



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 10 June 2025

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
20th Meeting 2025, Session 6

CONVENER

*Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)

*Craig Hoy (South Scotland) (Con)

*John Mason (Glasgow Shettleston) (Ind)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Davidson (Scottish Fiscal Commission)

John Ireland (Scottish Fiscal Commission)

David Kennedy (Scottish Police Federation)

Professor Domenico Lombardi (Scottish Fiscal Commission)

Stephen McGowan (Crown Office and Procurator Fiscal Service)

Professor Graeme Roy (Scottish Fiscal Commission)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 10 June 2025

[The Convener opened the meeting at 09:30]

Scottish Fiscal Commission (Economic and Fiscal Forecasts)

The Convener (Kenneth Gibson): Good morning, and welcome to the 20th meeting in 2025 of the Finance and Public Administration Committee.

The first item on our agenda is an evidence session with the Scottish Fiscal Commission on its May 2025 economic and fiscal forecasts. I welcome, from the Scottish Fiscal Commission, Professor Graeme Roy, the chair; Professor Domenico Lombardi, a commissioner; Michael Davidson, the head of social security and devolved taxes; and John Ireland, the chief executive.

I invite Professor Roy to make a brief opening statement.

Professor Graeme Roy (Scottish Fiscal Commission): Thank you for inviting us to give evidence on our latest forecasts, which were published last month.

First, I thought that it would be helpful to outline the process for our forecasts this time round. Members will recall that, in February, the Cabinet Secretary for Finance and Local Government advised that the Scottish Government intended to publish its medium-term financial strategy on 29 May. We proceeded on that basis, with the deadline for the inclusion of new data set at the end of April and the deadline for policy changes set for early May.

On 6 May, a day before our deadline for final policies, the cabinet secretary wrote to say that the Scottish Government was considering deferring publication of its MTFS until later in June. As I set out in my reply, a copy of which was sent to the convener, because all the necessary forecasting analysis and engagement with the Government had taken place, it was my view that publishing the core economic, tax and social security forecasts on 29 May as planned would aid transparency and enable us to give evidence to the committee. I note that that was welcomed by the cabinet secretary in her reply to me on 13 May.

As a result, our updated forecasts are based on current Scottish Government policy and the

information that was available at the time. We will publish an updated report alongside the MTFS on 25 June.

In relation to the detail in our report, we estimate that the total funding available to the Scottish Government this year will be £59.6 billion—almost £800 million higher than in December, when the budget was set. That is mostly because of more United Kingdom Government funding, but also because the Scottish Government now expects to carry forward some money that was not spent last year.

Despite that increase, the pressures on the Scottish Government's budget remain significant. Two key Scottish public sector pay deals that have already been agreed for this year have been above the Scottish Government's policy of offering a 3 per cent increase, which is likely to create further pressure for on-going pay negotiations. The challenges regarding pay are added to by April's rise in employer national insurance contributions. Although the Scottish Government has had some extra funding, that will cover only half to two thirds of the Scottish Government's estimated costs.

Social security commitments are growing, and we forecast that, by 2029-30, spending on social security will be £2 billion more than the associated funding. A key reason for that larger gap is the UK Government's proposal to tighten the qualifying criteria for personal independence payments, which will reduce spending in England and Wales and thereby decrease funding through the block grant adjustment by about £400 million in that year.

We have made a modest downward adjustment to our gross domestic product forecast for this year. Clearly, there remains significant uncertainty about the outlook for trade and the impact that any US tariffs might have on the global economy.

The Convener: Thank you for that opening statement. You seem to be concerned about the delay to publication of the medium-term financial strategy. I can almost sense a level of irritability as you talk about that. What impact has that had on the Scottish Fiscal Commission?

Professor Roy: I will say a couple of things. In setting our forecasts on tax, the economy and social security, we were working on the basis that those forecasts would be ready to sit alongside the publication of the MTFS in May. Ideally, you would want all of that to come out at the same time. Given that we had done all the work and the collaboration with the Government and had set our forecasts, it made sense for us to publish the forecasts when we had said that we would do so. If we had delayed publication until the end of June, we would have been sitting on forecasts that

would have been going out of date, or, at the least, a significant period of time would have passed. I had also given a commitment to the committee in December, when the deputy convener asked when we would be publishing updated forecasts. If we had delayed publication to the end of June, that would not have given us the chance to come here and give evidence to the committee.

When the MTFS is published, we will provide an update on any changes to funding in order to give the committee information about the outlook. You will recall that we have also committed to publishing in August a new regular fiscal update, which will take a deeper dive into what the MTFS might mean for the outlook on spending and funding. I hope that that will provide useful information to help the committee to undertake its work in the run-up to the budget.

The Convener: As I recall, this was not the reason that was given by the cabinet secretary, but David Phillips of the Institute for Fiscal Studies said that it would be more appropriate to wait until the spending review before publishing the MTFS, which is what the Government has done. That was not the entire reason that she gave, but she did touch on it somewhat. Is there an argument for that?

Professor Roy: After the spending review, there will be much more clarity on funding. The Barnett consequential will be set out tomorrow, which will give the Government more certainty about the overall outlook.

The general point is that we had made the commitment to publish our forecasts, so we followed through on that commitment. There will always be uncertainties, nuances and changes. For us, the important thing is to come back to talk about the big-picture stuff. For example, we mention the changes in the net tax position, which are important, and the changes in the social security funding position and in the outlook for the economy. It is important to be able to present and discuss all of that. That is why transparency is important.

The Convener: As the Scottish Fiscal Commission does so well, it has set out income tax and social security forecasts in great detail for a number of years. Can you talk us through both of those forecasts?

First, let us look at income tax. I notice that it is projected that there will be a 23 per cent increase in income tax revenue during the next five years or so. How much of that increase will be down to fiscal drag and how much will be due to economic growth?

Professor Roy: It is a mixture of both. Our baseline policy is that, as we get later in our projections, we assume that the thresholds will

increase in line with inflation. That offsets some of the effects of fiscal drag. The majority of the growth in income tax revenue is due to growth in earnings across the economy. In any progressive system, there will be some fiscal drag, but we do not assume that everything is down to fiscal drag because the thresholds have been frozen.

The Convener: I was just wondering what share of the growth was down to fiscal drag, which is a concern across the UK—it is not just a Scottish issue. The current UK Government and the previous one have, in effect, allowed fiscal drag to enhance their coffers, and the Scottish Government has done the same.

Professor Roy: We can send you the specific breakdown on that.

In our supplementary figures, we talk about the costings for the tax policy changes, and we also discussed that in December. From a policy change perspective, significant amounts of revenue are raised by freezing the thresholds. More than £200 million is raised by freezing the higher-rate threshold, largely because a large number of taxpayers move into that tax band. Ultimately, fiscal drag is one of the key ways in which the Government raises revenue over time. The further we go into the future, the more significant that becomes.

The Convener: It is projected that expenditure on social security will rise by 30 per cent over the next five years, which is higher than the projected increase in tax revenues. That relates to the overall Scottish budget, but, within the social justice portfolio, expenditure on adult disability payments is expected to increase by more than 50 per cent during that period. There are some really concerning figures from an economic point of view—year-on-year increases of 8 or 10 per cent. Can you talk us through that a wee bit?

Professor Roy: There are a couple of things to separate out. Inflation is one of the key reasons why expenditure on social security payments increases towards the end of the period. We assume that the payments will be uprated by inflation. From a public finance point of view, it is important to note that that is offset by increases in the block grant adjustment, because it is assumed that the same will happen in the UK, so there is no net impact on the budget.

In figure 5.4 on page 58 of the report, we see that, according to the December 2024 forecast, the net position would flatten off once we got to 2026-27, following the changes in the delivery of social security payments and the introduction of new payments such as the Scottish child payment. Once the reforms were put in place, we said that the growth in expenditure on the payments would be offset by growth in the BGA and that, in

essence, there would be no real change in the net social security funding position towards the end of the period.

In the most recent update, our forecast has changed. Our May update shows the net position increasing towards £2 billion by the end of the forecast period. That is largely because of the UK Government's proposed changes to qualification for PIP, which will have an impact on the BGA. That is why the net position increases towards the end of the period.

Another good example relates to winter fuel payments, which we spoke about in December and which I am sure we will discuss today, given recent announcements. That was the first time that we started to see the interconnections between social security and the net position in Scotland, with that position being driven by decisions being made not by the Scottish Government but by the UK Government. The net position is dependent on both Governments' decisions, because it is affected by funding as well as spending. Our May forecasts show that the UK Government's changing plans will lead to an increase in the gap of about £400 million relative to what we said in our December forecasts.

The Convener: You have said that, overall, the effect of social security spending will widen by £600 million. A third of that relates to the devolved Government lifting the two-child cap, and the remaining £400 million relates to UK Government policy and block grant adjustment funding.

I know that you have been liaising with the Office for Budget Responsibility, but your projections on the economy look to be fairly optimistic. You will have seen from this morning's figures that unemployment has increased. From what was said on the news today, it seems that the combination of the increase in the minimum wage and the increase in employer national insurance contributions has had quite an impact. What is your view on that?

Professor Roy: I will give a broader view and then Domenico Lombardi might want to come in specifically on tariffs. Overall, there is a lot of noise and uncertainty in the economy at the moment, which will have an impact. We try to see through some of that noise and look at the underlying trends in the economy.

A good example relates to tariffs. There has been a lot of discussion about them, but we have not yet seen their full effects. Similarly, there has been a slight increase in inflation relative to where we were. However, the overall trend is pretty much in line with what we had forecast. We have revised down slightly our forecast for this year based on some of that uncertainty, but we think that it will

bounce back a bit next year. Overall, we have not really changed our forecast.

The Convener: You put the tariffs in perspective in your report, which says that trade with the US accounts for only 2 per cent of Scottish gross domestic product. The concern is about the impact on specific sectors of the Scottish economy. In fact, the impact will be felt not only by certain sectors but by certain geographic areas—the obvious example is whisky. Obviously, you are keeping a very close eye on the matter.

You now project that GDP will increase by 1.2 per cent this year, instead of the 1.6 per cent that you predicted in December. Is that still likely to be the case? You also say, in paragraph 34 of your report, that there will be "broadly flat employment growth".

09:45

Professor Roy: Growth of 1.2 per cent is relatively fragile; it is not that great. The key issue for us is whether that growth is asymmetrically different from that in the rest of the UK, and that is broadly what we are seeing. The numbers will always move around ever so slightly.

We are saying two things. First, uncertainty itself is having a slight impact on growth. However, we need to be cautious about overegging that. Tariffs will have an impact on the economy in the short run, but that needs to be put in the context of economic activity and where growth comes from more generally. The caveat to that relates to the importance of some key sectors and the impact of tariffs on them. However, on a macro level, the effect might be relatively limited compared with other shocks that we have had in recent times.

My second point, which is probably more important, is about what happens over the medium to long term. We really need growth to start to pick up over that period. That relates to all the stuff that we have spoken about previously about transforming productivity. We still predict that, in the long term, growth will pick up to about 1.5 or 1.6 per cent, which is still relatively fragile compared with our long-term historical average in Scotland.

The Convener: Our long-term historical average will change if we are stuck with low growth, according to your projections. We are nowhere near where we were before the financial crash in 2007-08. It seems like we are still trying to recover from that situation.

Professor Roy: Definitely. Productivity has not turned around. We now have a pretty good understanding of why productivity is so bad in the UK. About a third of the issue relates to our low

capital investment relative to our key competitors. The other two thirds relate to what economists call total factor productivity, which, in essence, is how we convert our inputs into outputs. That is done through innovation, having skills in the right jobs and so on. We have a clear diagnosis of why productivity has been poor, but we have still not sorted it out or turned it around.

The Convener: One side effect of employer national insurance contributions going up is that it might incentivise companies—as Toyota has said—to invest further in capital rather than in labour, which could result in long-term dividends, although whether that will happen remains to be seen.

Professor Roy: Yes. There is a question about what the optimal tax structure is to encourage the right balance of labour and capital in the economy.

The Convener: That is not to say that that was the reason for the rise to be implemented.

Professor Roy: Exactly—there needs to be a much broader conversation about the optimal incentives and what we are investing in and trying to grow over time.

The Convener: One of the interesting things that you say about tax in your report is:

“we have revised down our forecast of Scottish Income Tax in 2023-24 based on information we have received on growth in tax paid through Self Assessment.”

What has the change been there?

Professor Roy: That is a really good question—it is something that we are keen to raise because it is important. You will recall that it is one of the challenges in forecasting income tax.

We can get quite good data on earned income—the income that people are paying through the pay-as-you-earn scheme—which we track through the real time information data. That is really good information; it is provided by His Majesty’s Revenue and Customs and it works out what we are collecting from employers. That is the main anchor that we use to forecast income tax. Then, there is the other component, which is self-assessment. You will recall from when we chatted after our forecast evaluation that that is exceptionally volatile. Not only that, but the real problem is that we get no data on it throughout the year. We have no idea what is coming from self-assessment, so we have to make a judgment, which is that we think that it will be broadly aligned with what is coming through the RTI data.

A couple of years ago, there was a huge growth in self-assessment tax, which then fell back. What we get now from HMRC, helpfully, is an early indication of what it thinks is going to come through self-assessment at the UK level, based on

the information that it has for the year. In this case, the year is 2023-24, and the data suggests quite a low growth in self-assessment in Scotland, so we have adjusted our projection of Scottish income tax in 2023-24 down. That is the main part of that £240 million reduction.

The key thing is that that has not had an impact on the budget yet, but it might have an impact when we get the outturn data in July, because that data will help to confirm the reconciliation next year.

The Convener: In paragraph 4.18 of the report, you say:

“The Income Tax net position is projected to be £616 million in 2025-26, which is £222 million lower than the December 2024 projection.”

Professor Roy: Yes. A couple of important things are going on here. If you look at the figures for 2024-25, you will recall that we highlighted in December that there had been quite a change in the projection for the block grant adjustment, largely through changes in outturn data at the UK level, but also because of changes in the OBR forecast for earnings.

