

FINANCE COMMITTEE

Tuesday 20 January 2009

Session 3

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FINANCE COMMITTEE

2nd Meeting 2009, Session 3

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

*Jackie Baillie (Dumbarton) (Lab)

COMMITTEE MEMBERS

*Derek Brownlee (South of Scotland) (Con)

*Joe FitzPatrick (Dundee West) (SNP)

*James Kelly (Glasgow Rutherglen) (Lab)

*Alex Neil (Central Scotland) (SNP)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)

Murdo Fraser (Mid Scotland and Fife) (Con)

Lewis Macdonald (Aberdeen Central) (Lab)

Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Lewis McNaughton

ASSISTANT CLERK

Allan Campbell

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 20 January 2009

[THE CONVENER *opened the meeting at 14:01*]

Budget (Scotland) (No 2) Bill: Stage 2

The Convener (Andrew Welsh): Good afternoon and welcome to the Finance Committee's second meeting in 2009, in the third session of the Scottish Parliament. I ask all members and members of the public to turn off their mobile phones and pagers.

The first agenda item is stage 2 consideration of the Budget (Scotland) (No 2) Bill. As well as having a copy of the bill, members also have a note from the clerk. I draw attention to two procedural points: first, only a member of the Scottish Government can lodge amendments to the bill; and, secondly, as paragraph 5 of the clerk's note makes clear, it is not possible to leave out a section or schedule by disagreeing to it, because an amendment to do so would first have to be lodged.

I thought that it might be useful if, before starting our formal proceedings, I allowed the Cabinet Secretary for Finance and Sustainable Growth to make some explanatory remarks about the bill and gave members an opportunity to ask questions.

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): Thank you, convener. It is a pleasure to come before the committee once again for stage 2 consideration of the budget bill.

As I did in the parliamentary debate just before Christmas, I put on record my thanks to the committee for its published assessment of the Government's budget bill. I issued the Government's formal response to the committee's findings to the convener on 7 January. To assist members, I will explain certain details in the bill.

I point out certain differences between the draft budget and the bill, with reference to tables 1.2 and 1.3 in the bill's supporting document. Column A of table 1.2 sets out by portfolio the 2009-10 budget as shown in the draft budget document, which was published last September. Column F sets out the draft budget, as it needs to be restated for the budget bill, and columns B to E provide details of the adjustments that are necessary to meet the statutory requirements of the parliamentary process.

I will outline the major adjustments. First, there is the exclusion of £83.5 million of non-departmental public body non-cash costs, which do not require parliamentary approval and relate mainly to capital charges and to bodies such as the national institutions, Scottish Enterprise and Scottish Natural Heritage.

Secondly, we have taken into account income of just over £1.7 billion from national insurance contributions, which is being used to fund approximately 14 per cent of health and wellbeing portfolio expenditure.

The third major adjustment is the exclusion of local authority supported borrowing and judicial salaries, which amount to a little over £330 million and again do not require parliamentary approval.

Fourthly, portfolio budgets have been adjusted to reflect the requirement for separate parliamentary approval for a number of directly funded and external bodies, including the National Archives of Scotland, the Forestry Commission and the Food Standards Agency.

The final adjustment is the restatement of specific grants that are included in the overall 2009-10 local authority settlement and which remain under the control of the cabinet secretary with responsibility for those policies. For example, the Cabinet Secretary for Justice remains responsible for the police grant. Full details of all grants treated in that way are set out in the summary table on page 75 of the supporting document.

Those adjustments are essentially technical and do not change in any way the budget that has been scrutinised by this committee and others and approved in principle by Parliament. They are simply an explanation of the reconciliation that has taken place and form part of the process of parliamentary approval.

Table 1.3 sets out changes to the original draft budget that are now included in the 2009-10 budget bill. The changes fall into three main categories. First, there are updated estimates of annually managed expenditure, which have been provided to Her Majesty's Treasury as part of the normal process of monitoring such items. The largest increase is in teachers' and national health service pensions, reflecting the most recent actuarial valuation.

The second change is in additional net spending, mainly to reflect commitments in relation to police, fire and teachers' pensions. That has been funded largely from non-domestic rates income based on local authorities' most recent forecasts.

Thirdly, there are changes as a result of accelerated capital expenditure of approximately

£230 million, on which I have already made a number of detailed announcements. Those changes, of course, follow as a result of the Chancellor of the Exchequer's announcement in the pre-budget report of his willingness to accelerate capital expenditure for 2010-11 into 2008-09 and 2009-10 and are detailed in column I in table 1.3.

As I made clear last week to Parliament, I remain committed to an open and constructive approach to the 2009-10 budget process and continue to seek consensus and agreement on a budget that will meet the needs of Scotland's people during these difficult economic times. Although I appreciate that this part of the process is largely technical and procedural, I welcome any comments and suggestions that will help to build such a consensus as we move towards next week's stage 3 budget debate.

I hope that my explanation has been helpful. I am very happy to answer questions.

The Convener: I thank the cabinet secretary for his explanatory remarks. If members have no questions, we will move to the formal proceedings.

There are no amendments to deal with but, under standing orders, we are obliged to consider and agree to formally each section of and schedule to the bill and its long title. We shall take the sections in order, with each schedule being taken immediately after the section that introduces it. We will take the long title last.

Fortunately, standing orders allow us to put a single question when groups of sections or schedules fall to be considered consecutively. Unless members disagree, that is what I propose to do. Are we agreed?

Members indicated agreement.

Section 1 agreed to.

Schedules 1 and 2 agreed to.

Section 2 agreed to.

