

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 29 April 2009

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

12th Meeting 2009, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)

*Patricia Ferguson (Glasgow Maryhill) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Mary Mulligan (Linlithgow) (Lab)

*Jim Tolson (Dunfermline West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Paul Martin (Glasgow Springburn) (Lab)

Alison McInnes (North East Scotland) (LD)

Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Communities Committee

Wednesday 29 April 2009

[THE CONVENER *opened the meeting at 10:00*]

Equal Pay

The Convener (Duncan McNeil): Good morning and welcome to the 12th meeting in 2009 of the Local Government and Communities Committee. I ask members and the public to turn off mobile phones and BlackBerrys.

Agenda item 1 is evidence on equal pay in local government. I welcome the Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP; Graham Owenson, who is head of the local government finance team in the Scottish Government; and Kirstie Campbell, who is the local governance team leader in the Scottish Government. Do you wish to make any introductory remarks, cabinet secretary?

The Cabinet Secretary for Finance and Sustainable Growth (John Swinney): I would like to do so.

The Convener: That would be helpful. Thank you.

John Swinney: Thank you for giving me the opportunity to discuss equal pay with the committee.

I am sure that the committee is aware that the Scottish Government was not involved in the negotiations on equal pay and single status between the Convention of Scottish Local Authorities and the trade unions that resulted in the single status agreement of 1999. The Government has not been directly involved in the implementation of that agreement in the period since. The Government's position, and the position of previous Administrations, has been that those matters are properly for councils as independent corporate bodies to progress. However, I understand the committee's concern about the time that it has taken to implement the provisions and the issues that that raises.

From my discussions with COSLA, I know that all councils are seeking to conclude the process as quickly as they can. In the circumstances, it would be wrong for the Scottish Government to seek to step in and impose new arrangements where arrangements have not already been implemented. We share the view that successive

Administrations have taken that such a course of action would be inappropriate.

We have consistently encouraged councils to resolve the issues as quickly as possible in order to remove the uncertainty not only in relation to local government finances, but for the council employees who are involved. I understand that 26 of the 32 councils in Scotland have now implemented agreements and that the remaining six councils are on target to do so by the end of this year. However, that is not to say that there are no more obstacles to overcome.

There is still the potentially significant issue of the overall cost of the new arrangements. The committee has already heard estimates from councils on the likely scale of the final costs. So far, councils have managed the implementation costs of equal pay and single status from within the resources that have been allocated to them. Successive Governments have taken the view that, because such matters are for local authorities, they should be responsible for dealing with them. To be fair, COSLA has never come to the Government and asked for extra resources to meet the costs involved.

COSLA has raised the issue of equal pay with the Government on a number of occasions. As a result, we are currently discussing with it the possible terms of a special scheme under which councils may be given consent to borrow to meet any cost spike that may result from further costs. In effect, that would spread the cost into the future rather than force councils to meet it in one year.

In its evidence to the committee, Unison asked that we consider the relative merits of a capitalisation scheme along those lines. The Scottish Government cannot put in place such a scheme wholly at its own hand; the formal consent of Her Majesty's Treasury would be needed. Under the normal Government accounting rules, borrowing is permitted only to fund capital expenditure. Borrowing to fund revenue expenditure is permitted only in exceptional circumstances. However, we recognise that further measures may be required, particularly in the current very difficult financial climate.

In our discussions with COSLA, we are modelling a possible Scottish scheme on a scheme that already exists in England. The Treasury has already given consent to councils there to undertake limited borrowing to meet equal pay costs. However, the scheme will not be identical to the English scheme because of the differences in the legislation north and south of the border.

With the Treasury's agreement, in January I gave consent to Aberdeen City Council capitalising £11.1 million to meet its equal pay

costs. My decision was based on consideration of the council's financial position and the business case that it presented to me.

I hope that my comments are helpful. I am happy to answer questions from committee members.

The Convener: I am sure that your comments are helpful, cabinet secretary. Thank you for your introductory remarks.

Alasdair Allan (Western Isles) (SNP): The cabinet secretary mentioned capitalisation and the role of the Treasury. Can he say any more about his plans in that area and whether he would pursue that route with other councils?

John Swinney: The precedent that I have to deal with is the Aberdeen City Council equal pay costs precedent. That council came to us with a proposal. Obviously, the committee will be familiar with the circumstances that that council faces with its finances.

On the basis of Aberdeen City Council's proposition and the business case that it provided, we advanced the idea in discussion with Her Majesty's Treasury, which agreed that a capitalisation scheme could be put in place for the council. We had a straightforward discussion with the Treasury about the arrangements.

It is obvious that if we were to consider a capitalisation scheme that had wider financial implications, the Treasury would need carefully to examine such a scheme and the business case for it. There would be material issues for the Treasury to consider, particularly in the context of what we now know about the wider position of the United Kingdom's public finances.

Alasdair Allan: Has the Government produced figures for what it would cost—to put it at its most simplistic—to put the problem of single status and equal pay claims right in Scotland? We have asked previous witnesses who have appeared before the committee to answer that from an employer's point of view. Have you collated such figures?

John Swinney: The Government has not done that, because, as I said in my introductory remarks, it is an issue for local authorities to manage within their own resources and their own financial planning. They are independent corporate bodies, and they are entitled to resolve those issues themselves.