An important point that we need to keep emphasising is that the net tax position can change because of changes at the UK level, not just because of what is happening in Scotland. It is the net position—the relative position—that matters. That has had quite a significant impact in eroding the net tax position because of better data and forecasts coming through at the UK level. We have then seen the latest forecasts from the OBR, in which its earnings forecast is essentially aligned with our earnings forecast, and that has eroded the net tax position. That is, again, one of the risks in the system. We have not changed our forecasts for Scotland, but the OBR has become more optimistic about its forecasts for the rest of the UK, so the net tax position becomes weaker for us.

The Convener: I just have a few more points, one of which is about pay. There is an underlying frustration with the Scottish Government’s pay policy, and we have discussed that on a couple of occasions. On average, it is an increase of 3 per cent over three years and 9 per cent in total. We already seem to be breaching that with national health service pay and, understandably, unions in other sectors are looking for similar pay increases. What impact would there be on those projections if, for example, pay settlements across the public sector mirrored those of the NHS?

Professor Roy: We got what we needed for our forecasting around pay in terms of feeding that into our core elements. The point that we highlighted the last time is that, if you have a fixed budget and a pay policy, and then you allocate budgets to portfolios, pay can be up to about half

of the money in those portfolios. If you choose to spend more money on pay, that means that you will have to spend less money elsewhere.

The Convener: Or you will have to reduce the workforce.

Professor Roy: Yes. Our point is that you need to explain and be transparent about what is happening with that. It is not for us to set pay policy. It is just to say that, if you have that pay policy, you have made the allocation on that basis.

The Convener: I am just asking what you think the impact will be if we end up in that situation. In the past three years, we have had emergency statements in the autumn and I do not think that anybody is particularly keen on seeing that again. I do not think that the Government would want to be in that position. Is it a possibility, or are we not at that level?

Professor Roy: There are two points there. First, we know that some of the pay awards at the UK level have come in slightly ahead—

The Convener: At 2.8 per cent.

Professor Roy: Yes, and that is slightly ahead of where the UK Government had set it and slightly lower than the pay policy in Scotland. Money might be coming through in the spending review that might help to ease some of the pressure for the Scottish Government.

The second point is that the pay deals have not been dramatically different from the pay policy set out by the Government. It comes down to how much scope and headroom there is in the various portfolios to be able to deal with that.

The Convener: Hold on. If half of the Scottish budget—£30 billion—goes on pay, a 1 per cent increase is £300 million, is it not?

Professor Roy: Yes, but again, the question is how far existing portfolios can cope with that and how much headroom they have. As we highlight, there is also the added pressure of national insurance increases. It is not as though the budgets did not have pressures of pay already, because a lot of them were having to take up the effects of national insurance.

You are talking about £300 million, but the budget is still £60 billion. The Government still has flexibilities within that, but clearly anything that you do in respect of pay that is above the policy level means that savings will have to be found and pressures addressed elsewhere.

The Convener: My final question is about capital funding, which has had quite a significant boost—15.7 per cent in real terms, which is quite impressive. However, what I found bizarre about that is the fact that it has been boosted so much in the first year and then declines for the year after to

3.5 per cent. It goes up again slightly and then goes down again, and then it goes down for three consecutive years. In a previous report, you said that, by the end of 2030-31, it will be much the same as it was in 2023.

What do you think was the thinking behind that? What are the pluses and minuses? I would have thought that, if you have a big increase in capital very suddenly but you do not have the increased workforce to deliver capital projects, you end up with inflation in construction and all the other areas. If it then ends up going down, you are stuck with those inflationary prices, potentially, and you end up getting less bang for your buck overall. What is your thinking on that?

Professor Roy: There are a couple of points to make. First, you will recall that the previous UK Government had a plan to cut capital spending significantly. We were talking about a 20 per cent real-terms reduction in capital spending by 2029-30, so this forecast looks quite different to the profile that was set out then. You are right that what was announced was essentially a big uplift in the current financial year and largely modest increases beyond that, so we are looking at a relative real-terms reduction.

Some of that is influenced by what the Scottish Government will do around capital borrowing and the use of ScotWind funds; hopefully, we will see a bit more clarity on that when the MTFS is published. Some money from ScotWind was meant to be spent last year but was not spent, so that gives the Government an opportunity to do more in the future.

We make a broad assumption that the Government will borrow around £300 million each year towards the end of the period, but that could change. If it wanted to, it could borrow towards the end of the forecast horizon to increase expenditure at the end. It could borrow less now, if it has more capital departmental expenditure limit, save some of that borrowing, and then borrow more towards the end of the period to try to smooth that out.

However, the general point that you make is right: the Government would want to have a plan for capital that is not just for one year but for a long period of time. That would involve what the UK Government needs to do and will do around setting out its priorities for the spending review over a period of time, and then what the Scottish Government does to follow suit with its capital investment pipeline and infrastructure pipeline. We are still waiting on the detail for that.

The Convener: We are hoping to see that in September. Have you had any indication of when you are likely to see it? Might it be before then?

Professor Roy: I have not seen anything. My officials have not, either.

The Convener: Thanks very much. A number of colleagues are keen to come in.

Liz Smith (Mid Scotland and Fife) (Con): I will concentrate on social security, if I may. I have two points for clarification.

Dr Roy, in paragraph 47 of your summary paper, you say:

"We forecast spending on the policy to mitigate the two-child limit will be £156 million in 2026-27, rising to £199 million in 2029-30".

If I am not mistaken, that is an increase of around 27 or 28 per cent in a three-year period. Is that simply because of the number of youngsters that are involved? It is a quite substantial level of increase.

Professor Roy: Is it the increase from £156 million to £199 million?

Liz Smith: Yes.

Professor Roy: Michael Davidson can explain how we calculate that.

Michael Davidson (Scottish Fiscal Commission): There will be some uprating involved in that, because we expect the universal credit rates to be uprated over that time.

However, the bigger effect, as you say, is the number of children. At the moment, the application of the two-child limit is being introduced by age, gradually, so, the ages of the children not getting that extra allowance are increasing. That allowance will then be paid to families in Scotland, and increasing overall as the ages increase. I cannot remember the exact age, but I can get the caseload figures in a second—I will look now.

Liz Smith: That would be very helpful.

Michael Davidson: Sorry—I have it now. In 2026-27, we think that there will be 43,000 applicable children. Over the period to 2030-31, that will increase to 52,000.

Liz Smith: That does not reflect a 27 or 28 per cent increase.

Michael Davidson: Sorry—and the amount increases from £70 to £75 per week. Those two things combined should lead to that rise. On top of that, there is a bit of a behavioural response that builds up over time, but we think that that will amount to only around £10 million.

Liz Smith: Can you explain that behavioural change?

10:00

Michael Davidson: We think that more families than otherwise would have done will stay on universal credit, getting the Scottish child payment as a result and also getting the two-child limit mitigation allowance. Rather than thinking about the detail of individual responses, we have taken a broad-brush approach and have looked at the work incentives caused by the cliff edge. Someone in a family who makes a decision to take on more hours of work but then loses the entitlement to universal credit loses quite a small amount because universal credit is tapered by that point, but they also come to a cliff edge with the Scottish child payment and the two-child limit mitigation, and that means that they can lose around £8,000 a year. We do not think that many families will be affected, because they have to be large families, but those small changes can cost them quite large amounts.

Liz Smith: I think that I got most of that.

Professor Roy, at one of your recent breakfast seminars you rightly spelled out the challenge of having an ageing population not only in this country but across the world, which is having a major impact on social security budgets. Are the statistics for comparative studies available, and how easy is it to do those studies and to find out whether we have any exceptional trends in Scotland?

Professor Roy: First, I will quickly come back to the two-child payment limit. We can share with the committee the calculations and numbers that we used when we published in January.

It is difficult to make international comparisons, because it is not just social security that is different: taxes and the delivery of public services are also completely different. It is difficult make a comparison of the public finance element, although we can look at the strengths and weaknesses within that. That is why, a lot of the time, our comparisons are with what is happening elsewhere in the UK.

On population dynamics, it is worth reiterating the issues that we spoke about in our health report. First, Scotland is relatively unhealthy compared to the UK overall. That was built into devolution, when the idea of being no better or worse off underpinned the initial transfer. That idea is baked in, so that there is higher social security spending on disability per head in Scotland than in the rest of the UK.

What matters is what happens from this point onwards. If we can become healthier and offset the increases in some payments, particularly in the area of mental health and wellbeing that we spoke about, that has the potential to work in favour of Scotland's public finances.

Liz Smith: It seems to me, from what I could extrapolate, that the rate of increase in social security payments in Scotland is pretty high in relation to other countries. It is that rate of increase that should be interrogated and, if it comes down to Scotland being a less healthy nation, that is important in making policy.

Professor Roy: Health is part of it. The second bit is that our demographic ageing in the next 10 to 15 years will be ahead of that in the rest of the UK and that the positive correlation between age and some social security payments will have an impact.

Your general point is about the key public policy question of why we are seeing a significant increase in the inflows into those payments. We have spoken about some of the numbers before. The rate of applications is more than double what it was before Covid and, for child disability payments, it is treble what it was.

We need to think about how much of that is because of what Government policy is trying to do. The policy is to encourage and support more people to apply. There may be people who should have had those payments in the past but did not because the process was difficult. We need to think about how much that will level off but also about how much of it is being driven by real concern in society about mental wellbeing, particularly among young people. Thirdly, we need to consider how it looks relative to trends that everyone else is seeing around the world.

Liz Smith: That brings me to a point that was raised almost a couple of years ago, when the Scottish Fiscal Commission said that the introduction of the so-called light-touch reviews was a major factor in rising costs. It pointed out that 2 per cent of the reviews resulted in a claim being stopped, whereas the figure was 16 per cent for PIP in England and Wales. The Cabinet Secretary for Social Justice slightly rebutted that, saying that it was not the result of the soft-touch system but predominantly the result of awareness-raising campaigns and increasing public trust in applying. Do you have a more refined view on that, having had another two years of statistics?

Professor Roy: Michael Davidson might want to come in on the specifics of the data. We are still seeing that trend of very low outflow from the annual award, at 2 per cent. That is the most recent data that we have. The number of claims being stopped in Scotland is still 2 per cent, compared with the 16 per cent of PIP claims that are disallowed and the 6 per cent that are decreased. I guess the point is that it is light-touch, not soft-touch—

Liz Smith: I am quoting the cabinet secretary.

Professor Roy: Sometimes the “light-touch” element can be seen as being negative. The policy of the Government is to make the process very supportive for people who are on payments to go through annual reviews and remain on those payments, and it naturally follows that more people would remain on those payments. That can be done through marketing campaigns, which are more to do with take-up than with remaining on the payments. Remaining on them has more to do with how the review process works and with the approach in Scotland being quite different to the rest of the UK.

Liz Smith: As the statistics are just now, would you expect that 2 per cent, compared with roughly 16 per cent, to continue?

Professor Roy: Yes. We expect the percentage for Scotland to increase slightly. I think that we have forecasted an increase up to 6 per cent.

Liz Smith: Can I ask why?

Michael Davidson: It is to do with the mix. The majority of the reviews that have taken place so far are for cases that have been moved over from PIP to ADP, so it is part of the review process. There are people who have been in receipt of a disability payment for a long time, but we are now seeing more reviews coming in for new applicants to ADP in Scotland. Because those cases involve people who have been on the payments for a shorter time and perhaps have less severe conditions, they have a slightly higher rate of being decreased or disallowed at award review. The forecasted increase is due to the balance as that share of the overall caseload increases. We have assumptions where we think that the exit rate will stay as it is for the longer-term ones and stay fairly static for the new group, but the mix means that the overall average increases.

Professor Roy: The key point of that is that it will still be different to the rest of the UK. There will still be fewer people outflowing relative to the rest of the UK. We have highlighted in our forecast the risk that the rate will increase—that is, that there will be more outflows. If that does not happen, it will add to—

Liz Smith: That might happen. Presumably, it could be accentuated by the change to PIP.

Professor Roy: The whole point about the relative difference is the key, and what that might mean for the net funding position.

Liz Smith: Okay. Thank you.

John Mason (Glasgow Shettleston) (Ind): I have a few points to ask about, following on from that. Is the fact that there was that delay and that you are having to redo forecasts to some extent in June causing you extra cost or work?

Professor Roy: No. Nothing that is not within our capability.

John Mason: Okay. That is reassuring. I suppose that you have a fixed budget, so you have to live within it.

You have already been asked about the pay increases, pay policy and inflation, and they are all tied together. I think that the pay increase of 3 per cent for a year or 9 per cent over three years was set when inflation was expected to be below 3 per cent, and it is now 3.5 per cent. Therefore, everybody is expecting a pay increase at least to match inflation—I believe that the NHS pay increase is 4.25 per cent. That will mean that we will get more tax, will it not? If the pay increases are all a bit higher, presumably in the private sector as well as the public sector, we will get some more tax. What is the timing of that? That tax coming in does not help this year's budget, does it?

Professor Roy: No. The budget will be set on income tax, and you would be looking at a reconciliation further down the line. However, crucially, it is the net tax position that matters for the funding position. If we have higher inflation and higher pay awards in Scotland and there are higher pay awards in the rest of the UK, both the UK and Scottish tax revenues would rise, and you would expect each rise to roughly offset the other, but we will not know whether that is the case for another three years.

John Mason: Exactly. So, even if we expect more tax to come in, that does not help us in any way this year.

Professor Roy: That is correct. As I said, the only thing that might happen is that, if there are higher pay awards at the UK level, the UK Government might respond by giving more money to departments to cope with higher pay awards because of higher inflation, exactly as you say, and we would get Barnett consequential from that, which would open up the Scottish Government's abilities in relation to pay increases, but that obviously depends on what happens tomorrow.

