

# **PUBLIC AUDIT COMMITTEE**

Wednesday 23 September 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:  
[licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley.

---

# CONTENTS

Wednesday 23 September 2009

Col.

|   |      |
|---|------|
| <b>DECISION ON TAKING BUSINESS IN PRIVATE</b> .....                           | 1197 |
| <b>SECTION 22 REPORT</b> .....  | 1198 |
| “The 2008/2009 audit of the Royal Botanic Garden Edinburgh” .....             | 1198 |
| <b>SECTION 23 REPORTS</b> .....   | 1201 |
| “Improving civil contingencies planning” .....                                | 1201 |
| “Central government’s use of consultancy services—How government works” ..... | 1208 |
| “Drug and alcohol services in Scotland” .....                                 | 1209 |
| <b>SCOTTISH GOVERNMENT (PROGRESS REPORT)</b> .....                            | 1210 |
| <b>PUBLIC AUDIT COMMITTEE REPORT (RESPONSE)</b> .....                         | 1211 |
| “The First ScotRail passenger rail franchise” .....                           | 1211 |

---

## PUBLIC AUDIT COMMITTEE

### 14<sup>th</sup> 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)

\*Bill Kidd (Glasgow) SNP

\*Anne McLaughlin (Glasgow) (SNP)

\*Nicol Stephen (Aberdeen South) (LD)

#### 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:

Mr Robert Black (Auditor General for Scotland)

Justine Menzies (Audit Scotland)

Ronnie Nicol (Audit Scotland)

#### CLERK TO THE COMMITTEE

Tracey White

#### SENIOR ASSISTANT CLERK

Joanna Hardy

#### ASSISTANT CLERK

Jason Nairn

#### LOCATION

Committee Room 2



## Scottish Parliament

### Public Audit Committee

*Wednesday 23 September 2009*

[THE CONVENER *opened the meeting at 10:02*]

### Decision on Taking Business in Private

**The Convener (Hugh Henry):** Good morning. I convene the 14<sup>th</sup> meeting in 2009 of the Public Audit Committee. I remind everyone to switch off all electronic devices. I welcome staff from Audit Scotland and members of the public to the meeting. For agenda item 1, we must decide whether to take in private items 8, 9 and 10.

**Anne McLaughlin (Glasgow) (SNP):** I suggest that we do not take item 10 in private, given that there was more press coverage yesterday in *The Scotsman* about what the Public Audit Committee might decide to do on the First ScotRail franchise report. I do not see any reason for it to be taken in private. It is wrong that the issue has been discussed with journalists. Whatever we have to say on it should be said in public.

**The Convener:** Are there any other views?

**George Foulkes (Lothians) (Lab):** That suggestion is okay. Why not discuss it in public?

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I did not see the press coverage yesterday, and I do not have a copy of it. Perhaps a copy could be made available to members before we deal with item 10.

**The Convener:** If we can get the article copied, we will circulate it. The substantive point is whether to take item 10 in public. If that is agreed, we will swap the agenda round and take the items on the First ScotRail franchise report in public, and item 8 and item 9 in private.

## Section 22 Report

### “The 2008/2009 audit of the Royal Botanic Garden Edinburgh”

10:03

**The Convener:** For item 2, members each have a copy of the Auditor General for Scotland’s report “The 2008/2009 audit of the Royal Botanic Garden Edinburgh”. I invite the Auditor General to give us a briefing.

**Mr Robert Black (Auditor General for Scotland):** On 8 October 2008, the Icelandic bank Kaupthing Singer and Friedlander went into administration. At that time, the Royal Botanic Garden Edinburgh had £1.09 million deposited with the bank: that deposit was frozen, which is reflected in the Royal Botanic Garden Edinburgh’s accounts for 2008-09. I will explain briefly to the committee why the garden had that amount deposited with the bank, and what has happened since 8 October last year.

As my report notes, the £1.09 million deposit was made up of two components. First, there was £456,000 of deferred VAT payments relating to the garden’s John Hope gateway construction project; I understand that that gateway will open next month. The second element of the deposit was a board reserve of £635,000, which the previous Scottish Executive provided to the garden in 2005 to correct a long-standing deficit.

Ernst and Young was appointed as administrators of Kaupthing Singer and Friedlander, and wrote to all the bank’s creditors, including the Royal Botanic Garden Edinburgh, in April 2009, suggesting that it anticipated being able to distribute a minimum of 50p in the pound to creditors. In the case of the Royal Botanic Garden Edinburgh, that implied a minimum of £545,000 being recovered. Ernst and Young have subsequently returned £220,800 to the garden, which is 20 per cent of the total amount that was frozen.

It is important to stress to the committee that, until a few days before its collapse, Kaupthing Singer and Friedlander was an A-rated institution. However, since October 2008, the garden has reviewed and strengthened its treasury management arrangements, as outlined in paragraph 12 of my report. I have asked the auditor of the Royal Botanic Garden Edinburgh to monitor progress on recovery of the funds.

I am happy to answer questions.

**The Convener:** Thank you, Mr Black. Paragraph 12 in your report outlines the commendable approach that is now being taken,

although I suppose that everyone can be wise after the event. This is maybe not a fair question, because it is not specifically about the RBGE, but do you know whether other public bodies across Scotland are taking a similar approach to that outlined in paragraph 12?

**Mr Black:** I cannot answer that, because the report refers particularly to the RBGE situation. However, as I am sure all committee members are aware from their general knowledge, action has been taken in that area across the public sector as a whole, not least in local government. There were widely reported problems in a few local authorities in particular. My understanding is that those have been addressed.

**The Convener:** Who would be responsible for circulating suggestions of best practice in accounting practices and procedures?

**Mr Black:** That would depend on the sector. There would be specific requirements and guidance for local government, which I am not really qualified to speak on at this meeting—I would need to research that. However, in relation to public bodies in Scotland other than local government, as the report states, the “Scottish Public Finance Manual” is very clear in its requirement that bodies should gain approval from the Scottish Government for opening commercial bank accounts, but no further approval is required to place cash on deposit. There is therefore no doubt that, in this case, the garden should have sought authority from the Scottish Government before opening accounts with the bank in Iceland.

**The Convener:** Had the RBGE failed to do that?

**Mr Black:** Yes.

**The Convener:** How significant is that failure?

**Mr Black:** With the benefit of hindsight, it is obvious that it should have sought approval. In the grand scheme of things, the sum of money that is involved is not particularly great. Nevertheless, all bodies should always conform rigorously to the requirements of the “Scottish Public Finance Manual”. As I mentioned in my opening remarks, the bank in question was an A-rated bank, so it would be fair to say that, in the normal course of events, the RBGE’s not seeking authority as described would be seen as a technical breach, but not one of great substance. Had we not had the most unusual circumstances of the collapse of that bank in Iceland and others, I guess I would not be reporting on the issue, because there would not have been financial loss. It would simply have been a matter that would have been picked up in the audit, and which would be rectified.