Schedules 3 and 4 agreed to.

Sections 3 to 5 agreed to.

Schedule 5 agreed to,

Sections 6 to 10 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The Parliament has already agreed that stage 3 proceedings will take place on Wednesday, 28 January, and members might wish to note that the deadline for Scottish ministers to lodge stage 3 amendments is 4.30 pm on Thursday, 22 January.

I thank the cabinet secretary and his officials for appearing this afternoon. We will have a short suspension.

14:09

Meeting suspended.

14:10

On resuming—

Public Sector Pay

The Convener: The committee has agreed to undertake some evidence sessions on public sector pay. On 9 December, we took evidence from the Scottish Government's pay policy unit and from unions that organise in both central and local government. Last week, we took evidence from the Convention of Scottish Local Authorities. This week, we will hear from the Cabinet Secretary for Finance and Sustainable Growth, who has a role in both setting public sector pay policy and overseeing decisions on how that policy is applied in various negotiations. Accompanying the cabinet secretary are Alistair Brown, who is deputy director of finance, and Nicola Paterson, who is head of finance pay policy. They are very welcome. I ask the cabinet secretary to make a short opening statement.

John Swinney: I thank the committee for the invitation to give evidence to it on public sector pay and pay policy. As the convener noted, I am accompanied by the officials who are most closely involved in the management of public sector pay policy: Alistair Brown, who is deputy director of finance, and Nicola Paterson, who has responsibility for public sector pay policy.

The committee took evidence from officials on 9 December. I understand that follow-up correspondence has been provided to committee members to explain some further details.

The Scottish Government's pay policy is formulated on an annual basis. We will review the existing policy ahead of making decisions for 2009-10. As was the case last year, we will consider the views and contributions of the relevant trade unions and public bodies in formulating that policy. The committee might wish to note that, for the 2008-09 policy, of the 39 remits that were scheduled to be approved, 60 per cent have been approved, of which 74 per cent have been settled.

We are committed in our policy to ensuring that public sector pay increases in Scotland remain affordable, sustainable and fair. Given the tight financial settlement for Scotland and the current economic climate, it continues to be necessary to maintain a tight control on public sector pay and pay increases.

As the committee will be aware, the Scottish Government's pay policy for 2008-09 was deliberately constructed to try to maximise the flexibility that was available to ensure that pay policy both met the needs and aspirations of

Scotland's public sector in Scotland and protected Scotland's public finances into the bargain. Our policy allowed for the use of pay bill savings to part-fund proposals to target increases in pay where those will make a difference: dealing with those in low pay; addressing inequalities in pay and reward systems; and ensuring that public sector employees are recruited, retained and motivated. Those elements have been implicit in the policy that the Government has taken forward.

In the evidence session with my officials on 9 December, the committee considered at some length the remuneration of public body chief executives. Their remuneration is subject to Scottish Government policy, which is published annually. Spot rates of pay or pay ranges are determined within a framework that is set out in the policy. Annual uprates thereafter must be in line with the parameters that are set in the policy. The 2008-09 policy allows uprates of up to a 2 per cent basic award plus, for chief executives on pay ranges, performance-related progression up to a maximum total award of 3.75 per cent. That is in line with increases for other staff as set out in the Scottish Government's policy on pay remits. The 2 per cent basic award also applies to the daily fees that are paid to the chairs and members of public bodies. As the committee commented, the opportunity exists to pay non-consolidated bonuses for exceptional performance only. Any bonuses will be applied by the relevant public bodies and assessed by the Scottish Government's remuneration group.

The Government takes seriously the maintenance of firm controls on public sector pay. Given the current economic climate and the financial arrangements under which we operate, that is the correct judgment for the Government to adopt.

I am happy to answer the committee's questions.

14:15

The Convener: I thank the cabinet secretary for the Government's response to and clarification of the points that members raised. I invite questions from members.

Derek Brownlee (South of Scotland) (Con): Some of the public's concerns about public sector pay are about pay not just in its narrow sense, but in the broadest sense of remuneration. A constituent raised with me an issue that related to termination of employment. The case involves a historical example, but I will not name the organisation or the individual involved. The example illustrates a general conflict between what the public are told and the reality.

I will quote from the "Scottish Public Finance Manual" three relevant extracts that were in place when the case was on-going. First, the manual makes the reasonable point that

"public funds must not be used wastefully or to underwrite inequitable or over-generous conditions of service".

It says that

"special payments should be transparent and negotiated avoiding conflicts of interest"

and, crucially, that

"any undertakings about confidentiality should leave transactions open to proper public scrutiny."

All those principles are admirable. However, my constituent's experience of a case that came to his attention through the media suggests that those admirable principles are almost impossible to uphold in practice.

On hearing about the termination of an individual's employment, my constituent wrote to the Scottish Government. The Government's response was:

"The details of the agreement between"

the organisation and the individual

"are confidential, as is normal practice in such cases. However, you can be assured that"

the organisation's

"payment to"

the individual

"was considered very carefully by the Board ... through their normal governance processes, and was in line with legal and contractual obligations."

That was perfectly reasonable. However, my constituent was not satisfied that their question had been answered appropriately, so they wrote back.

A subsequent response from the Scottish Government said:

"You can be assured that the actions taken by the employer in this matter, as well as their specific detail, will be scrutinised by internal and external auditors as part of the accountability arrangements that assure sound corporate governance and financial probity."