John Mason: That is helpful. Perhaps related to that, paragraph 18 on page 7 of your forecasts document says that, when the UK gives pay rises, the level of funding that the Scottish Government receives depends on how those pay rises are funded. It says:

"Specifically, it depends on whether pay increases over and above the current UK budget plans are funded from new, additional money, or from existing departmental resources."

Again, that frustrates me, because it is all so short term, but we are all trying to look at a longer-term plan. We are back to this living hand-to-

mouth situation whereby we just do not know what is happening. Is that correct?

Professor Roy: That comes back to the general point that, in an ideal world, you would set out very clear plans over four to five years about what you want to prioritise in spending, and within that you would have a clear pay policy that underpins that. Spending reviews are the ideal time to do that.

You are right that, at the margin, if you have pay awards in-year or for the year ahead that are different from your stated pay policy, what matters at a UK level is how you fund them. The Scottish Government does not have the luxury of funding those increases in different ways, because it cannot borrow more money or do a quick increase in a tax that it can then use to fund spending. Therefore, the level of funding that the Scottish Government receives depends on whether the UK Government says that it is going to give more money to Whitehall departments to fund those pay awards. If it does, Barnett consequential will follow. If it does not and simply says to departments that they should deal with the increases from within their existing allocation, there will be no Barnett consequential and the Scottish Government will have no additional money flowing through from that.

John Mason: That also applies to welfare. If increased welfare spending is announced tomorrow, we will not know that until the UK Government tells us. Would we expect to know that tomorrow, or would it be some time before we would know where that money was coming from?

Professor Roy: There are a couple of things to say on that. If, for example, the UK Government announces immediate changes to departmental spending for this year, Barnett consequential would come through, and the statement of funding policy would work that through. If there was a change in the funding for social security, that would come through in the in-year adjustments to the BGAs. There are then technicalities about whether the Scottish Government could defer some of that. If I remember correctly, last year we could defer the winter fuel payment.

John Mason: Yes, but that affected us negatively. However, I presume that if it affects us positively, we will take the money immediately.

Professor Roy: Well, that is not for me to say.

John Mason: Okay. You were asked about productivity and capital investment, and I want to press you on that. Is it the case that any capital investment will inevitably help productivity, or do you look at where the capital investment is going? For example, if we buy a new train, perhaps people's comfort improves and things are a bit more reliable, but, actually, it is still moving 200

people from A to B, so it does not really increase productivity.

Professor Roy: I wish that Professor Francis Breedon was here, because his big thing is capital investment and how we do it. You are right that some investment is particularly targeted at boosting productivity, whether it involves investment in skills or investment in infrastructure to deal with a bottleneck or something like that. That is where you would generally see a significant increase in productivity.

A lot of capital investment is in replacement, and is really just to keep things ticking over. Some capital investment might be done for very good reasons, but it is not designed to support economic growth. For example, building a hospital would create construction output, which in turn would boost the economy. However, the immediate aim of building hospitals is not to improve productivity performance in the economy—we do it for other reasons. Although public sector capital investment is one enabler of overall productivity growth, it is not the only one. Such growth depends on a multitude of other factors.

10:15

John Mason: Do you look below the line? At the moment, you do not have a lot of detail on where capital expenditure will be for, say, the next five years. If you were to get that information, would that have an impact on your forecast?

Professor Roy: It might, or it might not. If we were to see a really significant change in capital investment, either upwards or downwards, that would likely be a material factor and we would change our view on the overall economic forecast. However, the numbers that we are typically talking about are a few hundred million pounds here or there. In the short run, that would not really have much impact on our forecast. Putting an extra £200 million-worth of capital investment into an economy worth £160,000 million would not change our view. Clearly, the point of longer-term capital investment is to turn up long-term total factor productivity. However, we would not immediately change our view unless either there was no money or the money were to treble.

John Mason: My final point is on the 2027-28 negative reconciliation figure, which is £851 million. That sounds absolutely scary, because we have a limit of only £600 million or £700 million. That number will go up and down, though, and every other set of figures that we have mentioned, including those on social security, will impact on that, will it not? Is it correct to say that it is incredibly difficult to predict the reconciliation figure?

Professor Roy: It is not incredibly difficult to predict the scale or the relative sign of it. However, you are right to say that the exact number will move. I think that it was at £700 million when we talked about it in December, and it has now gone up to £850 million.

It is important to emphasise a couple of points. The issue is partly caused by the nature of the framework. The figure moves around because of the specifics of the framework that we have. This is not passing the buck, because sometimes it is our forecast that changes, but the key reason for the reconciliation is that there is better outturn data at the UK level. HMRC has just collected better data at that level, and it found that UK tax performance was better than it had thought it would be. The OBR is changing its forecast to become more aligned with ours. Members will recall that we were previously more optimistic than the OBR. The two forecasts for that year have now essentially aligned. The tax richness of growth at the UK level is also a factor. There is earnings growth in the UK, but there are very rich taxpayers there relative to the situation in Scotland, which, in turn, leads to effects coming through. If we put all of that together regarding a tax level of over £20 billion in Scotland, we see those variations moving around, which leads to quite a significant reconciliation. That is the first point.

The second point is that the issue is not so much about the movement of reconciliation as it is about how much flexibility we have to manage that uncertainty. We are just highlighting that there could be a real challenge for the Government in 2027-28, because its borrowing powers to offset reconciliations might not be sufficient to do so in full in that year.

John Mason: But we will get a clearer picture as we move forward.

Professor Roy: Yes. The position will change, and we will keep updating that number.

John Mason: Thanks very much.

Michael Marra (North East Scotland) (Lab): I want to go back to the issue of social security payments. Given Mr Davidson's comments about the behavioural effects and the interaction of different factors I understand that the situation is complex. What information has the Scottish Government supplied to you on its policy design, including its understanding of the thresholds, their interaction and the behavioural effects? Why did it choose the method that it has as the best one for alleviating poverty?

Professor Roy: We would not be party to any discussion about what motivated the Government's approach. We take the policy that it wants to implement and model what we think its effects would be. In turn, that might influence the

Government's thinking about what it would do. However, we would not be there to design policy—for example, to say, "This is the optimal decision that the Government could take to tackle child poverty." We were told that the policy was to mitigate the two-child limit, so we took that as the Government's policy design and modelled it.

Michael Marra: So, the Government does not supply you with any of its working on evaluating whether it should adopt a certain policy approach. I understand your point about motivation, but that is not really what my question is about. We can agree about the motivation behind a policy but move on to decide the most effective approach. From what Mr Davidson described, deep complexity surrounds the behavioural effects, the thresholds, the timing of when people exit, and how all those factors are combined. However, you say that you were not provided with any working on the assumptions that the Government had made in choosing its approach.

Professor Roy: I do not know about the discussion with the policy officials. Again, to be clear, we would make our own judgment call about what we think that the behavioural effects and so on would be. It is entirely fine that Government would chat with our officials about that, but, ultimately, it is a judgment call, and we would say, "If you mitigate the two-child limit at that threshold, we will be the ones who then decide what the behavioural effects will be." The officials would critique and challenge what we say, but that would not be policy, and it would not be appropriate for them to say, "This is what we think your view on the behavioural effects should be as a result of the policy that we have done"—we would not accept that.

Michael Marra: I am glad that you do not take their homework as read.

Michael Davidson: On the information that we receive, we had to make a few more assumptions when we did the costing in January, but the forecast that we produced in May was based on, and consistent with, the consultation document that the Scottish Government published on how it would deliver the policy. There is quite a lot of detail in there on its preferred policy, means of delivery and things like that. Our May forecast was based on that document, but it was pretty consistent with the assumptions that we had made in January anyway.

Michael Marra: With regard to your evaluating the fiscal impacts of the approach, you will understand that one of the committee's interests concerns the effectiveness of the approach that is chosen. That side of it is interesting.

Let us move on to the economic performance gap. In 2022-23, it was £624 million; in December

2024, it was £838 million; and, in May 2025, it was £1.06 billion, so it is clear that it has been increasing significantly over the past two years.

In addition, to pick up on what colleagues said about the negative income tax reconciliation, that has grown by 20 per cent in the past six months. I understand some of the factors that are involved in that. Are you concerned about the fact that, as a result of all those different factors, the Scottish Government appears to have a growing gap across those different areas?

Professor Roy: There are a couple of things to consider. First, in figure 4.4 we look at the net tax position. That is still positive, so the Government is still raising more revenue than otherwise would have been the case without tax devolution—it is the stated policy to do that.

The net tax position is interesting. I will explain the calculation that we do, because it is not an assessment of Scottish Government policy or performance. It is essentially about asking, "If you implemented these tax policies and had exactly the same earnings, growth and economic performance as the rest of the UK, how much would you potentially be raising?" That is then compared with how much is actually projected to be raised, and that is where the gap comes from.

The gap is, essentially, everything that is not explained by that policy. As we highlight in the report, it could be down to different policy decisions; it could be the result of a UK Government decision having an impact on Scotland relative to the UK; it could be a Scottish Government decision having an impact on Scotland relative to the UK; or it could just be down to general economic performance in Scotland lagging behind that of the UK, or performance in different sectors.

We have highlighted previously some of the challenges that we see in the decline in relative tax paid per head in the north-east. That area has naturally been a rich source of tax revenue for Scotland relative to other parts of the UK, and that was baked into our baseline when we got tax devolution. If there is a decline in oil and gas, that naturally becomes less positive over time. London is also a factor in the UK numbers. If the city has a really good year, that means that it will be harder for Scotland with regard to the net tax position.

If we take a step back, it is interesting: you want the economic performance gap to be as small as possible, and ideally positive, because that means that you are getting even more benefits coming through. The fact that it is negative and is becoming more negative, partly because we are seeing faster earnings growth and taxes at the UK level, means that there is money that is essentially not there that otherwise could have been.

Michael Marra: I understand all of that—it is a useful explanation. One of my colleagues has doubts about some of the terminology, it is fair to say; we have come back to that on a few occasions. However, it feels like, overall, the update presents a picture of a worsening situation. There is a challenge for the Scottish Government across those different areas, whether it is in the area of economic performance and tax take that you have illustrated or in the scale of the gap in relation to the amount of money that we have on social security. Are you more or less concerned than you were 12 months ago?

Professor Roy: The net tax position is less positive than it was in December, and the social security position is more negative than it was in December. As I said in my article in *The Herald* yesterday, the key reason for that is to do with what has been happening in the rest of the UK, rather than anything that has happened in Scotland. That is one of the risks with the framework—it is about not only how Scotland does, but how the rest of the UK does, and UK Government decisions come into that.

Michael Marra: I also understand that—that is well recognised. However, that does not change the fact that we should be concerned about the figures that I mentioned. Are you more or less concerned than you were 12 months ago about the broad picture that you have painted in your update?

Professor Roy: That partly depends on what comes through in the spending review. The Barnett formula is still the biggest element in that. However, if we look at the key components, we can see that the net tax position on income tax has got worse, and the social security gap is projected to get wider towards the end of the horizon.

There are still some areas in which we need to wait and see what happens. Obviously, announcements by the UK Government on social security might offset some of the decline that we have projected. If more money flows through for things such as winter fuel payments, that might have a small marginal impact. Ultimately, as Mr Mason said, the net tax position might move around again, but it has certainly become more negative than it was back in December.

Michael Marra: You mentioned tomorrow's UK spending review. What discussions have you had with the Government about a Scottish spending review?

Professor Roy: I have not had any particular discussions about that. I note that the Cabinet Secretary for Finance and Local Government talked about setting out the detail around that

when the MTFs is published. We will wait to see what that says. We will be ready to respond.

Michael Marra: Do you think that there should be a Scottish spending review? Would it be prudent to have a Scottish spending review?

Professor Roy: I have been very clear that spending reviews are really important for a variety of reasons. They stop Governments focusing on the day-to-day issues and make them take a step back and think about where they are heading on public policy overall. They are good, because they give Governments a chance to look at the outcomes that they are trying to achieve and whether those are all aligned and in a good place. They also let Governments think ahead over the next four to five years.

In principle, spending reviews are a really good thing to do. We have not had regular spending reviews in Scotland for a long time.

Michael Marra: Do you think that it would be achievable for the Government to have a spending review within the next six to nine months, so that it could consider a zero-based budgeting approach, which has been advocated by members of the committee, and look through the spending lines with a view to resetting the budget as we move forward?

Professor Roy: That is probably a question for the cabinet secretary.

Michael Marra: I suppose that I am talking about whether it is possible on a technical level. Do you think that that is achievable, as opposed to desirable? I understand that there is a lot of politics in this, and I do not want to draw you on that, but, on a technical level, do you think that it would be possible to have a spending review?

Professor Roy: Everything is achievable. The question is how much detail you go into and how rigorous the process is. The word “comprehensive” often comes before the phrase “spending review”. How comprehensive would the process be? It has taken the UK Government quite a bit of time to do a spending review—it has taken it nearly a year to undertake a root-and-branch review. There is an advantage to doing it after an election, because that makes it possible to set out the path for a long time.

The challenge in Scotland is that, if a spending review is delayed, the Government will be rubbing up against the fact that it will be moving into the middle period of a UK spending review, so it will be lagging behind.

In general, what the UK Government is trying to do by having a comprehensive spending review followed by regular updates is a much more effective way to do it than has been the case in the past.

Michael Marra: If we get ourselves into a position in which we undertake a spending review after the election in 2026, we will, as you said, be approaching the midpoint of the UK Government's spending review cycle. There has been a lot of discussion about the problems with an MTFs, because events come along and things change. In your view, should the Government simply get ahead and get it done? Would that be the best thing to do to address the strategic challenges that you have set out in your report?

Professor Roy: Ultimately, it will be for the Government to decide the specific timing of a spending review and what it does as part of that review. However, I will make a general point, which relates to my earlier point about the timing of things: much of the time, we focus very much on the marginal piece.

You were quite right, convener, to mention that, in relation to pay, a 1 per cent increase in the budget is £300 million. That is entirely right. We are talking about a budget of £60 billion, with some huge challenges coming down the line on health, ageing and net zero. We must be able to have a conversation about the totality and the strategic direction of that and then say that there will be marginal changes around all of that. In principle, the sooner that you can do a spending review, the better, but it is up to the Government and the Parliament to decide when that would be.

