AUDIT COMMITTEE

Wednesday 28 May 2008

Session 3

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

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AUDIT COMMITTEE

10th Meeting 2008, Session 3

CONVENER

*Hugh Henry (Paisley South) (Lab)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Loudoun) (SNP) *George Foulkes (Lothians) (Lab) *Charlie Gordon (Glasgow Cathcart) (Lab) *Jim Hume (South of Scotland) (LD) *Stuart McMillan (West of Scotland) (SNP) *Andrew Welsh (Angus) (SNP)

COMMITTEE SUBSTITUTES

Derek Brownlee (South of Scotland) (Con) James Kelly (Glasgow Rutherglen) (Lab) Iain Smith (North East Fife) (LD) Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Robert Black (Auditor General for Scotland) Angela Cullen (Audit Scotland) Russell Frith (Audit Scotland)

CLERK TO THE COMMITTEE

Tracey Reilly

SENIOR ASSISTANT CLERK Joanna Hardy

ASSISTANT CLERK Rebecca Lamb

LOCATION Committee Room 4

Scottish Parliament

Audit Committee

Wednesday 28 May 2008

[THE CONVENER opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Hugh Henry): Welcome to the 10th meeting of the Audit Committee this year.

Under item 1 on the agenda, I ask the committee to agree to take items 4 and 5 in private.

Members indicated agreement.

"National Fraud Initiative in Scotland 2006/07"

10:00

The Convener: Item 2 concerns the report "National Fraud Initiative in Scotland 2006/07". I invite Russell Frith to address the committee.

Russell Frith (Audit Scotland): The report summarises audit work that was carried out across local government and the health service over a two-year period.

The idea of the national fraud initiative is to assist councils and other public bodies to identify and detect fraud and other overpayments that might occur in their systems. It enables public bodies to investigate matches and take action if fraud or overpayments are identified, and it helps the auditors to assess the arrangements that bodies have in place for the prevention and detection of fraud.

The Audit Commission in England has been running the initiative since 1996. In Scotland, we piloted some aspects of it from 2000, and 2004-05 was the first time that we performed a full roll-out of the exercise across local authorities in Scotland. For 2006-07, in addition to local authorities, we brought in health boards, the Student Awards Agency for Scotland and the Scottish Public Pensions Agency, which picks up national health service and teachers' pension schemes.

We aim to match the various data sets to identify indications that fraud is taking place. The fact that there is a match does not necessarily mean that there is fraud; it means that there is something that should be followed up to determine whether it is fraud or another form of overpayment.

One of our areas of work involves matching the pensions records of local government, the NHS and teachers with the Department for Work and Pensions register of deceased persons. That identifies pensions that are still in payment to people who have died, which happens with a degree of frequency. The exercise enables the whole pensions database to be checked quite effectively, especially when compared with the way in which most pension schemes performed checks in the past, which involved writing to pensioners and-basically, but with more subtlety-asking them to confirm that they were still alive.

Mr Robert Black (Auditor General for Scotland): Did they include a stamped, addressed envelope?

Russell Frith: Usually, yes.

The other main area that we consider is housing benefit. We match the payroll records of local

government, the NHS and, just for good measure, ourselves, with the housing benefit records of all 32 councils. In doing so, we are trying to identify cases in which housing benefit is being claimed but the correct earnings are not being declared. That is quite a fruitful area for us.

We provide the matches to the local authorities and health boards through a secure website, and they are responsible for following them up, using the various filters that we provide, so that they can prioritise the matches in order to concentrate on the ones that are most likely to be fruitful.

In the 2006-07 exercise, we have so far uncovered around £10 million of fraud, other overpayments and forward pension savings. That is less than we found in 2004-05, which was the first time that we ran the exercise, when the sum came to around £15 million. However, that is pretty much what we expected because, in 2004-05, we picked up cases that had been outstanding for a long time, whereas, this time, most of the identified cases should have been running for no more than a couple of years.

