



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 6 October 2010

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PUBLIC AUDIT COMMITTEE
16th 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)

*George Foulkes (Lothians) (Lab)

*Bill Kidd (Glasgow) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*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)

Russell Frith (Audit Scotland)

Barbara Hurst (Audit Scotland)

THE FOLLOWING GAVE EVIDENCE:

Sir John Elvidge

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 3

Scottish Parliament

Public Audit Committee

Wednesday 6 October 2010

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Hugh Henry): Good morning. I welcome everyone to the 16th meeting of the Public Audit Committee in 2010. I remind those attending to ensure that all electronic devices are switched off so that they do not interfere with the recording equipment. I welcome staff from Audit Scotland and anyone else who is attending the meeting.

The first agenda item is a decision on taking business in private. Do we agree to take items 6, 7 and 8 in private?

Members *indicated agreement.*

Section 23 Reports

“The Gathering 2009”

10:01

The Convener: The second item is the section 23 report on “The Gathering 2009”. We have with us Sir John Elvidge, who was formerly the permanent secretary to the Scottish Government. He has now left the service—I do not know whether “retired” is the right word—and is doing a lot of productive things with his life in a new environment.

Before I go into detail on the report, I beg Sir John’s indulgence while I remind committee members about matters being sub judice. I make it clear that liquidation proceedings are on-going in the courts, so members should refrain from saying anything that has the potential to prejudice the outcome of the court process, as advised by the Presiding Officer in accordance with rule 7.5 of standing orders on matters being sub judice.

Thank you, Sir John, for taking the time to come along. I know that although you have left the employment of the Scottish Government you are a busy man, so we appreciate your attendance.

We have received your written statement. Would you like to say anything in advance?

Sir John Elvidge: No, thank you—I would rather you got on with the questioning.

The Convener: Okay. Thank you.

I want to ask about communication and liaison with other public bodies. To go back to the original £100,000 grant, I do not know whether you were involved in that, but it appears that the Scottish Government did not discuss the grant with The Gathering 2009 Ltd, or the event with the existing steering group members. Was there a reason for that?

Sir John Elvidge: I was not involved in any part of making the original loan. Indeed, I was not aware until after the event that the original loan existed, so it is difficult for me to talk about the rationale for the way in which people handled that process.

Having read the Auditor General for Scotland’s report, I note that it says explicitly that the members of the steering group were not informed. In my experience, there is a lot of contact at working level between the Scottish Government and the various organisations, so I do not know whether that statement means that the organisations were unaware or simply that the members of the steering group were unaware.

The Convener: For the record, the original payment was a grant rather than a loan. The loan was a subsequent payment; I think that you were involved at that point.

Sir John Elvidge: I was not involved in any financial transactions before the event took place.

The Convener: No. At what point did you become involved?

Sir John Elvidge: I became involved in the second half of September 2009, when the company had made it clear to ministers that it could not meet its debts.

The Convener: Did ministers or other civil servants approach you at that point?

Sir John Elvidge: First of all, other civil servants alerted me to the fact that the company had communicated that to ministers, and to the possibility that complex issues might have to be considered regarding what action the Government was able to take. Then I was involved, with others, in a meeting with ministers to consider what options were available for dealing with the circumstances.

The Convener: So your involvement did not start until the second half of September 2009, but the Government had already decided to offer a short-term interest-free loan of £180,000 in June 2009.

Sir John Elvidge: Yes.

The Convener: And you had no knowledge of that.

Sir John Elvidge: No, I did not.

The Convener: Who, then, would have cleared the decision about the method that was used to justify that loan? The loan was awarded under section 23 of the National Heritage (Scotland) Act 1985, which relates to the power of the Secretary of State to make “payments”—not loans—

“to any body whose activities appear to him to be likely to promote the development or understanding of cultural or scientific matters.”

That was a very unusual route, was it not? In your experience, have other loans been given under that heading?

Sir John Elvidge: I think that my successor has provided some evidence on that. If I recall it correctly, that evidence was that it is unusual for the Scottish Government itself to use that power to make loans, because a range of non-departmental public bodies that are active in culture would normally be responsible for making loans.

The Convener: That is right. So, in your experience, that mechanism had not been not used before, given that other bodies would

normally do that type of thing. It was therefore a very unusual situation. Given that it was unusual—potentially unprecedented—for the Government to give a loan of £180,000 under the National Heritage (Scotland) Act 1985, do you not think that it should have been drawn to your attention before the decision was made?

Sir John Elvidge: I am not sure that it should. It is a good question—one of the standard tests for considering transactions is whether they are novel or contentious, to use the jargon of the trade. I can understand that someone might have considered whether they needed to alert me. Without knowing what thought process they went through, I am not necessarily surprised that they reached the view that assistance to private companies was not in itself a particularly contentious principle. Whatever process they went through, however, they did not see the need. Neither the division making the loan nor the finance directorate, which it consulted—if I understand the Audit Scotland report correctly—thought that there was an issue that required to be passed up the line to me.

The Convener: When you eventually became involved some three months later and you started to look at the issue, did you first determine who had authorised the loan?

Sir John Elvidge: No. I was not much exercised with the past at that point, because the pressing issue was that we were in a period in which, on any given day, an action by one of the creditors could have precipitated insolvency proceedings. I was entirely focused on how we might deal with the issue in front of us.

The Convener: It is understandable that you would be focused on the most pressing issue, which was the potential insolvency. However, I find it strange that when you became aware of a loan of £180,000 being made in a very unusual—perhaps unprecedented—way you did not ask who made it, which is something that we do not really know, or whether it was done properly and whether the right route was taken. This comment is not aimed at you personally, but I think that there is an organisational issue to deal with. As you will recall, our previous discussions about the capital programme highlighted that certain decisions were being made without their being flagged up to you as head of the civil service in Scotland. It seems that significant and potentially controversial decisions can be made without you or your successor having any knowledge of what is going on. Should that not be addressed?

Sir John Elvidge: At this point, I need to remember that I have no authority to speak for the Scottish Government.

The Convener: Of course not.

Sir John Elvidge: My view, though, is that there is a system of internal checks. One of the primary functions of the finance directorate, which has knowledge of all such transactions, is to act as a prompt to inform me if it thinks that something about a financial transaction might raise accountable officer issues. It is clear from the Audit Scotland report—or, I should say, from my reading of the report; I should not put words into the mouths of those in the finance directorate—that the directorate satisfied itself that there was a legal basis.

The Convener: You did not, however, ask those questions. By the time you became involved, which was in September, a decision had already been made in June to give a £180,000 loan. Things started to disintegrate very quickly thereafter, but you do not know who authorised the loan, who gave the legal advice, what advice was given or whether ministers were involved in trying to solicit some means of finding money. You became involved only when it looked as though the event itself was starting to come under threat rather than as a result of worries about the use of public funds.

Sir John Elvidge: Without pretending to know things that I do not know, I will try to help a bit. There is a clear system of financial delegation in the Scottish Government that gives people authority to make decisions within particular boundaries, and which would have given the relevant deputy director the authority to make the decision without reference to someone else. I do not know whether they did so or whether they involved their director, but I think that the system of who is authorised to make the decision is clear enough. The Audit Scotland report says that in making that decision the relevant division took the finance directorate's advice and that no one considered that explicit legal advice was needed. I must rest on the Audit Scotland report in that respect. It also makes it clear that ministers were part of the consideration of the process. Audit Scotland will correct me if I am misremembering any part of the report, but it seems to me that there is clear evidence in it of a system and a process.

10:15

The Convener: Ministers talked to officials about coming up with an appropriate solution and the suggestion was made to offer a loan. We cannot get hold of advice to ministers, under freedom of information rules, but can you tell us whether you were copied into the exchange of correspondence?

Sir John Elvidge: I cannot tell you that with any certainty.

The Convener: Do you not remember reading anything about any of it?

Sir John Elvidge: I can tell you with some certainty that I never read a piece of paper about it. It would be a bigger claim to say that I can guarantee to you that my name was not on a copy list in relation to any document.

The Convener: We cannot establish what was in the information, but we might be able to establish whether there was an audit trail in relation to who received information. We can also ask separate questions about who made the decision and when, and about what legal advice was taken.

Murdo Fraser (Mid Scotland and Fife) (Con): Sir John, will you help us with our understanding of the process? Can you give us an illustration of a circumstance in which a proposed loan would have come to your notice? Would that have been unusual?

Sir John Elvidge: It would be very unusual. The Government lending money—and lending to a private company—is not an unusual occurrence, although in general it is slightly unusual for that to be done at first hand rather than through a non-departmental public body. I cannot immediately recall an occasion during my time as permanent secretary when someone would have found it necessary to refer the issue of a loan to me.

Murdo Fraser: Would the level of the loan be relevant in that regard?

Sir John Elvidge: Yes it would, if it were a very large sum of money. One must always be careful, because we can sound airy about sums of money that are quite large to many people, but in the context of a £35 billion budget what constitutes a large sum of money has to be a very big number.

Murdo Fraser: You are saying, in effect, that £180,000 is pretty small beer in the wider scheme of things.

Sir John Elvidge: It is a smaller transaction than many of the transactions that the Scottish Government conducts day to day.

The Convener: You said that it is unusual for the Government to lend money at first hand rather than through an agency. Can you give other examples of the Government providing a loan at first hand?

Sir John Elvidge: That would happen mainly in the enterprise area—that is the area in which the Government is primarily in the loans business. There is a bit of history in that regard. You might recall that, in the to-ing and fro-ing of functions between the core of the Scottish Government and Scottish Enterprise, some functions to do with assistance to private companies have moved

about over time, generally in the direction of Scottish Enterprise. Before that happened, the Scottish Government itself would have had a reasonably regular volume of loan transactions with private businesses.

The Convener: Are you aware that anything else has been done under the National Heritage (Scotland) Act 1985?

Sir John Elvidge: I am not, and if I may rely on my memory, without looking at my successor's written evidence, I recall that he says clearly that there are not many—I cannot recall whether he said “not any”—instances of that power being used to make a loan.

Murdo Fraser: I want to move on a little bit. Given what you have told us about your personal involvement in the matter, I appreciate that you may not be able to help us with the aspects that I want to discuss. However, the Auditor General's report identifies the lack of any formal due diligence on The Gathering 2009 Ltd before the loan was granted. Do you know what the reason behind that was?

