

PUBLIC AUDIT COMMITTEE

Wednesday 25 March 2009

Session 3

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PUBLIC AUDIT COMMITTEE

6th Meeting 2009, Session 3

CONVENER

*Hugh Henry (Paisley South) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Loudoun) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
George Foulkes (Lothians) (Lab)
*Anne McLaughlin (Glasgow) (SNP)
*Nicol Stephen (Aberdeen South) (LD)
*Andrew Welsh (Angus) (SNP)

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

John Baillie (Accounts Commission)
Mr Robert Black (Auditor General for Scotland)
Angela Cullen (Audit Scotland)
Caroline Gardner (Audit Scotland)
Barbara Hurst (Audit Scotland)
Gordon Smail (Audit Scotland)

THE FOLLOWING GAVE EVIDENCE:

Sir John Elvidge (Scottish Government Permanent Secretary)
Paul Gray (Scottish Government Change and Corporate Services Directorate)
Guy Houston (Former Director of Finance and Corporate Services, Transport Scotland)

CLERK TO THE COMMITTEE

Tracey Reilly

SENIOR ASSISTANT CLERK

Joanna Hardy

ASSISTANT CLERK

Jason Nairn

LOCATION

Committee Room 4

Scottish Parliament

Public Audit Committee

Wednesday 25 March 2009

[THE CONVENER *opened the meeting at 09:33*]

Decision on Taking Business in Private

The Convener (Hugh Henry): Good morning. I welcome committee members, Audit Scotland representatives and members of the press and public to the sixth meeting in 2009 of the Public Audit Committee. I have received apologies from George Foulkes; James Kelly is attending in his place.

I remind everyone that all electronic devices should be switched off.

Agenda item 1 is to decide whether to take item 5 in private. Do members agree to do so?

Members indicated agreement.

Accounts Commission

“Overview of the local authority audits 2008”

09:34

The Convener: Agenda item 2 is the overview of local authority audits. We have with us the chair of the Accounts Commission, John Baillie. He is accompanied by the deputy auditor general and controller of audit, Caroline Gardner, and the portfolio manager of local government audit in Audit Scotland, Gordon Smail. I welcome them to the meeting.

Willie Coffey (Kilmarnock and Loudoun) (SNP): I should remind the committee that I currently serve as a local councillor on East Ayrshire Council. The committee should be aware of that before we discuss the report in detail.

The Convener: Thank you for that.

I invite Professor Baillie to make some introductory remarks.

John Baillie (Accounts Commission): Thank you for giving me this opportunity to brief the committee on the report, “Overview of the local authority audits 2008”. I will make a short opening statement, after which I and my colleagues will be pleased to respond to the committee’s questions.

Each year, the Accounts Commission requests a report from Audit Scotland on the main issues arising from the audit of Scottish local authorities. The report covers the 32 councils and the 41 related local authority organisations, such as the police and fire and rescue authorities, which together spend about £17 billion each year and provide crucial public services. The overview report brings together all aspects of the commission’s work in the calendar year 2008: for example, the annual financial audits, the best-value audits and our wide range of in-depth performance studies of policy implementation and service delivery. We draw on all that work to highlight issues of importance for the local government sector in Scotland.

This year, we welcomed the evidence of improving local authority service across a range of areas, including council tax collection. However—it is a rather big however—we highlighted significant challenges that councils face as a result of the recession and in making partnership working achieve its full potential. Our overview report identified six areas on which councils should focus, to ensure that they are fully equipped to meet those challenges. The Accounts Commission has tracked and reported on most of those areas for some time, but in the current environment we

view them as crucial. I will cover each area briefly, before I talk about work that the commission is currently doing, which is of relevance.

The first area is performance management and monitoring. Good management processes remain important, and robust information about the quality, cost, accessibility and value for money of services is essential to support performance monitoring and reporting, decision making and scrutiny.

The second area is culture or attitude. Councils need to have a strong best-value attitude and a culture of continuous improvement across services, with an even greater emphasis on efficiency, the effective use of resources, equalities and sustainability.

The third area is competitiveness of key services. A more systematic and rigorous approach is needed to demonstrate service competitiveness and value for money, with more use of comparative information.

The fourth area is shared services. We are disappointed at the slow progress of councils in working together on shared service initiatives to secure efficiencies. In light of continuing financial pressures, all councils should consider the area to be a high priority.

The fifth area is making partnership working real and effective. Single outcome agreements and community planning require local authorities to work closely with organisations that cover the same geographical area, such as national health service bodies, to deliver services. The commission hopes that other public bodies will also work to improve partnership working.

The sixth area is continuous development of elected members. Personal development is essential to ensure that councillors are properly supported in carrying out their demanding and complex roles of leading, monitoring and scrutinising. All councillors should have a personal development plan that sets out their training needs and progress.

I will conclude by making three points to update the committee on our work. First, we are continuing our cross-cutting work with our public audit partner, the Auditor General for Scotland. We recently agreed performance studies that will consider topics that affect local government and other parts of the public sector, including the Scottish Government. For example, tomorrow we will publish a joint report on drug and alcohol services and during the next few months we will publish joint reports on mental health services and civil contingencies planning. There is a strong partnership theme across much of the study work.

Secondly, following the Crerar report, the Government asked the Accounts Commission to take on a key role in co-ordinating scrutiny in local government. We are working hard with the other scrutiny agencies and making good progress in developing shared risk assessments and planning for joint scrutiny work. We are currently consulting on proposals for joint audits and inspections of the police service.

Thirdly, we have completed best-value audits that cover all 32 councils, and the final council report will be published by the end of next month. We are well advanced in developing our approach to the second phase of best-value audits, which will be more risk based and proportionate and will include a stronger focus on partnership working and what local people have to say. We will issue a public consultation paper at the end of this month, and we will hold consultation meetings with councils early in June, following similar meetings that we held with councils at the beginning of the second-phase development.

Thank you, convener, for allowing me to make those opening remarks—we are happy to take any questions.

The Convener: Thank you, Mr Baillie. You have stressed value for money, which is always an issue for the public, particularly in difficult times such as those we are currently experiencing, when people become acutely aware of it. In many local authority areas, the population is declining, there is a reduction in the number of schools and teachers, and the amount of housing stock is decreasing. Having examined local authorities throughout Scotland, do you think that that is an accurate picture of what is happening?

John Baillie: It varies by council area—the overview report tries to address the key points that arise rather than concentrate on specific issues. Although in some areas the population is forecast to decline, in others the number of children of school age is forecast to increase quite significantly.

The Convener: That is the case in a handful of areas but in general, in local authority areas throughout the country, populations are declining and the number of schools is decreasing.

Have you considered what is happening with regard to the salaries of chief executives and senior officials? In recent years, there have been significant increases in the salaries of senior officials throughout the country, at a time when belts have been tightening for everyone else. Have you looked into those huge rises to decide whether they are justified and represent value for money?

John Baillie: Decisions on the payment of specific salaries are a matter for individual

councils and their elected members. We have examined best value and considered the extent to which it can drive improvement. For example, it can draw attention to the scope for shared services and to the fact that services can be shared to a far greater extent than is currently happening. That in itself should drive value for money, which would, I suspect, necessarily include a reduction in some areas in duplication of effort involving two or more people.

The Convener: I accept that you say that individual salaries are a matter for each local authority, but are you saying that you have no interest in the fact that throughout Scotland the salaries of chief executives and senior officials are increasing disproportionately, at a rate higher than those of the rest of the workforce and higher than the public would think represents good value for money?

John Baillie: No, that would not be a proper representation and I am sorry if I gave you that impression. We have an interest in anything that causes the public concern. Indeed, that is part of our fuel for the development of best value 2, which places greater emphasis on what the public need and want. If salaries were perceived to be disproportionately high or to be rising at a disproportionate rate, it would be a concern for us.

Before I go on, I ask Caroline Gardner to supplement that answer.

09:45

Caroline Gardner (Audit Scotland): As part of best value, we examine councils' management structures and how they are changing to meet the demands on councils and to fit their responsibilities. We also consider openness and transparency. There is a case for councils to be accountable for the decisions that they take about management structure and salary levels—that is a United Kingdom-wide debate, as the committee will be aware—and there is room for transparency to be increased so that the public interest can be satisfied on such important decisions.

The Convener: As the matter would be of interest to the Accounts Commission, does it intend to consider it?

John Baillie: At the moment, we would consider the issue along the lines that Caroline Gardner just described. If the decisions of elected local government are transparent, that is part of good governance. If, in the course of those decisions being reached transparently, there is local concern about them, elected members will respond to it.

I would be concerned about the extent to which there was a general, across-the-board drift in salaries. We would be under a duty to report any

such increases as perhaps out of proportion with more general increases, without necessarily commenting about whether they were justified.

Another interesting point, which is perhaps related, is that 10 councils will change chief executives in the period between last September and the coming September. I am as yet unclear about how that will affect salaries.

The Convener: So you could report on that. Will you come back to us to do that at some point?

John Baillie: We will note it for consideration and determine whether is a general issue that should be drawn to the attention of the committee and other stakeholders.

Murdo Fraser (Mid Scotland and Fife) (Con): I will ask about single status, which is covered in paragraphs 90 to 93 of your report. You say in paragraph 90:

"A third of councils had yet to implement the agreement fully at 31 October 2008",

notwithstanding the fact that it was supposed to have been implemented by April 2002. When do you expect the remaining councils to have implemented the agreement fully and resolved this long-running issue?

Caroline Gardner: We understand from our auditors that all those councils expect to settle single status in the course of the next year. It is important that they do that, not only because the agreement is, as you say, of long standing but because many of them continue to incur equal pay liabilities while the issues remain unresolved. Significant amounts for equal pay and the single status settlements are being held in provisions. It is important to finish that business so that the liabilities can be capped and the sometimes damaging effects on staff morale and engagement can be ended.

Murdo Fraser: Are you satisfied that the remaining councils have provision in their accounts to resolve the issue so that there is no continuing, open-ended risk to them?

Caroline Gardner: The answer to that is not straightforward, I am afraid. About £143 million has been set aside for outstanding equal pay liabilities throughout Scotland, but we do not know whether that will be enough, partly because the case law keeps changing as further appeals go through and some are upheld. Through the audit process, we ensure that auditors keep asking councils questions about the issue, but the uncertainty is a strong reason for bringing the single status agreement fully into effect and capping the liabilities rather than running the risk that they may increase further in future.

Murdo Fraser: So there is still a risk that some councils may be exposed to substantial additional costs over and above what they have budgeted for.

Caroline Gardner: Yes, there is certainly a risk of that.

John Baillie: I think that I am right in saying that some of the earmarked reserves in the general fund contain an additional expectation of further amounts to be paid. Because those amounts cannot be accurately estimated, they are earmarked in reserves rather than in provisions. I am sorry to get technical.

Murdo Fraser: Thank you.

Andrew Welsh (Angus) (SNP): Will you comment on the role, potential and scope for shared services as a means of increasing available resources and the efficient provision of services? It seems a sensible approach that provides mutual benefit, so why has overall progress been slow so far?

John Baillie: There are fairly significant opportunities, which I guess start with backroom services, although they do not stop there—the approach could be extended into the backroom services that support the delivery of specific services such as education, social work and housing.

There are good demonstrations of shared services being explored. Most recently, Sir John Arbuthnott held a summit meeting with the eight councils in the west of Scotland to take a good hard serious look at the issue to see what can be done. There are examples in the north in relation to council tax collection, and Glasgow City Council and the City of Edinburgh Council have done pioneering work, which other councils are considering closely. There are many instances of such work.

I ask Caroline Gardner and Gordon Smail to comment on the reasons for the slow progress.

Caroline Gardner: That is a question for local government, rather than the Accounts Commission, to answer in more detail, but we have picked up some of the reasons.

First, shared services are difficult to achieve. There is no question but that they require people to be willing to think fundamentally about what they are trying to achieve, how they balance local control and employment against the cost of services, and how they set up shared services to meet councils' needs, particularly for key services such as finance. The second issue is about the definition of shared services. There has been a lot of work in areas such as procurement—by working together, councils have made significant savings in the money that they spend on buying goods and

services—and it is reasonable to consider that as a type of shared service.

At the other end of the spectrum, the financial pressures that all public services are likely to face mean that councils will have to be willing to consider much more radically the way in which they provide public services. For example, they will have to consider working with partners in health to consider not only backroom services but the way in which front-line services, such as those for older people and mental health services, are provided with the aim of increasing quality as well as cutting out some costs. There will be an increasing need for that in future.

Gordon Smail (Audit Scotland): The only additional point that I have is on the definition of shared services, as the term can mean many things. The onus is on local government to demonstrate to us and the public where efficiencies come from and to give us more information about the progress that has been made.

Andrew Welsh: Necessity encourages co-operation. It is important to have good models of best practice.

John Baillie: Yes, although another aspect is that, inevitably, people are suspicious of such changes. There is perhaps a natural intransigence in people organisations.

James Kelly (Glasgow Rutherglen) (Lab): Paragraphs 48 to 50 of the overview report deal with efficiencies, which you define as

“delivering the same services with less money”.

You acknowledge that councils are making efficiency gains in response to the financial pressures that they face, but there is an on-going issue about what is a cut and what is an efficiency gain. Throughout Scotland, there are reduced teacher numbers, and community halls and libraries are closing—clear examples of cuts. It is therefore important that performance measures are put in place to help us monitor efficiencies and differentiate between cuts and efficiencies. Your report notes that issue, but do you have any suggestions for practical performance measures that councils could put in place?

John Baillie: Quite a lot of work has been done on the development of performance measures generally and, as you will know, the Convention of Scottish Local Authorities and the Improvement Service offer councils recommendations and advice on the development of performance measures. Whenever performance measures are selected, it is important that they meet the needs of the council and local people. They have to be open and transparent, so that everyone can understand the quality of the service, what is being

achieved and how much it is costing. Thereafter, performance measures can be tuned to the individual council's needs, in line with what the people want.

Caroline Gardner might want to develop those points.

Caroline Gardner: About 18 months ago, we published a piece of work on the first strand of the efficient government initiative that was kicked off under the previous Administration. That piece of work included an approach to measuring efficiencies and—this picks up on Mr Kelly's point—to differentiating between efficiencies and service reductions.

It is important that councils start off with a clear picture of what they want to achieve, which might be doing the same with less money or doing more with the same money. Neither of those would be a cut; they would be an improvement in efficiency. The council has to be able to track such things.

The study programme that the Accounts Commission has just approved and which Mr Baillie referred to in his opening statement includes a couple of pieces of work that are relevant to this issue: one considers efficiencies and the other considers unit costs in local government and the way in which people are using them to make comparisons. We hope to say more about that in our next overview report.

Anne McLaughlin (Glasgow) (SNP): You have said that you will be urging local authorities to have a continuous personal development plan for each elected member. We would all accept that councillors' roles are complex and demanding, and the report says that

"personal development is now established as essential to support elected members".

Are you confident that local authorities will want to buy into that idea? Do any of them already make provision for personal development? It is important that they should.

John Baillie: I agree—it is extremely important. Elected members are there to lead, to direct, to monitor and to scrutinise. If proper information on performance management is lacking, scrutiny suffers—and we have seen just what happens in the private sector when scrutiny is ineffectual.

The report says that just under half of all elected members do not have a personal development plan. That group is not to be confused with the half who are new members, having first been elected in May 2007. It is important to stress that we are talking about a different cut of members.

We are not alone in asking for continuous professional development to be considered seriously. COSLA, the Improvement Service and

others have considered the issue, and there is general agreement that personal development is necessary for the reasons that I have indicated. I think that I am right in saying that some councils have their elected members fully signed up to the idea but that other councils are not quite there yet.

There is an element of taking a horse to water. I would speculate that some experienced councillors feel that they already know enough to be equipped for the job, and perhaps they do—I am not suggesting that a personal development plan is necessary for an experienced councillor who has been with the council man and boy or woman and girl. However, I think that the vast majority of councillors would benefit from specialised training in how to understand what is going on in the council, especially in finance. That would make them better able to scrutinise effectively, at a time when scrutiny will be extremely important.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): In your report, you highlight sport and physical recreation and the amount of money that councils spend. Councils spend more than half a billion pounds throughout Scotland but, despite that expenditure, we are not hitting the targets or encouraging young people to take up sport and get involved—the report says that participation is declining.

The report also says:

"sportsotland estimates that an additional £110 million a year is needed for the next 25 years to bring sports facilities up to an acceptable standard"—

that is, to a standard that might encourage folk to get involved. How will you approach that issue in your future study? In the current financial climate, that is a lot of money to find.