10:30

Michael Marra: For my last question, I want to go back to the issue of productivity. You mentioned that capital investment is comparatively lower in Scotland. I attended an excellent conference on Friday, at which I chaired a session, but there was one thing that I found slightly puzzling, so I will ask the question that I did not get answered then. It relates to the availability of capital to firms in Scotland.

Prior to the Ukraine crisis, companies and firms would tell me that the availability of capital was not the problem, because capital was relatively cheap for a long period of time. Because of low interest rates, it was accessible. Interest rates have now increased and it is a bit more difficult for firms to access capital. However, access to capital is a long-term problem; it is not just a short-term problem, following the invasion of Ukraine. In a marketplace in which capital was cheap, Scottish firms were still underinvesting in capital and productivity. Can you say why that is a problem?

Professor Roy: That is a great question. Why there has been such underinvestment is a puzzle. You mentioned Scotland, but, across the UK more generally, why companies have underinvested is a puzzle. Part of the explanation is to do with the

fact that, especially after the financial crisis, companies were, in effect, hoarding cash to build up resilience for a potential future shock. Future shocks happened, but companies kept on hoarding cash, and that did not lead to an unlocking of investment.

The issue is not to do with the availability of capital through borrowing; it is to do with how we use the potential that has been built into the UK economy. There are huge sums in pension funds that are waiting to be invested. How do we unlock that? We have never done that well in comparison with other countries. We need to encourage a vision for investment so that companies with huge balance sheets that have not been able to take a long-term view are able to do that.

There has been a lot of funding, but the interesting policy question is whether that has been the right type of funding. That is being looked at, and some of the changes in the UK's fiscal framework are intended to provide more flexibility. The British Business Bank is considering more innovative ways of funding that could unlock greater potential.

As I said, it is interesting to look at the explanation for why the UK has been lagging behind. About a third of that issue relates to low investment, but there are huge funds sitting there that could be invested.

Michael Marra: The comparison that was drawn between the amount of capital that we retain in-country and the amount that other developed nations retain was a striking one. I was also struck by the situation with regard to the ability of firms to mobilise capital and the absorptive capacity of the economy to use that capital effectively. It strikes me that you are saying that the issue is partly to do with the behaviour of firms and whether they are risk averse in relation to investing here rather than elsewhere. Is there anything that we could do to address those issues, rather than simply addressing the question of capital flows?

Professor Roy: The issue is partly to do with the strength of the underlying ecosystem in the business base. In other countries around the world, that ecosystem is much stronger when it comes to enabling the flow of capital and funds. For example, with the Mittelstand in Germany, there is a completely different model for how economic investment is unlocked.

The issue is also partly to do with the types of companies that are growing, the sectors that are being invested in, and the speed and agility with which additional capital for projects can be unlocked. The part of the conference that I thought was really interesting was the bit when questions were asked about how much of the funds that we have in the UK get invested abroad compared with

how much of them get invested domestically. Compared with other countries, we tend to invest much more abroad than we do domestically. There is a question about how we can incentivise the investment of capital in domestic companies, or skew investment towards those companies, without picking winners or throwing money after poor projects, as we have done in the past.

Domenico Lombardi might have some reflections on that from an international perspective.

Professor Domenico Lombardi (Scottish Fiscal Commission): Following the Greek financial crisis, there was a stream of regulatory reforms across a number of countries, certainly in Europe, and in the UK and the United States, to name but a few. Lending standards have been tightened up, not just in this country but elsewhere. On the one hand, tighter lending standards and regulatory reforms foster a sound financial system, but, on the other hand, at the margins, it has become more difficult for small and medium-sized companies to access capital. There is a trade-off, and some countries might move forward in different ways, but that is the reality that a number of countries are confronting.

Michael Marra: I will close on this point. Firms have said to me that, for them, the challenge of attracting investment is more to do with the availability of talent in Scotland and their ability to find people who can run the company at a level that increases output; it is more to do with the skills base and the ability to access the right skills than the availability of capital.

Therefore, is the issue not more complex than simply being a question of bulking up or putting in place capital controls or trying to find a more tax-efficient route by which to direct investment in Scotland? A combination of those things is required, including consideration of the human factors, rather than just action on the regulatory side.

Professor Roy: Yes. As I said, the extent to which there is high-growth potential depends on the entire underlying ecosystem that sits around the sector.

Last week, I was at a conference at the Technical University of Munich. What they do there is unbelievable—it involves looking at the whole ecosystem, from students to start-ups to scale-ups, and the support from the public sector and the business community. There are 21 unicorn companies linked to that one university, either through graduates or through research that has been done. Every year, 100 start-ups come out of that.

You are right—there is a huge pot of capital sitting there waiting to be invested, but it is all

crowding around young people coming through, who are ambitious to be entrepreneurial and set up their company with fantastic academic research and a pipeline of support, including training and managerial support to enable them to grow their business, all within a relatively small geographical area. That comes back to the point that it is not just about capital—those in Munich would say that it is down to the complex ecosystem that they have been able to build over 50 years.

The Convener: I have to say, from my recall of economic history, that the issues that you talked about, such as concerns about the amount of investment from British companies going overseas, was an issue before the first world war—that is how long that has been an issue for the Scottish and UK economies.

Craig Hoy (South Scotland) (Con): Good morning, Professor Roy. One of the features of the fiscal framework is that it links Scottish and UK fiscal and tax policy to relative economic growth and performance, which has led to what you describe as an economic performance gap.

In our discussions with ministers, we have picked up a sense that that does not appear to be a particularly big concern for them, because it is a notional, academic, intangible figure—it is not real money. Will you clarify how important it is that the Government takes that issue seriously, because of the interaction with the fiscal framework?

Professor Roy: The figure that matters, ultimately, is the net tax position—essentially, that is how much you raise. That is the figure that enters into the budget. I think that we are projecting it to be £600 million for 2025-26.

When we highlight the economic performance gap, we stress that the net tax position is made up of two elements: the tax policy decisions of the Government in Scotland relative to the rest of the UK, and how the tax base is doing. That is what matters in the fiscal framework, and we think that it is important to look at both those elements. You need to think about not only how much you might raise from your tax policies, but how your overall tax base is doing within all of that.

That is why it is helpful to take a hypothetical view and to think about what you would have if you had your tax policy and you matched economic performance in the rest of the UK.

As we have highlighted in the past, growing the economy—the relative performance of the Scottish economy—is fundamental to the framework. That is why it is important to highlight it and to be cognisant of what we are seeing in that regard.

Craig Hoy: That reminds me of a chief executive officer with whom I worked, who used to say to the sales teams, “Don’t tell me how much

you did sell—tell me how much you didn't sell and what you didn't bring in."

Let us look at what, in a sense, the Scottish Government has not brought in. You made a projection that said that the top rate of tax—the 48 per cent rate—should have brought in £53 million in 2024-25, but, in the end, the Scottish Government realised just £8 million. That was from one of your previous reports. The top rate applies to those who earn more than £124,000 or so. What would be the reason for such a significant difference between what you estimated would be brought in by a certain tax policy and the net result, which was significantly less?

Professor Roy: We have related that to things such as behavioural change and how people might respond to different tax rates. Again, we use evidence, including the increasing evidence that HMRC is pulling together about what has been happening in Scotland, and—crucially—what the international evidence shows.

That evidence shows that people on higher rates of tax typically adjust their behaviour in response to changes in tax policy. People think that that is about people moving, but it is not—it is simply about people adjusting their tax affairs, taking more of their income in dividends, marginally changing their hours worked and so on. There does not need to be much of a change in people's behaviour for there to be quite a significant change in the tax position overall.

Changes in tax policy, which give you a static effect, need to account for the fact that people will change their behaviour. That is why, for higher earners in particular, we assume quite a high tax elasticity, whereby changes in tax policy would lead to a relatively marginal overall increase in revenue, because people adjust their tax affairs and tax behaviours. That is why we saw such a change.

Craig Hoy: With regard to the levels of behavioural change, I presume that the greater the differential in tax between Scotland and the rest of the UK, the more exposed we will be to such behavioural changes taking effect.

Professor Roy: We model tax elasticities. Clearly, if you have more of an increase, you will raise more revenue, but the actual scale of potential behavioural change would be bigger.

There are a couple of points to consider. Some people have talked about whether there are tipping points, for example, so you could potentially increase tax quite a bit and have relatively limited behavioural change, but, once you get above a certain level, you might potentially have more behavioural change.

A lot depends on the individual's circumstances. People who have one job that is very highly paid might have very limited flexibility; if someone owns a company and is self-employed, they might have much greater flexibility around how much they actually take as a dividend, as a salary and the like. We have highlighted that as an area in which HMRC is starting to pull together longitudinal data sets that will enable us to test much more empirically whether we have seen behavioural change going on.

One caveat is that we are still seeing net inward migration of taxpayers into Scotland. Again, everything has to be taken in the round. We might be seeing people's behaviour change, but people are settling here; there is no evidence that large numbers of people are leaving Scotland or not coming here because of the changes in taxation.

Craig Hoy: The Scottish Government quotes the overall figure, but has there been any assessment as to which tax bands those who come into the country as part of that net inward migration fall into? Do they tend to be in the lower middle tax bands, or are we seeing greater numbers at the lower end of the pay spectrum?

10:45

Professor Roy: I do not recall whether the HMRC study broke it down into different tax bands, but we can have a look at that and come back to you.

Craig Hoy: One of the issues that you described as an asymmetric and downside risk to the net tax position is your assessment of Scottish earnings growth relative to the OBR's assessment. Why do the two organisations take a slightly different view? Why is your outlook slightly rosier than the OBR's in respect of Scottish earnings growth?

Professor Roy: Ask two economists a question and you will get three different answers.

Craig Hoy: They could be one-handed economists.

Professor Roy: As an institution, we have always been slightly more optimistic than the OBR on the outlook for earnings. There is a chart on page 39—figure 3.3—in which you can see that our forecasts are slightly ahead of the OBR's.

For the first few years of tax devolution, Scottish earnings lagged behind the rest of the UK's. To come back to your point about performance, that led to the net tax position not growing as much as we might have thought that it would have, because Scottish earnings were not tracking UK earnings. That turned around for a couple of years, partly because of improvements in the energy sector in Aberdeen, but also, we think, because of the

performance of financial services in Edinburgh relative to the performance of financial services in London. That led to Scottish earnings outperforming UK earnings for a couple of years.

We have recently seen a closing of that gap, and, in the most recent forecast, the OBR uplifted its forecast to be more aligned with ours. That is the key reason why the net tax position has come down this year.

If you look at the chart on page 39 and at the risk, you will see that we are more optimistic than the OBR is on earnings in 2026-27 and 2027-28. If the OBR aligns its forecast with ours or we align ours with the OBR's, the improvement in the net tax position will deteriorate further.

Craig Hoy: You mentioned financial services but not oil and gas. Has the public sector pay settlement given you some encouragement? Recently, that has tended to be higher than settlements in the private sector, and we have more public sector workers in Scotland.

Professor Roy: To go back to Mr Mason's point, there is an element of recycling over time. If the pay awards in the public sector are higher, you get income tax coming through from that. Again, public sector pay awards have been higher in Scotland, which is another factor that led to that relative improvement in earnings.

Craig Hoy: The figures say that unemployment is 4.5 per cent. If we look at the levels of economic inactivity, which are running just shy of 25 per cent, we can see that we are getting close to one in three working-age Scots not being in employment. Mr Davidson referred to issues in the benefits system that might lead to behavioural changes such as people simply not taking up work. As we look forward, how concerned should we be that, in effect, we are in a position in which 28 to 30 per cent of working-age Scots are not in employment? How will that aid our future productivity?

Professor Roy: Overall, the figures for Scotland are not that different from those for the rest of the UK when we take activity and unemployment into account. In particular, we are not that different from other regions of the UK in that regard.

I will say a couple of things about that. Inactivity is a bit of a catch-all term for a large number of people. There are "positive reasons"—if I can use inverted commas in that way—to be inactive. For example, someone who is a full-time student will be classified as inactive. We might have views about how active students are, but they would be classified in statistics as being inactive.

Obviously, we are not worried about those people, because they are going through the education system. People who retire early will be

classified as being inactive. We are more concerned about those people who are inactive because they are discouraged from entering the labour market, and, crucially, those who are inactive because of ill health.

Recently, there has been a switching, whereby people who were inactive for some other reason are now inactive because of ill health. That is a concern not just in Scotland but in the UK, because it suggests that there might be more significant reasons for people not being in the labour force, which are linked to their health and wellbeing. It suggests that there is something going on upstream or a challenge in society that is affecting people's ability to be active in the labour market.

Craig Hoy: I accept that there is probably a similarity with the rest of the UK, but am I right in thinking that there is not a similarity with other Western economies that are the same size as ours?

Professor Roy: Yes. The levels of inactivity in the UK are relatively higher than they are in other places in Europe. We have lower unemployment, however. Unemployment is higher in places such as France, for example.

We have more people classified as inactive. The interesting thing is that the national figures for inactivity hide huge variations between different parts of the country. That is why the comparison between Scotland and the UK is perhaps not the right one. The comparison between Edinburgh and the affluent parts of England, or between Inverclyde and the post-industrial regions of the north of England, is where we get the most insight into what is driving inactivity in some key areas.

Craig Hoy: I am looking at the state of the Scottish Government's budget this year and going forward. We are seeing quite big policy changes at the UK Government level that will have a material effect on the Scottish budget. For example, we are seeing a potential reversal of the winter fuel payment, which will give the Scottish Government more money, and possibly the scaling back of other welfare reforms at the UK level. The consequence of that could be further cuts at the UK level to health, education or areas in which we get Barnett consequential funding. How difficult will that make it for the Scottish Government, which, by common consensus, seems to be too last-minute in the way in which it approaches its budgetary considerations, to forecast for the next 24 to 36 months?