I dispute none of that but, as my constituent is a tenacious fellow, he wrote back to remind the Government of the Freedom of Information (Scotland) Act 2002. The response was that the organisation and the individual

"agreed a confidentiality agreement, this legally binding document contracts both parties not to undertake legal action in pursuit of further claims concerning the ending of the employment contract ... it is understood from"

the organisation

"that the confidentiality agreement included an ex-gratia payment ... which"

the organisation's

"legal advice considered was reasonable ... specific details of the terms of resignation and 'confidentiality agreement' is covered by s.38 of the Freedom of Information Act (Scotland) 2002",

which means that those details are exempt.

Under employment law and employment practice, all that is perfectly reasonable. However, the equally reasonable part of the "Scottish Public Finance Manual" that says

"undertakings about confidentiality should leave transactions open to proper public scrutiny"

ends up being ineffective in such cases. If the 2002 act does not allow a challenge—which is perfectly reasonable—and if organisations are free to sign confidentiality agreements, which are used for valid reasons not only in the public sector but in the private sector, a conflict exists between the reassurance to the public that appropriate decisions have been made and are open to scrutiny and the reality when people challenge decisions. I have no doubt that if I had written to the Government, I would have received the same response as did my constituent. Perhaps those two aspects cannot be reconciled, but can the Government do anything to ensure that when people are concerned about such situations, there is more transparency about termination of employment and payments that people might perceive to be unfair and unwarranted?

John Swinney: You made a number of reasonable points. You inferred that there is some conflict between the situation that you described and, in particular, the third extract from the "Scottish Public Finance Manual" that you quoted, which is not a particularly unfair charge to make. You highlighted the difficult balance that must be struck between the preservation of an individual's rights under employment law—I am not an employment lawyer but I know that myriad human rights issues are associated with employment law—and the proper scrutiny of public finances.

I accept that all citizens have a legitimate interest in being able satisfactorily to scrutinise information on public finances. However, to satisfy that legitimate interest ministers would have to make available every detail about individuals' salaries, contracts, termination arrangements and so on. A vast raft of personal data would have to be disclosed. Ministers would have real difficulty trying to satisfy demands from a member of the public for that degree of information and I think would be exposed to legal challenges in relation to the compromising of the human rights of the employee concerned.

The answer, to which you did not give due weight, is the function of audit. If public money has been spent on terminating an individual's

employment, as in the example that you cited, absolutely every detail can be scrutinised by internal and external auditors. In my experience, if anything is of concern to the auditors not only will we hear about it but the issue will go into the public domain, because it will be in a report that qualifies the accounts—I think that you were referring to an external body, in which case the accounts would be qualified by its auditors or by Audit Scotland—and there will be a consequent effect on the Government's accounts. No finance minister wants their accounts to be qualified. That is not a desirable situation to be in.

Although I accept many of the steps that you set out on behalf of your constituent, the logical conclusion is that the Government would end up in formidable trouble if such information were shared with a wider audience. However, the public interest is protected by the function of audit, which allows us adequately to scrutinise whether payments are justified in public expenditure terms, as was asserted to you and your constituent.

Derek Brownlee: If a confidentiality agreement has been entered into and, although there is no pre-existing contractual requirement for a payment to be made, an ex gratia payment is made, an auditor will not question that—the sum involved is immaterial—if the payment has been agreed following due process. That is not to say that the public do not have a justifiable interest in whether ex gratia payments have been made.

John Swinney: First, I fundamentally dispute your assertion that an auditor would not question an ex gratia payment. An auditor is perfectly entitled to consider all elements of the workings and decisions of a public body—and the supporting documentation that goes with all that. Whether or not there is a confidentiality agreement, everything must be made available to auditors. I do not accept that material is somehow off limits to auditors—it most definitely is not off limits.

Secondly, in essence, the issue can be properly addressed only if it has been aired in the public domain, which is where we get into difficulties to do with the protection of individual employees' legitimate rights under employment law. I hope that what I have said about the audit process might give the committee, and Mr Brownlee and his constituent, comfort that the issues are examined properly.

Derek Brownlee: I do not want to take the meeting completely off the subject—

The Convener: I remind Mr Brownlee that the discussion should be kept general.

Derek Brownlee: Absolutely.

I can propose a solution. The problem is partly to do with the use of confidentiality agreements. Organisations in the public and private sectors use such agreements—that will not change. However, there does not seem to be a great deal of published or publicly available guidance on the use of those agreements. Is not part of the way in which to reassure the public to give greater guidance on when such agreements are appropriate and on an appropriate scale for ex gratia payments? At least then we would have in the public domain a frame of reference that did not relate to one specific example. At present, there is a laudable aspiration about public scrutiny but, in reality, as you have explained—I perfectly understand why it is difficult to drill down into individual circumstances—there is a gap between what members of the public might wish to find out and the ability to satisfy them.

John Swinney: There is a distinction in your question between the scale of such payments and issues of policy around when it is appropriate to apply a confidentiality agreement. The auditors are perfectly placed to judge whether the scale of an ex gratia payment is appropriate. Such payments are a material consideration in the financial health of an organisation. I will certainly examine whether there is a need for more guidance on the scale of payments, but my feeling is that an auditor can easily test that.

I will also examine whether more guidance on policy needs to be issued. That brings me back to individuals' employment rights. As we are all aware, in the work environment, sometimes working arrangements do not work out and people need to move on. Nobody wants to create a situation in which somebody has to carry a difficult employment situation with them for the rest of their life because something simply did not work out. I believe that there are enough safeguards, but I undertake to look again at the question that Mr Brownlee raises. I will reply to the committee on that.

