



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 24 February 2010

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1523
SECTION 22 REPORTS	1524
“The 2008/09 Audit of Transport Scotland”	1524
“The 2008/09 Audit of the Mental Health Tribunal for Scotland Administration”	1524

PUBLIC AUDIT COMMITTEE

4th Meeting 2010, 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)

Angela Cullen (Audit Scotland)

Barbara Hurst (Audit Scotland)

Mark MacPherson (Audit Scotland)

THE FOLLOWING GAVE EVIDENCE:

Sir John Elvidge (Scottish Government Permanent Secretary)

Paul Gray (Scottish Government Director General Rural Affairs, Environment and Services)

Geoff Huggins (Scottish Government Primary and Community Care Directorate)

Dr Kevin Woods (Scottish Government Director General Health and NHS Scotland)

CLERK TO THE COMMITTEE

Tracey White

LOCATION

Committee Room 4

Scottish Parliament

Public Audit Committee

Wednesday 24 February 2010

[The Convener *opened the meeting at 10:02*]

Decision on Taking Business in Private

The Convener (Hugh Henry): Welcome to the fourth meeting in 2010 of the Public Audit Committee. I welcome members of Audit Scotland and our guests, whom we will introduce in a minute. I remind everyone to ensure that all electronic devices are switched off so that they do not interfere with the recording of the meeting.

Agenda item 1 is to agree to take item 3 in private. Is that agreed?

Members *indicated agreement.*

Section 22 Reports

“The 2008/09 Audit of Transport Scotland”

“The 2008/09 Audit of the Mental Health Tribunal for Scotland Administration”

10:03

The Convener: Item 2 is a follow-up to two reports that have previously been presented to the committee. We have before us Sir John Elvidge; Paul Gray, who has taken up a new post since his previous appearance at the committee; Dr Kevin Woods; and Geoff Huggins, to whom we spoke recently. I welcome you all and thank you for taking the time to be here today. Sir John, is there anything that you want to say in advance of the committee's questions?

Sir John Elvidge (Scottish Government Permanent Secretary): It is not my usual habit to detain the committee from questioning for long and I do not want to break that habit, but I will say two or three things. Convener, you made the point that Paul Gray is in a new role. It might help the committee to know that his new role provides continuity of responsibility for the human resources and corporate services function that is relevant to the committee's interest in this case. Although the nature of Paul's role has changed, that does not cut across his ability to help the committee.

In a sense we are two teams: Kevin Woods and Geoff Huggins in relation to the Mental Health Tribunal for Scotland issues; and Paul Gray and me in relation both to the Transport Scotland issues and to such general issues as may arise. As I sought to bring out in my letter, distilling the general issues from the individual cases in front of us would not appear to be the most straightforward process, especially given that the committee has covered some helpful ground in the past. Also, we have reached a conclusion of one phase, in which we agreed to all the recommendations on Transport Scotland in the committee's previous report. We have given some thought to how we can help the committee with general issues.

Two things occur to me. First, I believe that the committee's work on the reports has opened up some complex and difficult issues to do with the application of the law, some of which are still being explored. There is an interesting wider set of issues there. Secondly, there is a territory to do with proactive disclosure, which is relevant here in a general sense. I am conscious that that is a territory on which there is currently a great deal of activity at a United Kingdom level and to some extent at a Scottish level. One of the conclusions

that I draw from that is that, with so much around the issue of proactive disclosure under debate, it is slightly difficult to get our bearings at the moment. However, one of the things that I—and I hope the committee—would find helpful is to try to crystallise positions on the issue of proactive disclosure as those various debates coalesce. It would have been my intention in any case to have discussions with the variety of bodies that will be affected by the crystallisation of those positions. However, I hope that it is helpful to the committee if I make it clear that we would be happy to embrace Audit Scotland within the boundaries of those consultations, so that it is an integral part of helping to formulate future positions, rather than simply being left in the role of commenting on that after it has happened.

The Convener: Thank you. To clarify, does Paul Gray still have responsibility for human resources?

Paul Gray (Scottish Government Director General Rural Affairs, Environment and Services): That is right.

The Convener: Human resources is now part of the rural affairs team.

Paul Gray: It is part of my oversight as director general. The HR and corporate services directorate reports to me.

The Convener: That is an interesting combination, but I am sure that there is a logic to it.

Committee members will ask some general questions, and then we will separate out Transport Scotland from the Mental Health Tribunal for Scotland Administration, because we are aware that there are specific and sensitive issues in relation to the tribunal that may mean that we need a slightly different approach. As far as is possible, we will separate the discussion on the two issues.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Good morning, gentlemen. Sir John, I refer you to your letter to the convener of 17 February, in paragraph 5 of which you pointed out that a small proportion of departures from the civil service involve a compromise agreement. You stated:

“One key reason for using a compromise agreement is to ensure that an employee discontinues or agrees not to commence litigation against the public body leading to a saving in public expenditure and avoidance of disruption to organisational effectiveness.”

Can you give the committee examples of when the risk of litigation may arise?

Sir John Elvidge: Yes. Most commonly, the risk of litigation arises when there is a possibility of action that might lead to the employer wanting to

terminate the employment of the employee. If, as is often the case, the employee is going to contest that process through an employment tribunal, substantial legal costs are often associated with that process. That is the most common example.

There are two halves to the overall process: the internal disciplinary process, which can be lengthy; and the process that might follow. During the internal disciplinary process, one of the things that one cannot do, without constructively dismissing the person, is to fill their job with a new substantive employee. One of the business disruption issues is therefore that one must freeze a position. That matters less at more junior levels, and the vast majority of compromise agreements are with relatively junior staff, but the more senior a person is, the more relevant that becomes to the functioning of a part of the business. That is therefore the broad picture.

Litigation and disruption do not always go together. There might be a disruption risk that involves no litigation risk, and there might be a litigation risk that involves no disruption risk. They are therefore separate categories; sometimes both will occur in the same case, but sometimes only one will be present.

Cathie Craigie: You said that one of the risks might be that an employee will proceed to an industrial tribunal to contest the decision. Would you always seek to find a compromise agreement? If you felt that you had a strong case, would you take it to the tribunal?

Sir John Elvidge: Comparing the volume of cases that go to employment tribunals with the volume of compromise agreement cases, we find that the latter volume is very much smaller. We do not automatically use compromise agreements in all cases; in the majority of cases, we do not use them. A judgment is made about the circumstances of each individual case.

Cathie Craigie: You also cited the difficulties in ensuring that business continues and the job gets done, particularly with posts at a senior level. Are you able to bring somebody in to fill the position concerned while any litigation is on-going?

10:15

Sir John Elvidge: We can bring somebody in temporarily, but we cannot substantively replace the person. Bringing someone in temporarily covers some of the needs of a business, but it does not have the same effect on the running of a business as having a substantive replacement. Of course, it also doubles the costs. Someone who might return to work is being paid to be at home and someone else is being paid to substitute for them. In addition to the legal costs, that is one of the cost issues in the value-for-money calculation.

Cathie Craigie: You would pay somebody to stay at home if they were suspended from their role, but not if they were dismissed from it.

Sir John Elvidge: Indeed. However, we cannot go straight to dismissal without a disciplinary process, so there are no circumstances in which we would not have that period. To be clear, it is not inevitable that disciplinary proceedings against somebody will mean that they are suspended from their post. The individual circumstances must be considered. Sometimes, disciplinary proceedings proceed while someone is still in post, although you will appreciate that it is not a perfect arrangement for the smooth running of an organisation to have someone in a role and to go through disciplinary proceedings against them. However, it is not always the case that disciplinary proceedings mean that we pay the cost of someone not being at work. That is why a case-by-case judgment must be made about such issues.

Bill Kidd (Glasgow) (SNP): These may be questions for Paul Gray to answer although, obviously, the witnesses themselves will decide who answers. I have one general question and a couple of specific ones. In Sir John Elvidge's letter to the convener, he says that guidance is not issued to directorates on compromise agreements and confidentiality clauses because those are agreed with the HR directorate. What guidance and criteria does the HR directorate use in those instances? How does the HR directorate ensure that consistency and value for money are achieved? What reporting is made to accountable officers?

Paul Gray: I have three points on the criteria. First, in entering into any such agreement, we have direct regard to the provisions of the "Scottish Public Finance Manual". We must have a value-for-money assessment and certain conditions are laid down within which that takes place. Secondly, any compromise agreement must be consistent with the current legal framework, so we always take legal advice before we enter into such an agreement. Thirdly, we must have regard to the particular circumstances of the case. The cases are varied and, generally, the circumstances are relatively unique. I can put that into context for the committee if it would be helpful. I cannot give a breakdown year by year, because we would run into identifying individuals but, in the past three years, there have been fewer than 10 compromise agreements in total for Scottish Government core staff, which is set against a total of 753 people leaving during that period. That gives the committee a sense of proportion.

On value for money, I have already referred to the constraints of the "Scottish Public Finance Manual". On consistency, such cases are always

dealt with by our HR professional advisers team—that is not the team's only role, but we would not enter into such agreements without going through that team.

On reporting to accountable officers, the reports to the corporate audit committee in the Scottish Government would refer to any such agreements. I am happy to tell the committee that I have been questioned by the corporate audit committee in the past about these matters. The permanent secretary, as the principal accountable officer, is of course supported by the corporate audit committee in the discharge of his duties.

