AUDIT COMMITTEE

Wednesday 29 October 2008

Session 3

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AUDIT COMMITTEE
15th 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)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*George Foulkes (Lothians) (Lab)
*Stuart McMillan (West of Scotland) (SNP)
*Nicol Stephen (Aberdeen South) (LD)
*Andrew Welsh (Angus) (SNP)

COMMITTEE SUBSTITUTES

Derek Brownlee (South of Scotland) (Con)
James Kelly (Glasgow Rutherglen) (Lab)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Sandra White (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Robert Black (Auditor General for Scotland)
Graeme Dickson (Scottish Government Primary and Community Care Directorate)
Nick Hex (Audit Scotland)
Neil Rennick (Scottish Government Primary and Community Care Directorate)
Dr Kevin Woods (Scottish Government Director General Health and NHS Scotland)

CLERK TO THE COMMITTEE

Tracey Reilly

SENIOR ASSISTANT CLERK

Joanna Hardy

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 1

Scottish Parliament

Audit Committee

Wednesday 29 October 2008

[THE CONVENER *opened the meeting at 09:15*]

Decision on Taking Business in Private

The Convener (Hugh Henry): Good morning. I start the Audit Committee's 15th meeting in 2008 and ask everyone to switch off mobile phones and other electronic devices.

I welcome to the committee again Dr Kevin Woods, who is accompanied by Graeme Dickson and Neil Rennick. I appreciate Dr Woods accommodating us; he has another committee meeting to attend later, so the evidence session will inevitably be tight.

Under agenda item 1, do we agree to take items 4 and 5 in private?

Members *indicated agreement*.

Section 23 Report

"A review of free personal and nursing care"

09:16

The Convener: Agenda item 2 is evidence from Dr Woods on "A review of free personal and nursing care". Do you wish to say anything before we ask questions?

Dr Kevin Woods (Scottish Government Director General Health and NHS Scotland): With your permission, convener, I would like to make a brief statement. Since the Auditor General's report was issued in January, I am sure that committee members have had the opportunity to study Lord Sutherland's report of his independent review, from which I will briefly draw out key conclusions that might assist the committee.

First and foremost, Lord Sutherland recommends that we should stop viewing personal and nursing care in isolation and consider it as part of the wider package of support for the long-term care of older people.

George Foulkes (Lothians) (Lab): Convener, I do not want to be rude, but we have only 50 minutes and we know Lord Sutherland's conclusions. Could we spend a bit more time on questions?

The Convener: No. I offered Dr Woods the opportunity to make an opening statement, so we should hear him out.

George Foulkes: All right.

Dr Woods: In view of Lord Foulkes's comments, I will try to be as brief as possible.

Lord Sutherland estimates that the total spend on long-term care for the elderly is about £2.2 billion per annum. That does not include spending on hospital care or on drugs, for instance. Free personal and nursing care represents about 12 per cent of that total, which is why he recommended that we should focus on the totality and not just on the 12 per cent.

The more we can shift the balance of care away from hospitals and residential care settings, the better we can maintain people's quality of life, provide them with care in the way that they want to receive it and achieve best value in the use of resources.

The session 2 Audit Committee's report on community care expressed concern about the quality of financial monitoring of the policy. We acknowledged the difficulties that councils faced in disaggregating information about free personal

care from their total expenditure, and I have no doubt that we will touch on that theme later. That committee also raised concern about the original cost estimates and projections for the policy that the care development group prepared. I was pleased to note that Lord Sutherland said in his report that he did not believe that, in the given timescale, the care development group estimates could have been improved.

The Auditor General and Lord Sutherland confirm that the policy was adequately funded in its initial years, which is consistent with the advice that we provided to the session 2 Audit Committee for its report in 2005. The additional funding to local authorities for free personal and nursing care forms only one part of significant additional investment since 2001. Despite that additional investment, it is clear that, as we have moved further from the policy's initial years, concerns about the adequacy of funding have continued. That is why ministers asked Lord Sutherland to undertake his review.

Lord Sutherland received evidence from a wide variety of people. He concluded that, although there were different views about the level of any previous funding gap, looking forward—he emphasised that—he thought that additional funding was needed to stabilise the policy. He estimated that requirement to be about £40 million per annum from next year.

As well as agreeing to provide the additional £40 million, ministers have confirmed that, along with the Convention of Scottish Local Authorities, we are taking forward the other recommendations in Lord Sutherland's report—on eligibility criteria, waiting lists, public information and food preparation. I am happy to elaborate on any of those points for the committee.

Murdo Fraser (Mid Scotland and Fife) (Con): I want to pick up your closing point about clarity of the legislation and guidance. Audit Scotland's report highlighted ambiguities in legislation and guidance that have led to councils interpreting issues such as charging for food preparation differently. The committee had concerns about that. In your letter to us, you say:

"Scottish Ministers have now announced their intention to introduce revised legislation to clarify this matter."

What progress has been made on that? When can we expect the legislation to be enacted?

Dr Woods: It may be helpful if I say a little about the context of the announcement. Charging for food preparation is one of the most vexed issues that have been thrown up by the policy of free personal care. I am happy to acknowledge that in the early years of the policy there were clear difficulties surrounding the interpretation of the initial guidance that was issued. Although in 2004 and 2006 efforts were made to get the guidance right, the problem was that people were operating in the context of the existing legislation. A number of councils are still charging for food preparation.

We have agreed with COSLA that the best way forward is to address the issue through legislation. A draft order to amend schedule 1 to the Community Care and Health (Scotland) Act 2002 will be laid before the Scottish Parliament in the near future, which will remedy the problem.

Murdo Fraser: Can you be a bit more precise?

Dr Woods: I am not sure that I can provide the committee with more detail. Mr Rennick may have more information on the timing of the order.

Neil Rennick (Scottish Government Primary and Community Care Directorate): A draft order is at an advanced stage. We intend to consult on it this year, with the aim of having an order ready to be laid before Parliament early in the new year.