10:00

John Baillie: Yes, indeed. I will make a general point before inviting Caroline Gardner to comment—she has been examining this issue closely.

I would submit that recreation is ever more important in a time of recession. It is not just young people but all people who need to have stress relieved, for example if they are losing their job or if they are in a job that they know they might lose. If I may say so on a personal note, there is a greater need for recreation.

Caroline Gardner: As Cathie Craigie mentioned, we have a study on physical recreation services in our forward programme, and it is a good example of where we believe councils should be thinking quite radically with their partners about what they can do better together than they can individually. There is a big backlog

of maintenance required on existing facilities, and the way in which they are used varies quite a lot across Scotland. A big investment is going into the 2014 Commonwealth games, and there is a clear link to the health service and public health policy.

There is room for councils, both locally and at a national level, to think much more radically and in more innovative ways about how to use their facilities and about other forms of physical activity, such as walking and using the countryside that we in Scotland are blessed with, to secure health benefits without necessarily spending more on buildings as we have done in the past. We should use also the buildings that we have as effectively as possible for the sport part of physical activity.

We do not know the answers yet, because we have not done the work, but my comments illustrate the questions that we are asking as we set out its scope. We look forward to discussing that report when it is published.

Cathie Craigie: Targets have been set to encourage young folk in schools to get involved in physical education, with a minimum number of hours of PE per week. Has that come up, or will it be included in your forthcoming piece of work?

Caroline Gardner: It will be included in our study. We published an overview of sport policy last year, which looked ahead to the Commonwealth games, and the target was one issue that we identified. The next step is to examine in more detail how individual councils are addressing the issue so that we can identify what good practice looks like and encourage councils to think more widely about how they can work with their partners.

Cathie Craigie: Is there scope for councils to seek more money to address the issue, or does that have to be done with the budgets that have been set? You have highlighted a matter that the convener brought up earlier—paragraph 6 on page 7 of your report mentions “continuing pressures” with the “ageing population”. How do we bring everything together?

Caroline Gardner: It is pretty clear that councils’ finances will be stretched for the foreseeable future. The settlement heads into 2009-10; after that, the Scottish Government’s budget will start to reduce slightly in real terms and there is likely to be a knock-on effect for all public services. That is why the Accounts Commission has highlighted the need for councils to think ahead about how they will respond to those pressures. For the first time since devolution, there is no real-terms growth, after some years in which there was quite significant growth. The situation requires public services to take a different approach to what they can do, and they need to address questions around sport, activity and a

wide range of other services in a much more fundamental way.

John Baillie: Caroline Gardner has used the word “radically” at least twice, and that is one of the key things that we wish to impress on everyone: councils need to consider the situation more radically than they have done until now. Difficult circumstances might call for radical solutions.

The Convener: We will now have a question from—

Cathie Craigie: Could I ask one further question?

The Convener: It needs to be a quick one, following which we will go to Willie Coffey.

Cathie Craigie: I am thinking about this year. The national priorities that are contained in the concordat state that single outcome agreements must be agreed by the partners. How does that affect the ability of local authorities or health boards to be on top of their budgets? Who holds the purse for that work?

John Baillie: The process starts with determining what the single outcomes are to be—the outcomes must be agreed by the partners—and performance indicators are then identified that people think will confirm whether those outcomes have been achieved. My old friend performance management also comes into the process because, without monitoring any drift from the plans through performance management, achieving what is in the plans will be difficult.

More specifically, it is important at the outset that the partners involved in the plan agree who is responsible for what and when they are responsible for that. The funding and the use of people, property and pounds should be taken into account at the same time. The linking of people, property and pounds not only for today but for tomorrow and the long term is important for the partnerships, as it is for the operation of the council itself. We advocate a strategic approach with the full involvement of each partner, who should know who is doing what, when they will do that and who will be accountable for it. That is important.

Willie Coffey: What the report says in its opening remarks about the shifting emphasis towards outcomes, continuous improvement, customer satisfaction and so on is encouraging. Such messages crop up fairly regularly in the committee, which is welcome. Locally, I share the experience that has been outlined.

I want to ask specifically about the decision-making structures. Some councils have adopted cabinet models as opposed to the traditional committee system with which many of us are

familiar. Did you consider that model to find out how effectively it is delivering? It is clear that such a model in a local authority places greater emphasis on the scrutiny function. I am interested in your comments.

John Baillie: We have seen both types of model. There is no question but that the cabinet-style model can improve scrutiny or increase the opportunities for scrutiny, but that does not necessarily mean that the other model is wrong—it is for each council to determine the way that it will go. It is clear from our best-value work that the councillors who have achieved the most improvements and the best value have had effective leadership, open and transparent decision making and effective scrutiny. If those things can be delivered within the limits of a more traditional model, so be it. I prefer the cabinet-style model, but that is not an official position.

The Convener: Thank you very much. We look forward to continuing work in the area.

I suspend the meeting for a couple of minutes to allow the witnesses to change over.

10:08

Meeting suspended.

10:09

On resuming—

Section 23 Report

“The First ScotRail passenger rail franchise”

The Convener: Agenda item 3 is our continuing inquiry into the extension of the First ScotRail passenger rail franchise. Mr Guy Houston is with us. I thank him for agreeing to give evidence to the committee. I am sure that what he says will be very helpful to us in our considerations.

I understand that you do not wish to make any opening comments, Mr Houston. Is that correct?

Guy Houston (Former Director of Finance and Corporate Services, Transport Scotland): Yes. This is just my opportunity to set the record straight.

The Convener: Thank you. Before we take questions from the committee, perhaps you could help us to clarify a couple of points of fact. In paragraphs 2a, 2b and 2c of your letter of 14 March 2007 to Malcolm Reed, you refer to increases in your shareholding. At 2a, you say that you had 16,722 shares that you were able to buy at £2.751 of an option price. What was the share price at that date, roughly?

Guy Houston: The date that I exercised them?

The Convener: Yes.

Guy Houston: I do not know. It was about £5 or £6. The figure in the letter should read “£2.75”, not “£2,751”.

The Convener: Okay. We can get the exact figure later on.

At paragraphs 2b and 2c, you say that you had exercised 6,309 shares and 3,432 shares respectively “at £Nil option price.” Does that mean that you were able to buy them at zero cost? The committee is not familiar with the phrase.

Guy Houston: Yes. On all those share options, you pay tax on whatever the value of the shares is on the date that you exercise them. If, when you exercise them, the value of the shares is £5, you pay 40 per cent tax on £5. In the case of the shares that are set out in paragraph 2a, you pay on the difference between £5 and the option price. So, I pay £2.75 for the shares that are set out in paragraphs 2a, 2b and 2c. The “£Nil option” relates to bonus payments; instead of receiving cash bonuses, you receive share bonuses. That was way back in 2003-04.

Nicol Stephen (Aberdeen South) (LD): Was that income tax?

Guy Houston: Yes.

Nicol Stephen: So, it relates to your income for the year in which the share option is exercised.

Guy Houston: Yes.

Nicol Stephen: So, if you earned sufficient to trigger the 40 per cent band—which you did—you would pay that rate.

Guy Houston: Yes.

The Convener: I should clarify that you have not yet exercised the third option under paragraph 2c. Is that correct?

Guy Houston: Correct.

The Convener: In the second paragraph on page 3 of your letter to the committee, you say:

“As part of the process, Audit Scotland was shown a copy of the letter you see attached. Therefore, the statement from the Auditor General in earlier evidence that ‘we certainly had no knowledge of the Director of Finance’s particular private interest in this issue’ seems difficult for me to reconcile.”

I have raised the matter with Audit Scotland, but it has no recollection of seeing the letter. Did you show it to Audit Scotland or did someone else in Transport Scotland show it to Audit Scotland?

Guy Houston: I do not know. I was involved in the discussions with Audit Scotland that took place round about June 2007. I do not remember the exact details, but Audit Scotland was shown that there was a letter that was dated March 2007. There was a letter. I remember it being shown to Audit Scotland—the team that was involved in the annual report at the time.

The Convener: Right. For the purpose of clarification, and if we have an opportunity later, we might clarify that with Audit Scotland.

Guy Houston: I should point out that the discussions that took place in June 2007 relating to the annual report for January 2007 were held specifically to talk about the paragraph on my shareholding that was to go into the annual report. It was quite clear to Audit Scotland that I had the shareholding and that I therefore had private interests. That is the bit that I find difficult to reconcile.

The Convener: Okay. Thank you for that. We can clarify the matter with Audit Scotland.

When did you tell your senior managers at Transport Scotland that you had a share interest? We note that you wrote to them in March 2007, but that was a considerable time after you started to work for Transport Scotland. In your letter to the committee, you say that you notified your senior managers. When did you do that? Who did you notify?

10:15

Guy Houston: I notified my line manager within weeks of starting—I do not know the exact date. As soon as I took up employment and read the civil service code, I recognised that I had an interest that should be disclosed and I did so in the one-to-one meetings that I had with my line manager. I ensured that the other directors were well aware of my interest as well.

The first sentence in my letter of 14 March begins, “As previously discussed”. We had discussed the matter at length for quite some time.

The other point that I would like to make is that the ScotRail franchise, as it was at that time, was a seven-year contract that was signed many years before I was with Transport Scotland. As you know, the contract is a 300-page document. One cannot take any decision on the franchise once that document has been signed; every part of the decision making is done through that contract. If we wanted an extra train, fewer trains or changes to the train services, we would go through a process that was, basically, like a flowchart. It was not possible for any one individual to make any difference to that process. Therefore, whether I wanted to or not, I could have had no involvement in decision making on the franchise at that stage. It was just not an issue.

The Convener: Leaving aside the fact that you could not make decisions about individual aspects, you were aware during that period that discussions were taking place about extending the franchise that would be of benefit to FirstGroup. Is that correct?

Guy Houston: I understood that a confidential project was taking place, and that we were looking into the possibility of an extension. However, that was happening along with a number of other improvements. Some of the directors, including me, had no idea of the content of the discussions.

The Convener: Yes, but you were aware that discussions about extending the contract were taking place, and that they would be of benefit to FirstGroup.

Guy Houston: Not necessarily.

The Convener: You were not aware?

Guy Houston: No, the discussions would not necessarily be of benefit to FirstGroup. As Audit Scotland pointed out, in and around June 2007, the discussions were about three options. One option was to extend and another was to not extend; I cannot remember the third option, but my point is that three options were on the table at that stage. Therefore, the discussions were not necessarily of advantage to FirstGroup.

The Convener: So you were not aware that the discussions that were taking place were about an extension. We can clarify this with others, but am I right in understanding that you are saying that, during that period, the discussions included the option of not renewing or extending the contract?

Guy Houston: I knew very little about it. All I knew was that there was a confidential project, called project golden key—very few projects in Transport Scotland had specific project names or were kept confidential. I was not aware of what the project was about in detail at that point.

The Convener: You say that you notified your line manager at an early stage. Who was that?

Guy Houston: Dr Malcolm Reed.

The Convener: Why did you write to him in March 2007 after telling him about your interest at an early stage?

Guy Houston: The first opportunity to publicly disclose my interest was in the annual accounts for the year to 31 January 2007. We decided to place the matter in writing for the purposes of Audit Scotland, among others. In the letter, I stated that I would continue to have no part in the franchise negotiations.

The Convener: Did Dr Reed suggest that to you, or did you think that it would be a good idea at that time?

Guy Houston: I do not know. Both of us knew that we would have to put it in writing. We were well aware of the consequences of not doing so. We both agreed that there had to be an audit trail.

The Convener: Given that you knew of the discussions that were going on, and that you knew that at least one of the three options that were under discussion would not benefit FirstGroup, why did you decide to exercise your share options?

Guy Houston: There is a specific window of opportunity, as I said in my letter to the committee. In my letter of March 2007 I had made clear what I had and the exercise dates, and my final comment in the letter, which was that I would not increase my shareholding beyond what was in the list, was given approval. I had approval for taking up those share options, and given that share options work only within a window of opportunity I had to take them up at that time. However, in relation to the Financial Services and Markets Act 2000 I knew that that was well away from any decision on anything—I was nine months away from any timescale on the issue, so I knew that I was not going to break any rules by exercising those options. I already had approval from my line manager, in line with the guidance. That is the simple reason why I took up the opportunity.

The Convener: Malcolm Reed knew that you had those share options and that you intended to exercise them.

Guy Houston: Yes. He approved the letter.

The Convener: Although different options were being considered, you thought that it would be advantageous to exercise the options at the time.

Guy Houston: I had no alternative but to exercise them. If I did not exercise them, I would lose them.

The Convener: That was an alternative; you could have lost them. There was an element of choice. You decided to exercise the options rather than lose them.

Guy Houston: Yes.

Murdo Fraser: You will appreciate that the committee is concerned about a potential conflict of interest. The civil service management code says:

“Civil servants may freely invest in shareholdings and other securities unless the nature of their work is such as to require constraints on this. They must not be involved in taking any decision which could affect the value of their private investments ... or use information acquired in the course of their work to advance their private financial interests”.

You had a substantial shareholding in First ScotRail—

Guy Houston: Excuse me, but I had a substantial shareholding in FirstGroup. First ScotRail is a subsidiary of FirstGroup. FirstGroup is a £6 billion business and the likelihood of an individual being able to manipulate in some way the FirstGroup share price for a contract that was worth £250 million a year—

Murdo Fraser: You will appreciate that that is precisely the point that the committee is trying to understand. You were a shareholder in FirstGroup. You were present at meetings at which the extension to the First ScotRail franchise was discussed. Did it occur to you that there might be a conflict of interest? What steps, if any, did you take to draw the potential conflict of interest to the attention of the management in Transport Scotland?

Guy Houston: To which meetings are you referring?

Murdo Fraser: For example, we understand that you were present at meetings on 19 and 28 March 2008.

Guy Houston: I am referring to my notes. The meeting on 19 March was about what the handling strategy would be if there was to be an announcement. As well as being director of finance, I was director of corporate services;

media handling and communication were a main area of corporate services that I looked after.

As Audit Scotland pointed out, we did not minute the fact that I disclosed in the meeting on 19 March that I had a shareholding. However, I disclosed that verbally at the beginning of the meeting on 19 March—as we all sat down I said, “Guys, remember my shareholding.” In the discussion that took place, as happened with many FirstGroup-related matters, it was considered that the meeting was not about financial decision making and therefore there was no conflict of interest.

Murdo Fraser: Were you not present at any meetings prior to the meeting on 19 March at which the issue was discussed?

Guy Houston: I was at lots of meetings at which the First ScotRail franchise was discussed in relation to performance, human resources, communications and all sorts of issues that related to First ScotRail. I was not involved in financial decision-making meetings.

Murdo Fraser: However, you were present at meetings at which the possible extension of the franchise was discussed.

Guy Houston: Yes, I was involved. The key thing to remember is that the onus was then on me, in knowing that there might be an extension, to do nothing with my shares and not to trade during that period. I certainly did not trade during that period; I have not dealt with my shares since July 2007, when the option was exercised.

Murdo Fraser: With respect, the point that you did not trade in the shares is not the only relevant point. If you were involved and could influence decisions that might have affected the share price, the fact that you were a shareholder could have meant that you had a conflict of interest.

Guy Houston: As far as I am aware, the only discussion that took place in which I received any detail on the franchise extension was the meeting on 19 March. By that time, Dr Reed—as he has said in evidence—had already agreed it with FirstGroup, around 5 March. The meeting was about handling if there was to be an extension. I could not influence the decision at that stage, because the decision had already been made to take the matter to ministers.

Murdo Fraser: I understand your point. However, you said to me a moment ago that you had been involved in a series of previous meetings in which discussions had taken place on a wide range of subjects, including the possible extension of the franchise.

Guy Houston: Yes—but on the “possible” extension. I am generalising—I am not denying that I was involved in a lot of First ScotRail

meetings, but they were all on a range of areas. I could not influence any decision because I was not involved in decision-making meetings that related to the franchise. I may have been given progress updates, but there is a crucial difference between receiving information on progress, and receiving knowledge and using it.

It is clear from third-party evidence—the FirstGroup share register—that I did not use that knowledge for personal gain. That is a crucial point: I may have been knowledgeable, but I did not use that information for personal gain—I still have the shares.

Murdo Fraser: I am not entirely convinced that your analysis of the situation is correct. As a shareholder, you do not have to deal in the shares to make a gain. If the share price had gone up as a result of decisions that were taken—for example, to extend the franchise—that would have been to your benefit. That is why I am concerned about a conflict of interest.