Sir John Elvidge: No I do not, because of the complete absence of my involvement in that matter. Obviously, I have thought about that, as I have thought about all the questions that Audit Scotland has raised, and it seems to me that the circumstances may have had something to do with what happened. The company openly said that it had a significant cash-flow problem, after all. One might think that if a company says, “We're coming to you because we're in trouble,” there might be slightly less likelihood of going through the due diligence process, which is designed to flush out the negatives about a company that people are not being told about. However, that is hypothesising on my part.

Murdo Fraser: I suppose, however, that one might want to find out just how bad the troubles are. Although the company says that it is in trouble, it may not be aware of how serious that trouble is. From your experience, can you tell us whether it would be normal in a situation in which a Government loan or grant was being granted that detailed inquiries would be made about the financial position of the recipient of that loan or grant?

Sir John Elvidge: I need to be careful not to claim omniscience, which I do not have. My view is that, in most circumstances in which a private company approaches the Government or an NDPB for a loan, there probably would be a process of due diligence, but in most cases, one starts without self-declared information about the company. Therefore, one starts from a lower base. Due diligence is a natural response to starting from scratch. However, I think that some form of

request to the company to provide financial information is a normal part of a loan-giving process.

Murdo Fraser: Okay. I assume that, when a Government grants a loan, it is normal for it to do so on the basis that a risk assessment had been done on the company's ability to repay it at the end of a defined period.

Sir John Elvidge: That seems to me to be a sound commonsense principle.

Nicol Stephen (Aberdeen South) (LD): You have told us that it was the second half of September 2009 before you were alerted to matters due to the problems that the company was facing. By that time, the £180,000 loan was significantly outstanding—it was due to be paid back within 14 days of the payment from WorldPay being received, and by 31 August at the very latest. From the Scottish Government perspective, given that the event was so high profile and given the crisis that already existed around the event, should not a process have kicked in to focus hard on the responsibility to the public purse, which is ultimately the Scottish Government's responsibility? Should not a process have kicked in to focus hard on the responsibility for the use of public funds and the recovery of that £180,000?

Sir John Elvidge: As I recall—again, I am relying principally on the Audit Scotland report—the final date for payment was 31 August. I was told by colleagues that there was an issue sometime in the second half of September. I am not sure that I would have expected people to be faster than that. People being late in paying us money—I am sorry, I should not say “us”, should I? People being late in paying the Government money is not a particularly unusual occurrence.

Nicol Stephen: When you discovered in mid-September what had happened, the level of due diligence associated with the loan—which seems to have been virtually non-existent—the fact that there was no interest on the loan, and the fact that it was issued through a letter that had a schedule that calls it a grant claim form, you must have been horrified that the system that you were ultimately responsible for had failed, and had failed badly.

Sir John Elvidge: I was not focused on those issues; as I have said, I was focused on the pressing problem that was in front of us. In so far as I might have thought about those issues, my approach would have been that the audit process would need to take care of them. It was not my habit to go chasing after individual investigations of things that I knew the audit process would look at thoroughly anyway.

Nicol Stephen: The organisation that you were responsible for had given money to a company that was insolvent, with no or only very limited checks and in very unusual circumstances. Was that not a matter of deep concern to you as the leader of that organisation?

Sir John Elvidge: Again, I need to be careful not to pretend to know things that I do not but, if the company had been insolvent when we made the loan, the directors would have been committing a criminal offence. I do not take it from anything in the Audit Scotland report that the company was insolvent at the point at which the loan was made. It had a cash-flow problem.

Nicol Stephen: The company became insolvent. Is that what you are saying?

Sir John Elvidge: The company became insolvent because—again, as I understand it from the Audit Scotland report—the non-advance revenues did not live up to expectations, although they do not seem to have been easy for anyone to judge in advance of the event.

Nicol Stephen: You discovered the information in September. From that point until you retired, you did not instigate any review of systems or procedures and you did not express any concern about the process that led to the loan, which you believed would be picked up through the audit process. Is that correct?

Sir John Elvidge: Yes. Once the case became so high profile, it was clear that the audit process would consider it thoroughly, so I thought that the right thing to do was wait for the audit process to reach its conclusions.

Nicol Stephen: You did not ask for that or alert the auditors or anybody involved in the audit process to your concerns.

Sir John Elvidge: I did not. I think that our systems for dealing with instances in which we may have to write off money are such that there is automatically a strong audit process. There was no need for me to do something extra.

Nicol Stephen: Thank you.

10:30

The Convener: On a point of clarification, you have said twice now that you were not really focused on current issues but were trying to resolve the problem that had developed. You also said that you had not looked at how the original grant had been given, how the loan was given or the processes and procedures involved, some fairly unusual aspects of which have just been highlighted by Nicol Stephen.

You then said that you were content for the audit process to look at the matter. The specific

function of that process is to deal with the efficacy and legitimacy of decisions taken and payments made, but the fact is that you were the senior manager of the civil service in Scotland and had experienced some very unusual decisions and what one might generously describe as highly imaginative ways of making payments to a company that very quickly got into trouble. I presume that at that time you realised that no detailed checks had been made. Setting the audit process to one side, I wonder whether it should be the responsibility of the person who is ultimately responsible for not just the civil service but Government funds in Scotland to initiate a review of how decisions are made. Would it not be good practice to say, "There's something badly wrong here. We need to make sure that for the future we learn lessons and improve"?

Sir John Elvidge: Well, the audit process is precisely that. There was nothing that I was going to do without evidence. You are assuming that I had reached a conclusion that something had gone badly wrong in the system. I have not reached any such conclusion.

The Convener: So at the point at which you became involved you did not think that there was much that was wrong and, subsequently, you feel the same.

Sir John Elvidge: I did not see anything unusual about making a loan to a private company or anything intrinsically unusual about private companies getting into trading difficulties that make them incapable of meeting their obligations. However, it would be true to say that I was also very focused on the rather unusual issues that were personal to me as accountable officer that came up in the weeks succeeding my involvement. My energy was pretty fully taken up with those issues.

The Convener: Even though you recognise that using the Natural Heritage (Scotland) Act 1985 in such a way is exceptionally unusual, you do not think that making a loan to a private company, or the loan in and of itself, is unusual.

Sir John Elvidge: It is not part of my way of looking at the world to be overly focused on the specific powers that we use to do something, provided that the powers exist.

At the risk of going off at a tangent, I have over the years been struck by the fact that one of the differences between public administration in the United Kingdom and such administration in some other countries is that in those other countries people are very focused on the specific powers that they use to pay money. The nature of the financial powers in the UK is broader and more flexible and therefore we—[*Interruption.*] I must stay away from words such as "we" and "us".

There is a tendency to be less concerned about the specific power that is used, provided that it has a legal basis.

The Convener: But you do not know whether there was a legal basis because you did not ask that question, did you?

Sir John Elvidge: Given the thousands of transactions that take place every day, it is not my habit to ask whether there is a legal basis for each of them. I work on the presumption that there is a legal basis, unless someone gives me reason to think otherwise.

The Convener: Once you became involved and saw what was happening, did you ask why the steering group members had not been informed of the loan?

Sir John Elvidge: No. I did not know that they had not been informed of it, and I am not sure that the question would have come to the front of my mind.

George Foulkes (Lothians) (Lab): It is nice to see you again, Sir John.

Sir John Elvidge: And you.

George Foulkes: I wish to ask about the time when you were closely involved in this matter. You have said that creditors could have taken action “on any given day”, which would have threatened the event. You were extremely focused on it. You had seen that the loan of £180,000 had not solved the problems, and you became involved with trying to save the event. Is that right?

Sir John Elvidge: To save the future of the event—the event had happened.

George Foulkes: Yes—it was a matter of trying to save the company.

Sir John Elvidge: The focus was on enabling someone to run a further iteration of the gathering. That was the objective.

George Foulkes: That involved dealing with the public creditors and the private creditors. Is that right?

Sir John Elvidge: There were different phases. The first phase involved thinking about the options for preserving the company as an entity. It is important to draw a distinction between the company as a name or a brand and its directors. Without wishing to be rude to them, what happened to the original directors of the company was never the slightest part of my concern. There was a view, however—which I shared—that the gathering, as a brand and as an image, would be damaged by insolvency. The focus was on how one could extract the brand from the situation.

George Foulkes: We can come to that in a moment. I want to concentrate on what you said about how, “on any given day”, creditors could have come in. You made it very clear that the whole thing would have gone belly up.

Were you in touch with the City of Edinburgh Council about its role?

Sir John Elvidge: At a later stage. There was a stage at the beginning that involved thinking—this was internal to the Scottish Government—about what the options were. Could the Scottish Government deal with the matter itself, or would it need to involve some third party?

There was a second phase, when the conclusion was reached that a third party would have to be involved. In the process of discussions around that, the city council, as a significant funder of the gathering itself, was automatically drawn in.

There was a third phase, when the council emerged as the potential purchaser of the company.

George Foulkes: Did someone say to you that the City of Edinburgh Council would take over the company’s private sector liabilities?

Sir John Elvidge: That was my understanding.

George Foulkes: Why did you come to that understanding? Who told you or made you aware of that?

Sir John Elvidge: We are heavily reliant on my memory of meetings that were not necessarily focused on that specific question. The fact that the Scottish Government could not justify taking responsibility for the private sector creditors was an explicit part of the basis for the discussion with third parties. The desirability of protecting the private sector creditors was also an explicit part of the discussions.

It would be truer to say that I thought it was implicit that anyone who bought the company was taking on responsibility for its private sector liabilities, rather than that anybody told me explicitly that they were taking those on.

George Foulkes: So who in the City of Edinburgh Council made you aware that the council was willing to take on the liabilities of the operation?

Sir John Elvidge: Again, we are reliant on my memory—

George Foulkes: But you were extremely focused on the issue.

Sir John Elvidge: Yes. I simply enter a caveat that, although I remember some things, I cannot guarantee that I remember every single thing. At the first meeting in which I was involved and at

which the council was engaged in the discussions, the principal representatives of the council, as I recall, were Councillor Cardownie and Mr Jim Inch, whose title with the council I confess that I have forgotten, but he is a member of the executive of the council.