Murdo Fraser: So you hope that the legislation will be in place by the beginning of the next financial year.

Neil Rennick: That is the target.

Murdo Fraser: That information is helpful.

George Foulkes: Why is it taking so long? It was announced on 7 May that legislation would be introduced. It is now nearly November.

Neil Rennick: The difficulty with the current position is that there is a lack of clarity in existing legislation.

George Foulkes: I know that. Why is it taking so long to draft a simple order to change it?

Neil Rennick: We want to ensure that we get it right this time.

Dr Woods: With respect, the underlying issues are quite complex. One of the groups that we have established jointly with COSLA is tasked with ensuring that we get the legislation right once and for all. We do not want to produce an order that leaves any lingering doubts about the intention of the legislation or guidance, because that is the issue that has dogged us. Everyone would like the matter to be resolved as quickly as possible, but we want to get it right.

George Foulkes: So you predict that it will take a year to draft and agree a simple order. Surely that is ridiculous.

Dr Woods: It may appear on the surface that only a simple order is required, but the underlying issues are rather more detailed.

Murdo Fraser: I want to expand the discussion beyond the issue of food preparation. There is a wider issue relating to the clarity of the legislation.

There is a potential conflict in the way in which the policy is perceived. People believe that they have a universal entitlement to free personal care. Local authorities argue that, although they accept that broad principle, they must temper the way in which they implement it according to the resources that are available to them. We are never entirely sure whether there is genuinely free personal care for everyone or free personal care only if a local authority can afford it. Does the Government recognise that conflict? If it does, does it intend to try to resolve it, in the same way that it is trying to resolve the issue of the cost of food preparation?

Dr Woods: The Government recognises the debate that you describe, and Lord Sutherland reflected on it in his report. He drew an analogy, which the Government has accepted, with the national health service, and argued that assessed care needs should be met as soon as is practically possible.

We are working with COSLA to agree a standard approach to maximum waiting times for levels of assessed need, in relation to which a number of practical measures need to be put in place. The best way that I can answer your question is to say that the Government regards the entitlement to free personal care to be analogous to the entitlement to national health service services.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): To take that a little further, can we anticipate with hope that the draft order will include provisions for a universal system for local authorities that people can expect to apply regardless of where they live, and that it will be focused not only on waiting times—important though they are—but on the level of service that an individual can expect under the heading of free personal and nursing care?

Dr Woods: The draft order will deal with food preparation. We are currently progressing issues around access and entitlement, waiting times and eligibility in discussions with COSLA. That is one of five work streams on the back of Lord Sutherland's report. Clearly, it is desirable to have a standard approach to needs assessment, which is why we have done some work on the single shared assessment. In that context, we are exploring the index of relative need, to ensure that people who might need personal or nursing care are assessed on a standard basis throughout Scotland in accordance with four categories of need, one being the most needy and four the least needy. That will be put in place as well.

Cathie Craigie: Will any draft orders be required to deal with the findings of the assessment of entitlement group?

Dr Woods: I am not sure that draft orders will be required, because measures can be progressed through guidance. Mr Rennick might confirm that.

Neil Rennick: That is correct. The aim is to agree standards that do not require legislation.

Cathie Craigie: What is the timetable? Do you have a date for when the group should report its recommendations?

Neil Rennick: We have asked the group to give us its report around the end of the current year, with the aim of trying to implement changes during 2009-10, as is the case for the food preparation order.

Cathie Craigie: So you are looking for recommendations by the end of this year that will be implemented by the start of the next financial year, 2009-10.

Dr Woods: Yes.

Neil Rennick: Measures will be phased in during the year, because of the requirement for people to be assessed or reassessed.

Dr Woods: It is worth pointing out that the £40 million that the Government has identified for 2009-10 is intended to support some of those policy issues.

The Convener: Following on from Cathie Craigie's question, will you clarify that from 2009-10 there will be an incremental phasing-in of common standards of care throughout Scotland; there will be an agreement between the Government and COSLA about what people can expect, irrespective of where they live; and any increased demand or costs associated with that will be covered by the £40 million?

Dr Woods: I am saying that we and COSLA are committed to implementing as soon as is practical the products of the various work streams that we are talking about. We are also in clear agreement with COSLA about the use of the £40 million to support that. Of course, the local authorities have discretion about how to meet the needs of individual clients and their residents within that framework. We are trying to get as much agreement as possible around free personal and nursing care, and I believe that we are close to achieving it.

09:30

Cathie Craigie: Will the £40 million go towards free personal and nursing care? Is that money ring fenced within the local government budget?

Dr Woods: No, it will be part of the overall settlement for local government. However, everyone knows what the £40 million is for.

Neil Rennick: Lord Sutherland said in his report that, had the original money for free personal care been ring fenced, that would not have made any difference to the eventual outcomes.

George Foulkes: I am slightly confused. There was a court case about this, which the local authority won, and therefore did not have to provide free personal care for someone. Is that correct?

Dr Woods: You are referring to the Macphail judgment.

George Foulkes: Yes. How do you overcome that?

Dr Woods: We believe that local authorities are operating within the legal framework as described by Lord Macphail.

George Foulkes: But that does not provide the guaranteed entitlement that Lord Sutherland recommended.

Dr Woods: I will draw Mr Rennick into the discussion, as he may be more familiar with the detail of Lord Macphail's ruling. My understanding of what he concluded is that local authorities should make payments when the council, having assessed a person, has a contract with a care home provider to supply the care as assessed. That is why the debate about the eligibility criteria that inform assessments and waiting times for care is so important.

George Foulkes: I understood that, if a council said that its budget had been totally allocated and that it had no money left, it would not matter that a person in its area was clearly entitled to care—the council could not provide it. Lord Macphail said that councils could make that decision.