You have made it clear that you were not involved in the decision-making process. I understand that, but I have one more question. The minutes of the meeting of the directors of Transport Scotland on 21 November 2008 record that you informed the board at that point that you no longer held shares in FirstGroup, and the board agreed that you could remain for the discussion as there was no conflict of interest. Can you explain the background to that particular entry in the minutes?

Guy Houston: The meeting on 21 November took place around the time that I resigned. I have never seen the minutes of that meeting, other than when I was given a copy by the committee last week. I was not party to the minutes: I did not write them, I did not have a say in them and I never approved them. There is half a sentence missing from them, which is “transferred to wife”. I was not party to the minutes after they were written.

The meeting took place within days of my resignation. I cannot comment on the accuracy of the minutes, and I certainly did not approve them—I was not there to do so. To be honest, I did not remember what the meeting on 21 November was about until I saw the minutes. It was a six-monthly update to the board of Transport Scotland on the performance of the First ScotRail franchise. If you read the minutes, you will see that it was a progress update.

The meeting did not involve financial decisions and therefore, as the minutes state, there was no conflict of interest—not because I did not own the shares any more, but because it was not a financial decision-making meeting. That is a simple fact. It was an update to the board on the progress of the First ScotRail franchise.

Murdo Fraser: I understand that, and I appreciate that you did not approve the minutes and may not have seen them before last week. However, I find it curious that the minutes of that board meeting specifically state that because you no longer held shares, the board agreed that you no longer had a conflict of interest. That suggests that, at the time when you did hold shares, there was a conflict of interest.

10:30

Guy Houston: As I said, I cannot comment. I do not believe that those minutes are accurate; it is as simple as that. I did not approve the minutes. I was not there to approve them, so they cannot stand as a record of what I said on the day. It would be difficult for anyone at Transport Scotland to sign them off and say, "Yes, that's a true and accurate record, because that's what Guy Houston said and he confirms it." I do not believe that the minutes are accurate.

Murdo Fraser: Okay. Thank you.

The Convener: We can get further clarification on that. I will invite Nicol Stephen to ask a question in a minute, but I would like to stay on this issue for a moment. You said that there was no conflict of interest on 21 November because you had disposed of the shares. Sorry—they were trans—

Guy Houston: No. That is not what I said.

The Convener: I am sorry. The shares were transferred to your wife.

Guy Houston: Yes.

The Convener: Under the civil service code of conduct, shares owned by a spouse are a material issue. There was therefore still a potential conflict of interest because your wife held the shares. Is that correct?

Guy Houston: Yes, but this is the point that I just made to Mr Fraser. The sentence in the minute is not whole. The reason that a conflict of interest did not arise was that the meeting was not a financial decision-making meeting; the reason was not that I had the shares or that my wife had the shares. The sentence is too short.

The Convener: Okay. We can sort that out later.

I have one further question on the dates that you mentioned for meetings that you attended. We now have a record that, on 23 January 2008, you attended a franchise extension meeting. That date is earlier than the dates that you had suggested.

Guy Houston: Yes, and I believe that the permanent secretary has already commented specifically on that meeting. It was something to

do with progress, and was a pre-meet with FirstGroup, or something like that. I cannot remember the full details but I saw the details and I said that, again, it was not a financial decision-making meeting. However, I must admit that I do not recall that specific meeting.

The Convener: But you attended that meeting, which was called to discuss the franchise extension.

Nicol Stephen: You say, straightforwardly, that the minute of the meeting on 21 November 2008 is inaccurate. You would contest the minute because it should have said that you had transferred your shares to your wife. Can you explain when and why you did that?

Guy Houston: I will explain, but it was for personal reasons. The committee is going into a lot of detail about my personal affairs. I transferred—

Nicol Stephen: I am not asking you about personal reasons. If the reasons are personal—

Guy Houston: They are to do with tax efficiency.

Nicol Stephen: I do not need to press you on that, but I need to understand why you chose to inform the board at that meeting that you had transferred the shares.

Guy Houston: That was the first opportunity.

Nicol Stephen: So the transfer had happened—

Guy Houston: In November.

Nicol Stephen: Yes, in November 2008. However, the decision was not related in any way to your knowledge of the issues that were about to arise in the context of the First ScotRail franchise.

Guy Houston: The tax reasons are related to dividend payments. I do not really want to give this away, but—

The Convener: No.

Guy Houston: I just want to be clear.

The Convener: If there are issues that relate to your personal tax situation, you are not obliged to disclose them to us.

Guy Houston: Okay, but I just want to be clear that the transfer was for personal tax reasons.

Nicol Stephen: The fact that all this happened within days of the First ScotRail franchise report, which raised this issue and which triggered your resignation, is coincidence. That is what you are telling us.

Guy Houston: My transferring the shares to my wife was before the report came out.

Nicol Stephen: Yes, but the report was coming out at the time. Was the meeting on 21 November before the report came out, or before you had knowledge of the report?

Guy Houston: It was before the report came out.

Nicol Stephen: So when was the phone call that you refer to in your letter to us?

Guy Houston: It would have been five or six days before the print deadline, which I cannot remember—Audit Scotland might have the answer. It was a few days before 28 November.

Nicol Stephen: You resigned on 28 November.

Guy Houston: I did.

Nicol Stephen: Five or six days before that is about 22 or 23 November. Is that right?

Guy Houston: That is when I disclosed. It was the first opportunity to do so. I transferred the shares to my wife some time in the middle of November.

Nicol Stephen: So it was earlier in November.

Guy Houston: I have already explained that that was for personal tax reasons.

Nicol Stephen: It was the week before, or two weeks before, everything that we are discussing occurred and, as you explained, coincidence. You went to the meeting on 21 November and explained about the transfer of shares to your wife. For some unexplained reason, the minute states:

"Guy Houston informed the Board that he no longer held shares in First Group and the Board agreed that he could remain for the discussion as there was no conflict of interest".

Guy Houston: I believe that it says at the end of that comment that there was no conflict of interest because it was not a financial decision-making meeting.

Nicol Stephen: That sentence in the minute came as a complete surprise to you; you were unaware of it.

Guy Houston: Yes. I was not present when the minute was agreed; I was not in the employment of Transport Scotland.

Nicol Stephen: Okay.

You also attended a meeting that related to the ScotRail franchise extension in November 2008. Malcolm Reed and the permanent secretary told us that your attendance at any meetings to do with the franchise came late in the process and that you attended two such meetings, both of which were in March 2008, as I recall. Are you telling us that that is incorrect?

Guy Houston: I was involved in those two meetings.

Nicol Stephen: But you attended more meetings than that. You attended additional meetings on the ScotRail franchise extension. Is that correct?

Guy Houston: I am saying that I was involved in a lot of meetings to do with First ScotRail.

Nicol Stephen: This is very important. Did you attend meetings to do with the project with the code name golden key prior to March 2008?

Guy Houston: If I did, none was decision making or about influencing the decision.

Nicol Stephen: That is not the question I am asking. The question is: did you attend meetings about project golden key prior to March 2008?

Guy Houston: There was a rail policy board, which met monthly, had a group of directors and discussed the policy on rail. One of the topics in those discussions would have been ScotRail's performance, which may or may not have included an update on project golden key. I do not have paperwork with me, but I would not be surprised if there was an update to the meeting in 2008.

The Convener: If project golden key was mentioned at any of the policy board meetings that you attended—such as April, May, June, August, September, November and December 2007 or meetings in 2008—did you remind those attending that you had a shareholding, or did you leave the meeting?

Guy Houston: They were certainly reminded on a number of occasions, although I cannot confirm whether it was at every meeting. It was common knowledge, had been in our annual report for two years and was in the register of interests. We had received confirmation that the arrangements that we had put in place were suitable because they had gone into the annual report, which Audit Scotland had signed off.

As far as I was concerned, the letter from March 2007 confirmed what shares I had, what I was going to do with them and the arrangements that we were going to put in place. We worked to that letter and the discussions beforehand. If any financial decision making was to be done, I would ensure that I was not involved. The directors of Transport Scotland were so aware of the situation that they knew that they could not involve me in financial decision making on franchise extension.

There is a difference between receiving knowledge in a progress report and using that knowledge for personal gain. It is clear that I did not use it for personal gain.

Nicol Stephen: We have a note of at least two meetings at which project golden key was

discussed prior to March 2008. One was on 23 January 2008, which was the franchise extension meeting that has been referred to, and the other was back in August 2007. I assume that that is accurate and that you do not dispute those minutes.

Guy Houston: I do not dispute anything. As the permanent secretary said, on 28 August, I had disappeared before that agenda item came up. I think that the January 2008 meeting was the meeting about which he said that I was on a train at half past 5. Therefore, the topic might have been on the agenda, but I was not there.

Nicol Stephen: That must have been a different meeting. We were told that you had not been involved in any discussions or meetings on the franchise extension prior to March 2008 and that you were involved with only two meetings, neither of which involved financial negotiations. I am trying to establish that there were prior meetings that involved project golden key, but which you state did not involve financial negotiations. Over several months, there was a series of meetings. Is it fair to say that you were comfortable attending those meetings even though project golden key was being discussed, unless there were financial issues?

Guy Houston: Yes—unless there was a financial decision to be made on the negotiations on the franchise. The letter of March 2007 said that I was not to be involved in financial decision making. The agreement and the procedures that were put in place did not set out that I was to have no knowledge of the issue. From an administrative point of view, that would have been virtually impossible.

Nicol Stephen: So the financial negotiations in relation to project golden key were being conducted elsewhere and you, as the finance director of Transport Scotland, had no involvement in them.

Guy Houston: Three senior directors—the chief executive, the head of the rail directorate and the director of strategy and investment—were closely involved. We should remember that they had support on financial issues from Ernst & Young and the Scottish Government. They had lots of financial help from people other than me. We were comfortable with that.

Nicol Stephen: As you might know, I have pressed Transport Scotland fairly hard on confidentiality and market sensitivity. The main reason that Transport Scotland gave to the committee as to why it kept project golden key—the franchise extension project—confidential and did not at any point consult or involve external stakeholders was the market sensitivity of the project.

Malcolm Reed told us:

“There is market sensitivity because as soon as negotiations start both parties to the deal have inside knowledge. All the individuals involved are in a position to take financial advantage of that knowledge, if they choose to do so. In that regard, my situation was no different from that of Mr Houston. If I had been minded to breach the civil service code, I could have traded in FirstGroup shares. Of course, I did not do so.”

He went on to say, on the record, to the committee:

“I am firmly of the view that the nature of the deal and negotiations, and the market sensitivity around them, made it entirely appropriate for the negotiations to be conducted in private.”—[*Official Report, Public Audit Committee, 14 January 2009; c 838, 843.*]

You seem to have a slightly different view. From what you have just said to us on the record, you seem to feel that the contract extension was not particularly market sensitive for an organisation such as FirstGroup. Will you explain your perspective on that?

Guy Houston: No—I was talking about one individual being able to make a difference to the FirstGroup share price and being able to guarantee that. That is subtly different from the statement that you have just made.

Nicol Stephen: So you agree that, even in the context of a £6 billion business, the scale of the contract extension project was significant and was market sensitive.

Guy Houston: Yes—I am sure that it was. Does anyone actually know the facts about what happened to the share price on the day that the franchise extension was announced?

Nicol Stephen: That is really what I am asking you.

Guy Houston: From what I understand, the share price went down on that day.

Nicol Stephen: With respect, you cannot have it both ways: you cannot say that you personally feel that the issue was sufficiently important—

Guy Houston: I am just saying that, in the context of a business that is worth £6 billion, one decision on its own does not necessarily make a huge difference to the share price. A number of issues could make a difference to the share price; this is just one of them.

10:45

Nicol Stephen: I think that you tried to make that point in your letter when you said that the decision was not that substantial or significant within the context of FirstGroup. However, were you aware of how sensitive the project was regarded as being by people in the organisation

and of the reasons for the strict confidentiality that surrounded it?

Guy Houston: I was aware of that, yes. As I said earlier, the project was called project golden key, and the fact that it had such a name demonstrated the fact that it concerned confidential matters.

Nicol Stephen: If you had been aware of another individual in Transport Scotland who was a substantial shareholder in FirstGroup and was involved in discussions around that project, what would you have felt?

Guy Houston: As long as we had an audit trail that said what people could or could not do and we were all agreed on that, I would have had no issue with that. The onus is on that individual not to trade in sensitive areas, because they will be caught by the Financial Services and Markets Act 2000. The matter is not only to do with Parliament; it is to do with a load of other legal issues.

Nicol Stephen: You have talked a lot about the issue of public disclosure and the fact that your interest was publicly disclosed in Transport Scotland's accounts. However, the onus on you, in terms of your contract of employment, had nothing to do with public disclosure, did it?

Guy Houston: Sorry, what do you mean?

Nicol Stephen: I mean that your contract of employment states that you should disclose such issues to your employer and that the matter does not have to go on the public record or be disclosed in the annual accounts of the organisation that you work for. It is a contractual matter between you and your employer.

Guy Houston: Yes, and that is why I informed my employer.

Nicol Stephen: And when you informed your employer—which you said you did verbally within the first few weeks of joining the organisation—you did not believe at that stage that there was any need to set down in any way the nature of your shareholding interest.

Guy Houston: I knew that I had to put it in writing to my line manager.

Nicol Stephen: Why was that not done for a period of 10 months?

Guy Houston: There are no timescale requirements with regard to disclosure. In previous evidence-taking sessions, you have said that there was "late disclosure". That is not correct. The disclosure was within the guidelines and the rules. The fact is that Malcolm Reed and I had discussions about what action to take and how to put the matter in writing. At that time, I had no involvement in the franchise extension, so the

matter was never an issue. The fact that I told everyone verbally—

Nicol Stephen: So disclosure can take place at any time. It does not matter whether it takes place after 10 months, one year, two years or whatever. Is that right?

Guy Houston: Disclosure should take place when it is appropriate. A set of annual reports was due, and my view was that the matter should be put on the public record at that time.

Nicol Stephen: It is unusual for a civil servant to be subject to a set of annual accounts in which a disclosure of that nature needs to be made. Most civil servants do not work for an organisation that produces a set of annual accounts of that sort. Assuming that the issue should be handled in a manner that is appropriate for all civil servants, I would have thought that it would have been far better if you had sent a private letter to Malcolm Reed at a far earlier stage. That would have been the appropriate point for disclosure.

Guy Houston: We discussed the matter on numerous occasions beforehand, and we formalised the matter in March 2007. It is as simple as that.

Nicol Stephen: So, in your opinion, the arrangements that were followed in March 2007 reflected your previous discussions with Malcolm Reed. Your letter starts with the words, "As previously discussed".

Guy Houston: Yes, and the letter also says:

"I would continue to be at arms length in relation to any negotiations with First ScotRail on the franchise costs."

I was simply formalising, at the end of the financial year, the way in which we had already been working.

Nicol Stephen: But the only reason for formalising that in a letter was that the public accounts for Transport Scotland were being prepared.

Guy Houston: I would not say that it was the only reason—

Nicol Stephen: That was the reason for the timing of the letter, in March 2007. Is that correct?

Guy Houston: The timing was related to when we would make the public disclosure. Malcolm Reed and I had decided that it would be best to publicly disclose the matter.

The Convener: You have said a number of times that you did not trade in any shares during that period. However, did you obtain additional shares in that period?

Guy Houston: What period are you referring to?

The Convener: The period between your starting with Transport Scotland and your leaving Transport Scotland. Did you obtain additional shares in that time?

Guy Houston: I exercised the share options up until a point in July 2007, which was many months before the franchise extension was crystallised in any way, shape or form. Audit Scotland has already stated that, around that time, there was a number of options, and any educated individual could work out what those options were.

The Convener: During that period, you obtained additional shares.

Guy Houston: Yes, and that was approved in the letter of March 2007. As far as I was concerned, I was allowed to do that.

James Kelly: I would like to clarify a point that you made in answer to one of the convener's questions. You joined Transport Scotland in May 2006 and you acknowledge that, at that time, you were aware of a confidential project called project golden key, which was considering three options relating to the ScotRail franchise extension, one of which was to extend that franchise. Do you acknowledge that, if the option to extend the franchise was pursued, that would be of benefit to FirstGroup?

Guy Houston: Of course it would.