**Murdo Fraser (Mid Scotland and Fife) (Con):** You said that the RBGE had not obtained the Scottish Government’s approval for opening the

account. Is there any reason to believe that such approval would have been withheld?

**Mr Black:** That question should be put to the Scottish Government, but I will read into the question a little bit. It must be at least possible, if not probable, that opening an account with an A-rated bank would have been approved, but I am not in a position to advise you on that because I may be unaware of details of Scottish Government policy in respect of which banks should be used.

**Willie Coffey (Kilmarnock and Loudoun) (SNP):** You remarked that wisdom increases with hindsight. How did the assessment process that gave the bank an A rating come about and has it changed since the Icelandic situation?

**Mr Black:** I would have needed notice of that question. I would be happy to help the committee if it wants further information about authorities’ rating of banks, although the matter lies somewhat outwith my remit.

**Willie Coffey:** I imagine that the bank is no longer A rated.

**George Foulkes:** The answer to Murdo Fraser’s question is surely that the Scottish Government would have given permission. Was Iceland not in the so-called arc of prosperity?

**The Convener:** It is not for me to comment on that. As there are no further questions, we will consider our approach later.

## Section 23 Reports

### “Improving civil contingencies planning”

10:11

**The Convener:** I ask the Auditor General to give us a briefing on the report.

**Mr Black:** The report “Improving civil contingencies planning” is a joint report by the Accounts Commission and me because civil contingencies planning is complex and involves many different agencies in Scotland. I will say a few words about the report and highlight some of the key issues from it.

I do not need to tell members of the committee that there have been a number of high-profile emergencies in Scotland, such as the current flu pandemic, the Glasgow airport attack and, most recently, floods that were extremely serious for local communities. They all highlight the importance of having in place resilient and flexible arrangements that allow effective responses to any type of emergency. It is also important to ensure that key services continue to be delivered to the public throughout any disruption, and that communities are assisted in recovering after the event.

The Civil Contingencies Act 2004 was introduced as United Kingdom legislation, so it applies in Scotland as well as the rest of the UK. It was designed to ensure that key organisations, such as the police, local authorities and health authorities, as well as private and voluntary organisations, have in place effective arrangements to prepare for and respond to emergencies that threaten serious damage to human welfare, the environment or our security.

The report examines progress in Scotland since the 2004 act was implemented, particularly in relation to the requirement on organisations to work together. We do not consider particular events; we examine how the overall arrangements are bedding in.

Some of the key findings are as follows. The main finding is that, overall, organisations are working well together to prepare for and respond to emergencies, particularly through the eight strategic co-ordinating groups that exist throughout Scotland. However, the greatest progress to date has been made in relation to what might be called the more traditional aspects of emergency planning, by which I mean the aspects that concentrate on the immediate response to an event rather than the important issues of business continuity and the arrangements for recovery in communities and economies.

Key organisations generally keep one another well informed, but there are some barriers to effective information sharing. For example, organisations use different security labelling systems on documentation, they operate different levels of e-mail security and they work to different definitions of what constitutes an emergency. At the moment, organisations do not tend to share very well or very widely good practice information, the findings from the exercises that they run or the reviews of real-life incidents after the event, in order to learn lessons locally. There is also only limited evidence that the lessons that are learned are systematically put into good practice.

10:15

Civil contingencies planning is complex. There are some areas relating to the strategic co-ordinating groups in the Scottish Government in which we think the governance and accountability arrangements are not absolutely clear and could be tidied up.

The Scottish Government has been active in implementing the Civil Contingencies Act 2004 and in supporting the co-ordinating groups. One consequence of the increased priority that has been given to civil contingencies planning and the growing activity at Scottish Government level is that much greater demands have been placed on what are called local responders—the key people in the local areas.

More use could be made of shared services and formal mutual aid agreements. Such arrangements could increase the capacity of the system to respond to emergencies and make more effective use of resources, some of which are quite specialised for some types of emergency.

Finally, we suggest that organisations should develop a consistent framework for managing and reporting expenditure on civil contingencies planning to make it possible to demonstrate value for money. We say in the report that we recognise that it is quite difficult to do that, because for many of the services, particularly the emergency services, their day and daily job is to respond to emergencies of some kind or another and it can be difficult for them, and indeed for other bodies, to isolate the resources that are specifically committed to an emergency response. Nevertheless, we think that there is scope for improvement there.

Our report sets out a series of recommendations for the Scottish Government and the main bodies that are involved in handling emergency responses. We have followed our recent practice, which we now undertake with all significant reports, of including at the back a self-assessment

checklist, which we are encouraging and expecting bodies to use when they are implementing our recommendations in order to achieve improvement.

I am pleased to say that the Scottish Government has given a positive response to the report and thinks that it is a useful contribution. My colleagues and I are happy to answer questions. The team who are with me understand the detail of the report better than I do, as members can imagine.

**The Convener:** Thank you for that. Is civil contingencies planning focused solely on how to deal with an emergency once it has happened, or does it also include identifying potential problems and seeking to avoid their happening in the first place?

**Mr Black:** The starting point is that the UK Government has a national register of risks, which is part of the whole framework of civil contingencies planning. There is not yet a document like that in Scotland, but the Scottish Government has indicated its intention to prepare a supporting document—an addendum, if you like, to the national risk register—which reflects the risks as perceived in Scotland, including flooding, terrorist attacks and health events.

**The Convener:** When we talk about improving civil contingencies planning, is any attention paid to the risk that comes from flooding, such as the recent flooding in north-east Scotland? Over the years, we have seen flooding elsewhere, including in my constituency.

**Mr Black:** Flooding is a risk that is identified in the risk assessment. Perhaps the team can provide further detail.

**Ronnie Nicol (Audit Scotland):** There is obviously a continuum between prevention activity and response activity. Civil contingencies planning generally recognises that events will happen from time to time. For example, global warming is a contributor to greater flooding. The scope of our study was to look at what preparations can be made to respond to events, on the assumption that events will happen. Common sense would say that organisations that are coming together to consider risk and responding to events would also take away from that process something about prevention. However, it is not something that we looked at in this work.

**The Convener:** So no consideration has been given to the growing concerns that the money that was previously allocated specifically for flood prevention work is no longer so allocated, or to the fact that that could leave gaps at the local level across the country.

**Mr Black:** That is correct. That issue is outwith the scope of the study, which is on response arrangements. As I am sure committee members are aware, as part of the new arrangement for funding local government, defined budgets no longer exist; they are rolled up into the single budget that a local authority receives.

**Murdo Fraser:** Paragraph 27 of the report draws attention to the complexity of the environment around civil contingencies planning. Exhibit 2 makes immediately apparent the complexity of the responsibilities of the various bodies that are involved at the UK and Scottish Government levels. I am concerned that that complexity will lead to confusion.

Is there any evidence that the complexity of the arrangements is causing difficulties? Is there a case for streamlining them?

**Mr Black:** I remind you of my opening comment, which was that we think that, overall, the arrangements are working. Although we did not look at individual recent emergencies and how they were handled, general knowledge indicates that Scotland has responded pretty well to recent events.