Responsibility for considering that calculation rests with local authorities. The Government is trying to take forward an approach, in co-operation with local authorities, to try to resolve the issues as quickly as possible. A discussion is taking place today with COSLA, through the Scottish Government's capital finance working group, to

examine the approach to the capitalisation scheme.

The Convener: Is that discussion specifically related to the equal pay issue, or to the wider funding issues for local government?

John Swinney: It is related to equal pay. The Scottish Government's capital finance working group, which involves COSLA, is essentially discussing what a capitalisation scheme proposition might look like.

The Convener: Thank you for that qualification, cabinet secretary.

Mary Mulligan (Linlithgow) (Lab): I am sure committee members agree that we are all frustrated that, although we sit here and take evidence from local authorities and trade unions on these issues, there appears to be no solution in the foreseeable future. That must also be frustrating for all those who are affected.

You suggested in your opening statement, cabinet secretary, that local authorities have the burden of resolving equal pay and single status, and that you are taking quite a hands-off approach to that. Is there anything that you feel you should do to move the issue on to a satisfactory conclusion?

John Swinney: I do not accept the analysis that the Government is taking a hands-off position. We are allowing local authorities to resolve issues that are properly theirs to resolve. I imagine that, in a different scenario in which the Government was to try to resolve an issue that was properly for local authorities to resolve, we would be criticised for interfering in the proper jurisdiction of local authorities.

We have in place arrangements for extensive dialogue. I have read COSLA's evidence to the committee, and I sensed in that evidence COSLA's appreciation of the general dialogue that it has with the Government. I think the committee regularly hears a fair amount about the dialogue between the Government and COSLA. We have the ability to address issues, if they are properly for us to address.

I reinforce the point that I made to Dr Allan and the convener a moment ago. The Government is involved in a discussion today about a capitalisation scheme that might be appropriate in the circumstances. We are involved in those discussions to try to help resolve the issue.

I would be the first to concede that the issue has taken a long time to resolve—longer than any of us would have wanted it to take—but that is where we are. Significant progress has been made relatively recently. As I said, 26 local authorities have implemented schemes and a further six are scheduled to implement schemes in the course of

2009. Obviously, progress has been made, which compares well with periods in the past when there was not much progress. The situation is not ideal or utterly resolved, but there is a momentum around progress. The Government will take forward discussions with local authorities in a helpful way to try to address that.

Mary Mulligan: I accept that some progress has been made, as some settlements have taken place and some agreements have been reached. However, the evidence that we have received shows that, as those settlements are reached, other problems arise—for example, the recent pronouncements on Bainbridge. We never seem to be able to get to a situation in which we can see the end of the difficulties that are facing us.

Part of your answer confused me. You said that it is right for local authorities to reach their own settlement but also that the Government is taking part by meeting local authorities to discuss capitalisation. I am trying to get a handle on the degree to which you think that you can influence a resolution of the difficulties in the foreseeable future and the degree to which you think that that is beyond your capabilities.

John Swinney: My view on where the proper accountability and responsibility lie is clear. This is an issue for local government to resolve; it is entirely within the scope of local government. However, if the Scottish Government can be helpful by becoming involved in something that is within our scope, such as a capitalisation scheme across the country, we will engage in discussions to try to resolve the issue, at the invitation of local government.

As I said in my opening remarks, even if I think that a capitalisation scheme is a good idea, it is not entirely within my gift. We have to be mindful of the fact that the Treasury will have a keen interest in the issue, in the context of the capital undertakings that it is resolving, as it will want the matter to be properly considered.

Mary Mulligan: As of this moment, is there anything beyond the capitalisation issue that you think that you need to be involved in?

John Swinney: No.

The Convener: There seems to be some confusion—at least in my mind—about capitalisation. Is the capitalisation that is being discussed in the meeting that you have said is taking place today intended to deal with the additional costs that have arisen as a result of Bainbridge, or is it meant to address the historical picture?

John Swinney: It primarily concerns new liabilities that might emerge as a consequence of Bainbridge. Obviously, I am making the

assumption that, in terms of the resolution of many of the previous issues, local authorities have other devices at their disposal, including the use of reserves. Fundamentally, that is an issue for local authorities to determine in terms of their financial strength.

Although the capitalisation scheme is concerned primarily with new liabilities, we will ensure that any arrangements that are put in place deal as effectively as possible with all the issues.

10:15

The Convener: As you know, this is the third committee to consider the issue that we are discussing. The Finance Committee considered the issue when you were on it and, at one of its meetings, you and the president of COSLA had an exchange about whether there was enough money to address the issue.

Previously, there was a concern on a number of fronts that there was not enough money in the pot. What has happened since then to change the position? COSLA used to say that there was no money in the pot to cover the necessary expenditure, and when you were in opposition, you expressed frustrations and concerns that you do not express now that you are in government. Now, COSLA accepts that the matter is its responsibility. Has there been a debate with COSLA? Has COSLA seen money going into the pot to cover the necessary expenditure? What debate took place to change the view that you and the COSLA president held in the previous session that insufficient money would be available? When you were in a position in which you could do something about the situation, what did you do to reassure the COSLA president and COSLA that there was money in the pot?

John Swinney: COSLA has never advanced the argument that the issue was for anyone to resolve other than local authorities, as they enact the agreement that was reached with the trade unions in 1999. The judgment about the financial resolution of the difficulties lies with local authorities, which must take a view on their financial strength.