James Kelly: With regard to the contract extension—[*Interruption.*]

The Convener: I think that Mr Houston needs to be given every opportunity to give evidence in ideal circumstances. However, the noise from outside the committee room does not make these circumstances ideal. I apologise for the interruption, but I suggest that we suspend the meeting until we can get the noise stopped.

10:52

Meeting suspended.

10:57

On resuming—

The Convener: We have asked whether the work can be halted, but it might be happening beyond the Parliament's curtilage, so the matter might not be entirely within our control. I apologise, but we might just have to suffer through it.

I ask James Kelly to start again.

James Kelly: Apologies for the interruption, Mr Houston.

Obviously, consideration of the extension of the ScotRail franchise had financial implications for

Transport Scotland. What role did the organisation's finance department play in those considerations?

Guy Houston: At the time, the rail finance team was under the rail directorate. I do not want to appear flippant, but I was not involved so I do not know what its involvement was. As a result, I cannot actually answer your question. I know that a rail franchise team—a rail finance team—sat under the rail directorate, and I assume that they would have provided the directorate with information. I do not know.

James Kelly: Are you saying that the role of the finance department was to provide clarification and support to the rail franchise team, which sat under a different directorate from your own?

Guy Houston: Yes. That team sat under the rail directorate.

James Kelly: Who in the finance department provided and directed that support?

Guy Houston: The team was under the director of rail at the time.

James Kelly: Yes, you have already made it clear that the rail franchise team is under a separate directorate. However, from what you have said, it required some support from the finance department, so who—

Guy Houston: The rail finance department was under the rail directorate.

James Kelly: Just to be clear, what role did the finance department that you were finance director of have?

11:00

Guy Houston: I do not believe that it played any part.

James Kelly: So the finance department—

Guy Houston: I cannot confirm either way. If information was asked for that I was not knowledgeable about or if key decisions were to be made, my team would not be involved. We did not have the expertise; rather, the rail finance team had the expertise.

James Kelly: So you cannot state whether the finance department had a role in considering the financial implications of the ScotRail franchise.

Guy Houston: I do not believe that my central team had a role. We would simply consolidate information that we had been given. We would get information from rail, concessionary fares and roads teams that we would consolidate. We would then send information up the line.

James Kelly: Can you be clear about whether the department that you were director of had a role?

Guy Houston: Only to consolidate numbers and send them up the line.

James Kelly: Right. So staff in your department had a role in providing analysis and passing that on to the rail franchise team.

Guy Houston: No; things were the other way around. The rail finance team would provide forecasts for a number of years. We would consolidate those into a future forecast.

James Kelly: Just to be clear, staff in the department that you were finance director of had a role in liaising and helping to provide information to the rail franchise team.

Guy Houston: Yes, but that was not to do with the franchise extension.

James Kelly: Okay. So who was responsible for that in the department?

Guy Houston: I am sorry, but you are being too general. Templates and spreadsheets and so on to fill out would go from my team to the rail finance team, which was under the instructions of the rail directorate at the time.

James Kelly: I think that we are all clear that the rail franchise team was under a directorate that was separate from the department that you were finance director of. I am trying to establish and be clear about the involvement that the department that you were director of had in analysing the financial implications of the ScotRail franchise extension.

Guy Houston: It had none.

James Kelly: Okay. That is clear.

In answering a question that Murdo Fraser asked, you said that you had been involved in many meetings to do with the ScotRail franchise extension.

Guy Houston: No. I said that I had been involved in many meetings to do with the ScotRail franchise.

James Kelly: Okay. You said that HR and communications were discussed in those meetings, but none of them was on financial decision making.

Guy Houston: Correct.

James Kelly: I assume that there were meetings on financial decision making. Who deputised for you in them?

Guy Houston: There would not necessarily be a deputy. There was a set of governing rules that said that people up to certain levels could make

certain decisions. The rail directorate was entitled to make decisions with the approval of the chief executive. Financial decisions did not have to be taken through me.

James Kelly: So you are telling us that in your role as director of corporate services, you had, as your department had, input on HR and communications in discussions on the ScotRail franchise, but your department had no finance input in any discussions or meetings on the ScotRail franchise.

Guy Houston: We had no input on its extension.

Anne McLaughlin: Good morning. I would like clarity on two matters, one of which James Kelly has just covered a wee bit. Murdo Fraser talked about the meeting on 19 March and asked whether you had attended meetings in which the franchise extension, or project golden key, if we must call it that, was discussed. We have talked about that matter subsequently, and you said that you had. Like James Kelly, I want clarity. Did you ever attend a meeting at which you said, "Shall we or shan't we award the franchise extension contract?"

Guy Houston: No. It was not about that; it was about saying, "Here's the progress: we are working with First Group; we still have the options on the table; and this is where we have got to."

Anne McLaughlin: Okay. On the meeting on 19 March, you said that your role was multifaceted and that you covered lots of different areas. On that occasion, the purpose of the meeting was to discuss any communications issues, should the franchise be extended. It would be helpful to the committee if you could give examples. Initially, it sounded like you were saying, "Yes, we were discussing the franchise extension." However, I now understand that what you meant was that you were discussing not whether to extend the franchise, but the implications of a franchise extension—something that one has to do in a normal business.

You said that you had an HR input. Perhaps you could give us an example of the type of thing that you might have discussed around the franchise extension. That would help the committee to be clear about what you mean when you said, "We discussed the franchise extension." What were the types of thing that you were discussing?

Guy Houston: Those were very much rail policy meetings, and if the franchise extension was brought up, it was by way of a progress update. Other than listening, my input would be minimal. On 19 March, on media handling in particular, we discussed who to tell, when we should tell them and how we should tell them. Basically, we put together a communications strategy around an

announcement on the extension. Is that the sort of thing that you were looking for?

Anne McLaughlin: Yes.

Guy Houston: The whole discussion was around which MSPs to phone, and when and how to inform the Department for Transport, Network Rail and all the major stakeholders. It was all on the specific announcement of an extension.

Anne McLaughlin: And you would not be able to do your job without discussing the franchise extension—I mean not whether to have an extension, but the franchise extension itself. The example was a good one.

James Kelly questioned you on the exercise of the share options that you had been given between 2003 and 2005. When he asked whether you had obtained additional shares, you said yes. Did you mean that, in obtaining those additional shares, you exercised the existing share options, or did you say to yourself, “I have got these share options, and I am going to go out and buy lots more shares”?

Guy Houston: No. All that I ever did was to exercise the options. When say in evidence “additional shares”, I mean the exercising of those options. From my scribbles on the letter of 14 March 2007, you can see my notes in reconciling my total current shareholding to the exact share. When the shares under 2a, 2b and 2c are added up, that is our total shareholding. There were no additional shares over and above that.

In the last bullet point on page two of my letter of 14 March 2007, I said:

“My shareholding in First Group plc does not increase above the current levels”,

which is set out in paragraphs 1 to 2c. That is why I was quite clear. Because I had approval—confirmation—and, subsequently, the information was in annual reports that Audit Scotland has seen, I said to myself, “I’ve got full approval. I have third-party approval. Audit Scotland is saying that it notes the arrangements and is happy with what is stated in the accounts.” I had a letter in which I was told that it was okay for me to do it. As far as I am concerned, I was proactive in putting the detail on paper.

Anne McLaughlin: I understand that. I will make it clear why I asked you for clarification on the point. I did so because the *Official Report* of the meeting will record that you said yes in answer to the question whether you obtained additional shares. What you meant by that was that you had exercised the existing share options that you had been given between 2003 and 2005.

Guy Houston: I appreciate you clarifying that.

The Convener: It is important that the point is clarified. I return to the question that I asked earlier. During the period that you were at Transport Scotland, did you not increase your shareholding?

Guy Houston: Yes, but only through ordinary options.

The Convener: Yes, but by whatever route, during that period, you took a decision to increase your shareholding.

Guy Houston: I took a decision in line with the guidance—

The Convener: And your managers were aware of that.

Guy Houston: Yes.

The Convener: And they expressed no concern.

Guy Houston: Yes.

The Convener: That is fine.

Andrew Welsh: Why were you at meetings at which project golden key was discussed? What decision making were you involved in regarding golden key?

Guy Houston: I was not involved in any decision making for golden key.

Andrew Welsh: Were you involved in any decision making? Were you involved in giving advice?

Guy Houston: The rail policy group provides a good example. That group discusses lots of issues to do with railways and the policies around them. On project golden key, any discussions that took place at the rail policy group were few and far between, from what I can remember. They were succinct and short, with statements such as, “We are still in discussions with FirstGroup,” or, “We are still looking at options.” That went on for a number of months. It was no more than that, and the minutes simply showed that progress was noted.

We had no idea of the detail or of how much the work was worth to the taxpayer. In the end, the taxpayer is getting £70 million back, which I think is quite a good deal, especially in the current economic climate. That £70 million was future revenue, and I do not know whether FirstGroup will get it back now.

Andrew Welsh: But the end product was to be the franchise decision, for or against. You were present at those meetings. Why? What was your input to them?

Guy Houston: The rail policy group was involved in various decisions on the future of the

railways of Scotland—it was more to do with providing advice to ministers.

Andrew Welsh: Therefore your advice was part of the decision-making process.

Guy Houston: No. You are confusing two issues. The rail policy group had a number of agenda items, one of which was project golden key. That particular agenda item was simply to note progress.

Andrew Welsh: Did you have any involvement—giving advice or otherwise—in the decision making?

Guy Houston: On the franchise extension, no.

Andrew Welsh: The franchise extension, whether it was agreed to or disagreed to, would obviously have financial consequences, and you had a pecuniary interest. I find it strange that, if you had a direct pecuniary interest, you were even present at meetings. I know that, in other organisations, one would have to declare an interest and leave. However, you were at those meetings. I presume that you were aware of a process going on. Why were you there? You must have been there to do something and to contribute.

Guy Houston: I was there to contribute to a number of agenda items covering all manner of things. Project golden key was one specific element. All those who were present at those meetings were directors, who were well aware that I had disclosed my interest. We were working in an environment such that, at internal meetings, everyone was well aware of my shareholding. They knew that I was ex-finance director of the bus division of FirstGroup. I am sure that one of the reasons why I was employed was because of the market intelligence that I could bring to the organisation, for example on what was happening in the bus and rail industries.

I had a number of involvements, including communications. If there was a decision on a policy matter, I would bring in my communications advice. If there was an HR matter, I would wear my HR hat. If there was a health and safety matter, I would use that hat. I had a number of roles as director of corporate services. I could wear a number of hats at any one time.

Andrew Welsh: You obviously were not there just as a spectator. How did your input affect or lead to the final decision?

Guy Houston: On the franchise extension, in no way. I did not provide advice.

Andrew Welsh: So you were in no way involved in the decision making. The rules are quite clear: civil servants should not be involved in taking any

decision that could affect the value of their private investments.

Guy Houston: And I made sure that I did not trade. If I gained any knowledge—which I did—I made sure that I did not trade when I gained that knowledge. Most of that knowledge was gained around March 2008, when the matter was being crystallised.

The Convener: You have indicated that you gained knowledge during the process.

Guy Houston: Yes, but most of the knowledge that made any difference was not gained in June 2007. It would only have taken an educated guess to work out what options were available. Any knowledge that I gained was gained around 19 March 2008—I refer to the detail that we were given at that time.

The Convener: Andrew Welsh's question takes me back to what Anne McLaughlin said. You say that you were not involved in making any decisions about whether the franchise should be extended. That is not the issue under the code of conduct; it is whether you attended meetings at which you gained any knowledge or information that could have been beneficial to you in determining whether to exercise options to increase your shareholding. You have indicated that you got knowledge at some of the meetings.

11:15

Guy Houston: Round about March 2008, I received knowledge. It is clear from the FirstGroup share register that I did not use any of that knowledge for personal gain.

The Convener: March 2008.

Guy Houston: Yes. Round about then—19 March, for example. I did not trade in any of the shares and I still have not traded in any of them. It is not possible to make a gain or loss without trading in the shares and I made sure that I made no personal gain. I simply held on to what I had because I knew that it was too sensitive to do anything—not that I was going to do anything anyway, because I am holding the shares for long-term investment.

The Convener: During that period, you increased your shareholding.

Guy Houston: I did not.

The Convener: At a time when you were attending meetings at which project golden key was mentioned, you exercised your share options.

Guy Houston: July 2007 was the last time that I exercised a share option.

The Convener: Yes, but you attended meetings prior to that. I read out the dates that you attended meetings.

Guy Houston: No, I attended meetings to do with the rail franchise. I do not have the details of all the minutes, but that does not necessarily mean that they concerned the franchise extension and, even if they did, Transport Scotland was not even close to a decision. Audit Scotland has already said that, at that time, a number of options were on the table. Some of those would have benefited FirstGroup and some would not have done. The decision was taken round about March 2008—it may have been a month or two before then—and it is clear that there is no link between me increasing my shareholding in July 2007 and the awarding of the extension. You cannot link it.

Nicol Stephen: Will you clarify for the record when you exercised your share options? I presume that you did so more than once. Is that right?

Guy Houston: The detail that I have shows that July 2007 was the last time that I did so.

Nicol Stephen: What about previously?

Guy Houston: I do not have the detail, but it would have been some time in 2006, some time in 2007.

Nicol Stephen: Which was during the term of your employment with Transport Scotland.

Guy Houston: I think that the letter states exactly when.

Murdo Fraser: I want to clarify something, Mr Houston. As far as you are concerned, in all your dealings, you adhered to the agreement that you had with Dr Reed, the chief executive of Transport Scotland, as set out in the letter of 14 March 2007. Is that correct?

Guy Houston: Yes.

Cathie Craigie: The agreement that you had with your employer was that you would be able to discuss the rail franchise and involve yourself in meetings on it but not to take part in any meetings on the franchise extension. Is that correct?

Guy Houston: The remedy—of which you have a copy—said:

“I would continue to be at arms length in relation to any negotiations with First Scotrail on the franchise costs ... I would be party to negotiations in relation to ... contractual changes in either concessionary scheme, but any decision ... would ... be ratified by a fellow director ... Any other financial decision made by myself that would impact on First Group or any of its subsidiaries are to be ratified by a fellow director.”

Cathie Craigie: My colleague Anne McLaughlin asked some questions about your input at the meetings. You said that you were there to listen.

Guy Houston: On the specific example of discussions on project golden key—the rail franchise extension—in the rail policy group meetings, my role was simply to note progress, for example, “The rail team has a handle on this. They are discussing it with FirstGroup. There are a number of options.” I am talking about that specific example alone.

Cathie Craigie: There is an industry in meetings—we all attend lots of them. You have told the committee that you were at lots of meetings. Was there ever an occasion when you felt that it would be right to withdraw from a meeting, for example when discussions moved on a wee bit too much from the franchise to the extension?

Guy Houston: I do not remember removing myself from any meetings. I remember saying on a number of occasions, “Guys, remember I have shares; let’s have a quick discussion. Is this meeting going to lead to financial decisions?” Because the directors were aware of the situation, they would not invite me to meetings at which they thought that a financial decision would be made. I was quite good at avoiding meetings that were to do with the issue, for the simple reason that all the directors were aware of the situation and would not compromise their positions.

I remember that I discussed the matter with directors on a number of occasions, especially around March, either in meetings or outside, and beforehand. I said, “Guys, will this compromise our position?” The matter was discussed on a number of occasions, but I do not remember removing myself from a meeting.

Cathie Craigie: You do not remember being in a meeting at which you felt personally compromised.

Guy Houston: No. As I said, I might have gained knowledge, but the onus was on me to ensure that I did not use that knowledge for my personal gain. I was well aware of that.

Cathie Craigie: Did you gain knowledge—

The Convener: Sorry to interrupt. Mr Houston, you said that there were meetings at which the franchise was discussed, in which you did not participate. We asked Transport Scotland for a list of all the meetings that related to the franchise, and we understand that there was only one meeting that you did not attend, which took place on 29 February 2008—I beg your pardon, Mr Houston; the clerks are telling me that the list refers to meetings that you attended. I hope that we can get the information that I was seeking.

Cathie Craigie: Mr Houston, did you gain knowledge that you were uncomfortable with?

Guy Houston: No. In March 2008, I gained knowledge that there would be an extension of the franchise, or rather that that decision was likely to be made. I knew fine well then that I could not trade and must not do anything that would jeopardise my position, so I held fire.

I point out that Audit Scotland said in evidence that I was not involved in early discussions and in going through the options. It is clear that I was not involved in all the discussions about how options were arrived at and which option would be ended up with.

