

Mr Black: We have an arrangement with the Scottish Commission for Public Audit. The convener of the SCPA is before the committee today and I am sure that she can describe the arrangements that exist for the engagement of the SCPA in the scrutiny of our budget and performance.

Mr McAveety: Would you welcome the SCPA doing more?

Mr Black: Doing more in what regard? Doing more in relation to Audit Scotland?

Mr McAveety: Yes.

Mr Black: One of the issues that we have to bear in mind, whether in relation to Audit Scotland or to the commissioners and ombudsman, is the need for proportionate intervention. The SCPA's sole purpose is to oversee the budget and activities of Audit Scotland, which provides services to me. The SCPA does that fairly intensively, as any reading of its reports will show. I think that that level of activity in relation to our budget is proportionate.

Derek Brownlee (South of Scotland) (Con): Your suggestion about extending the best-value regime from local government to the rest of the public sector is interesting. What would it mean for the way in which Parliament scrutinises the commissioners and ombudsman?

Mr Black: I hesitate to answer that question because it is for the Parliament to determine how it runs its business. Forgive me if that is not terribly helpful, but if you could make the question more specific—

Derek Brownlee: I see where you are coming from. Presumably, if the process is to be meaningful and we are to make the most of the best-value regime in the context of the commissioners, ombudsmen and other organisations, that would have to be fed into the oversight procedure. Whatever we consider or propose will be supplemented by the lessons to be learned from the best-value reports, which will feed into the process.

Mr Black: Yes. It might be helpful to bear in mind the distinction that I made earlier between accountability to the Executive and the accountability of ministers to the Parliament. To stick with the local government example, the Accounts Commission is essentially a creature of the Executive and best-value reporting through Audit Scotland to the Accounts Commission provides for the Accounts Commission to produce public reports, the principal recipients of which are Scottish ministers. Therefore, I think that the best-value principles are probably of greater relevance in informing the Executive of the performance of the public bodies that are accountable to it.

Derek Brownlee: I appreciate what you said about the complexity of the landscape that we are considering. Looking at the matter from another perspective, would it be sensible to modify the best-value regime in implementing it for the commissioners and ombudsman, or should we stick with the current regime but alter the scrutiny process? Which is the best approach to implementing the principles of best value?

Mr Black: It is important not to be overinfluenced by the legislative arrangements. Fundamentally, best value is about good management and public reporting. It is no more than that. The need for legislation on extending the best-value principles beyond local government is limited—indeed, I suspect that there is no need for legislation at all.

Derek Brownlee: If we extend the best-value regime to every public body and we stick with the timeframe that we have for local government, public bodies would be reviewed every three years or so. What resource implications would that have for Audit Scotland?

Mr Black: I cannot answer that question this morning. It would depend on how the process was developed. However, I can offer an assurance that the resource implications for Audit Scotland would not be large. The cost to Audit Scotland of introducing the best-value regime throughout local government—the 32 councils—is about £1.2 million per year. Of course, that is a pretty demanding programme of activity.

We in Audit Scotland are getting smarter and more focused in our activity. The audit is driven by our conducting a strategic appraisal of the key priorities and risks in each public body or sector in Scotland. We are using the audit resource in a focused way to concentrate on the big issues. That is close to a best-value regime, but what we do not have in place is an expectation that all public bodies will report in the round every few years.

10:30

The Convener: I want to move on to governance issues and discuss Audit Scotland itself. As I understand it, the board of Audit Scotland has on it the Auditor General for Scotland—that is, you—the chair of the Accounts Commission and three other members who are appointed jointly by you and the chair of the Accounts Commission. You are also the accountable officer. Is that not just a wee bit cosy?

Mr Black: With the greatest of respect, the accountability arrangements for Audit Scotland set the standard for how to hold public auditors to account, not only in the United Kingdom but, to the best of my knowledge, globally. The post of Auditor General is a Crown appointment that is made under Westminster legislation. The Scottish Parliament is required to provide me with the resources that I require to do the job. The Parliament has established what I think is an excellent regime by creating the Scottish Commission for Public Audit, which comprises a group of elected members of the Parliament who sit independently, in a non-political way, to scrutinise the budget of Audit Scotland and to hold me, as the accountable officer, to account for the use of those resources. My prime accountability is to the SCPA.

When the financial issues advisory group was advising on those arrangements, my view was that it would be appropriate to legislate for there to be a board of Audit Scotland to consider detailed governance issues, such as remuneration and our own audit arrangements. We have not a statutory board, like a health board, but a board of internal governance, above which are the arrangements of the SCPA.

It is unusual to have the Auditor General and chair of the Accounts Commission appoint members of the board, but the circumstances are unusual. We have tried to achieve a good governance arrangement by having two non-executive appointees, one of whom is from the Accounts Commission, whose background is in audit and finance and the other who was appointed independently after external advertisement. He plays a key role by chairing the remuneration committee. I have put in place extensive governance arrangements within Audit Scotland, which sit within the framework of the next level of accountability, which is to the SCPA.

We also have an external auditor, who is appointed by the SCPA, who audits our accounts and reports as appropriate to the SCPA. The Audit Scotland board has appointed an internal auditor; there is a full range of internal audit activities.

To use the phrase that I used a little while ago, the architecture of accountability is extremely robust in relation to Audit Scotland's activities.

The Convener: If in any other context there was a system of governance whereby two principals appointed the other members of the board, one of whom was also the accountable officer, would you regard that as robust?

Mr Black: The circumstance does not arise, because the SCPA has the key governance relationship with Audit Scotland. The SCPA is the body appointed by Parliament to oversee our activity. The Audit Scotland board provides a second level of internal control and balance to ensure that the standards of internal management are appropriate.

The Convener: So, your argument in governance terms is that the key safeguard for the public purse is the SCPA.

Mr Black: That is a critical safeguard and the most important one.

The Convener: Can I ask about your own budget in this context? Who approves the Auditor General's budget?

Mr Black: The budget is recommended by the SCPA to the Parliament, after discussion with me.

The Convener: So there is direct scrutiny of your budget by the SCPA.

Mr Black: Yes.

The Convener: It is not indirect in any way? I understood that the SCPA scrutinised the budget of Audit Scotland, not your budget.

Mr Black: There is no distinction; I do not have a budget. The Scotland Act 1998 created the post of Auditor General and charged the Parliament with providing me with the resources that are necessary to undertake my responsibilities. The 2000 act provided for that to be done through the creation of Audit Scotland and the Parliament has appointed me as the accountable officer of Audit Scotland, which means that it is for me to present to the SCPA the resource needs that I have in relation to the undertaking of my activities. The SCPA scrutinises that and reports to Parliament.

The Convener: Is it necessary for you to be the accountable officer?

Mr Black: Yes.

The Convener: Why?

Mr Black: Ultimately, I have the responsibility for deciding how the resources are used and, therefore, I should be held accountable for that.

The Convener: You are on the board at the same time, though.

Mr Black: Yes.

The Convener: And that is an acceptable governance arrangement, from your point of view?

Mr Black: Yes, for the reason that I gave earlier, which is that the SCPA is the principal line of accountability to Parliament.

The Convener: Would it be appropriate for the Auditor General to be on a fixed-term contract in a manner similar to the ombudsman and independent commissioners?

Mr Black: I am not in a position to answer that question. I would have an interest in the answer to that question, so I decline to answer it.

The Convener: Can you answer this question, then: should there be a distinction between the legislative basis for Audit Scotland and that of the ombudsman and commissioners?

Mr Black: In what particular sense? Every piece of legislation is individual to the circumstances.

The Convener: If the Parliament wished to rationalise the process under which the ombudsman and the various commissioners were set up, should your position be considered in that context or should you be exempt from that process?

Mr Black: It is fundamental to the devolution settlement that the Westminster Parliament legislated not only for a Scottish Parliament, but for an Auditor General who would oversee public expenditure in Scotland and report to Parliament on spending by the Executive and all public bodies in Scotland. That is a given. I would have serious concerns if, after such a short time, the Parliament were to alter the way in which I was resourced or the way in which I performed my role. Audit Scotland has performed its role in an exemplary fashion. If the Parliament were minded to think further about the rationalisation of other functions around audit, I would be open minded in relation to any discussion about that.

The Convener: Do you think that Audit Scotland is well qualified to consider issues that might be seen to be policy issues in the context of the expertise of organisations as distinct from the technical issues of financial control and financial management?

Mr Black: It is fundamental to the effective operation of audit and my role that I do not become in any way involved in advice on policy matters. Over the past few years, we have demonstrated that we have the capacity to comment on the implementation of policy. As a result of that, there might be issues that ministers might wish to reflect on in terms of how policy might be adjusted. However, it is extremely important that we do not second-guess policy decisions.

The Convener: So you do not see it as part of your responsibilities or role to consider performance criteria for market-based,

contestability-type approaches as distinct from other kinds of approach.

Mr Black: The decision whether to go down the contestability route is entirely for ministers and those in charge of public bodies. However, if a contestability approach is applied in any part of the public sector, Audit Scotland could analyse whether that approach had resulted in better and more efficient services to the public.

The Convener: Are the criteria with which you judge whether it is appropriate or inappropriate for you to make assessments always clear? Are there sometimes difficult boundary issues?