James Kelly (Glasgow Rutherglen) (Lab): I will ask about public sector pay in comparison with private sector pay. You said in your introductory remarks that you will take on board the trade unions' views in the formation of the 2009-10 pay policy. The trade unions expressed to us their concern that employees in the public sector are underpaid in comparison with those in the private sector. What is your view on that? What can you do to address the trade unions' concerns and what action points will you include in the 2009-10 pay policy?

John Swinney: The comparison of public sector pay with private sector pay is a material consideration in the way in which we formulate

public sector pay policy. If private sector pay is more attractive than public sector pay, the recruitment challenge for the public sector will become ever more acute. On what we can do to tackle that, the Government went to considerable lengths in the pay policy for 2008-09 to try to put in place enough flexibility to improve the position, particularly for lower-paid employees. In the pay settlement that the Government put in place for our employees in the Scottish Government, one key element of the use of that flexibility in the pay policy was to try to improve some of the lowest pay ranges. That element of the pay policy was especially appropriate and necessary.

We will continue to do as much as we can to keep public sector pay as competitive as possible. However, we will come up against the issue of affordability. There are issues that I will have to reconcile within the financial framework in order to determine the scale of the resources that we can put in place while ensuring that pay policy remains affordable. I assure members that we will do as much as we can to maintain competitiveness and to tackle the position of lower-paid employees into the bargain.

As I said in my opening statement, I will discuss the process with the relevant trade unions, and I look forward to their input.

14:30

David Whitton (Strathkelvin and Bearsden) (Lab): Also in your opening remarks, you mentioned that the Government takes seriously the firm control of public sector pay, and you have just spoken about low pay. Are the two positions compatible? If you are keeping firm control of public sector pay, does that hamper you in tackling low pay?

John Swinney: It obviously restricts how much I can do. The Government has to operate within a sustainable financial envelope using the resources available to it. That will clearly dictate the extent to which we can take action. However, and returning to the point that I made to Mr Kelly, in the central Government pay round for 2008-09, we put particular emphasis on improving the position of many of our low-paid employees. That has been helpful to many people, as has our implementation of the pay increase much earlier in the financial year than was the case in the past.

David Whitton: We heard from the unions about pay parity between people in the civil service and people in local government, and about the difficulties that arise. What are your views on that?

John Swinney: There is clear and objective information to show that some local government employees will be paid less than some of their

counterparts in other parts of the public sector. I accept that point.

Decisions on local government salaries are for local authorities to make, and I know that the issue is of particular concern to them. In my discussions with the president of COSLA, he has made clear to me his desire to act to improve the position of lower-paid local government employees. That is a welcome aspiration.

David Whitton: In a previous evidence session, your colleague Mr Neil referred to "film-star" salaries being paid to certain individuals in the public sector. Have you any comment to make on that? Does it fit in with your desire to do something about low pay?

John Swinney: As Mr Whitton knows from many years of observation, I could never use as colourful a phrase as Mr Neil could use, on any subject.

I have studied the committee's exchanges in relation to senior salaries, and I see two elements that we have to consider. The first is salary levels, and the second is bonus arrangements. I want to separate the two issues.

It is in the nature of pay policy that people who carry significant responsibilities will be paid more than people who carry less responsibility. I think that we would all accept that differentiation; but the question that arises is whether the differences are appropriate. Are they reasonable? Are they tangible? Are they within parameters with which we are all broadly comfortable?

When I look at the different public bodies that are affected, it strikes me that the salaries that are being paid are commensurate with the responsibilities that those individuals are carrying. However, that issue must be kept under constant review to ensure that those levels of salary are appropriate and commensurate with the responsibilities. Those salaries are not arrived at by accident; they are arrived at via research into the composition of particular responsibilities and what individuals are expected to deliver.

The question of bonuses is slightly different. My firm view is that a bonus should be for exceptional performance only. A bonus is not something that you get because you turn up on a Monday, go home on Friday and do your bit while you are there—not that any members of Parliament have such a burden-free existence. We are therefore looking for major contributions to the achievement of public sector policy to justify bonuses in addition to those already high salaries. Careful judgment must be exercised about whether a bonus is justified in every circumstance.

David Whitton: I would be keen to know whether the cabinet secretary believes that a

bonus should be paid at all. If what you say about all the machinations around pay comparators and so on is correct, we pay these individuals reasonable salaries. Why do we have a situation in which one chief executive is earning more than a quarter of a million pounds, plus a 38 per cent bonus? What exceptional performance is he showing in order to justify such a bonus? Should people who are on six-figure salaries be getting a bonus anyway?

John Swinney: First, I reiterate that a bonus should be paid only for exceptional performance that can be clearly demonstrated; it should not be paid as a matter of course. The logic that someone should get a bonus in 2009-10 simply because they got one in 2008-09 does not follow.

Secondly, there is the issue of the recruitment of individuals to provide leadership to organisations. In that respect, we are in competition with other bodies that seek to employ those people. The question of bonus payment is pretty rudimentary in many private sector organisations. I dare say that, in the current financial climate, the forthcoming period will bring about a very different bonus culture in many of those organisations, particularly in the financial services sector, in which bonuses have been at an extraordinary level when compared to anything that is experienced in the public sector. That is more than appropriate, and might change the dynamics of the competition that we are engaged in. However, the issue is certainly one that I intend to keep under review. The bonus is there not because that is the Government's preference, but because it is felt to be a necessity in terms of the recruitment of individuals to some of those roles. The deploying of that level of bonus must be carefully considered in that context.