George Foulkes: Councillor Jenny Dawe was not there.

Sir John Elvidge: No, she was not. I was never at a meeting in the process at which Councillor Dawe was present.

George Foulkes: So Councillor Cardownie was the senior person representing the council at that meeting.

Sir John Elvidge: Yes. Again, if my memory is correct, that is because he is convener of the relevant committee of the council.

George Foulkes: You understood from Councillor Cardownie and Jim Inch that the council was going to take on the liabilities.

Sir John Elvidge: It seemed to me that it was an implicit understanding that whoever bought the company would take on the liabilities. That is an automatic feature of buying a company. It was always absolutely explicit in the discussions that the Scottish Government could not justify bearing the financial costs of meeting those liabilities.

George Foulkes: Am I correct that the council was going to take on the company through the Destination Edinburgh Marketing Alliance?

Sir John Elvidge: So I understand.

George Foulkes: That was the understanding, and the press release that was issued on 15 October was done on the basis of that understanding. Is that right?

Sir John Elvidge: I had no involvement in the press release because, by that stage, I thought that we had a solution. I left it to others. However, I am certain that my colleagues would have shared my understanding that taking on the private sector liabilities was an integral part of purchasing the company.

George Foulkes: After the meeting with Councillor Cardownie and Mr Inch, did you get anything in writing from the council? Did you seek confirmation in a letter, minute or memorandum?

Sir John Elvidge: Yes and no. I will do the no bit first. I never went through a process of asking the council to write down what it was undertaking to do. Remember that we are talking about a private company being purchased by a public body that the Scottish Government does not control. The Scottish Government had no locus to require the council to do anything and the council was not accountable to the Scottish Government

for what it chose to do. There were exchanges about the financial framework within which the Scottish Government might be willing to provide funding if, having bought the company, the City of Edinburgh Council wanted to mount a second iteration of the gathering.

George Foulkes: But you never explicitly got from the City of Edinburgh Council, either from the leader or from the chief executive, in writing that it was arranging for DEMA to take over the liabilities of the company.

Sir John Elvidge: I am sure that there are bits of paper discussing the possibility that DEMA would take over, because everyone was working on the assumption that that was the solution.

George Foulkes: Apart from the chairman of DEMA.

Sir John Elvidge: I have no knowledge of the dealings with the chairman of DEMA.

10:45

George Foulkes: We will no doubt come back to that. You said that once you thought that everything was okay, you left it to someone else to deal with the press release. Who concocted the press release of 15 October?

Sir John Elvidge: I have no idea.

George Foulkes: You have no idea?

Sir John Elvidge: I assume that it was some combination of people who were working in the division and dealing with that set of issues.

George Foulkes: In your division?

Sir John Elvidge: The division in the Scottish Government. I have read in the council's evidence a statement that some of the text of the press release was generated inside the Scottish Government; I have no idea whether that is true.

George Foulkes: That was said to us by Jenny Gilmour in evidence to the committee. She said that she was called to St Andrews house with Lord Sempill to look at the draft text of a press release that was to go out in the council's name, although it was drafted by the Scottish Office—sorry, the Scottish Executive; I am reverting. Is that unusual?

Sir John Elvidge: I am sure that the answer to that must be yes.

The Convener: Is it permissible?

Sir John Elvidge: When we are working closely with another public sector body to resolve an issue, it is give and take. We could not have put any statement out in the council's name; the council must be responsible for anything that it puts out in its own name.

The Convener: Even though you wrote it?

Sir John Elvidge: Even though we may have contributed to the writing.

The Convener: No, not contributed to it—my understanding is that your officials wrote it. You have admitted that you had no locus in relation to what was being said, but my understanding is that your officials wrote the press release to be issued in the name of the City of Edinburgh Council.

Sir John Elvidge: I cannot know whether that is true or not.

The Convener: If it is true, is it acceptable?

Sir John Elvidge: It is very generous of them to do that work for the council.

The Convener: It may be generous; we have seen untold displays of generosity from the Scottish Government and senior officials in making payments to Transport Scotland staff. This is potentially another act of generosity, but is it permissible?

Sir John Elvidge: Formally, given that ministers wanted a positive solution to this set of issues, it is permissible for civil servants to spend their time doing things that are conducive to an outcome that ministers believe is in the public interest.

George Foulkes: You said that ministers wanted a solution. In the scenario that you have just described, how were ministers involved in finding a solution and in the drafting and issuing of the press release? Were they involved in that?

Sir John Elvidge: I have no idea whether they were involved in drafting the press release. They were actively involved in, first, the pursuit of the consideration of whether the Scottish Government itself could be the vehicle for preserving the company, and, secondly, when it became clear that that was not feasible, in discussions with other potential purchasers of the company.

George Foulkes: Which ministers were involved in that?

Sir John Elvidge: Primarily the First Minister and Mr Russell.

George Foulkes: Primarily the First Minister.

Sir John Elvidge: And Mr Russell, who was of course the portfolio minister. In line with all my caveats, I am not giving you a guarantee that my memory is so perfect that I can say to you that no minister other than those two was ever involved.

George Foulkes: Were you surprised to find out that Jenny Dawe and the council as a whole had not agreed to what appeared to have been agreed at the meeting that was attended by Councillor Cardownie?

Sir John Elvidge: Yes.

George Foulkes: Were you surprised when the chairman of DEMA, Mr Springford, resigned? Did that cause you disquiet or concern?

Sir John Elvidge: It caused me disquiet in the sense that it was evidence that what I had understood to be a settled solution was not going smoothly.

George Foulkes: You realised that what you had thought was a settled solution was not going smoothly. What did you do about that?

Sir John Elvidge: Either I or someone acting on my behalf—I genuinely cannot remember which—had a conversation with the council about whether the solution was still on track. At that stage, the belief was that the solution was still on track.

George Foulkes: We have an exchange of correspondence that shows that in—I think—December, Councillor Dawe, who is the leader of the council, indicated that the council was not willing to take on the responsibilities.

Sir John Elvidge: It was all past praying for at that point.

George Foulkes: Does it seem to you that Councillor Cardownie, who is a Scottish National Party councillor, the First Minister and Mr Russell might have come to an agreement of which Councillor Dawe was not aware?

Sir John Elvidge: I am not sure that their party allegiances have anything to do with it. I was present, as were many other people, in the meeting when Councillor Cardownie said that he believed that there was a case for the council taking the lead in a solution. The discussion was predicated entirely on the evidence of the economic benefits that had come principally to Edinburgh.

George Foulkes: Were the First Minister and Mr Russell at that meeting?

Sir John Elvidge: Yes. I make the usual caveat about the accuracy of my memory, but I am reasonably certain of that.

George Foulkes: I am sure that your memory is accurate. You have been very helpful. Thank you.

Nicol Stephen: Sir John, you came to the view that the Scottish Government could not assist with the purchase of the company—although there is the issue of the write-off of the public sector liability.

Sir John Elvidge: Indeed. That is a separate set of issues.

Nicol Stephen: Perhaps we will come on to that, because you were involved.

Can you explain why one public sector organisation, the Scottish Government, could not take on the liabilities but expected another public sector organisation, the City of Edinburgh Council, to do so?

Sir John Elvidge: I can have a go. It is a balance of considerations. The costs of meeting the liabilities of the private sector creditors all related to benefits that had already been delivered. I took the view that the Scottish Government could not justify spending public money for the benefit of a number of companies whose impact was in a particular geographical area. It is not the business of the Scottish Government to favour companies based in Edinburgh, say, over companies based in Glasgow, which might be their competitors. I do not think that the Scottish Government ever expected the council to do something. However, it seemed to me that the council for the area in which the companies were predominantly based might come to a different conclusion about whether legitimate public interests enabled it to spend money in the interest of such companies. Ultimately, I took the view that what constituted defensible value for money for the council was the council's business.

Nicol Stephen: Did you take the view that it was within the powers of the Scottish Government to take on the private sector liabilities but that it would have been inappropriate to do so?

Sir John Elvidge: As far as I could tell, it was certainly within the powers of the Scottish Government to purchase the company and thereby take on the liabilities. However, I thought that that option failed the value-for-money test and that it potentially raised a different kind of legal issue with European Union state aid legislation. It would have been possible to interpret such action as a decision to find a route to channel public funds to certain companies, which by definition would have raised state aid issues.

Nicol Stephen: Your advice was obviously accepted in that regard, so the focus shifted to the City of Edinburgh Council.

Sir John Elvidge: Yes.

Nicol Stephen: I will move on to the 15 October press release. As I understand it, as part of the deal there was to be a write-off of the public sector liabilities—the public sector was a significant creditor—and the council was expected to take on the other, private sector liabilities. The press release went out in the joint names of the organisations involved—is that correct?

Sir John Elvidge: I do not believe so. Again, I want to be careful not to get beyond the boundaries of my knowledge, but my understanding—and I think that this is clear from

the Audit Scotland report—is that the press release went out in the name of the council.

Nicol Stephen: It was a council press release but it included quotes from representatives of other organisations, such as

“Scottish Government Culture Minister Michael Russell”.

The organisations involved in the difficult and delicate negotiations, including the Scottish Government, cleared the wording of the press release. It was drafted by the Scottish Government, there was some negotiation around the wording, and after amendment it was issued in the name of the council.

Sir John Elvidge: If you say so. You are offering a version of events that I cannot verify at first hand. It appears to be consistent with the evidence that I have read.

Nicol Stephen: Okay. Is it not important that an organisation such as the Scottish Government is alert to the legal ramifications of such a press release being issued—particularly the legal consequences in relation to the creditors?

Sir John Elvidge: Yes, that must be so—in principle. I am sorry—I am hesitating for two reasons, one of which is the convener's caveat at the beginning about sub judice, because it seems to me that we are beginning to brush up against that territory.

What I can say is that I am confident that, if you had asked me on the day the press release was issued whether it corresponded with my understanding of what was happening, I would have said yes. Of course, the press release must have some implications for the council's position, but that has to be the council's business. If we had had any reason to suppose that it was misleading—sorry, I must stay away from the “we” thing. If the Scottish Government had had any reason to believe that the press release was misleading, I think that the Scottish Government would have had a role. However, I can say with some certainty from my knowledge of the Scottish Government's beliefs at that time about the council's intentions that there was no reason to suppose that the press release was misleading.