Mr Black: Generally speaking, I have found things to be clear. In our work over the past six years, I cannot think of a case in which I would be concerned that we had transgressed the boundary.

The Convener: Should the Scottish Commission for Public Audit have additional powers?

Mr Black: I have found that the Scottish Commission for Public Audit exercises its role in holding Audit Scotland to account very effectively, so there is no need to adjust its powers with respect to our work.

The Convener: Is there any area in which its controls are not strong enough?

Mr Black: I cannot think of any such area. There may be issues to do with the Parliament's standing orders, in which I am not an expert, but by and large, it seems to me that the commission fulfils its role expertly.

The Convener: I want to run something past you. As you have said, you were a member of FIAG, which developed the policy base for the Public Finance and Accountability (Scotland) Act 2000, which established Audit Scotland and the role of the Auditor General for Scotland. Under that act, the SPCB authorises the Auditor General's salary, which is paid by Audit Scotland. Audit Scotland's entire budget is then scrutinised by the SCPA. However, all commissioners' salaries and the ombudsman's salary are authorised and paid by the SPCB. The Auditor General is therefore in a different position. You decide the number and salaries of Audit Scotland employees. Is such a distinction justified?

Mr Black: The distinction works well. As a Crown appointment who oversees all public spending in Scotland, I require a degree of independence from the Parliament and the Executive. Fundamentally, Audit Scotland's resources come from the Scottish Executive's budget—there is a budget line for it. I understand that the resources of the ombudsman and commissioners come from the corporate body's

budget. Therefore, there is a fundamental distinction for which there is some rationale.

The Convener: I am sure that the commissioners you mention would argue that they also require independence, but that does not necessarily mean that no budget scrutiny is required. I ask again: should the Scottish Commission for Public Audit have the power to consider issues to do with the salaries and number of employees of Audit Scotland?

Mr Black: I am sorry, I did not catch the second part of what you said.

The Convener: Should you be accountable for the number of employees in Audit Scotland and their salaries in the same way that commissioners—

Mr Black: I am accountable for such issues to the SCPA. Indeed, the SCPA has asked me in the past about Audit Scotland's staffing levels over the years and about our charges.

The Convener: But I understand that the commissioners must have their salary levels and so on approved, whereas you do not have to.

Mr Black: Are we talking about the salary of the Auditor General, or are we talking about the salaries of the employees of Audit Scotland? I would welcome some clarification.

The Convener: The salaries of the employees.

Mr Black: That is the responsibility of the Audit Scotland board, from within its resources.

10:45

The Convener: That board comprises you and people you appoint.

Mr Black: Indeed.

The Convener: So, is there not an issue about appropriate governance and scrutiny? People's salaries are being decided, in effect, by you, and then approved by a board whose members, arguably, are appointed by you. You are on that board yourself, and you are also the chief accountable officer.

Mr Black: The SCPA may question any aspect of the work of Audit Scotland. An external auditor is appointed by the SCPA, with the power to undertake value-for-money studies in my organisation. If the SCPA had a concern about the salaries in Audit Scotland, it would be perfectly possible for it to make inquiries directly to me. All papers and reports would be available to it. If it was not satisfied with the inquiry, it could ask the external auditor to undertake a study.

Within Audit Scotland we have robust and appropriate arrangements. We have a

remuneration committee and periodically we commission completely independent reviews to ensure that our salary levels are appropriate. All that activity must, of course, take place within the budget limits within which I have to operate. There are many checks and balances and many routes through which I could be held to account for the decisions taken within Audit Scotland.

The Convener: The main route through which you could be held to account is a board of which you are a member—and you jointly appoint the bulk of the other members. You are also the accountable officer.

Mr Black: Forgive me if I am giving the wrong impression. The main route of accountability is through the Scottish Commission for Public Audit.

The Convener: Okay. I want to ask about charges now. Who determines how charges are set by Audit Scotland for work done in relation to local authority audit investigations?

Mr Black: About two thirds of the resources of Audit Scotland come from charges made on public bodies. The larger part of that two thirds is charges made on local authorities for the audit activity that we undertake. The charges are determined by the Accounts Commission.

The other charges, which apply primarily to national health service bodies, further education colleges and the like, are ultimately for me to determine.

The Convener: What criteria do you use?

Mr Black: Within Audit Scotland there is a directorate of audit strategy, which has expertise in the technical aspects of auditing. The directorate does a number of exercises to ensure that charges are appropriate. For example, it will suggest an indicative audit charge to be applied to a public body. That audit charge is then the starting point for negotiation between the audited body and the auditor, as to what the actual charge should be.

The audit strategy team will benchmark our costs against the costs of sister organisations elsewhere in the United Kingdom. That is a thorough exercise. We are also aware of the level of fees that firms would seek to obtain for any other work that they undertake—and the committee will know about the work that KPMG did recently for the Scottish Executive in relation to Scottish Enterprise. There is a lot of information that my team can use when setting indicative charges.

The Convener: Have you had any representations from local authorities or other bodies that are being audited about the level of charges?

Mr Black: Yes, we have.

The Convener: What has been the nature of those representations?

Mr Black: In general, the bodies concerned would like the audit fees to be lower, as one might expect.

The Convener: Do they say why they think that the fees are too high or suggest how they could be reduced?

Mr Black: The context within which such dialogue takes place varies. The main point that I want to emphasise is that the starting point for the negotiations about the charge is the indicative fee, which is set after an open dialogue with people such as directors of finance about what needs to be done to fulfil the audit obligations. In relation to the indicative fee, it is interesting that a large number of public bodies come back and ask for extra work to be undertaken because they value what we do.

The Convener: In general, what is the consequence of such negotiations? Have the local authorities and the other bodies been satisfied with the answers that you have given them or have they continued to make representations about the level of the audit fees?

Mr Black: I cannot speak for the current position with the Accounts Commission, but I understand that, generally speaking, the bodies accept that the costs that they must bear are necessary. To be frank, the burden tends to be more onerous on small public bodies. For example, the audit fee is more of a concern to very small councils. There is a fundamental problem to do with size and risk. I am not saying for a moment that small bodies are necessarily badly managed, but in small bodies, as in large ones, there is a minimum amount of audit that needs to be undertaken to provide assurance on the systems and controls that are in place, so there is certainly a distinctive economy of scale in audit activity.

The Convener: To return to the question that Frank McAveety asked you near the beginning of the meeting, is there any scope for the adoption of a slimmed-down, enhanced scrutiny model of audit, given that there are concerns about the cost and the extent of the present audit burden on public bodies?

Mr Black: The answer to that is yes; it is appropriate to travel in that direction. If I stick with the cost end of the business, in each of the past two years we have taken out 5 per cent of the cost of our audits to the health service. In other words, there has been an overall reduction of 10 per cent in those fees.

That efficiency has been achieved in two ways. First, the rationalisation of NHS bodies in Scotland

has allowed me to strip out costs. Secondly, we have rationalised our audit activities to ensure that we concentrate on the key strategic priorities and risks in the health service. The fact that we have reached an understanding with the NHS about the areas in which we will apply our resources to greatest effect has been a real driver for getting our costs down.

As for the rest of the public sector, it is clear that we are constrained by the complex landscape of public bodies that exists in Scotland. Each of those bodies requires to be audited so that I can advise the Parliament whether resources are being used wisely, well and appropriately. That imposes limits. That said, I do not think that it will be possible to drive down audit costs significantly. We always assess whether that is possible, but I do not think that there are opportunities for making substantial savings. We might save some money at the margins, but it will not be a significant amount.

There is a huge opportunity to achieve best value and get more productivity and benefit out of audit by applying the modern audit regime that I described. That involves doing less of what is sometimes called tick and bash audit and, instead, applying the principles of best value across the public sector and re-engineering audit so that it examines the big issues of performance and the use of resources.

Mark Ballard (Lothians) (Green): In your oral evidence, you have highlighted your need for a degree of independence from the Parliament and the Executive and talked about the different responsibilities of the SCPA and Audit Scotland's board for the scrutiny of budgets. In your written evidence, you draw a distinction between budgetary controls and the setting of budgets. Will you explain a bit more how that distinction works in scrutiny models for Audit Scotland and for the ombudsman and commissioners in the current Scottish set-up?

Mr Black: As I said, it is incumbent on every accountable officer to be accountable for proper budgetary control. It is clear that that is a fundamental requirement of proper financial management. That applies equally to the chief executive of a non-departmental public body or a local authority, an ombudsman, a commissioner and the Auditor General himself. Against that background, fundamental to the proper holding of account and to the relationship between the Parliament and the Executive is, at the end of the year, giving a proper account of how resources were used. That in no way cuts across my or the Scottish public services ombudsman's independence, which needs to be safeguarded.

The budget setting exercise is perhaps a bit more interesting and complex. It is important not to

apply a one-size-fits-all approach, as the various bodies fall into different categories. However, the fundamental process should be the same: the accountable officer or the statutory office-holder prepares a budget for the resources that they believe are needed to fulfil their activities and that resource bid is subject to an appropriate level of informed scrutiny. The public body's annual report, which describes how resources have been used, should be fundamental to that informed scrutiny, which should also be informed by a clear exposition of how the resources will be used.

By and large, that happens throughout the public sector. Although it is entirely appropriate for the Parliament to turn the spotlight on those activities through the committee, the standards of financial management, stewardship and governance throughout the public sector in Scotland are very high.