Earlier, I said that COSLA has not come to us to ask for money to resolve the issue. As is well known, we have had extensive discussions with COSLA on a range of financial issues that have been material to the arrangements for local government finance in the current period, and there has not been a request for the Government to bring forward resources to pay for the costs of the equal pay settlement beyond what is provided in the block of public expenditure that we give local government. There is, however, an on-going discussion about the move to capitalisation.

The Convener: At the Finance Committee meeting that I referred to, you said to Pat Watters:

“Your view is that the local authority settlements have not been adequate to allow you to make provision for the equal pay issues that you now face.”

In response, Councillor Watters said:

“Yes, I agree with that.”—[*Official Report, Finance Committee*, 24 January 2006; c 3312.]

That means that you thought that there was insufficient money in the pot at that time. When you and Mr Watters were in a position to do something about that, what did you do to reassure councils that money was available in the pot to deal with the issue?

John Swinney: That goes to the heart of the arrangements that we now have in place with COSLA. Since that exchange—which I think must have taken place in 2006—local government has been given a rising share of the Scottish block of public expenditure as a consequence of the decisions that I, as Cabinet Secretary for Finance and Sustainable Growth, have taken in budgets that have been supported by Parliament. I can only assume that our reversal of the declining share of expenditure that was going to local government—its share was declining when that exchange took place—has been quite helpful.

The Scottish Government's approach to the funding of local government—the committee will be familiar with this, because we have made many of these points in the past—is that we have given local authorities much greater freedom over the utilisation of their resources through the relaxation of ring fencing. We have also allowed local authorities to retain the proceeds of efficiency savings. When the exchange between Councillor Watters and me took place in 2006, that was not the case—efficiency savings were being top sliced from local authority budgets. I have put in place arrangements to allow local authorities to retain efficiency savings. There is a cash benefit from the removal of ring fencing, from the retention of efficiency savings in local authorities and from the fact that local authorities get a rising share of Scottish public expenditure. Those three material factors must help to improve local authorities' ability to manage the equal pay issues and the other financial pressures that they have.

That is not to say that there is not an on-going dialogue with local authorities on the financial pressures that they face in the current climate. That regular dialogue informs my consideration of how we have to handle these issues in the run-up to the formulation of the 2010-11 budget, which will be a significant challenge.

The Convener: There was a debate at that time specifically about what you described as the very serious amount of money that local government

was going to pay out in equal pay settlements. Then you and Mr Watters resolved the issue, and he understood clearly that money was available in the overall settlement to deal with equal pay cases.

John Swinney: I do not want the committee to misinterpret what I am saying. Our approach to local government finance was to say to our colleagues in local government that we would relax a number of the significant controls and impediments to the efficient use of public finance locally; we would allow local authorities to retain their efficiency savings for the first time ever; and we would give local authorities a rising share of public expenditure. Essentially, we said to local government that, within the context of that discussion, the financial pressures that had to be resolved by local government would be resolved within that financial envelope. We also said that we would be prepared to engage in a regular dialogue with local authorities about the funding pressures that they face. I cannot tell the committee on how many occasions we have had that dialogue, but we have it regularly. Out of that has come the desire for us to examine the possibility of a capitalisation scheme in relation to the costs of equal pay, which is precisely what we are examining in the discussions that are under way just now.

The Convener: So, the bill for equal pay, which you described in your exchange with Mr McCabe, the minister at the time, as the most significant risk that local authorities were facing, was not discussed specifically with COSLA. It was just dealt with in the overall settlement; it was hidden away.

John Swinney: If you do not mind my saying so, that is a particularly pejorative way of expressing it. The issue was included in an overall discussion of all the funding pressures facing local government. The Scottish Government put in place a set of arrangements that allowed local government greater flexibility over the utilisation of its finances. The arrangements related to the removal of ring fencing to ensure the more efficient use of public money locally; allowing local authorities to retain their efficiency savings locally, which they had never been allowed to do previously; and giving local authorities a rising share of public expenditure. Those three factors have a cash benefit to local authorities. It was within that context that we resolved the issues around the financial pressures facing local government. I add a caveat: we have on-going dialogue and discussion with local government on emerging financial pressures.

The Convener: I will read out part of the exchange in 2006, in which you highlighted the absurdity around all this money:

"I want to pursue my example. Local authorities are pressurised by Audit Scotland to examine the fact that education might cost £400 more per pupil in a rural primary school than it would cost in a town primary school, but hundreds of millions of pounds in contingent liabilities on equal pay are not even making it on to the balance sheet. That seems to be an absurd position for us to be in."—[*Official Report, Finance Committee* 21 February 2006; c 3427.]

Is it not an absurd position that you are asking us to accept today in saying that hundreds of millions of pounds of contingent liabilities have not been discussed with COSLA?

John Swinney: If you were to set that exchange in its proper context, you would see that that was not a point about local government; it was a point about how Audit Scotland examines the accounts of local authorities.

The Convener: That is another issue.

John Swinney: It is not another issue—that was the context of the exchange. I am glad that you have read out that quotation, as it has reminded me of the context of the point that I was making. If my memory serves me correctly, at that time I was expressing concerns not only about the fact that Audit Scotland was probing what were relative issues in terms of the cost of service provision, which varied from one area to another, but about the fact that Audit Scotland did not seem to be expressing an opinion on how contingent liabilities such as the cost of equal pay should be treated within local authority accounts. If my memory serves me right, I was, along with Mr Brownlee, questioning that into the bargain. You are inferring from that quotation something fundamentally different from what the exchange was about.