The report shows that governance and accountability arrangements are not always as clear as they might be. It would be helpful if a little bit more could be done in that area. We capture that point in some detail around page 20 of the report. I invite my team to supplement my answer.

**Ronnie Nicol:** There has been an increase in activity of late and, in all areas of the public sector, when such activity occurs, layers, organisations and lines of communication are created. There has also been a deliberate attempt to plan on a generic basis. Rather than having separate processes and plans for different kinds of event, which would create a more disparate and harder-to-organise system, generic planning means bringing together all sorts of organisations that might be involved, depending on the nature of the event. It is probably inevitable that the arrangements will be quite complex.

Certainly, the things we saw that were difficult or challenging for multi-agency working on civil contingencies planning were similar to what we find with any multi-agency working, whatever the subject. We found a few parallels with our community planning study, for example, so we were not concerned that there was any specific difficulty with civil contingencies planning in that regard. However, as the Auditor General said, we believe that, given that the legislation was enacted five years ago, now is the time to check some of the lines of governance, accountability and answerability. The civil contingencies environment is very busy and there is probably scope for some



streamlining, although we have not identified what that might be.

**Anne McLaughlin:** I have two questions. The first is on the co-ordinating groups. Are you aware of any mechanism that is in place so that work can be done with specific groups that might face specific issues or threats? I am thinking of what happened just after the Glasgow airport attack in relation to the Muslim community. How effective are such mechanisms, if any are in place?

That leads on to my second question. Does contingency planning take account of community cohesion? To use the same example, after the Glasgow airport attack, there were a number of incidents in which people in the Muslim community were targeted, and there was the threat that local communities would splinter and become fragmented. I do not know whether that had anything to do with contingency planning. Are you aware of any mechanisms that would cover such situations?

**Mr Black:** Those are relevant questions, but unfortunately we can give you only a limited answer. Our study examined overall arrangements for handling emergencies, rather than responses to individual emergencies. I will offer a few comments that might be helpful, and my team might have something to say on the subject.

A general message in the report is that, in developing the new planning frameworks, the greatest progress has been made on the immediate response when an event happens. That response tends to be led by the emergency services, and by the police in particular. We expected that, because it is a continuing responsibility that lies with those protective services.

One of the challenges that the report highlights is the need for planning at a local level to give great consideration in general to recovery and to community cohesion and resilience after an event. The report suggests that the role of elected members in that area is perhaps not fully recognised, and that more needs to be done with regard to working with them.

I am not sure whether we use the awful word “training” in the report, but we need to make elected members aware of the issues, help them to engage with the local communities, keep them informed during the emergency, use them as a channel of communication, and recognise their local community leadership role after an event. I hope that that theme, which runs through the report, will be picked up, given that the Government has responded positively to the report.

There are some interesting issues in the report that relate to Strathclyde. One exhibit examines

how the various contributors to emergency planning view the quality of information sharing and so on in the local area. It is clear that the co-ordinating group in Strathclyde faces particular challenges in civil contingencies planning, simply given the size of the geographical area that it covers, the wide range of different communities it includes and the very large number of organisations with which it needs to interact.

We recognise that it is difficult to involve all local organisations in civil contingencies planning. However, we know that the Strathclyde group is working hard to identify and address those issues by examining its structures and the way in which it responds. That is not to say for a second that the emergency services and the local authorities do not do well in relation to the immediate response, but it is generally recognised, as our report picks up, that work needs to be done on interacting with local communities and bringing elected members on board.

Perhaps Mr Nicol would like to add to that.

**Ronnie Nicol:** That was a fairly comprehensive answer. I will just add that the idea behind local strategic co-ordinating groups is that they can think through the particular issues that relate to their local level and—either through membership of the group or other forms of engagement and communication—involve the organisations or representatives that are most relevant to their area. Work with vulnerable groups, such as elderly people or those who may have mobility difficulties in an evacuation, is particularly encouraged.

There is a shift in balance from the immediate response that the Auditor General mentioned to community cohesion and recovery—we would expect more of the type of thing that Anne McLaughlin talked about to take place.

**Bill Kidd (Glasgow) (SNP):** I do not know the extent to which you considered the crossover between civil and military authorities. Of course, certain areas of work in which the armed forces are involved are necessarily kept secret. However, there are concerns about, for example, the ship lift at Faslane, where nuclear weapons are still on board vessels that are lifted out for work in the dry dock, and the potential for an incident to take place there. How much crossover work has been identified and what contingency preparations for an incident such as a leak, an explosion or a fire at a military base have been made through co-operation between local authorities, the Scottish Government and the Ministry of Defence?

10:30

**Mr Black:** We did not look at that in this study. However, we comment in the report on the scope for further improvement in the way in which the UK

Government, the Scottish Government, local authorities, health authorities and so on work together. Those comments are made against a background of the very good work that takes place—they are about further improvements to what is quite a strong framework.

We mention the dead swan in Cellardyke, which was a serious issue at the time because it might have been an indication of an avian flu pandemic, which would have been much more serious than the current swine flu pandemic. That experience highlighted the need for clearer definitions of the roles and responsibilities of various parts of Government in cases in which the lead responder—such as the Maritime and Coastguard Agency, British Transport Police or the Health and Safety Executive—delivers services in Scotland but the matters involved fall within a reserved competence. There is a need to ensure that the relationships work well. Unfortunately, we do not have any information about Faslane and the concern that you mentioned.

**Bill Kidd:** Could that matter be looked at in the Scottish Government's addendum to the UK's national contingency—

**Mr Black:** The question of how it manages those relationships is probably one that would be better addressed to the Scottish Government.

**Willie Coffey:** Paragraph 124 in the report states that a survey conducted only last year indicates that

"the public think they are unlikely to be affected by major incidents."

The example that was given was influenza A (H1N1). Why do people think that? Is there a lack of understanding of the risk or the threat? Are the public not being given enough information? I noted in a subsequent paragraph that quite a few of the category 1 responders, such as local authorities, the police, the fire service and the ambulance service, do not have plans in place to inform the public as quickly as possible and keep them up to date if and when an incident occurs. Can you comment on that?

**Mr Black:** The emergency services need to take a balanced approach. They must have robust and effective plans in place to respond to an emergency, but at the same time they must not needlessly raise public anxieties about events that may not happen. At one level, it might be suggested that the response that

"the public think they are unlikely to be affected by major incidents"

reflects a good deal of common sense and maturity among the public, because most of us are not affected by incidents terribly often. The greatest risk of recurrence tends to come with

flooding, in relation to which there is an effect on local communities. A targeted survey in parts of Elgin and Moray would attract different responses from a survey that was conducted across the whole of Scotland. I suggest that the public's response is not inappropriate, because the risks are not that high.

We comment about the need to improve the material that is available to the public to ensure that it is appropriate and presented consistently. However, I suspect that we are all in the same boat. Such information is the sort of thing that we look for when we need to acquire it, rather than absorbing it as a matter of course.

**Willie Coffey:** Among the category 1 responders, is there no lead agency for informing the public? Do they expect one another to be the lead partner in informing the public? Is that possibly what is happening?

