

FINANCE COMMITTEE

Tuesday 27 June 2006

Session 2

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FINANCE COMMITTEE

19th 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:

Paul Grice (Clerk and Chief Executive, Scottish Parliament)

Tom McCabe (Minister for Finance and Public Sector Reform)

Colin McKay (Scottish Executive Finance and Central Services Department)

John Scott (Scottish Parliamentary Corporate Body)

Huw Williams (Scottish Parliament Corporate Policy Unit)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 2

Scottish Parliament

Finance Committee

Tuesday 27 June 2006

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

Accountability and Governance Inquiry

The Convener (Des McNulty): I welcome the witnesses, the press and the public to the 19th meeting of the Finance Committee in 2006. I remind people to switch off all pagers and mobile phones. We have apologies from Wendy Alexander.

The first item is our accountability and governance inquiry, for which this is the final evidence session. The basis of the inquiry is to look at the accountability of and budgetary control over public bodies that are set up to be independent. We are considering specifically whether there are differences in accountability and controls in order to ascertain why such differences exist. We are also considering how accountability and budgetary control can be assured while maintaining the independence of the bodies' individual officers.

In this final evidence-taking session, we will hear first from the Minister for Finance and Public Service Reform, then from the Scottish Parliamentary Corporate Body. Members have copies of supplementary submissions that were sent in following previous evidence sessions. The SPCB's original submission to the inquiry and the Audit Scotland report on behalf of the SPCB on the shared services of ombudsmen and commissioners have also been provided to members to inform this session.

I welcome our first panel of witnesses, who are Tom McCabe, the Minister for Finance and Public Service Reform; Colin McKay, head of the Executive's public service reform development division; and David Robb, head of the Executive's public bodies and relocation division, whose third consecutive appearance this is before the committee.

Our practice is to invite witnesses to make an opening statement before we proceed to questions, so I invite Mr McCabe to speak to the committee.

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Good morning, convener and members, and thank you for giving me the opportunity to come along to say a few words this morning and to address your questions.

I am pleased that we have a mutual interest in improving scrutiny systems for public services in Scotland. Members will know that in the past few weeks I announced an independent review of the arrangements for regulation, inspection, audit and complaints handling with regard to public services in Scotland. I am sure that members already know that Professor Lorne Crerar will head up that review.

I am interested in the committee's inquiry into accountability and governance. Our review will draw on complementary evidence and the committee's eventual recommendations. As members will know, the review that I have set up is due to take around 12 months to complete its work. The reasons for the review are rooted in our public service reform agenda. Again, as members will know, we recently published a discussion document on transforming public services that sets out our vision for reform and invites comment and opinion from a wide range of interested parties across Scotland. Any reform of regulation and scrutiny will happen, therefore, in the context of the reform agenda for public services in Scotland.

I do not think that we disagree about the need for a scrutiny system that reflects the principles of reform, is fit for purpose and reflects the new models of delivering services that are emerging and will continue to emerge over the months and years to come. I do not think that we disagree either that a robust scrutiny regime is vital to protect the public and to provide the reassurance that the public expects on the performance of public bodies. However, we also need to ensure that we are proportionate in how we go about this activity, so that the checking does not become an obstacle to the doing.

The burdens that the current arrangements impose was a recurring theme in my discussions with public bodies and their representatives last summer. People complained about duplication and different bodies asking similar questions. In addition, some felt that they were in constant preparation mode for yet another inspection. In the final analysis, the people who work in a public service are committed to what they do. They are enthusiastic and determined to do a good job. They would much prefer to have the time to get on and do the job rather than have the feeling that they are under the burden of constant review and inspection.

New scrutiny bodies have been created over the past few years in Scotland. That has been done for good reasons and it has been widely supported by the Parliament. However, we are clear that we need to examine any duplication and overlap between the public bodies. We need to satisfy

ourselves of the effectiveness of the entire scrutiny system.

The review that we have announced will consider objectively the structures that are needed to deliver effective scrutiny of public services; comment on duplication and inefficiency in the current arrangements; and consider the opportunities for information sharing and, indeed, the joining up of existing organisations. In the meantime, the Executive has agreed to a moratorium on new scrutiny bodies until 2007.

We are determined to ensure that all public bodies take up opportunities for efficiencies. In my role as the Minister for Finance and Public Service Reform, it is my duty to maintain overall policy on the establishment, governance and accountability of bodies for which the Executive is responsible, and to encourage my ministerial colleagues to adhere to the principles in their individual policy areas. In that regard, I have a challenge role in relation to policy decisions that involve creating new bodies for which the Executive and Scottish ministers will be responsible. It is ultimately for portfolio ministers, the Cabinet and Parliament to consider and challenge proposals for any new structure.

We want to ensure that there are appropriate levels of accountability. We know that that is key if ministers and Parliament are to secure the confidence of people in Scotland and to get the balance right between scrutiny and allowing people to get on and do their job. That is a difficult balance to achieve, but it is worth pursuing.

As I said earlier, the committee's work will be particularly valuable. I am sure that it will help the review with important points to learn. These matters are complex. We live in an increasingly complex society and the public—rightly—have expectations about inspection and regulation. However, the public also have concerns about the proportionality of that, which is what the whole exercise is ultimately about.

I hope that that indicates the approach that the Executive intends to take. I will do my best to answer any questions.

The Convener: Thanks very much. I concur with your argument about the need to streamline and simplify the scrutiny process. In my view, the committee would strongly endorse that, as it is consistent with the approach that we have adopted.

Before we discuss the commissioners, I want to turn to the new bodies that the Executive proposes to set up. The permanent secretary's submission indicates that the Executive intends to create five new bodies in this parliamentary session, including a road works commissioner, who will be an independent statutory office-holder, and the

Scottish civil enforcement commission, which will be established under the Bankruptcy and Diligence etc (Scotland) Bill. Do you still intend to set up those bodies, in spite of what you said about a moratorium? What criteria does the Executive employ when considering whether a new body should be created?

Mr McCabe: It is still the intention to create those bodies. We decided on a moratorium because it was clear that there had to be a cut-off point, but certain pieces of work were already in progress. That was discussed by ministers and consideration was given to whether we should carry on with the establishment of those bodies. The decision to proceed was taken in the portfolios concerned. The moratorium has now been established. As I said in my introductory remarks, we have set up a review, which I am sure will offer its opinion on the appropriateness of all bodies in Scotland, whether they are in the course of being created or they already exist.

With regard to the principles that apply, there is a set of guidelines that should be considered by any minister before they decide to go along the path of creating an additional body. As the Minister for Finance and Public Service Reform, I have a challenge function to perform. I must ensure that my Cabinet colleagues take heed of those guidelines before they make any final decisions.

The Convener: One reason why we raised concerns about the establishment of a civil enforcement commission under the Bankruptcy and Diligence etc (Scotland) Bill is that the non-departmental public body approach appears to be the most expensive of all the options that were considered; indeed, it took us a long time to get out of the officials the fact that different enforcement options had been considered. It was also difficult to extract from them any justification for the decision that had been taken. The impression that we got—it was certainly the impression that was given by the Deputy Minister for Enterprise and Lifelong Learning in his response to our report on the financial memorandum—was that value for money was thought to be a policy issue rather than a finance issue. That seems to be inconsistent with your general approach and with some of the points that you have made this morning. How can we get across the message that, not just from your point of view but from the Parliament's point of view, going for the most expensive scrutiny option—the cost-is-no-object approach—is not acceptable?

Mr McCabe: One of the ways in which we can get that message across is for me as Minister for Finance and Public Service Reform to say on the record, explicitly and without reservation, that what you have just said is absolutely the case. If there are officials in the Executive who take the cost-is-

no-object approach, I am happy to confirm to the committee that they should not. It is up to us as ministers to ensure that in future they do not.

I am not clear about your point about value for money.

The Convener: The Deputy Minister for Enterprise and Lifelong Learning stated in his letter:

“the ‘value for money’ question is ... more of a policy issue than a finance one.”

That seems to be a strange attitude to take—from the Finance Committee’s perspective, at least.

Mr McCabe: I would need clarification of that quotation, too, because I do not understand what it means.

10:15

The Convener: In her evidence, the former Scottish legal services ombudsman told us that financial guidance was issued to her only a week after the launch of the committee’s inquiry, that she had not been audited for five years and that monitoring of her overspend or underspend had been limited until recently. There were also various other issues. When we asked the permanent secretary about that, he said that it was difficult to identify that any practical damage had been done in the process. He then used that as a justification for the low priority given to the formalisation of the financial framework by the officials involved. In your view, does the process that was described to us by the former legal services ombudsman represent good practice?

Mr McCabe: No.

The Convener: How can we ensure that such practice does not happen again? Do you want to take the opportunity to state that on the record?

Mr McCabe: If the system does not learn by taking account of the experience of the ombudsman who was in that position for a good number of years, there is something wrong with the system. From what I know of Mrs Costelloe Baker’s evidence, the issue concerns me.

The Convener: The accountable officer seems to have said that it does not matter that financial procedures were not put in place and operated. I recognise that, in the circumstances, huge amounts of money were not involved, but the process of auditing a body’s work presumably involves ensuring that a financial framework is in place. That is just basic good practice. There cannot be an excuse for not doing that.

Mr McCabe: The principle is more important than the amount of money. I cannot completely second-guess what the permanent secretary was trying to convey, but if there were shortcomings in

how the Executive oversaw the legal services ombudsman we should learn from them. There is no question in my mind about that. I would be surprised if the permanent secretary does not want to learn those lessons—I am sure that that is not the case.

Dr Elaine Murray (Dumfries) (Lab): The Audit Scotland report that was commissioned by the SPCB said that, before any new bodies are brought into existence, there should be pre-legislative scrutiny of their costs, of how efficiencies might be built in and of how services could be shared. I know that the minister said that there is a moratorium on new commissioners and so on, but what steps will he take to ensure that shared services are considered in the pre-legislative scrutiny phase for new bodies? For example, how might that be taken on board in the creation of the new road works commissioner?

Mr McCabe: The review might give us advice on how we consider the options that are available to us before new bodies are created. I hope that it will advise us on how we can better consider the options before final decisions are taken.

Dr Murray: When we took evidence from the permanent secretary, he said that financial memorandums have tended to set the maximum limit quite high because

“there is a natural tendency to create some headroom in that process.”—[*Official Report, Finance Committee*, 13 June 2006; c 3740.]

However, the evidence that we heard from the commissioner for children and young people suggested that she used the financial memorandum more or less as a basis for her budget. She argued that she spent what she was told she could spend under the legislation. Given the difficulties involved in holding independent bodies to account financially, do we need to improve the process of pre-legislative scrutiny so that we produce more accurate financial memorandums?