The Convener: I am confirming that you were well aware of those contingent liabilities. I am probing why those massive contingent liabilities were not discussed specifically in your discussions on the funding of local government.

That takes us neatly to the role of Audit Scotland. There has been criticism from the Finance Committee, of which you were a member, from the Equal Opportunities Committee and from Unison about the role of Audit Scotland. Last week, we got mixed messages about whether local authorities had the money to meet the liabilities and about which local authorities had the money to meet them—some had it and some did not; some had the money to pay for the historical compensatory agreements but not the on-going implementation of equal pay. Is there a job for Audit Scotland to do in confirming how much money is available and how much money is required to ensure that we can control the situation? Your colleague, Mr Mather, made similar comments. If we cannot measure that

money, we cannot control things. Is there a proper measurement of how much equal pay is costing and which local authorities have the money to pay for it?

John Swinney: The answer to that is twofold. First, it is the duty of each local authority to assess properly its financial position and liabilities and to make financial planning decisions accordingly. That is the statutory responsibility of each individual local authority, and I have every reason to believe that that is what local authorities are doing. When they do not do that, we end up in the situation that Aberdeen ended up in. The Accounts Commission had to examine the financial health of Aberdeen City Council—not specifically in relation to equal pay, but in relation to a variety of different questions—and make recommendations, which I have accepted and followed. I am glad to say that, on that basis, there is now a process of real recovery going on in Aberdeen City Council.

Secondly, there is the question whether it is appropriate for Audit Scotland to undertake an investigation. It is not my place to define the workload of Audit Scotland—I am sure that I would be criticised if I were to do so, because that is entirely a matter for Audit Scotland. Audit Scotland exists to scrutinise the work of Government and local authorities.

The Convener: But you would agree that there are some outstanding questions. Last week in the chamber, you told me:

"Many local authorities, if not all, have made financial provision to tackle the problem."

Today, you have told me that local authorities are currently in discussions to ensure that they have the financial provision to tackle the problem; yet, only last week, you told me that you believed that

"many local authorities ... have made financial provision to tackle the problem."—[*Official Report*, 2 April 2009; c 16505.]

10:30

John Swinney: I have answered the question clearly. Local authorities have made provision; they have signed up to an agreement. I work on the assumption that authorities have made provision within their overall financial position to deal with those liabilities, and we are taking forward discussions with local authorities to examine what potential new liabilities may arise from some decisions with which we all are familiar.

The Convener: New and old, I think you said.

John Swinney: Well, potentially, but my assumption is—

The Convener: How many will require access to capitalisation?

John Swinney: That question will be answered in the discussions that we have with local government.

Jim Tolson (Dunfermline West) (LD): Good morning, cabinet secretary.

John Swinney: Good morning.

Jim Tolson: You raised an interesting point on capitalisation and the on-going discussions—including today—with the UK Government. Is capitalisation potentially part of the solution to the financial problems facing some local authorities?

I share Mary Mulligan's deep concern that there is no end in sight to all of this, whether through the Bainbridge judgment, private litigation or another route. Has the Scottish Government had any discussions with the UK Government on the UK Equality Bill, particularly on the issue of equal pay?

John Swinney: I cannot answer that question today, but I am happy to write to the committee with the answer. I am not sighted on that issue.

Jim Tolson: We will await that communication.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, cabinet secretary. I found your response to a question from the convener interesting. You said that it was not for you to recommend the workload of Audit Scotland. I recall that you were not so reticent in June 2007, when you invited Audit Scotland to review a number of transport projects—an invitation that Audit Scotland accepted. Reports were made to Parliament on the projects. Do you agree that you should, in a similar vein and courteous manner, invite Audit Scotland to look at the equal pay funding pressures on local authorities?

John Swinney: No. It is appropriate for local authorities to take forward their statutory functions. The Government inherited those transport projects; they were our predecessor's commitments and we believed them to be fundamentally flawed. History has justified the Government's scepticism in that regard.

David McLetchie: Yes, but on the constitutional issue, you have no qualms about making recommendations or requests to Audit Scotland from time to time on matters that it might consider in its work programme.

John Swinney: There is a fundamental difference between the issues. The convener invited me to speculate on whether I should ask Audit Scotland to investigate the functions that are entrusted on a statutory basis to other statutory bodies in Scotland. However, given that the transport projects were part of the policy programme that we inherited, the Government had a financial commitment, obligation and liability. It

was therefore appropriate for us to ask Audit Scotland to examine the commitments that we were being asked to take forward.

David McLetchie: That is the constitutional distinction. The present Scottish Government will therefore never invite Audit Scotland to look into any aspect of the affairs of any publicly funded body in Scotland. Is that correct?

John Swinney: That is not what I said. I said that—

David McLetchie: You drew a distinction between projects for which the Government is directly responsible and matters that are the responsibility of local authorities. That was the distinction that you drew, was it not?

John Swinney: No, it was not. The Government has responsibility for plenty of public bodies. On occasion, I might invite Audit Scotland to examine the conduct of such bodies. That said, local authorities have the statutory power to exercise their role and responsibilities. Clearly, there is a statutory mechanism whereby if there is a concern about the financing of an individual local authority, the Accounts Commission will properly commission Audit Scotland and the Auditor General to investigate. That is exactly what happened in the case of Aberdeen City Council. As a consequence of such investigations, the Government receives recommendations. That is a pretty orderly process, and the Government should respect it.