Nicol Stephen: But there can be no doubt that it was misleading, because the reality was very different from your belief on that day.

Sir John Elvidge: The subsequent outcome was very different from my belief on that day. It is a different statement to say that the reality was different on that day.

Nicol Stephen: On that day, there was no agreement by the council to fulfil the obligations that were referred to in the press release.

Sir John Elvidge: If the council says so.

Nicol Stephen: Thank you.

11:00

The Convener: Just before I bring in Anne McLaughlin, I have a couple of questions about the press release. You said that you had no reason to believe that it was misleading, but Councillor Dawe, the leader of the City of Edinburgh Council, has said that she believes that the release was rushed. We are talking about something that was prepared by your staff in your time not for you or for ministers but—generously, as you described it—for a completely independent organisation. Your senior staff reviewed it and potentially ran it past ministers for authorisation, because it contained a ministerial quotation. I assume that ministers would not have agreed to the inclusion of their words on a very sensitive issue without their being aware that they were being used.

We can assume, therefore, that, although you might have had no knowledge of the release, it was cleared at the highest level in the Scottish Government. Nevertheless, the leader of City of Edinburgh Council says that

“it was rushed and contained references which were both premature and somewhat misleading”.

Basically, your organisation prepared something for the City of Edinburgh Council and the leader says that it contained “misleading” information. Is not it outrageous that Scottish Government officials are producing such shoddy, ill-informed, inaccurate and, indeed, “misleading” information for a completely independent organisation that caused it embarrassment and, as you indicated to Nicol Stephen, might have had legal implications?

Sir John Elvidge: That is an unsustainable interpretation of events. Of course officials were involved. As you rightly point out, a ministerial quotation could not have been used without authorisation. As I have said, it is perfectly proper for officials to work with the council on the wording of a press release about the outcome of a process of joint endeavour, but any attempt to suggest that the Scottish Government made the council utter particular words is simply unsustainable.

The Convener: The *Official Report* will show whether I am wrong, but I do not think that I said that the Scottish Government made the council utter any words. Instead, I said that it had been involved in “shoddy” work, that Jenny Dawe had called what was produced “misleading” and that in my view it did a disservice to an independent agency or organisation by producing something that the leader of the council was not prepared to accept. Does not that reflect badly on your officials?

Sir John Elvidge: No. I think that it is entirely a question of the City of Edinburgh Council's processes for ensuring that its leader is happy with its press releases. I have said to you in the plainest possible terms that the understanding that was reflected in that press release is the understanding that I would, if anyone had asked me—which they did not—have held on that day. I do not think that you can blame Scottish Government officials for reflecting the Scottish Government's understanding. If it was wrong, it was the council's business to deal with it.

The Convener: Of course. You are entirely right to say that if the matter was wrong it was up to the council to deal with it. However, the council usually deals with and takes responsibility for inaccuracies in press releases that it has produced. We are talking about a press release that was produced by your officials and which was perhaps sanctioned by ministers of the Administration in the name of the City of Edinburgh Council, and that the council leader says contained information that was “misleading”. Do you not find anything wrong with that?

Sir John Elvidge: We—the Scottish Government, I mean, is not capable of producing and issuing a statement for any local authority.

The Convener: I am sorry, but could you correct that? Earlier you acknowledged that Scottish Government officials prepared a press release for another organisation. They did not issue it, but they prepared it.

Sir John Elvidge: You know as well as I do that documents that are to go into the public domain go through a variety of versions. The fact that Scottish Government officials were involved in offering wording does not make them in any sense responsible for the document that the council issued. No one put a gun to the council's head.

The Convener: No, but you and your officials produced a press release for the City of Edinburgh Council. It was not done together—your people produced it for the council. To be fair to the council, as you said, the press release reflected the council's understanding of the discussion that took place between the First Minister, Mike Russell and Councillor Cardownie and his officials.

Sir John Elvidge: It also reflected discussions that I had with council officials. There is not some political conspiracy here. There was a discussion involving a lot of people over a period of days that led—certainly as far as I was concerned—to a clear understanding. In relation to the press release, you are going well beyond any information that I have about the extent to which Scottish Government officials wrote particular words in it. You might have perfect knowledge of that, but I do not. However, I would be astonished

if the press release had emerged through a process of Scottish Government officials writing it and everybody in the City of Edinburgh Council saying, "Oh that's fine—we'll just put that out."

The Convener: No, of course that did not happen because, when people in the City of Edinburgh Council saw it, they said, "No, we're not putting it out." That is the issue.

Sir John Elvidge: They did put it out.

The Convener: The leader of the council did not. She said that it contained "misleading" information and it is clear that she was not aware of the process.

Sir John Elvidge: That is a matter for the council. I cannot possibly comment on how the council came to issue a press release that its leader thinks was "misleading".

The Convener: Absolutely. We can find that out.

You said to George Foulkes that you were focused on trying to get a solution and that, at one point, you still believed that a solution was at hand and you were discussing that with people in the council. Who in the council gave you the impression that a solution was still at hand?

Sir John Elvidge: I make the usual caveat about my memory but, as I recall, most of my conversations were with Jim Inch.

The Convener: That is helpful.

Anne McLaughlin (Glasgow) (SNP): Before I come on to my question, I want to say that we all have the press release in front of us. It has six contact names on it—one from EventScotland, one from the Scottish Government, one from The Gathering 2009 Ltd and three from the City of Edinburgh Council. I would be astonished if none of those people who are authorised to speak on behalf of the council was aware of the contents of the press release.

Lord Foulkes rightly gave credit to SNP councillor Steve Cardownie, who saw the benefits of taking on the company, given the £8 million-plus boost to the city's economy. Were you ever made aware of why the Liberal Democrat leader of the council, Jenny Dawe, went back on that and what on earth the justification was for not taking the opportunity to protect Edinburgh businesses and to boost the economy of Edinburgh in years to come?

Sir John Elvidge: No. I did not regard it as my business to pry into the council's internal political discussions. However, none of my conversations made me aware of why Councillor Dawe might take a different view from Councillor Cardownie on the merits of the issue.

Anne McLaughlin: So, a reason or explanation was never given for not proceeding with the move.

Sir John Elvidge: As I recall, as things subsequently fell apart, the general statement was one of concern about the council's overall financial position, but there was nothing more specific than that.

Murdo Fraser: I want to bottom out the issue of the press release, which is important. I have been ploughing through papers that we received under freedom of information. Perhaps you can confirm whether my understanding is correct.

According to the information that we have, the original draft press release was produced by Jane Robson in the Scottish Government—you might or might not know the detail of that. It went through a series of revisions with the City of Edinburgh Council during the course of the afternoon of 14 October 2009 and the final version was agreed later that evening, at 21:27.

The important line in the draft press release was:

"DEMA has agreed to discharge all the remaining obligations from this year's event".

That was a significant point; it is the one that gave the reassurance to the creditors that meant that they did not at that stage take action to protect their position. The line appeared in the original draft, which was produced by Jane Robson and e-mailed at 14:05 to the City of Edinburgh Council. In the final version, the wording was more or less identical:

"DEMA will take on The Gathering 2009 Ltd's remaining private sector obligations".

Therefore, there was no change between the final version, which was issued by the City of Edinburgh Council, and the initial version, which Scottish Government officials provided. It is important that we get that on the record.

You are right to say that it was a City of Edinburgh Council press release and that therefore the council had the final say. However, all the council did was pick up wording that Scottish Government officials had provided.

Sir John Elvidge: That is not all that the council did; it put out a press release in its own name. I have not seen the documents, but they say what they say. I have said that if you had asked me on that day what the council's intentions and DEMA's intentions were, that would have been my understanding of their intentions, so it is not surprising that other officials in the Scottish Government shared that understanding. If that were not so, it is clear that the council must have had ample opportunity to change the statement.

George Foulkes: It is not usual for me to jump to the defence of a Liberal Democrat. However, you said that you are not aware why Jenny Dawe took the view that she took. Have you not seen her letter of 23 December to Iain Smith, from which I think the convener quoted? She said of the press release:

"it was rushed and contained references which were both premature and somewhat misleading".

She went on to say:

"At the time of the news release, discussions with the Scottish Government and with DEMA were at a very early stage and the necessary due diligence had not been completed".

Jenny Dawe was concerned that the press release had been put out before that work had been done, which was a sensible and responsible point of view. Surely you must have known that, Sir John.

Sir John Elvidge: I have no recollection of reading the letter, but that does not mean that I have not done so. I thought that the question was whether any explanation had been given to me, and the answer is that it had not been. If Councillor Dawe says that those were the reasons, I have no reason to doubt her account.

George Foulkes: Do you think that she was right to say that the press release was put out prematurely, when due diligence had not been carried out, and that it created a "misleading" impression?

Sir John Elvidge: I do not know—

George Foulkes: She has been proved right.

Sir John Elvidge: Has she? Are the facts different now from the facts that were known at an earlier stage? It is certainly true that everything that was done in the episode that we are discussing was done in a rush, because of the fundamental point that on any day the action of any individual creditor could have pulled the deal down. It is inevitable that people were making haste.

11:15

George Foulkes: You said earlier—unprompted, not in response to my questioning—that you, as the top man in the Scottish Executive, were involved because on any given day creditors could have taken action. You wanted to avoid Mr Smith or whoever it was taking action that would bring the whole edifice down. The press release was put out prematurely to prevent one of the 103 creditors from taking action. Is that right?

Sir John Elvidge: I do not think I said that that was why I was involved; I said that it was why I focused intensely on it. I was involved because

there were accountable officer issues in the process.

George Foulkes: You were not involved earlier on. You became involved only in mid-September, when creditors could have taken action to bring the whole edifice down.

Sir John Elvidge: Indeed—and I became involved initially for the reasons that I have explained to you. An accountable officer view was needed on whether the Scottish Government would deliver value for money if it was the agent of the rescue.

If you are seeking a single reason why my involvement began, it is because there was an explicit accountable officer issue to be considered. As I said earlier, it was implicit in the public policy objective of enabling a future iteration of the gathering to be run for the economic benefit of Scotland that it would be damaging if there was insolvency action rather than a purchase of the company.