Mr McCabe: No one in the public sector should think that they have a blank cheque, irrespective of the importance of their function. If we have created a situation in which people—perhaps misguidedly—think that they have a blank cheque, we should correct it. I do not think that there is any doubt about that.

Dr Murray: The concern was that there might have been a tendency to build in some allowance in case the functions turned out to be more expensive than had been expected. However, although the financial memorandums suggested upper limits for expenditure, once they were in position some of the commissioners and ombudsmen viewed the figures as what they were

expected to spend to do the job rather than what they could spend.

Mr McCabe: I would fundamentally disagree with an approach that set an upper limit and built in the headroom that you are speaking about. The management of public finances is supposed to be sensible and prudent, so people should try to produce financial memorandums that are as accurate as possible. We do that in the knowledge that none of us has the wisdom of Solomon—people can get things wrong. The facility should exist to revisit the money that is available if it proves inadequate. I prefer that approach to saying that we should shovel in a few hundred thousand pounds extra just in case the desks or the chairs cost more than we thought. If that is the approach that has been taken, it is wrong, whether it is in the public finances or any other finances.

Dr Murray: It is slightly worrying that the permanent secretary should indicate that that might have happened.

Mr McCabe: I do not understand why he would indicate that. The Minister for Finance and Public Service Reform is certainly not indicating that to the committee.

Dr Murray: Does scope exist to establish a memorandum of understanding between the Executive and the SPCB to lay down a process for pre-legislative scrutiny? In its submission on the Scottish Commissioner for Human Rights Bill, the SPCB suggested stage 2 amendments that would give it the statutory role of formally approving or otherwise the office-holder's budget. Would a stronger role for the SPCB help?

Mr McCabe: We should be willing to consider any innovations that would improve the process and build confidence in it. Anything that contributed to that would be useful, because concerns have been expressed about the growth of bodies and how they are accounted for. However, we should not automatically assume that giving a role to the SPCB is an answer. We should examine that and reach objective conclusions.

The Convener: The committee will consider that when we have gathered all the evidence. The response is not automatic.

I will ask about the Scottish commissioner for human rights. You have said that there will be a moratorium on the creation of new public bodies. The committee had pretty serious reservations about governance issues and whether anything other than a narrow space exists for the proposed body. Parliament has decided in principle that it should go down the route of having a human rights commissioner, but is there a rationale for at least pausing before implementation to think through some of the governance arrangements? Would

the Executive be prepared to think about that before bringing into being another new commissioner?

Mr McCabe: The Executive is obliged to ponder the creation of any new bodies and any decisions that it takes. The question of the rationale behind the creation of the commissioner is probably better addressed to the portfolio minister than to me.

The Convener: That is fair. I just wanted to point out that governance issues have serious financial implications; other issues relate to the definition of the role. At one level, it is easy to agree to a policy approach, but it is a different matter to recognise that whatever approach is adopted will involve opportunity costs, that is, we will be unable to do other things. That is the meat and drink of government, with which I am sure you agree.

Mr McCabe: I certainly do. The opportunity costs become all the more obvious when the fiscal environment changes. For several years, we have been fortunate to have unprecedented rises in public expenditure, but I doubt that anyone around the table expects that to continue indefinitely. When the rate of increase slows, that may influence people's thinking and their ultimate decisions.

The Convener: You talked a wee bit about the review of the scrutiny of public services that you are putting in place, which committee members welcome. Will you give more details on that? Will you focus on overlaps? We have heard quite a lot from the Scottish Commission for the Regulation of Care, for example, about multiple inspections of care homes by different regulatory bodies at different times, and we have just talked about the problem of the potential overlap between bodies that are not accountable to the Executive, such as the Scottish public services ombudsman and the proposed Scottish commissioner for human rights. Do you see eliminating overlap and reducing duplication as a key objective of the review and, if so, how will you develop that?

Mr McCabe: It is certainly a major objective. There is a remit for the review committee. Unfortunately, I cannot give it to you verbatim at the moment, but I can make it available to the Finance Committee if members have not seen it. Perhaps Colin McKay can give you a flavour of the remit.

Colin McKay (Scottish Executive Finance and Central Services Department): The chair of the review has been asked to make recommendations in the following areas: the principles and role of effective regulation, audit, inspection and complaints handling; governance arrangements; how regulation, audit, inspection and complaints handling can better support

continuous improvement in public services; how regulation, audit, inspection and complaints handling can be more efficient and better co-ordinated, which is primarily where the overlap issue comes in; the priorities for change in the short and medium term; and any legislative or organisational changes that would be required to implement the recommendations.

Although the issue of overlap and duplication is one of the major themes of the review, the review will start from first principles. It will ask what scrutiny needs to be carried out and look at how the current landscape is configured, to decide whether it is best placed to undertake that scrutiny. It will also ask what changes might be needed to arrive at something that will deliver the principles of effective scrutiny in the public services to which we aspire.

The Convener: Concerns are partly accounted for in the moratorium that the minister has announced. However, there is also concern about how the process of creating new commissions will work alongside a review that seeks to streamline the current scrutiny system. How long will the review take? Are its objectives compromised by pressing on with creating new scrutiny bodies at the same time? We mentioned that five bodies are in the pipeline and that other commissions are in the process of being set up through legislation. There seems to be a contradiction between recognising that something is wrong and carrying on with setting up those bodies. Does it make sense to recognise that there is a problem yet contribute to the advancement of that problem? Should that not be reconsidered by the Executive?

Mr McCabe: It is questionable whether we are contributing to the advancement of the problem. No one is saying that every body is unnecessary. The review will look at existing bodies and those that will be created in advance of the moratorium.

Unfortunately, public life is never black and white. Consideration has been given to the need for new bodies and the review will comment on that in the same way that it will comment on other bodies. As I said earlier, we have to draw a line at some point. A number of bodies were already in the process of being created or there was an intention to create them. Ministers considered that against the background of the review that was being instigated and felt that it was still necessary to go ahead. The review might comment on that.

The Convener: I take you back to the concern about the potential overlap between the Scottish public services ombudsman and the proposed Scottish commissioner for human rights. The Scottish public services ombudsman has said:

"Given ... our human rights casework, it is our view that there are jurisdictional issues that need to be clarified and

that the new legislation should clearly specify the respective spheres of activity of the two bodies."

The ombudsman recognises that that is not the case at present. She continues:

"We recognise the possibility of dislocation with bodies that have been set up since devolution and we believe that a Memorandum of Understanding at an early stage would avoid the possibility of confusion, duplication and gaps."

We have no information about whether any of that has been progressed in the legislation. Do we not need to address those issues urgently before we spend another £1 million creating a body for which we are not clear there is a need when significant potential overlaps between it and existing bodies have been identified?

10:30

Mr McCabe: The quote that you have just read out contains a lot of common sense. I will ensure that my colleagues are made aware of those points—I am sure that they are already aware of them—and take them on board.

Mr John Swinney (North Tayside) (SNP): I wish to pursue the issue a little further. As I understand it, you are saying that the Executive will create five more bodies and will then apply a moratorium. Is that correct?

Mr McCabe: I am saying that a line must always be drawn somewhere. There were proposals to create additional bodies and we decided on a moratorium. Ministers examined the case for the bodies—and they are still examining it—and have decided that, at this point, they wish to carry on with them.

Mr Swinney: So the Executive feels that there is such a need in the context of at least two cases. The convener has just read out a quote from the Scottish public services ombudsman—which you have accepted as being very powerful—about her concern about jurisdictional overlap in the Scottish Commissioner for Human Rights Bill. If there is a need for a commissioner for human rights and a road works commissioner to be established on the same statutory basis, I take it that no question marks can be put in the way of those proposals before we spend more public money—and then apply a moratorium.

Mr McCabe: I never said that there was no space for any question marks. The Finance Committee will report on the matter and ministers will also have the opportunity to consider the comments that I make. Matters are clearly progressing. There is always a facility, at different stages, for people to alter their thinking. I will not give you any guarantees in that regard on behalf of other portfolio ministers, who have responsibility for their respective policy matters, but people's minds are always open to the committee's

suggestions. For instance, the committee might want to recommend that the moratorium apply to those five bodies. If any member wants to take up that policy position, either as an individual or on behalf of their political party, they can do so.

Mr Swinney: The Executive is obviously free to take up that position, too.

Mr McCabe: We either want to promote government that is guided by the views of all those with an interest or we do not. Over the seven years since devolution, the Executive has demonstrated amply that it is prepared to take on board the thinking of others. I am sure that whenever it can the Executive will do the same again with respect to such matters.

Mr Swinney: I want to be clear about how the process is driven. You have mentioned a couple of times the fact that the policy proposals are the responsibility of individual portfolio ministers. I presume that the Minister for Transport is the champion of the road works commissioner idea, for example. What is your role in the process, bearing in mind the comments that you have made to the committee—quite justifiably, in my view—about the pressures on public finances?

Mr McCabe: My role involves ensuring that the relevant minister has considered the guidelines that are in place on the creation of public bodies and challenging them to ensure that they have considered all other options before deciding on the course of action that they finally pursue.

Mr Swinney: In the context of the comments that you have just made about the pressures on public finances, which I think were entirely justifiable, do you think that each case that has been brought by the portfolio ministers is robust and worthy of spending public money on?

Mr McCabe: If I have a comment to make to an individual portfolio minister, I will make that comment to them; I will not necessarily share it in public.

Mr Swinney: But surely, in the interests of open and transparent government, we should know if our Minister for Finance and Public Service Reform is uneasy about a burgeoning number of commissioners. You have told us today that you have set up a body to analyse inspection and complaints handling and to review regulation, and that you are concerned about issues of proportionality. Surely if you have concerns about ministers continuing to authorise the establishment of commissioners, this is the perfect platform on which to express those concerns.

Mr McCabe: We have promoted open and transparent government from day one of the creation of the new Scottish Parliament. That is laudable. Of course, we must strike a balance

between having open and transparent government and being able to promote free and frank exchange among colleagues and those who advise us. Maintaining that balance is sometimes difficult, but I will do my best to do it, as I have done in the past.

Mr Swinney: Will your department reflect on the report that the committee will produce in due course or will the report's recommendations be taken to the Cabinet for its determination? For example, might the Cabinet discuss a committee recommendation that the Government's proposal to introduce a moratorium after five more bodies are established be brought in a good deal earlier than that?

Mr McCabe: Which committee are you referring to?

Mr Swinney: This one. The Government proposes to introduce a moratorium after it has established five more commissioners. If this committee recommended that such a moratorium be introduced earlier, would such a proposal be worthy of Cabinet discussion with a view to changing ministerial policy?

Mr McCabe: Indulging in discussions about hypothetical situations seldom serves government well. However, the Executive takes seriously every recommendation made by a parliamentary committee and will take any recommendations that you make equally seriously.