Professor Roy: There are a couple of things to say about that. The UK Government has set out broad parameters for departmental spending. Tomorrow, we will get the detailed intricacies between different departments, which, at the

margin, will lead to modest changes in the position of Barnett consequentials relative to that total.

There is a lot of information out there that the Scottish Government can use to plan. That was one of the key reasons why the Government said in February that it was going to publish the MTFS before the spending review, and it was relaxed about doing that, because the broad parameter of departmental spending was set. We will get a bit more detail tomorrow, but the Government has a lot of information to enable it to plan what will happen to its overall budget.

With the winter fuel payment, you are talking about the potential implications of a small number of hundreds of millions of pounds—if that—in a budget of nearly £60 billion.

The Government has a lot of information. It has the forecasts, the trajectory for social security and a broad outline of what the block grant will look like. A lot of things will change at the margin, but, overall, the Government has a pretty clear indication of where the overall public finances are trending and when the reconciliations will hit.

Michelle Thomson (Falkirk East) (SNP): Good morning. I will keep my questions brief. This session has been invaluable. It has been interesting for me to listen to it.

We have had a number of conversations about the so-called economic performance gap and you have clearly illustrated the reality and why it is more complex than simply seeking top lines. I am quite intrigued by the percentage of our conversation this morning about getting further clarity on the operation of the fiscal framework, with the different events that influence data and information coming in from the UK Government and the Scottish Government.

I also feel that, every time that we have these sessions, we are descending in terms of transparency, which has to underpin the point of why we are doing this. Things seem to become ever more opaque, ironically, as we get more data and information, and that is clearly driven by a system that seems to encourage short-termism and more complexity, becoming ever more inefficient. That is just my observation from sitting and listening to this session, but I am interested in hearing your views, because your work rate must also be increasing.

Professor Roy: As the economist here, far be it from me to be more optimistic than you. I think that you are right. The nature of the fiscal framework means that it has a lot of moving parts, and a lot of those moving parts change relatively regularly, whether that be the economic performance gap or the UK Government making an announcement on social security reform, which has an impact on the Scottish budget, or whether we get a spending

review and we are waiting on Barnett consequentials. There are a lot of things moving around in all of that. My answer to you, and the point that I think it is also important for the Government to think about, is that if we take a step back, a lot of what we are talking about is marginal changes in the context of an overall large budget.

If I take the example of winter fuel payments—Michael Davidson might be able to quickly work out on an envelope the numbers that we are talking about—the last time, we were talking about a difference of up to about £80 million between Scottish Government and UK Government policy. Even the two-child limit is a difference of up to £190 million—we were talking about growth from £156 million to £190 million. It is really important to consider those issues, but we are talking about £30 million in a budget of £60,000 million. Sometimes, we focus on the minutiae when the really big public policy questions are how we spend the £60,000 million budget most effectively to support the priorities of reducing child poverty, economic development and tackling net zero. Sometimes, there is a tendency for us to dive into the detail, which is quite right, and to scrutinise the forecasts and those elements of it, but the big-picture trends are pretty stable.

Michelle Thomson: That is very helpful. I will pick up on a comment that you made earlier about HMRC. Have you got any indication from HMRC as to whether it might start to make more data available? You were talking about self-employed people, and, with the making tax digital programme coming during the next tax year, there will be much more data available, even if it is not collected—and it could be during future phases. There must also be more data available with people making interim, mid-year payments, which came in a few years ago. The whole point is to make data more readily available to mitigate the problem of the self-employed figures.

Professor Roy: All of that helps. HMRC has been really good about sharing the information and data that it gets, and that definitely helps with things such as RTI. It is now able to give us an indication of the figures that it is seeing that might be coming through self-assessment, and we can take that into consideration for the update in advance of the outturn that we will get in July.

I do not know whether anybody here does self-assessment, but the challenge with it is that most people do it in January, which means that they are doing it right at the end of the tax year. For the tax year 2023-24, for example, people were doing their self-assessment in January 2025. We do not know the figures until a couple of months afterwards, when HMRC gets them through. It can then tell us what those figures are, but it cannot

tell us any earlier, because that is just the way that it is done. We need more of a structural change in how we do things such as self-assessment, and getting it done earlier would really help us. It is a concern, and that is the bit that is very volatile in Scotland and the UK.

Michelle Thomson: My last wee question is about economic inactivity. I have previously asked about the extent to which you disaggregate data by sex, because that often gives interesting patterns. It makes me wonder to what extent we might see emerging patterns when we do that. Obviously, there will always be a big proportion of economic inactivity related to childcare. Have you got any sense of what patterns there are? Do you disaggregate data in that way? Have you got any further plans to derive more key insights?

Professor Roy: On inactivity, we rely on what the Office for National Statistics produces on the labour market. Again, you will hear some frustrations from us about the quality of the data that the ONS is producing on the labour market and some concerns about the labour force survey. That data is disaggregated by sex, age and reason for inactivity. The challenge—this is why we need them to produce the robust data—is that, once you start to drill in on age, sex and reason for inactivity, you could start to get into relatively small samples, particularly in Scotland. We need that to be as representative and robust as possible—

Michelle Thomson: Sorry to interrupt, but the scale of the ONS data set for Scotland has been an issue in recent years, has it not? Has that moved on at all?

Professor Roy: It is still work in progress. The Scottish Government boosts the ONS data, so it is more representative, which helps, but there have been bigger challenges in the ONS and concerns about the labour force survey. The ONS view is that it is more confident with the LFS, but I note that the Bank of England and others still do not use it.

11:00

The challenge, in trying to drill down into exactly the types of policy questions in which you are interested is that, if you do not have confidence in the data, you could end up with really poor policy judgments on the back of that.

The Convener: I have just a couple of further points. The first relates to social security. I am curious about employability services. The wee footnote in your report says:

“The forecast of Employability Services is an indicative forecast and includes spending on Fair Start Scotland and elements of No One Left Behind.”

You have the figure increasing from £52 million to £60 million to £73 million in the current year, which is an increase of about 15 to 20 per cent per year, and then you have it projected to go from £73 million to £70 million and remain at that level for five years. Is there a reason for that?

Professor Roy: Michael Davidson may want to come in and explain that.

The Convener: I am asking just out of curiosity. That is the only static budget that I have seen in your whole report.

Michael Davidson: We produce what is—as we have said—an illustrative forecast, because we take the budget allocation from the Scottish Government and then estimate the proportion that falls within our remit, based on the existing use of that money. What falls within our remit is spending to assist disabled people or those receiving reserved benefits with barriers into long-term employment. We estimate that around 80 per cent of the employability budget falls within our remit, and that is according to our legislation, so we just apply that to the budget that we are given by the Government and roll that forward rather than uprating it.

The Convener: Right. But why do you think that it is going to fall from £73 million this year to £70 million and remain there for five years in a row?

Michael Davidson: Sorry—the fall by £3 million, from £73 million to £70 million, is the fair start Scotland element. That scheme is being phased out and is being entirely subsumed into the no one left behind scheme, and we ran it flat from then onwards. This year, we have £70 million; in 2025-26, the £73 million is broken down by £3 million on fair start Scotland and then £70 million on the no one left behind scheme. When fair start Scotland fades away, we are just left with the £70 million.

The Convener: And there is no inflationary component.

Michael Davidson: We do not currently apply anything to that figure, based on the discussions that we have had on that with the Government and the spending that we have seen in previous years.

The Convener: Okay. Thank you.

I am curious about something else—it is in paragraph 3.11, on page 39, regarding your projection on public sector employment.

Since the pandemic, there has been an increase of 42,000 in the public sector workforce; 25,000 of those posts are in the NHS, which means that 17,000 are not. The public sector reform agenda will be looking at the size of the workforce, particularly with regard to digitisation, artificial intelligence and so on—you name it. However,

despite that, you are predicting only a 0.1 per cent reduction in the current year and 0.3 per cent for 2026-27 onwards. Can you explain that?

Professor Roy: What we do on that is, largely, take pay policy and the public sector employment data and then just slide that forward, based on what we think public sector pay will be within that. That is across the entire public sector in Scotland. We do not have any details from the Government on its specific targets for, say, changes in employment, so it is largely just a mechanical forecast to help us to make our tax forecast. It is not a judgment whereby the Government has told us that it plans to remove X number of jobs and we have incorporated that—it is going the other way.

The Convener: Is that something that you might expect to see in the medium-term financial strategy, for example?

Professor Roy: As we have spoken about quite a lot, it is okay to have pay policy but it would be nice to have a workforce policy that underpins that. We would expect to see that sort of thing in a medium-term strategy.

The Convener: Would you or your team like to make any further points?

Professor Roy: No—that is it really.

The Convener: I thank you once again for your evidence—it is much appreciated. We will now take a short break of some five minutes before we move to the next session.

11:04

Meeting suspended.

11:09

On resuming—

Scottish Public Inquiries (Cost Effectiveness)

The Convener: Our second agenda item is consideration of evidence on the cost effectiveness of Scottish public inquiries. I welcome to the meeting Stephen McGowan, deputy Crown Agent, litigation, Crown Office and Procurator Fiscal Service, and David Kennedy, general secretary, Scottish Police Federation. We already have your written submissions, so we will move straight to questions.

Mr Kennedy, I have to say that you provided a hard-hitting submission, which was refreshingly direct about the issues that the committee is addressing. In it, you say that you want to

“raise concerns regarding the escalating and unsustainable burden that public inquiries are placing on policing in Scotland”

and that the

“current situation is critical.”

You mention the six major public inquiries that are on-going in Scotland—those on Sheku Bayoh, Emma Caldwell, Scottish child abuse, Scottish hospitals, Covid-19 in Scotland, and Mr Eljamel’s practices in NHS Tayside’s area—and you say that,

“collectively, they represent a crippling financial and operational burden on a service already facing the most acute resourcing crisis in over a decade.”

I could continue in that vein, but I am quite keen that you should have an opportunity to speak directly on the record.

David Kennedy (Scottish Police Federation):

The amount of pressure that public inquiries place on the police service’s resources—through the sheer number of tasks required of it—is quite extraordinary. I have been in the federation for nearly 20 years and, since taking up my post, I have never seen budget being set aside for the police service to work on such inquiries. Since 2013, the police service in Scotland has lost money from its budget, and the reforms that have taken place have had a knock-on effect.

Let me give an example. The cost to the police of working on the Sheku Bayoh inquiry currently sits at £25 million. Even if we take a light touch, that figure alone would give us 500 police officers. Given Police Scotland’s current resourcing levels, the costs are absolutely having a detrimental effect on policing.

The response to a recent freedom of information request made to G division in the Glasgow area,

which is the biggest division in Scotland, showed that 176 rape inquiries are currently sitting with one detective inspector. He alone is in charge of those cases, as senior investigating officer. Allowing for his rest days, he will therefore be lucky if he investigates each of those cases for two days. That shows the knock-on effect that public inquiries can have on the day-to-day running of policing. We have been told that, at one point, 60 detectives were dealing with the Scottish hospitals inquiry, which illustrates the level of resource that is being used.

Seventeen officers, ranging from constables to superintendents, are currently dealing with the Sheku Bayoh inquiry. That figure covers not just the officers who are giving evidence but those who are in the background, making sure that the inquiry gets all the statements and other documentation that it requires. That shows you that a lot of money is involved. For example, the cost for those personnel, including their salaries, currently sits at £5 million.

The Convener: Your submission also says:

“To believe that public safety hasn’t been compromised would be foolhardy.”

You go on to say:

“Officer wellbeing is being totally neglected”.

David Kennedy: It is. We have senior investigating officers who are currently off sick, and we are dealing with others who will not be back. That is due to the number of inquiries that they are dealing with and the number of deaths that they are seeing. When so many officers go on to day-shift roles covering public inquiries, the knock-on effect is that the operational role is left short. That is what is happening at the moment. It is not necessarily the public inquiry work that is causing that situation. Officers who are working on those are probably getting an easier time, because they have set tasks to do. It is the ones who are left in the operational roles who are in dire straits, because their workload is unbelievable. When I saw the figure of 176 cases for one SIO who is a detective inspector, I thought that that person must be under an inconceivable amount of stress.

The Convener: One could make a number of arguments, for example that the police should get additional resources—I think that there would be strong support for that. Your submission points out that

“no additional funding has been made available to cover the costs incurred”,

which is obviously a major concern for the police, particularly as new inquiries are about to begin—the Emma Caldwell inquiry, for example.

We are looking at the cost effectiveness of public inquiries. What does the federation think should be done in that regard?

11:15

David Kennedy: Proper budgets should be set out at the beginning of an inquiry. Before that, though, there should be an impact assessment that asks how the inquiry will affect the operational day-to-day running of the agencies that will be involved in it. They are not asked about that now; they just take on the inquiry.

The police will always say that they can manage. The people in the organisation are can-do people—that attitude is in every police officer—but in reality they cannot do it all. The police will say that they can do it, and they will do their best to do it, but they probably do not realise that that is having a knock-on effect, which is now catching up on them.

An impact assessment would allow the Government and whoever is setting up the public inquiry to ask what needs to be done to ensure that services are not impacted. My concern is that there will be more public inquiries in 10 years’ time because of cases that are being missed when people are taken off the operational side of policing to help with public inquiries.

The Convener: So, it becomes a self-perpetuating cycle.

Mr McGowan, you say in your submission that the Crown Office and Procurator Fiscal Service’s approach to public inquiries is that

“One Deputy Crown Agent coordinates COPFS’ response to ensure there is an overview of the way in which inquiries are dealt with and to provide consistency in responses.”

You go on to say that

“costs incurred by COPFS in relation to Public Inquiries come together into one budget line to enable the better control of costs.”

How are those costs being controlled?

Stephen McGowan (Crown Office and Procurator Fiscal Service): Like all of our work, our public inquiry work is demand driven. When a public inquiry is set up, we engage with it at an early stage to discuss what it wants from us. It will then ask us formally for information and we will provide it. That information is provided by senior prosecutors who are subject matter experts in the area. When an inquiry asks us to co-operate, we will give it what it requires of us.