Dr Woods: I ask Neil Rennick to elaborate on the implications of the Macphail judgment.

Neil Rennick: As Dr Woods has said, our opinion is that Lord Macphail's ruling confirms the existing guidance, which is that people will get free personal care payments only once the local authority has in place a contract with the care provider. We have acknowledged that the interpretation of Lord Macphail's ruling has created concerns about what he actually said. In response to that, as part of the work on legal issues as well as on food preparation, we are considering the implications of the Macphail ruling. At the moment, the current guidance continues to apply, and our view continues to be that local authorities have a responsibility to provide free personal care on the basis of people's assessed needs.

George Foulkes: But, according to the judgment, if councils do not have the resources to provide that care, they can get out of their responsibility.

Neil Rennick: Case law says that local authorities can take account of resources, but that does not mean that they can just ignore someone's assessed needs. Particular procedures take account of those assessed needs, and local authorities must ensure that, if someone has needs, those needs are met and kept under review until services are delivered.

George Foulkes: A person who is assessed as being in need of free personal care can wait almost indefinitely for a care package if the local authority has no resources. Given the present squeeze and the other responsibilities that local authorities have under the concordat, that may well be the case.

Dr Woods: That is why the maximum waiting time, which we are discussing with COSLA, is important. It will prevent what you described as someone waiting for an indefinite period. Local authorities also have a responsibility to meet needs within that waiting time while the care package is being assembled.

George Foulkes: But you cannot guarantee that people who are assessed as being in need of free personal care will get it immediately in every local authority area in Scotland.

Dr Woods: As I said, we regard the situation as analogous to the situation in the national health service, in which people have assessed needs and there are waiting times for certain services. Our record in bringing those waiting times down has been excellent in recent years. It is clear to us and to COSLA that we need the framework of eligibility and maximum waiting times to avoid the situation that you have described.

The Convener: What maximum waiting time do you anticipate?

Dr Woods: I am not familiar with the latest discussions on that. Perhaps Neil Rennick can update us.

Neil Rennick: It is still being discussed.

The Convener: If you are not familiar with the latest discussions, can you tell us the maximum time that was being considered in earlier discussions?

Dr Woods: I think that we are talking about several weeks.

The Convener: So someone could have a critical care need, but if the money was not available, there would be no legal requirement to provide the care package. You said, however, that such a person's assessed needs would be met. How would those needs be met without money to pay for the care package?

Neil Rennick: In all cases in which someone has critical and immediate needs, and there is

obvious danger to life and limb, local authorities provide services and support—usually within a matter of days, if it is required. Our own evaluation and Lord Sutherland's work found that when people have immediate needs, they are met. There is more of an issue around cases in which a professionally qualified social worker assesses that there are needs but they are not immediate. The issue is the timescale to which we provide services in cases where the person's needs are not immediate. We have to decide what constitutes a reasonable timescale.

The Convener: Will there be national standards to ensure that immediate assessed needs are met?

Neil Rennick: We are working towards that, and we have been discussing it with COSLA. As I said, under their existing statutory responsibilities, local authorities are already meeting people's critical and immediate needs.

Dr Woods: The analogy with the national health service is evident: people with immediate life-threatening and emergency needs are dealt with immediately, whereas those who have other needs—particularly for elective surgery and so on—may experience delays. We are committed in the NHS to bringing times down, and we are committed with COSLA to agreeing a framework to meet needs within the available resources.

Cathie Craigie: The Macphail judgment, which we spoke about earlier as a result of George Foulkes's question, gave local authorities a way out when they did not have sufficient resources. Can we be sure that local authorities will not be able to use the new guidance and the proposals that you have spoken about as a defence for not providing free personal and nursing care?

Neil Rennick: The issues in the Macphail case related to a very specific minority of free personal care clients, who can be described as self-arrangers, that is, people who put themselves into care for whatever reason before approaching a local authority for assistance. We are considering the position of self-arrangers as part of our work.

Stuart McMillan (West of Scotland) (SNP): We have heard a lot about eligibility, and Dr Woods mentioned the national eligibility framework. Can you provide information about the work that the Scottish Government has undertaken with councils to develop that framework? What is its current status?

Neil Rennick: As Dr Woods indicated, a number of work streams are being taken forward. One of them is specifically on access, eligibility for services and waiting times. It is being led by a senior professional from the Association of Directors of Social Work, and it involves COSLA, us and representatives from older people's organisations. The work on that has been carried out over the past few months and will continue.

Stuart McMillan: Have any other organisations been involved?

Neil Rennick: Age Concern Scotland and Community Care Providers Scotland—as well as ADSW, COSLA and us—are involved in the wider package of work.

Stuart McMillan: How does the Government intend to ensure that the public, particularly older people, are made aware of the care to which they are entitled in the different council areas?

Dr Woods: That is another area of work that we are pursuing with COSLA. I believe that the work is chaired by someone from Age Concern Scotland. We are committed to producing clear advice throughout Scotland so that people have the most up-to-date information on the policy and on what some of the changes that we have described will mean for them.

The Convener: Sticking with assessed needs, Mr Rennick spoke about meeting immediate needs and said that an assessment of longer-term requirements will be made. Will there be a standard definition of what is to be assessed and which needs must be met?

Dr Woods: Yes. That is why the work on the single shared assessment and the index of relative need is so important.

The Convener: If that is the case, where do domestic home care services fit in? The Audit Scotland report highlights that greater priority is being given to intensive care needs, but points out a reduction in domestic care services. I am sure that most members will know from constituents' inquiries that domestic care services are important to many older people to enable them to maintain their quality of life at home. Where do domestic care services fit in?

Dr Woods: We agree on the importance of those services. Before I give more information on that, I want to go back to the previous discussion. I was trying to refresh my memory of a rather important outcome from an evaluation report that we produced that is pertinent to the discussion. In 2007, Hexagon Research and Consulting reached the conclusion that the vast majority of people with care needs received services without significant complication or delay. That is an important back-cloth to the debate that we had a moment ago.