Colin McKay: I should point out that the five bodies that we have been discussing are not all Executive proposals. Some of them have already been enacted in legislation. For example, the road works commissioner was established by the Transport (Scotland) Act 2005 and, as I understand it, the role of the police complaints commissioner has been established by a piece of legislation that has already completed its parliamentary passage. Therefore, it is inaccurate to suggest that the Executive is simultaneously imposing a moratorium and bringing forward five new proposals. The proposals are already in the system and, to some extent, are out of the Executive's hands and in the hands of the Parliament.

Mr Swinney: With the greatest respect, during stage 3 of the Police, Public Order and Criminal Justice (Scotland) Bill, one proposal directly challenged the establishment of the police complaints commissioner and I seem to remember that ministers on the front bench enthusiastically argued against it. How deep-seated is the Government's enthusiasm for slimming down this system of regulation? After all, you are telling us today that there will be a moratorium, but just a couple of weeks ago, your colleagues were asking on the floor of Parliament for the creation of these

bodies, even though a credible opportunity had been presented not to go down that route. I am simply trying to get a handle on whether all ministers have bought into the idea of the supposed moratorium.

Mr McCabe: Mr Swinney, I am sometimes surprised that a politician of your experience can, on occasion, portray the world in such black-and-white terms. The world can seldom—if ever—be reduced to such terms. Two pieces of legislation have been mentioned in which two different approaches were taken. I do not remember any great resistance to the establishment of the road works commissioner or any comment on the matter from either you or other committee members. As we all know, situations are different.

In direct response to your question, I point out that the Executive has an absolute commitment to ensuring that we have a proportionate and appropriate system of scrutiny and regulation. That is why we have set up an independent committee—I stress the word “independent”—and will consider fully any recommendations that it or its chairperson makes. I should have said earlier that I am delighted that the independent review will be headed up by someone as credible and as eminent as Professor Lorne Crerar.

Mr Swinney: The problem is that a considerable amount of time has elapsed between the passage of the Transport (Scotland) Act 2005 and the passage of the Police, Public Order and Criminal Justice (Scotland) Bill. In that time, we have dealt with the proposed establishment of the Scottish commissioner for human rights and of the police complaints commissioner. Now, other proposals are emerging. Minister, I urge you to reflect on the fact that a different attitude is emerging in Parliament on these matters. Indeed, I hope that the rest of the Executive will listen to the Parliament's views.

Mr McCabe: Of course we will listen. As I said, we will take on board and fully consider the committee's recommendations before any final decisions are made.

The Convener: One problem is that the information we received from Sir John Elvidge suggested that some bodies such as the road works commissioner had only been proposed; they were not, as you have indicated, already contained in legislation.

There is certainly a genuine issue to address. The committee receives and comments on all financial memorandums. A pattern is emerging of new commissioners being created as a way of dealing with administrative difficulties, and such commissioners almost always involve significant expense. It is a reflex action that seems to raise not just financial questions, but policy questions

that are perhaps not being addressed because ministers and subject committees are not focusing adequately on the financial implications of going down that route. How can we work together to stop that reflex action happening and to ensure that the Executive responds in that way only when it is entirely justified? All too often, it seems to be regarded as an easy way out.

Mr McCabe: I disagree with little that you have said, but it is important to keep matters in perspective. Although people may have concerns about the five proposed new bodies, I stress that a line must be drawn at some point. There is a moratorium and an independent committee has been established to review the arrangements for regulation and scrutiny in Scotland. The Executive is not unaware of people's concerns, and those concerns also exist within the Executive. I have tried my best to assure the committee that we are determined to ensure that such bodies are created only when that is absolutely necessary and after a range of other options have been considered and, for good reasons, discounted.

There is a need to resist the knee-jerk reaction of creating commissioners—I give the example of commissioners, but they are not the only example—for the sake of it. I absolutely accept that and so does the Executive. We are determined to try our best to tackle the issue and to work with our colleagues in Parliament and the committee to complete the review.

The Convener: In the reports that the committee has produced on recent financial memoranda—especially those for the Bankruptcy and Diligence etc (Scotland) Bill and the Scottish Commissioner for Human Rights Bill—we have made it clear that we are not convinced that there is a case for such expenditure. We do not believe that there are identified benefits or clear enough gaps associated with what is proposed to justify the bodies being created. The convention in the Parliament is that financial memoranda are not discussed but the financial resolution is agreed formally at the end of the policy debate. The Finance Committee's views are not adequately taken into account at present—we are not stopping such bodies being created, although we think that they are not justified. Is there a way in which we can ensure that the financial issues, which we argue should be given the same weight as policy considerations, are taken on board? The impression that we have is that, to some extent, the Executive takes the body blows in the reports that we produce on financial memoranda but presses ahead with the proposals regardless.

Mr McCabe: That should not happen, but it is not my place to suggest what parliamentary procedures should be put in place. I understood that the facility existed to debate a financial

memorandum, but I am open to correction on that. It would be strange if it did not, and perhaps that needs to be considered. However, rightly, it is not for the Executive to suggest that; it is for the Parliament to consider its procedures. If that facility does not exist, the committee may want to suggest that it should.

The Convener: There is an opportunity to debate a financial resolution formally but, as you say, that has not been done, although the Finance Committee has expressed clear reservations about aspects of some of the bills that have been passed in recent months. I leave that on the table.

Commissioners are being created and budgets are being allocated that we feel are not justified. We have made that point crystal clear in the reports that we have made to Parliament. It is worth placing on record the fact that the Finance Committee will consider moving motions against financial resolutions when such proposals are made. That should perhaps be taken into consideration when the Executive considers the timing of such things.

10:45

Dr Murray: As has rightly been pointed out, many of these posts are created by acts of Parliament and are voted on by the Parliament. The Commissioner for Children and Young People (Scotland) Bill was not an Executive bill; it was a bill from a committee. Therefore, Parliament must take some responsibility for the number of such posts that have been set up.

Is there a possibility of delaying the enactment of the parts of the Transport (Scotland) Act 2005 and the Police, Public Order and Criminal Justice (Scotland) Act 2006 that will set up the road works commissioner and the police complaints commissioner until the independent review committee has had a chance to consider them? If the review concludes that those were not the best decisions for Parliament to have made, we should have the opportunity to produce amending legislation rather than just press ahead despite the fact that we have been ill advised or have not reflected adequately on the financial consequences. Is that possible?

Mr McCabe: The short answer is that I do not know. I will relay that question back to the portfolio ministers and get an answer for the committee from them.

Mr Swinney: I have a couple of questions on shared services. There is a complex geography of commissioners. Some individuals are accountable to Parliament; some are responsible to ministers or the Executive; others' functions are somewhat stand-alone. Will the review that you have commenced examine any of the opportunities for

providing shared services to leverage out resources that could be spent on other issues? Does the review have a sufficiently wide canvas to take in the range of different bodies, some of which will be responsible to Parliament, some of which will be responsible to ministers, and some of which will be out there in the ether? Will the review be comprehensive enough to assess the opportunities for shared services among all the organisations?

Mr McCabe: I believe that it will be. I have a couple of points to make on that. We are already consulting on the sharing of services in Scotland. That consultation is on-going and will close in the near future. As I said earlier, the review of scrutiny, regulation, audit and complaints is an integral part of our public service reform agenda. One of the first bodies to which I spoke after we launched the consultation document was a conference of NDPBs. I wanted to ensure that they were involved in the process and that they took the opportunity to make their views and suggestions known.

Our public service reform agenda is predicated on an absolute acknowledgement of the fact that the map of not only non-departmental public bodies and commissioners but all public services in Scotland is extremely complex. Clearly, there is potential for many organisations to share services and, perhaps, even to come together and join up. The principle behind our reform of public services in Scotland is that of ensuring that we are consuming as much human capital as we need to deliver world-class public services but are not consuming any more than is necessary.

Mr Swinney: So the debate is sufficiently wide to take in all the bodies, some of which may be accountable to Parliament. Is there a mechanism for enabling dialogue between the review team that you have established under Professor Crerar and the Scottish Parliamentary Corporate Body to try to find common ground on the issues?

Mr McCabe: It is for Professor Crerar to decide how he goes about his work. I say with confidence that I am aware of no obstacles to Professor Crerar's engaging with the kind of bodies to which you refer.

Mr Swinney: Last week the Deputy Minister for Finance and Public Service Reform appeared before the committee to discuss the relocation of Government posts. He cited, as an example of a successful relocation, the relocation of nine posts to do with the water customer consultation panels. I want to ask a couple of questions about that. Those bodies and the Water Industry Commission for Scotland used to be located in the same premises, but they have now moved to separate locations despite the fact that they deal with

largely similar issues—customer complaints and the economic regulation of the water industry.

Do the Government's policies on relocation and on complaints handling sit comfortably together? The relocation of those water industry bodies will undoubtedly have increased the administrative costs for the Scottish taxpayer.

Mr McCabe: Our aim is certainly that they should sit together as comfortably as they possibly can. I do not know the specific details of the case that you mention, but it is not necessarily the case that costs will be duplicated simply because a body is split up as described. Technology can allow people to share many support service functions, so the fact that they are physically separated need not mean that there is duplication. I do not know where the body that you mention has located to, but if it was taking up space in an existing Government building, that might make a contribution to the better utilisation of the overall space. Anyone can speculate on those matters, but I do not have the details of that relocation to hand.

Mr Swinney: On the agenda of trying to rationalise the number of public bodies, we now have two bodies in that area—the water industry commissioner and the water customer consultation panels—doing largely the same kind of thing. There is also the drinking water regulator, as the convener is helpfully telling me in my left ear. There does not seem to be much evidence of cutting through all that to simplify the arrangements, so we end up with the situation that the Scottish public services ombudsman has, quite rightly, highlighted to a number of parliamentary committees—the fact that there are just far too many places for people to go with their concerns about some issues.

Mr McCabe: I will leave the ombudsman's comments for her to justify. The fact that we have set up the independent review is evidence that we are prepared to examine the issue that you have just mentioned. It will be able to comment on the situation and may say that it is inappropriate and that the bodies are performing similar functions or that there are important distinctions between the things that a customer council and a water industry commissioner do. I would have thought that there were pretty important distinctions between the functions that the two bodies carry out, although that does not mean that they could not sit together and share administrative services.

Mr Swinney: When will the review be complete?

Mr McCabe: We have allowed 12 months for the review to be completed, and I hope that it is done within that time. I am more concerned about the nature of the outcomes than I am about the timescales. I do not want anything to be open-

ended and I do not think that 12 months is an unreasonable period, but if Professor Crerar comes back and says that he needs another two or three months to provide us with a more comprehensive report, I would not necessarily resist that request. However, I have had no indication that he wants to do that.

Jim Mather (Highlands and Islands) (SNP): I do not know whether I got the connotation right, but I was taken by Colin McKay's comment that audit is a primary tool for continuous improvement. What else, perhaps of a more proactive nature, are you doing in relation to performance improvement?