Bill Kidd: You said that each of these circumstances has different elements, which have to be negotiated separately, and legal advice has to be taken on each of them. Does each organisation have unique requirements or does the background of the individual senior staff member necessitate the negotiation in each instance?

Paul Gray: In referring to 10 compromise agreements, I was referring not just to senior staff but to all staff across the Scottish Government. The uniqueness of the circumstances arises from the fact that in each case a different issue might have given rise to the need to enter into this kind of discussion. This is not about unique contracts or organisations; I am talking about the core of the Scottish Government, in which, in broad terms, I would expect everyone to be operating under roughly the same contractual conditions. You will appreciate that I am speaking in general terms and not about unique contracts.

Murdo Fraser (Mid Scotland and Fife) (Con): Sir John, I am interested in what you said about proactive disclosure and change of culture at Government level. I take you back to paragraphs 8, 9 and 10 of your reply to Hugh Henry's letter, in which you respond to question 4. We asked whether you shared the view of the Auditor General for Scotland that, as a general principle, the Parliament and this committee have a right to know the amounts spent on senior officials, including any amounts that are covered by compromise deals. You have given us quite a detailed and comprehensive reply in those three paragraphs, but I would like you to give a slightly more general response, particularly in the light of what you said earlier. Do you think that Governments should be working towards that general principle?

Sir John Elvidge: The direction of travel is towards more proactive disclosure. I am deliberately using the words "proactive disclosure" because, as we all know, the committee has the power to obtain disclosure of anything it chooses. This is not a debate about whether disclosure happens but a debate about how it happens. The

general debate is moving in the direction of more proactive disclosure. I understand the reasons for that and I see the merits of it. What I do not know is at what boundary those debates will settle. They are not purely Scottish debates.

Murdo Fraser: Okay. I will perhaps put that question again in a slightly different way. All I am trying to draw out from you is whether, as a matter of principle, you accept that there should be disclosure.

Sir John Elvidge: As a matter of principle, I certainly accept that there should be disclosure. The arguments about proactive disclosure are different. When we disclose proactively, we are putting into the public domain detailed information about individuals. The question that we always have to ask is why are we doing that and what is the public interest reason for it. I know that some people take the view that absolutely anybody who is paid from the public purse should expect their rights to privacy to be negated as a consequence of that fact. That is not the view that I take, and it is not where the general debate seems to be. The question that one must ask is when does the public interest that would be served by proactive, automatic disclosure, as opposed to selective disclosure for a reason, override the rights that people who are employed in the public sector share with other citizens. Self-evidently, that is not the most straightforward debate in the world.

In the past, the line has been drawn around the groups of individuals who control the running of public sector organisations. It is around the remuneration of those groups of individuals, such as the board of the Scottish Government or the board of Transport Scotland, that the line is currently drawn, although the debate is moving in the direction of disclosure of the remuneration of a wider range of people, perhaps by reference to post or salary. I can see the debate, but I cannot yet clearly see the principles that will determine the outcome of it.

My objective is that we should fit into a pattern of best practice. That is why the interaction with the wider debate is important, as I said in my opening remarks.

Murdo Fraser: The way in which you have set that out is extremely helpful.

How do you think that we will come to a conclusion in that debate and who will help us to do so?

Sir John Elvidge: That is a jolly interesting question.

The UK Government will have a significant role to play in formulating general propositions on that. The issue for us will be about where there might be a case for a different approach to be adopted in

Scotland, in so far as we have authority to depart from the general UK position. The drawing of conclusions, or at least the formulating of propositions that might be consulted on is likely to take place at UK level, and there is a reasonably active debate between the UK Government and the Westminster Parliament on those issues.

Willie Coffey (Kilmarnock and Loudoun) (SNP): Good morning, Sir John. I will stick with the issue that Murdo Fraser raised in relation to paragraph 8 of your response to the convener. You say that employment contracts do not always include an obligation to disclose remuneration. We have talked about that in general terms. I hope that you agree that there is a perception that the public want to know more about the salaries, bonuses, expenses and compromise agreements of senior staff. The direction of travel that you describe is to be welcomed.

Is the shift towards greater openness such that we should obtain people's agreement at the contract stage, when we take them on, to the disclosure of such matters, should something subsequently happen that would require that, or do you still think that that would be overridden by guidance such as that which is contained in the financial reporting manual? What are your views on that? Will we eventually arrive at a point at which there is a shift in the balance whereby we favour what the public want to know rather than what the private individual wishes to keep private?

10:30

Sir John Elvidge: Yes. It is my unequivocal view that that is the direction of travel—I am quite clear about that. As I said to Mr Fraser, I can see the direction of travel clearly enough, but I cannot see the end point of the journey.

At the risk of getting abstract and philosophical on you, I suggest that privacy is a social construct in individual societies. Where the boundaries of privacy lie is a judgment that each society makes for itself, and societies make different judgments on that at different times. Nevertheless, I recognise the point that you make, that we seem to be seeing a shift in social views about boundaries of privacy. That is observable, and it is one of the things that make me think that the direction of travel is clear.

Willie Coffey: What is your view on the specific point about the contract, though? Do you think that we can do something at this stage, even in the framework in which we are living? In taking people on, could we ask them to consent to disclosure if something were to happen subsequently during their employment, or would we still be bound by the framework and rules within which we operate?

Sir John Elvidge: My honest answer is that I am not certain. I am convinced that everybody wants to explore how far in that direction we can go. Broadly speaking, I think that there are separate issues for us in relation to those who are employed below the senior civil service and those who are employed in the senior civil service. I do not have the same flexibility to make a determination about the nature of standard contracts for the senior civil service that exists in relation to staff who are below the senior civil service.

The question is whether that is in line with general expectations of what employers ask of people or whether one might be creating a barrier to recruitment. It would be asking someone to sign up for disclosure in future circumstances of which they could not possibly have any knowledge. It would be asking them to agree in advance to disclosure irrespective of the circumstances in which they may find themselves. Typically, people are reluctant to enter into contractual conditions whose consequences they cannot predict. It is roughly the equivalent of—although not as immediate as—saying to people, “We will pay you whatever we feel like paying you at the time,” rather than giving them certainty about what they will be paid.

Everybody wants to get as far with disclosure as they can and I suspect that, if making it a mandatory stipulation that people agree to disclosure in all circumstances proved feasible, that is where we, as employers, would like to get to. However, a contract is a relationship with two sides and what the employer wants is not the only consideration.

Anne McLaughlin (Glasgow) (SNP): We have referred to the fact that the UK Treasury has been consulting on proposals to amend the reporting of civil service exit packages in the accounts, among other things. In paragraph 11 of your letter, you rightly say that you are going to wait for the outcome of that consultation. However, you then state:

“Nevertheless, we believe that we should operate on the basis that disclosure will be expected, other than in exceptional circumstances.”

What exceptional circumstances do you have in mind? Can you give us an example?

Sir John Elvidge: I will try, although “exceptional circumstances” is a phrase that allows for the fact that none of us can imagine every possible future circumstance that might exist.

The most obvious situations are those in which the individual already has the right to refuse disclosure and exercises that right, or in which the individual can—exceptionally—make a compelling

case that disclosure would have consequences that are disproportionate to any benefit.

I will hypothesise—I do not have specific cases in mind. Let us imagine a case in which the disclosure of information about an individual would impact negatively on the interests of third parties. In such situations, one might at least pause and ask whether there is an overriding argument against disclosure. I do not find it particularly easy to think of cases in which that would be so, but I can imagine the theoretical possibility.

Anne McLaughlin: Who would decide which circumstances were exceptional?

Sir John Elvidge: Ultimately, we have to decide the terms on which we employ people. In so far as that is bound up with the initial discussion pertaining to their employment, it takes us back to the question of contracts. In that context, it is us.

Where it is not a contractual right of the individual, then again, ultimately—well, in some circumstances, it is us, as the individual. I am sorry—I am trying to get my logic clear. If there is an agreement to be disclosed, it is always us, ultimately. There will be cases in which, if we make it plain that we intend to disclose, the result will be that one will not have an agreement with an individual. However, that is not what my words are intended to cover; my words must cover circumstances in which there is something to disclose, rather than those in which there is not, because an agreement was never reached.

I am sorry if that was a convoluted answer, but trying to imagine the circumstances in which a general principle would not apply is not the most straightforward thing to do.

The Convener: Let us now move on to the specifics, dealing first with Transport Scotland. Before I invite members to ask their questions, it would be useful if you could clarify some aspects of detail.

Dr Reed indicated that he wished to exercise his right to take early retirement. Is that right?

Sir John Elvidge: No. As he said in his evidence to the committee on 14 January 2009, he was not taking early retirement; he was over the age of 60.

The Convener: Sorry.

Sir John Elvidge: He said that, if it was in the interests of the business, he was prepared to go before the end of the period to which he was contractually entitled to employment. It is important to be clear about this. He did not say, “I want to go”; he said that he could see that there were reasons why it might be in the best interests of the business to change chief executive at a certain point in the cycle of the business of the

organisation. He was prepared to go, in those circumstances.

The Convener: So Dr Reed approached Paul Gray and said, "If it is in the best interests of the business, I am entitled to go just now—I can go on my pension. It is not early retirement; I have the legal entitlement to go, and I am prepared, in the best interests of the business, to leave early if you think that that will help." And you said yes.

Sir John Elvidge: Yes.

The Convener: He made that generous offer to go in order to help the business, and he was at an age and had the length of service that gave him entitlement to his pension.