It was explicit in all the discussions in which I was involved that people were seeking an outcome that was favourable to the private sector creditors. Any purchase of the company would protect the private sector creditors, whereas the information that was available to us suggested that insolvency would be unlikely to deliver any financial return to those creditors.

That becomes relevant when we come to the last phase of my involvement, which is the write-off of the Scottish Government loan, because that was based explicitly on advice that we, as a creditor, were unlikely to get any part of that loan back in the event of insolvency.

Murdo Fraser: I want to clarify a point, Sir John. You said to us that the ultimate responsibility for issuing the press release, which we now accept was "premature" and "misleading", lies with the City of Edinburgh Council. However, it is clear from what we have seen and from what you have said that the Scottish Government was pushing the City of Edinburgh Council down that road, encouraging it to issue the press release and putting words in its mouth. The Scottish Government clearly had an interest in getting that message out.

Sir John Elvidge: There was a shared interest in acting quickly to ensure that the risk of insolvency proceedings did not crystallise. Yes, the Scottish Government had an interest—it was intrinsic to the solution that people were seeking that such a solution was brought about as rapidly as possible.

Murdo Fraser: If there was a shared interest, there was also a shared responsibility to the creditors of The Gathering 2009 Ltd to ensure that

the information that was put into the public domain did not mislead them.

Sir John Elvidge: Only the council can take responsibility for statements about the council's intentions. As I have said, the press release reflected the Scottish Government's understanding of the situation at that time.

Bill Kidd (Glasgow) (SNP): Sir John, I think you said that people in the Scottish Government compiled the press release, but it was given to the council, as opposed to the Scottish Government simply sticking the council's name on to the bottom of it and saying, "Here's your contact." The press release was sent to the council, which then had the responsibility for releasing it.

The issue comes down to co-operation taking place in the hope, which seems to have been genuine, that The Gathering 2009 Ltd could be rescued from financial insolvency in order that the creditors, among others, would benefit. If the company had become insolvent, the creditors' benefits would have been very small; indeed, many companies would not have been able to continue as solvent organisations. Whether or not the press release was "premature", as Councillor Dawe said it was—although, in the light of the dates on the correspondence, it seems that she said that more than two months later—the intention was to rescue The Gathering 2009 Ltd and ensure that the creditors gained the moneys that they were due. Do you believe that some people were pulling in one direction and some were pulling in another and that, unfortunately, despite all the good will that existed, some people possibly panicked and decided that they would not be able to rescue the company, and that it was best simply to pull the plug on it altogether?

Sir John Elvidge: It is difficult for me to comment on people's thoughts and motivations, but it is certainly true that protecting the interests of the private sector creditors was thought to be inseparable from the objective of protecting the reputation of the gathering as an event. I do not think that it would be right to say that protecting the private sector creditors was the primary objective, but there could not be one objective without the other. The gathering, as a brand, could not be protected without also protecting the private sector creditors.

It is also true that although—as I said to Lord Foulkes—it was not my business to take advice specifically about the private sector creditors, I received advice about the position of the Scottish Government as a creditor. That advice was that the company's assets were liable to be swallowed up by the costs of the process of insolvency and that, in the event of insolvency, it would be improbable that any creditor could expect to see any return from the process. It was certainly our

belief that, unless a purchaser could be found, damage to the private sector creditors, which would in turn damage the status of the brand, would be bound to occur.

The Convener: Before Willie Coffey moves on to the next questions, I want to be absolutely clear about the press release relating to the creditors. I think that you said, quite reasonably, that you took at face value what you were told, and that your contact was Jim Inch. When the press release was being constructed, did he indicate that the solution would mean that either DEMA or the City of Edinburgh Council would ensure that the creditors would be paid?

Sir John Elvidge: Let me be absolutely precise. It is not part of my purpose here to criticise any individuals. By the time the press release was issued, my personal discussions with Jim Inch had ceased—they were behind us. That is part and parcel of my understanding that a solution was being implemented. In the discussions that I had with Jim Inch, it was a clear part of the understanding that the council—via either DEMA or some other means; in all honesty, I was not interested in the set of mechanics that the council was going to use to do this—would, by purchasing the company, inherit the liabilities to the private sector creditors.

The Convener: So Mr Inch was clearly given the impression that the solution would involve protection of the creditors.

Sir John Elvidge: That was absolutely implicit in the discussions, because it would not have been a solution otherwise.

The Convener: Therefore, Mr Inch was aware of what was going on and gave you that impression. You did not have any hands-on involvement, but you knew what was happening and the rough outline of the solution, and you believed that the creditors would be paid. Councillor Cardownie was clear that the creditors would be paid and that DEMA and the City of Edinburgh Council would take on responsibility. Clearly, Mike Russell and the First Minister were also party to that, so there was a group of people, straddling the City of Edinburgh Council and the Scottish Government, who all believed that a solution was possible and that the creditors would be paid. Was Norman Springford involved? He was the chair of DEMA.

Sir John Elvidge: I have never had any contact with Norman Springford.

The Convener: Right. That is perhaps something that we need to explore because, according to the words used for him in the press release, the board of DEMA viewed the purchase as an "exciting development" and he was

“delighted and honoured to accept this new responsibility”, but he subsequently resigned. We will have to pursue that separately.

Therefore, senior people at both the political and civil service levels of the Scottish Government believed that a deal was possible, senior people in the council—Councillor Cardownie and Jim Inch—believed that a deal was possible and had been agreed, and a press release was produced generously by your officials and signed off by the City of Edinburgh Council, but then the whole thing unravelled. Is that correct?

Sir John Elvidge: That would seem to be a reasonable account.

The Convener: Thank you.

Mr Frank McAveety (Glasgow Shettleston) (Lab): We have a letter from Jim Inch, as director of corporate services, that was released under freedom of information. It is dated January 2010, by which time, obviously, a number of things had occurred. I draw members’ attention to page 2 of his letter where he states that, because of the overall resources available to the council,

“in these circumstances the scope for investing in the Gathering brand is at best problematic.

I have no doubt that the Council, together with DEMA and in partnership with others, could put together a very compelling business case for holding a future gathering event. However, the potential time lag between investment and income, and the remaining uncertainties associated with the state of public finances, represent significant risks and militate against intervention at this time.”

The debate is not about whether the brand is worth preserving. We each have distinct views on that as against the value of other projects or events that might take place and generate similar economic returns. I draw your attention to the letter because, a short time afterwards, Mr Inch was expressing concern that he could not put a business case together. Was that view expressed to you at an earlier time, either during the debate on the loan, when you had to get involved, or with regard to the press release and the issue of reassurance?

11:30

Sir John Elvidge: Not in those terms, obviously—otherwise, I would not have had an understanding that the deal was secure. During my discussions with it, the council was concerned about the fact that it had some up-front costs and would need to see some financial benefits to balance those within a reasonable period. That is why the council wanted a discussion about what, in principle, the financial framework for a second iteration of the gathering might be, and about whether there was a prospect of repeated support from other public sector bodies for a second

iteration, as that would potentially have brought the council some financial benefits, and not necessarily at a huge time distance from meeting the cost—that would depend entirely on the council’s own decision about when to pursue a second iteration of the gathering.

That conclusion is not recognisable from my discussions, but some of the factors that were balanced in that letter are issues with which I am familiar from the discussions.

Mr McAveety: In your recollection of discussions and events, did the senior representative of the City of Edinburgh Council involved ever articulate any concerns of that type?

Sir John Elvidge: Let me make a distinction: clearly not the conclusion that is expressed in that letter, as—

Mr McAveety: That was quite forthright. What changed over the intervening time?

Sir John Elvidge: As regards what was needed for me to believe that the deal was on, it is clear that the balance of those considerations was, as I understood it, on the other side of the line—on the side of the council’s belief that it could make things work. Otherwise, I would not have believed that we had a deal.

Willie Coffey (Kilmarnock and Loudoun) (SNP): We are an hour and a half into the meeting and members have been asking a variety of questions that seem to be focusing, latterly, on a press release that was issued by the City of Edinburgh Council.

Earlier, you said that we sometimes focus overly on the procedures and mechanisms that are available to us in the civil service, rather than on the issues at hand facing ministers and organisations as they try to deliver events such as the gathering. We have read what Audit Scotland said about the loan being “not unreasonable”. You have said that it is not unusual for the Scottish Government to lend money, even to private companies, and you said that the entire amount that we are discussing—notwithstanding the remarks about the importance of public funds—is a very small part of the overall Scottish budget. You corrected Nicol Stephen by saying that the company was not insolvent at the time when the loan was made. Otherwise, it would have been an illegal act.

Given all that, let us switch our thinking to what the implications might have been for the event, for Edinburgh and for Scotland if the Government and its partners had not intervened. If we had not issued the loan, what would have happened?

Sir John Elvidge: It is a hypothetical question, but one might have expected negative publicity, which one might have expected to have an effect

on ticket sales and to have started a vicious cycle that would have led to greater financial difficulty and to the possibility that the event might not take place at all.

I need to make it clear that I was not part of the consideration, so I am absolutely not saying that people went through that process of analysis. However, from what I have read of the circumstances, those are the risks that would have been in my mind if someone had put that set of issues in front of me.

Willie Coffey: It is quite clear that the whole event could have been put at serious risk.

We all benefit from hindsight but, looking back at all the processes that have been described, including the loan mechanism under section 23 of the 1985 act and the consultation with City of Edinburgh Council, do you think that any of those existing processes could or should be reviewed to make the situation better in future?

Sir John Elvidge: Putting my formal ex-accountable officer hat on and forgetting everyone else's interests, I think, with hindsight, that I would have liked our £180,000 loan to have received preferential creditor status to ensure that, irrespective of whether anyone else got their money, we got ours. As accountable officer, that would be my narrow responsibility. You might not think that to be the right public policy outcome but, as accountable officer, I would not necessarily take the wider view all the time. If you are asking me what more could have been done to protect that £180,000, my answer must be preferential creditor status.

Willie Coffey: Could that mechanism have been made available if we had asked for it?