Andrew Welsh: It is quite right that there are strict rules for civil servants, which operate in their interest and in the public interest. You attended all the meetings that you mentioned and you said that your attendance meant that you acquired knowledge. When we are talking about shares, knowing something does not necessarily mean that one takes action; it might mean that one takes no action. That is the difficulty. As a civil servant, you attended meetings that gave you access to information that no one else had, because it was kept inside your organisation. You said that you did not sell your shares or make any movement on them, but I put it to you that the knowledge that you gained might have encouraged you to take no action.

Guy Houston: My letter of March 2007 set out guidelines, which were approved, and I stayed within them. For example, I was not allowed to make a decision and my shareholding was to increase only in line with the options that I had. It is as simple as that. I really do not understand where you are coming from. I knew that I had to stick to the guidelines and procedures that I was given and I did so.

Andrew Welsh: Civil servants

"must not be involved in taking any decision which could affect the value of their private investments".

Do you know colleagues who have been in the same position that you were in? The issue is the role of civil servants who are involved in decision making. There is a delicate line to be followed.

Guy Houston: I know a number of senior transport operators who now work in the public sector, not necessarily in Scotland. They will have had large shareholdings, but I have no idea what they have done with them.

I wrote and asked for guidance and I set out remedies, which were all approved by my employer. I would have needed my employer to come back to me and say, "I need you to do this, this and this with the shares." My employer did not do that. My role, as the civil service code is quite clear, was to inform my line manager and accept the instructions that came back.

Andrew Welsh: Following this situation, would you recommend any change in the rules?

The Convener: I do not think that that is a fair question to ask. We can take that up with the permanent secretary.

Guy Houston: I would make sure that we minuted every single meeting with every single detail.

Cathie Craigie: I want to move on to ask about Mr Houston's departure, if that is okay, convener.

I and, I am sure, other members of the committee, do not want to cause you or your family any stress, Mr Houston, but we have to get to the facts of the matter. You informed us in a letter that you took the decision to step down following the publication of the auditor's report. Sir John Elvidge informed the committee that the initiative to have the discussions came from you. How long were you in discussions with Mr Reed—I take it that it was Mr Reed—about whether you should go?

Guy Houston: The paragraph in the report came out around about the 20-something of November—I do not know the exact date. That is when I was informed. The key thing for me was that I was told that it was going to print. That was the first knowledge that I had of it. I had a matter of days to consider my position. It was all rather quick. The discussions generally were not with Dr Reed; they were with the central HR team that deals with all pay and rations. It is the team that deals with all such matters.

The Convener: Who was leading that?

Guy Houston: It was the director of HR.

The Convener: Paul Gray?

Guy Houston: Yes.

Cathie Craigie: What contractual notice would you normally have to give in the position that you held? I note from your letter that in your previous job as finance director with the bus division of FirstGroup, you gave six months' notice.

Guy Houston: I believe that my contract was to give three months' notice.

Cathie Craigie: How did the discussions go? I realise that there are issues that you might not be able to discuss.

Guy Houston: The discussions were around the fact that the paragraph was to go into Audit Scotland's report. The report was on a high-profile event in the first place. I felt that I did not have a right to reply to the comments, which I felt were unjust. Were they unjust? I felt that they were out of context, quite simply. Factually, was the paragraph correct? Absolutely, but it was

completely out of context. I just felt that this was going to cause an embarrassment to ministers. At the end of the day, my job was to serve ministers and the Scottish Government.

More important, knowing how high-profile the matter had been, I had to think about what impact it would have on my wife and four-year-old daughter. The last thing I wanted was the press at my door. In hindsight, I wish I had stayed. At least I would have got paid for all the press invasion and my appearance here today. I would have had Scottish Government colleagues and the whole Scottish Government behind me. I just assumed that it would make life much easier for all concerned if I resigned on the spot. Yes, it would make a headline on the day, but that would be the end of it.

We had not minuted the meeting of 19 March properly. There was a small issue with that, but I thought that what was said was completely out of context. I took the decision primarily. I took the decision entirely on my own. I decided that I would exit quickly, because the matter was likely to cause embarrassment to the Scottish ministers. I followed the guidelines and the rules, but I just felt that there would still be an issue and I did not think that we were going to get a fair hearing. I just assumed that we would exit on that matter.

11:30

Cathie Craigie: It hardly seems to be an acceptable way for an employer to behave, if an employee has followed the rules that are laid down by the code.

Guy Houston: This was my decision. I cannot comment on how the Scottish Government feels about it. That is all that I will say about that.

Cathie Craigie: It was your decision entirely; you were not pushed.

Guy Houston: No, I was not pushed.

The Convener: You decided that you would leave, you handed in your notice, you told your employer that you believed that it was in everyone's best interests for you to leave immediately, and it agreed. If that is the case, why is there a confidentiality clause?

Guy Houston: That is standard in every compromise agreement. I do not want people to know my personal information.

The Convener: But what compromise agreement was there? You said that you took the decision to leave, and your employer agreed that you could go. How was there a compromise?

Guy Houston: It is standard practice, when somebody leaves and they do not give three month's notice, that a compromise agreement is

put in place to cover both sides. That is standard employment practice.

The Convener: Is it? I am aware of other situations in which people walk out the door and there is no compromise; they simply get paid up to the date on which they left, including payment for their holiday entitlement, and that is an end of it. However, you are suggesting that, having taken a decision on your own behalf to walk out the door, there was somehow a compromise agreement that required a confidentiality clause. If you just decided to leave, what is there to hide? You have left and you will get everything to which you are legally entitled. That is it.

Guy Houston: There are a number of areas in an agreement that is made when you leave. I really do not want to go into details of the contract that I signed with my employer. Those are the details that I worked within.

The Convener: The contract that you signed with the employer would be the standard civil service contract, which is a matter of public record. We know what was required of you and what was required of the employer.

Guy Houston: Yes, but I am talking about the compromise agreement, which was a contract.

The Convener: So there was a compromise agreement over and above what was contractually set out.

Guy Houston: Yes.

The Convener: In your letter, you say that you are adhering to the confidentiality agreement because not doing so

"could lead to financial repercussions for myself."

Did the civil service introduce into that compromise agreement conditions that would penalise you if you broke that confidentiality agreement?

Guy Houston: I do not have the contract with me and I do not want to go into the details. However, the view from my lawyer was that there would be a financial repercussion if I broke the confidentiality agreement.

The Convener: Why would there be a—

Guy Houston: I want that confidentiality agreement to work both ways. I do not want the Scottish Government to disclose what my terms of departure were.

The Convener: That is correct, but I am concerned with the issue of financial repercussions. Did civil servants introduce into that compromise agreement a penalty that could have financial repercussions for you if you broke the confidentiality agreement?

Guy Houston: If you break a confidentiality clause, there will automatically be a repercussion.

The Convener: Did you suggest that there would be a financial repercussion if you broke it?

Guy Houston: I am not quite sure where this line of argument is going.

The Convener: I am just trying to find out who suggested that there would be a financial repercussion for you if you broke the confidentiality agreement. Did the civil servants insert that clause?

Guy Houston: It is something that is standard in a compromise agreement. There will be repercussions on both sides if the confidentiality clause is broken. That is standard practice.

The Convener: But could there have been financial repercussions on the civil service?

Guy Houston: I do not know how I would get the benefit of any such financial repercussions but, yes, there would be repercussions on both sides if the confidentiality agreement were broken.

The Convener: You took the decision to leave—you went out the door at your own behest. A compromise agreement was reached, over and above that to which you were contractually entitled, and someone inserted into it a confidentiality agreement—whether or not that is standard—that could have financial repercussions for you.

Guy Houston: You used the words “over and above”, but, just to clarify, the compromise agreement takes everything into account—it states, “You had three months’ notice, and, as of this date, this is everything.” It is not necessarily over and above the contractual entitlement.

The Convener: But if you were simply getting that to which you were contractually entitled, there would be no need for a confidentiality clause or the threat of financial repercussions.

Guy Houston: There was a need for a confidentiality agreement because I do not want people to know what my terms of departure were—that is fairly standard. Confidentiality works both ways.

The Convener: No—the point that I am making is that if you only got that to which you were contractually entitled, it would be a matter of public record—we could get that information from the standard contract. Therefore, there would not be an issue of confidentiality, because everyone would know.

Guy Houston: The confidentiality clause does not necessarily cover financial information—it can cover reasons for leaving, speaking to the press

and all sorts of things. It covers the whole agreement.

The Convener: So—just for argument’s sake—if it covered that range of issues, there could be a financial penalty on you for talking to the press.

Guy Houston: If I disclose issues that are covered by the compromise agreement, there could be. In this arena, I am covered by the Official Secrets Act, data protection legislation, employment law, the Scotland Act 1998 and the Financial Services and Markets Act 2000. There are a number of acts and rules, and all the rest of it.

I am here as an individual, and I am, as you can imagine, petrified of breaking any of those rules and perjuring myself in various ways. I have to be very careful in what I say—the confidentiality agreement is just one of the areas in which I have to be careful. Another example is that I am not allowed to reveal advice that I gave to ministers. I am bound by a number of things, and I no longer have the backing of the Scottish Government machine to keep me right.

The Convener: I appreciate the potential vulnerability of your situation, in that you do not have the support that others do when they appear before a committee. I appreciate that you have made the effort to come and give us advice—thank you.

Willie Coffey: I hope you do not mind, convener, but I have been waiting patiently for an opportunity to ask a couple of questions, and I would like to take the train back a couple of stations.

Mr Houston, you were recruited in May 2006, when Transport Scotland was in the process of discussing a potential franchise extension with the Government. It might seem unusual, particularly from the public’s perspective, that you were brought into the organisation but not to participate in that process. Perhaps the question is for others to answer, but I would like to hear your view. Was the nature or the suggestion of the franchise extension put to you as part of the recruitment process when you were brought into the organisation?

Guy Houston: No. A franchise extension was never mentioned. It was in the contract already, but I was not aware—I did not have a clue—that discussions would be held on the franchise extension.

Willie Coffey: It seems odd that a senior director would be brought in when the contract was about to be negotiated but would play no role in that. That is perhaps hard for the public to understand. You have on a number of occasions made it clear in answer to committee members’

questions that you played no part in the financial decision-making that related to the franchise extension. Who, being financially qualified to do so, ultimately signed off the extension?

Guy Houston: I was not involved in that, so I do not know who signed it off. I cannot tell you, as I do not know that detail.

Willie Coffey: Okay. It might have to be picked up after this meeting, but the question has to be answered. Which financially competent person signed off the extension?

You mentioned the rail finance team and said that there was external financial advice. However, during the process, the Government was, in effect, a customer. In your absence, who—at all the financial meetings—was the key financial adviser who gave Transport Scotland the advice that led to the ultimate decision? I have no clue as to who that person was.

The Convener: We can pursue the matter elsewhere.

Nicol Stephen: I am interested in the timing of various events around your resignation. You say that you cannot recall when the phone call came through from Audit Scotland, but you think it was four or five days before your resignation.

Guy Houston: It would have been about a week before it.

Nicol Stephen: The Transport Scotland directors board meeting, with its curious minute, took place on Friday 21 November. I believe that you resigned on the following Friday, which was 28 November. Can you recall whether, at that board meeting, you had information on this issue from Audit Scotland?

Guy Houston: I honestly do not know.

Nicol Stephen: You cannot recall.

Guy Houston: I cannot recall. I would just be guessing. I honestly do not know.

Nicol Stephen: We will probably be able to find out more information from Audit Scotland, from you or from the civil service. I would certainly be interested in getting that information.

Guy Houston: I am sorry, but I do not understand the relevance of the 21 November board meeting.

Nicol Stephen: I am just trying to clarify when the minute was put in. I remind you that it says:

“Guy Houston informed the Board that he no longer held shares in First Group and the Board agreed that he could remain for the discussion as there was no conflict of interest”.

Was there any attempt to try to resolve the issue prior to your decision to resign from Transport Scotland?

Guy Houston: As I said, I do not think that there was anything to resolve. There was no conflict of interest—I had followed the guidelines that I worked within. I did nothing wrong, so there was nothing to resolve.

Nicol Stephen: But you chose to resign from the organisation.

Guy Houston: Yes.

Nicol Stephen: When I talk about resolving the issue, I am asking whether there could have been some way forward for you within Transport Scotland or the civil service.

Guy Houston: That would have involved disclosing what?

Nicol Stephen: For example, if you had sold all your shares in FirstGroup and if you had indicated that—

Guy Houston: But the minute does not mention the word “sold”.

Nicol Stephen: I was talking about if you had taken steps to sell your shares.

Guy Houston: I still do not believe that I have done anything wrong, so why would I take that sort of action?

Nicol Stephen: You chose to resign from a senior job in Transport Scotland, which was quite a profound action.

Guy Houston: Yes. I resigned because I have personal pride. There was the potential for embarrassment to the employer that I served.

Nicol Stephen: I wonder whether I can come to that. Did you inform Malcolm Reed of your decision to resign?

Guy Houston: Yes, I would have done.

Nicol Stephen: How was that done?

Guy Houston: It was certainly done verbally, because all the writing was through the senior human resources team that deals with all such matters.

Nicol Stephen: Was the discussion with Malcolm Reed the first discussion that you had, or was your first discussion with Paul Gray?

Guy Houston: The first discussion would have been with Paul Gray. After I had taken the decision, I would have told Malcolm Reed.

Nicol Stephen: Can you recall when that first discussion—

Guy Houston: Actually, I do not think that I did tell Malcolm Reed. I did not, I believe, on making the decision subsequently phone Malcolm and say, "I've resigned." The discussions were with the HR team—specifically, Paul Gray—literally on the day itself. I do not remember a telephone call with Malcolm to tell him that I had resigned. In the civil service, you deal with the HR team in such matters.

Nicol Stephen: I am trying to clarify the facts, to get some dates in place and to understand who was contacted. You are telling us that your decision was to phone the head of the central HR team, Paul Gray, to inform him verbally that you had decided to resign.

Guy Houston: I wanted to meet him.

Nicol Stephen: You wanted to meet him?

Guy Houston: And when I met him, I said that, subject to a compromise agreement, I would want to resign.

Nicol Stephen: At that point, none of the issues was in the public domain.

Guy Houston: That is correct.

11:45

Nicol Stephen: Before the story broke, you decided to resign. You did not contact your line manager or have any contact with him. Is that correct?

Guy Houston: During that week I had discussions with Malcolm Reed. You are asking whether I said to him that I was going to resign. I do not think that I did. I do not quite understand the relevance—

Nicol Stephen: It is quite unusual not to inform one's line manager that one intends to resign.

Guy Houston: I would not say that. Transport Scotland is a Scottish Government agency and we were Scottish Government employees, so we dealt with such matters through the Scottish Government's specialist team.

Nicol Stephen: It is unusual in my experience, and I have reasonable experience of such matters. Perhaps you are aware of other examples, about which you can tell us.

Guy Houston: I took a decision and I thought that Paul Gray was the best person to talk to. I went through that process.

Nicol Stephen: How long did it take you to negotiate the terms of your departure?

Guy Houston: Fewer than two or three days. I knew that the report would come out on 28 November.

Nicol Stephen: Was your resignation effective as of Friday 28 November?

Guy Houston: Yes.

Nicol Stephen: When was the agreement struck?

Guy Houston: Some time around 27 or 28 November.

Nicol Stephen: On the day of or the day before your departure.

Guy Houston: Yes.

Nicol Stephen: Did the negotiations take place in the days prior to that?

Guy Houston: Yes.

Nicol Stephen: On 25 November, for example, there was no agreement that you were going to leave. Is that correct?

Guy Houston: There was no agreement on 25 November.

Nicol Stephen: If we had been told that there was such an agreement on 25 November, that would be inaccurate.

Guy Houston: Yes.

Nicol Stephen: Okay. We fully understand that you do not want to disclose the terms of the agreement. However, will you say what issues had to be agreed?

Guy Houston: Simply the terms of my departure and references—I do not know whether I am allowed to disclose that under the confidentiality agreement. I will try to be open and I hope that I will not be shot down in flames. There were issues to do with ensuring that I had a reference, what lines to take with the press—what I could say and what others could say—and the financial terms. I think that other people would say that such matters are fairly standard in most compromise agreements.

Nicol Stephen: Did any civil servant contact you at any point to say that they thought that it would be a good idea if you resigned or to suggest that you might cause embarrassment to ministers?

Guy Houston: No. The decision was mine and mine only.

Nicol Stephen: Thank you.