**Justine Menzies (Audit Scotland):** When an incident occurs, there is a lead agency—it depends on the specific type of incident. When there is not an incident, the strategic co-ordinating groups have a responsibility to inform the public, and they publish community risk registers.

**The Convener:** As there are no further comments, I thank the Auditor General for his briefing. We will return to the issue later in the agenda.

I suggest a change to the order of the agenda. We have agreed to take in public our discussion on the committee's report "The First ScotRail passenger rail franchise". Rather than separating out our consideration of the accountable officer's formal response from our further deliberations on the subject, I wish to take those two items together. With the committee's permission, therefore, I propose to take items 5, 6 and 7 first, and then go on to item 4 on First ScotRail.

**George Foulkes:** Why do we not just do ScotRail now?

**The Convener:** We can dispose of the other business on the agenda and then give attention to the two ScotRail items together. That way, we will not have to squeeze the other items if we overrun on ScotRail. Is that okay?

**Members indicated agreement.**

### **"Central government's use of consultancy services—How government works"**

**The Convener:** We come now to item 5. The committee has correspondence from the accountable officer. It is a fairly full response.

**Willie Coffey:** I have a comment on the response to the last question, about contractors entering new framework contracts and so on. The

whole thrust is to promote continuous improvement and to encourage the emergence of approved contractor lists, not to encourage the emergence of rejected contractor lists. There was to be a purely positive focus. I took from the response more of a negative intent to exclude people on the basis of bad performance and somehow to highlight that. That was never the intention; it was meant to be the other way round—to promote approved contractors, which I would say is a fairly common practice in business in Scotland. We can rely on the approved contractors that have emerged, given their previous performance.

**The Convener:** Do you wish to draw that point to Stella Manzie's attention, or should we simply note the response?

**Willie Coffey:** The matter needs to be clarified. Stella Manzie perhaps missed the intended emphasis. We are not seeking to discriminate against anyone; the aim was purely to highlight good performance in the public sector and to make such information widely available. That does not imply that we were saying that performance by other contractors is bad.

**The Convener:** Do we agree to draw that point to Stella Manzie's attention and to note the reply?

**Members** *indicated agreement.*

### **“Drug and alcohol services in Scotland”**

**The Convener:** We have further correspondence from the accountable officer. Perhaps in response to some of our previous criticism, we now have a fairly detailed response from which further issues may flow. Do members have any comments on the issues around access to treatment services? Are members content with what has been said in the correspondence? It seems that there are no further comments, so we agree to note the response.

**Members** *indicated agreement.*

## **Scottish Government (Progress Report)**

10:39

**The Convener:** We move on to item 7. We asked for an update on progress with free personal and nursing care, and a letter has been circulated. I invite comments from the committee.

**Murdo Fraser:** I have one small point to make. Towards the end of his letter, Kevin Woods refers to the group reporting to the ministerial strategic group in December. I am not sure at what point its findings might be made public. It might be worth writing to Kevin Woods, asking that we be kept advised of the outcome of the group's work. That would be helpful.

**The Convener:** Okay. Is that agreed?

**Members** *indicated agreement.*

## Public Audit Committee Report (Response)

### “The First ScotRail passenger rail franchise”

10:40

**The Convener:** We will now take items 4 and 10—the formal response from the accountable officer and the committee’s considered approach—together.

The response that we have received is generally positive. The accountable officer and the permanent secretary have taken the committee’s concerns into account, and I am pleased that some of them have been acknowledged. I also note the permanent secretary’s regret that the committee received inaccurate information. Although he says that that happened unintentionally, it happened on several occasions. I am pleased that some positive work has been done in relation to the recommendations, and I hope that that will lead to improvements in practices and procedures.

I remain concerned that we have not been able to get all the information that the committee requested. That has left us, frankly, unable to draw conclusions in certain aspects of our inquiry, although some of that work remains on-going in relation to freedom of information. In my opinion, however, we have received a fairly positive response notwithstanding some of the difficulties that we have faced and continue to face.

**Nicol Stephen (Aberdeen South) (LD):** I agree with that and welcome the response. All our recommendations have been accepted by the senior civil service and the Scottish Government, and we have received a full apology. Dramatic changes are being introduced that represent nothing short of a sea change in attitude towards conflict-of-interest issues in the senior civil service. Previously, there were significant weaknesses—it is important to emphasise that point—and we have played an important role in identifying and tackling them.

It is important that lessons are learned at all levels in the civil service, not just in the senior civil service. We could continue to press on that issue. Conflict-of-interest issues throughout the civil service are of public concern, as some civil servants who are not in the senior civil service have significant influence over major contracts and budgets.

Throughout the process, we have too often perceived a closed-government instinct. That applies not just to the failure to release information

to the committee and the Parliament, but to the responses that we have received from the Government. That is part of the reason why we were misled on so many occasions during our inquiry, and I am still disappointed about that.

We still have to consider what we should do in relation to the failure to disclose the documents that we have continued to seek. I believe that we should keep pressing for the information and at least be told what our options are. I assume that we could appeal such matters to the Scottish Information Commissioner. I could be wrong about this, but I think that the examples that Sir John Elvidge gives of what he regards as similar or comparable decisions come exclusively from outside Scotland—from England and Wales. I thought that we had a different, more open system in Scotland, with a more stringent, rigorous public interest test. I would be interested to hear the advice that we might receive on that issue.

10:45

The extra information that has been made available to us is also worthy of comment. I refer to the e-mail exchange from March this year involving Guy Houston. We need to look at Guy Houston’s e-mail of 17 March and to reflect on the information that we discovered. I must be careful about what I say, but I believe that there are substantial factual inaccuracies in that e-mail. We should check our facts and consider whether we want to take the issue further. The first paragraph of the e-mail is not accurate, and the statement in the second paragraph about the meeting on Friday 21 November is either misleading or inaccurate, I believe. I would be grateful for advice from officials on that point.

**The Convener:** We will need to get officials to examine the matter. The e-mail exchange to which you refer is interesting, as senior management seems to have taken the view that, once the information about the transfer of shares became apparent, somehow Guy Houston’s word could be taken at face value and there was no conflict of interest because he had transferred the shares to his wife. That indicates a staggering degree of complacency and, probably, ineptitude. I hope that the new procedures will prevent anything of that nature happening again. However, Nicol Stephen has raised wider issues on which I am not in a position to comment at the moment.

**Nicol Stephen:** There seems to be no process for checking the facts. I would have thought that the civil service might have taken steps to check the information that was provided in relation to such a serious matter, which had attracted substantial public and media interest and become the subject of an inquiry by this committee.

**Murdo Fraser:** I agree with the points that Nicol Stephen has just made. The response from Sir John Elvidge is helpful and accepts all the committee's recommendations. Its tone is appropriate and stands in marked contrast to the evidence that the committee received during our inquiry from a number of individuals, including Sir John Elvidge himself to some extent and Malcolm Reed to a greater extent. When we put to Malcolm Reed our concerns about a conflict of interest, he rejected them robustly.