Jackie Baillie (Dumbarton) (Lab): Your officials indicated that there is a willingness to consider making the pay settlements system quicker and more efficient. My understanding is that pay guidance for the public sector is usually issued in June or July, but that the settlement date is in April, which means that there is a built-in delay. Is there any way in which that guidance might be brought forward so that negotiations would be based on current pay policy rather than the previous year's pay policy?

John Swinney: When this Government came to office in May 2007, no pay policy was in place. I do not say that to criticise the previous Administration—it was not in a position to finalise such a policy and, rightly and understandably, it left the issue until after the election. One factor was the need to await guidance from Her Majesty's Treasury on pay policy at United Kingdom level. I suspect that the previous Administration did not have that before Parliament

was dissolved in March 2007, so the deployment of a pay policy would have been impossible.

When we came into office, we had a public sector pay policy for 2007-08 available by June 2007—I will provide the committee with the exact date. In April 2008, having received the Treasury's pay policy document from the United Kingdom Government, we published the pay policy for public sector staff for 2008-09. The pay policy for senior appointments—chief executives, chairs and members of non-departmental public bodies and so on—was issued in October 2008, largely because we were awaiting the report of the senior salaries review body, which was published during Parliament's summer recess.

To answer Jackie Baillie's question, my aspiration is to have pay policy available as early as possible during the financial year, so that remits can be settled as quickly as possible. I accept totally that folk get fed up if things drag on for months and they do not get their 2008-09 salary increase until February 2009.

Jackie Baillie: It is helpful to know that.

John Swinney: There is a real endeavour in the team that Nicola Paterson leads, which is not very big, to process issues speedily and to have them resolved as quickly as possible in front of the remuneration group.

Jackie Baillie: Again, that is helpful to know.

You spoke about engaging in discussions with the trade unions; we have heard some of those discussions reflected back to us. However, in the case of NDPBs there is no opportunity for the trade unions to negotiate directly with the Government. I understand why you say that that is a matter for the management of NDPBs, but when the public sector pay unit undertakes line-by-line scrutiny of pay remits, are you not in danger of presenting a *fait accompli* to NDPBs? Do you understand the frustration that trade unions feel because the paymaster is in a different room and they are unable to talk to them? Would you change any of that?

John Swinney: I would hate members to think that there was such distance between the Government and public bodies in this respect. We talk to a range of trade unions about public sector pay issues; I welcome the discussion of those issues that will take place in relation to the formulation of the pay policy for 2008-09. As the committee knows, the First Minister meets a number of the trade unions under the auspices of the Scottish Trades Union Congress; pay issues are raised in that forum into the bargain. There is no lack of awareness on the part of ministers of the trade union perspective on issues of public sector pay.

We are also in touch with NDPBs on a regular basis about managing the public sector pay issues with which they deal. We are trying to ensure that those organisations operate within the framework of pay policy that is set by the Government, so there is close dialogue with them about the demands and issues with which they deal. The contacts that I have described ensure that ministers are well equipped with the information that they require about the state of pay discussions in the relevant workforces and are able to reflect on that information.

Jackie Baillie: With all due respect, the general talk that takes place in formulating the pay policy is to be welcomed, but what is there to stop you speaking to the trade union representatives in NDPBs, given that you speak to their management? You would then truly have a 360° picture of what is going on.

14:45

John Swinney: I will explore that point, but I am satisfied that I am getting a broad enough trade union perspective. Many of the trade unionists who are speaking to me about wider public sector pay policy issues will be same trade unionists who are involved in some of the NDPB issues. From time to time, when there have been particular concerns in particular areas, I have seen individual trade union groupings that represent those areas, and I am happy to have those discussions.

Jackie Baillie: Okay, so the cabinet secretary is willing to have pay negotiations with individual trade unions of NDPBs.

John Swinney: No, I did not say that at all. I said that I was happy to see them. To give an example, just before Christmas, I saw the relevant trade unions in Scottish Water, at their request. I felt that it was a reasonable request. I made it clear to them that I was not negotiating and that it was for the management of Scottish Water to negotiate with them. That will always be the case, but out of courtesy and respect for the trade unions involved, I saw them and listened to their concerns. I would think that the committee would welcome that.

Jackie Baillie: Cabinet secretary, you rightly point out that the public sector pay unit is a small one. I asked previously whether there were any human resources professionals in the unit, given its direct relationship with pay settlements, and I was told that there are none. I will illustrate why I think the matter is important, using the care commission as an example. The job evaluation scheme that is used in the care commission is called job evaluation and grading support, or JEGS. It is also used in the Cabinet Office. It provides for pay benchmarking for a ladder of jobs

within an organisation, not across different organisations. An HR professional would have known that. The wrong job evaluation scheme is being deployed for the care commission with a set of 10 comparators. I wonder whether you would consider supporting the development of the unit by introducing HR professionals.

John Swinney: Jackie Baillie will be aware that the civil service does not operate on the basis that a person gets a job in a particular area only because they have spent a lifetime working in that area or they have the relevant professional qualifications in that area. Part of the articulated strength of the civil service is that people move into different areas.

We must, however, be assured that those of our staff who are taking forward the issues have access to relevant professional advice and support, and I assure the committee that there are plenty of HR professionals in the Scottish Government, with HR qualifications, who work in relation to the management of our staff. If there is any requirement for additional professional HR experience, that can be readily accessed by the finance directorate's pay policy team.

Jackie Baillie: Can I take it that the JEGS scheme, which is currently used as a comparator, will be reviewed when professional advice has been taken?

John Swinney: I will look at the JEGS issue in relation to the care commission and advise the committee of my view on that, but I assure the committee that we take the appropriate advice to support our officials in different areas. That applies not just in the pay policy team, but throughout the organisation. Individuals who operate with a high level of generalist skills have access to professional advice as required, and that is as it should be.