The Convener: In all the fog around what can and cannot be said, one startling revelation is that the agreement was reached by civil servants within days. In our dealings with civil servants during the past few years, we have not known them to move as quickly as that on anything. There are signs of progress, if nothing else.

You said that you indicated that you would leave, subject to a compromise agreement. In other words, if there was no compromise agreement, you would not leave.

Guy Houston: I cannot say. I would have been in a sticky position if my employers had said that I could not have a compromise agreement. I wanted to ensure that there was full closure on the issue, so that I would not have to say anything to anyone and the terms of my departure would not be known and so on. If you are asking who asked for a compromise agreement, I am pretty sure that it was me.

The Convener: Did Malcolm Reed try to talk you out of leaving?

Guy Houston: No. I do not think that I had a discussion with him. As I said, the decision was mine and all my discussions were with Paul Gray during those two or three days.

The Convener: Is there anything that you want to clarify, rectify or put on the record before we conclude this part of the meeting?

Guy Houston: All I would add is that the permanent secretary and the Minister for Transport, Infrastructure and Climate Change have both confirmed in evidence that there was no suggestion of wrongdoing. One paragraph in a report of 20-plus pages outlined that best practice should be to minute everything. In my opinion, if any issue had arisen relating to the part that I played, Audit Scotland would not have signed off annual reports or the report on the franchise extension with a press headline along the lines of "Transport Scotland is managing the franchise effectively". The level of scrutiny of that one paragraph about best practice has seriously outweighed other considerations, and, to be quite honest, the impact on my family has been unbearable.

The Convener: I can imagine the stress involved.

On behalf of the committee, I thank you for coming along this morning. It has been a full and informative session, and I am sorry about the interruption earlier.

The next witness is scheduled to be Sir John Elvidge, but before we hear from him, I ask Mr Houston to step into the public gallery, if he wishes, while I invite representatives from Audit Scotland to come to the table and speak during the interval between Mr Houston leaving and Sir John arriving. Thank you, Mr Houston.

I invite the representatives from Audit Scotland to comment on what Mr Houston has said, both in his letter to the committee and during this morning's evidence session. He has said that

Audit Scotland was shown a copy of the letter of 7 March. Can that be clarified?

Mr Robert Black (Auditor General for Scotland): We will be happy to clarify it. If the convener agrees, I will ask Barbara Hurst to explain the details. She is closer to the issue than I am.

Barbara Hurst (Audit Scotland): Thank you, convener and Auditor General. Goodness, the wisdom of Solomon is needed here. I will take the committee back to the beginning and to the disclosure in the accounts in 2006-07. The local audit team had discussions with Transport Scotland about what required to be disclosed in the accounts in relation to any potential conflicts of interest. The team has told me that it has no recollection of seeing the letter that Mr Houston has shared with the committee; the team has no evidence of it being in any audit working paper.

We bitterly regret that communication between the local audit team and the study team was not as good as it should have been. We have learned from that. However, I want to take the committee back to the real issues, which are issues of governance. Ultimately, it is not the auditors' responsibility to manage any potential conflicts of interest; it is the responsibility of the management of the organisation. It is probably worth remembering that among what the convener has called "fog" was a very secret or confidential process about extending the franchise. The local audit team did not know that it was going on, and our study team, which was in there considering the extension of the rail franchise, did not know that negotiations were going on to extend the franchise. Once we did know, there was no audit trail to show what had gone on, in terms of managing the conflict of interest.

That brings us to the insertion of the paragraph in the audit report quite late in the day. As I say, we regret putting the paragraph in late, but we are confident that it needed to go in as part of a true and fair representation of some of the governance arrangements for the extension. I personally phoned Mr Houston to let him know that we were doing that. That was after a conversation that I had with the chief executive of Transport Scotland about how we could agree on the factual accuracy of the paragraph. I felt that it was a courtesy to let Mr Houston know what was happening, but because of the sensitivities involved I deliberately did not share what we were going to say. For the factual accuracy, the right person for us to deal with was the accountable officer of Transport Scotland. As a courtesy, we let Mr Houston know. As I recollect, that was on 13 or 14 November. I can double check the exact day. That was before we sent the report to print early the next week.

The Convener: Mr Houston says that it is difficult for him to reconcile the statement from the Auditor General that

“we certainly had no knowledge of the director of finance’s particular private interest in the issue.”—[*Official Report, Public Audit Committee*, 21 January 2009; c 899.]

Do you not agree with Mr Houston?

Mr Black: Barbara Hurst has given you a full and accurate background. If we put that phrase in the context of my discussion with the committee at that point, “we” refers to the team that did the study. Perhaps the use of “we” was inappropriate, because I did not distinguish clearly enough between the team that did the study and the Audit Scotland team that audited and signed off the accounts with the appropriate reference to the disclosure of Mr Houston’s interests.

As I am sure I have said to the committee a couple of times—forgive me for saying it again—the report that you received was true, fair, comprehensive and accurate in every respect. The only issue between us was in relation to that one paragraph that included the short reference to the interest of Mr Houston, which it was appropriate to include. I do not think that it was a particular problem for Transport Scotland to be aware of that and to recognise that I had to put it in the report.

Nicol Stephen: I very much appreciate the information that has just been given to us by Barbara Hurst. The information about the dates is very important. I am concerned about what has just been said in the context of the evidence that was given to us previously. We were told that Mr Houston was informed about the inclusion of the paragraph about a week or a few days prior to it going to print—the *Official Report* will confirm what was said. We were told that the shares were transferred to his wife in the middle of the month, before all of this happened, and that it was a matter of coincidence. We have now been told by Barbara Hurst that she informed Mr Houston on 13 or 14 November. It would be helpful if we could pin that down exactly.

It may all still be coincidence, and I will not say any more on the issue until we clarify the facts, but it is very concerning that we are being given different information. We need to clarify the information and get to the facts—so far we have not. We are still finding out fresh information, even at this late stage.

The Convener: It does seem to be a pattern in this inquiry that bits of information drip out piece by piece. We need to get to the bottom of that.

Anne McLaughlin: I want to confirm something that Barbara Hurst and Robert Black said. When you said,

“we certainly had no knowledge”—[*Official Report, Public Audit Committee*, 21 January 2009; c 899.]

you meant that the study team, and not the Audit Scotland team that audited the accounts, had no knowledge. I also want to clarify that although the accounts team had a conversation about the matter with Transport Scotland, it cannot remember seeing a letter about it.

Barbara Hurst: The team probably had several conversations about what needed to be disclosed in the accounts, but not on the detail of what the management then needed to do. The audit team also reviewed corporate governance. This was in the early days of Transport Scotland being set up, so it was quite a high-level governance review, in which a number of issues were raised about where the organisation was not complying with best practice. I reiterate that none of us knew that the rail franchise extension was being negotiated at the time. In my view, if the audit team had known that, it would have looked in more detail at the management arrangements. However, it did not know that, and, as we have just said, neither did the study team.

12:00

Nicol Stephen: It would also be helpful to know when the discussions with the audit team took place. I think that a report was produced in the summer—perhaps in June. I presume that the discussions took place significantly before then.

The Convener: It would also be helpful to know whether the shares issue was discussed at any point. You can write to us about that; we do not necessarily need to know the answer to that question at the moment.

Barbara Hurst: We have information about that, which Angela Cullen can talk the committee through.

Angela Cullen (Audit Scotland): The local audit team for Transport Scotland would have had initial discussions with Transport Scotland about its corporate governance review back in February to March 2007. That was the organisation’s first corporate governance review in its initial year. In late March to early April, discussions started about the annual accounts process and disclosures that might need to go into the annual report and accounts. There were then discussions about the register of interests and further discussions with internal auditors who were also reviewing corporate governance around June. In August, the internal audit team finalised the work on corporate governance. The Audit Scotland team picked up its review of corporate governance in October 2007 and reported on the review to Transport Scotland’s Audit Committee in November 2007.

The annual report and accounts would have been signed off by that time too.

The Convener: When was the first reference to the shares?

Angela Cullen: Disclosure was discussed in late March to early April 2007. Initial discussions would have taken place around then about any disclosures that needed to go into the annual accounts for the first year.

The Convener: You asked about that, but were you given information at that point?

Angela Cullen: The audit team would have discussed a number of disclosures, including Mr Houston's, that had to go into Transport Scotland's register of interests.

The Convener: We will ponder that and come back to you on it if necessary.

Mr Black: I am sorry, but I would like to reiterate something, if members will bear with me. The disclosure was appropriately recorded in the accounts and appropriately referred to in my report to the committee. There is an internal issue from which we need to learn. The attention of the study team was not drawn to the matter, but it was picked up in time to make the report to the audit committee, therefore I have full confidence in what the team did with the report and I stand by every word in it.

The Convener: Thank you for that.

We move on to the next evidence session. I thank Sir John Elvidge for returning to the committee. He is accompanied by Paul Gray, who is a director of human resources, I think.

Paul Gray (Scottish Government Change and Corporate Services Directorate): I am director of change and corporate services in the Scottish Government.

The Convener: Do your responsibilities include human resources?

Paul Gray: They do.

The Convener: I think that Sir John Elvidge wishes to make an opening statement.

Sir John Elvidge (Scottish Government Permanent Secretary): No. For understandable reasons, the committee is pressed for time, and I do not want to use that up.

The Convener: Okay. Thank you.

When were you first made aware of Mr Houston's shareholding?

Sir John Elvidge: I first became aware of it through the passage in the 2006-07 accounts that referred to it. I could not accurately say when in the middle of 2007 that was.

The Convener: So neither Transport Scotland nor Dr Reed specifically drew the matter to your attention.

Sir John Elvidge: No.

The Convener: Were you informed about Mr Houston contacting Paul Gray to say that he wished to leave his post?

Sir John Elvidge: Yes.

The Convener: Were there discussions with you about the terms under which Mr Houston would leave?

Sir John Elvidge: No.

The Convener: So you did not sanction any compromise agreement.

Sir John Elvidge: When the discussions were complete, I was told what the broad content of the agreement was.

The Convener: You could have refused to sign off that agreement.

Sir John Elvidge: Yes, I could have.

The Convener: But you chose to allow it to proceed.

Why does Mr Houston feel that there could be financial repercussions for him if he breaks the confidentiality clause?

Sir John Elvidge: I think that he was making a general point. I suppose that I ought to say that it is inherently difficult for me to know why someone else feels or thinks anything but, having listened to Mr Houston's evidence, I think that he was making a general statement that, when someone breaches a contract, they are automatically exposed to financial consequences.

The Convener: If he were to give this committee any information relating to the circumstances of his departure, would there—from your perspective—be any financial repercussions?

Sir John Elvidge: That would depend on whether Mr Houston and his legal advisers chose to pursue the matter, but my assumption—

The Convener: No, I am talking about your perspective. If Mr Houston disclosed information to us about the terms of his departure, would you, from a civil service perspective, pursue Mr Houston for financial compensation?

Sir John Elvidge: That would depend entirely on what Mr Houston said that breached the compromise agreement. Let me try to use an analogy here, as we will rapidly get into difficulty around the details regarding Mr Houston.

In other settings, I have listened to people who have left an organisation saying things in public

that I knew were not consistent with the contents of a compromise agreement. If they had left the organisation that I was running, I would probably have taken legal action against them for what they did. They might have been able to say other things about the content of their compromise agreement that would not have led me to feel that way.

The Convener: If Mr Houston chose to tell us the financial terms under which he left Transport Scotland—and nothing else—would you pursue him for financial redress?

Sir John Elvidge: If he were to do that in an entirely neutral way, without placing an interpretation on the information, it is less likely that we would wish to do that. As I think I said in my first evidence session, although the confidentiality obligations are symmetrical, the probability that we would pursue a remedy for breaching the confidentiality is less than the probability that we would be pursued for breaching it. It depends entirely on how information is conveyed.

The Convener: If Mr Houston, in an objective and neutral way, simply stated the compensation package that he was given, there would be no repercussions from you for his doing that.

Sir John Elvidge: Broadly speaking, yes, that is the case.

As I have done before, I point out that language such as “compensation package” makes presumptions about the content of the agreement.

The Convener: Why was it felt necessary to have a compromise agreement when Mr Houston indicated that he wished to leave?

Sir John Elvidge: There are two things to say about that. First, as Mr Houston made clear, when senior people leave an organisation prematurely, compromise agreements are often a pretty standard part of the arrangements. It is not a particularly exceptional thing to have. If it would help the committee at all, we can make available a standard template for compromise agreements, so that it is a bit clearer what kind of ground such an agreement tends to cover.

The Convener: That would be helpful.

Sir John Elvidge: Secondly, as I think Mr Houston said to you, he did not say that he was walking out the door, but that he was minded to resign subject to the completion of a compromise agreement. That would be entirely normal. As he brought out, compromise agreements are often more about reputation than financial issues.

The Convener: To stick with the financial issues for a moment, you indicated previously that you could not provide information on certain aspects of Mr Houston’s departure—payment in lieu of notice

or anything of that nature—for data protection reasons. In answer to a freedom of information request last week, the Scottish Government indicated that £83,000 was paid in severance and for other matters in 2007 and 2008. However, it also indicated that that did not refer to senior civil servants, so Mr Houston would not be included in those figures. Is that correct?

Sir John Elvidge: That must be an accurate logical inference.

The Convener: It is important that we get that on record. Given that, under the FOI legislation, you are able to disclose what other grades of staff receive over and above their wages when they leave, would you be able to answer a similar question about senior civil servants if this committee asked one or if an FOI request for that information was submitted?

Sir John Elvidge: If the FOI request had led us to disclose information about an individual, we would not have been able to answer it.

The Convener: However, if the FOI request were to ask you for totals for the year 2007 and separately for the year 2008—as the one that was answered last week did—would you be able to give that information?

Sir John Elvidge: We would, provided that it was not tantamount to giving information about an individual.

The Convener: Okay. Can you tell us how much was paid out in such circumstances to senior officials during 2008?

Sir John Elvidge: The answer to the FOI request was intended to convey that nothing was paid out in the relevant categories to members of the senior civil service in those years. It was not a statement that we had given information only for certain grades; it was a statement that we had given information for everybody but, to help you make the inference that you have made, we added the information that none of them was a senior civil servant.

The Convener: Despite my years of involvement in politics, I was not aware of that nuance and it is my fault for misreading the answer. I apologise.

So no payments were made to senior civil servants for severance or other matters. You can account for those categories and answer FOI questions on them. Do you account separately—and, if so, in what way—for payments to senior civil servants who leave under compromise agreements? Where is that information recorded and will it be provided under freedom of information legislation?

Sir John Elvidge: I will try to tease that apart. Information can be provided only if it is at a level of aggregation that does not allow inferences about individuals to be drawn.

The Convener: So, if there were 10 people, you might be able to provide the information but, if one person left, you would not provide it.

Sir John Elvidge: That is correct. We would, in effect, be disclosing information about the individual. It is disingenuous to disguise information as anonymised information if it is not, in reality, anonymised.

The Convener: So it is better for the public interest if a lot of people leave under compromise agreements than if a few do, because you could tell us about a lot of people but not about a few.

12:15

Sir John Elvidge: I think I have said to the committee before that putting information about people into the public domain is not the only way of addressing legitimate public interests—Audit Scotland has access to data that we cannot share publicly. If it thinks that we are doing something wrong, there is a path for it to draw that to our attention. However, if what we do with individuals is clearly within the bounds of reasonable judgment, the public interest is in knowing what the general arrangements are, not in knowing how we treat specific individuals.

The Convener: I have one further question before I open up questioning to the committee. What is your opinion of the procedures that Transport Scotland had in place to manage the declaration of interests? Were they sufficient and robust?

Sir John Elvidge: I will distinguish between the procedures and the practices—hindsight is very tempting here. What I can say is that, prompted by the issues that we have got into in this case, we have made some general changes to processes for handling this kind of situation—not that there are terribly many of them. However, it seems to me and to Mr Gray that the framework could have been better in this case.

The crucial, substantive judgments were whether Mr Houston should have been asked to dispose of his shareholding and whether the arrangements for allowing him to exercise his share options should have been different. That is clearly judgment territory, and I do not think that Malcolm Reed's decisions were unreasonable.

The Convener: Can you clarify what you, as the permanent secretary, would expect from any of your senior team when someone declared an interest to them? Notwithstanding what has happened and irrespective of hindsight, is it

sufficient for an individual simply to declare an interest verbally, or are they expected to register something in writing?

Sir John Elvidge: We have, and have had since April 2008, elaborate processes requiring all senior civil servants to register their financial interests in writing—in fact, it is done electronically. Clearly, we feel that that is the right state of affairs.