Mark Ballard: When John Swinney asked you about the matter earlier, he talked about budget constraints. You talked about a model of scrutiny that seemed to involve examining the previous year's accounts and checking that the money was spent appropriately. Is there a component for the restraint of budgets? How does that factor fit into the scrutiny model that you described? If a commissioner makes a budget bid based on what they believe they need, how do you compare what they think they need with the total budgetary picture for the Scottish Parliamentary Corporate Body or the Scottish Executive as a whole? How does that interaction work?

11:00

Mr Black: Underlying that question is one thought that I will share with you: there is a need for proportionality. If we take the ombudsman and commissioners in totality, we are talking about £6 million of public expenditure. We must always recognise the need to apply an appropriate mesh. In other words, if the same standards of scrutiny were applied to the ombudsman and commissioners as are applied to some of the major public bodies in Scotland, audit could become quite disproportionate. Proportionality is very important.

There is an obligation upon the Parliament to be well-informed about how resources are used. The annual report and any performance information within it should be central to that. It is perfectly appropriate for the Parliament, through whatever arrangements it wishes to put in place, to ask questions about efficiency, effectiveness, comparative costs and benchmarking, as indeed Mr McNulty has asked me this morning.

Jim Mather (Highlands and Islands) (SNP): I am keen to go back to your earlier comments

about the complex landscape of public bodies and your suggestion that the time might be right to encourage the Executive to review it. Do you have any views about how that landscape could be redesigned?

Mr Black: We are in an evolving situation. There has been a huge amount of development and change in the arena of scrutiny over the past few years. Fundamentally, I believe that there is a strong case for examining those issues in the round, at a strategic level, to ascertain whether we can find ways to work more effectively together.

I have asked a series of questions, at which I hinted in my paper, that might reasonably be asked of the scrutiny process. Some fundamental principles need to be applied, namely that scrutiny should be proportionate, add value and provide public assurance. On balance, it would be helpful to take an independent look at all that and ensure that we are doing it as efficiently and effectively as we can.

One of the interesting features for me over the past few years has been that some of the more significant inspectorates are moving away from a pure focus on what might be called the professional arenas of education and social work and are increasingly concentrating on inspection from the perspective of the people who are affected by the services—I do not want to use words like “client” or “citizen”.

That can clearly be seen with children's services, for example, in which a number of bodies are now engaged. I have heard comments from local government colleagues about their concern regarding overinspection in that area. I am not sure that we have any objective evidence of that. Nevertheless, we should hear what they are saying and respond sensitively. We should undertake some objective analysis of what the inspection is designed to achieve, how it adds value, whether it could be done more efficiently and effectively and whether there is scope for some economy and efficiency in that area. I cannot provide the answers to those questions today, but I think that an exercise needs to be undertaken.

Jim Mather: Do you think that proportionality and added value would be easier to achieve in the process of scrutiny if we had better measurements of the body being audited and if those measurements were clearer, more widely understood and better publicised, both to the general public and to the auditors?

Mr Black: The short answer to that is yes. That is an area that we must consider. As I am sure we all appreciate, these issues are extremely complex and technical. It should, however, be possible to get a better alignment between, for example, the

key performance information that a council requires for its effective oversight of children's services, the key indicators that ministers wish to have analysed by inspectors and those factors that should be reflected in a council's best-value report. There is a lot of inefficiency in that area, and there is a job to be done to streamline that activity.

Jim Mather: I was interested to hear what you had to say about annual reports, standards being high in Scotland and the need to include some kind of on-going performance scrutiny and reporting. You talked about having best-value reports every few years. Should we not ask public bodies to be involved in a process of perpetual improvement on which they report almost month in, month out, rather than year in, year out?

Mr Black: It is important to draw the distinction between what might be called the short-term accountability for how resources are used and effective holding to account for performance at different levels. I am in no doubt that for short-term reporting on and accountability for how resources are used, the annual financial cycle is appropriate. It is tried and tested and it works well. Within the financial year, by and large—if I may use the word “proportionality” again—it is appropriate to recognise that it is a responsibility of accountable officers and the management of public bodies to have effective stewardship of resources in-year. Increasingly, I expect auditors to provide an oversight and if necessary to challenge whether audited bodies have good systems for the oversight of resources in the financial year.

We need to avoid the risk of creating an industry of overaudit and overinspection by seeking annual public performance reporting. Through Audit Scotland, I have oversight of some 220 bodies a year, so responding to annual reporting on the performance of all those bodies would be problematic for the Parliament and the Executive. I wonder whether a somewhat longer stride of full performance reporting might be appropriate. That would give organisations the opportunity to address weaknesses and allow us to see the results of that, and it would avoid the risk of overaudit and overinspection.

The Convener: I will conclude by talking about the reception of reports—whether lessons are learned and whether we are exercising sufficient financial control. It is best to do that by referring to an example, so I will discuss the audit report on the northern isles ferries contract, which made several criticisms of significant cost overruns and the management of them. I understand that another contracting process for northern isles ferries is taking place. Have the lessons of your report been learned? How might lessons be better learned?

Mr Black: I am sorry; I must resort to auditorspeak—I simply do not have the audit information to comment on the subject. I expect the auditor to keep an eye on the matter and, if necessary, I would report to Parliament later. We received clear assurances from the Scottish Executive that the lessons and recommendations in the report were being fully taken into account. The Audit Committee also has the opportunity to require accountable officers to appear before it in order to hear assurances that recommendations are being applied.

The Convener: Is the mechanism for following that up sufficiently robust?

Mr Black: The mechanisms that are in place can be used effectively. The question is how to apply them to the greatest effect and proportionately. The Audit Committee has previously asked the Executive for a report after the event on whether recommendations that had been made in the previous year or two years had been followed through and implemented. That committee asks for progress reports on key recommendations, so the mechanism certainly exists.

The Convener: Thank you for your written and oral evidence. You have been the first witness for what will be a fairly lengthy investigation.

I suspend the meeting while we switch to the next panel of witnesses.

11:09

Meeting suspended.

11:11

On resuming—

The Convener: I welcome our second panel of witnesses, who are from the Scottish Commission for Public Audit. We have Margaret Jamieson MSP, the convener of the SCPA, and Andrew Munro, the adviser to the SCPA. I invite Margaret Jamieson to make a brief opening statement if she wishes, after which we will proceed to questions.

Margaret Jamieson (Scottish Commission for Public Audit): I will make a brief statement. Members of the Scottish Commission for Public Audit have shown great interest in the Finance Committee's inquiry and are pleased that the commission has been invited to give evidence. I do not intend to repeat all the specific comments that are made in our submission, but I will elaborate on one issue that is mentioned in it, which may be of interest to the committee.

As the commission's written submission states, the legislative basis for the SCPA does not prescribe how the body should carry out its

functions. Since its establishment, the commission has set about establishing procedures to put flesh on the bones of the legislative provisions, but one procedural issue in relation to consideration of Audit Scotland's annual budget bid remains: the lack of clarity about the process that would take place should the SCPA choose not to recommend Audit Scotland's budget bid to Parliament.

The Public Finance and Accountability (Scotland) Act 2000 does not say how the Parliament would deal with a proposal from the SCPA to reject or amend Audit Scotland's budget bid. In addition, there is a lack of clarity about what would happen should the Finance Committee and the SCPA have a strong difference of opinion over the level of funds that Audit Scotland should receive. Although an agreed protocol clarifies the information that the SCPA provides to the Finance Committee, an element of uncertainty remains as to whether the Finance Committee could, if it wished, overturn an SCPA recommendation on Audit Scotland's budget.

Furthermore, if the Parliament decided, by whatever process, that Audit Scotland should receive a budget that differed from that requested, the original budget bid would already have been detailed in the Executive's budget bill. As only the Executive is entitled to lodge amendments to a budget bill at stages 2 and 3, the Parliament would therefore need to rely on the Executive to amend the bill to reflect the Parliament's suggested budget for Audit Scotland. That is a strange situation, given that the SCPA was established specifically to ensure that the consideration of Audit Scotland's budget is entirely independent of the Executive.

Thus far, neither the SCPA nor the Finance Committee has sought to recommend that Audit Scotland receive a budget that differs from its bid, but such a situation might arise in future, so I am keen to ensure that the Finance Committee has the opportunity to consider the issue in the context of its inquiry.

I am happy to answer any questions from members about the work of the SCPA and about the issues raised by the Auditor General and in our written submission.

11:15

Mr Swinney: It is my pleasure to begin the questioning. First, could you explain to the committee how the Scottish Commission for Public Audit exercises its responsibility to examine Audit Scotland's proposals for the use of resources?

Margaret Jamieson: At the moment, we have a protocol that has been agreed between the commission and Audit Scotland, and we expect to be advised at certain times of the proposed budget

and the corporate plan. That gives the commission the opportunity to consider the information and to take evidence from Audit Scotland.

Mr Swinney: How does that process generally work? Can you give us more detail about the sequence of events?

Margaret Jamieson: Andy Munro, the adviser, can describe the timetable.

Andrew Munro (Scottish Commission for Public Audit): I will do my best. Round about April or May, Audit Scotland will come to us with a budget proposal for the following year and a corporate plan for three years into the future. On that basis, we review the plan, consider it against the budget and try to pick out some key issues on which to ask the Auditor General for further information if we feel that further elaboration is required.