The Convener: If you are demand led, there are not really any cost controls, are there?

Stephen McGowan: There are cost controls in the sense that we have a team that deals with those matters. It flexes across the various

inquiries—it can work between inquiries. We are developing expertise in the law and practice of public inquiries. However, it is not for us to control the costs of a public inquiry that is scrutinising us.

The Convener: Do you think that there should be cost controls? Mr Kennedy has made a couple of helpful suggestions. Every other area of the public sector, whether it is the police, the NHS or local government, has a budget and is expected to deliver on it. However, it seems to me that inquiries are almost open ended. The Sheku Bayoh inquiry has gone on for six years. There should be an assessment at the outset of what the opportunity cost will be, for want of a better phrase. If resources are being taken away from the police to put into an inquiry that may or may not come to a conclusion in a few years' time, and that may or may not produce recommendations that may or may not be implemented, should there not be a comparison of the costs? There is also an implication for the Crown Office and Procurator Fiscal Service, relative to other areas where public money should be spent. Is that not something that you think should take place?

Stephen McGowan: That is really a question for the Scottish ministers, because it is they who set up such inquiries.

The Convener: I am asking your opinion as an organisation. You have given us a good submission, but Mr Kennedy's is very direct and robust. The committee is trying to make things better not only for the Scottish taxpayer but for people who want public inquiries to result in the timely delivery of justice, as they see it. How does it help anyone if an inquiry runs on for five or 10 years, costs hundreds of millions of pounds and makes recommendations that might not be implemented even a year or two after they were made? Surely that in no one's interests, and that is why I am keen to have your view on it.

Stephen McGowan: When ministers set up an inquiry, the process at the start should be that they set and adjust terms of reference. If the terms of reference are sharp and focused, they should take us to the place that you suggest. Once the inquiry is set up, we will work with it and support it as far as we can. We are all for transparency and public accountability, but how the inquiry is set up and what its budget is are matters for the inquiry. If you set up an inquiry that is independent, it is independent.

The Convener: Surely the COPFS has a view. In paragraph 19 of your submission, you say:

"prior to the setting up of the Sheku Bayoh Inquiry, COPFS and the then Lord Advocate were of the view that there were matters in relation to the circumstances of Mr Bayoh's death that would be outwith the scope of a Fatal Accident Inquiry and therefore there would be benefit in a Public Inquiry being held."

You were part of the recommendation that there should be an inquiry. Should the terms of reference not include some kind of recommendation that you would want it to report within a couple of years, say, which does not seem unreasonable to normal people, with a certain cost implication? Instead, that inquiry is costing £50 million overall, including £25 million on the police side.

Stephen McGowan: The Bayoh inquiry was unusual in that sense. There were matters in relation to the death—what happened post-incident and so on—that could not be dealt with within the constraints of the legislation that governs fatal accident inquiries. Those matters had to be addressed for the purposes of dealing with the state's article 2 right-to-life procedural obligations. It needed something more than a fatal accident inquiry, which is why the then Lord Advocate made that submission. That is what we did.

You come to a fundamental philosophical point: what does independence mean? If you set up an independent inquiry and then control its budget and say that it can operate for only two years, that is a constraint on the work that the inquiry can do.

The Convener: Does it not just mean that you have to focus a bit more, rather than looking at every single potential thread in an almost exponential way? Mr Kennedy's submission says:

"The current inquiry model is not effective. Many inquiries become protracted and unfocused. Without statutory timelines or budget oversight, costs spiral, and impact is delayed."

Do you not agree with that?

Stephen McGowan: Ministers control a public inquiry's work through its terms of reference when they set it up. Again, I come back to the point that all of that stuff can be done at the start by controlling the terms of reference of the inquiry and setting them tightly—if that is what your objective is at the start.

The Convener: Do you think that there should be more transparency? Mr Kennedy's submission says:

"The public, and contributing participants, are rarely informed about inquiry costs, remits, or extensions."

Should more information, such as interim recommendations, be available in an inquiry, so that people can see where it has gone in the past five or six years, or whatever it might be?

Stephen McGowan: Some public inquiries take that approach and work on a modular basis, where they come up with conclusions and recommendations at the end of that. The Scottish child abuse inquiry is a good example of that. It

splits off each piece of work and will publish reports of its findings at that point in time.

As for the financial costs and what the inquiry has been doing, those are really matters for the inquiries themselves. As I said, I am all for transparency in and accountability for budgets. How inquiries publicise that is perhaps part of the issue, because their costs are available. As far as I am aware, costs are published in the annual reports and accounts.

The Convener: Is that not a bit like marking your own homework? I will let Mr Kennedy come back in, but he said that

“Independence is essential—but it must be balanced with accountability ... while working within a framework that ensures value for public money.”

Stephen McGowan: That is the philosophical question that I described—

The Convener: It is not a philosophical question. Mr Kennedy has directly referred to the fact that the police service is under strain because officers are being directed into inquiries in significant numbers and, as a result, the other things that they are trying to do might be adversely affected. Any benefit to the public from an inquiry could effectively be negated by the loss of service that the police would otherwise be able to provide elsewhere. Is that not an aspect of inquiries that we should be looking at?

Stephen McGowan: It is a matter that you should be looking at, although it is, as I have described, a difficult matter for me to comment on. As I said, if you set up an independent inquiry, that inquiry is independent. If you start trying to set limits on what the inquiry can and cannot do, it becomes less independent. You get that right at the start by setting an inquiry’s terms of reference. Section 5 of the Inquiries Act 2005 allows for that. If the terms of reference are set tightly, the inquiry should not be allowed to wander into other areas.

The Convener: Should there be a higher bar for public inquiries? There are more public inquiries than ever in Scotland and the rest of the UK. It seems that less radical cases just go to public inquiry now. Should we look again at the advice that ministers are given on whether inquiries should or should not be launched?

Stephen McGowan: As I said, we are subject to the scrutiny of public inquiries. With respect, your question is really one for the Scottish ministers. It is not for me to express that ministers—

The Convener: Ministers take advice. The Sheku Bayoh inquiry was launched because of advice from your office and the Lord Advocate.

Stephen McGowan: It was not launched solely for that reason, although I am sure that that was a factor that ministers took into account. That advice was given for the reasons that I have explained. There were factors that, we thought, were necessary to be considered under the state’s article 2 obligations. There was legal advice and there were legal obligations that the Scottish ministers had to fulfil. That was what was behind that advice.

The Convener: Mr Kennedy, in your submission, under “Cost Monitoring”, you say:

“There are no enforceable mechanisms for monitoring costs. This leads to unchecked overruns.”

You advocate for

“Independent financial oversight ... Maximum inquiry durations unless formally extended by Parliament”

and

“Annual public reporting on progress and spend”.

David Kennedy: Yes. Inquiries tend to run away with themselves financially. In Stephen McGowan’s defence, I do not think that the Crown Office has control over that. Right from the beginning, it has to be clear what the mechanisms are that will control an inquiry. There are no financial constraints on that. As an inquiry runs away with itself, the police service cannot stop what it is doing. It has to continue to be part of the inquiry, which is why the costs start to mount up.

You mentioned a different approach. Other tiers could be put in place, in which the issue is looked at. We could say that, instead of the overarching way in which public inquiries work, they are going to work differently now. Inquiries tend to spread and spread, and there does not seem to be a point at which we ask, “Can we afford to do this, given the financial predicament that we are in? Is there a cheaper and better way of doing it?”

The Convener: In your submission, you talk about alternatives to full public inquiries. For example, you talk about

“models in Canada, New Zealand, and Ireland where inquiry frameworks are more proportionate and cost managed.”

David Kennedy: New Zealand is probably the best example. It considered its public inquiries in 2013, and the Inquiries Act 2013 changed how it dealt with them. New Zealand now has a broader approach to inquiries. It still has public inquiries, but it also has Government inquiries and royal commissions. It has tailored inquiries to be more cost-effective.

Canada and Ireland are similar to the UK. There are positives and negatives in what they have, but each of those countries is looking at how they can achieve more cost-effective inquiries.

That is where Scotland needs to be. We have to look for a better model, in which public inquiries do not take six years. We will be running a public inquiry for something that happened more than 20 years ago. The question is what is being left behind while that takes place. That is my biggest concern at the moment. From what I am being told, the Emma Caldwell inquiry will probably be one of the biggest inquiries that we have ever had. Having looked at what has happened with the most recent public inquiries, I have a real concern that, in 20 years' time, we will be back with another public inquiry, which looks at what happened 20 years ago.

11:30

The Convener: When inquiries such as the Emma Caldwell inquiry or Sheku Bayoh inquiry take place, police resources are really impacted. Other inquiries—the Eljamel inquiry, for example—require NHS resources. Whether or not we have the same inquiry model in place, is there an argument for a completely ring-fenced fund to pay for public inquiries, so that specific service budgets are not impacted?

David Kennedy: Absolutely. We do not have anything ring fenced for inquiries. We do not consider how much an inquiry will cost or what the impact will be on the organisation involved.

The Convener: Mr McGowan, does the COPFS feel that that would be a sensible approach?

Stephen McGowan: Anything that helps budget-wise is of assistance, and we are happy to work with the Government on that. Public inquiries are a pressure for us. Every year, we go into discussions on the budget and say, “We have these inquiries to deal with,” but we do not get separate funding for them. It is a pressure every year.

The Convener: I have a question about the implementation of recommendations, which, as I touched on earlier, has been a bugbear for many people. About 3,250 recommendations have come forward from 54 completed UK inquiries since 1990, and hundreds of them do not seem to have been implemented. Mr Kennedy suggested that there should be

“Statutory deadlines for publication of implementation plans ... Annual reporting to Parliament on progress”

and

“Independent post-implementation review”,

which, for example, was done in Jersey two years after the child abuse inquiry there. Would the COPFS support a post-review?

Stephen McGowan: In principle, there is no reason why we cannot do that. It would come with

more expense, because you would be reviewing what had happened at the inquiry, but doing so is not difficult in principle.

The Convener: I am sorry to cut across you, but this is about not only cost but cost-effectiveness. There is not a lot of point in having an inquiry and making recommendations if nothing happens. In the first evidence session of our inquiry, Professor Cameron said that some recommendations that were made in the Jersey inquiry had first been made in 1945, in the very first child abuse inquiry, and still had not been implemented.

Stephen McGowan: A post-review would come with a cost, but, in principle, there is absolutely no problem with it, because there are ways and means of doing it. My other observation is that some inquiries make recommendations that are just that: recommendations. They need to be implemented, which means that the Government needs to take a broad view to its budgets. It is about the extent to which the Government and the Parliament consider the recommendations when they vote on budgets. In principle, there are ways of examining such things.

The Convener: Would the COPFS suggest anything specific to improve the public inquiry system?

Stephen McGowan: I suggested in my submission that there are other ways of holding inquiries, such as non-statutory inquiries. I gave examples of those that have worked.

The Convener: The issue is that the public, or individuals who are clamouring for inquiries, now feel that they have been almost short-changed unless an inquiry is judge led.

Stephen McGowan: That is the tension. I gave the example of the two inquiries on the Chhokar case. They were quick and effective. I have been around long enough to remember their impact on the COPFS; there was a fairly radical change in how we did things as a result of those reports. I also gave the more recent example of Dame Elish Angiolini's inquiry and the co-operation that it was given.

When my organisation provides material and assistance to an inquiry, we do not necessarily do so because it has the force of law and can compel evidence from us; we do so because we welcome the transparency and accountability that inquiries bring, so we co-operate with them in any event. However, there might be a very small number of inquiries that involve balancing other rights, so powers of compulsion might be required.

The Convener: Did the Chhokar case take a year, from 2000 to 2001?

Stephen McGowan: It was about that long. The inquiry reported in the calendar year after it was set up. I cannot recall now whether the report was published within 12 months, but it was certainly speedy.

The Convener: Mr Kennedy, do you feel that we have lost our way with public inquiries and that it is time for a reset?

David Kennedy: Absolutely. I genuinely believe that we have lost our way and need to find it again. Your point about recommendations is fundamental. If we publish recommendations, we should ensure that they are acted on if they are in place and found to be correct. In 45 or 50 years' time, we do not want to be here looking at the same problems about which somebody produced recommendations 40 or 50 years ago. That would be foolhardy.

The Convener: We do not really want to be here again in five years, do we?

David Kennedy: Absolutely not.

The Convener: Okay. I will open up the session to colleagues around the table.

Craig Hoy: Good morning. Mr McGowan, in your submission, you referenced the Angiolini inquiry and made the point that non-statutory inquiries do not have powers of compulsion. How important is it for inquiries to have that power, given that, in that example, people seemed to co-operate with the inquiry without it?

Stephen McGowan: I can speak only for my organisation, but we would co-operate with any inquiry that was set up, whatever the manner in which it was set up. As I said, we welcome transparency and accountability. As a public authority, we recognise that we are there to be scrutinised. Scrutiny can lead to improvements in the way that we do things.

Craig Hoy: In respect of the Sheku Bayoh inquiry, you say that a fatal accident inquiry was not pursued because

"there were matters in relation to ... Mr Bayoh's death that would be outwith the scope of a Fatal Accident Inquiry".

What would such matters typically be?

Stephen McGowan: It was to do with post-incident actions and cultural matters within the organisations, including my own, that dealt with the response to the death. Under the statutory framework for fatal accident inquiries, such things could not typically be dealt with. A fatal accident inquiry finds out the facts of the death, how it happened, what caused it and what might have prevented it; it does not deal with the wider surrounding issues, which is what, in part, caused the Sheku Bayoh inquiry to be set up.

Craig Hoy: Could a hybrid model potentially be put in place, whereby the scope of fatal accident inquiries would be slightly enlarged to prevent the default position of a case from becoming a public inquiry?

Stephen McGowan: At the moment, fatal accident inquiries are bound by the terms of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016, which is pretty similar in scope to the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that predated it.

