



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### **PUBLIC AUDIT COMMITTEE**

Wednesday 24 November 2010

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**PUBLIC AUDIT COMMITTEE**  
**20<sup>th</sup> 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)

\*Jamie Hepburn (Central Scotland) (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)

Graeme Greenhill (Audit Scotland)

Fiona Kordiak (Audit Scotland)

**THE FOLLOWING GAVE EVIDENCE:**

Neil Cuthbert (Scotland's Colleges)

Ian Graham (John Wheatley College)

Ronnie Mercer (Scottish Water)

Philip Riddle (Former Chief Executive, VisitScotland)

June Smyth (NHS Borders)

Mary Wilson (NHS Borders)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

Committee Room 6



## Scottish Parliament

### Public Audit Committee

*Wednesday 24 November 2010*

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

**The Convener (Hugh Henry):** Welcome to the 20<sup>th</sup> meeting in 2010 of the Public Audit Committee. I ask everyone to ensure that all electronic devices are switched off.

Before we move to the formal part of the agenda, there are a couple of things that I would like to put on record. Last week was significant for the Public Audit Committee in a couple of ways. First, yet another member of the committee was elevated to the House of Lords—you will notice that all the lords are crammed down at one end of the table, away from us commoners. I congratulate Nicol Stephen. I know that he will bring to that other body many of the strengths that he has brought to the Parliament.

**Nicol Stephen (Aberdeen South) (LD):** Thank you.

**The Convener:** Secondly, last week the Public Audit Committee was singled out for special mention at the politician of the year awards. For the second year in a row, it won the committee of the year award, which was quite an achievement. I won the politician of the year award but, as I made clear at the event, it was a team award.

**George Foulkes (Lothians) (Lab):** Just like the Oscars.

**The Convener:** Without the contribution of members of the committee and Audit Scotland, neither of the two awards would have been made. The awards are quite an achievement.

**Murdo Fraser (Mid Scotland and Fife) (Con):** You are far too modest in sharing the glory with the rest of us.

**Nicol Stephen:** We offer you our collective congratulations.

**The Convener:** It is safer to share the glory, because when things get rough you will take the blame as well.

### Decision on Taking Business in Private

10:03

**The Convener:** Does the committee agree to take items 4, 5 and 6 in private?

**Willie Coffey (Kilmarnock and Loudoun) (SNP):** I suggest that we consider taking in public item 6, which relates to the committee's follow-up letter on "The Gathering 2009". I request that we do so because, in my view, the letter that it is proposed that we send bears no relation to the discussion that the committee held at the time. Given the comments that you have just made about the scrutiny to which the Public Audit Committee subjects public bodies in Scotland, it is important that we offer the public an opportunity to see how we scrutinise ourselves on the matter.

**The Convener:** I do not have a problem with the suggestion.

**Murdo Fraser:** I am relaxed about it.

**The Convener:** Does the committee agree to take items 4 and 5 in private and item 6 in public?

**Members indicated agreement.**

## Section 23 Report

### “The role of boards”

10:04

**The Convener:** We have already taken evidence from the Auditor General for Scotland on his report entitled “The role of boards”. We decided that we would like to get some further perspectives on the report. Today we have before us a cast of significant experience. I welcome Ian Graham, the principal of John Wheatley College in Glasgow; Neil Cuthbert, the public affairs and communications manager for Scotland’s Colleges; Mary Wilson, the chair of NHS Borders; June Smyth, assistant director of planning and performance at NHS Borders; Ronnie Mercer, from Scottish Water; and Philip Riddle, the former chief executive of VisitScotland. Thank you for agreeing to come to the meeting.

Because of the breadth of experience on the panel, we do not have time today to ask each of you to answer every question from committee members. We may try to segment our questions to match your experience and perspectives. Mary Wilson would like to make an opening statement before we move to questions.

**Mary Wilson (NHS Borders):** I simply wish to put in context the work of national health service boards, particularly NHS Borders. It may be useful for the committee to know something about the background of our area. We provide health services for just over 112,000 people. Our budget is £217 million, and we have a total staff complement of 3,300 people. In Scotland as a whole, NHS Borders is a medium-sized board. I have been a member of the board since 2003 and became chair in 2007. I was reappointed in 2009. My period of office ends in March next year.

**The Convener:** I have a specific question for Ian Graham and Neil Cuthbert. In the case of some of the other organisations that are represented here, we know the lines of accountability and where ultimate responsibility for policy matters lies. As you know, we have raised and considered previously a particular issue relating to Scotland’s colleges and universities, both of which are recipients of significant amounts of public funds. To whom are Scotland’s colleges ultimately accountable?