Sir John Elvidge: I am sure that we could have constructed some way of making it available. After all, the loan was made against the existence of a cash flow that was being held by the third party receiving the advance ticket payments. It seems to me that, in principle, it might have been possible to insert ourselves between the person holding the money and the company to ensure that the money came to the Scottish Government. That would not have done anyone else much good, but it would have made me happier.

Willie Coffey: That is very helpful.

The Convener: You took a decision in relation to the £180,000 loan that others made under the National Heritage (Scotland) Act 1985.

Sir John Elvidge: That is right. I took a decision in relation to the £180,000 loan that the Scottish Government had made.

The Convener: In your submission, you say that you

"shared with the Accountable Officers for Historic Scotland and the Scottish Ambulance Service the information that I had received advice that the debt would be irrecoverable, and the basis on which I was taking a contingent decision on write off, so that they would be in a parallel position to me ... in exercising their individual Accountable Officer responsibilities."

What responsibilities would the accountable officer for Historic Scotland have had?

Sir John Elvidge: The accountable officer for Historic Scotland would have had to take her own decision on whether to write off the debt that it was owed. Notwithstanding the fact that Historic Scotland is a Scottish Government agency, it would not have been proper for me to instruct the chief executive on how to discharge her accountable officer responsibilities. The accountable officer role is a personal one, and only she could take the decision to write off.

The Convener: You had a similar discussion with the Scottish Ambulance Service.

Sir John Elvidge: Indeed.

The Convener: Did you indicate to the police what you were doing?

Sir John Elvidge: I did not. My understanding is that my colleagues shared with the police information about the action that we were taking and the basis on which we were taking it.

The Convener: Presumably it would have been open to the accountable officers for Historic Scotland and the Scottish Ambulance Service to come to a different conclusion from you.

Sir John Elvidge: Yes. It is a personal decision. They have to be satisfied that they have the evidence on which to base an accountable officer decision.

The Convener: But, presumably, when you shared the information, human nature being what it is, those officers would have taken it as some kind of steer about the way in which things were going, and they would have been highly unlikely to have come to a different decision.

Sir John Elvidge: I wish I had that much confidence in my influence.

The Convener: Do accountable officers frequently go against the express views of the head of the civil service?

Sir John Elvidge: It would have been unusual for me to express a view about one of their operational responsibilities. If you were to say to me that I did some things in my leadership role that they would choose to do differently in their leadership roles, that would probably be right.

I am sorry; I do not want to make too much of this because it is relatively straightforward. The "Scottish Public Finance Manual" makes the basis

for write-off absolutely clear: it is when there is no prospect of recovering the money. Faced with that piece of information, I would have been surprised if any accountable officer took a different view. What was unusual in this situation was that, for the general reasons that we have discussed, all the accountable officers took the decision earlier than we usually would. The watch-your-back stance in such situations is to wait as long as possible before taking such a decision.

The Convener: What would the implications have been if you had decided not to write off the loan?

Sir John Elvidge: The implication would have been that the council would have had to take on the Scottish Government as a creditor. I would have expected that to have changed its view of the solution.

The Convener: As part of the solution to encourage the council to do what you thought it was going to do, if it agreed to take on the deal and to take responsibility for private creditors, you, Historic Scotland and the Scottish Ambulance Service would all write off what you were owed.

Sir John Elvidge: No. It could not be that way. No one in the Scottish Government could speak for Historic Scotland or the Ambulance Service. Also, in my discussions, I was always clear that write-off was only possible if we had the evidence on which it could be based. My undertaking was to take that decision at that particular point in time if the evidence enabled me to do so rather than waiting until some other time.

The Convener: Let us leave the other two organisations aside for the moment. As far as you were concerned, writing off the loan facilitated what you thought was an agreement with the City of Edinburgh Council.

Sir John Elvidge: Yes, absolutely. If we had not been pursuing the solution, I would have had no reason to take the decision in October 2009. My normal practice would have been to wait many more months for a higher degree of certainty that the debt was irrecoverable.

The Convener: You took the decision to write off the loan, hoping that it would cement the agreement that the First Minister, Mike Russell, Councillor Cardownie and Jim Inch had been discussing. You thought that that was a reasonable contribution from the Scottish Government.

11:45

Sir John Elvidge: That is not how I would put it. All the evidence that I had in advance led me to believe that the debt was irrecoverable. I took the decision because it was clear to me that, if I were

not willing to consider the evidence at that point, I would be jeopardising the prospects of a solution. It did not seem to me to be right to jeopardise an outcome that appeared to have a public benefit simply, in a sense, to protect my own back by allowing several more months to elapse before reaching a decision that I already had the evidence to reach.

The Convener: You reached that decision in the firm belief that it would help to ensure that a solution was not jeopardised.

Sir John Elvidge: Yes. It was avoiding a negative, rather than creating a positive.

The Convener: And you shared that information with the accountable officers for Historic Scotland and the Scottish Ambulance Service.

Sir John Elvidge: Yes, I think so. I would have to look at the letters that I wrote, but I think that I made reference to the fact that I was taking the decision earlier than I would normally do because it was material to the wider issue.

The Convener: That is right. You say in your note to us:

"It was for this reason that I shared with the Accountable Officers ... the information that I had received advice that the debt would be irrecoverable, and the basis on which I was taking a contingent decision".

Sir John Elvidge: Yes, I am sure that that is right. I have the letters here, so I could check that if you want.

The Convener: It is okay.

The basis of the contingent decision was that you did not want to jeopardise what you saw as a reasonable solution.

Sir John Elvidge: No—the basis of the contingent decision was that the debt was irrecoverable. The basis of the timing of the decision was that I did not want to jeopardise the solution.

The Convener: Right. Therefore, it would be reasonable for those accountable officers to come to a similar conclusion that, by writing off at that stage, they were helping to ensure that the successful outcome was not jeopardised.

Sir John Elvidge: Yes.

The Convener: And that outcome had been negotiated with the First Minister, the cabinet secretary, some unknown officials in your organisation—although not you—and Councillor Cardownie and Jim Inch.

Sir John Elvidge: Yes. Probably others were involved. That is my point. I am not guaranteeing that I can give you an exhaustive list of the people who were involved.

The Convener: The reason for the approach was to help to ensure a successful outcome.

Sir John Elvidge: It was to avoid wrecking the prospects of a successful outcome.

The Convener: Sure. You were not involved in all the negotiations to ensure that successful outcome, so who on the Scottish Government side was involved in pulling that together and giving advice to ministers on the options?

Sir John Elvidge: I do not claim absolutely detailed knowledge of who did what, but the principal official during the period was the deputy director responsible for that area of the business, Vicky Carlin. That is because, as luck would have it, during those vital weeks, we were temporarily without a director in post in that area of the office.

The Convener: She was key to identifying what the Scottish Government could do and to negotiating with the City of Edinburgh Council. On your side, she was the linchpin to make the process work.

Sir John Elvidge: I would say that she was the co-ordinating point. A range of colleagues were involved.

The Convener: Was she the key person who gave advice to ministers on the options, the legality and the implications, as always happens when serious decisions are made?

Sir John Elvidge: Indeed. However, if we are talking about right at the beginning when I became involved, I would have given the advice on the options, including the option of the Scottish Government being involved, because there were accountable officer issues in that.

The Convener: Oh right—so you would have given the advice at the stage when you all thought that agreement had been reached with the council.

Sir John Elvidge: No—much earlier than that. I would have given advice well before the council became involved, when we were still thinking about whether the Scottish Government itself could be the principal agent.

The Convener: At the stage when it looked as though agreement had been reached with the council, who gave advice to ministers about how that agreement would operate, in what circumstances it would be beneficial and write-off? Who gave advice to ministers about how that could and should be handled?

Sir John Elvidge: I cannot tell you whose name was at the bottom of the piece of paper. I can simply tell you that the senior official in the line below me on those issues would have been the deputy director, Vicky Carlin.

The Convener: But when we reached the situation in which a company that no one wanted to see dissolve was unravelling with huge implications, were you involved in giving advice to ministers?

Sir John Elvidge: Oh yes, because the situation was so fast moving that most of that would have been done in discussion rather than in writing.

The Convener: Ultimately, at that stage, when negotiations were going on with the council, you were the key adviser to ministers about that option.

Sir John Elvidge: Yes. It is fair to say that I would have been ministers' key adviser on whether, as a solution, it met the criteria that they were pursuing. It is also fair to say that I would have been the key adviser on whether it was a better solution than some of the other possibilities that, as Audit Scotland says, were under consideration, at least briefly, one of which was that the tattoo company could become the purchaser of The Gathering 2009 Ltd.

The Convener: Given that you were the key adviser at that stage, would you have looked at the detail of the press release to ensure that the position of the Scottish Government was reflected accurately?

Sir John Elvidge: No, I did not do that because, as I have said, there was not, as far as I was concerned, any doubt in anyone's mind that we had reached the point of a deliverable solution. How people wrapped that up with nice quotes was not something that I felt the need to spend time on.

The Convener: You just assumed that whatever was going out in the name of the Scottish Government was accurate.

Sir John Elvidge: It was not going out in the name of the Scottish Government.

The Convener: There was a statement—

Sir John Elvidge: I assumed that the ministerial quote was accurate but, as the minister would have cleared that, it would not have been necessary for me to do it as well.

The Convener: By that stage, your job is done. Agreement has been reached. The council is taking on the responsibility, the minister approves his own quote and your officials generously write the press release for the council.

Sir John Elvidge: Yes. I do not routinely see press releases, regardless of the engagement that I might have had earlier in the process.

Nicol Stephen: If we look at the issues around the write-off, is it the case that the debts have not

been written off because the agreement that you thought had been reached did not proceed?

Sir John Elvidge: Yes, because there is no longer any reason to crystallise the write-off.

Nicol Stephen: Okay, that is helpful.

You very properly referred to the short timescale. In normal circumstances, you would go through a much longer process before deciding to write off a debt of this nature. When did that short timescale start? How quickly did it all happen? What advice did you seek to ensure that the public interest was protected? What advice did you receive? Was any due diligence carried out? Who looked at the company's trading position? Were accountants, auditors and lawyers involved? Were there any financial projections? Did the directors provide any management accounts? Can you give us a sense of what happened during those two weeks? Is that roughly how long we are talking about?