**Nicol Stephen:** Dismissive.

**Murdo Fraser:** As Nicol Stephen says, he was dismissive.

It is excellent to see that the permanent secretary now accepts that our approach was correct and that the Government is taking steps to ensure that no such conflict of interest arises again. That shows the importance of the work that the committee and the Auditor General and his staff do. We should be reassured by the fact that we are able to ensure that policy changes happen at Government level.

I agree with Nicol Stephen about the outstanding freedom of information issues. We should continue to pursue them. The Information Commissioner has always taken a robust view of the legislation and has been prepared to go out on a limb on occasion. We should ask him to review the matter.

**Anne McLaughlin:** Three members of the committee have said that they are concerned about information that we are not getting from Sir John Elvidge. In his letter, he says that he cannot disclose information because of

"the Scottish Government's duties under data protection legislation; Article 8 of ECHR; the general law of confidentiality; the potential impact of disclosure on the effectiveness of the HR operations of the Scottish Government ... and, by extension, any public sector organisation ... and the absence of an explanation of what material link exists between the findings of the AGS report and our reasons for agreeing to the departure of"

the gentleman in question. Will it be possible to take legal advice if enough committee members are concerned about not getting that information? The suggestion is that Sir John Elvidge's legal advice is that he should not give us the information. Can we take legal advice on whether the legal advice that he was given is correct?

**The Convener:** There are two issues. We took legal advice from the Parliament's lawyers during our long deliberations on the report, and everything that we did was based on the advice that we were given. We reflected on that advice and proceeded carefully.

At an earlier stage, we also decided not to escalate the matter into the courts. We could have done so with the powers that are available to us,

but we wanted to avoid a long, costly and messy procedure. Ultimately, the matter could be resolved in the courts, but I am not sure that that is the first option that we should consider, given that a less cumbersome option is open to us. Nicol Stephen and Murdo Fraser suggested the freedom of information option.

**George Foulkes:** I, too, welcome the general response. It is worth reiterating that the committee is not questioning whether the decision to extend the franchise was right or wrong. That is a separate issue.

I am concerned about two things, which, I think, also concern the committee. One is the way in which we were misled by Malcolm Reed and John Elvidge on Guy Houston's involvement in crucial decisions. We were told that he was involved only peripherally in one meeting, but it later emerged under questioning that he was involved in many more meetings and that he had a direct financial interest. It still concerns me that a committee of the Parliament should have been misled by the permanent secretary of the Scottish Executive and the former head of Transport Scotland.

Members have referred to the other matter that I am concerned about. Anne McLaughlin listed the reasons that Sir John Elvidge has given for not providing certain information. In spite of constant pressure from the committee, we have been refused any information about the arrangements and terms of leaving for Guy Houston, which we have pursued. When I specifically asked Sir John Elvidge about that matter in a committee meeting, he talked about the data protection legislation. Those who were members of the committee at the time may recall that I pressed him again and again on what part of the data protection legislation he was referring to. He still has not replied to my question.

As Anne McLaughlin has pointed out, Sir John Elvidge has given us five reasons why he cannot give us the information. In my experience, someone who has a strong case or a clear reason for not doing something states it, justifies it and then stands by it. For example, they cite the relevant section of the Data Protection Act 1998 or whatever. However, someone who has a weak case tries to find all sorts of other ways of backing up their affirmations or attestations. That is what Sir John Elvidge has done in this response. He talks about "data protection legislation", but does not specify which. He refers to "Article 8 of ECHR". Every nutter who comes to see me tells me that in their case the European convention on human rights has been violated. The green ink brigade always quotes ECHR; this response refers to article 8 but does not say how it applies.

Furthermore, what on earth is  
“the general law of confidentiality”?

Does that exist? Is it part of Scots law or any other law? I do not know. Moreover, Sir John does not explain how “disclosure” would undermine

“the effectiveness of ... HR operations”.

The greatest reason is the fifth one, which is basically that he is not going to tell us because it is none of our business and has nothing to do with the committee's report.

This is outrageous. Again and again the committee has asked the permanent secretary to provide information, and again and again he has refused to do so on spurious grounds. That is why I completely agree with Nicol Stephen, Murdo Fraser and you, convener, that we should pursue the issue.

**Anne McLaughlin:** If the committee can compel Sir John Elvidge to give us this information, can we take legal advice on whether we can publish it? What if his own legal advice is correct? Unless I missed it, I do not think that we received specific legal advice on publishing the details of a specific individual's departure. You are better placed to know this than I am, convener, but perhaps the committee has the power to get this information from Sir John Elvidge, even though he feels that giving it to us is against various pieces of legislation. If that was the case, I would want to know whether the committee would be within its rights to publish that information.

**The Convener:** You have raised a number of different points. First, we cannot compel Sir John Elvidge to do anything. He is the permanent secretary. Indeed, one thing that has emerged from the inquiry is the fact that the First Minister and the Permanent Secretary can make decisions on certain matters of policy making and expenditure and the Parliament can do nothing about it because of the separation of interests. I suppose that that raises bigger democratic questions such as whether, if they so decide, the head of the civil service and the First Minister of the day can stand above the will of Parliament on a range of issues. However, it is not for this committee to determine such matters.

On the question of publication, anything that is subject to determination by the Information Commissioner goes into the public domain. As a result, it would not matter whether or not we decided to publish because the information would still be available to the wider public. Furthermore, as you might have seen from previous freedom of information requests from members of different parties, the press gets access to decisions almost as soon as the member who makes the inquiry. That is not within our control.

As for any other information that we might or might not be given—and at this stage it is unlikely that we will be given anything else other than what we request under freedom of information—we will always reflect on our legal responsibilities. Indeed, we have done so at every stage of this inquiry.

11:00

**Bill Kidd:** I think that I read somewhere in the sheaves of paper that we have that Sir John Elvidge has said that he would be happy to appear before the committee again rather than be compelled to do so. He could give a further explanation of why he believes that he cannot open up any further or provide greater transparency. In his response, he mentions article 8 of ECHR in the context of the impact of disclosure. As I am not a lawyer, I do not know what the general law of confidentiality is, but I assume that we could ask him that. He might be referring to something in Scots law that I have not heard of.

It would do no harm for the committee to speak to Sir John again, given that he has said that he is perfectly willing to come along. That would avoid what the article in *The Scotsman* bizarrely described as the “nuclear option”. I hope that everyone knows that my opinion about nuclear issues is that I am against them. I would be perfectly happy for us to invite him to appear before us.

**George Foulkes:** You would not be here without nuclear.

**Bill Kidd:** I think it had more to do with my mother and father.

**The Convener:** We will not get into a discussion about nuclear proliferation, thank you.

**Willie Coffey:** It is clear from listening to the discussion this morning that there has been an element of rehashing of old arguments that we have already gone through painstakingly over a number of months. I do not think that anything new has been added. All members welcomed the response from the permanent secretary and the fact that so many of the committee's recommendations have been agreed to, taken on board and implemented. That is to be warmly welcomed.