David McLetchie: So the Government would never recommend that such an investigation be conducted or invite someone to conduct one.

John Swinney: I have said what the statutory position is.

David McLetchie: I know what the statutory position is; I am asking whether the Government would instigate such an investigation.

John Swinney: I cannot foresee every circumstance or scenario that we will face but, as things stand now, the Government properly and fully follows the existing statutory and investigatory position.

David McLetchie: I will clarify a point about the concordat that arose in the evidence that we took last week. Is any aspect of equal pay one of the "exceptional funding pressures" that are referred to in the concordat that the Government concluded with COSLA?

John Swinney: The exceptional funding pressures were not defined. They are essentially the product of regular discussions between the Government and COSLA.

David McLetchie: Some of the exceptional funding pressures were defined, were they not?

The president of COSLA was very quick to slap local authorities down when they suggested that implementing your free school meals programme would cause them additional financial problems.

John Swinney: The free school meals proposal is explicitly referred to in the concordat. On page 5, there is a specific provision on the implementation of that policy commitment, so it is different.

David McLetchie: It was a known factor.

John Swinney: It was a policy commitment that the Government wished to implement but could do so only in partnership and collaboration with local authorities, so it was expressly stated as a policy commitment that the Government wished to take forward.

David McLetchie: The potentially substantial equal pay liabilities were also known factors on the table. They were part of the background against which the concordat was concluded. I am simply asking whether any aspect of the equal pay liabilities is an exceptional funding pressure as defined on page 6 of the concordat.

John Swinney: If my memory serves me right, when the concordat mentions exceptional funding pressures—I am just trying to find—

David McLetchie: It is on page 6.

John Swinney: I have got page 6; I am just looking for exactly where.

David McLetchie: It is paragraph 4, lines 1 to 3.

John Swinney: Line 3 and a half, Mr McLetchie, helpfully goes on to say:

"It is clearly impossible to anticipate all the pressures at the start of the process."

David McLetchie: Indeed.

John Swinney: That rather answers the question.

David McLetchie: No, it does not, actually. If I may—

John Swinney: No, allow me. I am afraid that I will have to go over ground that I have already covered with the convener. It may sound more pleasant the second time it comes out. When we negotiated the concordat, we did not specify every single element of local authority expenditure. We said that there was a pot of expenditure that would be informed by the grant from the Scottish Government, the retention of efficiency savings, the removal of ring fencing and a rising share of the Scottish block, and that it would deal with local authority funding requirements and the contents of the concordat on specific policy commitments. We also gave a commitment that, if there were any exceptional funding pressures, we would have a

discussion in due course to resolve the issues. That is exactly what happens in our dialogue with local government.

David McLetchie: As you correctly pointed out, lines 3 and a half to 4 and a half state:

"It is clearly impossible to anticipate all the pressures at the start of the process"

but, of course, you had anticipated the liabilities two years previously. We knew that there were hundreds of millions of pounds of liabilities, so had you not anticipated the situation with your great foresight when you were preparing for government?

John Swinney: Mr McLetchie, local authorities face many financial issues in the climate in which we operate, such as wage pressures, which could not have been anticipated at the start of the process. Who could have predicted where the local government salary deal would go over the duration of the concordat?

David McLetchie: That is a future event, Mr Swinney. Equal pay is a past event. It is an historical factor that existed when you conducted the concordat negotiation.

John Swinney: It is quite clear that the arrangements that we have put in place—which give local government a rising share of public expenditure, allow it to retain efficiency savings and remove ring fencing—create a greater degree of financial flexibility and financial opportunity for local authorities. That is the basis upon which the concordat was constructed.

David McLetchie: Is the Bainbridge decision an exceptional funding pressure?

John Swinney: We will discuss the Bainbridge decision with local authorities as part of the work that we are taking forward on the capitalisation issue.

The next sentence of the concordat states:

"In such cases, both sides agree that any difficulties will be addressed jointly between the Scottish Government and local government, as part of a developing mature relationship. That process will include a review of both finance available and of pressures."

Within that context, I remain open to a mature discussion with local government about the implications of the Bainbridge decision, and I am happy to proceed on that basis.

David McLetchie: So the Bainbridge decision, for the purposes of paragraph 4 on page 6, can be categorised as an exceptional funding pressure.

John Swinney: It could be.

David McLetchie: Good. That is a development since we started the inquiry.

On the capitalisation scheme, when was the working group examining capitalisation as a method of funding equal pay established and when did the issue first come up for discussion?

John Swinney: The group was already established—it was not set up for the purpose—and it meets to discuss capital issues. We started our discussion of the issue back in February 2008 and we have had subsequent discussions. The group is now examining the questions.

David McLetchie: I think that you said that a scheme exists in England. Will you give us an idea of the scale of the scheme and how much money councils in England have been authorised to borrow for the purposes of settling their equal pay liabilities?

John Swinney: The value of capitalisation direction limits in England up to and including 2008-09 is £1.1 billion.

David McLetchie: That is the sum that the Treasury has authorised councils to borrow for the purposes of meeting these historical liabilities. Is that broadly correct?

John Swinney: I am not certain, but I assume that it must for historical issues.

David McLetchie: In relation to the Scottish position and what might emerge from it, the evidence that we have received suggests that Bainbridge, which we now learn is an exceptional funding pressure—

John Swinney: Before Mr McLetchie gets carried away and rewrites history, I said that it could be classed as an exceptional funding pressure. That would be determined only after a discussion between the Scottish Government and local authorities.