Jackie Baillie: My final question is about consistency of approach in public sector pay policy. In the NHS, there was a major job evaluation and restructuring under the agenda for change. Additional funding was found to enable that to happen, but there is no similar process for NDPBs. Funding for any job evaluation or regrading has to be found from within the existing envelope. How do you apply consistency across the board?

John Swinney: The agenda for change was largely undertaken during a period of substantial expansion of the budgets that were available to support the process. For the best part of the last eight years, the health budget grew exponentially in relation to the level from which it started, which provided some of the resources to allow the change to happen. During that time, as members

know, the Scottish Government budget grew at a much more significant rate than it is at present.

It is easier to manage the process of regrading when a great deal more new resource is available. When less new resource is available, the challenges become ever more acute, and the Scottish budget is increasing at a much slower rate than it has for the last eight years. That is why the pay policy is so flexible. We have enabled different organisations within the public sector pay policy to utilise efficiencies within the pay bill to support the process of establishing public sector pay. That is the most helpful way in which the Government can proceed.

Alex Neil (Central Scotland) (SNP): We appreciate the fact that you have inherited a lot of this, particularly some of the individual contracts. Most of us agree with the point about basic salaries. The basic salaries of senior appointees, which are my main concern in these questions, compare reasonably well with those for similar positions in the private sector. Any public concern about the remuneration of senior people in the public sector, particularly in relation to the quangos, tends to be around the issue of bonuses and, more recently, redundancy payments.

I have three points to make. First, I totally agree with you that bonuses should be paid out on the basis of exceptional performance. Maybe there is a need for the Scottish Government to give clearer guidelines to the quango boards, in particular, about what exceptional performance means. If we compare some quango boards in terms of performance and the bonuses that are paid, there does not appear to be a correlation between the level of performance and the level of bonuses.

Secondly, although the guideline for the maximum bonuses is 10 per cent, David Whitton mentioned a bonus of 38 per cent that was paid last year and there was another 15 per cent. How strict is the limit of 10 per cent? Should there be a capping of bonuses at 10 per cent, rather than just a guideline limit?

My third point concerns the impact of some of those bonuses on the rest of the organisation. As I understand it, in most of the quangos in which the chief executive is paid a bonus, it is only the chief executive who qualifies for a bonus. However, the improved performance of some of the quangos in recent years is by no means entirely due to—although one would expect it to be partly due to—the performance of the chief executives. Therefore, if we are going to have bonuses, should they be restricted to the chief executives? Exceptional performance would be required from other people, as well as the chief executives.

John Swinney: On your first point, I do not want to anticipate the conclusions of the Finance

Committee's inquiry in that area. Nevertheless, I understand, from the *Official Reports* that I have read, that there is a great deal of concern in the committee on that question. I will certainly be happy to consider any recommendations that the committee makes on the issue when those are formulated in due course. I recognise the concern, and if there is a need for us to be more specific in the guidelines that regulate the decisions that are made about bonus payments, I will consider that if it is the view of the committee. However, the questions are already tested by the Scottish Government's remuneration group, which examines the decisions that are made by the boards of non-departmental public bodies.

On your second question, regarding the number of bonuses, I can inform you that only three out of the 35 chief executives that are covered by the policy are eligible for a bonus in excess of 10 per cent. That is, fewer than 9 per cent of chief executives are eligible for a bonus of more than 10 per cent; the remainder come below that threshold. I should point out that the total amount of non-consolidated bonuses for exceptional performance that was paid out to chief executives in 2007-08 was about £190,000, out of a total pay-bill of about £3.75 million. I appreciate that they are large sums of money, but those figures put them in context.

Mr Neil's final point was about whether a bonus should be just for the chief executive. That brings me into the sphere of what we define by "exceptional performance". I do not agree that it is possible to apply a bonus position to every employee. Sorry—I will rephrase that. If we were to apply such a bonus position to every employee, that would mean significant inflation in the pay-bill, which we could not afford. For that reason, that is not a practical proposition.

I agree, however, with the analysis that Mr Neil has set out: if an organisation performs well, it will not be entirely down to the performance of the chief executive. That said, if an organisation performs extraordinarily well, it is likely that the exceptional performance of its leadership has helped to bring about that position. In such circumstances a board may well legitimately consider a bonus, although it must be established that the organisation has performed well truly because of exceptional leadership, as opposed to everyone simply having put their shoulders to the wheel and done well for the organisation, with the chief executive being well remunerated for the efforts of others. That is the distinction that I would make.

Alex Neil: Some witnesses have highlighted the number of negotiating structures in the public sector in Scotland. We must, of course, make a distinction between local government structures

and the structures relating to central Government, but the case has been made by the trade unions in particular—although not exclusively—for the need to streamline the number of structures. That has the upside of achieving more consistency, and perhaps greater fairness, because more comparisons can be made in internal negotiations. The downside is that there might be more difficulty in reaching agreement. Generally—without being specific—are you empathetic to the idea that the negotiating structures could be further streamlined?

John Swinney: I accept that fewer separate bargaining units would make it a lot easier. The Government is slimming down the number of public bodies and, hopefully, that will reduce the number of bargaining units, although members will be familiar with the fact that, when a couple of organisations are brought together, the blending of the different pay structures is not always a happy experience. We will try to create a smaller number of separate bargaining units; I am sympathetic to that point.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Good afternoon, cabinet secretary. Is it the Government's policy that bonuses should not be paid if the chief executive simply meets an agreed key outcome for the public body in question?