Domestic home care services are an important part of the landscape, but the long-term trend is a reduction in services in that category. Nonetheless, we regard those services as an important part of care. Significant progress has been made through projects in some parts of Scotland. The one that is most in my mind is the

telecare project in West Lothian, which helps people to retain and maintain independent lives at home, which is important. However, there is scope for a great deal of effective work with the national health service. Helping people to remain at home and to receive more care there is a main plank of much of our work in the NHS. We might develop certain services further, such as fall prevention. We agree with the thrust of your question. We want to keep a focus on the area—we do not wish to lose sight of it.

Mr Dickson may want to add a few comments.

Graeme Dickson (Scottish Government Primary and Community Care Directorate): As Dr Woods said, we have been considering using the NHS's health improvement, efficiency, access and treatment targets to tackle the issue of keeping more people in their homes. Yesterday, I attended a national consensus conference to consider ways in which we can keep more people in their homes and prevent them from being admitted to hospital. There seems to be a consensus about the need to grow anticipatory care services. Dr Woods gave the example of fall prevention. We need to reach out and identify older people who are at risk and work with them to help them deal with their long-term conditions in their home, so that they do not have to be admitted to hospital, which often ends up in admission to a care home. That requires investing more up front.

09:45

Andrew Welsh (Angus) (SNP): My question has been partly answered. It appears that there has been a filling in of gaps as the policy has developed, in levels of care, assessments and so on. What other gaps have been identified that remain to be addressed? Are there any major gaps to fill?

Dr Woods: I struggle to think of any that we have not yet mentioned. Perhaps there is some specific area that Mr Welsh is interested in, but we believe that the matters that Lord Sutherland identified form the kernel of the issues that we need to resolve. The policy has been very successful and has provided a great deal of benefit to a lot of people in Scotland, but one of our longer-term challenges is the growing number of older people, and we are turning our attention to working with COSLA on the pressures that arise from an ageing population. I refer not just to the pressures arising from free personal and nursing care; I go back to the point that we need to consider the totality of spending on long-term care, which is £2.2 billion. The proportion of the population in their 70s and 80s will increase in the future. If we consider that as a gap, to use the term used in your question, I would cite that as something that we are working on at the moment.

Andrew Welsh: Even after all this time, the policy still appears to be work in progress. That is what I was asking about.

Dr Woods: It is indeed work in progress. We are thinking about the consequences of an ageing population, and the issues are not limited to their care needs. We want to view them in a wider context.

Willie Coffey (Kilmarnock and Loudoun) (SNP): You mentioned that, within the timescales available at the time, it would not have been possible to improve the financial estimates and so on. With the benefit of hindsight, was the policy implemented earlier than we were adequately prepared for? I am mindful of the discussion that took place just a moment ago, with questions about the clarity of the legislation still being asked six years after the implementation of the policy.

Where are we now, six years on, with financial planning, future cost estimates and the quality of data gathering that is required for planning the service effectively over the coming years?

Dr Woods: There were a number of questions in there, and I will do my best to find my way through them. As I said a moment ago, we should not lose sight of the fact that the policy has been a success. That is a widely held view, and it was confirmed by Lord Sutherland. With hindsight, it was a considerable task to implement the Parliament's decision speedily. My recollection of events at the time is that there was a strong wish for the policy to be implemented as soon as possible. The will of the Parliament was clear in relation to the policy.

I was pleased to note that Lord Sutherland concluded in his report that, given the circumstances, the work of the care development group and of various officials produced a policy that has brought very considerable benefit. There have undoubtedly been difficulties, however, around some of the financial reporting from local government, and there have been difficulties with disaggregating the spend on personal care prior to the legislation—as opposed to the total spend going forward.

We have devoted a lot of time in our discussions with local authorities to improving returns. On occasion, we have asked them to go back over the work that they have done. Unfortunately, however, one of those exercises was not available when the Auditor General carried out his own exercise.

For the first time, we published data this year on this policy area as part of a national statistics series. The fact that the data are in that framework

can give us all confidence about the improved quality of the financial returns around the policy.

I hope that I have covered all the questions that were raised.

Willie Coffey: You certainly have. You can say with confidence that there will be no surprises or shocks regarding cost projections over the coming years. I am trying to find out whether we are getting it right now.

Dr Woods: We believe that, within the parameters and uncertainties around such a policy—given the context of an ageing population and so on—we are getting it right. We did work previously in the range and capacity review and in the Hexagon Research and Consulting report that I mentioned, and we will continue to work in this area to try to get the best possible estimates that we can. However, there is a degree of uncertainty in this work, and I cannot undertake to remove that.

Nicol Stephen (Aberdeen South) (LD): Everyone is concerned at the moment about the increased cost of living, although our hope is that the cost of living may start to moderate over the coming months. What assumptions and projections did you make about the annual increase in the costs of free personal and nursing care over the period of the spending review, and what cash increase will individuals receive over the next few years to reflect that?

Dr Woods: I will invite Mr Rennick to say a bit more about that. We are, of course, in the process of setting budgets. As you will know, I am going to the Health and Sport Committee in a few minutes to talk about budgets. The local government settlement is not part of my responsibility, so I do not have all the detail that you perhaps want.

Nicol Stephen: It is already set for the spending review period, as I understand it.

Dr Woods: The payments to self-funders were uprated for the first time in the past year, and the Government has made a commitment to continue to uprate those for inflation. I do not know whether Mr Rennick wants to add any more detail on that.

Neil Rennick: That is the position. We uprated the payments for self-funders from April, and the commitment is to uprate them again next April and the year after. That will be confirmed in regulations that will be put to the Parliament for approval.

Nicol Stephen: Is that additional cost provided for in the existing local government settlement, or might more money be required, depending on the rate of inflation? Will councils simply have to absorb it?