The only remaining issue of great interest to the committee is whether we can get the piece of information that we seek. As members will be aware, the director of constitution, law and courts, Kenneth Thomson, has sent the committee a letter, which clearly states that disclosure of the piece of information in question

“would cause unwarranted prejudice to the rights and freedoms of the data subject ... and would therefore be a

breach of the data protection principles set out at Schedule 1 of the Data Protection Act 1998”.

That is not some trivial piece of legislation; it is there to protect people and to provide a balance. In my view, that is really the only further matter of debate in the whole affair. The committee has produced its report and its recommendations have been accepted. There is only one remaining issue to be discussed.

**The Convener:** I think that Willie Coffey is right. That is the issue on which we need to decide whether to take further action.

We face a difficult question. Do we accept at face value what a very senior officer says about their interpretation of the law and take it as the final word? I suppose that if we always did that, in this case or any other, there would be no need for a Scottish Information Commissioner. That is the standard response that people have got in a number of cases that have gone to the commissioner: very senior people in certain organisations have said that they were sorry but the information that was requested could not be made available, and the commissioner has then taken a different view. Indeed, the whole reason for a Scottish Information Commissioner is to have someone who can look objectively at disputes between those who have the information and those who seek the information.

At the moment, we seek information. Those who have the information have put their arguments in a semi-legal response. It may well be that, ultimately, the commissioner would agree with them, but there have been examples of cases in which such persuasive arguments have been made but then rejected by the commissioner. That is the reason for that process.

In relation to Sir John Elvidge's offer to come to the committee, Bill Kidd's point is not entirely accurate. Sir John said:

“As I have offered previously, I remain willing to discuss this specific case with you as Convener.”

He has offered on several occasions to meet me and take me through some of the details. I was reluctant to do that, and the committee supported my view that I should not be privy to information that cannot be shared with the whole committee. That is in part because it would place me in an invidious position—I do not mind making difficult decisions but, leaving that aside, it would make me the person who decided whether the information should be used further. That would not be fair on the committee, so as a committee we decided not to avail ourselves of that offer.

**Cathie Craigie:** As other members have done, I welcome Sir John Elvidge's acceptance of the committee's recommendations. I am particularly pleased that the Government accepts that in-

principle discussions should be held with stakeholders in any future deliberations on contract extensions. That is welcome and I hope that such a provision will be included in further contracts that are drawn up.

I have a question about the way in which the permanent secretary deals with the disagreement between the accountable officer and Audit Scotland on the terms of the Auditor General's report. It is a long-term practice that organisations see a draft of such reports and then bat about possible amendments with the Auditor General's office before reaching an agreement. I feel that Sir John Elvidge defends what happened when questions arose about a paragraph in the report that the accountable officer claimed was late. I would have preferred it if Sir John Elvidge had accepted our investigations and left the matter at that.

It was the responsibility of Mr Houston, as a senior civil servant, to register his interest right at the outset, but he did not do that. The Government's response states that changes have been made and that individuals' interests will be reviewed twice a year. I am not sure that that is enough. It is the management's role to ensure that people follow the civil service code and register any interests at the outset.

Our report talked about inaccuracies that civil servants provided to the committee. Sir John Elvidge regrets that and the inconvenience that was caused to the committee. Basically, he says that he hopes that it does not happen again. However, on another transport issue, unrelated to the First ScotRail franchise, at our meeting a fortnight ago, in information that we received from Sir John Elvidge on capital works over the value of £50 million, we were told that the Glasgow airport rail link was on budget—I think that the words were that there were no budget pressures—but, last week in the Parliament, the Cabinet Secretary for Finance and Sustainable Growth said that one reason why the GARL project has been dropped from the capital programme is that it is over budget. The committee has to know that the information that we receive is accurate and we have to know who is right. The events of last week do not give me any comfort about that. We have the comments from Sir John Elvidge in black and white, but are we seeing them in action?

In addition to those points, I feel that the civil service could be much more open with the committee. I hope that the committee's willingness to keep digging will result in a much more open relationship with the civil service so that, when civil servants say that they are providing factual information, they are able to back that up.

**The Convener:** Perhaps the Auditor General will respond to the two points that Cathie Craigie

has raised. Her second point was about the information that is presented to the committee. We were told that budgets were fine and on track, but subsequently that turned out not to be the case. Could the Auditor General look into that issue? If he can deal with that question first, I will then return to Cathie Craigie's first point.

**Mr Black:** As members will recall, some time ago we produced "Review of major capital projects in Scotland—How government works", on which the committee took evidence. A significant finding in that report was that there was a pattern whereby the initial estimates that were presented when the decision to commit to a project was taken tended to be less than those that came in once hard estimates had been received from tenderers. There is a risk to Scotland's public finance as a whole from that pattern of taking policy decisions to commit to projects and then finding that the final costs run well ahead of the estimated costs. Our report presented quite a few examples of that pattern, which the committee expressed its concern about. We have agreed that we will review the management of capital projects again next year.

Secondly, we have an outstanding request from the committee in effect seeking—I cannot recall the exact words used—that the Government provide good monitoring information on how projects are proceeding. That is an element of unfinished business that we could perhaps handle through the work that we will return to next year on capital projects.

**The Convener:** We can return to that broader issue of the management of budgets later, but we will leave that for today. We can deal with that separately.

Cathie Craigie's first point was about the permanent secretary's comments on Audit Scotland. She referred specifically, I think, to paragraph 12 of the permanent secretary's response, which states:

"It is clearly not good process that the Audit Scotland team working on the study of the franchise extension were unaware that the Audit Scotland team responsible for auditing Transport Scotland's annual accounts had been aware of, and had reported publicly on, the existence of a shareholding in First Group plc by Transport Scotland's Finance Director."

**Cathie Craigie:** That is another point that I wanted to make. From that paragraph, it looks as if the permanent secretary is trying to get a defence in earlier.

**The Convener:** Sorry, were you referring to a different paragraph?

**Cathie Craigie:** I was referring to a later paragraph over the page, which deals with the reporting process.

**The Convener:** Is that paragraph 13?

**Cathie Craigie:** Yes. However, I would also endorse the point that you make about paragraph 12. It is as if the permanent secretary is trying to get a kick in first.

**The Convener:** Does Mr Black have any comments to make on paragraphs 12 and 13?

**Mr Black:** As the committee will no doubt recall, colleagues and I were invited to provide specific information in response to that point at the meeting on 25 March. In effect, paragraph 12 revisits an issue on which evidence of our response has already been recorded in the *Official Report*. Essentially, the point that is made in paragraph 12 is a criticism of communication arrangements within Audit Scotland. It is fair to say that Barbara Hurst responded along the lines that we regretted that the communication between the local audit team and the study team was not as good as it should have been. We have learned our lesson from that.

11:15

However, I remain strongly of the view that Transport Scotland should have drawn our attention to the matter in the course of the study. The study was concerned with the overall management of the contract rather than the internal governance of conflicts of interest and such matters, so it was not unreasonable for us to have expected Transport Scotland to make us aware of the issue. Nevertheless, as Barbara Hurst said, Audit Scotland regrets what happened, and we will improve our communication.