Mr Swinney: How often does the SCPA meet?

Margaret Jamieson: At the moment, it meets twice yearly, to receive the budget and to take evidence. Towards the end of the year, it reviews that process when the accounts are laid. However, we have just appointed new auditors and it is my intention to have more regular meetings with them, because that is something the commission failed to do previously when we had another company undertaking the audit.

Mr Swinney: How long do the two meetings a year normally last?

Margaret Jamieson: About an hour and a half to two hours.

Mr Swinney: So the commission devotes three hours of parliamentary time to the whole scrutiny of the Audit Scotland budget and to Audit Scotland's performance against budget in any given year.

Margaret Jamieson: Yes.

Mr Swinney: The Auditor General told us a moment ago that the SCPA undertakes its role fairly intensely. Does that seem an appropriate way of describing the commission's scrutiny of Audit Scotland?

Margaret Jamieson: Yes. The difficulty for other members of the Parliament who are not members of the commission is that there is no way in which they can measure whether we are actually doing our job. Until recently, all meetings were held in private, which fundamentally does not sit well with me, so when I was appointed convener I moved that meetings should be held in public. However, you will see from our written report that we are not entitled to have an *Official Report*, so you and other colleagues are unable to challenge us or to apply any kind of measurement as to whether we are meeting the needs of the Parliament in holding Audit Scotland to account.

Mr Swinney: Before we move on to the improvements in the protocols, welcome though they are, I would like to spend a little more time on the process of scrutiny. It does not strike me that there is consistency between two 90-minute meetings of the SCPA and the Auditor General telling us that that the SCPA undertakes its role fairly intensely. Those two statements sit uncomfortably together. I would be grateful if you could share with the committee some more information about the extent to which the commission is actually kicking the budget around, or about whether it is simply saying, "That's what you did last year, so we'll just agree to the same again, plus 2.5 per cent."

Margaret Jamieson: You obviously do not know members of the committee very well.

Mr Swinney: That is what I am inviting you to place on the record in the presence of the official report.

Margaret Jamieson: When we receive the accounts or the budget request of Audit Scotland, there is discussion between our audit advisers and our auditors. Our advisers indicate areas in which they believe there may well be a difficulty or areas in which there is a huge difference.

The SCPA has raised issues about premises that are used by Audit Scotland, about rationalisation and about the capital budget. The SCPA also expressed concern about the negotiations with the Westminster Government, particularly the Treasury, when we were trying to resolve the issue of VAT. The SCPA ended up saying that it was dissatisfied with Audit Scotland's contribution towards trying to resolve the matter. I eventually wrote to the Chancellor of the Exchequer to try to get the matter resolved, in the interests of everybody in the public sector in Scotland. Those are a number of issues on which I recall us challenging Audit Scotland.

We asked the previous auditors to undertake a three Es examination—an examination of economy, efficiency and effectiveness—of Audit Scotland, because we had concerns about the training of graduates in Audit Scotland. We were concerned that we were expending a lot of money on ensuring that they were trained up to a certain level, only for them to toddle off the next year to some other organisation that received the benefit. That examination was undertaken. We have had initial discussions with our new external auditors for Audit Scotland. Although I cannot indicate the exact terms of the next round of three Es, because that is now part of the negotiation process on their remit, I have heard the committee's discussion this morning with the Auditor General for Scotland.

Mr Swinney: I will probe a little further the issues that you are raising with Audit Scotland. We

will park the VAT issue for the moment. Have any of the issues that you have raised led to a change in Audit Scotland practice or changed its mind about decisions in relation to location, capital budgets or staffing?

Margaret Jamieson: We considered the offices that Audit Scotland had across Scotland. It was considering the matter anyway, but we asked whether it should consider having a shed on the M8. We asked whether it was necessary for Audit Scotland to be in George Street in Edinburgh; it has two offices, which was a surprise to us. It is necessary to ensure that the matter is considered every year. I accept that, because of legal commitments, it is not always easy to move, but it is important to ensure that those questions are continually asked and that the issue is therefore at the forefront of Audit Scotland's budget-setting process. Given that the Parliament asks local authorities and further education establishments to answer such questions, it is only right and proper to ask Audit Scotland the same questions.

Mr Swinney: Have any of the questions that the SCPA has asked resulted in a change of practice by Audit Scotland?

Andrew Munro: I can mention one change that is currently in progress. It relates to the way in which Audit Scotland reports, in its annual accounts, its direct costs against its indirect costs. Effectively, the direct costs cover the audit delivered by the guys in the field. They are reported against the overheads, which are basically everything else. We are debating with Audit Scotland how it reports the figures to us.

Audit Scotland's current approach is probably to give us its best guesstimate, to be honest. We accept that it is difficult for the organisation to establish who in the office should be considered as being on the direct delivery side, because the organisation employs many guys on the strategy team and many researchers who undertake work on health and non-financial matters, for example. We will meet Audit Scotland soon to discuss how we can have a better idea of what is a direct cost of delivery and what is an overhead.

Mr Swinney: Are you saying that Audit Scotland has not changed its practice on direct costs, even though the commission expressed concern about the matter?

Margaret Jamieson: In the early days, Audit Scotland did not provide a split of costs. When we asked for costs to be apportioned, the organisation came up with a 50:50 split. When a result is as clear cut as that, we automatically ask how that happened.

Andy Munro is right to say that it is difficult for Audit Scotland to provide the split between direct and indirect costs, but the commission is not

satisfied that that is an acceptable response. Audit Scotland would not accept such a response from other public sector organisations.

Mr Swinney: The Auditor General for Scotland said this morning that the SCPA may ask Audit Scotland questions about matters such as staffing and location, but there is a world of difference between the SCPA's asking questions and Audit Scotland's changing its practice as a result of the commission's concern. Has the commission asked Audit Scotland to reduce its costs by changing staff numbers or relocating?

Margaret Jamieson: We have not asked for staff reductions, but at the most recent meeting we asked for clarification about staff numbers, which have increased. We have been given an assurance that it is not anticipated that staff numbers will rise above 274—I think that is the current figure. We do not say, "You have too many"; we ask whether the organisation has the optimum number of staff to deliver the service.

Mr Swinney: The commission is saying to Audit Scotland, "We want a better understanding of why you need so many people to do this and so many to do that." Is that a new line of inquiry for the commission?

Margaret Jamieson: The approach follows naturally from the three Es examination in relation to the training that the commission asked auditors to consider. Now, we must ensure that that is appropriate.

Mr Swinney: The SCPA's five members are all members of the Scottish Parliament. Four SCPA members are also members of the Parliament's Audit Committee, to which the Auditor General is a key contributor. Is not that arrangement awful cosy?

Margaret Jamieson: Definitely not.

Mr Swinney: In what respect?

Margaret Jamieson: SCPA members who are members of the Audit Committee are aware of the Auditor General's work and the issues that Audit Scotland explores throughout the public sector. Therefore we are not averse to asking questions about Audit Scotland, to ensure that the approach that is applied in the rest of the public sector is applied to Audit Scotland.

Mr Swinney: Is it as simple as that? Members of committees acquire working relationships with advisers and contributors. The Auditor General for Scotland is a key contributor to the Audit Committee, but members of that committee who are also members of the SCPA must suddenly change roles and scrutinise and perhaps put pressure on Audit Scotland about a budget that might be causing concern. That seems an awful cosy arrangement that does not provide for the

kind of open scrutiny that people would expect of us.

11:30

Margaret Jamieson: If we had an *Official Report* of our meetings, you would see that the arrangement is sometimes less than cosy. Some aspects of the meeting can be quite adversarial. I am not saying that the whole meeting is adversarial, but it can get that way when we believe that we are being deflected in an area of examination.

Mr Swinney: Why are the arrangements for the meetings not open?

Margaret Jamieson: I do not know. I think that that is just a quirk of the standing orders. The SCPA was set up by legislation. It might be an oversight on the part of the parliamentary authorities that we do not have a seat on the Conveners Group. Since we were set up, we have undertaken only one fact-finding visit, which was to Copenhagen, for which we had to go through a different process from everyone else. If we want to have tea and coffee at the meeting, we have to use the Audit Committee's budget. It would assist a lot of people if they were able to read an *Official Report* of the meetings. The parliamentary authorities have to consider all that.

Mr Swinney: It strikes me that there is a need for greater transparency, to ensure that the public have confidence in the process. On the face of it, it looks like a cosy arrangement that four of the five members of the SCPA also sit on the Audit Committee; they sit on one side one minute and scrutinise another budget the next. There is a question mark over the right of the commission to put pressure on the Auditor General for Scotland or Audit Scotland to change a budget provision.

Margaret Jamieson: You also need to understand that each and every one of you decides who will be members of the SCPA, on the recommendation of the respective business managers. It is outwith our hands.

Mr Swinney: I try strenuously to avoid trouble these days, Ms Jamieson, as you well know. Becoming involved in that would probably get me into even more difficulty.

You said in your opening statement that there is a lack of clarity about what would happen if the SCPA refused to recommend approval of an Audit Scotland budget. I assume from that remark that the commission has concerns about whether its legislative and procedural arrangements provide a clear route for it to highlight genuine problems with the size of a budget and have them addressed. Will you set out more of the commission's thinking on that point?