Sir John Elvidge: Let us leave length of service aside for a moment, because there are two different issues here. He was at an age at which he was entitled, if he left, to take his pension immediately.

The Convener: Without any clawback, which is sometimes available if someone goes early.

Sir John Elvidge: Yes.

The Convener: So he was entitled to the full pension that he had accrued.

Sir John Elvidge: Yes—he was entitled to the pension that he had accrued; that is why I am putting to one side the length of service issue. He had not maximised his pension entitlement. Had he stayed in employment, his pension entitlement would have grown.

The Convener: Right. And he retired under civil service pension conditions.

Sir John Elvidge: Yes.

The Convener: How does that scheme operate? Is it on a system of eightieths, fiftieths, sixtieths or seventieths?

Paul Gray: It is on a system of eightieths. So that there is no lack of clarity, I should say that I do not have the precise details of Dr Reed's length of service in front of me, but the general provisions of the civil service pension scheme are based on eightieths, and a lump sum is associated with that.

The Convener: Yes—and the lump sum is usually three times the pension that a person leaves with.

Sir John Elvidge: We need to be a tiny bit cautious here, because there is now more than one civil service pension scheme. The long-standing civil service pension scheme has been superseded by two alternative pension schemes.

The Convener: Let us leave the alternatives aside and focus on the scheme under which Dr

Reed left. You would know about that scheme, because you agreed to it.

Paul Gray: I am saying that I do not have the precise details of Dr Reed's pension entitlement in front of me today.

The Convener: Leaving that aside, you signed off the decision that he could leave, so you would know which of the various schemes he left under.

Paul Gray: I would, but I would need to check that for precision.

The Convener: Okay. You can come back and tell us which specific scheme it was, and what the general terms were for anyone in that scheme. How significant are the differences between the schemes? Is the system of eightieths affected?

Sir John Elvidge: Yes.

The Convener: What are the alternatives?

Sir John Elvidge: One of the schemes, which requires higher contributions from the individual, is based on sixtieths, and the lump sum is not an automatic part of the pension—that scheme gives the individual more flexibility to trade between a lump sum and the pension entitlement.

The Convener: Okay. It would be interesting to know which scheme it was, because it is clear that the scheme significantly influences what an individual gets.

For argument's sake, let us say that someone who may not have reached 40 years' service, but who had certainly reached in excess of 30 years' service, was on the system of eightieths and retired on a salary of £122,000. That would have been Dr Reed's salary at the time, because we know that he got £61,000 in lieu of six months' notice.

Someone with forty eightieths would have been entitled to a pension of £61,000 a year, and someone with 30 years' service would have been entitled to a pension of £45,000. We can assume that if it was the eightieths scheme, and if the person had somewhere between 30 and 40 years' service—which Dr Reed probably had, given that he had a long history of working in local government, Strathclyde passenger transport and so on—the pension would be somewhere between £45,000 and £61,000 a year. Is the lump sum under that scheme three times the pension?

Sir John Elvidge: Yes.

The Convener: So he would have retired on a lump sum of anywhere in the region of £150,000 to £180,000.

Sir John Elvidge: You are making an assumption that—

The Convener: But it is that scheme.

Sir John Elvidge: No—you are making an assumption that Dr Reed transferred his non-civil service employment into the civil service pension scheme when he joined the civil service, where he was employed for a relatively short time. I do not know the answer to that question.

10:45

The Convener: But the local government scheme also works on eightieths and has similar provisions. Dr Reed was at an age at which he could have taken most if not all of his pension if he did not commute it into the civil service scheme. We could be a bit out, but I am assuming that it would not be any less than £45,000 to £50,000, and it could be as high as over £60,000, with a lump sum, if that applied, of between £120,000 to £180,000. So he approaches you and says, “If it is in the interests of the service, I am prepared to go,” and you say, “Good idea,” knowing that he will go with a very generous pension and possibly also a lump sum. You decide, because it is a structural issue—we will come to that in a minute—that you will give him another £61,000. Is that right?

Sir John Elvidge: Yes.

The Convener: So he was given another £61,000 on top of what he had legally accrued and was entitled to—I am not quibbling with that aspect, as that is what is provided by the scheme. We are talking about someone going out with a pretty generous pension and a pretty generous package generally. However, you decide that, for structural reasons, it is a good idea for him to go and that you will give him £61,000 and get somebody else in, even though the only saving might have been for the period when no one was in post, because this was not a case of putting three posts into two or four into three or whatever. That is the general background.

Sir John Elvidge: That is one way of looking at it.

The Convener: Okay. What other way of looking at it is there?

Sir John Elvidge: If you were him, you would have a series of entitlements and could stay in your job and earn your full salary for the remainder of the year until you were 65. You would also increase your pension entitlement, both through time and because the base figure might change over that period. So you have all your pension entitlement in your hand and, as an individual, you are making a choice between having additional income of £X by staying in employment and considering what will happen to you if you leave employment. Your pension entitlement is a neutral element between those two choices.

There is also a framework of decisions for what happens when people leave employment. We did not think, “Let’s invent a framework for this individual case.” The civil service compensation scheme exists to create a general framework for discussions about people leaving employment. We worked within the framework of that scheme in the circumstances of this case.

The Convener: I understand that. However, Dr Reed decided, for very altruistic reasons, that, given everything that was going on at the time, it would be in the best interests of the organisation if he left, as that would enable the organisation to move on.

Sir John Elvidge: I think that you are putting his position a bit too firmly.

The Convener: For whatever reason, he decided to leave early. You told us that he approached you and said, “I think that it might be in the best interests of the organisation if I left.”

Sir John Elvidge: He did, but you are characterising that as him deciding to leave; I do not think that that is an accurate characterisation.

The Convener: He made the offer.

Sir John Elvidge: He said that he was willing to have a discussion about it in the interests of the business.

The Convener: He made the offer and you accepted it. You then decided, after he made that offer, that you would be entitled under the scheme, if the decision was made for structural reasons, to give him six months’ pay in lieu of notice, and you paid him £61,000 on that basis. Is that correct?

Sir John Elvidge: Yes.

The Convener: Okay.

Sir John Elvidge: I do not mean to split hairs, but I did not decide what we were entitled to do. We examined what his rights were in a discussion about his situation.

The Convener: I do not want to split hairs, but if he had said, “I would like to leave, as I am entitled to do, because I can take my pension,” and you had said, “That is fine. I think that, given your age and the service that you have given, we are comfortable with that, so we will part ways. Thank you very much for your long and outstanding service,” that could have been done. Instead, you decided—it was not his decision—that there were structural reasons, so you paid him £61,000.

Sir John Elvidge: If he had said, “I am going, and I do not care what you think,” that would have been his right and he would have been in one set of circumstances. However, that is not what he said. He said, “Let us have a discussion about what would be in the best interests of the

business.” Implicitly, that discussion was also about what would be fair to him.

The Convener: I do not dispute any of that. I am merely trying to establish the fact that he approached you with an offer, which you reflected on; you then decided, “Yes, that would be a good idea.” You then looked at the rules governing the situation and realised that, if his departure was for structural reasons, you would be liable to pay £61,000. If it was not for structural reasons, there would have been no entitlement to £61,000. Is that right?

Sir John Elvidge: There would have been an entitlement to three months’ salary, which would be half that amount.

The Convener: A person would be entitled to three months’ salary if you decided that you were happy for them to leave. However, that would not apply if someone just walked out the door saying, “Look, I’m leaving.” There would not necessarily be an entitlement to three months’ salary if the person just said, “I have had enough.”

Sir John Elvidge: You are absolutely right—

The Convener: It seems that you decided, “That is a good idea. We can either let you go with three months’ salary or with six months’ salary if the departure is for structural reasons.” I will come back to those issues. George Foulkes and Cathie Craigie have some further questions.

George Foulkes (Lothians) (Lab): Good morning, Sir John. I thank you for your helpful written reply to the convener’s letter, which asked various questions. In paragraph 14 of your letter, you state:

“I had identified the need for a re-examination of the structural relationship of Transport Scotland”.

When did you identify that need?

Sir John Elvidge: I had been thinking about that in the course of 2008.

George Foulkes: When did you come to a conclusion that that was required?

Sir John Elvidge: Do you mean was there a single moment when I thought, “Yes, we must do this”? I am not sure that it works quite like that.

George Foulkes: So you do not have the dates on which you made decisions. When did you intimate to Transport Scotland that you thought that a restructuring would be appropriate?

Sir John Elvidge: I intimated that to Transport Scotland in a sense when I intimated to Dr Reed that this was part of our thinking, but I did not—

George Foulkes: When did you intimate to him that that was part of your thinking?

Sir John Elvidge: In the course of the discussions about whether there were business reasons for him to go.

George Foulkes: Can you give us a date or a month?

Sir John Elvidge: I cannot do that without checking.

George Foulkes: You knew that you were appearing before the committee today. You knew that you had written that down. Presumably, you might have anticipated some of the questions that we might ask.

Sir John Elvidge: I might have anticipated some of those questions.

George Foulkes: Did you not anticipate that some of us might want to know when that was communicated to Dr Reed? Whether you made that decision before or after Dr Reed decided to take that option is absolutely material to the whole issue that the convener has pursued.

Sir John Elvidge: It is material up to a point. As I have said, the issue was in my mind before Dr Reed intimated that he was open to a discussion about whether he might leave the organisation.