David McLetchie: But use of the phrase “could be” is an advance, because prior to its use equal pay was always included in the concordat, full stop, because it was historical. So the use of the phrase “could be” and the establishment of a working group to examine capitalisation to fund settlements are developments on the position that existed at the start. That is why I welcome the change in language in relation to equal pay and funding under the concordat.

Let us move on to the implications of the Bainbridge decision and the Scottish end of capitalisation. The evidence that we heard from one of our witnesses suggested that the costs of Bainbridge for a medium-sized authority could be in the order of £30 million, which suggests that the implications of Bainbridge as a whole for local authorities in Scotland might involve sums in the order of £200 million to £300 million. Is that the scale of borrowings that you anticipate under your capitalisation scheme to resolve the issue?

10:45

John Swinney: First, it is far too early to be able to give a definitive answer on any aspect of that question. I cannot begin to see how one could reliably estimate the implications of Bainbridge. There is a Court of Appeal view that undermines the effectiveness of Bainbridge, and I cannot understand how one could definitively estimate the results of Bainbridge for Scottish local authorities. As a consequence, it is impossible to define a figure.

Secondly, there is the question whether we actually consider Bainbridge to be an emerging pressure. That point has yet to be discussed formally between the Government and local authorities.

David McLetchie: I am slightly puzzled. It could be an exceptional pressure, yet we now have to decide whether it may be an emerging pressure—unless there is any doubt among the witnesses from the councils that it is a substantial funding pressure. That is self-evident.

John Swinney: Yes, but we have to determine the extent to which the implications of Bainbridge are a product of decisions that were taken previously, as part of the core settlement of equal pay and single status. We have a question that we must answer, and we will do so only after discussions with local authorities.

David McLetchie: What is the Government's view?

John Swinney: The Government will take forward the discussion with local authorities. That is why I am saying to you that there could be a financial pressure, as defined in the concordat.

David McLetchie: The only thing that we have learned is that nothing is ever defined under the concordat. I ask you whether something is an exceptional funding pressure or not; you say, “It may be,” or, “It could be.” You say, “We are taking it forward in discussions.” I say, “What is the Government's view?” and you say, “We are going to discuss it.” In other words, you do not have a view.

We are looking for clarity, Mr Swinney. If I conclude an agreement with someone and I use terms such as “exceptional funding pressures”, I expect to have a pretty clear idea in my mind what is and is not an exceptional funding pressure. I am simply asking you what the Government's position is. You concluded the concordat two years ago.

John Swinney: Let me give Mr McLetchie an example of an exceptional funding pressure. A judgment was made—it was an actuarial revaluation—about the fire and police pension schemes, which had an implication for Scotland. That actuarial revaluation changed the

commutation factors for police and fire pensions and resulted in a one-off cost of—if my memory serves me right—£40 million in Scotland. The Government accepted that that was an exceptional financial pressure. We engaged in a discussion with local authorities, and we agreed a financial mechanism to resolve the issue.

That issue was not envisaged when we signed the concordat. It arose not through the fault of local government or the Scottish Government but through an actuarial revaluation. We had a discussion

“as part of a developing mature relationship”,

to quote the concordat, to resolve that financial pressure. This is where I think Mr McLetchie fundamentally misses the point of the concordat. It represents a new way of working, under which we have the ability to resolve the issues that face us in public sector activity in Scotland in a more constructive fashion than was ever the case under the rather pointless relationship between national and local government in Scotland during the two previous parliamentary sessions. That is one example, which I give to Mr McLetchie, involving the commutation factors for police and fire pensions, which has been satisfactorily resolved

“as part of a developing mature relationship.”

David McLetchie: But Bainbridge was, in a sense, under the control of local authorities. It arose from the pay protection schemes that local authorities were responsible for negotiating. Perhaps they did not appreciate the consequences of that, but, nonetheless, Bainbridge was a legal decision that arose from actions that authorities had taken. It therefore does not fall into the same category as the actuarial decision that you mention, because that decision was not a matter over which local authorities had control, unlike the contract negotiations that gave rise to the adverse Bainbridge decision. Those are two different things, cabinet secretary.

John Swinney: I actually agree that they are two different things, and I will explain exactly why. Mr McLetchie's explanation might be an argument for the Government not to take the view that any implications of Bainbridge represent an exceptional financial pressure.

David McLetchie: Indeed. I am just trying to establish what your position is. That is what we have been doing for the past 20 minutes.

John Swinney: With the greatest of respect, the position involves a degree of dialogue and discussion with local government, which I will carry out, as the concordat expects me to do. That is exactly how the Government will proceed. I cited the example of the commutation factors for police

and fire pensions to make the point that it is possible to resolve emerging financial issues and pressures within the Government's relationship with local government perfectly amicably and satisfactorily, and to the benefit of the governance of Scotland.

Bob Doris (Glasgow) (SNP): I want to take us a few years into the future. One thing that is certain about equal pay and single status is the complete chaos and uncertainty in the past 10 years. However, assuming that we reach a resolution on equal pay and deal with single status, we have heard in evidence that the issues could echo again in local authorities because, as they create new jobs and new job remits, the authorities will have to review the single status arrangements. There will be a cyclical process, with reviews every five or 10 years or whatever.