Margaret Jamieson: Yes. At the moment, we have a working protocol that the convener of the Finance Committee and I agreed. At some point, Audit Scotland might make a request for a specific budget that the commission is not prepared to recommend. In such cases, we would use the protocol to advise the convener of the Finance Committee, who might agree with us. However, we cannot amend the budget at stages 2 and 3; only the Executive can do that. That is an issue for the Finance Committee as well as the SCPA.

The other issue about which we are concerned is that we could make a recommendation to the Finance Committee and it could say that it disagrees. There is nothing in the standing orders that would allow us to resolve that difficulty. I do not know whether in the setting up of the SCPA it was seen that the Finance Committee would have a direct input and the other body would be a reporting group. I do not know what the thinking was. It is certainly not a helpful situation to be in. I would much prefer for the matter to be clarified before we ever have such a disagreement.

Mr Swinney: I take it that, so far, the SCPA has not recommended a change to an Audit Scotland budget.

Margaret Jamieson: We have not recommended a change, although we have drawn the Finance Committee's attention to certain aspects of concern. Over the years, the main one has been the VAT issue.

Mr Swinney: But your point is that even if your concern reached fever pitch and there was a mood to change the budget, there is no mechanism for doing that.

Margaret Jamieson: There is no mechanism whatsoever.

Mr Swinney: Do any other procedural changes need to be made to the way in which the commission relates to Audit Scotland or to the work of parliamentary scrutiny?

Margaret Jamieson: The main change that we would like is to the report that we make to our colleagues in the Parliament, who should at least be able to get the *Official Report*. That is a given, and we will pursue the matter more vigorously than we have in the past. That will provide comfort to individuals such as you, who perhaps have a view that the situation in relation to Audit Scotland's budget might be too cosy. I want to assure colleagues that it is robust.

Mr Swinney: The final thing that I want to ask about is the more general issue of governance of the commissioners and ombudsmen. I am sure that you know that the Finance Committee has been considering it for some time. I think that you were in the room when I raised it with the Auditor

General. He covers it in his evidence and he accepted that my analysis of it was fair.

The commissioners and ombudsmen have the right to propose budgets and the Parliament has the right to scrutinise them. Without compromising the independence of the commissioners or ombudsmen, the Parliament has the right to say that they need to change the proposed budget or alter the provisions. However, it is clear to the committee that there is no real ownership of that responsibility in the Parliament, whether by the Finance Committee, the corporate body or whatever. Has the SCPA considered that issue? Does it have a role in that respect? Do we need to clarify who has the procedural leadership to undertake that scrutiny?

Margaret Jamieson: If we take the point that the budgets are allocated by the corporate body and top-sliced, I would point out that Audit Scotland's budget is top-sliced. The commissioners are provided with budgets via the corporate body, but there is nothing to prevent the Scottish Commission for Public Audit from operating on behalf of the Parliament. The work should not necessarily be done by the corporate body, because, given all the other issues that it has to deal with, it needs to be seen as separate. Given the expertise that we have developed in relation to Audit Scotland, we are in a good position to expand our work to cover the commissioners.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): My questions follow on from the convener's line of questioning to the Auditor General on charging by Audit Scotland. How much information on that do you get in Audit Scotland's budget proposals?

Andrew Munro: The information that we get is pretty much what the Auditor General mentioned to you. As we understand it, an indicative fee is set by Audit Scotland's central office. The local offices, which are responsible for delivering the day-to-day audit fieldwork, have the scope to negotiate, although I believe that they are restricted to negotiating up or down by 10 per cent. The auditees or clients are pretty much stuck with that.

Margaret Jamieson: The fee depends on the level of risk involved. If an organisation has a clean audit record, the risk is less than it is in an organisation that requires a section 22 report, for example. There must be significant input to ensure that the risk level decreases.

Mr Arbuckle: From local authority experience, I know that Audit Scotland charges have increased massively in recent years. Has the SCPA picked up on that?

Margaret Jamieson: We asked our previous auditors to look at the charging-out fees. The fees that are charged by Audit Scotland are broadly similar to those in the private sector.

Mr Arbuckle: You sat in on the first evidence-taking session. Did you hear anything to make your commission consider changes in the future?

Margaret Jamieson: The evidence from the Auditor General gave you a flavour of the work that he is doing and how he views his position in Scotland's governance arrangements. The big difference between the Auditor General, commissioners and ombudsmen is that his is a Crown appointment, whereas the others are appointed directly by the corporate body.

Dr Elaine Murray (Dumfries) (Lab): You have touched on what interests me. When we interrogated the corporate body about the commissioners, we found that because of the way in which the legislation had been set up for many of them, the SPCB had no say in the location of offices, for example. The corporate body felt constrained by the ability of commissioners to argue that because their duties had been laid down in statute, they were entitled to ask for a certain budget in order to fulfil their duties, which they could not otherwise do. You raised an important issue of which I was unaware when you asked what would happen if we did not agree Audit Scotland's budget. That is an important question to answer.

In your reply to John Swinney, you suggested that you could extend your remit to consider the roles of some commissioners. If you were able to do that, what reporting mechanism would you use? Would you report back to the corporate body? How much power would you have over the commissioners? Although you might be able to investigate them more rigorously, I presume that you would face the same constraints when trying to take action that would force a change in the budget.

Margaret Jamieson: To a certain extent, we are using the committee's inquiry to float some ideas and point out our difficulties in making a report to Parliament in the current structure.

Were the Finance Committee minded to say, "Yeah, the SCPA can oversee the budget of commissioners and ombudsmen", we would need certain functions to make that process open and transparent. We need a clear route to make a report to Parliament. I am throwing the point back to you—your inquiry gives us the opportunity to clarify matters. Ultimately, Parliament should make the decision; it should not be made as the result of a cosy meeting somewhere else.

Mr Swinney: We are against cosy meetings in this place.

Dr Murray: Would changes in primary legislation be required to extend the SCPA's remit and give it an increased power of direction, or could that be done by protocol? Perhaps that is a difficult question to answer.

Margaret Jamieson: It would not require any changes to legislation. My understanding is that the only changes that would be needed would be to the standing orders of the Parliament.

Dr Murray: I ask because the SCPA's current remit was decided in legislation.

Margaret Jamieson: Yes, but that legislation did not define how we should make our reports. That is where the difficulty lies. Westminster does not always get it right.

The Convener: The pattern of change in the budget for Audit Scotland and the Accounts Commission during the past five or six years has been one of significant expansion. I appreciate that you are saying that, in a sense, you have asked appropriate questions at different points in time, but the comparative rate of growth has been pretty high. If we benchmark that rate against the costs of public audit elsewhere in the UK, it still seems to be relatively high. Do you have any comment to make on that? Are we getting value for money? To use the Auditor General's terms, is the extent of Audit Scotland's remit appropriate in the circumstances or is there a reason for one or two more fundamental questions to be asked rather than the budgetary monitoring exercise that the SCPA is doing at the moment?

11:45

Andrew Munro: I will take the chance to answer that, because my reply might answer Mr Swinney's earlier question. I will explain how we analyse Audit Scotland's budget.

Audit Scotland provides us with a budget statement about a year in advance of the year commencing. Within that, there is always a subjective analysis of the types of expenditure that it will undertake in that year. Basically, we look for trends from that subjective analysis—what was spent during the past year and what is proposed for the next year. We then look for any changes that are outwith the norm, such as large or unusual items, and ask for an explanation of them. I have been the adviser for a year and a half and the recent explanations have been about things such as the new transport authority and the fact that it will have an impact on Audit Scotland's time, hence the need for further expenditure in that area, or the fact that best value is going through its next stage of implementation, which needs further expenditure. That is the process involved.

If you were to go back five or six years and see the gradual year-on-year build-up, I suspect you would find that my predecessors asked the same questions. Those questions often arise as a result of general changes in the public sector in Scotland.

To be fair to Audit Scotland, it is a reactionary body that must adapt its approach according to the way in which the public sector is structured. The Auditor General gave a fine example when he mentioned NHS boards and trusts. In a big city such as Glasgow, the four or five health trusts and one health board formed five or six distinct clients, each of which required an audit statement and a full review of expenditure. The NHS in Glasgow is now one health body, but Audit Scotland does not just have one fifth or one sixth of the work. However, it has tried to derive some efficiencies from the situation.

The Convener: I suppose that the Auditor General is a very skilful and practised individual in that he can make arguments for incremental growth in new areas, but the pattern of change in the budget remains broadly expansionist. Are there limits to what we should ask Audit Scotland to do, and is that issue properly discussed by the SCPA, or by the Finance Committee and the Parliament?

Margaret Jamieson: Obviously, each committee has a say in the areas that should receive Audit Scotland's attention. However, we must ensure that we do not go for overkill. I am aware that there is a programme of audit in specific areas of interest. A timely mid-term evaluation of McCrone that came out last week reassured Parliament about the decisions that had been made about education, and raised some issues that local authorities and the Executive ought to consider. That type of work continues.

In addition, Audit Scotland has to undertake reactionary reports. You are well aware of the issues surrounding Scottish Enterprise and the fact that various individuals have asked Audit Scotland to go in there. Audit Scotland has to take a value judgment on that. It has to ask whether that is the right thing to do at the time and whether it needs to ensure that other areas are safeguarded while it conducts its audit. A fine balance has to be struck.