Colin McKay: Two, parallel, processes are going on, particularly in local government performance improvement, which is part of the minister's portfolio. As well as looking at the external bodies that scrutinise local government and other public services, we are taking a look at the process of performance improvement and performance management within local government, building on the best value regime. A group has been set up that involves local government and officials and it is linked to Audit Scotland. It examines such things as the statutory performance indicators that Audit Scotland imposes on local government, so that we can get to a more streamlined, proportionate and effective performance management regime for local government.

The other area of activity in relation to performance improvement more generally across the public services involves our rolling out best value across the public sector, as well as to local government. Guidance on that was issued a couple of months ago.

Jim Mather: When John Elvidge was here, he conceded that it would be sensible to have common objectives that tied in the Executive, the regulator and front-line services, so that all the silos were lined up, which would produce better outcomes over time. How well disposed are you to that? Are you making any moves in that direction?

Mr McCabe: It would be common sense to have common objectives and to minimise the number of silos. I suppose that that brings us back to the public service reform agenda, which tries to break down the barriers to people working together more comprehensively so that they can deliver better services. The short answer is that we are well disposed towards the idea.

Jim Mather: To give such an approach credibility and to secure the confidence of the Scottish people, which we discussed earlier, do you plan to have for those lined-up silos common outcomes that are measurable, auditable and broadcast publicly from time to time?

Mr McCabe: I am strongly in favour of moving us towards a more outcome-based relationship with our delivery agents, whether local government or any other delivery agent. As I have said on many occasions, it seems to me that we need to find ways of getting the headline agreements and agreeing the financial envelope that would be required for delivery. We need to have the courage to operate a lighter touch and to allow the delivery agents to determine how they will live up to the agreements that they have reached—without the Executive burdening them unnecessarily by overmonitoring them or constantly requesting updates and reports.

I am attracted to that model and it would be in everyone's interest to move towards it. It would promote innovation and enthusiasm in our delivery agents and allow the Executive to marshal its resources much more effectively.

Jim Mather: I am pleased to hear that. Having sat on the Finance Committee for three and a bit years, I have seen financial memorandum after financial memorandum that seem to go in only one direction—escalating forwards. I am interested to hear that you are taken with the concept of lean and squeezing out waste, duplication, delay and non-added value. Does that mean that in future we can expect to see financial memorandums that shrink costs?

Mr McCabe: It is beyond me to predict the shape of future financial memoranda, because they come from the ministerial portfolios, not from me. As a principle of public life and the stewardship of public finances, we should not think that we need to add to the overall quantum on every occasion; we should be much more focused on the idea that there is already a considerable level of resources, that the external environment is changing quite rapidly and that applying those resources in a different way might produce better results.

Jim Mather: For us to be credible in taking up lean, we will have to show that lean comes to fruition with lower costs for the delivery of services. Do you accept that?

Mr McCabe: I do not think that you can claim to be leaner if you are constantly putting on weight.

Jim Mather: Point taken. Thank you.

Mark Ballard (Lothians) (Green): John Elvidge laid out in his evidence the complex architecture of non-ministerial departments and non-departmental public bodies, which are all, to a greater or lesser extent, arm's-length bodies—they have financial accountability to the Executive and, ultimately, to ministers, but a greater or lesser extent of operational independence. In your experience as a minister, have you ever seen a conflict between

that operational independence and financial accountability?

Mr McCabe: I think that I have seen a conflict in relation to the memorandum of understanding between the minister and individual bodies. Ministers have not always been entirely satisfied that the bodies have operated in line with the guidance that they have been given.

Mark Ballard: Has the Executive taken steps to produce more effective memorandums to reduce such conflict?

11:00

Mr McCabe: A constant dialogue goes on between individual portfolio ministers and the bodies under their control or stewardship. I cannot give specific examples at the moment, although I am sure that I could find some. If a minister has concerns, it is obviously in their interest to ensure that their concerns are addressed and that the chair and the chief executive are left in no doubt about the parameters within which they work. I doubt very much whether any minister does not take the opportunity to clarify that when they feel the need.

The Convener: We have talked about financial resolutions and the committee's perception that they tend to be introduced even when they are criticised, because if we move against them a whole bill could be lost. For example, the committee had very serious concerns about the dentistry aspects of the Smoking, Health and Social Care (Scotland) Bill, but we were reluctant to do down a bill that had a core policy objective that we agreed with. Voting down the financial resolution would have been inappropriate in that case.

When the committee has serious reservations about the financial implications of legislation, it is not taken sufficiently seriously by portfolio ministers, who see this process simply as something to be set on one side once the bill has gone through the subject committee. The Finance Committee and the Minister for Finance and Public Service Reform have a shared interest in ensuring that the committee's reservations about the financial implications of proposed legislation are taken seriously, because that would save the public significant amounts of money.

Are you open to discussing with the Finance Committee how we can improve the process so that our concerns can go to you and you can work with them—rather than their being dealt with just by the subject committee and the portfolio minister? Should we consider the way in which financial memoranda are handled?

Mr McCabe: There are three points to make on that, one of which is more sensitive than the others. First, following this committee appearance, I am perfectly happy to communicate in writing to my cabinet colleagues any concerns that the Finance Committee has about the way in which financial memoranda are constructed and the way in which any concerns about them are considered by the minister in charge of a bill. I am quite happy to convey those concerns.

Secondly, there are times when the committee is concerned about some of the financial memoranda and the degree of seriousness with which its concerns are taken. Many financial memoranda come to me as the Minister for Finance and Public Service Reform and I comment on them. So, sometimes, the finished product that the committee sees is not what came off the production line, if I can put it that way. Financial memoranda do not always come out in their original form.

The third point is a bit more sensitive: it is about whether there is a flaw in our parliamentary procedures. Parliament exists to legislate and to scrutinise legislation proposed by the Executive. It is not for me to comment on the adequacy of the procedures for scrutinising proposed legislation, but if there is an inadequacy in the way in which the Parliament scrutinises a financial memorandum, the committee is as aware as I am that that should be emphasised in its report.

The Convener: Members of the committee will reflect on that, because it has consistently been an issue of concern to us. It is not a defect in the scrutiny process from the committee's point of view; the problem is that the issues that are highlighted are not addressed adequately.

Mr McCabe: I accept entirely that there may be a concern. We have a single-chamber Parliament and checks and balances are extremely important. We should always pursue the opportunity of refining those checks and balances.

The Convener: My final question takes us back to the moratorium, the commissioner posts that are in the pipeline and the review that you have highlighted. Do we need to look again at each position individually, in the context of the moratorium and the review? I am not suggesting that the moratorium should be applied to all the posts in a blanket way, but that those prior commitments should be reviewed in the context of the Executive's changing approach and the emphasis that it now places on the need for streamlining and avoiding unnecessary expense, to see whether they continue to be justified. The question can be put at two levels. First, we can ask whether they are justified at all. Secondly, we can ask whether implementation should be deferred until the review has been completed and

any new governance arrangements that need to be put in place following our inquiry and your review can be instituted, so that we do not have a continuation of unnecessary duplication and overlap.

Mr McCabe: It is part of my job to be as helpful as possible to this and every other parliamentary committee and to work with them as much as I can. However, even good intentions can be misconstrued—sometimes deliberately by some people, dare I say. I am happy to concede that I have picked up from the committee that it has a strong concern about the five bodies and the way in which they relate to the moratorium, but it would be entirely unfair of me to place an obligation on my ministerial colleagues. They are more aware of the circumstances in which particular decisions were taken, and I do not want in any way to place them in an invidious position. If it is helpful to the committee, I will undertake to write to my Cabinet colleagues indicating that it is my view that, in advance of its final recommendations, the Finance Committee has a strong concern about the five bodies. I will bring that to the attention of my colleagues in advance of publication of the committee's report, if members think that that is helpful.

The Convener: It is helpful from the committee's point of view. I thank you and your colleagues for taking part in a very useful evidence-taking session. Our intention is to publish the report in September, after we have taken evidence from the SPCB.

11:08

Meeting suspended.

11:11

On resuming—

The Convener: I welcome John Scott MSP, a member of the Scottish Parliamentary Corporate Body; Paul Grice, the chief executive of the Scottish Parliament; and Huw Williams, the head of the Scottish Parliament's corporate policy unit. We have a substantial amount of information from the SPCB, for which we thank the witnesses. As with previous witnesses, I will give John Scott an opportunity to make an opening statement, after which we will proceed to questions.

John Scott (Scottish Parliamentary Corporate Body): Thank you for the opportunity to make an opening statement. We submitted written evidence in March, but the situation has moved on since then, so it is important that I make an opening statement.

The SPCB welcomes the review, as it provides an opportunity to take stock of the five new offices

that the Parliament has created since 2002. It is worth noting that those offices are very young. For example, the office of the commissioner for public appointments in Scotland was established slightly more than two years ago. We should give credit to the office-holders for what they have achieved in a relatively short time. The SPCB has embraced its statutory role in relation to the new offices, but we fully accept and support the committee's aims in its inquiry. To progress the governance arrangements further, it is beneficial to take stock through the inquiry and consider how we can best build on what is in place to ensure that the office-holders are properly accountable to Parliament.

At present, the SPCB's statutory role includes setting the office-holders' terms and conditions of appointment; paying their salaries, allowances and any expenses that they incur in the exercise of their functions; approving their determinations, for example on the number of staff whom they wish to employ; and designating an accountable officer who is accountable to the Parliament for ensuring that the finances are used properly, efficiently and effectively. Our role in respect of the Auditor General for Scotland is to set his salary and to review that and his allowances. The duty to pay the salary and allowances rests with Audit Scotland.

Following a recent inquiry by the Procedures Committee, the SPCB will also consider whether office-holders should be nominated by the Parliament for reappointment. That process will involve the SPCB putting in place an annual appraisal mechanism to consider how the office-holders have undertaken their business functions, as distinct from their core functions. As the SPCB has no role in the appointment process for the AGS, those arrangements are not intended to apply to that office. Of course, the SPCB will take account of any view that is expressed by the Finance Committee or the Procedures Committee.

The SPCB will shortly undertake a reappointment exercise—that of the three part-time deputy Scottish public services ombudsmen, whose first four-year term in office comes to an end on 29 September 2006. The reappointment procedure will be the same as that followed for the Scottish parliamentary standards commissioner. The deputies will be invited to an SPCB panel interview. If they are successful at interview, a report will be laid before Parliament and the SPCB will, by means of a motion, seek the Parliament's agreement to nominate them to Her Majesty for reappointment.

11:15

The SPCB has determined that the deputies' second and final term in office will be for one year only. The SPCB considered that having four

Crown appointees in a relatively small office was disproportionate and that a better model, as suggested by the ombudsman, would be for the ombudsman to recruit two full-time heads of office. That alternative model will provide the ombudsman's office with the necessary flexibility to respond to changing circumstances and demands.