The Convener: Sure, but what was the required practice before that?

Sir John Elvidge: It is impossible, is it not, not to say that writing it down must always be a sensible thing to do.

The Convener: I am asking what the procedures were if a senior member of your team, or of any team, had an interest to declare. Were they required to declare it in writing? Or would it have been sufficient just to have had a wee blether with somebody?

Sir John Elvidge: “Wee blether” is a bit of a pejorative term. Our guidance says that having financial interests is not illegitimate, but that they must be managed and that the individual concerned is not the right person to decide how their interests are to be managed. Their line manager must decide that. The substantive point is that the line manager must have the information that they need to make that decision. Provided that the line manager has that information, it is not a fundamental flaw that it is not written down. In my view, it is sensible to write it down.

The Convener: So there is potentially more than one manager—there is certainly at least Dr Reed—who has not, in your terms, acted in a sensible way. We have no way of knowing whether, in fact, he was told, other than to take at face value what is said to us. Would that be correct?

Sir John Elvidge: You have the testimony of both Mr Houston and Dr Reed that they had conversations about the matter, but you do not have written evidence of those conversations. From where we are now, that does not look like a wonderful arrangement, does it?

The Convener: No, it certainly does not. That is an understatement.

Sir John Elvidge: That is why my view is that, because one can never predict the circumstances that will arise, writing things down is generally a sensible thing to do. We are not, as an organisation, generally criticised for our reluctance to write things down.

The Convener: That is certainly true.

Nicol Stephen: Indeed, that is what makes it all the more curious that more information was not available when we asked for it.

Much of the initial evidence relies on the information from Dr Reed and Guy Houston about that verbal disclosure. Guy Houston referred more than once to the fact that his opening words in the letter of 14 March 2007 are, "As previously discussed". However, at the end of that letter, he suggests a remedy:

"I believe we need to agree a protocol that ensures my impartiality in these matters. I suggest the following:-".

That makes it clear to me that, in March 2007, there was no agreement and no protocol had been put in place. First, will you comment on the appropriateness of that?

Secondly, Guy Houston's letter then proposes a remedy in paragraphs a, b, c and d. Are not those inappropriate remedies? The remedies proposed are not simply for dealing with the extension of the First ScotRail franchise but for all dealings with FirstGroup. I have some concerns about the remedies in paragraphs b and c:

"I would be party to negotiations in relation to any contractual changes in either concessionary scheme, but any decision I take would need to be ratified by a fellow director."

"Any other financial decision made by myself that would impact on First Group or any of its subsidiaries are to be ratified by a fellow director."

Do you find those arrangements satisfactory?

The Convener: Can you remind us of the first question? We will take the questions one by one.

Nicol Stephen: My first question is about the fact that no protocol or agreement was in place in March 2007, given that the final paragraph of Mr Houston's letter suggests that a protocol needs to be agreed. Was that appropriate, given that his shareholdings existed from the date of his employment in May 2006?

Sir John Elvidge: It would have been better for a detailed protocol to be in place earlier. I am not sure that I would draw the inference that Dr Reed and Mr Houston did not have a broad understanding, but in the circumstances it would have been appropriate to have agreed, earlier than March 2007, a fully detailed protocol for managing those interests.

Nicol Stephen: My second question is about Mr Houston's suggested protocol, which I understand—although I have no written evidence of this—was subsequently agreed to by Dr Reed. Was that, as I assume, the working protocol?

Sir John Elvidge *indicated agreement.*

Nicol Stephen: I see that you are indicating assent.

The suggested arrangements allowed Mr Houston not only to be present at meetings, but to be a party to negotiations and to take other financial decisions relating to FirstGroup, provided that those were ratified by a fellow director.

Sir John Elvidge: I am not worried about the ability of those arrangements to protect the public interest—that is not the dimension that bothers me. As a general principle, provided that people are not in a position to make decisions that further their own interests, I think that in most cases creating a situation in which such people must have no knowledge or information would be too extreme a restriction. That would place too many constraints on the operation of an organisation. The restrictions on what Mr Houston could do with his financial interests were sufficient to protect the public interest against any motivation on his part to behave improperly.

The arrangements require a lot of extra work by other people. By definition, the process of validation by other directors—the doubling-up process that is built into the management arrangements—consumes scarce senior management time. The arrangements seem to be cumbersome, given that, as you rightly imply, a wide range of matters are potentially involved, because of the nature of Transport Scotland's business.

I fully understand the pragmatism that will have led to the development of that set of arrangements. Someone had been brought into the organisation at senior level because they had particular industry knowledge and skills, and there was a desire to use that knowledge in the organisation as fully as possible. To enable that to happen, elaborate checks and balances were built in. I fully understand what would have motivated Malcolm Reed to construct the arrangements in that way, but are they cumbersome? Yes, they certainly are.

Nicol Stephen: I have one final point at this stage. The last time you gave evidence to us, I asked:

"In respect of the arrangements that were put in place, Mr Houston was permitted to remain present during discussions on the extension of the contract, albeit at a late stage in the discussions. Is that acceptable?"

I do not want to be misleading by not giving your full response, but the final sentence of it was:

"As we have clear evidence that his involvement in meetings was post the decision being made, I do not think that I would describe it as unacceptable."—[*Official Report, Public Audit Committee*, 14 January 2009; c 863.]

We now have clear evidence that Mr Houston was involved in meetings that related to the franchise

extension at an earlier date. Do you agree? Would you care to comment and to update your view on the acceptability of that? The committee takes extremely seriously the fact that it appears to have been misled on the issue.

Sir John Elvidge: I do not think that Dr Reed set out to mislead; I think that he was concentrating on the meetings that were mentioned in the Audit Scotland report.

Nicol Stephen: It is important to be accurate when appearing before a committee of this Parliament.

Sir John Elvidge: I agree. I am not for a moment arguing that it would not have been better to go beyond the confines of the questioning and to say, "Oh, by the way, it's probably helpful if I also tell you that ..."—I completely agree.

It is interesting to look at the substance of the meetings in question. The committee has the extracts from the minutes of those meetings. The most significant of them seems to be the one that took place on 23 January. Rather than riffle through my papers, I will rely on my memory. It is pretty clear why someone from Mr Houston's directorate would have been present. The minute says quite clearly that what was being discussed was what to do with the additional financial resources for the organisation that would flow from the franchise extension. The people at the meeting were saying, "We're going to have this extra money. What should we do with it across the range of the business?"

The Convener: So, by implication, at that point Mr Houston knew that the franchise was going to be extended, because you said that the discussion was about the extra money that would flow from the franchise extension.

12:30

Sir John Elvidge: I am probably overinterpreting. Given the process of the negotiation, all that they could have said in January was, "It looks highly likely that we will do a deal that will be financially beneficial to the organisation. Let us plan ahead and think about what we will do with the money if that expectation is fulfilled."

The Convener: So at that point Mr Houston was present, as a major shareholder, with the potential to increase his shareholding, at a meeting at which the extra money that would flow from the contract extension was being discussed. That is not to mention earlier meetings that he attended at which the issue may have been discussed.

Sir John Elvidge: Yes.

The Convener: Did no one in senior management think that that was a problem?

Sir John Elvidge: Clearly not, or he would not have been at the meeting.

I was just coming to the denouement of my answer to Nicol Stephen's question, which is yes. Again, we must be careful about relying on hindsight, but I believe that I would probably have said that it might be better for another member of the finance team to be present for the discussion. I do not believe that the public interest was damaged, but good practice would probably have led me to say that someone else should be there.

Nicol Stephen: Do you accept that both the evidence that you gave and the question that I asked were based on inaccurate information?

Sir John Elvidge: I accept that, when I gave the answer, I did not know that Mr Houston was present at the discussion that took place on 23 January.

Cathie Craigie: Nicol Stephen has dealt with the issues that I wanted to raise.

Willie Coffey: We heard Mr Houston give evidence to the committee under fairly stressful circumstances. We heard the point made on record several times that, in owning the shares, he was not doing anything illegitimate, that he declared them properly—although we can argue about whether he did so in time—and that he did not breach the code of conduct. However, despite all of that, Mr Houston felt compelled to resign from a post and a career in which he had been involved for a considerable number of years. Would you say that that casts a shadow more over procedures and processes and the code of conduct, which may need to be reviewed, than over Mr Houston's role in the contract extension process?

Sir John Elvidge: I would say two things. First, our processes could be stronger generally—we have strengthened them. Secondly, I do not believe that having stronger processes would have altered the judgment that someone in Guy Houston's position might have made. Rightly, he judged that he was facing trial by media, which would have done immense damage to his family. I do not think that any processes that we had would have protected him from that risk. The inclusion in the Audit Scotland report of the material in paragraph 71 carries with it the implication that Guy Houston's shareholding might have been material to the process of negotiating the franchise extension. If I had been in Mr Houston's shoes, I do not know what I would have been able to say to remove the inference that people would draw. For that reason, I understand absolutely the decision that he took.

Willie Coffey: I will put to you a question that I asked in the previous evidence session. Mr Houston was recruited in May 2006, at a time when Transport Scotland had embarked or was about to embark on negotiations on a fairly substantial contract. It seems unusual that he should be recruited not to be involved in that process, but he told the committee several times that he played no part in the detailed negotiations on the extension. Why did that happen? Did we not know about his interest when he was recruited? Who signed off the extension agreement—and was financially qualified to do so—if Mr Houston did not sign it off?

Sir John Elvidge: My starting point must be that I do not find it unusual. Transport Scotland is structured around a series of specialist teams for each area of its business—rail, bus and trunk roads. Those teams take the financial decisions in their businesses. Mr Houston's role, as he described, was to bring together the impact of all those aspects and to manage the aggregate finances of the business. I would not have expected the holder of that post, whether it was Mr Houston or someone else, to be actively engaged in the negotiation of the extension of the rail franchise. The financial advice on the matter was the job of the specialist rail finance team, which is embedded in the rail directorate. Therefore, I do not think that anything particularly unusual happened in the way in which the business was managed because of Guy Houston's interests.

As I said when I gave evidence most recently, the fact that Mr Houston's interests were not identified before his appointment was not ideal. People might have reached the same decision anyway, but it is clear that it would have been better if they had had all the information. We have changed our processes to ensure that the situation cannot arise again.

Willie Coffey: Who signed off the financial aspects of the deal on behalf of Transport Scotland?

Sir John Elvidge: Signing off the deal was a matter for the chief executive. Verification of the financial advice was provided by a combination of the specialist rail finance team and the external advisers we were employing in the process.

The Convener: According to the minutes of the Transport Scotland directors board meeting of 21 November 2008,

"Guy Houston informed the Board that he no longer had shares in First Group and the Board agreed that he could remain for the discussion as there was no conflict of interest".

We have heard that Mr Houston had transferred the shares to his wife, for his own reasons. The civil service management code specifically

mentions interests that are held by a spouse. Why did the board of Transport Scotland say that there was no conflict of interest, when there was a conflict, under the terms of the code?

Sir John Elvidge: I thought that logic was on Mr Houston's side when he answered your questions on the matter. Because the transfer of shares to his wife made zero difference to the nature of his interest, in our terms, he was in effect in the same position as he had always been in. I think that I can understand what the sentence that you quoted is trying to say, although it is a bit clumsy. There was an interest, but it was implicit in the arrangements since they were put in place that Transport Scotland did not consider that there was an insuperable conflict of interest.

I was persuaded by Mr Houston's view that the board was simply reiterating a position that it had reached before—of course, it was doing so at a time when it was extra-sensitised to issues to do with the acknowledgement and recording of the interests, because it knew that the Audit Scotland report was about to highlight the issue. I was not at the meeting, but I guess that the board was trying to do the right thing by having better written records, although that was done in a rather clumsy way.

The Convener: The issue is about more than whether the view was expressed in a clumsy way; it is that the board appears not to have understood the rules. According to the minutes, Mr Houston informed the board that he no longer held shares. That is a matter of fact. It does not say anything about transfer to his wife. I do not know whether Dr Reed knew of that or whether Mr Houston had just given the impression that he did not hold the shares. The statement is there as a matter of fact:

"he no longer had shares ... and the Board agreed that he could remain ... as there was no conflict of interest."

The statement that there was no conflict of interest was linked specifically to the earlier part of the sentence. There was no conflict of interest. Why not? Because he no longer held shares. The statement is very specific. Someone, either by omission or commission, has neglected to indicate that the shares were held by his wife and that was a breach of the code of conduct.

Do you have confidence in the board of Transport Scotland, which, once the story broke, seemed incapable of acting in the proper way in relation to the code of conduct?

Sir John Elvidge: I have complete confidence that everybody fully understands the significance of these issues now.

The Convener: But, Sir John, they must have understood the significance of them on 21 November 2008, because Audit Scotland had

reported. The matter was getting into the public domain. Here we have a board of senior people who should know the code of conduct and who, apparently, knew of Mr Houston's shareholding, although I do not know whether they knew that it had been transferred, and they took a decision that there was no conflict of interest. How can you have confidence in people who are clearly incapable of applying your own code of conduct?

Sir John Elvidge: I was persuaded by Mr Houston's argument that two separate things had been put together in one sentence and that that created a misleading impression. There is a record that he told the board members that there had been a shift in the ownership of the shares. There is a record that they showed that they considered explicitly whether his presence at the meeting was okay and concluded that it was. I absolutely agree with you that, given how the sentence is written, it looks as if the first thing leads to the second. Mr Houston argues that that was not what happened. He was the one at the meeting. I have seen enough clumsy writing in my time not to regard it as particularly improbable that someone could construct a sentence that put together two things that happened one after the other and make it look as if there was a sequence.

The Convener: You said that there is a record of the transfer of ownership of the shares.

Sir John Elvidge: I am saying that Mr Houston clearly told them at that meeting.

The Convener: You said that there was a record.

Sir John Elvidge: Those words are the record that he told them.

The Convener: Oh, right, so the words are the record. Okay.

Cathie Craigie: Regardless of the clumsiness of the wording, Mr Houston has told us this morning that he does not believe the minute to be accurate. He was no longer with the organisation so he could not challenge that. He told us today that the minute should have recorded that the shares had been transferred to his wife. I find it incredible that we have a board made up of transport experts and senior civil servants who cannot understand the code of conduct that governs how they are employed, never mind anybody else in their employment. As the most senior civil servant, I would expect you to be really concerned that people who are working for you and are answerable to you do not even know the code, which should be basic to their employment.

Sir John Elvidge: I do not think that there is a basis for drawing the inference that those people did not understand that transferring your shares to your wife did not make any difference to the

interest that you held. Mr Houston's argument was that it should have been clear from the minute that he had told the board members that. Assuming that he told them that, I think that it is absolutely right that it should have been clear from the minute. I do not think that one can infer from that that the people who were sitting round the table did not understand that transferring shares to a spouse makes no difference. I do not draw that inference.

12:45

Cathie Craigie: But the board agreed that he could stay because there was no conflict of interest. If it said that there was no conflict of interest, it must have thought that that was acceptable.

Sir John Elvidge: No, because the board would have reached the same conclusion if it had believed that he still owned the shares. It had reached that conclusion repeatedly for two years. It would have been odd if it had reached any other conclusion.

The Convener: So at least we have consistency. During the period, the board apparently knew and thought that there was no problem.

Nicol Stephen: I find that, perhaps, the most curious thing about the minute. Given the circumstances as you have just described them, it is curious that the board chose to refer to the matter in those terms in the minute of the meeting on 21 November. When did Mr Houston first contact Paul Gray?

Sir John Elvidge: Paul Gray had better answer that.

Paul Gray: It was on 25 March—sorry, I mean 25 November.

Nicol Stephen: On 25 November.

Paul Gray: Yes.

Nicol Stephen: Was that in the morning or the afternoon of 25 November?

Paul Gray: I could not say, Mr Stephen. I can—

Nicol Stephen: Was it by telephone or by e-mail?

Paul Gray: By telephone.

Nicol Stephen: Given that the matter was made known to Mr Houston on 13 or 14 November, I wonder why he contacted you on Tuesday 25 November—I think that that is what you told us.

Paul Gray: That is correct.

Nicol Stephen: Did he tell you in that discussion that he wished to resign?

Paul Gray: He said at that point that he wished to have a meeting with me to discuss his future. He did not give a particular indication about his intentions at that point.

Nicol Stephen: He told us that you were the first person with whom he discussed the matter. Are you aware of that evidence?