In addition, the considerable publicity about the exercise should have deterred people from committing fraud, although I am not sure whether that worked, because in at least one case the same person was identified in both exercises.

Many of the matches require the co-operation of other public agencies to follow them through. The Department for Work and Pensions in particular co-operates with local authorities to follow cases through. This time, the case with the biggest single value is an example of an NFI match that identified a tenant who allegedly worked with a council and received housing benefit. As the case was pursued, it was established that the tenant had a partner who was also a council employee and who also did not declare their earnings. It has been estimated that the total overpayment in that case was around £100,000. The parties are being reported to the procurator fiscal.

Our ability to match complete data sets gives us a reasonable degree of assurance about the overall error levels in the data sets. If low levels, or no levels, of fraud or overpayments are identified, the public bodies can take significant assurance about the quality of the data sets and, in some cases, the integrity of their workforce.

One of the main issues for us this time concerned the legal powers to conduct the exercise and, in particular, to extend it. That is also one of the main issues in looking forward. The exercise has been based on local authority auditors' powers to obtain information for the purposes of audit not only from local authorities themselves but from other organisations that may hold information that is relevant to the audit. Similar powers do not exist for the Auditor General's part of the public audit process.

The Serious Crime Act 2007 provided our sister organisations in England, Wales and Northern Ireland with explicit data-matching powers. We have discussed with the Scottish Government's criminal justice directorate the prospects for introducing similar legislation in Scotland at the next suitable opportunity, and the response has been quite positive so far. We believe that such legislation is essential for the NFI exercise to progress in the future. It is essential not only to provide a level playing field across the whole public sector-the exercise is quite heavily weighted towards local government at the moment-but to help identify cross-border fraud. Fraud does not stop at artificial boundaries. One of our problems with the current legislation is that we cannot share data on matches across borders.

That is a brief summary of the exercise. I would be happy to answer any questions that members have.

The Convener: Thank you.

You said that you had uncovered almost £10 million of fraud, other overpayments and forward pension savings. Can you confirm the cost of the exercise?

Russell Frith: The cost of the processing was around £125,000. It goes up to around £350,000 if we include the cost of the time that our staff spent on it.

The Convener: So there is a significant return from a relatively small investment.

Russell Frith: Yes.

Mr Black: That, of course, is before one takes into account the deterrent factor, which we cannot quantify. People now know that the system is working, and councils' systems of control in particular have become much more effective.

Murdo Fraser (Mid Scotland and Fife) (Con): What is the scale of the initiative in relation to the scale of the problem? Do you think that the initiative is capable of being extended or do you think that it is as far-reaching as it can be?

Russell Frith: It is undoubtedly capable of being extended. A significant issue to look at is singleperson council tax discounts. The Audit Commission's pilot work in England has shown that to be a fruitful area, given that there are significant levels of misclaiming of such discounts. We are in the process of running an exercise on that for the first time with about half the councils in Scotland. I cannot tell you the outcome of that exercise, because the councils have only just got back the matches.

Mr Black: The report refers to cancelled discounts improving the council tax base and says

that the Audit Commission's rule of thumb estimate is that the potential savings could exceed $\pounds 200$ million throughout the whole United Kingdom.

Russell Frith: Yes, that is the Audit Commission's initial estimate.

Murdo Fraser: So we are talking about saving substantial sums in exchange for a relatively small investment, which we would all encourage. There is a substantial opportunity in respect of benefits claimants, although that is obviously a reserved matter. I remember reading a few weeks ago the story about the chap in Aberdeen who was claiming benefits for 36 children. It seemed rather extraordinary that nobody had picked up on the fact that it would have been a minor medical miracle if someone aged 29 had fathered 36 children—it would not be physically impossible, but it would be fairly unlikely.

Russell Frith: Unfortunately, we would not have been able to identify that particular case, because it related to child tax credits, which is an HM Revenue and Customs matter.