Although the SPCB meets the expenses of the office-holders other than the Auditor General for Scotland, there is a lack of clarity in the legislation with regard to the power to approve or disapprove their budgets. I note that the Finance Committee considered that matter in some detail when dealing with the financial memorandum that accompanied the Scottish Commissioner for Human Rights Bill. However, the Audit Scotland report acknowledges that, even without the legislative clarity that I mentioned, the SPCB has endeavoured to undertake effective budget scrutiny of the office-holders' budget submissions before they were presented as part of the SPCB's overall budget bid.

Last year, we drew the Finance Committee's attention to some concerns we had about whether the work programme anticipated by an office-holder would be achievable. The committee subsequently took evidence from the office-holder. We are therefore comfortable that we undertake a scrutiny role in relation to budgets.

Committee members will also see from our written evidence that, subject to the committee's views at the conclusion of this inquiry, we have suggested additional mechanisms to increase scrutiny—for example, by looking at business plans.

Following scrutiny of the budget bids of the office-holders last year, and in light of concerns that the Finance Committee raised about the rising costs of those office-holders, we commissioned a report from Audit Scotland on the governance arrangements of the office-holders in relation to the SPCB. Audit Scotland reported in May and a copy of the report has been submitted to the Finance Committee. I place on record our thanks to Audit Scotland for the report. The SPCB has discussed it and, in general, we welcome the recommendations that relate specifically to the SPCB, which include: giving the SPCB explicit responsibility and the necessary powers to oversee the business operations of the office-holders; scrutinising the annual business plan or budget projections of the office-holders; reviewing the strategic business performance of the office-holders systematically; and exploring the potential for sharing services between and beyond office-holders and the SPCB, as there may be greater business advantage to be had in working with other organisations.

On the recommendation to set up a remuneration committee, I inform committee members that we are neutral for two reasons. First, and based on advice that we have received on such committees, the probability is that salary levels will tend to show an upward trend. Secondly, we are not convinced that we could justify setting up a remuneration committee for nine office-holders without holding discussions with Scottish ministers about the establishment of a Scotland-wide remuneration committee for all office-holders and senior appointees in Scotland. However, we would welcome the committee's thoughts.

I should advise the committee that, depending on recommendations from this committee and the Procedures Committee, the SPCB will incur additional costs in supporting the greater scrutiny process. Those costs have yet to be quantified.

I am grateful to the committee for allowing me the time to make these points. Huw Williams, Paul Grice and I will be more than happy to answer your questions.

The Convener: I place on record the committee's thanks to the SPCB for commissioning the Audit Scotland report and for co-operating with the committee in our discussions on the budget, once we had decided that we wanted more detailed scrutiny of the commissioners. We have highlighted issues relating to governance, the inconsistency of practice and the need for financial scrutiny.

We have made substantial progress already, and we have highlighted a number of other issues that need to be addressed. The Finance Committee's review is timely. My impression is that the SPCB welcomes the process and recognises that there is a need to achieve greater coherence and control in it. It is worth placing those comments on record.

Derek Brownlee (South of Scotland) (Con): The fundamental issue, which we have recognised for a while, is the balance between having the appropriate level of financial scrutiny and maintaining the independence of the various bodies that we are discussing. Based on what John Scott said and on the evidence that has been submitted, I presume that the feeling is that the balance is not quite right at the moment and that it is not skewed far enough towards financial accountability. Is that a fair way to summarise the situation?

John Scott: That is certainly a fair comment. We are concerned about whether that balance is right. We would appreciate a clear steer on where our responsibilities and duties lie. We particularly take heart from the fact that the scrutiny that we have carried out thus far with respect to the

various office-holders has been generally approved of and has been regarded as adequate by Audit Scotland. Nonetheless, there seems to be a growing field of commissioners. We would appreciate a clearer definition, with a standard or standardised process put in place to make it easier for us to carry out both annual reviews and reappointments, which we will inevitably come to, so that we can have a more holistic picture of commissioners' performance in office. For that reason, we think that the committee's review is timely.

Derek Brownlee: Having looked at the Audit Scotland report and the SPCB's evidence, it struck me that there is potentially a slight difference of opinion as to the level of scrutiny that it would be appropriate for the SPCB to adopt.

Paragraph 4 of your submission discusses what ought to happen, should

"the SPCB have reservations about the size of the budget proposed".

That seems to be focusing on the overall budget, rather than relating to the levels of allocations within it.

The Audit Scotland recommendations discuss how

"the SPCB should scrutinise the annual business plan/budget projections".

Audit Scotland also says that the Finance Committee ought to be able to

"take assurance from the SPCB's scrutiny and not get drawn into the detail".

Presumably, from Audit Scotland's perspective, the appropriate body to look into the detail is the SPCB. Is that also the SPCB's view? Should we take it from the view expressed in the SPCB's written evidence about the size of the budget that it is more a matter of its taking an overview, rather than a detailed look at individual budgets?

John Scott: I presume that Paul Grice would agree with me that we very much welcome the ability to carry out detailed scrutiny. That is why we would like to have a statutory role formally to approve—or otherwise—an office-holder's budget.

Derek Brownlee: Presumably, that statutory role would not simply be to say that a budget is to be £X million; it could be to say that you are not happy with a particular allocation within an £X million budget proposal. It is a deeper level of scrutiny than just looking at headline figures.

John Scott: Yes—we already carry out that deeper level of scrutiny, and we ask what we believe to be very pertinent questions on the annual preparation of budget bids.

Paul Grice (Clerk and Chief Executive, Scottish Parliament): That would be done commissioner by commissioner. The proposed requirement to produce three-year business plans would arguably give the corporate body more context in which to ask questions.

I ought to caution that proportionality is important. I think that the idea would certainly be to build on the level that we began at last year, to which John Scott referred, and we expect that to go further. However, we must always bear it in mind that, at one end, the Scottish parliamentary standards commissioner spends about £85,000 a year, while at the higher end there is expenditure in excess of £2 million, which is a significant amount. We must ensure that we do not spend more money on scrutiny than we can potentially save.

With that caveat, I can assure the committee that there will be a proper commissioner-by-commissioner scrutiny process that will be tied into our own overall financial process. When we submit a bid to this committee, members will be able to ask us questions and we will be able to answer them. The committee will have in reserve, of course, its power to summon an individual commissioner before it if we are unable to answer questions or if we cannot resolve matters, which I hope will be unlikely.

John Scott: We would also like the relevant subject committee to scrutinise an office-holder's report. We think that that would be helpful and would add further value to the scrutiny process.

Derek Brownlee: On the process, I take it that the SPCB would scrutinise the business plan as well as the budgetary mechanism. For example, the SPCB might be satisfied that all the expenditure in a proposed three-year business plan was properly within a commissioner's statutory remit, but the expenditure might be skewed towards a particular function in a way that the SPCB was aware might cause public concern. I assume that the SPCB would not feel that it was intruding on a commissioner's independence if it tried to adjust such spending in their business plan.

John Scott: We would be cautious about doing that. We might want to scrutinise a particular area in a commissioner's or ombudsman's business plan, but we would not want to compromise in any way their functional independence. That is not our role, although, as members would expect, we would seek the best value for the public pound.

Derek Brownlee: I guess what I am trying to get at is that a commissioner's draft business plan might have, for example, what could be regarded as a disproportionate proposed spend on advertising, although what was to be advertised

would be clearly within the commissioner's statutory powers. The SPCB can scrutinise a business plan all it likes, but if an overall budget is set and the SPCB is cautious about intruding on independence within that allocation, although it is concerned about spending that is within the commissioner's remit, is there any mechanism for the SPCB to rein in such spending?

John Scott: We would probably have a strong view on something as specific as advertising spend, but we would be cautious about exploring difficult areas with a commissioner. We would certainly be concerned with spend in areas such as advertising and office services. Similarly, we would be concerned that, wherever possible, a commissioner did not spend money needlessly, as we might perceive it.

Derek Brownlee: But if promotion or awareness raising is in a commissioner's remit, would not the argument simply be that even to raise concerns about spend in such areas would be trampling on their independence?

Paul Grice: You are clearly at the nub of the issue. As John Scott said in our opening statement, we start from the position that there is perhaps a lack of clarity, and that, in the short term at least, we will work with the best that we have. I think that there is a robust process of challenge, and this committee necessarily functions as an arbiter. There is a tension between independence and scrutiny, but they are not necessarily always in conflict—there are judgments to be made.

It is also important to recognise that the commissioners and ombudsmen have different roles. There is a broad distinction between those who perform distinct, demand-led regulatory functions. If I may speak for the SPCB, I think that it would be reluctant to take budgetary decisions that a commissioner genuinely felt would constrain his or her ability to deal with casework—I am thinking of cases involving the information commissioner or the public services ombudsman. I think that members of the SPCB would feel that they had stepped across a line. That is not to say that they would not challenge inefficiency, but I think that they would want to leave the commissioner feeling that he or she could still do the job.

11:30

Other aspects of the work of commissioners, in the realms of advocacy and advertising, are quite difficult. There is conflict only if you take the completely unreasonable position that they cannot do that work at all. Once you allow them to do some of that work, you are making a judgment, and I think that the corporate body will feel able to come to reasonable judgments, even if that

requires some negotiation and debate with a commissioner. If necessary, that could be brought to the committee.

In the longer term, if it was ultimately the view of the committee and of the Parliament that the corporate body ought to be given a more specific budgetary approval role, the corporate body would then have a duty to set or approve a budget, and it would be entirely reasonable, having listened to all the arguments, to put a budget to the committee for approval. In the short term, it is more, as John Scott suggested, a question of negotiation.

Although the process was clearly quite robust last year—and I suspect that it will become more robust—my experience is that, in general, the commissioners have wanted to co-operate and have been quite prepared to justify decisions and to listen to corporate body concerns. Of course, we will also have evidence of previous years' expenditure, so if the corporate body has raised questions on spend and has given the commissioner the benefit of the doubt, we will revisit the pattern of expenditure the following year. If that expenditure coincides with corporate body concerns, I would expect the corporate body to return to the issue. I hope that that gives the committee some reassurance about the type of process that we will try to follow, at least in the short term.

Derek Brownlee: Would I be right to say that, in relation to your call for a formal statutory role for the SPCB, if the Parliament decides that it wants a much more transparent and detailed oversight role, that should be quite explicit in the statutory role that you propose?

Paul Grice: It is not quite right to say that we are calling for such a role, but we feel that there could be greater clarity. We have made it clear from the outset that, whatever view the committee ultimately comes to, we will seek to work within that framework. We have submitted our evidence to you and we are happy to rest with your judgment on what the right balance is, but we feel that greater clarity would be in the interests of the commissioners as well as parliamentary bodies.