Paragraph 13 reverts to the issue of the clearance of reports. We hope that the same thing will not occur in the future—although I have to say that it was a very unusual situation. I will always take the view that, if matters emerge late in a clearance process that I believe need to be included in a report so as to inform the committee and the Parliament properly, those matters will be included. There is no doubt about that.

I also remind the committee of the obvious point that we are not talking about a major rewrite of a report in this case; we are talking about relatively small adjustments to a sentence or two in one or two paragraphs of the main report. It should have been perfectly possible to accommodate that. The underlying issue was one of principle, as to whether it was appropriate for me to report to the Parliament on such matters; it was not about whether we were capturing the issue properly.

**The Convener:** The committee is on record as giving strong support to the work of the Audit Scotland team, and expressing some regret about the attitude that was taken by officials in the civil



service. It is disappointing that the issue is still running. However, we are talking about a small part of an otherwise positive response. We note that.

**Murdo Fraser:** I wish to return to some points that were made earlier. Cathie Craigie made some good points and observations about the report, but I agree overall with what Willie Coffey said. The one issue that is unresolved is the missing information about Guy Houston's termination of employment. I do not think that anything is served by asking Sir John Elvidge to return to the committee, because he will simply reiterate what he has already told us. I agree with you, convener, that it would put you in a difficult position if you were to meet him privately, so I think that we should discount that as an option.

Anne McLaughlin was talking earlier about getting legal advice. As a lawyer, I counsel against that, for the simple reason that it would be difficult to get a definitive answer. Legal advice tends to be opinion, and the danger is that if we ask five lawyers for their view we will get at least six different opinions. When I was in legal practice, it was a source of frustration to clients that, when they came along with what they thought was a very simple question, to which they wanted a yes or no answer, our response would typically be, "On the one hand," "On the other hand," and, "Here's my fee." I do not think that legal advice will take us very far.

The arbiter of the matter is the Scottish Information Commissioner. He will not just give advice; he will take what will in effect be the final decision. As I said before, I think that the right thing to do is to refer the matter to the Information Commissioner and let him take a view.

**The Convener:** Are there further comments on anything that has not already been covered?

**Anne McLaughlin:** I want to raise something specific but, before I do so, I wish to express my general concern. I thought that politicians attacked other politicians if they had to attack anyone, not individual civil servants. I am concerned about that. I know that we have to hold people to account, but to attack civil servants in the pages of the press is wrong, I think. I seek your guidance on that, convener.

I will read the final paragraph of the article in *The Scotsman* yesterday:

"Opposition MSPs on the committee"—

the Public Audit Committee—

"have told The Scotsman the issue may go further, including a 'nuclear option' with a full parliamentary debate, in a bid to have a vote to force Sir John to come before them again with the full information."

I was extremely disappointed to read that. Could I have your guidance on whether that is acceptable? What are your personal thoughts on the matter? Does anyone here wish to own up to speaking to the press and attacking Sir John Elvidge in the pages of the press?

**The Convener:** My personal opinion is that members of all parties regularly speak to the press. What we see here is something that has happened since 1999. Over the years, both as a member of various committees and as a minister, I have seen similar things said in the press on a range of issues. As convener, I cannot censor what committee members decide to do as individuals—that would be completely inappropriate.

If the committee was dealing with a confidential report and it was leaked to the press, I would act on that. There are standard parliamentary procedures for dealing with such leaks. However, to ask me somehow to prevent members of Opposition parties or indeed members of the Government party from going to the press with comments is to ask me to achieve the impossible. It has not been within anyone's gift since 1999 and I suspect that no one else would be able to do it. I do not intend to enter into such a futile exercise.

No doubt politicians of all persuasions will continue to brief and speak to the press as they see fit. I just hope that, when they do it, they will reflect the facts accurately. However, as Murdo Fraser said about lawyers, politicians are also driven by opinions.

**Nicol Stephen:** I want to move on to a separate point, unless anybody wants to follow up on that particular issue—

**The Convener:** Is it still on ScotRail?

**Nicol Stephen:** Yes.

I agree with what you said, convener. It is interesting that, this morning, it has tended to be the Scottish National Party representatives who have suggested that Sir John Elvidge should come back to the committee, and the Opposition MSPs who have not pushed the issue or indeed have suggested that that would probably not be useful at this stage.

**The Convener:** To be fair, some of the newer members of the committee have not had the privilege of having the exchange of views that we have had. Maybe they feel that they are missing out on something.

**Nicol Stephen:** Exactly. I just reflect that, as we know from experience, it is always difficult to take action on unattributed newspaper articles. The article does not mention any MSP's name, so it is difficult to take the issue further.

**Bill Kidd:** It was not me.

**Anne McLaughlin:** It was not me.

**The Convener:** Dear, dear. It was Barabbas.

**Nicol Stephen:** I do not think that a single Opposition MSP on the committee suggests that we should do anything other than take the matter to the Information Commissioner. That is the proper way forward, as Murdo Fraser suggested. I hope that we will get unanimity on that point, because I do not feel that the issue is one of party-political conflict. It relates to the approach that the civil service has taken to the matter. The issues that relate to freedom of information are important ones and I am sure that the Information Commissioner will make the matter a high priority when we place it in front of him—if we agree today to do that.

I move on to the point that I wanted to raise. Can the clerks tell us, from the report that the committee agreed, the date of the transfer of Guy Houston's shares? Once I have that, I would like to make a couple of points about Guy Houston's e-mail.

**Joanna Hardy (Clerk):** We did not manage to find out any further information other than that it was in the week beginning 17 November. We looked at the share register information, but it does not give a precise day. In our report, we relied on Guy Houston's evidence that it was during the week beginning 17 November.

**Nicol Stephen:** I recall that we got further information that it was the following week.

**Joanna Hardy:** We could not narrow it down any further than that week, but I will go back and look through the papers. We thought that the share register was going to give us a definitive date, but unfortunately it did not.

**Nicol Stephen:** I recall that we obtained a date, and that it was after 21 November. I will pause there—have you just been given some information?

**Joanna Hardy:** We got a date, but there was a health warning on it that stated that the transaction was processed on that date.

**Nicol Stephen:** So that was the date of transfer?

**Joanna Hardy:** Yes, it was; but it was useless to us as it was a couple of weeks after the meeting at which Guy Houston declared that he had sold his shares. Tracking back from that, it was impossible to state when he had made—

**Nicol Stephen:** It is important. The legal date of transfer is the date that we discovered, and any alternative explanation is an explanation that Guy Houston has given to us. The important date that I

wish to know is the date when the shares were transferred from Guy Houston to his wife. I understood that we had received that date; I would be grateful if we could be told what it is.

**Joanna Hardy:** I will get it for you. It was a couple of weeks after he declared it to his organisation, so the date was not particularly helpful. I apologise for not having it.

**The Convener:** Nicol Stephen makes a fair point that legally the transfer can only happen on that specific date, irrespective of what Guy Houston says happened before. He may well have intended to transfer the shares, and he may well have begun the process, but there is a legal date of transfer, and up to that date he remains the owner.