Neil Rennick: It was part of the concordat agreement, so it is included in the existing local government allocations.

Nicol Stephen: Therefore, if inflation is high, the pressure on council budgets will be all the greater because the additional payment will flow through to the patient or the individual with the assessed need. Is that how it will work?

Neil Rennick: Certainly, the inflation increase will have to be set, and then local authorities will meet those costs. The cost of the increase in April was about £1.5 million across all local authorities.

The Convener: Are local authorities quite clear that that element is included in the current settlement, so there will not be the expressions of surprise that we have heard from some of them on free school meals?

Neil Rennick: Certainly, that element is included in the concordat.

The Convener: And the local authorities know that.

Neil Rennick: It is in the concordat.

The Convener: Okay.

George Foulkes: I want to follow up that point. Willie Coffey and Nicol Stephen have identified a problem here, and I am surprised that Dr Woods does not appear to recognise it. The Audit Scotland report said that there was a shortfall in central funding, which was estimated as either £46 million or £63 million in 2005-06, depending on the assumptions. An additional £40 million will be provided from 2009-10—a few years later. Is there not going to be a greater shortfall by 2009-10?

Dr Woods: With your permission, I will take a few moments to pick my way through the history of the debate about gaps. That may be helpful.

As I mentioned in my opening statement, the session 2 committee wondered whether there was a gap, but one of the problems was the fact that it was not comparing like with like. Lord Sutherland's report indicated clearly that the cost estimates at the time were the best that could be achieved and that the policy was fully funded.

Since the policy was implemented, there have been significant increases in the resources that have been made available to support it. In the first full year of the policy of free personal and nursing care, the spending was about £143 million; in 2007-08, it rose to £169 million. The grant-aided expenditure assessment for total spending on older people's services went up from £775 million in 2002-03 to about £1.1 billion in 2006-07. Therefore, there has been a significant increase in resources, albeit that we believe that the policy was fully funded at the outset.

Against that background, there has been a debate about whether there have been costs associated with food preparation and so on. Lord Sutherland took Audit Scotland's analysis, which was based on an attempt to re-estimate some of the financial returns from local authorities and to include issues such as overhead costs. All of that was extremely complex, but Lord Sutherland looked at it carefully and devoted about five pages in his report to disentangling all the issues. His conclusion was that to stabilise the policy and ensure its continued success going forward, we need to inject about £40 million from next year. That is what the Government has accepted.

The £40 million is intended to cover factors such as demographic change, pay and prices, the loss of food-charging income for authorities that continue to charge at the moment and the continuing switch from care home provision to care-at-home provision. Those are the factors that Lord Sutherland took into account. His estimate, which built on all the dialogue about gaps and so on, was that £40 million was needed going forward, and that is what the Government has committed itself to providing.

George Foulkes: I know Stewart Sutherland—I spoke to him yesterday—and I have great respect for him. Are you saying that the Auditor General, for whom I have equal if not greater respect, got it wrong in his report?

Dr Woods: No, I am not saying that the Auditor General got it wrong; I am saying that this has been a very complex and difficult area for everybody concerned. As the Auditor General's report shows, there were some difficulties with the quality of the financial returns, and some things were simply not known about the pattern of expenditure before the policy was introduced. I am merely making the point that, in the context of that considerable complexity—which, inevitably, has spawned a substantial debate—Lord Sutherland examined all the issues and his conclusion was that, going forward, we need to put £40 million into the policy. That is what the Government has accepted.

Andrew Welsh: Are you saying that there was no shortfall?

Dr Woods: I am saying three things. First, at the outset of the policy, there was no shortfall. Secondly, in the light of experience and the discussions that took place in 2005-06 and beyond, there has been substantial debate about a number of issues such as food preparation. That debate has been informed by the Auditor General's work. Thirdly, Lord Sutherland pulled all of that together in a thorough analysis that I applaud for its clarity. He concluded that, going forward, there is a need for £40 million to stabilise the policy—to use his words—in the areas that I have just described.

10:00

George Foulkes: As Nicol Stephen said, Lord Sutherland's report was produced in April and there has been a lot of financial turmoil since then. Are you saying that no account needs to be taken of that?

Dr Woods: Well, yes. We accept that the £40 million takes account of some of those things. I mentioned pay, prices, and demography, and the Government obviously keeps under review the pressures on the public sector.

George Foulkes: We look forward to hearing your evidence in a year's time.

Stuart McMillan: Following on from Nicol Stephen's questions and comments, I have a question about the attendance allowance. The previous Scottish Executive planned for the inclusion of attendance allowance money, but that money did not then go to the Scottish Executive. Lord Sutherland recommended that

"The UK Government should not have withdrawn the Attendance Allowance funding in respect of self-funding clients in care homes, currently amounting to £30 million a year."

During its first two years, the policy was fully funded, but after that there were funding gaps. Surely that £30 million would have gone some way towards filling some of those gaps.

Dr Woods: The Government agrees with Lord Sutherland that the attendance allowance money should be available to the Scottish Government. The fact that it was not available at the outset of the policy meant that the Administration at the time had to inject additional resources. It did so, and that has been maintained ever since.

The Government agrees with Lord Sutherland's conclusion that the amount of money that is involved should be returned to Scotland. Of course, that money would go a considerable way towards making up the £40 million; it is a matter of simple arithmetic. However, that is a coincidence rather than anything else.

Nicol Stephen: Am I correct in saying that the £40 million will become available for the first time during the 2009-10 financial year?

Dr Woods: Yes.

Nicol Stephen: What is the amount for the subsequent financial years?

Dr Woods: Mr Rennick will elaborate on that.

Neil Rennick: That figure is for 2009-10. The future figure will be considered during the next spending review.

Nicol Stephen: What is the figure for 2010-11?

Neil Rennick: At the moment, it is £40 million, but we have agreed with COSLA that we need to look at uprating for demographic factors and inflation beyond 2009-10.