The Convener: Although I made some positive comments at the beginning, I would like to challenge you on some of what you have said. I wonder whether you are being sufficiently robust and challenging, and perhaps there is an issue about whether the nature of the challenge is the same for all the bodies. My view is that there is a principle of independence that is fundamental in relation to parliamentary commissioners carrying out their roles, particularly when they make judgments on individual cases. In the case of the ombudsman or the information commissioner, nothing should compromise that aspect of their work. However, none of the commissioners should

really be in the position of making policy, or of being the only persons able to interpret or change their remit. That, ultimately, is the Parliament's role.

It seems that there is an issue of oversight that goes a wee bit further than financial oversight. Financial oversight is one aspect, but there is a parliamentary oversight of parliamentary commissioners that needs to be exercised. To me, that seems to be where the gap is. Parliamentary oversight should not affect operational independence, but it should ensure that parliamentary commissioners are not the policy makers in relation to their own roles. There ought to be some check on that. I am a former member of the SPCB, so I know exactly how much work is involved. Is that process of oversight, whether financial or more general, something that the SPCB is the best body to achieve, or should we be considering setting up some other committee of senior parliamentarians specifically to exercise that function? What would be the advantages and disadvantages of the SPCB exercising that function rather than some other body? Does John Scott, or perhaps Paul Grice, have any views on that issue?

John Scott: You have put your finger on the issue. We would welcome further guidance on the matter for that reason, as we have already mentioned.

We believe that the SPCB is the best body to carry out the oversight function, given that it is invited by statute to regulate those office-holders. Also, as with the Auditor General, we pay the salary of each office-holder, and we are the budget holder. Therefore, if the oversight function was to be devolved to another group or committee, we would perhaps seek to ensure that the budget was devolved to that group as well. If the oversight role was given to another group within the Parliament while the SPCB remained ultimately responsible for the budget, that would create its own tensions. We are fairly relaxed about the proposal. However, I come back to the point that we have trod carefully hitherto so as not to infringe the rights and duties of the office-holders.

We would certainly welcome clearer guidance on how best to scrutinise the office-holders' policies in more depth. However, that is quite a big issue, as it perhaps involves challenging the fundamental position of the commissioners and ombudsmen under the existing legislation. As the legislation stands at the moment, the position that we have been aware of is the absolute independence of the office-holders.

Paul Grice: I think that John Scott is right. Our starting point is that we have a series of pieces of legislation, in respect of which we need to be

careful that we do not act in a way that is ultra vires. I think that we can and should be more searching and more co-ordinated in our approach. We have made a start and, with the Finance Committee's encouragement and further guidance, I think that the corporate body's approach will be robust.

Looking ahead and to the longer term—this is really a matter for the Finance Committee—I think that, if the Finance Committee felt that it would be beneficial to have a regulatory mechanism that looked across the piece, there would of course be options to reconsider the situation. I am certainly confident that the corporate body can and will do a good job but, as John Scott said, the corporate body did not look for additional functions. Those functions were given to it by Parliament and it has taken them on. If Parliament decided on a different regulatory regime involving a body that was independent of the corporate body, obviously the corporate body would look to support that. Of course, primary legislation would be required to achieve that, but that may be something that the Finance Committee will wish to consider.

From where we start, there is not much choice, but there might be longer-term options. As John Scott said, issues that need to be considered include, for example, the route that the funding comes through. As long as the funding comes through the corporate body and the corporate body is responsible for appointment and re-appointment recommendations, the corporate body needs to take a view. Of course, if the process were to change, that would leave open other possibilities. However, that is really a matter for the Finance Committee and Parliament to consider going forward.

The Convener: Would it be theoretically possible—I will put it no stronger than that—to have a mechanism like the one that operates for the Auditor General for Scotland? That mechanism could also encompass the issues of appointment or reappointment, although the question whether we should have reappointments has been asked. One argument that has been put to us is that commissioners should be appointed for a single term but for a longer period as that would be better in governance terms. However, if the appointment of commissioners were dealt with by a committee of senior parliamentarians who also exercised financial oversight and provided a forum for policy deliberation where that was needed—which, in respect of some commissioners, might be very limited—could such a model work?

Paul Grice: In principle, that is a perfectly workable model, although we would need to think through a lot of issues. There are two basic approaches. First, we can equip the corporate

body to do it—it is partially equipped already—and build on what is there. We are saying that we could do a decent job with the current powers but that the system could be rationalised and improved. Secondly, we could start with a different model, which is broadly the one that you have outlined. It is not for the corporate body to consider the pros and cons of each approach. However, from where I sit, it seems feasible to provide the machinery and support for either model. Internationally, we could probably find examples of both models in different guises, which may be a guide as to what works best. We are dealing with fundamental issues that require careful thought. However, either model could be made to work.

John Scott: It is important to have a proportionate response to the need for better corporate governance. We do not want to develop a whole industry of people reviewing people reviewing people. In my view, there is a danger that that will happen. We need to take a balanced and measured approach to the issue.

The Convener: We are very unlikely to recommend an instant answer. There will have to be consultation and models will have to be set up. Before we move, there will need to be broad agreement on the direction in which we want to move.

You have raised the issue of advocacy. In response to a question from Derek Brownlee, you indicated that you had particular problems in making any appropriate financial management judgment when someone whose role was partly or primarily advocacy was claiming that a particular approach was best. That raises the fundamental issue of who should and should not be parliamentary commissioners. The view has been expressed to me that a very narrow range of bodies should be parliamentary bodies. A body should be parliamentary either because it is an inspection or complaints-handling body that needs to be independent or because it is an oversight and scrutiny body such as Audit Scotland, which also needs to be independent. We have created commissioners that do not reflect that approach and are simply advocacy posts. They become parliamentary commissioners because someone has thought that that makes them more independent, but they are much more difficult for people in your position to manage. That raises the question whether they should be parliamentary commissioners. Do you have any thoughts on those matters?

John Scott: I have a good deal of sympathy with what you are saying. Thank you for recognising our difficulties in that regard. We might hold to the view that the commissioner for children and young people would be better placed under

ministerial control. There is room for improvement, which is why we have had difficulty with the issue.

Paul Grice: As the clerk, I cannot have any view on the matter, because Parliament has decided what the commissioners are. It is important for me to make the point that I will work absolutely in support of the current framework. Until such time as Parliament decides on a different model, it would not be at all appropriate for me to express a view.

However, I will develop the point that I made in response to Mr Brownlee's question. Making a judgment on the appropriate level of resource for advocacy, for example, is harder than dealing with a determined case load. When a commissioner or an ombudsman can demonstrate a case load in response to a legislative function, the question is how efficiently that function is being dealt with. When they say, "I think I need X amount of money to undertake an advocacy function," which is also based on a legislative requirement, it is quite challenging for any body, but particularly for the corporate body under the current legislative framework, to take a view on that. There is no question that it would ask—and has asked, I assure you—challenging questions, but how we resolve that problem is difficult because it is more open ended.

11:45

The Convener: You indicated that you have problems with your powers to hold commissioners and ombudsmen fully to account. Although we might be able to find a route forward to deal with that, a separate concern is whether you will be able to find a framework to allow you to deal in that way with all the bodies that are currently under your remit. The greatest difficulty is with the commissioner for children and young people and, in a different way, the Scottish information commissioner, because of the construction of their roles and their relation to Parliament, which is less clear than for the others. The public services ombudsman, the Auditor General, the standards commissioner and the commissioner for public appointments in Scotland have closer links to Parliament. Is that reasonable?

John Scott: It is a reasonable view and I cannot disagree with anything that you said. Perhaps that issue will be addressed by Professor Crerar, who will chair the review that the minister announced today.

You have put your finger fairly accurately on the difficulty of our current position in holding to account the various office-holders with all their different functions and roles and the different legislation that surrounds them. That is why we very much welcome the review as, at its crudest, a

way of making life simpler for the corporate body, or any other body that it is suggested, could undertake the review and budgetary process.

Mark Ballard: I hope that the review process will produce a simpler and clearer system of governance because we require more clarity.

In your evidence, you have stressed the importance of working with new bodies, offering support and guidance to them, asking challenging questions about their plans, but treading carefully. I would like to explore that further. Paragraph 2(2) of schedule 1 to the Scottish Public Services Ombudsman Act 2002 states:

"The Ombudsman, in the exercise of that officer's functions, is not subject to the direction or control of—

- (a) any member of the Parliament,
- (b) any member of the Scottish Executive,
- (c) the Parliamentary corporation",

which is represented today by Paul Grice and John Scott. How do you draw the line between that clear statement and the suggestion, which you seem to support, of having a formal approval mechanism for the budget and a three-year plan?

If you were to move beyond giving support and guidance and asking challenging questions, to denying formal approval of a budget or rejecting a three-year plan, would that not move you into potential conflict with that clear statement that there should be no direction from the "Parliamentary corporation"?

John Scott: Yes, you encapsulate our dilemma exactly. We are bound by statute not to interfere. Nevertheless, as you would expect, we have our own budgetary concerns about the £6 million for which we are responsible as part of the corporate body's budget. We have also had a clear steer from the Procedures Committee that—this is entirely proper—it wants us to hold the office-holders to account more. It is not possible to achieve that within the current legislation. You have read out the relevant bit of legislation for the public services ombudsman and other, equally relevant bits apply to the other office-holders. That is why we welcome the inquiry. We are looking for you to come up with the solution to the problem. We have suggested how you could achieve that.

Mark Ballard: What teeth would the suggested budget approval and three-year-plan mechanisms have, given the legislative framework?

Paul Grice: A degree of legislative clarity would be helpful. If that gave the corporate body or another body the power and responsibility to approve a budget, it would have to be set alongside and considered in parallel with another legal duty, such as the one that you have described. There is an important point of principle.

The Parliament, which created the bodies, has a responsibility. The corporate body has a duty to provide services to the Parliament, but nobody argues that that duty is completely open ended; indeed, one of my other functions is to come before you and defend the budget. I would not say that that was not appropriate because I am under a duty to act, under the authority of the corporate body. None of those duties comes with a blank cheque. There is an expectation that duties are discharged in accordance with what is affordable.

The difficult question that Mr Brownlee asked, which Mr Ballard is pursuing, goes to the nub of the issue. The Finance Committee and Parliament are the ultimate decision makers. The corporate body is part of that and will seek to resolve matters. It is important to record that, in the majority of dealings that we have had with commissioners, they have been entirely willing to submit themselves to that process. I would not want anyone to think that they were fighting us tooth and nail. Quite the opposite is true: we have robust but constructive discussions. You have seen a flavour of that in some of the evidence that you have taken. The committee and the Parliament have a potential role. Parliament created the commissioners and votes the money and could resolve matters.