**Nicol Stephen:** Exactly. It is very important, because the opening sentence in his e-mail states:

"Factually correct that I no longer had shares in FirstGroup."

That was a statement as of 21 November 2008. The second sentence is also relevant. It states:

"These were transferred to my wife sometime around late October, early November 2008."

My understanding was that the transfer took place after 21 November 2008. The email goes on to state:

"I do remember saying they were no longer in my possession and was quite clear that they had been transferred to my wife."

Is that accurate? Had the shares been transferred to his wife?

My final point is to ask why Guy Houston would say that at the meeting. As Sir John Elvidge told us, and as he agreed with us, it makes no substantive difference to the conflict of interest position, as the shares were still held by a close relative. For all those reasons, I would like to push the issue and confirm the legal date when the transfer occurred.

**Joanna Hardy:** I will find the date for you. I seem to remember that there was a lack of clarity in the share register around who owned the shares. In the end, we had to rely on some of the oral evidence.

**The Convener:** How quickly can we get that date? Can it be done today, or will we have to return to the issue?

**Joanna Hardy:** It can be done today.

**The Convener:** Do you want to follow through on that issue, Nicol, if we cannot get the date before the end of the meeting? Where do you want to go with it? Do we need to return to the matter at a future meeting, or can it be concluded today?

**Nicol Stephen:** It would be far preferable if we could get the date today. It is now all the more important that we get the information that we are requesting from the Information Commissioner, because we had speculated—indeed, the committee's report speculates—about what occurred, and what information might have been available to the civil service around that time.

11:30

The information shifts our interpretation somewhat. It depends on the accuracy and contents of the e-mail. It sheds new light on what information was not available to the civil service around the events of the following week—the week commencing Monday 24 November. That was the key week when Guy Houston resigned from the civil service.

Our aim is not to prejudge but to find out the facts, but we still lack clarity on the facts, so anything that we can do to obtain accurate information will be important for our final conclusions on the matter. I sense that, if we push the issue with the Information Commissioner, we will wish to return to the matter if we obtain further information.

**The Convener:** Okay. I think I know where you are coming from. I will come back to that.

**Anne McLaughlin:** At this point in the meeting, for some reason my mind turns to the BBC afternoon repeats of the detective series "Columbo". I wanted to ask what you asked, convener. I am not sure that I really understand why we need the information and what we will do with it when we get it, but I will not ask Nicol Stephen to repeat the answer that he just gave.

**Cathie Craigie:** The point is that Columbo usually gets to the guilty person in the end, so stick with it.

**The Convener:** I am not getting into an esoteric discussion about Columbo.

**George Foulkes:** I prefer Miss Marple.

**The Convener:** Nicol Stephen has raised an important issue that I do not think we will be able to answer before the conclusion of the meeting. However, we can come to a conclusion on a couple of the substantive matters that we have discussed, although it will not necessarily be a unanimous view.

I think that everyone welcomes the positive tone of the reply from the permanent secretary and the accountable officer. We are pleased that the committee's recommendations have been taken seriously, and we hope that that will lead to improvements in the way that such matters are dealt with in future. I think that we can go on public

record as a committee in saying that; I do not think that anyone disagrees with it. Is that correct?

**Members indicated agreement.**

**The Convener:** I will come back to Nicol Stephen's last point in a minute. The second conclusion that we can draw—although it will not be unanimous—is that the majority of committee members are supportive of my continuing to pursue the inquiries that I have made under the freedom of information legislation. I hear that it is not a unanimous view. Is that correct?

**Anne McLaughlin:** It is not unanimous.

**The Convener:** I will continue with that pursuit.

The third point—on which we will not be able to read a conclusion today, I am afraid—is the need for an answer to Nicol Stephen's inquiry about the date of transfer and the implications of that. I ask for the committee's indulgence to return to that once we have that specific information. Is that agreed?

**Members indicated agreement.**

**George Foulkes:** Cathie Craigie raised a substantive point that I had not appreciated. She is right that, a fortnight ago, we got a report on the capital programmes.

**The Convener:** We have already dealt with that, and I have said to the Auditor General that we will return to the issue.

**George Foulkes:** Will he report on it? I was not clear about that.

**Cathie Craigie:** It was not a report from the Auditor General. It was the result of previous investigations into the major capital contracts. The permanent secretary had agreed to update the committee on that.

**The Convener:** We will reflect on the process, as the committee's remit is only to respond to reports that are laid before it.

**George Foulkes:** That is what I was going to ask. If there has been substantial expenditure in preparatory work for GARL, will the Auditor General report on that?

**The Convener:** I do not know.

**Mr Black:** I would not want to give you an instant answer on that.

**The Convener:** We have noted the issues that Cathie Craigie raised. The information that we have come back to us from an inquiry that we made in response to a report from Audit Scotland. We will look to see where that specific bit of information fits in to the wider process. If there are things that we can usefully discuss together, we will do that. We will leave it at that just now.

Does the committee agree to seek an update in the next progress report from the Scottish Government on the recommendations from our report that are outlined on page 19 of the cover note from the clerk?

**Members** *indicated agreement.*

**The Convener:** The next two items will be taken in private.

**George Foulkes:** Did Anne McLaughlin want to consider in public only the First ScotRail issue and not items 8 and 9 on the agenda?

**The Convener:** Yes. The other items will be taken in private.

**George Foulkes:** I think that Anne McLaughlin raised a relevant issue. You will probably crucify me afterwards for asking this, convener, but why do we take such items in private?

**The Convener:** We can have that discussion—

**Murdo Fraser:** In private.

**The Convener:** No. We previously took a decision to consider those items in private, and we will do that now, although George Foulkes raises an important issue, which is that the committee can decide whether to take any item on the agenda in private. On this occasion, we have decided to take the final two items in private, so we now go into private session.

11:37

*Meeting continued in private until 11:44.*

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

The deadline for corrections to this edition is:

**Monday 5 October 2009**

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Published in Edinburgh by RR Donnelley and available from:

#### **Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

#### **Blackwell's Bookshops:**

243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

And through other good booksellers

#### **Blackwell's Scottish Parliament Documentation**

**Helpline** may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

#### **Telephone orders and inquiries**

**0131 622 8283 or  
0131 622 8258**

#### **Fax orders**

**0131 557 8149**

#### **E-mail orders, Subscriptions and standing orders**

**[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)**

#### **Scottish Parliament**

**All documents are available on the Scottish Parliament website at:**

**[www.scottish.parliament.co.uk](http://www.scottish.parliament.co.uk)**

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille; large print or audio), please contact:

#### **Public Information Service**

The Scottish Parliament  
Edinburgh EH99 1SP

**Telephone: 0131 348 5000**

**Fòn: 0131 348 5395 (Gàidhlig)**

**Textphone users** may contact us on  
**0800 092 7100**

We also welcome calls using the RNID  
Typetalk service.

**Fax: 0131 348 5601**

**E-mail: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)**

We welcome written correspondence in any language.