Willie Coffey (Kilmarnock and Loudoun) (SNP): Do we rely completely on information technology matching, or is any manual matching going on to pick up examples such as the one that Murdo Fraser mentioned? Is there any evidence that the methods of perpetrating fraud are becoming more sophisticated or is fraud fairly easy to spot with the systems that we have?

Russell Frith: In the past, councils and other public bodies have attempted to uncover fraud and overpayments by manual matching. The advantage of the IT-based matching is that we can cover the whole data set efficiently and quickly. It is by far the best method. However, given that it takes a rule-based approach, as all IT systems do, once we have the matches, we then have to do some manual work to identify the cause. In some cases, the claims will be perfectly legitimate.

Willie Coffey: Are the methods of perpetrating fraud becoming more sophisticated?

Russell Frith: In the areas that we are looking at, fraud is not particularly sophisticated in the first place, so it is relatively easy to pick up using the techniques that I mentioned.

Jim Hume (South of Scotland) (LD): Paragraph 22 of the report sets out the nearly £10 million of real savings. The paragraph also states that bodies are

"seeking to recover about £2.8 million".

Of course, seeking to recover money is very different from actually recovering it. Do we have any figures for how much bodies are actually recovering? **Russell Frith:** Not yet, because many cases are at an early stage in the investigation process. In a number of cases, the recovery rate per week will be low.

Jim Hume: It is always difficult to get blood out of a stone and it is more than likely that the money that has been obtained fraudulently will have been spent by the time you find out about the fraud. We need to find fraudsters as quickly as possible. Do you foresee our being quicker to identify fraud publicly?

Russell Frith: It would be possible to run the exercise more frequently, but that would start to bring more noise into the system. It takes at least 18 months for us to collect the data, run the analysis and return it to the councils, and for them to prioritise and carry out investigations. The most effective approach is to run the exercise every two years.

10:15

Jim Hume: I presume that eventually it will act as a deterrent to some people.

Mr Black: In the report, we encourage the various public agencies that are involved in the exercise to respond promptly and to take points on board. For example, we think that the Scottish Public Pensions Agency could react more quickly. We know that it is committed to doing so.

Stuart McMillan (West of Scotland) (SNP): The fact that £37 million will be returned to frontline services—regardless of whether the defrauding of the state was accidental or intentional—is a welcome step. When I read exhibit 4 on page 10, two categories caught my eye. I refer to the 1,552 housing benefit cases and the 969 blue badges that were cancelled. Is there a breakdown of the reasons that were given for failure to notify local authorities of the death of blue badge holders?

Russell Frith: We are not aware of such a breakdown. I suspect that notifying the local authority of the death of a blue badge holder is not the highest priority for the person's relatives. We are in no way saying that all the badges concerned were being held and used to gain an advantage—a significant number may have been left in drawers and not sent back. That was one of the new matches that were introduced in this NFI round. It has proved quite effective in reducing the number of badges that could be misused. We hope that that will increase confidence in the blue badge system generally.

Stuart McMillan: That is great.

George Foulkes (Lothians) (Lab): I am concerned by the lack of powers that are available to Audit Scotland because it missed out on the

Serious Crime Act 2007. I am not clear on how that happened. Why was Scotland not included in the 2007 act?

Russell Frith: We understand that the previous Administration took a policy decision to that effect in the run-up to the Scottish election.

The Convener: Presumably, there was sensitivity about introducing such legislation in close proximity to an election.

Russell Frith: That is what we understand.

George Foulkes: The report states that

"any new Scottish legislation will not be available in time for NFI 2008/09."

Why is that?

Russell Frith: Because we are preparing for the exercise now and the data will be collected in October. We understand that the first available opportunity for legislation is likely to be early in 2009.

George Foulkes: We are not overburdened with legislation at the moment, are we? Would it help if the committee pressed for earlier legislation on the issue?

Mr Black: It would certainly be appropriate for the committee to lend its support to the need for legislation.