Sir John Elvidge: Yes, that is probably right. Excuse me if I have to scrabble about in my papers, because I do know the final bit of the answer to your question. As I have said, the "Scottish Public Finance Manual" is very clear: the only basis for writing off a debt is that it is irrecoverable. I sought advice on whether the debt was irrecoverable from the then director general finance and corporate services, who said that the debt was indeed irrecoverable. If you want me to say anything about the process by which she put herself in a position to give me such advice, I will need to scrabble about in my papers a bit.

Nicol Stephen: That would be very helpful. After all, as the Public Audit Committee, we find the issue of the "Scottish Public Finance Manual" and the circumstances in which you are entitled to write off such a debt very important. Particularly given that the process was so quick, it would be valuable for us to know what the director general did prior to issuing her advice to you.

Sir John Elvidge: So it would. I just hope that I can find the information.

Okay. She took advice from the finance directorate—[*Interruption.*] I am not finding that information easily. Hold on—this looks promising. [*Interruption.*] No, that is not the right document. I am sorry—this is difficult, because there are two quite separate processes of accountable officer consideration. The set of issues to do with whether the Scottish Government could be the agent—

The Convener: Would we be able to get that information if we were to write to the permanent secretary?

Sir John Elvidge: Yes, and more easily than you can get it from me.

The Convener: We can do that.

Sir John Elvidge: You should probably do so, not least because the only thing that I would be able to do—if I could find the papers—would be to see what the director general's formal advice told me about what underpinned it. My successor will be able to give more thorough information about the underpinning process.

Nicol Stephen: I realise that you do not have direct access to the director general's advice, the circumstances that lie behind it and the steps that were taken before it was provided. However, would you have sent a paper to the director general explaining the circumstances and what you wished or intended to do?

Sir John Elvidge: She was thoroughly acquainted with the issues and did not need me to brief her on the background.

Nicol Stephen: There would have been a conversation or something.

Sir John Elvidge: I would have asked her advice on whether the debt was irrecoverable. I doubt whether I would have done so in writing, but I cannot swear to that.

Nicol Stephen: And she was fully informed because she was at the meeting.

Sir John Elvidge: Whether or not she was at meetings, she was very closely aligned with the whole set of issues. She had a high level of knowledge of the circumstances of the company's financial position and our financial dealings with it.

Nicol Stephen: Thank you.

12:00

The Convener: Finally, Sir John, as you have had the luxury of being able to step out and reflect, will you cast your mind over the bigger issue of how decisions are made in the Government? In this committee, we deal with only a small proportion of what goes on, so who knows in the totality what is involved? However, we have seen issues involving Guy Houston, when we could not get the information that we asked for; Malcolm Reed, when payments were made over and above what he was legally entitled to; and now the write-offs in relation to the gathering. As you said earlier, each case of itself is relatively small but, if we aggregate those three and goodness knows what else is going on in other departments and agencies of which we have no knowledge, is there an issue with how the Scottish Government and civil servants are using scarce public resources, and could improvements be made in the decision-making process?

Sir John Elvidge: It is always important to bear down as thoroughly as possible on the use of

public money, and it is a sound general principle that no process is ever so perfect that there is no scope for improvement.

I am not sure that it is true to say that there is no observable information about aggregates. Write-offs, rare events though they are, are reported in the accounts of the Scottish Government and the various agencies, and so in aggregate are payments to the most senior civil servants—and if my memory serves me correctly, we are moving to an accounting regime in which aggregates of such payments will be reported. As ever, whether one thinks that the resulting number is big or small is a matter of judgment, but such numbers will remain a small percentage of total expenditure.

It is also true that the issue of payments to individual civil servants is one of considerable activity, with both the previous and current UK Governments making proposals to change the basis of the payments and decisions in the courts so far making it impossible for the Government as an employer to do that. One conclusion that can be drawn is that it is not an unexamined territory. It is a territory that has received considerable attention at UK level and—I can say from personal experience—from permanent secretaries collectively for several years in the belief that it would be appropriate to have regimes that produce smaller payments.

On the general issue of the way in which decisions are taken in the Scottish Government, my position is that the accounts of the Scottish Government over several years, under various Administrations, demonstrate that losses to the public purse are much lower than is true elsewhere in government. I have always taken a certain amount of pride in the fact that we regularly succeed in getting unqualified accounts from our Audit Scotland colleagues. There are parts of government in which qualified accounts are the norm year on year, so the evidence suggests that, relatively speaking, the standards of financial management are high in the Scottish Government. Individual instances command so much attention because they stand out from the general run of events and not because they are an indicator of something else. There is a wonderful phrase in America, where they sometimes describe people as “all tip and no iceberg”. That is what we are dealing with here.

The Convener: With those profound words, Sir John, I thank you for your contribution. It has been a long session, but it has been very useful and you have highlighted a number of issues that we may need to explore elsewhere. Thank you and good luck for your retirement.

Sir John Elvidge: Thank you. As you said, convener, no one really retires any more—they just do different things.

The Convener: Yes, I am sure that you are very busy.

12:06

Meeting suspended.

12:13

On resuming—

“The role of boards”

The Convener: I apologise to the Auditor General and his staff because item 3 has been somewhat delayed and we are now a bit pressed for time. I invite Mr Black to make his contribution to the meeting.

Mr Robert Black (Auditor General for Scotland): The report was laid last week. There were three reasons why I thought that it might be useful to do a report on the role of boards in Scottish public life. First, the committee’s strong interest in the area has come through during inquiries into public bodies over several years, when weaknesses in governance have led to problems. Secondly, many of the bodies discussed have existed since well before devolution. Given the role that they play in Scottish public life, it seems appropriate to provide an overview of how they are operating. Thirdly, and quite significantly, during the past 10 years, those bodies, along with the rest of the public sector, have enjoyed a period of significant spending growth. With the predictions that the budget will be more than £4 billion smaller by 2014-15, there will undoubtedly be risks, so it is important to ensure that the accountabilities in public bodies are clear, and that boards are able to manage and plan for the difficult times that lie ahead.

12:15

As committee members are well aware, there is a range of bodies, and the report looks at more than 100 of them. They provide a range of functions, including health, further education, and the protection of the environment. They spend approximately half of the public sector budget each year; £17 billion in 2008-09. Most of those bodies are governed by boards that are in place to ensure good corporate governance. The boards’ role is to provide leadership and strategic direction. Of course, local government bodies are rather different. They have different accountability, so the report does not cover them.

Colleagues in Audit Scotland undertook a comprehensive audit. We had a good response to a survey of all 1,500 board members. There were interviews with around 70 non-executives, and visits were made to a sample of organisations. We

therefore think that we have a good information base for the report.

I would like to highlight briefly some of the issues that came out of the report, specifically about the complexity of the accountability arrangements that we see in Scotland, about the skills and expertise of board members, and about the way in which the boards operate in practice.

As we know, the Scottish Government is making progress with its public sector reform agenda, but the report confirms that the landscape is complex and likely to remain so. Six types of public body are included in the review, and all have their own arrangements for accountability to the Scottish ministers and the Scottish Parliament. I will give a few examples. Non-departmental public body boards are accountable to the Scottish ministers, but the chief executives are accountable to the Parliament. The boards of colleges are accountable to neither the Scottish ministers nor the Parliament. The boards of executive agencies are appointed to advise the chief executives and have limited scrutiny responsibilities. Some non-executives on those boards are not entirely clear about the role that they are expected to fulfil.

The parallel lines of accountability of chief executives and their boards might cause some confusion about who leads the organisation, unless the separate roles are clearly defined and understood. Chief executives have delegated responsibility as accountable officers for the proper use of resources and they are accountable to the Scottish Parliament. In most cases, the boards are responsible for the performance of their organisation and for ensuring that it delivers the policies and priorities of the Scottish ministers.

Boards will clearly be central to the way in which public bodies meet the financial challenges that lie ahead. They will be faced with difficult decisions about funding priorities and they will have to have strong leadership and ensure that good governance is in place during a period of financial uncertainty.

It is important that the relationships between the Scottish Government and public bodies are clear, so that there is a shared understanding of priorities. It is also important that relationships with the Parliament are clear. We have found that those relationships are not always absolutely clear. National health service bodies have a close relationship with the Scottish Government and the Scottish ministers, and there is consistency in the way in which those relationships work. For NDPBs, the relationships with the Scottish Government are managed by civil servants and the term of art that is used is "sponsors". However, such arrangements differ across the sector, and they tend to involve senior management in the bodies concerned, not the boards.

The relationship between colleges and the Scottish Further and Higher Education Funding Council is also not entirely clear. Scottish boards are not directly accountable to the Scottish ministers or the funding council. College principals are not statutory accountable officers, but they can be held to account by this committee through the reports that I produce. They are also accountable to the funding council for the public funds that they receive.

The second major heading that I want to touch on is the skills and expertise of board members. I suggest that the important factors that make for a strong and successful board can be broken down into three headings, the first of which is the calibre and personalities of the chair and individual board members. Second is the question whether the board has the right combination of skills and experience available to it, and third is the way in which the board members work together as a team.

We found that boards are working hard to ensure that they have round the table the right combination of skills and expertise. For example, some boards are using a sort of mapping of skills and experience of current members against those that they think that their board should have.

The Scottish ministers appoint most non-executives, with college boards being the main exception to that. In other words, the public appointments process applies to most non-executive appointments, but college boards operate their own system.

The process is improving, but there are still weaknesses, particularly around the length of time that it can take to make an appointment and how the range of skills and qualities that need to be acquired to be an effective non-executive are identified. Despite improvements in the process, fewer people are applying to become non-executives. Since 2004-05, the number of applications has gone down by half. Some progress is being made to increase the range and diversity of people who apply for non-executive posts, but further work remains to be done, particular in identifying and being explicit about the core skills, knowledge and personal qualities that a non-executive needs to be effective.

Another interesting finding was on the variation in the time commitment that is required of non-executives. We are not entirely clear why that is the case. For example, NHS chairs are expected to commit nearly twice the amount of time that is expected of NDPB chairs. About 80 per cent of non-executives told us that they had received some form of induction, but not all chairs or chief executives receive opportunities for training or have their performance assessed. Also, not all of

them were given a formal induction process—again, there is quite a variation.