I would hate it if local authorities, the Scottish Government and the unions sorted out single status and equal pay and dealt with the financial liabilities only to find that, in five years' time, another committee of the Parliament says that the authorities have not updated their single status agreements and there is a historical liability arising from five, six or seven years in which people's salaries and grades were incorrect because they related to gender rather than responsibilities. Are the Scottish Government and COSLA taking steps to ensure that they equality proof into the future in relation to single status agreements that might emerge five, six or 10 years from now? I would hate us to get into the same mess all over again.

John Swinney: The process of implementing single status and equal pay provisions is about ensuring that we have a robust and reliable arrangement for determining the role and remuneration of individuals in local authorities in Scotland. Given the lengths that have been gone to in creating the basis, it is important that we stick rigidly to its application for new roles and responsibilities. The scenario that Mr Doris sets out can be avoided if local authorities operate within the scope of the agreements that they have made and ensure that staff are identified and placed appropriately within salary structures to reflect their roles and responsibilities.

Bob Doris: Have you worked with COSLA to consider best practice guidelines that local authorities could use to equality proof future staffing issues?

John Swinney: I am sure that, in the discussions that go on within local government, the approach of ensuring that such issues are avoided will be taken forward. We are happy to have discussions with COSLA on that question to ensure that the advice that we have is made available to local government. However, I return to

my central point that the issue is in essence a responsibility for local government.

Bob Doris: I agree with that, but the committee has become increasingly frustrated about who has the leadership on all the aspects, including the historical issues, the Bainbridge decision or looking to the future.

John Swinney: On the question of leadership, the agreement was formulated in 1999 between COSLA and the trade unions. Leadership responsibility for taking the issue forward lies firmly with COSLA.

Bob Doris: I am encouraged by the idea of the Scottish Government working with COSLA and local authorities to deal with any cost spikes that could happen as a result of Bainbridge liabilities and so on. In the committee's discussions with the unions and COSLA, I suggested that another way of spreading the pain of equal pay liabilities, single status and Bainbridge would be to offer payments to individual employees over a three-to-five-year period rather than a one-year period, and to pay those liabilities in instalments. Other than the cost spike and the capitalisation, have you discussed with COSLA any alternative, imaginative approaches to financing single status and equal pay?

John Swinney: The issue that we are considering with COSLA is the capitalisation scheme. Obviously, if other suggestions are made, the Government will consider whether they are appropriate.

John Wilson (Central Scotland) (SNP): As I am sure that the cabinet secretary understands, committee members are frustrated that equal pay has been talked about in local government for almost 10 years. We are trying to find a way through the maze in which previous Governments and local authorities have found themselves.

The convener mentioned your exchange with COSLA in 2006 on whether the money was there to honour the equal pay and single status settlements. Part of the frustration comes about because COSLA and others have indicated to us in evidence that many local authorities can meet their commitments through their reserves. Some are on record as having said that. In its evidence last week, COSLA indicated that a number of authorities felt that they could meet the commitments of equal pay and single status from those reserves.

There is an issue in relation to the Bainbridge decision, but it is still unclear how many authorities will be covered by the ruling. In some cases, local deals may be struck that do not come under the Bainbridge ruling—liabilities under Bainbridge may differ between local authorities.

How will the Scottish Government, and in particular you as the Cabinet Secretary for Finance and Sustainable Growth, scrutinise any applications that are made by local authorities to the capitalisation scheme, which has been put on the table in Aberdeen and has been offered down south? What will happen if local authorities tell us that they can meet their liabilities under equal pay and single status and then they make an application to you, saying, "Sorry, we've miscalculated. We now need to go for the capitalisation scheme"? How will you or your department scrutinise any applications of that nature?

John Swinney: There would have to be a clearly articulated business case—as there was in the case of Aberdeen—that determined that that was a justifiable way of proceeding. That business case would have to consider the local authority's overall financial position. Obviously, we have a significant amount of information that would inform our judgment about whether the business case in that context would be justified. That is the process of scrutiny that would be applied.

John Wilson: My exchange with COSLA last week clearly expressed my frustration that it has taken so long to get to where we are on equal pay and single status. Many workers who would have been entitled to payments or increases under equal pay may have lost out because of the time that the process has taken.

Mr McLetchie asked about exceptional funding pressures. What dialogue is taking place with COSLA to ensure that we bring to a close the situation on single status and equal pay, so that we can start moving on to other issues regarding the funding aspects of local government?

John Swinney: We should take some encouragement from the fact that progress has been made in recent years. There was a dearth of progress for a significant period, but more progress has been made recently. That is an encouraging sign that we are moving in the right direction. In the discussions that I have with local authorities, they tell me that they are anxious to resolve this issue, because it is consuming a tremendous amount of energy and activity.

11:00

Patricia Ferguson (Glasgow Maryhill) (Lab): If capitalisation were to be allowed, what would be the long-term financial impact on local authorities, particularly in relation to their selling assets in the current financial climate?

John Swinney: Obviously the current market is a major consideration for anyone in the public sector who is disposing of assets. Careful judgments would have to be made about whether

this was the right time to dispose of assets, bearing in mind the condition of the property market, and about what benefit to the public purse might be realisable. As Patricia Ferguson knows, such matters are well marshalled in the "Scottish Public Finance Manual", which provides guidance on such questions.

By its nature, the capitalisation scheme is about repaying a sum over a longer period. As a consequence, it is likely that there would be revenue pressure on local authorities. Whether that was affordable would be a consideration for local authorities, but that is no different from the discussions about prudential borrowing in which a local authority has to engage.