Nicol Stephen: So you are committed to uprating the £40 million for 2010-11.

Neil Rennick: In her statement to Parliament in May, the minister gave the commitment that £40 million would be provided for next year and that we and COSLA would look at what uprating was required for future years.

Nicol Stephen: So some additional money beyond the £40 million could be provided for 2010-11—is that correct?

Neil Rennick: That will be considered as part of the overall funding package, yes.

Nicol Stephen: You are talking about this spending review period. When does it come to an end?

Neil Rennick: The current spending review period ends in 2010-11, but we recognise that we need to consider the position. This money is for 2009-10—

Nicol Stephen: I was expecting that answer. The spending review period ends not in 2010 but in 2011, so we should know today—this morning—what the figure will be for 2010-11, because that is within the period of the current spending review.

Neil Rennick: Lord Sutherland said that we should provide £40 million from 2009-10 and work with COSLA to look at what uprating might be required for future years, and that is what we are doing. We acknowledge the issue that you have raised.

Nicol Stephen: That is helpful, but what you are saying is that, as things stand, the risk is entirely with the local authorities. Unless there is a change of policy and a new announcement by the minister, any squeeze on local authority spending because of an increase in inflation—we have seen the impact on the spending review recently—would fall on local authorities, and any increase in the £40 million would require an announcement by the minister. Is that correct?

Neil Rennick: The issues around inflation are wider than free personal care.

Nicol Stephen: I understand that entirely. I am just focusing on free personal care because that is the issue that we are considering this morning. The £40 million was assessed as necessary by Stewart Sutherland some time ago, and that is the figure that has been announced for 2009-10. However, there is concern that there is no guarantee that the figure will be increased in subsequent years, unless ministers decide to increase it. We have received no guarantee or reassurance about that yet.

Neil Rennick: Much wider sums of money are already built into the settlement, and it is important to say that issues around inflation and increases were considered as part of the settlement discussions. The £40 million is a fairly small element of the total sums of money involved, but I acknowledge the issue that you have raised.

Nicol Stephen: The figures look wholly inadequate, which is clearly a problem across the Government.

The Convener: As we are beginning to run out of time, I will allow two quick questions.

Stuart McMillan: I have another financial question, but it is on another topic. Paragraph 53 of the Auditor General's report states:

"Also the Scottish Executive guidance is not entirely consistent with the accounting standards guidance which requires overheads to be fully included."

What is the current situation with that? Has the guidance been updated?

Neil Rennick: The latest figures that were published as national statistics include overhead allocations or assumptions for all local authorities for both home care and residential care. One of the issues around the overheads that was identified by Lord Sutherland but which could not be covered in the Auditor General's report was the fact that, although councils have overhead costs that are reflected against free personal care, as well as the additional funding that they get specifically for free personal care, separate allowances for overhead costs are funded in the settlement. That would impact on the £46 million figure that Lord Foulkes identified in respect of the suggested funding gap. That was one of a number of factors that Lord Sutherland took into account in identifying the £40 million figure.

Stuart McMillan: Do you have a round total for the amount that was put in to cover overhead costs?

Neil Rennick: What Lord Sutherland identified was £6.5 million—clearly, there were other factors.

Cathie Craigie: I seek clarification on the Government's position regarding the attendance allowance. Dr Woods said that the Government agreed that the £30 million should be available for attendance allowance. Is the Government saying that the Department for Work and Pensions should still be paying attendance allowance to individuals who qualify for it? Would that mean that the Scottish Government would charge those individuals for personal and nursing care in order to bring that money back into the pot?

Dr Woods: We are saying that we believe that the resources associated with attendance allowance should be returned to the Scottish—

George Foulkes: They are included in the block grant. They are taken account of in the block grant—there is no point shaking your head.

Cathie Craigie: My point is that if we are talking about a benefit, it should be paid out to the individual through the Department for Work and Pensions. If the Government believes that the £30 million should be in the system, how does it propose to make that work?

Neil Rennick: The options that were discussed with the DWP when the policy was introduced were based on the original assumption that individuals would be able to retain the attendance allowance. The advice from the DWP was that, under the attendance allowance rules as they applied, that would not be the case. There was then a discussion about a resource transfer that would have allowed those resources to continue to be available for older people's services in Scotland, recognising that the implementation of free personal care provided that saving to the UK Government.

Cathie Craigie: I am seeking clarity. Was the proposal that the Department for Work and Pensions should continue to pay attendance allowance and that the Scottish Government should charge individuals for their care?

Neil Rennick: If people were still receiving attendance allowance, local authorities would take that into account in charging arrangements. The most recent discussions have been about a transfer of resources to recognise the fact that the UK Government has made a saving because the people who get free personal care no longer receive attendance allowance, as they would have before free personal care was introduced.

The Convener: It is a complicated issue to which we will return in different shapes and forms over the coming years. I realise that pressure of time prevents the witnesses from staying, but I thank them for their contribution.

We are about to move on to discuss "The 2007/08 Audit of Western Isles Health Board". In that context, I refer to the letter that I received from you, Dr Woods, following your appearance before the committee along with Sir John Elvidge. Thank you for that letter and for the clarification that you have provided. In the letter, you say:

> "I agree that with the benefit of hindsight in relation to subsequent events the Government might have deployed the interim senior management team sooner than September 2006."

I agree that hindsight is a wonderful facility—we would all say that. I recognise what you have said in the letter, but the committee remains concerned about some of the events that took place in the Western Isles and about what could have been done. I know that you do not have time to respond to that comment, but thank you for your further clarification.

Dr Woods: Thank you.

Section 22 Report

"The 2007/08 Audit of Western Isles Health Board"

10:12

The Convener: Item 3 is a briefing from the Auditor General on "The 2007/08 Audit of Western Isles Health Board".