The areas of audit that Audit Scotland undertakes are up for input from any committee or any member of society in Scotland; Audit Scotland advertises its audits on its website. We can make an input into its work. The one thing that we should all step back from is overaudit, because that stops the service from being delivered at the point where the public expect it to be delivered.

The Convener: Clearly, there is a requirement for a robust and thorough public audit system and

an independent Auditor General. In our earlier questioning of the Auditor General, we heard that the extent of governance—the checks and balances—really relies on the SCPA, in terms of externality. Your experience on the Audit Committee comes into this, but my understanding of what you said is that the Auditor General decides on the areas that he will look at and the direction of travel, and that we can, perhaps, break the growth of his budget. The pattern of growth has been substantial over the period, however. The question that has to be asked, although it needs to be handled carefully, is what level of parliamentary control could or should there be in that context—

Margaret Jamieson: You have to understand that that expansion is primarily at the behest of the Parliament. Take best value, for instance. We are two thirds of the way through the first best-value audit of local government; we will take the findings of the first tranche of that work into the health service. We are expanding the best-value ethos into other areas of the public sector. There is difficulty in getting Audit Scotland staff to that level of expertise, and the impact on staff in the health service is also an issue.

Obviously, there is room for further expansion of best value—are we going to take it right across the public sector? The best-value agenda represents a total shift for everyone in the public sector. Sometimes I think that best value is too subjective. As a member of the Audit Committee, I can say that, once we have completed the first round of local government best-value audits, we will need to sit down with the Accounts Commission and consider what needs to be changed.

The Convener: Thank you for your evidence. You have given us a lot of useful information.

Margaret Jamieson: Thank you.

11:53

Meeting suspended.

11:55

On resuming—

The Convener: We will now take evidence from Linda Costelloe Baker, the former Scottish legal services ombudsman. Although a new ombudsman took up the post on 26 April, Linda has submitted evidence to the committee and we thought it would be helpful to take further evidence from her today, based on her experience in the role. I welcome Linda, and invite her to make a brief opening statement. If she has none, we will move straight to questions.

Linda Costelloe Baker (Former Scottish Legal Services Ombudsman): I have no opening statement to make.

Dr Murray: I thank you for the frankness of your written submission; it is possibly easier to be frank when you are no longer in post.

You mention a lack of clarity—although I should first say that you reported to the Executive rather than to the Parliament, which is different from the position of the people whom we were speaking to earlier. You say that you had to ask the Executive for written guidance on financial management and that your accounts were never audited. However, you did not receive anything by way of draft financial guidance until a week after this inquiry was launched.

Linda Costelloe Baker: I am told that that was a coincidence.

Dr Murray: It sounds like it, eh?

You also say that, until recently, the Scottish Executive Justice Department had not been able to give you information on staff costs, and that two of your staff appeared to have been allocated to somebody else's budget. That is a pretty unsatisfactory state of affairs, is it not?

Linda Costelloe Baker: Yes.

Dr Murray: I was quite shocked to read about the Executive's apparently lackadaisical approach to monitoring various organisations that were responsible to it.

Linda Costelloe Baker: Had I still been in post, I would still have prepared a submission; it is not just that I am feeling brave because I have moved on. This issue concerned me for almost all of the almost six years that I was in post as ombudsman. I have raised the issue very publicly, especially in my annual report for 2003, in which I made a formal recommendation to ministers that there should be a management statement between the Scottish Executive Justice Department and the office of the Scottish legal services ombudsman.

I was concerned about the lack of clarity and accountability. I was also concerned—and I must be very frank about this—about the degree of personal risk that the ombudsman was expected to carry. That should come as no surprise to the Justice Department; I have been raising the issue formally and publicly for a number of years.

The Convener: What do you mean by "personal risk"?

Linda Costelloe Baker: There are two particular areas of personal risk. I ran a business before I became ombudsman in July 2000. I was therefore familiar with all the requirements of running a business and being an employer. As ombudsman, I asked who employed the staff. In

the staff papers that I inherited, I could not see the required legal terms of employment. I was told then, in July 2000, that people were unsure who the employer was but that it was probably the ombudsman. I therefore acted as the employer.

I am a bit risk-averse in such areas and I believe in being a good employer. We were a small enough office to be able to draw up legal terms of employment ourselves. Interestingly, I asked Audit Scotland for advice on the terms of employment for its staff, because there is a bit of a network of similar organisations. I unashamedly poached some of its terms of employment and used them for the ombudsman's staff.

Round about the time that the ombudsman was given a budget to obtain independent legal advice, I was told that ministers had decided that they were the employer. At the same time, my legal advisers said that, in any employment tribunal, the ombudsman would be found to be the employer. Since then, there has been a difference of legal opinion. As ombudsman, I am used to there being differences between lawyers; I have had to live with that. However, I do not think that ministers have taken any particular steps at all to demonstrate that they are the employers, and my legal advice was still that a tribunal would find that the ombudsman was the employer.

The two bits of legislation that could be referred to are the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which referred to the ombudsman's staff, and the Superannuation Act 1972, as amended, which refers in a schedule to the principal civil service pension scheme being open to the Scottish legal services ombudsman and his staff. Both bits of legislation use possessive terms in talking about the ombudsman's staff.

My legal advisers told me in, I think, 2003 that, if ministers now claimed that they were the employer, they should issue me with an indemnity against any claims. However, they specifically refused to do that. I therefore held what I think was personal liability for any claims that could have been made against me at an employment tribunal.

12:00

Dr Murray: Is that a common experience for ombudsmen?

Linda Costelloe Baker: Not at all.

Dr Murray: So the situation is peculiar to your position.

Linda Costelloe Baker: When I started, there were very few ombudsmen in Scotland—there was the local government ombudsman, the housing association ombudsman and me. In my paper, I missed out the fact that the Scottish

prisons complaints commissioner joined the Scottish ombudsman's forum when we did joint training. We swapped notes about how we were set up and our problems. I also shared my experiences with the British and Irish Ombudsman Association. I do not know of anyone who was quite so stuck out on a limb as I was.

Looking back, perhaps I should have made more of a fuss, but there was a job to be done and I am the sort of person who rolls up my sleeves and gets on with the job. When I knew last September that my term of appointment would finish in the middle of this year—as it happens, I have gone a bit early—I felt strongly that whoever came next should know that they would have to bear a degree of personal risk. In October, I wrote a letter of a page and a half to the head of the Justice Department to summarise the key issues and why I thought there was a degree of risk. My intention was that that information could be given to people who considered applying for the post.

The Convener: Did you get a reply or acknowledgement?

Linda Costelloe Baker: I got a reply, but it took three and a half months. I sent a couple of reminders and one factual update—I had solved a pensions issue and wrote to update the Justice Department on that. I sent one reminder in January, when I knew that I would be leaving sooner rather than later, because I anticipated that the advert for the post would be published in January. I understand why the issue is not top of the Justice Department's agenda—it is a big department that deals with many issues that are far more important than my small office but, nevertheless, I was concerned that it took so long to get a reply.

The second area of risk relates to entering into contracts. Everyone's advice—there was no disagreement—was that, because the ombudsman is not a corporation sole, I had no legal right to enter into contracts, even though I was expected to do so. I was told that, when I entered into a contract, I did so in a personal capacity, not as the ombudsman, and so without any indemnification. There were several amusing cases—although they did not necessarily feel amusing at the time—in which services that the Executive provided centrally were withdrawn from the ombudsman's office at very short notice. I was expected to carry out a public sector tendering exercise and enter into a contract, which I signed as Linda Costelloe Baker. I had no legal cover to sign as the ombudsman.

Dr Murray: That is interesting. You have raised a concern about the resourcing of administrative support for your office—you had only one part-time administrator who worked 28 hours a week. When you submitted a request for an increase,

although the officials accepted that you had made an adequate business case, you were told that you could not have the increase because the Justice Department had run out of money. That does not seem to be a rigorous way of assessing the needs of NDPBs.

Linda Costelloe Baker: The honest answer is not that the Justice Department had run out of money but that its priorities were elsewhere. I did not believe that the Justice Department was short of £30,000 or whatever it would cost. In fact, there is a £40,000 underspend in my budget this year. I could have managed the increase out of my budget, had I known what the underspend was going to be.

Resourcing is an interesting issue. It is a wider issue for ombudsmen and for their independence. Being adequately resourced is one of the fundamental principles that allow ombudsmen to be independent, but I feel strongly that that adequate resourcing must be open to scrutiny, to challenge and—my suggestion to the committee—to an independent assessment and a benchmarking exercise, where there are reasonable similarities between jobs. I am thinking particularly of complaint-handling roles, because that is where my experience lies.

I have run a pretty tight ship over the past six years. I demonstrated in each of my annual reports how the cost per piece of work has fallen. It was £1,000 per opinion when I took over. The workload increased five-fold in just over five years, and the cost per piece of work is down to six hundred and something pounds. That compares very favourably with our closest comparator, which is the legal services ombudsman for England and Wales, whose costs per case are twice mine, even though she has a much bigger office and some advantages of economies of scale.