George Foulkes: When did he intimate to you that he was open to such a discussion? You state in your letter that

“He expressed this view to me in discussions during the final quarter of 2008.”

Can you tell me exactly when?

Sir John Elvidge: I could probably do that by checking my diary, but I do not have that information in my head.

George Foulkes: Did you not anticipate that we might ask about that? Absolutely material to the whole issue that the convener has been pursuing is whether your decision to restructure came before or after Dr Reed’s decision to go.

Sir John Elvidge: I have just told you. It came before.

George Foulkes: Which came before?

Sir John Elvidge: My thinking about restructuring came before Dr Reed’s conversation with me.

George Foulkes: When did you tell Dr Reed about that thinking?

Sir John Elvidge: In the course of the discussions, out of fairness, I made Dr Reed aware in general terms that there was a structural dimension to our thinking. However, I did not set out to have a discussion with him about what the structural changes would be.

George Foulkes: Okay. Let us examine your decision, then. You say in paragraph 14 of your letter:

"In particular ... it had been 3 years since the Agency's inception".

Is it part of your policy to review the position of chief executive after three years? Dr Woods might be interested in your answer.

Sir John Elvidge: You are talking about two separate issues: whether I review the position of chief executives; and whether I review structural issues.

George Foulkes: Well, the two are—

Sir John Elvidge: No, they are not; they are completely different subjects. As it happens, the civil service has a general policy for people who move towards being four years in any post of reviewing whether they are still the right fit for a post. The requirements of posts change over time, and the person who is absolutely right for a job at one point in time may not be absolutely right for that job four years later. Right across the board, we have a general policy of looking at individuals in that position. However, that is not what happened here. What I did was look at a major and relatively recent shift in organisational structure. The decision to create Transport Scotland was a major machinery-of-government decision by the previous Government. Three years or so in, I thought that it was the right moment to ask, "Has this machinery-of-government change delivered the aspirations that underpinned it? Is it still the right machinery-of-government arrangement for the circumstances that we are now in?"

George Foulkes: Okay. Well, can you tell the committee what changes there have been in the machinery of government—the structure of Transport Scotland? How is the situation different from what it was when Dr Reed was in charge?

Sir John Elvidge: It is not substantially different at the moment, but a significant amount of review work has been proceeding. We may make an announcement about those issues shortly, but I cannot pre-empt that.

George Foulkes: But you made that decision in the final quarter of 2008, and it is now 2010.

Sir John Elvidge: I know.

George Foulkes: So Dr Reed left his post in February 2009, on the basis that you were restructuring. It is now a year later, but you have not made any decisions yet about restructuring.

Sir John Elvidge: That is right. We are talking about the right structure of government to administer more than £2 billion of public expenditure.

George Foulkes: We know that, but—

Sir John Elvidge: I do not make those decisions overnight. I did think that we might come to some decisions quickly. One of the first things that I asked the new chief executive to do was to have a fresh look at the situation and tell me whether he thought that there was a clear-cut and overwhelming case for changes that we might act on in the short term. His advice was that the issues were more complex and would require more extensive work, which is why we have undertaken more extensive work.

George Foulkes: And that is irrespective of the fact that you said in reply to me earlier that you had considered and discussed restructuring during all of 2008—it was the subject of detailed discussion.

Sir John Elvidge: No, not detailed discussion. Just because I can see that there is a major issue, that does not mean that I know what the right solution is going forward. It is perfectly reasonable to say that there is a question to be answered but not to know immediately what the answer is.

George Foulkes: But you obviously chose your new chief executive—in rather a strange way, by the way—

Sir John Elvidge: There was nothing strange about it whatsoever.

George Foulkes: We will no doubt come back to that. In fact, you said that he was selected

"taking into account the skills and experience required for the post, from the group of around 40 Director level staff".

David Middleton was at the Scotland Office, which I know quite well. He was previously head of local government and external relations, and head of agriculture. What has that experience got to do with running Transport Scotland?

Sir John Elvidge: You are being a bit selective about his career.

George Foulkes: But that is his career in the Scottish Executive.

Sir John Elvidge: Well, it is his career in the Scottish Executive, but previously in his career in Scotland he had been a head of one of the transport divisions and a head of one of our finance divisions, so he had a useful combination of experience and skills.

11:00

George Foulkes: More so than any of the other 40 director-level staff?

Sir John Elvidge: That was my judgment.

George Foulkes: Why did you not consider anyone else? Did you intimate to people within the

Scottish Government or Scottish Executive that the post was vacant?

Sir John Elvidge: Who else do you expect me to have considered?

George Foulkes: I am asking the questions. Did you intimate to people in the Scottish Executive that the post was vacant?

Sir John Elvidge: No. I—

George Foulkes: No, you did not. So you just considered people whom you wanted to take on the job.

Sir John Elvidge: No, I considered the entire population of people who were already at that level within the Scottish Government.

George Foulkes: The post was not publicly advertised and it was not intimated around the Scottish Executive so that anyone could apply. You just chose your man to do your bidding. Is that right?

Sir John Elvidge: I and the board, as we frequently do, reviewed the stock of people whom we had at a particular level and made a choice from the skills that we had available. This is entirely routine practice.

George Foulkes: It may be routine practice, but is it sensible, wise and appropriate, in appointing someone to a position as important as that of the head of Transport Scotland, who is now responsible for the Forth replacement crossing and a range of other major things, to appoint someone internally who has almost no experience of the area? Is that appropriate? Is that sensible?

Sir John Elvidge: You can malign David Middleton's reputation—

George Foulkes: I am not maligning him.

Sir John Elvidge: Yes, you are. You are implicitly criticising his fitness to do the job.

The Convener: I am going to move on—

George Foulkes: I am asking a question.

The Convener: No. Excuse me—

Sir John Elvidge: Of course I thought it was sensible, or I would not have done it.

George Foulkes: I am grateful to you for your answers, Sir John.

The Convener: Okay. Thank you for that, Sir John. We remain on structural changes. I call Murdo Fraser.

Murdo Fraser: Will you remind me when Transport Scotland was set up? Was it in 2005?

Sir John Elvidge: Let me try to track it. It was a manifesto commitment before the 2003 election

and it was part of the partnership agreement in 2003. My recollection is that Transport Scotland was fully vested in April 2005. Mr Stephen might know the answer better than I do.

The Convener: The notes that we have been given state that it began to operate in January 2006.

Sir John Elvidge: Okay. Well, I may be wrong.

Murdo Fraser: Just so that I am clear, is it correct that Dr Reed was the chief executive from the outset?

Sir John Elvidge: Yes.

Murdo Fraser: He was there from January 2006, so he was in the organisation for less than three years.

Sir John Elvidge: Yes.

Murdo Fraser: Why was it felt necessary, given—

Sir John Elvidge: If my memory serves me correctly—perhaps someone can help me—I do not think that we appointed him after the organisation had formally commenced business. We appointed him to bring the organisation into existence, so he was employed for a longer period.

Paul Gray: It might help if I give the committee the facts that I have in front of me. Dr Reed joined the Scottish Government as chief executive of Transport Scotland on 8 August 2005. Before that, Dr Reed had an inward secondment from Strathclyde Passenger Transport Authority to the Scottish Government from 25 June 2002 to 31 December 2004 as a rail policy adviser. Those are the straightforward facts of the matter.

Murdo Fraser: Thank you. What I am trying to get at is this. Transport Scotland was up and running in January 2006. It was less than three years after the organisation became fully functioning when you started to come to the conclusion that it needed reform or that, as you put it, there were structural reasons why Dr Reed should be replaced.

Sir John Elvidge: I thought that there were questions to be asked. Some of the assumptions on which Transport Scotland was created seemed to me to be no longer valid. In case I frighten lots of people, let me say immediately that I had not concluded that it was wrong to create Transport Scotland or that it should be discontinued. I had concluded that material things had changed and that we needed to ask whether we still had the right organisational structure.

Murdo Fraser: Was that conclusion in any way related to Dr Reed's performance as chief executive?

Sir John Elvidge: No.

Murdo Fraser: You concluded that structural changes were required within Transport Scotland, but as of today, more than a year later, those changes have not happened.

Sir John Elvidge: Yes.

Murdo Fraser: Why was it necessary to have Dr Reed depart his post in such a rush and at a cost of £61,000 to the taxpayer if those changes have not happened a year later?

Sir John Elvidge: The structural changes were not the sole reason for the decision: there were two broad sets of considerations. One was that Transport Scotland had just brought to a natural break point three major pieces of work. Apart from the renewal of the rail franchise that we have talked about extensively, the planning of the Forth replacement crossing had reached a major break point in its development, and the strategic review of the trunk roads network had just been concluded. All those issues had occupied the chief executive considerably, and the next phase of action was going to need substantial chief executive involvement. One part of the reasoning, which was the part that Dr Reed could see, was that on two of those three fronts—the Forth replacement crossing and the trunk roads programme—the organisation was moving into major new phases of work. Dr Reed asked whether having discontinuity in the post of chief executive nine or 10 months into those new phases of work would be in their best interests. That was one dimension of the argument.

The other dimension of the argument was that I thought that it was a good time to reflect on structural issues. As I said earlier, I rather hoped that that might be a quicker process than it has turned out to be. However, the work that we have done has substantiated the view that significant and complex issues had to be explored, which is why it has taken us a long time, although I hope that we are very near to a conclusion and an announcement.