John Swinney: That would depend on what the key outcome was. One key outcome could be to ensure that the organisation is financially sound and that its accounts are not qualified. I would consider that to be a key outcome, but also to be pretty much part of the job. Alternatively, a key outcome could be to transform the customer service proposition of the organisation so that individuals receive their services within 24 hours rather than seven days. Such an outcome would be of a different order altogether. The answer depends on what we define as a key outcome. Throughout my evidence, I have maintained that bonuses should be paid only for exceptional performance. The issue hangs on that question of judgment.

15:00

Jeremy Purvis: I am grateful for that, because I wanted clarification of the difference between the 3.75 per cent bonus—which, in your opening remarks, you said would be the total award bonus—and bonuses for exceptional performance only, for which it seems no limit has been set. Exceptional performance bonuses seem to be considered case by case. Having looked into the pay policy that was published in October, I cannot find a reference to the 3.75 per cent award. The pay policy gives 10 per cent as the maximum pay award and says that an award above 10 per cent

would be an exceptional performance only bonus, which must be considered on a case-by-case basis. Where does the 3.75 per cent come from?

John Swinney: Page 17 of "Public Sector Pay Policy: Policy for Senior Appointments 2008-09", which was published by the Government in October 2008, states:

"A public body may propose an increase in total of up to 3.75% ... this includes:

- an increase in the minimum and maximum of a Chief Executive's pay range of up to 2.00% (the basic award). This increase is limited to the ceiling of the relevant Pay Band ... and

- a progression increase of one step, up to the maximum of the pay range."

Essentially, the total core pay bill element can go up to 3.75 per cent.

I point out that, once we take into account the factors in the staff pay policy that are similar to those in the paragraph that I have just read out, the increase in the pay envelope—my colleagues will correct me if I get this wrong—can go up to 4.5 per cent if we do a comparative like-for-like analysis. Essentially, the paragraph that I read out gives the total pot for the increase in the core salary element for chief executives, which can go up to 3.75 per cent. The comparative total pot for staff salaries can go up to 4.5 per cent to take into account progression, recruitment issues and so on. However, I point out that bonus arrangements are in excess of the figures in the paragraph that I have just read out.

Jeremy Purvis: I am grateful for that. I must have misheard—I will look at the *Official Report*—but when I was taking notes I thought that you said that the 3.75 per cent was related to the bonus. However, that is not the case.

John Swinney: The 3.75 per cent excludes that bonus. I may not have made that clear earlier on.

Jeremy Purvis: That is helpful.

The situation under the pay policy is that a standard bonus of up to 10 per cent can still be provided. For Highlands and Islands Enterprise, Scottish Enterprise, Scottish Water, the Scottish Environment Protection Agency and Scottish Natural Heritage, bonus awards within that category will be given out if the chief executives simply meet the targets that are set within operating plans. You said that bonuses should not be paid if chief executives simply do their jobs and meet the expectations that are outlined in their contracts.

John Swinney: No—I think that that is a distinction too far, Mr Purvis. The details of an operating plan are different from the terms of an individual's contract. An individual's contract of employment will state what is required of the

person, but an operating plan will be reviewed annually and will include expectations about the work of the organisation.

Paragraph 28 on page 14 of "Public Sector Pay Policy: Policy for Senior Appointments 2008-09" states:

"Public bodies must ensure performance bonuses are not paid out simply for meeting objectives, but for exceeding them or for other exceptional performance. There must be a robust and objective method of assessing exceptional performance and a similarly robust and objective method of translating exceptional performance into the percentage level of bonus being proposed."

A clear distinction must be made between fulfilling the requirements of a post and delivering exceptional performance. An organisation's operating plan is not a status quo, business-as-usual document; rather, it will always be dynamic and have in it development, change and improved performance. I expect NDPBs to insist on such standards.

Jeremy Purvis: That is helpful. Perhaps information can be provided to the committee on the performance measures and targets of all the agencies that I mentioned. Under the conditions of the chief executives of Scottish Natural Heritage, the Scottish Environment Protection Agency and Scottish Enterprise, for example, bonuses are paid if they achieve, meet or exceed the performance measures. In all the five agencies that I have mentioned, performance does not need to be exceptional if the target is to meet or exceed the performance measures.

John Swinney: Yes, but that simply ignores the answer that I just gave to the question that you asked, about the nature of the operating plans. The operating plans do not say, "Well, we did it this way in 2007-08, so we'll just do it the same way in 2008-09." Every operating plan includes new challenges, demands, initiatives and changes—all sorts of things—and will be part of the robust and objective method of assessing whether performance has been exceptional.

If we do not tell people that we want them to aim for a higher level of performance, and what we think that higher level of performance will look like, we will be sending people on a mystery tour to find out what is expected of them. By setting out an operating plan that includes clear expectations of improved performance and increased delivery, we tell people what they are aiming for: they should not come knocking on the door looking for a bonus unless they deliver that.

Jeremy Purvis: The question is about meeting or exceeding an enhanced level of performance. In your opening remarks, you said that bonuses should be paid only if there has been exceptional performance—if people have exceeded improved levels of performance. The policy states that it

should not be the case that a bonus will be paid if someone meets an improved level of performance, but in the agencies that I mentioned, bonuses are paid if people simply meet improved levels. The impression is given that

"those at the top of the tree seem to be taking the taxpayer for a ride."—[*Official Report, Finance Committee*, 9 December 2008; c 867.]

Do you agree?

John Swinney: Whom did you quote?

Jeremy Purvis: Mr Alex Neil.