With the current framework, we are trying to make things better. There might be a case, for the reasons that you set out, for considering whether the legislation is four square. It could be argued that there is some inconsistency, but there is not necessarily going to be conflict. It is possible to have a robust challenge. If the commissioner says that something is absolutely unacceptable and conflicts with it, we can go to the committee and the Parliament. I would argue strongly that Parliament has the right to take decisions, given that it created the commissioners in the first place.

Mark Ballard: You seem to be hinting that if we want to change the balance, we might have to change the legislative framework. It seems to me that the current legislative framework is very much along the lines set out in section B2 of the Paris principles. Are you concerned that if we moved away from that to a position where, as Derek Brownlee suggested, we scrutinise policies as well, we would be in danger of changing our legislative framework so that it was no longer in accordance with the Paris principles for international human rights organisations?

John Scott: Obviously we would seek not to compromise that position. We would want to preserve the integrity of the office-holders. We believe that it is possible to do both.

Paul Grice: I do not think that having a budgetary approval process is in any way inconsistent with the Paris principles. Arguably,

the opposite is true: they are consistent. It is quite proper to have a process that tries to weigh the functions of a commissioner or ombudsman with the equally proper function of deciding how resources should be allocated across a massive range of competing and mandatory work.

I do not want to make too much of what we are saying, but the current mechanism can and will be used and we will try to use it better in light of any guidance that the committee gives us. Because the commissioners were created one at a time, there might be merit in looking across the piece and asking whether the framework is sensible, and whether it could be rationalised, made clearer or improved. The Paris principles to which you referred might be the sort of thing that the committee would have in mind. Having looked at those principles and thought about them, I do not think that there is anything inconsistent between them and what you said we were hinting at—I think that we are more open than that: we are suggesting that changing the legislative framework would be helpful in the longer term.

Mark Ballard: So your suggestion for three-year strategic plans and budget powers would be purely for financial accountability. There would be no policy accountability. Is that what you are saying?

John Scott: There would not be policy accountability; there would be budgetary accountability. There is a primary requirement in legislation for budgetary accountability.

As you all know, a plan is only a plan and if there is a requirement at some stage for the plan to change, there are memorandums between the SPCB and commissioners that allow the commissioners to draw on a contingency fund held by the SPCB if they require additional funding for a justifiable reason.

The Convener: I need to be clear about my understanding of the arrangement. How are policy issues dealt with in the longer term? For example, how might the remit of a commissioner change in due course? My view is that that is not really a matter for the commissioner. Ultimately, it is a matter for the Parliament and the commissioner should not be making that kind of policy decision, or indeed policy decisions in general. The commissioner should make decisions about how they deal with cases and how they fulfil their role as it is defined in the legislation. If anything goes beyond that, it is a matter for Parliament. An issue arises from Mark Ballard's question. I am quite clear that commissioners are not policy makers—they must not be policy makers because they have no remit to make policy.

Mark Ballard: My understanding is that the remit of the commissioner for children and young people is

“building into the fabric of public life a system of scrutiny and advocacy on behalf of children and young people, who are citizens without a vote, and duty-bearers without formal power.”

That is the policy that has been set out. Surely independence is about how that scrutiny and advocacy are built into the fabric of public life—

Mr Swinney: We will have to come back to the witnesses later.

The Convener: I think that we will carry on with the witnesses; that amplifies my point.

Dr Murray: I would like to talk a bit about pre-legislative scrutiny problems. The evidence that we got from the permanent secretary a couple of weeks ago suggested that a bit of headroom was built into financial memorandums, but it is difficult to revisit them so there might be a tendency to set the maximum limits a bit higher than necessary. Alice Brown, the Scottish public services ombudsman, and the Scottish information commissioner gave evidence that there is a lack of clarity about the role of some of those individual posts. The committee heard in evidence from the commissioner for children and young people that she felt free to spend up to the limit described in her financial memorandum. That lack of clarity and the possible tendency as described by the permanent secretary to build in headroom was of concern to the Minister for Finance and Public Service Reform. How does it impact on your ability to scrutinise the budgets?

12:00

John Scott: That is a key issue. That is the difficulty that we have. I do not want to continue to repeat what we have said, but we have an obligation to the public and in law to scrutinise the budgets before they come to the Finance Committee. You would expect us to do so and we do.

Dr Murray: It is difficult for you to do so if the roles are not clearly defined in legislation and people have the perception that they have a pot of money that they can spend.

John Scott: You have hit the nail firmly on the head. We agree entirely with that point, which is why we would welcome clarification. As you are aware, in response to Audit Scotland's report on the matter, we have made recommendations to the committee, which we hope it will consider seriously as a way of addressing the problem but remaining within the legislation that sets out the role of the office-holders.

Dr Murray: It is a bit concerning that, with the Scottish Commissioner for Human Rights Bill, the SPCB has had to ask for an amendment at stage 2 to give it powers to scrutinise the new post adequately. The fact that the SPCB was not able to make representations earlier indicates a failure in the pre-legislative scrutiny process.

John Scott: We are not in the business of criticising others—we are here to serve Parliament—but it might have been easier had we been consulted at an earlier stage.

Dr Murray: Will you say a little about the additional powers on financial accountability that you will request through the stage 2 amendment to the bill?

Huw Williams (Scottish Parliament Corporate Policy Unit): The additional powers will relate to the clarity of the scrutiny and the budget approval. There is much in the bill that we welcome. The SPCB will have the final say on the commissioner's determination on the location of the office and on staff numbers. That will add to the SPCB's scrutiny role.

Paul Grice: If the amendment is accepted, we may end up with the SPCB's model for the appropriate powers that it or any successor body should have in relation to matters such as the budgetary process and the location of offices. That will build on the experience that we have had to date—as you know, there are slightly different powers for the different commissioners. I hope that, when the amendment is debated, that will provide an opportunity to consider some of the questions of appropriateness that Mark Ballard and Derek Brownlee have raised. That stage 2 debate could illuminate what the Parliament thinks about how we strike a balance on what are difficult issues. Practically, we feel that the amendment will give the SPCB a reasonable set of powers to undertake proper scrutiny.

Dr Murray: As John Scott mentioned earlier, the SPCB has to authorise the Auditor General's salary, but the salary is paid by Audit Scotland. A separate body of MSPs scrutinises Audit Scotland's budget. However, the SPCB authorises and pays the salaries of the commissioners and the public services ombudsman. What are your views on the distinction between the legislative basis for the Auditor General and that for the commissioners and the public services ombudsman? Why should we have a different legislative basis for the Auditor General? Is that just for historical reasons?

John Scott: As you say, the legislative basis for the Auditor General is different. We argue that there is a case for standardising the procedure. The Scottish Commission for Public Audit evaluates the Auditor General's work and budget

process. We are relaxed about that, but the inquiry offers an opportunity, which should be taken, to bring all the functions together. The situation is just a quirk of the setting up of the Parliament and the office-holders that we have created. They have been created through different pieces of legislation and have different routes of finance. We are where we are. If we were to start with a clean sheet, perhaps we would ensure that all the money came from the consolidated fund or from SPCB funding.

If the committee looks elsewhere—as I think it has—at regional Parliaments in Canada or the Parliament in New Zealand, it will find that they have reviewed the circumstances and roles of similar office-holders for some time. If we had considered that in the beginning, we might have produced a different model, but we did not, and we are where we are. We are affording ourselves another opportunity to review the process.

Dr Murray: The convener referred to the possibility of establishing a separate body of parliamentarians to scrutinise budgets. The SCPA's convener suggested almost that the SCPA might be willing to take on part of the role of scrutinising other bodies that are similarly placed. How do you respond to that? Do you see a way of working with the SCPA to extend its role?

John Scott: As I said, we can of course see a way of working with the SCPA, but we believe that the corporate body is best placed to perform that role as things stand, because we are responsible for the budgets of office-holders apart from the Auditor General.

Dr Murray: Given all the other work that you must do, would you have time for that role?

John Scott: We devote quite a bit of time to such scrutiny. We have undertaken the review process conscientiously. Office-holders and staff have spent quite a lot of time on examining budgets and how they were arrived at.

The Convener: An obvious question is about the appointment and reappointment of the Auditor General, which seems to be ill-defined.

John Scott: Indeed. That is another matter for Parliament to decide. Models elsewhere use fixed-term appointments. If that were changed for the Auditor General, legislation would have to be amended.

The Convener: We have just spent a whole day of parliamentary time on dealing with the situation that arose with the Lord President. That might provide an argument for considering the issue again before any situation arises.

John Scott: That is a matter for Parliament and not for the corporate body.

Mr Swinney: The Audit Scotland report makes several comments about the opportunities for shared services; the corporate body has been involved in dialogue about that. Will you update us on the opportunities for achieving shared services? Do issues arise from the sharing of services that might compromise the independence of commissioners, which you discussed with Mark Ballard and others?

John Scott: We do not think that sharing services compromises independence in general. I will let Huw Williams talk about the nuts and bolts of where services might be shared.

Huw Williams: Some progress has been made. We are aware that the Scottish public services ombudsman is considering wider sharing of services with bodies that do not fall under Parliament's direction. We must also start to consider what we will do about the Scottish commissioner for human rights, if the relevant bill is passed. We will consider the sharing of services and possibly co-location for that office.

Mr Swinney: What form is that likely to take? Will the commissioner be co-located with the ombudsman?

Huw Williams: The two alternatives that were mentioned in pre-legislative scrutiny were co-location in Glasgow with the Scottish arm of the United Kingdom commission for equality and human rights and co-location with the ombudsman.

John Scott: We favour co-location in Glasgow. For the public, it would make more sense for there to be one office in Glasgow, even though two organisations would work in it. Members will know that the public approach us about matters when they are not certain whether they are devolved or reserved. If the organisations were both in one office, that would benefit the public.

Mr Swinney: Obviously, the office of the human rights commissioner is an emerging body, but is the corporate body minded to pursue an agenda within the existing architecture that tries to get the ombudsmen for which it has budgetary responsibility to share many more services? How aggressively is such an agenda being pursued?

John Scott: Paul Grice will describe what is happening, but the simple answer to your first question is yes. However, there is only a certain amount of room for improvement in sharing buildings, for example. The Auditor General's report shows that very long-term leases have been taken out on many buildings, and the scope for squeezing out or reducing costs in that regard through breaking or continuing leases is relatively small. Perhaps Paul Grice will talk about sharing services.

Mr Swinney: Before he does so, perhaps we should consider how we have reached where we are. The Scottish public services ombudsman is based in Melville Street in Edinburgh, the information commissioner is based in St Andrews and the commissioner for children and young people is based round the corner from here. I appreciate that the offices were established at different times, but was the corporate body involved in any dialogue about establishing what could be called ombudsman central?

John Scott: Perhaps Paul Grice would like to answer that question, as I was not on the corporate body at that time.