Paul Gray: Yes, I am aware of that.

Nicol Stephen: Is that your understanding of the situation?

Paul Gray: I have no basis on which to contradict that.

Nicol Stephen: He was told on November 13 or 14 that the finding was going to be in the document "The First ScotRail passenger rail franchise". We have been told that Dr Reed was also informed about that on 13 or 14 November—indeed, he was informed before Mr Houston—yet we have been told that there was no discussion between Mr Houston and Dr Reed, his line manager, on the matter. Is that your understanding of the situation?

Paul Gray: If that is what Mr Houston and Dr Reed are saying, again, I have no basis on which to contradict those points.

Nicol Stephen: Then there was the board meeting of Transport Scotland directors on 21 November. At that board meeting, the directors would have been aware of the entry in "The First ScotRail passenger rail franchise", which was published the following week by Audit Scotland, but no reference is made to any intention by Mr Houston to resign. Indeed, the reverse is true. The minute of that meeting states that Mr Houston

"no longer had shares in First Group and the Board agreed that he could remain for the discussion as there was no conflict of interest".

Do you have any knowledge of what changed between Friday 21 November and the Tuesday, when he spoke to you for the first time?

Paul Gray: Not beyond what Mr Houston has said about his considerations about the likely impact on his family.

Nicol Stephen: Can you recall informing the permanent secretary of Mr Houston's intention to resign?

Paul Gray: Yes.

Nicol Stephen: When would that have been?

Paul Gray: That would have been after the meeting that I had with Mr Houston on 26 November, because that was the first time that I had any basis for knowing his intention.

Nicol Stephen: So that was the first time that you had any knowledge of Mr Houston's intention to resign.

Paul Gray: That is correct.

Nicol Stephen: If we had evidence that suggested that ministers had been told on 25 November that Mr Houston intended to resign, could you explain that?

Paul Gray: I told you that Mr Houston called me on 25 November to indicate his intention to come and discuss the matter with me. He had not, at that stage, given me a clear indication of precisely what he wanted to do.

Nicol Stephen: Had you relayed that information to the permanent secretary?

Paul Gray: I am not trying to be in any way incoherent, Mr Stephen. These things happened in a fairly—

Nicol Stephen: No, but these are important matters. We have been given inaccurate information during past evidence sessions; I am simply seeking accuracy now. I am not trying to be difficult or to trip you up; I am just asking for the facts. I am trying to understand the evidence, because it does not make sense to me at the moment.

Paul Gray: My recollection clearly is that I was contacted by Mr Houston with a request to meet him. I met him on 26 November and he set out at that point, as he said in evidence, that he would wish to resign subject to a compromise agreement. I said to you that I thought I told the permanent secretary on 26 November—although I may have told him on 25 November—that Mr Houston was coming to see me. The matter was of concern to all of us.

Nicol Stephen: I wonder whether the permanent secretary can shed any light on the confusion.

Sir John Elvidge: I cannot claim to give you precise information. The sequence may be exactly as Mr Gray has just described it.

You are seeing significance in the difference between one day and another that I have no particular reason to see. So I—

Nicol Stephen: It is not just one day, to be fair. I am confused and puzzled by the events from 13 or 14 November, whichever day it was, when Mr Houston and Dr Reed were informed that this paragraph was going to be in the Audit Scotland report on the First ScotRail franchise. I am genuinely confused about what occurred in that period of time. I am interested in when the transfer of shares occurred; I am interested in the meeting on 21 November; and I am very curious about the fact that we have been told by the Minister for

Transport, Infrastructure and Climate Change that he was informed by you on 25 November that Guy Houston had resigned, with effect from 28 November, but we have also been told by Paul Gray that the very first contact from Mr Houston was on 25 November and the very first discussion on the issue of his resignation was on the following day, 26 November.

Paul Gray: If I may, permanent secretary, I have looked at the notes that I took at the time and can respond to Mr Stephen's question. Mr Houston called me on the morning of 25 November. I informed Mr Elvidge on that day that Mr Houston had called me. I offered to meet Mr Houston on 25 November—and, I am sorry, this has clarified things in my own mind. I told the permanent secretary on the day that I was going to meet Mr Houston, but in fact that day moved to 26 November. I offered to meet Mr Houston on 25 November and he indicated to me that, after some consideration, he did not wish to meet me until 26 November. I told the permanent secretary on 25 November.

Sir John Elvidge: And therefore I think that it must be likely that, in the course of conversation that day, I mentioned to ministers that Mr Houston had made an approach of that kind. Of course, I would put only one interpretation on an approach of that kind, but I cannot possibly have conveyed that there was a firm decision on his resignation.

The Convener: Sir John, two points arise from what you and Paul Gray have just said. Earlier, Nicol Stephen asked Paul Gray a specific question about whether the call was in the morning or the afternoon, and you could not recall and could not give Mr Stephen an answer. It was only after Mr Stephen pressed you that you suddenly remembered that you had a note in front of you that could confirm the time. That answer should have been given in the first instance.

That is how this whole issue has been developing. Bit by bit, we have to prise information from you, collectively—information that is in front of you. I regard that as unacceptable. Instead of waiting until the argument developed, you could, and should have answered that when you were asked.

The second point, Sir John, is that there is now an issue that we need to clarify with the minister. The minister is saying not just that you told him on 25 November but that you told him that Guy Houston had resigned with effect from 28 November, which is more than just, "We can surmise that he is leaving." It is very specific.

Somewhere along the line, there is a huge element of—excuse the phrase—bullshit. It would be easier for all of us if the facts were simply put in front of us instead of having to come back to you

on umpteen occasions. Now we are going to have to get back to the minister. If we cannot get the information, this is a complete waste of our time. Even that question earlier to Paul Gray—I find the way in which we are being treated completely unacceptable.

Paul Gray: I apologise to the committee. It was not my intention to withhold information. I simply wanted to try to answer Mr Stephen as quickly as I could, and I will not do so in future; I will ensure that I check my notes. I genuinely apologise to the committee. It was not my intention to withhold anything.

The Convener: As far as the minister is concerned, what do we do about that? Sir John, did you or did you not tell him on 25 November that Mr Houston had resigned with effect from 28 November?

Sir John Elvidge: I do not see how I can have done because Mr Gray is telling us that he did not have the discussion until the next day.

The Convener: So the minister was wrong when he wrote to us in those terms.

Sir John Elvidge: I do not see how that can be accurate. No doubt, it is our responsibility for allowing the minister to make an error in the detail of what he has sent to you. I very much doubt that the minister had in his mind a vivid recollection of the precise timing of these events. Any responsibility for misleading you—

The Convener: But the minister would have a team of officials who would take specific notes of such communication between senior people. You are right—the minister would not remember, and he would not have to rely on his recollection. The minister would have written that letter on the basis of the information given to him by officials, who would have kept a note. Somewhere long the line, either the officials in the minister's office are compiling inaccurate information or we are being given inaccurate information.

The irony of all of this is that the issues are relatively trivial and incidental to the bigger picture. However, what comes out—and it is not the first time—is a consistent pattern of obfuscation and attempts to avoid saying things. I do not know how the committee can conclude anything in relation to this or anything else, when there is such a pattern of behaviour. It is unacceptable.

The other thing that frustrates me entirely is that there is no one to whom we can go to get a resolution beyond you in relation to the civil service, and beyond the First Minister in relation to ministers. We are stonewalled at every turn.

Nicol Stephen: I find it difficult to go further forward today. We need to get to the facts—it would be helpful if we were given honest and

factually accurate answers in the first instance in relation to this matter. We need to pause to consider the seriousness of the issues, and what we should do further.

Andrew Welsh: We should stick to the issues rather than personalities, but you can hear that deep concerns remain in the committee. Audit Scotland is the mechanism to protect the public interest after the event and to suggest remedies for the future. This particular issue raises a fundamental problem of a sensible balance between public and private interests, as well as issues of transparency in commercially sensitive situations.

Public-private business situations involving major projects and substantial amounts of money are becoming more common, but the traditional public approach and the present private sector approaches can follow very different philosophies. I believe that broad understandings, which were mentioned earlier, are simply not enough nowadays. What lessons can be learned, or are being learned, from the situation?

13:00

Sir John Elvidge: I agree absolutely with your analysis of the problem, and I have alluded a couple of times to things that we have done.

First, we have changed our recruitment processes so that it is not possible to recruit someone without the identification of an interest being discussed at that stage. That is right and important because if, for example, one were minded to argue for disposal of financial interests with a clear and substantial financial penalty to an individual, the right time to have that discussion is when one is having the rest of the financial discussions about employing them. If you choose to ask somebody to forgo—to pick a figure at random—£20,000-worth of personal advantage, you must expect that person to say, “Okay, that has implications for the rest of the financial deal that I am prepared to accept around my employment.”

The second thing that we have done is to introduce processes to require the small number of individuals who have any such private financial interest to have six-monthly discussions with their line manager, as part of their normal performance review arrangements, largely to ensure that there is an explicit understanding of how that is being handled and, in changing circumstances, to ensure that it is still up to date. A set of arrangements put in place at one time could look less satisfactory a year later because of events that people had not foreseen. We have tried to move away from a once-and-for-all view of putting in place arrangements.

I share your view that, in a more complicated world in which people move between cultures, these issues are more challenging than they once were. Hence, we are trying to put more focus on them than we have done in the past.

The Convener: This is my last question, Mr Gray. Was the compromise agreement that you reached with Mr Houston consistent with other compromise agreements that have been reached with senior civil servants?

Paul Gray: I am mindful of the need to be completely accurate. Every compromise agreement is different, but the compromise agreement was one that I would regard as fairly standard in all the circumstances.

The Convener: How did you work out what needed to be paid to conclude a satisfactory compromise agreement?

Paul Gray: We did that by reference to Mr Houston’s contract and to precedent.

The Convener: Recent precedent or precedent over a number of years?

Paul Gray: We would tend to find more on recent precedent, but we would look over a period of time.

The Convener: Okay. Thanks.

Nicol Stephen: I have two points. We have heard from Audit Scotland that it informed Dr Reed and Guy Houston on 13 or 14 November about the intention to insert the paragraph in the report on the First ScotRail franchise extension. Was anybody in the senior civil service, such as the permanent secretary, Paul Gray or anybody else, informed of that?

Sir John Elvidge: Dr Reed certainly informed me some time between that notification and publication.

Nicol Stephen: Between 13 or 14 November and 28 November.

Sir John Elvidge: Being chastened by our experience earlier, I would need to try to find some way of checking the precise date. However, it was clearly some time between when Dr Reed knew about the matter and his communicating his concerns about it to me, which was well before the publication of the report.

Nicol Stephen: It would be helpful if you could pin down the date. Can you tell us more about that discussion and any views that you expressed in it?

Sir John Elvidge: Yes, I can. Dr Reed expressed his concerns to me, which he has aired with the committee, about the lateness of the matter coming into the discussion process and his understanding that the publication timetable could

not be extended. The time for discussing the matter was therefore very limited.

Dr Reed also expressed strong views about materiality to me. His view was that there was no material connection between the matter and the franchise extension negotiation and that Audit Scotland was wrong to handle the matter in the way that it did. He thought that it would be more appropriate to deal with it in management letters, which concern things that Audit Scotland rightly wants to communicate to management, such as about improving governance practice, which are not of sufficient significance to merit a place in a report. Discussion of those two points took up the substance of the conversation.

Nicol Stephen: Did you express any opinions?

Sir John Elvidge: The only opinion that I expressed was that it would be worth while to seek further discussion with Audit Scotland. I could not sensibly have expressed a view one way or the other at that point on the merits of the issues, because they were fresh to me.

Nicol Stephen: Was there any discussion of the media impact that there would be?

Sir John Elvidge: No. At that stage, the focus was on the relationship with Audit Scotland and trying to find an opportunity to have the discussion on the merits of the issues that Dr Reed strongly felt needed to take place.

Nicol Stephen: Were there any other discussions with you or any other senior civil servant about the media impact or issues relating to the employment of Guy Houston?

Sir John Elvidge: At subsequent stages?

Nicol Stephen: Yes.

Sir John Elvidge: Let me search my memory. I came into the employment issues but not via Dr Reed: the channel of communication on them was from Mr Gray to me. I do not recall discussing the media dimension, but the issue is tricky because the media dimension would naturally have been in my mind as I acquired more understanding of the matter. I doubt whether someone would have initiated a conversation with me about that dimension as I am the person who is most likely to worry about overall reputational issues; the others in the process—Dr Reed and Mr Gray—were more focused on dealing with their practical bits of the problem.

Nicol Stephen: So your recollection is that, other than the discussion with Dr Reed, the first discussion was on 25 November, when Paul Gray informed you that Mr Houston had requested a meeting.

Sir John Elvidge: My recollection is of a sequence in which there was a discussion that

was initiated by the phone call from Dr Reed about the substance of what the report would say. For a period of time, any interaction that I had with anybody purely concerned that issue, because it seemed to me to be the primary issue.

Next in the sequence, at Mr Houston's instigation, we had a channel of contact, essentially between me and Mr Gray, about the employment dimension. At some stage, I must have started thinking about the media dimension, and once I did that I would have taken the initiative in speaking to others about it.

Nicol Stephen: In doing that, was it ever suggested to you that the matter had been resolved—for example, by Mr Houston's transferring his shares?

Sir John Elvidge: No.

Nicol Stephen: Because that is the minuted record that we have of the meeting of the Transport Scotland board of directors on the 21st.

Sir John Elvidge: I recall being told at some stage that Mr Houston had done something with his shareholding, but I regarded that as wholly irrelevant to the issues. We were dealing with an Audit Scotland report on historical events. From my point of view, what Mr Houston did in November was neither here nor there.

Nicol Stephen: It was not the point—I understand. Finally, when was the compromise agreement signed?

Paul Gray: It was signed on 28 November.

Nicol Stephen: It was signed on 28 November and effective from that date.

Paul Gray: Yes.

Nicol Stephen: So nobody would have been able to say that Mr Houston had resigned until 28 November. Until then, it would have been only an intention or a matter of negotiation. Is that correct?

Paul Gray: That is the effective date of his resignation. His intention was definitely known to us on 26 November, but given that he contacted me on 25 November, as the permanent secretary said, one would assume that that was his intention then.

Nicol Stephen: But that was purely an assumption.

Paul Gray: That would be an assumption.

Nicol Stephen: It was not something that Mr Houston said to you on that date.

Sir John Elvidge: Because I know that you are fitting this into the jigsaw puzzle with ministers, I add that it would be natural for me to say to ministers, "I think you need to be ready for the

prospect that you're not going to have Guy Houston as finance director at Transport Scotland. There are signs that he wants a discussion about leaving the organisation."

The Convener: But it was more than signs. It was something specific—that he would resign with effect from 28 November.

Sir John Elvidge: I could not have known that on the 25th. It is just not possible for me to—

Nicol Stephen: Paul Gray also clearly told us that Mr Houston had requested a discussion—a meeting—but did not indicate what it was about. That is already on the record.

Willie Coffey: On who told who what and when, when we bring guests to the committee they are reliant on their memory or instant access to their case notes, which can sometimes be substantial. I feel that we occasionally put them under undue pressure to give us instant reactions and responses. On occasions, that is a wee bit discourteous to our guests, who are operating in a fairly stressful environment.

I do not interpret from the answers that our guests have given us that we are being misled. They need to be afforded the opportunity carefully to reflect on and correct statements that they have made to us without the presumption that we are being misled. I want to put that on record.

The Convener: It is also important to put it on record that, for example, when Mr Gray was asked about a specific issue, he told Nicol Stephen that he could not recollect, but when he was pressed, he referred to his notes and was able to recollect. Frankly, that is unacceptable. There are issues—not just today but in preceding weeks—about what we have been told and what has dripped out bit by bit, and there have been inconsistencies in what different people have said at different times. We need to get to the bottom of that.

Willie Coffey: But, convener—

The Convener: No. I am drawing the meeting to a conclusion.

I thank Paul Gray and Sir John Elvidge for their attendance. We will move on to the next item on the agenda.

Public Audit Committee Report: Response

"Review of palliative care services in Scotland"

13:14

The Convener: Members have a response from the accountable officer on the report "Review of palliative care services in Scotland" and a note that contains some suggestions about follow-up work that the committee could do. There is some good stuff in there. Do we agree that we should pursue the follow-up line of inquiry and note that further work will be done on the matter when the next report is produced in September?

Members indicated agreement.

The Convener: We now move into private session.

13:15

Meeting continued in private until 13:42.

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