John Swinney: It is not the first time in living memory that Mr Neil and I have taken a slightly different view of the world. I know that it is a revelation to the committee—on a Tuesday afternoon when great events are happening in the world—that a dispute between Mr Neil and me has come to the surface.

Jackie Baillie: Tell us more.

John Swinney: I do not think that the committee has adequate time to hear about the substance of that.

The point I am making is that we must clarify to people what is expected of them in delivering exceptional performance. Demanding standards are put into the operating plans. We tell people what they are expected to deliver. If we do not do that, we do not give people clarity about what is expected of them. I return to my central point that people should not be paid bonuses just because they turn up for their work every week. That is just not good enough. They have to deliver real dynamic leadership to the organisations that they have the privilege to lead, and the Government expects them to do so.

Jeremy Purvis: I have questions about two more agencies. When the new chief executive of Scottish Water was appointed, did you have the opportunity to review the terms and conditions under which the chief executive works?

John Swinney: It would not have been practical to do that because we were in a programme of regulatory control—the 2006 to 2010 period. The regulatory environment involves the Government as well as input from the Water Industry Commission for Scotland and other bodies that contribute to the expectations for the business plan that Scottish Water has to deliver. We were in a regulatory period in which expectations had been set for what the organisation had to deliver as a mixture of investment, pricing and the contents of the capital programme. Those elements clearly fit together. It would have been impossible to disentangle the element that Jeremy Purvis mentioned.

Jeremy Purvis: So when ministers signed off the new chief executive's basic salary, which was a 30 per cent increase on that of his predecessor, they felt that their hands were tied.

John Swinney: An assessment of the marketplace is carried out to identify candidates who can lead organisations such as Scottish Water. On that basis, if an individual cannot be recruited who satisfies the requirements of the job specification, we are in some difficulty.

Jeremy Purvis: That is helpful. The benchmarking of market competitors south of the border has nothing to do with the regulatory performance of the agency in Scotland—they are two different things. The terms and conditions of the chief executive and their performance indicators are separate from a basic salary that is benchmarked against private sector competitors south of the border. The decision on the basic salary can be completely separate from the regulatory regime.

John Swinney: A candidate who we think has the ability to do the job might say, "I'm not coming because you're not offering enough money."

Jeremy Purvis: That might well be the case, but that is a completely separate issue from the agency's regulatory performance.

John Swinney: That is absolutely not the case—not in the slightest. We have in place a regulatory framework for a particular period with expectations on the organisation. If we want an individual to join the organisation, to fit into it and to give it the leadership that will allow it to continue in the same direction, and we then identify an individual who could command a certain salary elsewhere, we have to make a judgment on what the credentials and capabilities of the candidate should be. That is precisely the judgment that we arrived at.

The Convener: Mr Purvis, you have taken the issue a long way. Do you have a final question?

Jeremy Purvis: I have. Many people will be curious as to why in February 2008 the former chief executive could operate under the performance indicators on a certain salary, whereas in March that role could be delivered only with a 30 per cent increase. It would be interesting to see the benchmarking information.

John Swinney: Purely and simply, the previous chief executive decided to leave his post. Jon Hargreaves is a very fine individual and I have enormous respect for him—he did a super job at Scottish Water. He decided to move on and we had to fill his post. We wanted to ensure that the fine direction that Dr Hargreaves had set, along with Ronnie Mercer, the chairman of Scottish Water, was uninterrupted. We wanted a good

strong candidate to do that. To continue on the direction that had been set in the regulatory period, we had to pay what we had to pay.

15:15

Jeremy Purvis: I have just a final point, if I may, convener.

The Convener: Very quickly—David Whitton has the final question.

Jeremy Purvis: I am grateful and the question will be brief. Is the chief executive of the Scottish Futures Trust being recruited on the basis of the pay policy for senior appointments?

John Swinney: I am in discussions with the Scottish Futures Trust about the arrangements for employment and remuneration of its chief executive. I will make clear the position on that to Parliament in due course.

Jeremy Purvis: So the appointment does not come under the policy.

John Swinney: I have not yet come to a conclusion in my discussions with the Scottish Futures Trust.

Jeremy Purvis: The job has been advertised and, I presume, applications are being received. To avoid what you called "a mystery tour", it would be helpful to know whether discussions with applicants are on the basis of the pay policy.

John Swinney: I am having discussions on that with the Scottish Futures Trust.

David Whitton: Do you believe that salaries can go down as well as up? The conditions of the chief executive of Scottish Enterprise and Highlands and Islands Enterprise are under review. Both those organisations have had substantial cuts in their staffing levels and changes to their responsibilities. Should that lead to a substantial reduction in the salary that is offered to the incumbents of the posts?

John Swinney: On the theoretical question about whether salaries can go down, the answer is yes—of course they can. On the question about whether the salaries should go down in the two circumstances that Mr Whitton cites, that is a matter for the boards of Scottish Enterprise and Highlands and Islands Enterprise. They will consider the appropriate material in that respect and the Government will take a close interest in the issues that arise from that.

David Whitton: As I understand the pay policy, it allows you to cut salaries, does it not?

John Swinney: That is what I said in answer to your first question, Mr Whitton—salaries can come down. Whether they should do so in the two

circumstances that you raise is a matter that must be considered by the relevant organisations.

The Convener: I thank the minister and his officials for their attendance and the evidence that they have given.

Decision on Taking Business in Private

15:18

The Convener: Item 3 is a decision on whether to consider in private our approach to our work programme at our next meeting. I propose that we do so. Do members agree?

Members *indicated agreement.*

Meeting closed at 15:18.

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