Craig Hoy: In paragraph 21 of your submission, you reference the inquiries into the death of Surjit Singh Chhokar. The inquiries, one of which was led by Sir Anthony Campbell,

"were set up in 2000 and reported in 2001."

Do you have any insight as to how those were done so expeditiously yet other investigations into similar situations seem to roll on for years and years?

Stephen McGowan: I was not involved in those inquiries, but I know that the methodology that they used was to gather the documents and then speak to the witnesses, which they did without going through the formality of public hearings about the matter.

I am not sure that I can provide much else, given how long ago that was, but you can see, at the moment, that Dame Elish Angiolini's inquiry is following a similar pattern of speaking to witnesses without going through the public nature of hearings, so it is able to work its way through more quickly.

Craig Hoy: On the convener's point about public confidence, it seems that public inquiries have become the gold standard and that the public is distrustful of anything less, yet there are examples on the public record in which we seem to have satisfied public confidence without going down the public inquiry route.

Whose responsibility is it to sell such alternatives to the public, particularly the victims, who might end up getting answers on justice more quickly, which—if the reverse of justice delayed is justice denied—would presumably help the grieving process in such circumstances?

Stephen McGowan: I hesitate to go back to Scottish ministers just because they are the ones to set inquiries up. It is incumbent on everyone. There is always clamour for a public inquiry—we hear a lot of such calls. The question is whether we have looked through the other options before we go for a public inquiry, and it is incumbent on everyone to make suggestions as to whether one is needed.

It can be difficult for an organisation such as mine; we are the subject of the two inquiries that we have just discussed, and it can be difficult for the organisation that is about to be scrutinised to be out in public saying, “There is a different way to do this,” without looking as if it is avoiding scrutiny. Non-statutory inquiries are a tool in the armoury that we should remember when thinking about setting up an inquiry on an incident.

Craig Hoy: Given their nature, both the COPFS and the police are legitimately brought into the process of a public inquiry quite frequently. It has been recommended that a body be established somewhere to deal with public inquiries, rather than each organisation having to reinvent the wheel, as I think it was described. Would that aid you in your own engagement? If you were working with a constant secretariat, you would not have to rebuild relationships each time another public inquiry came along.

Stephen McGowan: Yes, we would be happy to work with an organisation like that. I can see the advantages of it.

David Kennedy: Yes, absolutely. We have to consider that. On the question of making the scope of fatal accident inquiries bigger, I would say change the legislation. That is what we need to do; we need to make inquiries better. Fatal accident inquiries are better now, and I would be asking for the law to be changed. Make it better. We have that opportunity, and we should be doing it.

Craig Hoy: You have raised the issue of the huge cost to Police Scotland. In an ideal world, you would presumably be asking for recompense from the Government, regardless of whether an inquiry found shortcomings on the part of the police. You would hope for the costs to be underwritten. If they were underwritten for Police Scotland, would that not open the doors to everybody to receive the equivalent of legal aid for whatever legal and manpower costs they incurred?

David Kennedy: They absolutely should be underwritten. The whole point of an inquiry is to get to the facts and the truth, to find out what happened and to prevent it from happening again. Organisations can sometimes be crippled when an inquiry begins. There are organisations that would probably wish to be involved in some public inquiries but cannot afford it financially. Inquiries are a financial burden on organisations.

If the costs are set out and everybody knows that the money is set aside, more people would be willing to be part of inquiries, and they would be conducted in a more timely manner, I hope.

Craig Hoy: There is a sense that ministers are passing the buck when they put in place a public

inquiry and that they want it off their desk as quickly as possible. The report might end up on their desk, gathering dust, 10 years later. If the Government and the Scottish ministers had to foot the entire bill for a public inquiry, might they think twice before instituting one, and might they be more discriminating as to what should go to a public inquiry?

David Kennedy: Ultimately, they foot the bill, although it might be hidden or not shown in the public finances. The organisation—a public organisation such as the police or the NHS—will foot the bill, because it will not be able to do something on the other side. We have to recognise that when we set up inquiries. The organisations have to be given the money at the time because of the knock-on negative impact on them.

Craig Hoy: You have mentioned the impact on operational policing. All of us around the table understand the huge pressure that the police are under. You face the issue of gangland warfare and everything else at the moment, so I fully recognise that pressure. In relation to the points about public inquiries that you have been raising with the committee, have you specifically raised the impact on the operational capabilities of the police with ministers in the past?

David Kennedy: Not in reference to the current inquiry, but we will raise that point with them. We have raised issues about finances in the past, however. I have asked the Cabinet Secretary for Justice and Home Affairs about the next public inquiry—the Emma Caldwell inquiry. Where is the money for the police coming from? We have asked whether the police can be funded for their part in the inquiries, given the operational impact, but I have not had an answer.

Michelle Thomson: Good morning. I will start by following up on the point that Craig Hoy was asking about. It would be useful for me to understand a little more, Mr Kennedy, about the direct engagement that you have had with the Government to express your concerns about costs. You mentioned the Sheku Bayoh inquiry. That tent seems to be out there, given how long that inquiry has been running and the costs that have been incurred. You might not have been in place at that time but, at the start of that inquiry, did you express concerns about the potential implications of cost and the operational challenges that would result therein? It would be useful if you could walk us through how many meetings have been held and how frequently you have raised your concerns with the Government.

You mentioned the justice secretary. There was quite the media campaign by the lawyer representing the family of Sheku Bayoh to have the scope of the inquiry increased, and it was the

Deputy First Minister who said, “No, we are not going to do that.” Have you have had any engagement with the Deputy First Minister?

David Kennedy: I was not in post when the early interventions were made. My predecessors certainly had various conversations any time they met with Government. I can assure you that, any time we meet with ministers, cost and money are probably at the top of the agenda.

11:45

Michelle Thomson: I appreciate that you were not in post then, but it would be useful to understand from you, even anecdotally, where those conversations went. If concerns were being raised about the operational impact on your core duties, did anything arise from that, or were those concerns simply noted—or noted and put in a box somewhere not to be looked at again?

David Kennedy: Nothing has arisen from those concerns since those conversations took place. Government will say that more budget is being given to the police service and will push some of that back on to Police Scotland.

The reality is, however, that we need only look at the police numbers to know that those concerns have not been taken cognisance of. Where we once had 17,234 police officers, we are now at 16,500. Those concerns are raised every time that we meet with Cabinet. Every time that we meet with ministers, we raise the issue of money and finances.

I know that there is no pot of gold somewhere—there is no pot of money there for Government—and, indeed, all parts of the public sector will be feeling the pain. Nevertheless, in general, the police service always raises with ministers the point that, although we have tried our best, we have had £200 million taken out of the budget, and the extent of the reform that has taken place, and which continues to take place, in policing is greater than that in all other parts of the public sector.

When it comes to public inquiries, we have written to ask where money can be put aside to assist the police with the legal costs that would certainly come from an inquiry. That does not include the operational costs that will also come into play.

Michelle Thomson: You said that you have written letters on that. Have you had responses to them?

David Kennedy: A letter was written in relation to Emma Caldwell, and we have been given a meeting to discuss that with the cabinet secretary. However, as I have said, we do not seem to be getting anywhere—that is the easiest way to put it.

The budgets that have been produced for policing are not enough, at the end of the day, for what policing has to produce.

Michelle Thomson: Mr McGowan, I have a question for you. In this inquiry, we have touched on the potential perception, real or otherwise, of a conflict of interest. Have you had any initial engagement on that? I note that at point 5 of your submission, with regard to what you refer to as the “Rangers case”, you say:

“The form and nature of this Inquiry has yet to be confirmed.”

Have you had discussions with Government as to the nature of that inquiry, given the significant potential for interest? For example, it could be led by somebody from the Scottish legal fraternity, which is relatively small, with many lawyers going to the Crown Office and vice versa. Have any such discussions taken place?

Stephen McGowan: We have had early discussions, because we require to keep Government up to date with what has been going on with the litigation and with the current inquiry, which is on-going and needs to be cleared before the other inquiry starts. Ultimately, those are, again, decisions for ministers. Again, there is a limit to what the COPFS, as the organisation that would be inquired into, can do and say about some of that.

Michelle Thomson: Of course, but surely you would be pushing to protect yourself and your reputation. Surely your view—I am interested to hear whether this is, indeed, your view—would be that the inquiry must, ideally, be led by someone external to Scotland altogether, because of the potential conflict of interest given the Crown Office’s role in the Rangers case.

Stephen McGowan: I am not sure that I would accept that there is a potential conflict of interest. At the end of the day, it is not our decision, but I am not sure that there is a potential conflict of interest in, for example, a judge from Scotland hearing that case. Judges in Scotland hear cases that the Crown Office brings every single day—we are the biggest litigator in Scotland—and they hear cases against the Scottish Government every day, and, as one can read in the media every day, they do not always rule in our favour. Therefore, I do not necessarily think that it needs to be someone from outwith the jurisdiction, but ministers will make the decision and we will co-operate with it.

Michelle Thomson: I am not necessarily focusing on that. It is about the decision-making processes—and not only the question whether an inquiry should be set up, but its nature in respect of good governance. That is why I am asking the question.

I do not have anything else to ask, convener.

John Mason: Mr McGowan, you previously mentioned the independence of public inquiries and said that it is a bit of philosophical question, which I kind of accept. You also suggested that, if the terms of reference were sharper and more focused at the beginning, that would—or might—solve the problem. What do you think of the idea that, alongside that, we say at the very beginning—I take the point that this should all be fixed at the beginning, not halfway through—“We want this inquiry to take two years and it’s going to cost £5 million, and these are the terms of reference”? Would that take away from the independence of inquiries?

Stephen McGowan: You would have to decide what you wanted from your inquiry at the start—that is my basic point. That is what the 2005 act currently allows. If you say, “It’s going to take two years and it’s going to cost £5 million,” that might come with compromises. If ministers and the inquiry chair accept that they have to make those compromises, we will work with that.

Public inquiries have, until now, been looked at as a root-and-branch review of everything, which is perhaps why we end up where we do. In principle, I absolutely accept your point, but it comes with compromise. You could have pure independence, in which the inquiry controlled everything, including the budget and where it went, or you could have a slightly different model, as you have suggested. There is no reason why that cannot work, but, again, it brings us back to the issue of public confidence and confidence in the people who are appearing before the inquiries, and how all of that balances out. I would suggest that none of that is insurmountable, but it is a different model from the one that we have operated thus far.

John Mason: Yes, and yet it is the case for other professions. A teacher will have 50 minutes, or whatever, with a set of pupils, and they will do the best that they can in that time. As an accountant, I would have to do an audit within three months—or whatever it might be—for a fixed fee. Auditors are still—I think—considered to be independent. It seems to be possible to do that kind of thing, but it seems that when we get the legal profession involved, they do not like that.

Stephen McGowan: I am a member of the legal profession, but I work for an organisation that gets a budget every year; we have an ever-expanding amount of cases to take on, so we need to find ways of doing that while finding efficiencies ourselves every year. The discipline that you describe is not unfamiliar to me, certainly in my organisation. Again, I go back to the point that it is perhaps a philosophical question, but I see

nothing about the model that you are suggesting that could not be made to work.

John Mason: You might or might not want to answer this—[*Interruption.*] Sorry—my microphone is not on.

The Convener: That is always a bad start, John.

John Mason: As I said, Mr McGowan, you might or might not want to answer this, but when I put the same question to Lord Hardie, he said that he just would not do it if those were the conditions.

Stephen McGowan: That is a matter for him—I cannot gainsay that. Again, it comes down to the meaning of independence. Do you want a judicially led inquiry, and what would be the conditions for that?

John Mason: On that point, it has been suggested that for, say, an inquiry on child abuse, some kind of specialist in childcare could be the chair, or there could be a panel or a judge. Do you have any thoughts on that?

Stephen McGowan: The choice of chair is, again, a matter for ministers—I keep coming back to that point. Judges tend to be chosen because, first of all, they are seen as independent, and, secondly, they have a background in ensuring fairness and in making and writing up complex decisions. That is the skill set that a judge brings with them—that is perhaps why they are reached out to and chosen.

The 2005 act, and the Inquiries (Scotland) Rules 2007 that go with it, also impose various obligations with regard to fairness, with powers to compel witnesses and evidence. Those are all matters with which lawyers are familiar. That is why we have perhaps ended up with the criticism that the process is legalistic. If we set up a forum that is chaired by a judge and impose rules that make it very much like a courtroom or a tribunal, it is perhaps inevitable that we end up with a legalistic format. In addition, the rules say that if someone is going to be criticised, they need to be warned—I am sure that the committee is familiar with all of that.

Again, we have a fundamentally legal—and legalistic—process for these inquiries. That is perhaps why judges are chosen, and why we end up with a legalistic process.

John Mason: That specific point about the warning letters has come up before in evidence, and I think that there were suggestions that we could make savings in that respect.

Mr Kennedy, is there any advantage in having a judge running an inquiry, or should there be a panel or a specialist?

David Kennedy: Stephen McGowan is correct: having a judge puts an inquiry into that legal environment. However, what we have seen happen in other areas—in, for example, medical inquiries—is that, if a doctor leads it, you might not need a lawyer, but then they will tend to listen only to doctors and not necessarily to any lay members.

It is all about taking a rounded approach. You are absolutely right that it has to be an appropriate person who understands the area of business or the area where the mistakes have been made. That might also assist those who come in, because, invariably, what happens with the costs associated with public inquiries is that the legal teams require experts to come in, and they cost money, and it just rolls on. It might be better to find a better way of controlling all that and ensuring that those people were more independent.

John Mason: But if we say to judges, “You’ve got two years and £5 million to do this” and they all say, “We’re not taking part,” we are stuck, are we not?

David Kennedy: We would just have to find somebody else.

John Mason: Right.

Moving on to other issues, I note, Mr McGowan, the suggestion in your submission that you could start the process as not a statutory public inquiry but that it could be turned into one later. I am interested in that concept. Would it mean a lot of duplication? Would the costs be higher in the long run?