I do not think that the sale of assets would be material to the capitalisation scheme. The sale of assets could be justified quite easily to generate sums of money for the local authority, which could then be used to settle equal pay claims. However, I am not sure that there is a direct correlation between the two. However, in all these issues, wise financial judgment has to be made about whatever steps individual authorities take.

Patricia Ferguson: I am sure that you have gathered that the committee feels frustration about this issue. I know that that frustration is shared by COSLA, the trade unions and, most important, the workers who are directly affected. The reason for my question is to try to ensure that if some new mechanism is put in place with the intention of trying to help resolve the situation, it will not result in local authorities stoking up problems for themselves into the future.

When you mentioned Aberdeen, I was reminded of the issues of which we became aware latterly, when the whole financial picture in Aberdeen City Council was in the public eye; it involved perhaps not the mis-selling of assets but, rather, not realising the full potential of assets. We all know that prices will have dropped in the current climate, but would safeguards be put in place to ensure that value for money was still obtained if any sale of assets were to go ahead?

John Swinney: It is a completely fair point that careful judgment would have to be made about disposing of assets in the market, given the current market circumstances, which we can all see. That all fits into the essential prudential judgment that has to underpin each local authority's financial arrangements. What happened in Aberdeen, and what the Accounts Commission properly examined and highlighted, was that such an approach had not been taken for a number of years; as a consequence, the current council administration faced an unsustainable financial position, which it is working extremely hard to rectify, at my requirement. There is no escaping the central point that Patricia Ferguson

advances in her question, which is that there must be wise prudential management of finances by every local authority. The implications of a capitalisation scheme would have to be another element of that consideration.

Patricia Ferguson: Do you have in mind a timescale for the conclusion of the discussions with COSLA over this issue?

John Swinney: I cannot give the committee a timescale just now. Those discussions are under way and we will try to resolve them as soon as we can.

The Convener: We have concentrated a great deal on the mechanisms. It may be important to get a statement on the record about how you feel about the women who are caught in this situation. I think that you agreed with the statement that equal pay is essentially about taking women out of poverty. Do you agree with that statement?

John Swinney: I do, convener. I have responded to the committee's concerns about the various issues, but at the heart of what I have said to the committee—I mentioned it in my opening remarks—is the fact that equal pay has taken too long to implement. It was the right thing to do. Equal pay legislation has been in existence for the best part of 40 years, but slow progress has been made. I accept that, and the discussions that I expect local authorities to have are designed to resolve that. We will try to be as helpful as possible.

The Convener: I am sure that you will also accept the committee's view that we are asking neither local authorities nor the Scottish Government for a blank cheque. We expect them to look after the public purse and, where cases can be defended in the public interest, they should be. Nevertheless, we heard in evidence last week about a serious issue. I do not know whether any of the discussions that are taking place involving the business case of the capitalisation or in your dialogue with local government have touched on this. Last week, we heard from COSLA that there is a rigorous evaluation of the claims and that that is what it expects—cases need to be taken through the courts and they need to be evaluated.

That contradicted evidence from the human resource and personnel directors from local government, who told the committee that there are "very strong claims" in the system. All the witnesses from local authorities confirmed that they had an obligation and a duty to resolve equal pay issues with their employers. One human resource director from Edinburgh said:

"It is a no-brainer for most councils: we cannot win these cases in court. ... so we are settling with them."—[*Official Report, Local Government and Communities Committee*, 18 March 2009; c 1815.]

I do not know whether there is an opportunity within the discussions that are taking place to get local authorities to deal quickly with strong cases that they believe they cannot win in court. I hope that you agree that, in such cases, the message should go out that those women should not have to be stuck in the logjam in the tribunal service and that that is not compatible with the Government's objective of a fairer Scotland.

John Swinney: Judgments must be arrived at on whether individual cases are sustainable. When equal pay deals were put in place, they must have been put in place with a sense that they were justifiable and sustainable. If that is the case, those cases should be entirely robust. However, if judgments question whether that could be reliably taken as a robust position, authorities must reflect on that. I would certainly want authorities to resolve matters as quickly and efficiently as possible.

The Convener: Thank you for your evidence, cabinet secretary.

Subordinate Legislation

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2009 (SSI 2009/112)

Building (Procedure) (Scotland) Amendment Regulations 2009 (SSI 2009/117)

Building (Scotland) Amendment Regulations 2009 (SSI 2009/119)

11:09

The Convener: We move to agenda item 2. The Subordinate Legislation Committee has seen all three Scottish statutory instruments that are before us and has raised no concerns on any matters within their remit. Members have received copies of the three instruments and have raised no concerns. Do members agree not to make any recommendation to Parliament in relation to the instruments?

Members *indicated agreement.*

Annual Report

11:11

The Convener: Item 3 is consideration of our draft annual report. Members have received a copy of the report, which details a number of meetings, evidence sessions and what we have been up to over the piece. Do members agree the report?

Members *indicated agreement.*

Decision on Taking Business in Private

11:11

The Convener: Under item 4, I ask members to agree that consideration of a paper on potential evidence sessions on the issues raised in connection with the provision of care be taken in private at a future meeting. Is that agreed?

Members *indicated agreement.*

The Convener: We move to item 5, which will be taken in private.

11:11

Meeting continued in private until 11:56.

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