Mr Robert Black (Auditor General for Scotland): As the committee will recall, there are three financial targets for NHS bodies, one of which is that they must not exceed their revenue resource limit—the amount of money that is allocated to an NHS board for spending on its day-to-day operations during the financial year. The auditors have reported that only one board—NHS Western Isles—failed to meet that target in 2007-08. The auditor's report on NHS Western Isles highlights that failure, although the opinion is not qualified. The board exceeded its revenue resource limit by just over £3 million. However, for the first time in five years it achieved an in-year surplus—of £267,000—which reduced the cumulative deficit compared with 2006-07.

In the annual audit report submitted to me, the auditor notes that steps to address the board's future financial stability, including a financial recovery plan, are now under way. The Scottish Government proposes to provide brokerage—extra funding on loan terms—during the current year to cover the cumulative deficit, provided that progress on the recovery plan is sustained. The board currently forecasts that it will break even, although the auditor's view is that that will present a significant challenge to NHS Western Isles.

This is the fourth year in which I have prepared a section 22 report on the accounts of Western Isles NHS Board. The committee conducted an inquiry into the issues arising from the report that I prepared last year and reported on its findings in May. The report that I am presenting today gives an update on the progress that has been made since my previous report was issued.

In June, the board responded to the committee's report and accepted all the recommendations for improvement. As I mention in my latest report, the auditor has criticised the corporate governance arrangements in the past, and the committee has also expressed serious concern about them. The auditor still has some concerns in this area but, as I outline in my report, there is some evidence of progress since 2007-08. The former acting chief executive has moved elsewhere in the NHS and an interim chief executive has been appointed until the board finds a permanent replacement.

That is a brief update on how we see it from the audit perspective. I am happy to answer any questions that you might have.

10:15

The Convener: Thank you. We are all relieved that the board has achieved an in-year surplus. We have previously recognised the efforts of the staff who have been put in place to enable that to be achieved.

The continuing concern is primarily about the cumulative deficit, which is still a drag. You will recall that, at a previous meeting, George Foulkes raised the possibility of the debt being written off. However, there is a dilemma. If we allow public organisations to run into deficit and then say that we will write it off, there is no encouragement for them to live within their means, so there are dangers associated with writing off the debt. Nevertheless, as I recall, Argyll and Clyde NHS Board's accumulated deficit was written off as part of the price of structural change. I might be wrong about that—if so, you can clarify the position.

Would it help Western Isles NHS Board to manage its functions from now on if, as a price of structural or other change, the accumulated deficit was written off?

Mr Black: I am sorry to be less than fully helpful, but the question is probably better addressed to the health directorates. The board is making progress in year to get into balance. That is reflected in the fact that it had a small surplus in year. It is receiving brokerage funding to help it through the period of transition. It would be challenging but nevertheless entirely possible for the board to bring itself into balance year by year.

As the committee is well aware from the evidence that it has taken, there are some fundamental issues within Western Isles NHS Board about the range of services that it is appropriate for an island board to deliver at its own hand, and there have been concerns about the sustainability of its clinical strategy. It is difficult for me to answer a question about the financial treatment of the cumulative deficit in isolation from policy matters regarding the clinical strategy that is appropriate for an island health board.

The Convener: I accept that, but your evidence is that the board is beginning to manage its resources efficiently and you seem confident that the in-year surplus that has been achieved can also be achieved in future years.

Mr Black: I am sorry, convener, but I cannot go that far. The financial pressures on the board are still challenging. It has expressed its commitment and firm intent to achieve balance in the current financial year. I am not in a position to give any

numbers regarding that, but we know that the board faces a considerable challenge.

There is a somewhat separate issue, which I attempted to mention a moment ago, about the level of NHS services that the board can sustain in the longer term if it is to ensure that clinical quality standards, for example, are safeguarded and enhanced.

The Convener: The management changes are outwith your control and that of the board. From an audit perspective, are you concerned that the repeated changes at senior level will impact on the board's ability to manage its resources?

Mr Black: In past reports, auditors have commented on the intrinsic risk of the high turnover in senior management positions. There is no doubt that, if the situation is now more stable, that will help the board enormously in managing the risks that still exist.

George Foulkes: As the convener said, I suggested that we should recommend that the debt be at least partly written off. At the current rate, the board will take about 10 to 12 years of struggling each year to raise about £250,000 to pay off the debt.

The basis for my suggestion that some of the debt should be written off was that the Scottish Government's home and health department—what do we call it? You know what I mean—had some responsibility. In his latest letter, which is dated 28 October—the convener referred to it—Dr Woods at last sort of makes an admission. He says:

"I agree that with the benefit of hindsight in relation to subsequent events the Government might have deployed the interim senior management team sooner than September 2006."

Damn right the Government should have done that, but it did not, so it has some responsibility—it should have acted earlier. If it had done so, the deficit might not be as large. Can we tell the Scottish Government's health directorates that they should deal with Western Isles NHS Board's debt more sympathetically?

The Convener: We have already decided not to make that recommendation.

George Foulkes: Circumstances change. I keep trying.

The Convener: We can discuss the suggestion when we reflect on the report later.

Nicol Stephen: Am I correct to say that the board exceeded its revenue resource limit by £3.097 million in 2007-08?

Mr Black: Yes.

Nicol Stephen: In effect, is that a balance sheet figure? I suppose that my point relates to the suggestion that George Foulkes—understandably—makes. The figure is included in the report as the amount by which the revenue resource limit was exceeded. I assume that the health board is under a legal or audit requirement to be in balance each year within the year. I am trying to understand the impact in law or in audit terms on the health board's budgeting. Are you saying that, every year, the health board must budget to break even, so it must budget for an in-year underspend to balance the significant deficit that it is carrying forward? What are the legal, policy, accounting or audit requirements on the board? That is what I am driving at.

Mr Black: The target is not to exceed the revenue resource limit, which is the annual allocation to keep the health board going and to pay for services. That is a Government requirement that is imposed on the health board.