Paul Grice: The short answer is that there was dialogue, but the corporate body faced a difficulty. The contrast should be made with the human rights commissioner proposals. The corporate body will have a clear power over the location of the human rights commissioner's office, which it will use, but no such power existed before. That takes us back to the fundamental issues. I recall that there was a particularly full discussion with the information commissioner, who made a robust case to the corporate body. Ultimately, he was the accountable officer and he had considered a range of possibilities. The difficulty that the corporate body faced was that it was right and proper to ask—

The Convener: You say that he is accountable. To whom does he answer, if not to the corporate body?

Paul Grice: Under the legislation, he is clearly not accountable to the corporate body. Indeed, the fact that the Parliament has decided to put the location provision in the Scottish Commissioner for Human Rights Bill is clear recognition—

Mr Swinney: Wait a moment. If my understanding of the Freedom of Information (Scotland) Act 2002 is correct, the commissioner is an accountable officer to the Parliament for such issues. I accept that the Parliament's decision to include the location issue in the bill that you mentioned gives pretty cast-iron information about where responsibilities now lie, but if an accountable officer is responsible to the Parliament for his expenditure, in effect such a power existed before.

Paul Grice: Yes. You have put your finger on it. The responsibility is to the Parliament, not to the corporate body.

Mr Swinney: I know. However, the corporate body could have invited the Parliament to pass a resolution to locate the information commissioner in the same building in which the ombudsmen are located, if that was necessary. Would that not be reasonable?

John Scott: To be fair to Paul Grice, the Parliament passed legislation within one or two years that was clear about people's independence and what they did.

The Convener: What advice was given to the information commissioner? What dialogue was involved?

12:15

Paul Grice: It was a few years ago, but I think that the corporate body asked tough questions and discharged its obligations. Its clear view was that the information commissioner was ultimately responsible for determining such matters. We have previously rehearsed that. Looking back, it could be argued that it was wrong to take that view, but a counter argument would be to ask where the statutory authority was for the corporate body to deny the information commissioner—whose post had just been created by the Parliament—that view. You can agree or disagree with his decision, but that was the process.

I hear where you are coming from, but I do not think that it is unimportant that Parliament has now decided to put a location provision in such acts. You might call that a cast-iron provision, but I would argue that it is recognition of the fact that there was at least an ambiguity. I was involved when the information commissioner was created, and I think that the corporate body took its responsibility seriously. It came to the judgment that, in its view, it did not ultimately have the right to say that the information commissioner had to locate in a certain place rather than somewhere else. It satisfied itself that the information commissioner had gone through a due process of considering alternatives and that he was not making a perverse decision. Ultimately, the commissioner will have to answer for that decision.

It is important to remember that the information commissioner, as an accountable officer, is responsible to the Parliament and not to the corporate body. In my view, that point is fundamentally important.

Mr Swinney: There is a sense, in this debate, that there may be a need for another body to consider such issues. I take the view—you may correct me if I am wrong—that the Scottish Parliamentary Corporate Body is charged with undertaking actions on behalf of the Parliament. You are saying to me that the SPCB can act only when the legislation expressly states that it can act; I think that that is an overzealous interpretation of the legislation.

John Scott: In fairness, the corporate body past and present has taken robust legal advice on such matters. That is not to say that we do not share

your sense of frustration that we are not able—and have not hitherto been able—to give a clearer sense of direction. We welcome the change in the Scottish Commissioner for Human Rights Bill, because we share your frustration about the inability to save costs and provide more direction.

Mr Swinney: So, the corporate body's legal advice has been largely that the matter is nothing to do with it.

John Scott: That is my understanding of it.

Mr Swinney: Has that legal advice been made available to the committee?

Paul Grice: If you want a history of why the information commissioner located where he did, we can get back to you on that.

Mr Swinney: I am interested in this, as it gets to the nub of what route I would be persuaded we should go down. I am pathologically opposed to the creation of more bodies within the Parliament—an extra committee for this, an extra committee for that. I am against that. I am trying to get at whether we need to go down that route or whether we already have a body, in the corporate body, that can exercise the necessary functions but which has been hampered by legal advice that has been too timid for words.

John Scott: We did not draft the existing legislation.

Mr Swinney: I am trying to probe the functions that the corporate body can undertake before the Finance Committee embarks on a discussion about what Dr Murray has questioned—the need to create another body to undertake budgetary scrutiny of commissioners. Without wanting to betray the privacy of the committee's discussions, I make it clear that I am not keen on that idea. I would like to know whether that function could be fulfilled by a body that already exists.

Paul Grice: Our starting point is that the corporate body is not looking for additional functions but is prepared to take on those that it already has. Under the Scotland Act 1998, the corporate body has a clear power to provide the Parliament with the staff and services that it requires. In addition to that, the Parliament has passed legislation that gives the corporate body certain functions. To my mind, it is not a question of timid legal advice; it is an important principle that a creature of statute does what the statute tells it and nothing more than the statute tells it. The statute does not give the corporate body a power to determine the location of commissioners except in the case of the human rights commissioner for Scotland. The Parliament is deciding—it has not yet firmly decided—whether to give the corporate body such a role.

I do not think that it is a matter of our receiving timid legal advice. The corporate body took a careful look at the issue; John Scott expressed the matter well. I am not saying that the corporate body was not frustrated or that it was particularly happy with the decisions that were made; however, it came to the view that it did not, ultimately, have the power to determine where the commissioners located. You could argue that the corporate body did not take the right view on the matter and that it could have taken a chance; my position remains that, in the absence of an express legal provision, the corporate body was absolutely right to pause and allow the commissioners to take those decisions.

I understand entirely where Mr Swinney is coming from and I am not saying that he is wrong; after all, these are matters of interpretation. However, the corporate body thought hard about the matter and took the view that it did not have the power. It is not a question of being timid. The corporate body felt that it was taking a reasonable decision in light of the legislation that Parliament had passed.

Again, the issue reinforces the need for more clarity about the exact nature of the corporate body's powers. I assure you that it tried very hard to discharge its functions properly; it did not take its decision lightly and, indeed, found the process quite frustrating. Although I realise that this is a hypothetical statement, if the corporate body had had express provisions, it might well have used them. However, it did not feel that it had any with regard to these significant issues.

You also asked about shared services. There is no question that it is easier to share many back-of-house services if there is co-location. As a result, the corporate body will pursue the matter with the human rights commissioner for Scotland—assuming, of course, that Parliament agrees to the bill—and build upon what has been learned.

That is as much as I can say at the moment. Again, Mr Swinney, I understand your point entirely, but I hope that I have persuaded you that the corporate body did not duck the matter. At the time, we felt not timid but constrained.

Mr Swinney: It was the legal advice that I accused of being timid.

John Scott: I do not think that that criticism is fair. My own point of view—which is not necessarily that of the corporate body—is that we should not create any more bodies than we need. The bottom line is that we have been constrained by the legislation, into which we had no input. If the Parliament passed legislation to allow us to enforce a more robust appraisal of office-holders, we would certainly use it. However, at the moment, our interpretation of the existing

legislation is that we do not have such powers—I should point out that the office-holders have confirmed that interpretation in discussions with us. That is why we have arrived at the current position. However, if you give us the tools, we will do the job.

The Convener: It would be useful to receive a report that sets out the frustrations and the outcomes of any discussions that have taken place.

I am concerned by the fact that, as Paul Grice mentioned earlier, some office-holders have taken long leases on their properties. What authorisation did they have to contract for 10 or 15-year leases? They have made financial commitments that have been neither scrutinised nor approved by any parliamentary process. Surely that cannot be right.

Paul Grice: We return to the same point: Parliament set up the commissioners and gave them the responsibility to get on and establish their offices. I will not go into the detail, but some of the leases are quite long. I am not completely up to speed on whether there are any break points, but the committee should not see a long lease as a complete barrier to change. It is simply another factor to consider, and issues such as break points will come into play.

However, a judgment has to be made. After all, the longer the lease, the better the rental value. Although accommodation can be rented with almost quarterly get-out clauses, doing so is more expensive. As I have said, the long-lease issue is certainly an impediment, but it is not a complete barrier to change. As in all such cases, we must consider the value-for-money equation and look at the precise terms of each lease to find out its implications.

The Convener: On the committee's behalf, I would certainly be interested in seeing a factual report that lists the office-holders' accommodation and sets out the length of the leases; the break points, if any; the advice that the corporate body gave; and the scrutiny process that it went through in reaching decisions on location. Such a paper would help everyone and would certainly be in the interests of transparent government.

John Scott: We would be happy to provide that, as best as we are able to, given that many of those discussions are historic. We will endeavour to provide the committee with that information.

The Convener: Thank you.

As there are no further questions from the committee, I thank you very much for coming along. I must correct something that I said at the end of the previous session. From the advice that I have received from the clerk, I suspect that our report may be published in late September or early October. It depends in part on how quickly committee members agree on the approach that we will take forward.

Budget Process 2007-08

12:25

The Convener: Agenda item 2 is consideration of the approach that we will take to this year's budget scrutiny process. The paper from the clerk underlines the proposed approach and the draft timetable, which is subject to the publication of the draft budget. Members will note the suggestion that we should look somewhere in the south of Scotland for the venue for our external meeting. I understand that Dumfries has been suggested as an appropriate location. Are we agreed?

Members *indicated agreement.*

The Convener: The proposal that is set out in the paper is to adopt an approach that is in line with our past practice. Are we agreed on that?

Members *indicated agreement.*

Financial Memoranda

12:26

The Convener: Agenda item 3 concerns financial memoranda. Members may be aware that the Transport and Works (Scotland) Bill was introduced today and that other bills may be introduced before the recess. There are also a couple of members' bills that committee members have signalled they would like us to consider.

The committee would usually receive an approach paper and decide in public session on the level of scrutiny that it will undertake for each financial memorandum. Given that this meeting is our last before the recess, I propose that the committee delegates that authority to me. That would allow the clerks to set in motion the evidence-taking sessions that we may require to meet lead committee timetables. The delegated authority would last only for the summer recess period and we would revert to normal procedure on our return. Do members agree to delegate authority to me to decide on the appropriate level of scrutiny for the financial memoranda that accompany the Transport and Works (Scotland) Bill and any bills that may be introduced over the summer months?

Members *indicated agreement.*

Items in Private

12:27

The Convener: Under agenda item 4, we are asked to agree to consider in private our accountability and governance inquiry draft report at our next meeting in September and at any subsequent meetings, as required. We are also asked to decide whether our draft report on the financial memorandum for the Adult Support and Protection (Scotland) Bill should be considered in private at our next meeting. Are we agreed?

Members *indicated agreement.*

The Convener: We move into private session for the final item on our agenda, which concerns our accountability and governance inquiry report. I think that we will be brief.

12:28

Meeting continued in private until 12:36.

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