Murdo Fraser: I understand your point about the work programme, but changes in the work programme do not constitute the structural grounds that would trigger the additional payment in lieu of notice to the chief executive. So, although that might be interesting, it is not relevant to the terms of Dr Reed's departure. The only thing that is relevant to that is the structural changes. I am concerned that those structural changes that were so significant that you deemed it to be appropriate to give him six months' salary have not happened more than a year later.

Sir John Elvidge: I can understand that, but the whole case does not have to be structural. My position was that there were various reasons why

it was in the interests of the business, some of which were slightly intangible value-for-money reasons. Effective management of the trunk roads programme and the Forth replacement crossing project—the largest single capital infrastructure project that we have ever progressed in Scotland—include substantial value-for-money issues. Ensuring that we are managing those projects in the most effective way possible is about value for money.

The fact that part of the case was structural led us to the conclusion that we would have been being dishonest in our dealings with Dr Reed if we had not acknowledged that there was a structural dimension to our side of the decision.

Murdo Fraser: I have a final question, which I must put to you, Sir John. Had none of this anything to do with the concerns that had been expressed by Audit Scotland and others about the director of finance and corporate services at Transport Scotland?

Sir John Elvidge: It had nothing at all do with that. I delayed Dr Reed's departure slightly because he was so keen to come, as the accountable officer, to the committee to articulate the views that you heard from him. It will not have been lost on you that Dr Reed had strong views about the Audit Scotland report on the First ScotRail refranchise, and strong views about the implicit criticism of the governance of the organisation under his leadership. There was no element of wanting to get him out of the line of fire on those things, nor was the fact that those things had happened any part of the case. Although, as I said earlier, the governance around the interests could have been better conducted, I absolutely share Dr Reed's view that the fact that there were flaws in the governance had no material influence on the First ScotRail refranchise. There was nothing in that episode that would have led me to form negative views of Dr Reed's capability as a chief executive.

The Convener: Can I just stick with that for a moment? You have said this morning that a range of issues were involved in deciding whether it would be appropriate to allow Dr Reed to go. In paragraph 15 of your letter to us, you say:

"The contractual terms of Dr Reed conferred an entitlement on him of six months notice ... if structural grounds were involved. Consequently, we took the view that he was entitled to rely upon the longer period of notice ... and I agreed to payment on this basis."

That is, you agreed to payment on the basis that structural grounds were involved. So, the reason for the payment had nothing to do with the other factors; it was based purely on structural grounds. Yet, we have heard this morning that there were no structural grounds—there has been no change to the structure.

Sir John Elvidge: That is not the same as saying that there are no structural grounds. If I may say so, that is a complete distortion of the arguments.

The Convener: Okay. Forgive me—I do not operate at the same level as you. Nevertheless, a payment on the basis of structural grounds indicates to me that there is going to be some change to the structure, but there has been no change to the structure. For the life of me, I cannot see where the structural grounds are.

Sir John Elvidge: You may see when we complete the process of considering the structural issues.

The Convener: That may or may not happen at some time in the future—Dr Reed could have stayed and you could have made the decision about his going at that point. Nothing happened after you decided to use £61,000 of taxpayers' money on the basis that there was a structural change. There was no change to the structure, irrespective of the fact that you have in your head a change that might happen in the future. Nothing has happened in that period. Is that correct?

Sir John Elvidge: There have been modest structural changes during that period

The Convener: What “modest structural changes” took place—as a result of the chief executive leaving and a new chief executive coming in—that were pertinent to that post?

Sir John Elvidge: You are right to believe that they are not related to the chief executive post. There have been structural changes—

The Convener: So, we did not need to pay £61,000 to make those structural changes.

Sir John Elvidge: No: my view was that, if we were to take a completely fresh look at a range of structural issues, we would be assisted in doing that by having a chief executive bringing a fresh pair of eyes to it. This was not a set of issues specifically about whether there was a structural change around the chief executive post. There were a range of structural issues that I wanted to examine, and I wanted a fresh look at those issues.

11:15

We experimented with some structural changes including, as you know, changing the organisation of Transport Scotland's finance function and pushing together two senior posts for a period to see whether that gave us a better functioning solution. However, there were—and are—wider structural changes that I think might be possible. You are right to say that at that stage I did not know how long it was going to take to get the

answer to that. However, I was clear that it would be difficult to start the process without a fresh pair of eyes.

The Convener: Yes, I know, but let us suppose for argument's sake that it was decided to reduce six clerical and administration posts in Transport Scotland to three. Would such a structural change, which has nothing to do with his post, be sufficient to justify paying the chief executive £61,000 to leave?

Sir John Elvidge: It would not, in my view, but you are making a false comparison. A decision on the structure of the board on which the chief executive works is a decision that cannot, in my view, be taken without the chief executive's engagement. I have been talking not about clerical assistants, but about board-level posts. I understand that you are frustrated that the structural change has not yet happened. I hoped that we would be able to get to structural changes earlier that would give us a better way of handling the whole of the Scottish Government's transport business, but we are not there.

The Convener: Are the changes that you are about to make with Mr Middleton in post solely dependent on Dr Reed's having left when he did?

Sir John Elvidge: No. As I have said, I thought that the examination of a series of choices, some of which might not necessarily be perceived as being in Transport Scotland's organisational interests, would be better conducted using a fresh pair of eyes. That was why there was a structural dimension. It is not necessary for 100 per cent of the reasons for Dr Reed's departure to be structural for there to be a structural element to all this. In my view, we would have been dishonest in our dealings with Dr Reed not to have acknowledged that one half of the argument was structural.

The Convener: So—one half of the argument was structural. Can you confirm for the record that at the time of the audit you did not mention that there were structural reasons and that what you mentioned were exceptional circumstances?

Sir John Elvidge: Audit Scotland had no dialogue with me whatever.

The Convener: Okay—not with you, yourself. When I say “you”, I am speaking about you collectively. When Audit Scotland discussed with your team the reasons for Dr Reed's departure, structural grounds were not mentioned. Instead, what was mentioned were exceptional circumstances.

Sir John Elvidge: I cannot pretend to know the detail of all the exchanges with Transport Scotland.

The Convener: Okay. Would Paul Gray know?

Paul Gray: No, convener. That is largely because I was not there in the intervening period. If it is helpful, we can try to find out, but I just do not know and would not pretend to know.

The Convener: As staff from Audit Scotland are with us, we can establish whether Audit Scotland was told that. Do any of you have any documentation or information that might confirm whether or not that was what was said?

Mr Robert Black (Auditor General for Scotland): The section 22 report advised the Parliament that the chief executive's contractual notice period was three months and went on to say:

"In this instance, the Scottish Government exceptionally agreed to pay him six months' salary in lieu of notice, totalling £61,000, along with untaken annual leave, as they considered it would provide organisational advantages in respect of Transport Scotland's delivery"

of the

"programme."

That was the basis on which we put the report together.

As you can imagine, I have asked the Audit Scotland team about this and my understanding is that they were informed that there were exceptional grounds. That is helpfully explained in Sir John Elvidge's letter, in which it is stated that, in this case, the exceptional grounds involved restructuring. As a result, there is a clear link from our report to Sir John's letter.

Sir John Elvidge: I would like to try to help the committee. The handling of the matter has cast the spotlight on a potential flaw in our arrangements for liaison with Audit Scotland. It is entirely natural that Audit Scotland should conduct its audit of Transport Scotland in discussion with that body, but issues that were dealt with in the Scottish Government, not Transport Scotland, came into the realm of the issues that were considered. I do not think that we tied together the communications between the three entities as well as we might have done.

The Convener: Okay. Thank you.

Willie Coffey: I would like to return to points that were made about the appointment of Mr Middleton before the lengthy conversation that has just taken place, and which Sir John Elvidge has not had the opportunity to answer. It has been said that the man was somehow hand picked without due process being carried through and that he had little or no experience to do the task for which he was appointed. Would Sir John respond to that and clarify the position for the committee?

Sir John Elvidge: It is not our general practice, or it certainly was not at the time, to cast open, on

their becoming available, each of our senior posts to self-nomination from our senior civil service population. There are significant issues to do with disruption to business—to service to ministers and effective management of the organisation—around moving individuals at particular times. Our normal process is that the board will consider the need to fill a post and the pool of talent that is available to us, and judge how we can best deploy that pool of talent, or whether we need to go outside it to meet the requirements of a post. In the case in question, we did exactly what we do across the range of our director posts.

I am anxious not to turn the meeting into a confirmation hearing about Mr Middleton's ability to do the job. The committee is well placed to judge Mr Middleton's stewardship of Transport Scotland through its ability to examine him as the accountable officer. It was clear to me that he has a range of relevant skills and experience that make him a good fit for the post. He is a better fit for it than any other option that was available to us internally and a better fit than I thought I was likely to get through going to external competition at significant additional cost.

The Convener: It is right to put on the record that we should not cast any aspersions on Mr Middleton in any way. He will be proven on the basis of what he delivers, and his record of achievement will be examined through the normal routes of accountability.

I accept the point that you make about the costs involved in external advertising, but some very senior posts in the civil service are not filled through people expressing an interest in them. They are not even advertised internally, never mind externally; rather, you decide who you think the best person would be and then appoint them.