Over the years, I had not asked for additional administrative support because I had introduced a lot of systems that made the office more efficient administratively. Our heavy reliance on information technology meant that we were able to manage with a part-time office secretary who worked 28 hours a week. However, given the rising workload, it became apparent that I could not carry on dealing with a lot of the admin work that I used to do. For example, nobody else can sign opinions—the one thing in the office that I had to do was sign the cheques and the opinions. I started allocating out administrative responsibilities to people who were hired as complaints investigators, which began to impact on our turnaround times. The office has very tight performance indicators, which we did not meet last year.

For the first time in six years, I asked specifically for an increase in administrative support. I did that by making a business case—calling it a corporate

plan sounds a bit grand for an office as small as mine, but that is basically what it was. It was a forward plan, with estimates of future demand and future resourcing need. I was told that the request could not be granted, although officials said that I had made an adequate business case. I am a bit of a data freak—I like data and information—so my predictions are usually pretty robust and pretty well supported by facts. I tried again six months later, which was my normal budget round, and got the same answer. The effect of that can be seen in the diminution in the quality of service that the office provided in my last year—much to my distress, I have to say.

Dr Murray: So you would argue that the lack of resources affected your ability to carry out the core functions of the organisation.

Linda Costelloe Baker: Absolutely—to the standards that we set ourselves. I suppose that this comes back to scrutiny and accountability. I decided that a two-day turnaround was right for correspondence. Nobody came back and said, “That’s too fast,” or, “That’s not fast enough.” I decided that it was appropriate to try to complete opinions in 13 weeks from the day that we got the letter of complaint. We were very rigorous compared with most complaint handlers, who do not meet such targets, but we met them during my term of office. The only reason why we were unable to meet them in the past year was a complaints trend that rose steeply. We had an adequate number of complaints investigators—I was given two more staff about a year ago—but we hit the buffers as far as admin support is concerned.

Dr Murray: Can you make any recommendations to the committee on improving the accountability of your type of organisation? If it had not been for the inquiry, many of these issues would probably not have been made apparent to committee members.

Linda Costelloe Baker: I suppose that the big issue is that small matters. My costs last year came to £360,000. There are only four noughts in that figure, and most public sector organisations deal with many more noughts. The fact that the amount of money involved was small meant that it almost did not matter.

I was brought up in Yorkshire—back when ha’pennies were still around—and started my working life running a regional office for Oxfam. Those two factors mean that I was brought up to run a tight, economical, cost-conscious organisation. As ombudsman, I tried to do that. I think that saving pennies teaches people lessons. I am fairly convinced that it is simply because my costs made up such a small part of an unallocated budget—my understanding was that the money was part of a general pot in the Justice

Department that also covered the Scottish Solicitors Discipline Tribunal and the Conveyancing and Executry Services Board—that it almost did not matter. However, it matters to me and I think that it matters to taxpayers. I would have loved to have been more open to scrutiny and more accountable. As I said, the information has been in my annual reports but nobody has questioned me on it. I did not get an answer in relation to the formal recommendation that I made to ministers in 2003. I kept on asking for an answer, but I did not get it until earlier this year. The information has been made available, and I wanted someone to ask me to justify my existence, explain how I was spending public money and outline my service standards.

Derek Brownlee: Most of us will be concerned about the possibility that what you are describing on a small scale is symptomatic of what is happening across the Executive. It is worth commending you on the rigour with which you managed your affairs independently of guidance from the Executive. If other public sector bodies that have been in the headlines recently had been monitoring planned expenditure against their budget on a monthly basis, we might be in a happier situation.

In your submission, you said that the Justice Department’s demands for financial information were sometimes “confusing” and varied from time to time. How frequently did the department ask you for financial information? I know that you gave it monthly and quarterly statements, but I would like to know how frequently it came back to you.

Linda Costelloe Baker: In the past year, the department asked for more information. I have to be a little cautious at this point because I know that a new person took up the relevant post in the department a year ago—three people held that post while I was the ombudsman—and I do not want to single them out for criticism. The problem is with the system, the structures and the supervision, rather than the particular person.

It strikes me that people have gone into that post with little training or understanding of financial matters and public accounting and that, perhaps, there has not been a great deal of supervision of their work. Until a year ago, I produced a rolling three-year plan that I published on the website. I issued that to the Justice Department in December or January. There was supposed to be a meeting in December but, usually, it took place in January. I do not think that anyone ever objected to anything that I put in that report and I was told that that was because I provided detailed information and knew my figures.

In the past year, I was asked to send a note at the end of each month to say whether I had underspent or overspent my budget. That was

easy to do—I sent an e-mail at the end of the month to say that I had neither underspent nor overspent my budget. The underspend at the end of the year came about because I had to set aside a certain amount of money for legal advice in case there was a huge legal challenge. There was the prospect of one, but it fizzled out, which is why there was a significant underspend this year.

The other information that goes in those reports is detailed: a photocopy of each cheque and invoice goes in, along with quarterly bank reconciliation statements and a request for funds. We used to make the request every two months, but we decided to do it every three months. In those requests, I detailed under the various budget headings my forecast of what the office needed for the three months ahead. The Justice Department paid that into the ombudsman's bank account.

12:15

Derek Brownlee: On your annual budget cycle since you were appointed, it sounds from what you have said that, until you made the recent requests for additional support for administration, your budget had never been refused or queried. Is that correct?

Linda Costelloe Baker: Yes.

Derek Brownlee: Were you ever asked for clarification at any point in the earlier years?

Linda Costelloe Baker: No, not for any specific item of expenditure.

Derek Brownlee: So a charitable assumption would be that the information that you provided was so comprehensive that any possible question that the Executive could ask would be answered by what you had already provided.

Linda Costelloe Baker: One would like to think so.

Derek Brownlee: I am sure that that was the case.

Mark Ballard: I want to take Linda Costelloe Baker through some of the points that she laid out in her helpful written submission. First, she suggests

“two mechanisms that can be used to test reasonableness in order to ensure that there is budgetary control for an organisation that must have independence.”

She mentioned benchmarking and assessing spending plans against similar bodies, but referred first to BIOA membership criteria. I ask her to lay out in more detail how she thinks that that might apply to independent organisations.

Linda Costelloe Baker: I think that BIOA has also submitted a response to the committee. BIOA

is a fairly loose organisation because joining ombudsmen together is a bit like herding cats—we are all fiercely independent. However, BIOA has been established for some years and it has membership criteria and good practice criteria. I regret that I cannot quote the membership criteria to you just now, but they are on BIOA's website.

At this year's annual meeting, which will take place next week, BIOA will probably approve complaint handling guidelines that it hopes that all its members will agree to support. The advantage of BIOA is that people from a wide variety of jurisdictions—the Republic of Ireland is included as well as Northern Ireland—who have similar jobs can meet to consider best practice criteria. Under membership criteria, they consider the key factors that make an ombudsman genuinely independent.

There is a validation committee for anyone who wants to join BIOA. The committee, which is slightly independent of BIOA, makes recommendations to the executive committee and says whether a would-be member meets the criteria for full voting membership—the Scottish legal services ombudsman does—or whether they meet the criteria for associate membership. Associate membership is for organisations that do not have the full degree of independence that BIOA thinks is necessary for full membership. There are only 20 full members of BIOA—I think that there were 17 when I started—and most BIOA members are associate members.

Mark Ballard: So the BIOA criteria assess independence, whereas the benchmarking that you suggested is about reasonableness.

Linda Costelloe Baker: Yes.

Mark Ballard: That is helpful. You say in your written submission:

“In 2001, I recommended that there should be a central Scottish Executive unit to manage its interface with the very wide range of postholders, public bodies and similar organisations because it seemed to me that there was duplication of effort and lack of expertise.”

That recommendation was not accepted. Can you explain the reasons that were given for that decision, if you can recall them?

Linda Costelloe Baker: I think that I was told at the time that it was just not done that way. My reading of that would be that departments operated separately and perhaps competitively in some ways, so they would not want to lose sponsorship links and the sort of arrangement that they had with an ombudsman, for example. There was a need to tie a sponsored body into the department to which it related. There is a fair amount of sense in that, as the sponsor department will have expertise in the area that the organisation deals with. However, as far as practical matters are concerned, I see no reason

at all why there cannot be a central unit for the procurement of things such as waste disposal and telephone systems.

Mark Ballard: I was going to ask you about that. You have given us some specific examples of things that you thought could be shared for which a sharing mechanism was established that was then withdrawn, or for which you tried to establish a sharing mechanism that was not accepted. Looking at your situation in relation to your sponsor department, why do you think that those services were withdrawn? What was the logic behind that?

Linda Costelloe Baker: When I did my MBA, one of my case studies was about transfer pricing within a big industrial company—students learn about such things, which do not seem very useful at the time but which pop up later in life. It struck me that the problem was transfer pricing. The Justice Department was removing direct responsibility for paying for a whole range of goods and services without realising that they had to be provided and that the costs to the taxpayer were going to be higher, even though the impact on the Justice Department's budget would be lower. Am I making sense?

Mark Ballard: You are making complete sense, sadly.