My final heading is on the way in which public sector boards operate. As I think I mentioned, the Audit Scotland team visited 17 public bodies—a representative sample of the sector—to look at how they operate and the extent to which they provide leadership and scrutinise the organisation's risks, financial management and performance. Clearly, one key factor in determining whether leadership is effective is the relationship between the chief executive and chair of the board, both of whom have important, but different, roles to play. "On Board", the relevant Scottish Government guidance, is a useful basic primer for the governance role, albeit that it could be clearer on the dual responsibility for leadership between the chair and chief executive and how it is exercised.

One general finding was that board scrutiny of risk, financial management and performance could be improved. That finding applies to a number of organisations. As public bodies start to operate with fewer resources, this scrutiny will be of particular importance. Also, with less money around, risks will increase and organisations will have to be safeguarded.

We found that the scrutiny of risk was largely designated to audit committees. In some cases, risks were not reported to the board. Although it is appropriate for audit committees to have that role, it is also important that all boards should receive clear summaries of the organisation's financial position. That is not always the case. A summary of the forecast outturn position for the financial year should be made to the board, with commentary and assessment of any risks that may affect the organisation's position, but such summaries are not always given to the full board. Board papers and performance are quite good in all the boards that we visited. All 17 boards are making serious efforts to improve the quality of the information.

Boards generally operate pretty well, but there is some room for improvement. Some boards are more open than others. We found that only around two fifths hold meetings that are open to the public. In some boards that we visited, it was not always the case that members were asked to declare their interests at board meetings where it might be appropriate to do that in terms of the business on the agenda. Also, not all boards review regularly the way in which they operate.

The size of boards is an interesting issue. As the committee will see from the report, the range is quite wide—from four to 32 members. Also, NDPB boards have an average of 12 members with NHS bodies having an average of 18.

Obviously, one developing issue is the increase in elected board members; examples of boards with elected members are the national park authorities, the crofting commission and two health boards—NHS Fife and NHS Dumfries and Galloway. While we understand and acknowledge the policy initiative, it is important that people who are so elected should recognise that their first duty is always to the board and its interests and not to any other interests that they may have in the community.

One issue that is of significance as we look to the future of good governance in these difficult financial times is that not all chief executives are members of their boards. In about a third of NDPBs, the accountable officers are not board members. I have picked up in my conversations that there are different views on whether chief executives should be members of boards, but my clear view is that they should be. After all, they are personally accountable to the Parliament for the proper and efficient use of public funds and therefore they should be able to participate fully as board members. Provided that there is an overall majority of non-executives, there should be good governance, and the arrangements should help to make the organisation resilient through challenges, because everybody takes ownership together and speaks fully and openly about what lies ahead for their boards.

Ultimately, whatever the make-up, it is important that boards exercise collective responsibility for the decisions that they make. I am pleased to say that, in the boards that Audit Scotland visited, collective responsibility for decisions was demonstrated, even when there had been strong differences of opinion during the discussion that led up to that decision.

As ever, I am happy to answer questions, and I am heavily reliant on my team that did the work.

Bill Kidd: We have a sort of byzantine situation, with so many boards and different numbers of members, whether executive or non-executive. That situation has obviously grown up over many years. Is it true to say that, because of the different circumstances under which each board operates as a result of different responsibilities, standardisation would not be practical?

Mr Black: That is an issue on which the report probably raises more questions than it answers. As I said, the system has been built up over many years and goes way back before devolution. It is not immediately clear to us why there is such diversity and difference in the public sector. I do not want to repeat what I said a moment ago but, for example, why should some chief executives and not others be on boards, or why should there be such variation in the size of boards and in how they operate? Colleges, which are governed by

different statutes from those that govern other public bodies, are interesting because there is no direct accountability to the Parliament for the spending of further education money—that comes through the Scottish Further and Higher Education Funding Council.

Basically, boards fall into two types. There are those with overall responsibility for the performance of their organisations—health boards are a good example—and those that in essence have an advisory capacity. We can see a distinction between those two types but, given that all boards have the core responsibility of the non-executives to oversee the governance of the organisation, to manage performance and financial stewardship and to set the strategy of the organisation, it is at the very least interesting to note that there is such diversity, which has been built up over time.

Bill Kidd: I had a quick flick through the report when you were speaking, just to remind myself about the range of boards. NHS Tayside, which has 27 or so directors, is juxtaposed with Scottish Enterprise, which has 12. I cannot remember what page the exhibit that contains that information is on. That shows that the range of responsibility and professionalism that NHS Tayside has to cover is fairly wide and probably wider than that of Scottish Enterprise, which delivers a more focused service. I can understand why there are genuine differences, although I accept that, as you say, some differences are completely unexplained and perhaps need to be addressed. There is a range of responsibilities, which will mean that there will be different types of board. Even if there was a complete restructuring, certain differences would have to be maintained because of the service that each board delivers.

Mr Black: Yes, that is correct.

12:30

George Foulkes: The report raises hundreds of questions and issues. I am not sure that we will be able to deal with it today. Can we not hold it over and deal with it properly?

The Convener: We will come to our consideration of the report at a later point in the agenda. At the moment, members can seek any clarification that they wish from the Auditor General.

Willie Coffey: With all the variations that you mentioned, Mr Black, is it your view that we need some kind of better, improved code of good governance for boards? There are many variations in their approaches to recruitment, risk management and performance management, and only two fifths of them open their meetings to the public. Those are things for which we might expect

there to be standard processes across the public sector. To me, that points towards a need for an improved code of governance for boards to assist them in their role and clarify what their obligations are.

Mr Black: Not for a moment would I wish to give the committee the impression that one size fits all would be an appropriate message to come out of the report. As I implied in my answers to Mr Kidd's questions, it is interesting to note the diversity that exists. However, given the core responsibilities for governance that all boards have, we have included at the back of the report a checklist of questions that board members could ask themselves, including questions about meeting in public, so that at least they think about why they are not meeting in public and, if necessary, can be challenged on some of the issues through the audit process, dare I say it.

A lot of interest has been expressed in the report—which came out only last week—from a number of different sources. It is fair to say that the speaking engagements are beginning to line up, which is good and healthy. It is good to see that people are willing to use the contents of the report to reflect on how they do their business. I welcome that.

The essence of what I am saying is that one size does not fit all, but there are common core standards that all boards should apply.

Willie Coffey: What is happening as a result of your report is helpful, but it is a wee bit difficult to get why boards might suddenly want to open themselves up to the public as a result of reading a recommendation from you. They should have been doing that, or thinking about it, for a long time, rather than waiting for you to put it in one of your reports. That is why I talked about a general code of guidance that might be able to assist them at an earlier stage.

Mr Black: By and large, when it comes to the big issues that matter we do not live in a secret society. All health boards and a number of other public bodies meet in public, but that does not mean that we could not take the matter a stage further.

Anne McLaughlin: I have a quick question, but I am not sure whether you will know the answer to it. Do you have any inkling what the explanation might be for the reduction in applications for public appointments?

Mr Black: We did not research that directly, but we had some feedback on it in the large response to our survey. I invite my team to give an indication of the factors that were in that feedback.

Barbara Hurst (Audit Scotland): I do not think that the reason is known, exactly. Through our

survey, we asked all non-executive board members for their views about the reasons. Obviously, they have gone through the recruitment process and were successful, so they are a slightly biased sample. There were lots of comments about the reputational risk of being on some of the boards. Some of them mentioned pay, but that was not necessarily a big issue, because not all non-execs get paid anyway. Time commitments were also mentioned. The non-execs gave us a range of responses, but there is no clear picture of why the numbers have gone down. The complexity of the appointments process was also raised.

Angela Cullen (Audit Scotland): We recommend in the report that the Government do some research to try to establish the reasons why applications have fallen and that it do something about it.

The Convener: I thank the Auditor General and his team for that report. We will consider action at a later point in the agenda.

“Draft Code of Audit Practice”

12:34

The Convener: I am looking at the time. Could the item on the draft code be held over?

Russell Frith (Audit Scotland): It would be helpful if it could be dealt with quickly today, because we hope to finalise the code with the Accounts Commission next week.

The Convener: Okay. We will deal with it quickly.

Russell Frith: Audit Scotland appoints its auditors to a wide range of public bodies every five years, at which point we also revise our code of audit practice, which is a key part of the framework for the conduct of those audits. We have been consulting stakeholders and audited bodies on revisions to the code over the past three months. The main purpose of the code is to provide a framework for the conduct of audits. The code stresses the similarities in the conduct of audits across the range of public sector bodies, rather than the differences between the different parts of the public sector. It is a principles-based code, which stresses some of the key principles for public audit: that auditors should be independent of the bodies that they are auditing; that the audits should be wide in scope, looking at governance as well as the audit of the financial statements; and in particular that auditors should work in partnership with not only each other and Audit Scotland, but the other scrutiny bodies across Scotland.

The consultation on which we engaged produced about 40 responses, virtually all of which were highly supportive of where we were going. There were very few suggestions for either additions to what we do or, in these straitened times, for reductions.

By issuing the code, we are aiming to achieve a very high and consistent standard of audit across all the bodies that we audit. We bring the code to you for information but also to give you, as a key stakeholder, the opportunity to make any comments that you wish to make as we go through the revisions.

The Convener: Thank you. I know that committee members would want to commend the principles that are outlined in the code. I think that we would want to endorse the code, because what has been articulated is important for carrying out the audit function in Scotland and for giving the public confidence that organisations are working properly and that accounts are being scrutinised and used appropriately. The work that you have done on that is very welcome.

Willie Coffey: Did the consultees express any view about the role for audit at the follow-up, verification stage, which we have mentioned on numerous occasions in the committee? It seems to us that when an audit function makes its recommendations, it rarely revisits them in detail. Was any view taken about there being more of a role for the audit function at that end of the process?

Russell Frith: From the responses that we got, there was no specific view on that, although we have been doing work in that area over the past couple of years in particular. It might be that what we have been doing has already addressed any concerns that were there.

The Convener: Thank you. I commend the revised code to all and sundry.

Do members agree to hold over agenda item 5?

Members *indicated agreement.*

12:39

Meeting continued in private until 13:00.

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