Sir John Elvidge: There are three routes to filling posts. One route uses the existing talent of the organisation to fill the vacancy. In those circumstances, it is not our practice to have an internal competition or to advertise the post and encourage people to apply. A second route involves looking within the civil service, but not within the confines of the organisation with the vacancy. When we take that second route, we advertise the post to the entire civil service population either at that level or sometimes to people at that level and the level below. The third route involves going to external advertisement. We make a case-by-case judgment that starts with the question, "Do we think we've got someone with a good skills fit to fill this post?" What we do varies according to how we answer that fundamental question about the skills that we need and the skills that we have available.

The Convener: I accept that you and your senior staff are probably in a better position to

know the individuals you have and the requirements of the post, but in the case of a significant number of senior posts, no one is considered other than the people whom you want to consider and you make the decision on the basis of internal selection by approaching that individual. How does that fit into an equal opportunities policy?

Sir John Elvidge: We apply equal opportunities principles to the way in which we consider each pool of candidates, depending on which candidates they are.

The Convener: So when you were replacing the Transport Scotland chief executive, was it you or a team of people who made the decision?

Sir John Elvidge: The board made the decision. I do not routinely make such decisions on my own. We are talking about a resource on which the collective management of the organisation depends, and about adjustments in how we deploy that resource. Self-evidently, all my director general colleagues have an interest in the choices that we make, so it must be right that they are engaged in the decision making.

The Convener: When such a decision is made, is there a check-list and a sign-off to ensure that equal opportunities policies have been followed properly?

Sir John Elvidge: We monitor ourselves on our equal opportunities practice. We tend to do that in the aggregate, although we would challenge ourselves—and sometimes do—if we think that there might be an equal opportunities dimension. However, where we are talking about people who are already at a particular level, we are not necessarily talking about conferring some advantage on a person. We are not talking about the same processes that happen when we promote people; we are talking about fitting people who already have a certain set of entitlements to roles in the organisation. We are not changing the number of people who hold a certain status in the organisation. The equal opportunities issues are less immediate than they would be if we were talking about changing the dimension.

The Convener: Right. Did that mindset—in which you did not necessarily confer an advantage through promotion—apply to making appointments to the Western Isles NHS Board when you sent someone up there when three chief executives were operating?

Sir John Elvidge: Although I am conscious that I have sat here in the committee's company going over the history of the Western Isles Health Board, I am not carrying the terms of service of those individuals in my head.

Cathie Craigie: It would be interesting to know just how many of the 40 director-level people are women.

Sir John Elvidge: A strongly increasing proportion of the 40 are women.

Cathie Craigie: Okay. Perhaps you could give me that information.

Sir John Elvidge: I am happy to do that. It is a story of which we are proud. We are doing much better than the civil service as a whole and we are making rapid progress against our own past on that equal opportunities measure. I am happy to give you the precise numbers.

11:30

Cathie Craigie: Okay. I refer back to the structural and operational changes to Transport Scotland that you were considering over the course of 2008. What did ministers know of your thoughts and the operational and structural changes that might come?

Sir John Elvidge: Ministers understand what I think the underlying issues are and they understand broadly the range of options that we are trying to analyse. When we have conclusions we shall explain to ministers the reasons for them.

Cathie Craigie: In 2008, you thought that you wanted a fresh pair of eyes to take Transport Scotland forward with the projects that were coming up, such as the Forth road bridge. Which ministers were aware at that time?

Sir John Elvidge: Aware of what?

Cathie Craigie: Aware of your thoughts for change.

Sir John Elvidge: John Swinney would have been aware of the things that were causing me to believe that there were questions to be answered and of the broad options that we inevitably would examine.

Cathie Craigie: Were ministers aware that there would be a cost to the public purse in moving someone to get in a fresh pair of eyes?

Sir John Elvidge: I do not think that ministers are under the illusion that these things happen without costs, so, in that sense, yes—but ministers do not routinely intervene in those kinds of managerial judgments.

The Convener: It is entirely proper that ministers do not interfere in managerial issues. You said that ministers were aware. Would that have been on the basis of a verbal conversation? Would they have been notified?

Sir John Elvidge: It would be on the basis of conversation.

The Convener: Right, so there would be no record of any memos saying, "We're thinking of changing," or, "We advise that change is probably best."

Sir John Elvidge: No, because we are not at the point of advising that there should be structural changes. At the point at which we say, "Here's a structural change of sufficient significance that it affects your interests," of course we are more formal in our engagement with ministers.

Nicol Stephen (Aberdeen South) (LD): I want to return briefly to the three options. The first is the one that was chosen—a managed move. The second is advertisement within the civil service. Is that within the United Kingdom civil service?

Sir John Elvidge: Yes.

Nicol Stephen: So if you decide to go down the advertisement route, everybody throughout the UK is aware.

Sir John Elvidge: Yes, you go to the whole field.

Nicol Stephen: The third option is external advertisement. You refer in your letter to a Public Administration Select Committee report, which you say criticised too much external advertisement. Was any element of that a criticism of the Scottish practice?

Sir John Elvidge: The report looked at the aggregates, not at Scotland separately.

Nicol Stephen: You decided to take the managed move route, which focused on the 40 individuals at senior management level. What job was David Middleton doing at that time?

Sir John Elvidge: At that time he was head of the Scotland Office in Whitehall.

Nicol Stephen: Is that a Scottish Executive position?

Sir John Elvidge: He was on our books, as it were. He is one of our employees, therefore he is our permanent responsibility. The fact that he is temporarily somewhere else does not take him out of our pool of people whose careers we are responsible for.

Nicol Stephen: Does that apply to all Scotland Office civil servants?

Sir John Elvidge: No. Others will be in the ownership of other bits of the civil service.

Nicol Stephen: But none of the Scotland Office individuals is within the employ of the Scotland Office.

Sir John Elvidge: The Scotland Office does not exist as a separate employer. It is a part of the Ministry of Justice for employment purposes.

Some of its staff will be Ministry of Justice employees and some will be employees of other bits of Government.

Nicol Stephen: Some of them are Scottish Executive.

Sir John Elvidge: Yes, some of them are Scottish Executive.

Nicol Stephen: Do you know how many? Are there several?

Sir John Elvidge: There are several, but I cannot give you a precise number off the top of my head.

Nicol Stephen: That is extremely curious. I learn things every day. That is very surprising to me.

The Convener: If there are no more questions, we will move on to the Mental Health Tribunal for Scotland Administration. We have some specific questions, but we also have some general issues. I know that Anne McLaughlin has a particular interest, but before we come to her I want to ask about the pension arrangements that are referred to in paragraph 27 of Sir John Elvidge's letter, which states:

"As the Auditor General's report indicates, the MHTSA contribution to this future liability of £344,000 in total is calculated as £297,000".

When did the president whose tenure we are considering take up employment?

Dr Kevin Woods (Scottish Government Director General Health and NHS Scotland): First of all, convener, she is not employed, she is appointed—

The Convener: She is appointed by the Crown; I beg your pardon.

Dr Woods: That is important in the overall context. She took up her appointment in February 2005.

The Convener: So she operated from February 2005. When did she leave that post?

Dr Woods: I think it was November—

Geoff Huggins (Scottish Government Primary and Community Care Directorate): It was 19 October 2008.

The Convener: So she left in October 2008, but effectively had not been available, although she was still on pay and rations, from—which date?

Geoff Huggins: It was 14 November 2007.

The Convener: So between 2005 and 2007 she operated as normal—I will leave the background aside for the moment—and from 2007 to 2008 she was not available but continued to draw a salary. Therefore, for her three and a half years in that

post, the Mental Health Tribunal's pensions liability is £297,000.

Dr Woods: I would need to check the calculations, but I think I understand what you are doing. We would be happy to give you a note of precisely what the figures are.

The Convener: No, Sir John told us that it is £297,000. He wrote:

"As the Auditor General's report indicates, the MHTSA contribution to this future liability of £344,000"—

which is her future pension liability—is £297,000. She was in position from February 2005 to October 2008, notwithstanding the fact that she was not there for nearly a year. If that final period is included, that is three and a half years and the Mental Health Tribunal has a liability of £297,000. Is that right?

Dr Woods: Yes, it is £297,000. I am sorry, but I thought that you were pursuing a slightly different point. That is correct.

The Convener: The public purse therefore has to contribute £297,000 to her pension entitlement for her three and a half years, a year of which she was not about.

Dr Woods: Yes.

The Convener: That is a very generous arrangement, is it not?

Dr Woods: Her pension is analogous to the judicial pension scheme.

The Convener: Indeed. It is a very generous arrangement.

Dr Woods: I am not sure what you want me to say.

The Convener: Do you not think that it is generous?

Dr Woods: It is the pension scheme that was offered with the appointment.

The Convener: Okay. I know that Sir John is exercised about future public spending, and some of this is a UK matter, but I hope that we will start to examine such arrangements, which leave the taxpayer paying huge amounts of money for relatively little service. Given how people's lives have been blighted by losing their jobs and that they are struggling to make ends meet, it is a scandal that we find that a very small number of people in this country can do so well out of a couple of years' service. It is shocking.

Anyway, leaving that aside—I accept that it has nothing to do with you, nor with the individual we are discussing—that is the arrangement, and we, the taxpayers, must find £297,000 for that short tenure.

Anne McLaughlin has some general issues to raise about the allegations.

Anne McLaughlin: Paragraph 20 of the letter refers to "certain serious allegations" that were made against the president of the tribunal in November 2007, and the conclusion came in February 2008. Can you tell us anything about the substance of the allegations and the conclusions that were drawn?