Stephen McGowan: It would depend on how it is done. Provision is made for that in section 15, I think, of the 2005 act. You could start the inquiry with less formality or without the full panoply of an independent public inquiry, and, if it were required, you could convert it into a more formal inquiry. If the inquiry chair agreed to do that—I think that that is the way in which it is phrased in the act—you would not necessarily have to go back and revisit things. I dare say that it would all depend on the facts and circumstances.

However, the reason to convert it, I would expect, would be that you needed the powers of compulsion required by a public inquiry under the 2005 act. If that is why it is being converted, and if it has been hearing evidence quite effectively up to that point, you will not necessarily have to start from scratch, and the work that you had already done will not just be put in a cupboard and ignored. The inquiry would be converted for the particular purpose of compelling someone to appear who would otherwise not have co-operated. I suggest that you could start some of these inquiries in a non-statutory manner and that, if there were such a requirement, you would still

have in your pocket the ability to use those powers of compulsion through converting the inquiry.

John Mason: The 2005 act, which you have mentioned, has come up a lot. Does this Parliament have the powers to change, amend or overrule that act?

Stephen McGowan: It is an act of the UK Parliament, so no. There are separate inquiry rules for Scotland—the Inquiries (Scotland) Rules 2007.

John Mason: Could we pass new legislation on public inquiries that would override that act?

Stephen McGowan: I do not actually know the answer to that question. I would need to go and search it out.

John Mason: That is fine.

Mr Kennedy, you have listed in your submission the six public inquiries that are going on at the moment. Do you feel that the demands from those inquiries in relation to the questions that they ask and the information and evidence that they seek and that your members have to provide are just repeating stuff that is already in the public domain? Is time being wasted in going over things that people should already know about?

David Kennedy: No, I am not saying that, because each inquiry has different elements. However, the issue is that police officers are very good investigators, which is probably why they are being used more and more in the investigation element of all those inquiries. In many of these inquiries, the police are just doing the investigation part to ensure that there is no criminality, and they will be investigating to get as much evidence for the inquiry as they can.

For me, the issue with police officers is a purely financial one. I understand that there is not necessarily anybody else that you would want to carry out that work, but, when the Government has a pot of money to set up an inquiry, it has to realise that that money is not infinite and that it will affect the organisations that it is using. That is our biggest concern at the moment, because when public inquiries are set up, we do not say, “We’ll set it up and put £40 million aside to pay for it.” That does not happen. They are set up—which is fine—but then the organisations are left to foot the bill.

I am concerned about what I am seeing operationally and the pressure that officers are under. I fear that we will have another public inquiry in years to come, because of something that they have missed and not done as a result of the pressure that they are under.

12:00

John Mason: Somebody in an earlier evidence session said that there is a sweet spot when you have to question how much more money, effort and time is going to be put into the inquiry, and for what extra benefit.

The Convener: The law of diminishing returns.

John Mason: That is a good phrase.

Police officers are used to working to timescales, as I presume you are. As you have said, they have so many cases to look at, and they have to do it within a fixed timescale. How does that work? When you are asked to investigate something or produce evidence for a public inquiry, there is a fixed timescale. Is it right that your staff have to work to that?

David Kennedy: Yes, they will have fixed timescales, and they will be given tasks such as evidence gathering. When you are dealing with the human element, however, it is not always that simple. If you cannot get a hold of or get to somebody, or if they are not making themselves available, that can be a drag on the inquiry's timescales. That is one element. I suppose that it might get to the point when we just say that we cannot get that evidence, it is not there or we are not able to obtain it.

John Mason: What would happen then? Would the police go to the chair of the inquiry and ask to be given a bit longer?

David Kennedy: They would have to, or, if the inquiry allowed it, they would look at arresting that individual. If it were part of an inquiry and somebody were breaking the law by not producing evidence, the police would go to those lengths.

Yes, the police are used to timescales, but, because inquiries have no timeframes on them, they can just spiral and spiral.

John Mason: Indeed. That is what I was thinking, too.

You suggested that, before an inquiry started, you could consult not just with the police, but with public bodies and anyone else who would be involved. Can you expand on what you mean by that?

David Kennedy: Well, if we take the NHS Tayside inquiry—and if we put the police to one side, because they have a part to play in it—you would go to the NHS and say, “We estimate that we are going to have to speak to all of these people within your employment. What will be the impact of that?”

I know, having given interviews for inquiries, that they can last hours and even days, so it will have an impact on the operational side of a public body

if the person is involved in that side of things. They have to look at the impact of that, and it will have a value attached to it. At the moment, that issue is not touched on when we look at inquiries.

John Mason: It would just happen anyway, would it not?

David Kennedy: It would allow the Government and ministers to say, “This will cost X, so X needs to be put aside, or else there will be an operational failure in that public body.”

John Mason: So, the aim would be to clarify both the time and the money involved.

David Kennedy: Absolutely.

John Mason: The final issue that I want to ask you both about concerns the idea of who is satisfied with a public inquiry. Is it your feeling that the public, the victims, their families, or whoever is involved, or even the police, have been satisfied at the end of the public inquiries that we have had? I do not know about the Crown Office—it does not get satisfied, so to speak.

Stephen McGowan: The last public inquiry that gave us recommendations was the fingerprint inquiry in 2011. There were recommendations for us on fairly minor points—they were on two specific areas about training and how we treated certain evidence. I am not sure that I can answer that question except by saying that we will read the report, make sure that we implement things and have a process for doing that.

John Mason: We sometimes see the media interviewing somebody, perhaps down south or elsewhere, after an inquiry, and they are still not satisfied. I get the feeling that there is a risk with public inquiries that either no one is satisfied or at least some of the people are not satisfied at the end of the process.

Stephen McGowan: I am sure that that is a risk—I recognise that as a risk—but I am not sure that I can say anything more to help you.

David Kennedy: I think that a lot of people are not satisfied after a public inquiry. That might be because of, for example, the length of time that it has taken to complete. Ultimately, if a death has been involved, that person cannot be brought back.

The satisfaction that people get will be in the years to come, should something not happen because the inquiry has led to something being put in place that prevents it. It is really difficult, because emotions are in play a lot, particularly if somebody has died. There will be small wins in public inquiries, but people will not necessarily get the satisfaction that they want.

There will be satisfaction in organisations if policies are put in place. Those policies have be

implemented, though, and it is frustrating for organisations when a public inquiry takes place but they do not see any change. Also, it could be that a recommended change is already taking place. Organisations are now looking to get ahead of the game once an inquiry is under way. They think about what they will be asked and try to do it before it is asked of them, because they do not like to be told what to do. That is why there is a lot of dissatisfaction at the end of public inquiries.

John Mason: When a public inquiry starts, do you think that the public—or a limited group, such as victims or their families—have unrealistic expectations?

David Kennedy: It depends on what their expectations are. They want answers. They might also want someone to be blamed for what has happened, but that does not always happen, as public inquiries are not about blaming someone. That is the unrealistic part of it.

At a basic level, it is like a grievance policy in the workplace. People want to raise a grievance, but, invariably, they will not be satisfied at the end of the process, because the outcome is not what they wanted. They might want blood, for want of a better term, and they are not going to get that.

John Mason: Thank you.

Liz Smith: Again, I put on the record that I represent constituents who are involved in the Eljamel inquiry.

Mr Kennedy, you have made powerful statements twice in this meeting and once in your report on your concerns about the burden that will be placed on the police force if we have more public inquiries, because pressure on the police might result in things being missed. Why do you think that there is an increase in demand for public inquiries?

David Kennedy: There is dissatisfaction among the public about the services that they are receiving. In the case of the police, for example, people are not receiving what they should be receiving from the police service.

Liz Smith: Do you think that that dissatisfaction is about the police service, or is there a wider issue about the delivery of public services and the public not getting answers to their concerns when public services have let them down? Is that a major influence?

David Kennedy: I believe that it is. Public services have changed, and people's expectations of what they should get have changed. That has happened because of the way society is: people want things tomorrow—that is, they want things now. They are not prepared to wait, and that has a negative impact on people's perceptions.

In general terms, people are not satisfied. We only have to look at the police. If someone calls the police, nobody will come. If someone goes to their general practice, they cannot get to see a doctor. If we look at many parts of the public sector, we see that people are not satisfied—the services are not what they want or would wish for. You could say that some of that is to do with society moving on and because of technology. In general, though, the public are not satisfied with the services that they get.

Liz Smith: If your analysis is correct—I have to say that I would agree with it—do you think that, in order to address concerns about public inquiries, we should address some of the concerns about public service delivery?

David Kennedy: Absolutely. There is a knock-on effect. When we deal with a public inquiry, we are not looking at how it will affect the relevant public service. Unfortunately, a lot of it is down to finances. It is down to resourcing and how we deal with that.

Liz Smith: Is there increasing complexity in some of the current public inquiries? They are taking longer, which is increasing pressure on your policing resources.

David Kennedy: There might be increasing complexity, but organisations have to work together more. Silos appear and, when a public inquiry takes place, organisations look to defend themselves rather than asking how they can prevent the issue and work together to ensure that it does not happen again.

The problem is that, because of the way in which our electoral system and Government work, people make five-year plans and are interested only in those five years. We need a social charter to change things over the next 30 years, otherwise we will continually go through the same revolving door. That is all that we are doing, and the same issues just keep coming back. Until we get to the point of considering how we can make things better over 30 years, we will always be in this position.

Liz Smith: Mr McGowan, do you agree with that analysis?

Stephen McGowan: The public's demands on public organisations are much greater now than they ever were. To a large extent, that is right—it is appropriate that they are different and that they have changed over the years—so I agree with that point.

Liz Smith: From the analysis that you have done of the public inquiries that you have seen, do you feel that there is growing dissatisfaction with the delivery of public services in Scotland? Is that causing increasing anxiety, frustration and, in

some cases, anger among the public because they do not feel that the money that they pay in tax delivers the quality of public service that they deserve?

Stephen McGowan: I am not sure that I can speak to the broad picture that you paint, because I am one part of the public sector jigsaw. We see that the public's demands are increasing—rightly so, as I said. I started at a time when we told victims nothing. If they asked us for a reason why we had done something, we would say, “We can't tell you that,” and that was that. That was not too long ago.

Liz Smith: If it were possible to address some of the concerns about public bodies not being able to give the answers to patients or victims, for example, that would make things much easier. It would ease the pressure in terms of the numbers of public inquiries that are requested if we could get the answers from the public bodies and, in some cases, from Government.

Stephen McGowan: If you can do that in a way that the public are satisfied with, that might ease some of the pressure. There are choices in all of this.

Liz Smith: I can think of three or four public inquiries that would not have happened had the answers been available through the public bodies.

The Convener: We talked about the opportunity costs of public inquiries on the police—the impact on the services that the police deliver—such as officers being diverted into inquiries. Mr McGowan, you also helpfully provided a couple of tables about the impact on the Crown Office and Procurator Fiscal Service. The Sheku Bayoh inquiry has cost your office more than £1 million and the child abuse inquiry more than £4.8 million. What impact has having to deliver those inquiries had on your services? What is not being done because your staff are focusing on them?

Stephen McGowan: I am not sure that I would say that something is not being done. It is not as straightforward as saying that all the staff who are spending time on and working towards those inquiries would be doing work at the sharp end in a court. Some of them would be learning lessons from other things that go on in our world in any event, but it is clear that some of them would be deployed in other, more operational parts of the business.

The Convener: Last year, the cost of the child abuse inquiry was £968,277. Surely that level of cost must make it more difficult for you to deliver the other services that the COPFS should deliver.

Stephen McGowan: We have to take that into account, yes. We are demand driven and that is one of the demands that are on us at the moment.

If we did not have that demand, we would be dealing with other matters.

The Convener: The Scottish Police Federation has been open about the impact on the service that the police provide. You are being a wee bit coy about the impact on your service. I will push you further on that.

Stephen McGowan: I am not being coy. We are demand driven. Crime happens and there are deaths—

The Convener: The police are demand driven as well, but the situation still impacts on their services.

Stephen McGowan: I have not said that it has not impacted on our services. I have been forthright in saying that it has.

The Convener: How has it impacted on your services? What has been the impact to the public? What other services that the COPFS delivers have been delayed, for example?

12:15

Stephen McGowan: I cannot say anything specific. I can say that those staff would be doing something else in front-line prosecuting work. However, that would not apply to all of them. That is the point that I am trying to get across. It is not that every member of staff who, at the moment, is directed at a public inquiry would be in a court prosecuting tomorrow. They would not.

The Convener: It might have delayed the prosecution of other cases, for example.

Stephen McGowan: They would be doing other work. They would be helping to clear the backlogs that we have.

The Convener: That is fine. I am reading between the lines a wee bit, as I am sure colleagues are.

I have a further question for you, Mr Kennedy. In the last sentence of the second-last paragraph of your submission, you say:

“Reform is not optional, it is essential.”

Do you wish to add anything to that?

David Kennedy: Reform is essential, otherwise we will keep going through the revolving door. Public finances are not great in the UK and the Barnett funding that we get in Scotland is directly affected by that, so we must consider reform. We have to look at ways in which we can minimise the spend in order to assist. Reform must happen, otherwise somebody other than me will be sitting here, answering the same questions in years to come.

The Convener: Would either of you like to make points on any aspect of the situation that we have not touched on?

Mr McGowan, is there anything that you would like to convey to the committee?

Stephen McGowan: No, thank you.

The Convener: Mr Kennedy, is there anything else that you would like to convey to the committee?

David Kennedy: No. I am just glad if we can help.

The Convener: I thank both of you for your evidence. It has been extremely helpful for our inquiry. We will continue to take further evidence next week. You will be glad to hear that we will report on the matter sometime in the autumn—not in 2038 or anything like that. The committee moves much more swiftly.

The next item on our agenda, which will be taken in private, is consideration of our work programme.

12:16

Meeting continued in private until 12:23.

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