Linda Costelloe Baker: As I said, some of the examples of that are quite amusing, although they did not seem so at the time. I can give a beautiful example. When I first started, we had offices in Picardy Place, for which my predecessor had bought the telephone system. When the lease was up, we moved to Waterloo Place, and I was going to unplug the phone system and plug it in in the new building. However, I was told that it would be cheaper for me to attach my office to a bit of the Executive's telephone system—the Executive had offices three floors up in the same building. So, I did what I was told would be cheaper.

A couple of years later, when I was walking to work, I realised that the office windows had not been cleaned. It crossed my mind that the contract had perhaps been stopped because the Executive had moved out of the offices that were three floors up. I phoned up and found out that, yes, the office cleaning and window cleaning contract had been stopped. The Executive had forgotten that we were still there, and I was asked to carry out a full public sector tendering exercise to acquire new office cleaners. About 10 days later, it struck me that the Executive was probably going to pull the plug on the phones, too. I then had two days' notice that the phone system was going to be taken out.

One of my guiding principles is that I must be accessible to members of the public, yet I was

about to have no phone system. I had to go out and buy what seemed a very expensive and completely new telephone system, having been instructed only two years before to leave one behind, which was probably put into somebody's skip. That short-sightedness bothers me, as a taxpayer, because of the overall cost to the public purse of the change of policy and of expectation. Having to get a new phone system installed so quickly also drove me absolutely demented and took up a lot of my time, as we did not have much admin support. I do not think that the standing-back, overarching strategic view of that series of episodes showed that we secured best value for the taxpayer. There was also a fair amount of aggravation for me and for the service users.

Mark Ballard: You have talked about shared training and the suggestion that you should share a contract for IT support with the Scottish public services ombudsman. One set of issues is about your relationship with sponsor departments and the silo mentality; another issue is to do with small budgets, small semi-autonomous organisations and short-sightedness. What do you think the balance was between short-sightedness and silos in those two situations?

Linda Costelloe Baker: There is a different issue. The original Scottish ombudsmen's forum was successful, and we did quite a bit of joint training over two to three years. However, when Parliament put into place an ombudsman and a whole range of commissioners, they were at a different stage of development from people who had served for longer. As a result, it was not possible to arrange or carry out joint training. Now that we are two to three years further on, I suspect that, if there were another round robin, there would be a lot more interest in joint training. At the time, there was simply a mismatch because the new appointees were more concerned about setting up new offices, developing their roles and finding their feet. However, the will to set up such training was certainly there, and should still be there now.

We ran out of time on the proposal to share IT support, but it was very clear that, to achieve economies of scale, the service provider wanted the contract to run through the public services ombudsman's office. If that had happened, the ombudsman would have been responsible for IT support, which would have been wrong. The IT company should have had that responsibility. Had I started the negotiations a couple of months earlier, we might have found a way around that. However, I needed IT support, so I went ahead with the standalone contract.

Professor Brown and I have considered sharing human resources and IT support. There is still a great deal to be learned in those areas, and I feel that common contracts could be very beneficial.

Mark Ballard: Has the suggestion of sharing such facilities and resources come from you or Professor Brown, or is the SEJD, or other parts of the Executive, pushing in that direction?

Linda Costelloe Baker: When I discussed the informal grouping with the Justice Department, it was quite keen to find out whether it was possible to have a joint contract for legal advice. Although the service had been provided from a central resource previously, at a certain point I had to find my own service provider. I am not surprised that that issue proved more difficult to resolve, because people might need different kinds of legal expertise and not all firms are the same. However, I think that that is the only time that I received encouragement from elsewhere.

The ombudsmen got together simply because the job can be pretty lonely. It seems that an ombudsman's only friends are other ombudsmen. However, the forum was very useful and supportive; we met only a couple of times a year and planned training that was relevant to our teams, who also got together. The approach was enormously beneficial.

The Convener: It sounds like the ombudsmen's lonely hearts club.

Dr Murray: Under the efficient government initiative that has been introduced over the past couple of years, departments have had to look at their functions, find economies of scale and, for example, put together common IT systems to govern more efficiently and save money. Did the Justice Department ever discuss with you ways of contributing to that initiative?

Linda Costelloe Baker: No. However, as I have said, we had discussions about a common legal services contract. Furthermore, just after I had started and the lease was up on our building in Picardy Place, we tried to find out whether I could be shoehorned into someone else's premises. At that time, there were only three staff and me—the ombudsman—and standalone premises are relatively expensive. Although the department responsible for accommodation was excellent and we tried very hard to find shared premises, it was not possible to do so.

Dr Murray: So the initiative was not discussed with you, even when the Executive was producing efficiency technical notes for the different departments.

Linda Costelloe Baker: No.

Jim Mather: I have very much enjoyed this exchange, and found your submission exceedingly interesting. Your evidence, which shows that big issues centre on small matters, has considerable resonance. I am also very impressed by the controls and benchmarks that you introduced.

You said that you wish that you had had more scrutiny. Did that lack of scrutiny damage your organisation's potential to improve in the way in which you wanted to improve? Did it damage staff morale or lead to a lack of input of new ideas? The fact that admin resources were not forthcoming must have had a damaging effect. Did the lack of scrutiny result in a dynamic being lost?

12:30

Linda Costelloe Baker: The healthy challenge is a dynamic that was lost. I have mentioned several times the value of ombudsmen getting together and talking about things. By swapping notes and challenging one another, we managed to fill some of those gaps. My main focus was on complainants, from whom we received plenty of feedback and who offered us a challenge. That kept the service highly consumer focused, which I was keen to ensure.

Although I was not a parliamentary appointment, when my annual reports were published—the new one is out today, by the way, and there will be a copy of it in your pigeonholes tomorrow—I would have liked one of the justice committees to call me before it to ask me questions about them. There is a feeling that there is a degree of interest in what is a fairly important check and balance on access to justice in Scotland. I might have been asked some difficult questions that would have made me think. Additional scrutiny is an important part of keeping an organisation healthy and demonstrates to the public that no organisation is beyond public challenge.

Jim Mather: If you were appointed to scrutinise the future performance of the Scottish legal services ombudsman's office, would you set more challenging turnaround targets?

Linda Costelloe Baker: I would. If I was a reasonable person, I would consider what similar organisations did and would set targets that were stretching but achievable and which were tighter than those of other organisations. When I was the ombudsman, I practised and preached the doctrine that people like a quick service. Most of the letters of thanks that we got for our initial response were because we had replied within two days. I know from feedback and from my instincts that that matters to people. That would be one of the targets that I would set for any consumer service. People do not mind having to wait for the service, but they like to know what is happening and that their letter has arrived.

Jim Mather: You would set a target that was considerably better than three and a half months.

Linda Costelloe Baker: Yes.

Mr Swinney: I am interested in your bank account.

Linda Costelloe Baker: Personal or—

Mr Swinney: Professional. If I am correct, you would make a request for subvention from the Scottish Executive Justice Department every three months.

Linda Costelloe Baker: Yes.

Mr Swinney: If the figure that you requested on the basis of your budget was £400,000, a cheque for about £100,000 would be paid into your bank account each month. Is that correct?

Linda Costelloe Baker: Far less money was involved because most of our £400,000 budget was taken up by staff costs, which were paid directly.

Mr Swinney: Right. That is what I was driving at. I want to obtain an understanding of whether any of what I would consider to be the utterly routine tasks, such as the payment of money into the accounts of members of staff by bank transfer, were carried out by the Scottish Executive or whether you had to put in place a plethora of services that duplicated what the Executive does for its staff.

Linda Costelloe Baker: I did not have to meet the costs of staff salaries or handle tax matters. I think that my equivalent in England and Wales pays a nominal 20 per cent of her budget back to the Department for Constitutional Affairs for the provision of services, whereas in my case the cost of such service provision was not added on to the budget.

About a year ago, the Executive stopped providing pensions information to my staff, so I had to become a pensions expert. At my age, that was quite useful. All pensions advice was then provided to me as ombudsman by the Cabinet Office network and I provided it to staff. That did not involve any costs, other than time costs.

Mr Swinney: Was the payment of staff the only matter that was handled directly by the Executive?

Linda Costelloe Baker: Yes. We paid rent.

Mr Swinney: You paid electricity bills.

Linda Costelloe Baker: We paid water rates, electricity bills and so on.

Mr Swinney: And your accounts were not audited for five years.

Linda Costelloe Baker: That is right. I have the budget figures in front of me; they are on page 19 of the annual report for 2005-06. Admin accounted for 15 per cent of the costs; 14 per cent of the budget was spent on accommodation—rent, business rates and insurance; and staff costs made up the remaining 71 per cent.

The Convener: Thank you for coming along and giving us your evidence. It has been useful for us to obtain an operational perspective.

I give members a profile of the evidence gathering that we will undertake. Next week, we will take evidence from a selection of regulatory bodies that are funded by the Executive. On 6 June, we will take evidence from parliamentary commissioners and the Scottish public services ombudsman and, on 13 June, we will take evidence from the minister and the Scottish Parliamentary Corporate Body.

Item in Private

The Convener: Agenda item 2 is to consider whether to take in private at next week's meeting consideration of our draft report on the financial memorandum to the Adoption and Children (Scotland) Bill. Do members agree to do that?

Members *indicated agreement.*

The Convener: We now move into private session to deal with our draft report on the financial memorandum to the Legal Profession and Legal Aid (Scotland) Bill.

12:36

Meeting continued in private until 12:38.

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