Dr Woods: I will be as open and frank about that as I can be. It is important to mention that there are third-party interests, which we all need to respect. It might be helpful if I say a bit about the background and deal with the issue of the allegations. They essentially relate to issues of behaviour—intimidating behaviour, bullying and harassment—and I will be happy to elaborate later in my answer. There is an important point that I wish to stress at the outset: this issue concerns a ministerial appointment to a judicial position, and the powers of ministers in this regard are very different from those that apply to our earlier discussion in the context of employment law. That theme will run through much of our evidence.

Complaints about conduct emerged at the back end of 2006, and there was a process of discussion with the president about some of those concerns. By March 2007, the relevant minister at the time, Lewis Macdonald, had decided to invite the Lord President of the Court of Session to convene a disciplinary committee to investigate the concerns. The procedure for that is laid down in legislation. I can elaborate on the nature of the procedure, but it is set out in regulations associated with the Mental Health (Care and Treatment) (Scotland) Act 2003. The disciplinary regulations were laid in 2004.

11:45

The disciplinary committee that was established undertook its investigations into the concerns, and it eventually submitted a report to ministers on 25 February 2008. The committee made five findings relating to intimidating conduct, bullying and conduct associated with harassment. To give the committee a sense of the nature of those findings, I will quote one of them in an anonymised way:

"From a specified date the respondent engaged in a course of intimidating and bullying conduct towards junior members of staff working within the Tribunal, bypassing or ignoring recognised procedures and systems; summoning them to meetings where they were criticised, causing them upset and distress, contrary to their entitlement as members of the staff of the Scottish Government and to the Scottish Government Code of Conduct on Dignity at Work".

There were five findings of that nature.

The overall finding of the disciplinary committee was that the

“conduct amounts to misbehaviour in terms of Schedule 2, Part 1, paragraph 5(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003.”

However, the committee concluded that the president should be allowed to remain in office and it refrained from a recommendation that she should be removed from office, on the understanding that new working arrangements were to be put in place and that further training and management development would be provided for the president.

That is the background to the allegations. As I said, it is difficult to talk more specifically because of the interests of third parties. I hope that the committee will understand why that is the case.

The Convener: I accept that. We will not go into any detail that might prejudice the interests of any third parties.

Cathie Craigie: Dr Woods, I did not hear the last part, when you told us about the findings of the disciplinary committee. Did you say that, despite the five findings of intimidating and bullying behaviour, the committee recommended that the president stay in office?

Dr Woods: It refrained from a recommendation to remove her from office and recommended revised working arrangements, training and management development. Basically, at that point, she could have returned to work.

The Convener: Where was the tribunal or panel—whatever it was called—that made the recommendation drawn from?

Dr Woods: The disciplinary committee was appointed by the Lord President of the Court of Session. In this case, it was chaired by a sheriff principal.

The Convener: Were the other members sheriffs?

Dr Woods: They were not sheriffs. Perhaps Mr Huggins can remind me of the detailed background of the individuals.

Geoff Huggins: There were two further lawyers, who were identified by the Lord President. In addition, the committee was supported by other legal staff in its work.

The Convener: Could the disciplinary committee have recommended dismissal?

Dr Woods: It could have recommended that the president surrender her office.

The Convener: Who would have taken the decision? Would it have been the Crown?

Dr Woods: The disciplinary committee would have recommended that to ministers.

Geoff Huggins: Sorry, but to correct that, the disciplinary committee would have ordered the removal. That power is given to the committee under paragraph 5(2) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003.

Dr Woods: But the disciplinary committee reports to ministers.

The Convener: Sure, but ministers do not really have a locus in the issue, because if that committee made such a recommendation, that would be that, under the terms of the 2003 act.

Geoff Huggins: Yes—the decision sits with the committee.

The Convener: So that panel of lawyers, who were appointed by the Lord President to investigate someone who was appointed by the Crown on generous terms, decided that what they heard was not serious enough to recommend dismissal and, in effect, let the matter go. The sorry saga then continued for a few months before the president decided to tender her resignation.

Dr Woods: It is difficult for me to comment on the disciplinary committee's findings, other than to report them factually. Ministers then had to decide what they should do. Because of what I have just said about the process, the possibilities for ministers were narrow. Essentially, ministers took the view that they had an important duty of care towards the tribunal staff—you will appreciate why—and that, for the effective functioning of the tribunal in the future, it was desirable in the circumstances that a negotiated settlement was reached with the president to enable a new president to be appointed. That is eventually what happened.

The Convener: Yes, and it is to ministers' credit that they saw that they had a duty of care and decided that something had to be done, albeit at a significant cost because of the terms that we have here. However, frankly, what was the value of the disciplinary committee if it could not come to the same conclusion? The lawyers who were looking at the lawyers thought that it was okay to continue and it was, unfortunately, left to ministers to do the right thing. If the tribunal had decided that that person had breached the terms of their appointment and should be removed, would the president have been entitled to the existing conditions—the same pension and any other financial arrangements—or, because it was a disciplinary issue, would that have resulted in a loss of entitlement?

Dr Woods: I believe that, had the disciplinary committee ordered her removal from office, that would have been the end of her entitlement.

The Convener: Correct. The future liability to the taxpayer of £344,000—including the £297,000

that the Mental Health Tribunal for Scotland is having to pay—would not have occurred if the lawyers on that tribunal had decided to remove her from office. However, because they passed the buck and left it to ministers, and because ministers properly decided to exercise their duty of care, the public purse is having to find that huge sum of money—£344,000, of which £297,000 is coming from the Mental Health Tribunal for Scotland administration.

Dr Woods: I think that the pension liability would have remained up to the point of the president's departure.

The Convener: Yes, but the future liability—

Dr Woods: I believe that that refers merely to the fact that the provision has to be made when the pension becomes payable.

The Convener: That may be. However, I presume that something was built in not only for the extra time for which that person was in post, but for any agreed period that would help to enhance that. Are you saying that, in a disciplinary situation, people leave with everything intact?

Dr Woods: What I am trying to say—I would be happy to check this on behalf of the committee, as it is a hypothetical situation—is that, had the disciplinary committee ordered the removal of the president from office, she would still have been entitled to her accumulated pension. I think that that is the situation, but I would be happy to check that on behalf of the committee.

Geoff Huggins: Neither the regulations that provide for the establishment of the disciplinary committee nor the legislation that provides for its sanctions provides for any sanctions beyond dismissal. They do not say anything about other entitlements that may have been accumulated.

The Convener: Which legislation covers that?

Geoff Huggins: It is covered by schedule 2 of the 2003 act and also by regulations that were made by Malcolm Chisholm in 2004.

The Convener: For pensions?

Geoff Huggins: No, sorry.

The Convener: I am talking about the pension entitlement. Where is that covered?

Geoff Huggins: The pension is somewhat complex, in that the scheme that was developed for the president was based on the judicial pension scheme that is operated by the Ministry of Justice but it is, effectively, a separate, external scheme, because during the period in which we were developing it that scheme was closed. We could check what the rules are in respect of the consequences of disciplinary action by reference to the Ministry of Justice scheme.

The Convener: That would be helpful.

Dr Woods: Just for the avoidance of doubt, the full title of the regulations that apply to the disciplinary committee is the Mental Health Tribunal for Scotland Disciplinary Committee Regulations 2004 (SSI 2004/402).

The Convener: Thanks.

So the situation is that a significant power was available to the disciplinary committee, it decided that it was not appropriate to exercise that power, and it effectively left the matter to ministers who, to their credit, decided to exercise a duty of care, which led to something happening.

Dr Woods: Yes. In fact, members of the committee are the only people with the power.

George Foulkes: What did the president do before she was appointed president of the tribunal?

Dr Woods: She was an advocate. Before that, she was a psychiatric social worker, I believe.

Geoff Huggins: The regulations require that the person who is appointed to be president be either an advocate or a solicitor of seven years' standing.

George Foulkes: And she was appointed by ministers.

Geoff Huggins: Yes.

George Foulkes: On whose recommendation?

Dr Woods: If I may describe the process—

The Convener: Could you just clarify that? Is it not a Crown appointment?

Dr Woods: The appointment is made by ministers.

The procedure is that appointments to the tribunal by ministers fall outwith the regulatory role of the Office of the Commissioner for Public Appointments in Scotland—that arrangement was agreed to by the commissioner. However, we have conducted appointments to the tribunal, including the president, in accordance with the practice that we follow in relation to OCPAS. The post was advertised in 2004, a panel was established and people were considered on merit. Arising from that process, a recommendation was made to ministers, and the minister who appointed this president was Rhona Brankin.

George Foulkes: And then a Crown appointment is made.

Dr Woods: No.

Geoff Huggins: The appointment is made by the minister. It is worth saying that the panel that made the appointment involved someone who was nominated by the Lord President, which reflected

the judicial nature of the appointment. Beyond that, references were requested and received in respect of the appointment.

Dr Woods: The procedure was the one that we subsequently used for the successor to the president.

Bill Kidd: We have been talking about how the tribunal could operate without a president. In our papers, we have a note that says:

“the underlying legislation is under review and is likely to be revised to address the issues arising from the Tribunal’s inability to operate fully effectively if the President cannot continue in office.”

At present, if such a situation arose—either because of something similar to the recent circumstances that we are discussing, or because a president died in office—the tribunal would be hamstrung, as it would be unable to operate. Should we be hopeful that the situation will be changed?