Nicol Stephen: I want to understand whether that is an example of the Government mixing balance sheet and revenue items—

Mr Black: Not really—not in this case. I ask Nick Hex to help us.

Nick Hex (Audit Scotland): It might be easier to explain all the overspend above the revenue resource limit as a cumulative deficit that has built up through the board's series of in-year deficits in the past four or five years. We can see that the cumulative deficit has reduced because of the board's in-year surplus in 2007-08. Despite that surplus, the board still carries forward a deficit that appears as the overspend against the revenue resource limit. The situation is slightly complicated but, as the Auditor General said, the board is set the revenue resource limit as a target each year. The idea with brokerage is that the board would essentially get a loan from the Government to pay off the debt. It would then gradually pay back the loan in a series of staged payments over future years.

Nicol Stephen: That has not yet been sorted or fixed.

Nick Hex: No.

Nicol Stephen: Therefore, is the current requirement on the health board to make cuts to health board expenditure of £3.097 million—it was £3.364 million last year—so that, technically, it is in balance in year?

Nick Hex: As we have seen this year, the in-year surplus does not necessarily fully address the revenue resource limit overspend, in that there is a cumulative deficit. The target for the board is still to meet the revenue resource limit.

Nicol Stephen: So, unless the health directorates change the targets, the current policy requirement on the health board is to be within its

revenue resource limit and at break-even by the end of March 2009, which would require an in-year cut in expenditure of £3.097 million.

Nick Hex: For the board to meet its revenue resource limit, it would imply that it would have to write off that amount.

The Convener: The question that Nicol Stephen is driving at is this: over what period does the £3 million deficit need to be reduced? Is it by the end of the next financial year, or can the deficit run indefinitely with the board making a contribution each year?

Mr Black: That is a matter for the health directorates and the health board to reach an understanding on. The revenue resource limit is calculated against the objective assessment of what it should cost the health board to run the services from one year to another, and all health boards have to observe that resource limit. If a board breached it in any significant way or if more than one board breached it, it would be a problem for the management of the aggregate finances for the NHS as a whole. That is why it is important that boards come within the revenue resource limit in each year.

In theory, the health directorates could require a health board to come back into balance in a single year but, if the excess had built up over a number of years, it would not be realistic or reasonable to expect a health board to come back into balance in one year without threatening the on-going services that it provided. The judgment on how long it should take for the health board to get back into balance would be taken by the health directorates with the health board.

Nicol Stephen: As I understand it, the default position is that health boards should be within their revenue resource limit each year.

Mr Black: That is an absolute and fundamental requirement in all health boards. It is because that has been breached year on year that I have prepared a series of reports to Parliament.

Nicol Stephen: And you have had to draw attention to that in the audit.

Mr Black: Indeed.

Nicol Stephen: I would have thought that the alternative to the default position would be an agreement or understanding between the health directorates and the individual health board to vary the position. However, we are not currently aware of any such agreement with NHS Western Isles. The normal assumption in those circumstances is that the default position applies, but there is no clarity on that.

We are in a vacuum. We are unaware of any agreement between NHS Western Isles and the health directorates to sort out the problem in three, five or 10 years or any other time. There is no clarity or agreement as far as we can see. Is that a fair summary?

Mr Black: Our understanding is that a financial recovery plan has been agreed between the health board and the health directorates, but we cannot advise the committee about the treatment of the accumulated deficit in it. The committee would have to put that question to the health directorates.

I offer one other thought as context. As a great economist once said, there is no such thing as a free lunch. Having a deficit is a serious problem; if a board persistently runs a deficit, the only way of plugging the gap is to take resources from elsewhere in the health service. That is one of the reasons why it is absolutely right for each and every health board to be rigorous and disciplined in observing the revenue resource limit. If that does not happen, the whole NHS budget risks running out of control and out of balance.

10:30

Murdo Fraser: I do not particularly want to labour this point, but I am a little bit surprised that you do not have access to that information.

Mr Black: We would have access to that information. However, we are not able to comment on the real-time financial position of the health board. The committee well knows that, in previous years, there was a lack of confidence and reliability in some of the financial numbers that were reported, so I am not really in a position to give you a robust answer to the question of what the future of the health board will look like.

Andrew Welsh: The watchword must be caution. I am tempted to say that we are far from being out of the woods.

Attitude, organisation and personnel must be the keys to future progress. That has always been straightforward. We should give NHS Western Isles credit for its progress in strengthening the organisation of its finances and wish it well in its task.

The question, though, is whether the recovery is short term or long term and whether it is robust enough to stand up to whatever the future will bring. How close is the present situation to being sustainable? I am worried about the fragility of the recovery and concerned that the acting chief executive, who deserves every credit for his work, has now gone. It is crucial that that work is maintained and, indeed, increased.

It is now a matter of monitoring the situation and, if required, providing assistance. NHS Western Isles has made great steps forward, but I urge

caution. After all, we must ensure that these improvements are robust.

Mr Black: I very much agree with Mr Welsh's comments. It is perhaps time to step back a little and monitor developments in the usual way through the audit process.

Willie Coffey: Although I am happy to congratulate the health board, I wonder whether the movement from last year's in-year deficit to this year's in-year surplus has had any impact on clinical standards, service delivery or the level of health care. Surely that must be the most important issue for the Western Isles.

Mr Black: Although the issue of clinical standards is clearly important, it is not up to the audit process to monitor it. In the report that it produced in the spring on clinical governance and risk management, NHS Quality Improvement Scotland, which is the body that oversees boards' management of clinical standards, recognised that recent problems had made it difficult for the board to move forward with its clinical governance and risk management agenda. However, NHS QIS is monitoring the situation.

The Convener: As there are no other questions, I thank the Auditor General for his briefing.

We now move into private for item 4.

10:33

Meeting continued in private until 11:17.

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