Andrew Welsh (Angus) (SNP): I congratulate Audit Scotland on this good public service. I hope that the Government will consider early legislation on the matter. I have a sense that what you have found is only the tip of the iceberg and hope that this is the beginning of a wider anti-fraud programme. Do you have any such plans or proposals?

Russell Frith: I am not sure that I agree entirely that what we have found is only the tip of the iceberg. We are covering 100 per cent the data sets that we cover, so we are getting a fairly good indication of the scale of overpayments in those data sets. If we can extend the NFI to singleperson council tax discounts, for example, we may be able to discover larger amounts elsewhere.

Andrew Welsh: I feel that the fraud that you uncovered was of a relatively low level, as it was found quickly by a computer sweep. I have the sense that deeper work could be undertaken. I congratulate you on what you have done, but more could be done to ensure that the public are not defrauded.

Russell Frith: We look continually for new data sets to include. Another aspect of the more explicit powers is that we are allowed to use data sets that other organisations have volunteered—the Audit Commission has also piloted that with reasonable success. However, in that case, some of the

benefit goes to the private sector as well as the public sector.

Andrew Welsh: I wish you well in that work.

Charlie Gordon (Glasgow Cathcart) (Lab): For the avoidance of doubt, will your examination of single-person council tax discounts be in the new programme that starts in October? That does not depend on your having new powers and is simply an example of good practice that you have heard about from the south.

Russell Frith: That work does not depend entirely on having the new powers. We have already run the data matches, but they have only just been given to councils to examine.

Charlie Gordon: That is why we do not have the information on that category yet.

Russell Frith: Yes. However, the new legislation will certainly help to clarify the powers to do that and similar work.

The Convener: I thank Russell Frith and the Auditor General for contributing. I have no doubt that we will return to the issue at some point.

Section 22 Reports

"The 2006/07 Audit of James Watt College"

"The 2006/07 Audit of Kilmarnock College"

10:22

The Convener: I remind committee members of the continuing police investigation in relation to Kilmarnock College, which means that what Audit Scotland can say is somewhat constrained. We can still ask general questions and make comments, but some specifics might have to be avoided until the police have completed their inquiries. We will discuss any further action on the reports under agenda item 5.

I invite the Auditor General to brief the committee on the reports.

Mr Black: Both reports are short. They were made under section 22 of the Public Finance and Accountability (Scotland) Act 2000 and they relate to the accounts of two further education colleges—James Watt College and Kilmarnock College—for the 2006-07 financial year.

This is the second year running in which I have made a report on James Watt College. The accounts were not qualified, but the college has again reported an operating deficit and it continues to carry what is for its size a large accumulated deficit on its income and expenditure reserve.

The college has recorded operating deficits in each of the past five years. However, it has worked with the Scottish Further and Higher Education Funding Council to address the financial problems. The college's operating deficit in 2006-07 was £919,000, which is significantly less than that in each of the previous two years. The college's financial forecasts were submitted to the Scottish funding council back in June last year—I ask members to recall that the financial year for colleges is different from that for most of the public sector—when the college predicted operating surpluses in each of the next few years.

The auditor says that there are early signs of improvement, but the operating deficit in 2006-07 resulted in the accumulated deficit on the college's income and expenditure reserve growing to £5.3 million. As a result, I continue to have concerns about the financial challenges that the college faces. It is important for the college to reduce its accumulated deficit and the auditor will continue to monitor the position.

The report on Kilmarnock College is different in nature. In his report on the 2006-07 audit, the auditor issued a qualified opinion on the accounts.

The qualification resulted from a lack of evidence being available to the auditor to enable him to form judgments on two separate matters.

The first matter relates to an investigation by the college's own internal auditors into the relationship between the college and other bodies. The investigation involves a review of governance arrangements, transactions between related parties and any evidence of impropriety. As you said, convener, it is unfortunate that I cannot say anything further on that matter, as it is currently being considered by the police.