Geoff Huggins: In late 2006 or early 2007, the previous Administration announced a review of the Mental Health (Care and Treatment) (Scotland) Act 2003. The review considered the functioning of the tribunal legislation to ensure that we were getting both quality and efficacy in respect of what the Parliament had wanted the legislation to deliver. In the context of that review, we have identified a number of other changes that we would want to make to the legislation.

The process that we undertook involved an external independent panel, which reported in early 2009; after that, we consulted on the panel’s recommendations about broader changes to the legislation. We will shortly offer advice to ministers on the next stage, in the hope that the changes can be dealt with in a future legislative programme.

Dr Woods: In the absence of a revision to the legislation, ministers would have two options in the situation that Bill Kidd described. One would be to make an appointment as quickly as possible to enable the tribunal to function effectively, perhaps circumventing the procedures that I described. For obvious reasons, we would wish to avoid that, but it is a course of action that would be open to us. The alternative would be to come to the Parliament to seek emergency legislation to change the regulations. Again, though, we would obviously not want to do that. We would like to do things properly in the context of the overall review of mental health legislation.

12:00

Bill Kidd: Paragraph 21 of Sir John Elvidge’s letter indicates that it took from April 2008 to October 2008 to make the arrangements to

appoint a “suitable successor” to the president. During that period, however, someone was in post acting as deputy. Could that person not have acted up as president so that the president’s contract would not have had to be maintained during the same period?

Dr Woods: The person acting could undertake those duties only with a president in post, even if the president was not at work. It would not have been possible for that person to operate otherwise. The legislation is such that we must have the president in post but not at work to enable that to happen. We indicated in Sir John Elvidge’s letter what the costs of that were. During that period, it also emerged that the post could be filled on a part-time basis. Indeed, the successor to the president was appointed on that basis.

Bill Kidd: And that is the only alternative that you could find?

Dr Woods: Yes.

The Convener: Is it a legal requirement for the pension arrangements to be linked to the judicial pensions scheme at the level of sheriff principal?

Geoff Huggins: It is not a legal requirement, but it was part of the agreement that was reached when the president was appointed by ministers.

The Convener: But that could be reviewed.

Geoff Huggins: It could be reviewed, and different arrangements could be entered into with future presidents.

The Convener: There is a person in the substantive post at the moment under the present arrangements. Who would consider future recommendations in that regard—would it be ministers?

Geoff Huggins: You are straying into asking about arrangements that have been entered into with a particular individual who is identifiable.

The Convener: No. I realise that someone is in the substantive post who has replaced the previous president. Leaving that aside, if there was a desire to break the link with the judicial pensions scheme for any future appointments, would that be a matter for ministers?

Geoff Huggins: It would be a matter for ministers, subject to what they may or may not be able to agree with people to whom they offer the post.

The Convener: Okay. Regarding the other tribunals that are referred to in Sir John Elvidge’s letter, is it the case that the Westminster Government appoints the president of the employment tribunals in Scotland and the Scottish Government appoints the president of the Lands Tribunal for Scotland?

Dr Woods: We would need to check, but I think that that is correct.

The Convener: Okay, that is fine.

Willie Coffey: May I take you back to what you said about the disciplinary committee that reported in February 2008? You determined five findings—I am trying to recall the words that you used, which concerned bullying, harassment, intimidation and so on. The result was that it was decided that new working arrangements should be put in place. I find it a bit lightweight that recommendations on those arrangements were all that emanated from your substantive findings. What were those new working arrangements supposed to be? Were the recommendations on new working arrangements hampered by your being bound by the law when it came to a successor stepping in to perform the duties of the post holder?

Dr Woods: On the first point, it was the finding of the disciplinary committee that

“The respondent accepts that she does not have any responsibility for the management, training, appointment or removal of staff. All such matters will be solely the responsibility of the Tribunal Administration.”

The tribunal administration was an executive agency. It went on to say:

“Any necessary interaction between the President’s Office and the Tribunal Administration will be conducted in accordance with protocols to be established.”

That is as far as it went. The new working arrangements would have had to be worked out. As I said, ministers, who were conscious of their duty of care, believed that the situation carried risk and that it would be better to enter into a discussion about bringing the appointment to an end.

I am sorry—I did not quite catch your second question.

Willie Coffey: It depended on your answer to the first one. Whatever the recommendations were, were they appropriate, given the substantive nature of the findings that were reached? Was implementation of the recommendations hampered by our not having flexible powers to enable an acting president to step in?

Geoff Huggins: There is no indication in the findings of the disciplinary committee that that was one of the matters that it considered material to its decision. Beyond that, I do not think that we can offer an explanation for the findings, which, ultimately, are the disciplinary committee’s.

Willie Coffey: Was the conclusion of the recommendations that it was thought appropriate to allow the person in question to return to work, despite the nature of the findings?

Dr Woods: That is indeed the conclusion that one reaches about what the disciplinary committee believed, but we have responsibilities for employees and we reached a different conclusion about the position going forward.

Nicol Stephen: You have made it clear that ministers acted speedily following the findings of the tribunal that the Lord President put in place.

Dr Woods: You are referring to the disciplinary committee.

Nicol Stephen: How was that done? How quickly did ministers have to act, presumably on the advice of civil servants? As you say, on the face of it, the person concerned would have been free to return to work immediately.

Dr Woods: I am just looking for the timeline.

Geoff Huggins: Decisions were made quickly by ministers and discussions were begun with the president and her lawyers in March. An agreement had been substantially concluded by the middle of March and it was signed and dated in May.

Nicol Stephen: Was the decision of the disciplinary committee known in February?

Geoff Huggins: On February 25.

Nicol Stephen: The end of February. How quickly thereafter were steps taken by civil servants and ministers?

Dr Woods: The matter was concluded on 17 March.

Nicol Stephen: Okay. I understand.

As well as a significant impact on the public purse, there has been an impact on good governance and on the effective operation of the Mental Health Tribunal system. Has there been dialogue with the Lord President about that following the fiasco? Has feedback been given to the disciplinary committee and its members or to the system? Have the Lord President and others been given an understanding of the consequences of what occurred, which I am sure you would agree are fairly substantial?

Dr Woods: I am not aware of any direct dialogue with the Lord President on the matter. Ministers and officials respected the decision of the disciplinary committee, which had been properly established. In respect of your comments about the impact on the organisation, it is to the great credit of people working in the Mental Health Tribunal that, in those very difficult circumstances, they sustained the operation of the tribunal throughout. I am pleased to say that, currently, the tribunal is functioning effectively.

Nicol Stephen: I will ask a final question, because, as ever, I fail to understand pensions as

fully as I would wish. My calculation is that the individual concerned was employed for just over three and a half years. Is that correct?

Dr Woods: I think that the individual concerned was employed from February 2005 until the date concerned—I just need to check whether that is three and a half years.

Geoff Huggins: Yes, it is three and a half years.

Nicol Stephen: And the salary for the job is roughly £150,000 a year. Is that right?

Dr Woods: Yes.

Nicol Stephen: I calculate that the total salary for that three-and-a-half year period would therefore be just over £500,000.

Dr Woods: I hesitate to answer, because I think that it is important to do the calculations carefully and to ensure that we are counting things properly.

Nicol Stephen: I understand.

Dr Woods: If it would be helpful to you, we are happy to set out that information.

Nicol Stephen: But, in broad terms, the figure is just over £500,000 and the pension payment that had to be made—the £297,000—is on top of salary.

Dr Woods: That is a pension liability in the accounts of the tribunal; it is not a payment.

Nicol Stephen: It is a liability of £297,000 that was incurred for a member of staff who, during their entire term of office, received just over £500,000.

Dr Woods: I think that that is broadly correct.

Nicol Stephen: I return to my earlier point: I fail to understand the detail of the pension arrangements, but that seems an extraordinary liability to have been incurred for three and a half short years of service, particularly when, I think, the individual worked for only two and a half of those years—is that correct?

Dr Woods: Yes.

Cathie Craigie: I would sum up the situation by saying that the president of the organisation would be a nice job to have—if any difficulties ever arose, the balls would always be in their court. I am pleased that the Government intends to introduce changes to the legislation. Mr Huggins and Dr Woods told us about the consultation and the processes, and Dr Woods helpfully explained the two options that are available. Obviously, my preferred option would be for legislation to be introduced as soon as possible. Do you have a timescale for that?

Dr Woods: I am afraid that I cannot comment on the timetable for parliamentary business, although I understand why you regard it as a matter that should be addressed soon. As Mr Huggins said, we have done the vast majority of the preliminary work to enable legislation to be introduced.

Cathie Craigie: As you rightly point out, it is for Government to prioritise the legislation and for Parliament to timetable it. Perhaps Sir John Elvidge can advise us whether the Government minister with responsibility for that area is likely to bring forward such legislation. I imagine that there would be cross-party consensus, and we have experience of the Parliament coming together on such issues.

The Convener: We can certainly comment and make recommendations, but it would be unfair for us to ask Sir John Elvidge to speak on behalf of the Minister for Parliamentary Business. The committee can pursue the issue if it wishes to do so.

Cathie Craigie: Okay, convener—I accept the slap down.

Dr Woods: The final point that I want to make, if I may, is that notwithstanding the comments that committee members have made on these matters, an important issue is that judicial independence must be preserved in all these arrangements. I am sure that the committee acknowledges that.

The Convener: Thank you for taking part in a fairly lengthy session on two important issues. There is some information that we look forward to receiving from you, once you are in a position to provide it; that would be helpful.

12:15

Meeting continued in private until 12:42.

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