The second matter on which the auditor expressed a concern relates to the procedures that the college used for reporting on its student activity. It might be helpful if I sketch out the background to that. The Scottish funding council requires colleges to submit an annual return detailing their student activity. That return must be independently audited, which is normally done by the college's internal auditors. The funding council needs the return to ensure that the funding that it provides has been used appropriately-in other words, for the purposes intended. In the case of Kilmarnock College, the internal auditors were unable to reach a satisfactory conclusion that the procedures that the college used are sufficient to identify properly programmes or students that should be excluded from the annual funding claims.

My colleagues from Audit Scotland and I are happy to answer any questions but we are clearly a bit constrained in relation to Kilmarnock College.

The Convener: I suggest that we take the discussion in two parts: we will consider James Watt College first and then, once we have exhausted questions on it, come to Kilmarnock College.

Who is responsible for managing the affairs of James Watt College?

Mr Black: The accountable officer for each college is the principal. As the accountable officer, the principal has a duty of care that is overseen through the audit process and may result in reports to the committee. The board of each college has a duty to monitor the performance of the college as a whole and to ensure good governance and financial control in the college. The Scottish funding council has duties and powers in relation to general oversight of the financial management and performance of the sector as a whole and a duty to satisfy itself regarding the governance and financial controls in individual colleges.

As I am sure members recall, those matters were outlined in some detail in the recent report "Financial overview of Scotland's colleges 2006/07", which I presented to the committee and about which members asked me questions.

The Convener: However, no one is ultimately democratically accountable, other than through the funding council's oversight. The college is almost responsible to itself.

Mr Black: There is no doubt that democratic responsibility for the use of funds comes principally through my reports to the committee and the funding council's responsibility to advise the Scottish Government on such matters.

The Convener: Yes, but no one can intervene in or take action on a college's situation other than the college itself; the minister has no power to intervene.

Mr Black: The funding council has evolved its policy, custom and practice over the past few years so that it takes a closer interest in the affairs of individual colleges than perhaps it did several years ago. It has a group called the FEDD—I cannot recall what that stands for, but it is a wonderful title—which, if it believes that a college is in difficulties, is required to engage closely with the college's management to support it in getting out of those difficulties and to monitor closely what is happening.

The Convener: That is an evolution of practice rather than a statutory requirement.

Mr Black: Yes, that is correct.

The Convener: James Watt College has a board that is responsible for governance and for monitoring the principal's performance. There has clearly been a failure somewhere, whether on the part of the principal or the board, or both. That suggests to me that there are significant concerns about how effective governance has been, at least in this case. Is that the case?

10:30

Mr Black: The section 22 report is based on the report that the auditors provided to me. It is not, therefore, a detailed audit of the governance arrangements of James Watt College. The best source of up-to-date and reliable information, independent of the college, on those would come from the Scottish funding council.

The Convener: But for a number of years in a row there have been question marks about the accounts. Clearly, there have also been question marks about management, because there have been management changes; you referred to the substantial steps that have been taken. What has been the role of the board during those years in carrying out its duties? What should be the role of a board in relation to inappropriate actions by or weaknesses in management? **Mr Black:** The other members of the team may want to say more about that, because they are closer to the detail of what we have said in previous reports.

Angela Cullen (Audit Scotland): It is fair to say that the board of the college asked for help during 2006 from the Scottish funding council, and the FEDD went in and carried out a review of governance arrangements. FEDD is the further education development directorate—I thought it might help if I spelled that out for you.

George Foulkes: We thought that it was Eliot Ness and the FBI.

Angela Cullen: I am afraid that it is not as glamorous as that. The board requested the FEDD's help, and it undertook a review of governance arrangements and reported back. Since then, the college and the board itself have taken a number of actions to address the weaknesses that the FEDD report highlighted.

The Convener: But the board itself was incapable of taking action up to that point.

Angela Cullen: The board had been taking action, but it reached a point at which the deficit was increasing and financial performance was not improving as the board had expected it to, so it asked for help to turn things around.

George Foulkes: The situation was raised when we discussed the overview report—a very cheeky letter came in from some principal somewhere. The example that we are discussing highlights yet again that there is something wrong. The arrangement is self-perpetuating: the principal suggests members of the board, and once they are on the board, they feel obliged to the principal. We need people on the boards who are independent, who can challenge the principal and the staff without fear or favour and who have some expertise, including financial expertise. There is nothing to ensure that that happens, is there?

Mr Black: I am not sure that we can help the committee much further, because there has been more than one review of the governance of the FE sector over the past few years and, for perfectly understandable reasons, the decision has been taken to leave the arrangements as they are. As members of the committee will be aware, one of the key factors that was mentioned in the overview report and which I am sure influences the thinking in the Scottish Government is the importance of the colleges' charitable status, which requires them to have a degree of independence from Government agencies.

George Foulkes: Did we not find out from the review that John Wheatley College lost its charitable status, or had that status questioned, whereas the private school in Dundee got its

charitable status? It is not clear that charitable status is guaranteed because of that separation.

Mr Black: That is correct. There is, therefore, an element of risk to the finances of the FE sector, but it is a risk of which the Government and the Parliament are well aware.

George Foulkes: If there was an independent public appointments committee of some kind that made appointments to college boards, would that change the charitable status position?

Mr Black: That is a matter of policy in relation to which we do not have expertise, but the question is entirely reasonable.

Stuart McMillan: As someone who stays in the Inverclyde area, I know that over the past three or four years there have been many stories in the local press about the running of the college. Have you had any dealings with the new principal, who started earlier this year, on the college's direction? I know that your report refers to a "projected ... surplus", but have you received any other information?

Mr Black: As I have said, it is more for the funding council than the Auditor General to manage such relationships much more closely. As a result, any such questions would be best directed towards the chief executive of the funding council.

The Convener: If members have no more questions about James Watt College, we will move on to the section 22 report on Kilmarnock College.

Auditor General, I appreciate the constraints that are on you with regard to Kilmarnock College, but I would like to ask a few factual questions. Is the college principal who was in post at the time of these reported matters still in place?

Angela Cullen: The principal was in place during the financial year 2006-07 but, according to the latest set of accounts, resigned in September 2007.

The Convener: In any future consideration of how public resources have been used, we would find it helpful to know whether a resignation was a straight resignation or whether the person in question took early retirement or enhanced redundancy, and whether the college board approved any enhanced financial package for them. Given the concerns raised by Audit Scotland and the on-going police investigation, such information would be useful.

Angela Cullen: We do not have that information, but we will ask the auditors for it.

Willie Coffey: I understand that the college's accounts were presented to Audit Scotland seven months late. I do not want to get into any detail

that might be subject to investigation, but was the late submission directly related to the issues that are being investigated or were there other reasons?

Angela Cullen: The accounts were submitted seven months beyond the year end and two months after the deadline because of the two issues that the college's internal auditors were having problems with. They were trying to gain information to form an opinion, but could not do so.

Willie Coffey: I understand that. Again, without getting into any of the issues under investigation, can you say whether there has been any indication that the college's current performance will be reported on time this year?

Angela Cullen: We do not have any information at the moment, but we have asked the auditor to keep us informed of any developments. If any concerns arise, we will certainly raise them.

Murdo Fraser: I appreciate that you are constrained in what you can say about the qualified opinion. However, the section 22 report refers to an

"investigation by the college's internal auditors into the relationships between the College and associated bodies".

What were those "associated bodies"?

Angela Cullen: I am afraid that we cannot answer that question, as the issue is part of the police investigation.

Murdo Fraser: I understand that.

The Convener: I thank Audit Scotland for its evidence.

We now move into private for items 4 and 5.

10:39

Meeting continued in private until 11:05.

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