**Ian Graham (John Wheatley College):** We are ultimately accountable to Mark Batho, the chief executive of the Scottish Further and Higher Education Funding Council. The Public Finance and Accountability (Scotland) Act 2000 stripped college principals of accountable officer status. The former chief executive of the funding council

decided to take on that role, so we are accountable to the funding council. However, the Scottish Government makes periodic requests for information from colleges. A number of other organisations nibble away and seek information.

The Crerar review and the move towards proportionate scrutiny have not really borne much fruit for us. A number of years ago, when I was on holiday in Egypt, I fell asleep in the Red Sea and woke up with a strange sensation all over my body. When I looked down, I saw that I was being eaten alive by a shoal of fish. Sometimes it feels a bit like that when we get a large number of requests. Recently my job was advertised, as I am about to retire. The Office of the Scottish Charity Regulator phoned and wrote to us to say that the college’s advert for my post was incorrect, as the board of management, not the college, was the registered charity. If we can afford that level of scrutiny, we are in a bit of trouble, although it is useful that we have people who can act as our conscience. We answer mainly to the Scottish funding council.

**The Convener:** If that line of accountability exists, are you suggesting that, ultimately, ministers can be held to account for what happens in Scotland’s colleges?

**Ian Graham:** I think that ministers can be held to account via the funding council, but it was a wrong move and a mistake to take accountable officer status away from individual colleges, because I do not really believe that the funding council is in a position to answer for 43 colleges. It also gives the funding council an excuse to ask for vast amounts of information from institutions, and there is an opportunity cost for us to provide that.

**George Foulkes:** Do you remember the—

**Ian Graham:** We do.

**George Foulkes:** You are reading my mind. Do you remember the problem with Jewel and Esk Valley College?

**Ian Graham:** Yes.

**George Foulkes:** How could the financial scandal and the resignation of the principal have been avoided?

**Ian Graham:** I suspect that a set of unique circumstances applied in that case, and frankly I am not sure that it could have been avoided. You will understand that I do not know absolutely the details, but my understanding is that it related to a land deal that had been struck, upon which a capital project had been founded. The land deal collapsed as a consequence of financial circumstances that were not really within the control of the college and that left a big hole in the budget. That does not mean to say that there was not somebody who was responsible, but the

circumstances in that particular case were a bit unique.

**George Foulkes:** But the funding council did not do anything about it. Apparently, the board of governors did not seem to have control—I have to choose my words carefully—over what some of the people employed by it were doing.

**Ian Graham:** My recollection of the report is that it appeared that there was excessive delegation to the principal. That report, when considered by the sector, led most colleges to look again at schemes of delegation. Certainly, our scheme of delegation at John Wheatley College is revised once a year. That process is overseen by both internal and external audit.

**George Foulkes:** I do not know if Neil Cuthbert wants to say whether Scotland's Colleges is looking at that case and has drawn any conclusions from it in relation to the responsibility of boards vis-à-vis principals.

**Neil Cuthbert (Scotland's Colleges):** A number of mechanisms, principally through the funding council, are used to look at capital projects as they arise and to try to draw conclusions from what happened with previous projects. I think that you are referring to a report by the audit committee of the Scottish funding council. Such reports are disseminated via the funding council to college boards and others who might be involved in capital projects in future. The funding council looks to them to draw the lessons from that particular project and other on-going capital projects.

**Ian Graham:** My college has completed two capital projects in the past 10 years, and specific risk management processes, which were not part of the college's risk management processes, were applied to them. There was a degree of scrutiny, which was delegated to a project management group that reviewed carefully what was going on in the project. Both our projects came in on budget and on time.

**George Foulkes:** We will consider later how non-executive board members are appointed but, in relation to that particular example, would we be wrong to have the feeling that the principal was the dominant figure in the college and that board members did not play the supervisory role that we would have hoped and expected them to play?

**Ian Graham:** It certainly is not my feeling as principal that I am in charge—I do not think that that is the case. I think that the circumstances were particular to that college. You also have to remember that colleges do not execute capital projects every other week; it perhaps happens once in three generations of managers in an institution, which is one reason why the issue that Neil Cuthbert raised about post-capital-project

reviews and so on is so important. My college has conducted such reviews on completion of projects and 10 years after, to see whether the original investment was of any value.

10:15

If I have a criticism, it is that those reviews are not being disseminated regularly to the sector; they are going to the Scottish funding council, although I suppose that if you asked for them under a freedom of information request you would probably get them. The reports should be published, because lessons are being learned and it is quite possible that some of them would be picked up. It is a condition of receiving capital grant that people conduct post-capital-project evaluations. We did that on the Easterhouse building, which was finished almost 10 years ago, long before it was a requirement. The general feeling is that we do not have experience in running such capital projects every other day, and individual institutions in the sector are responsible for ensuring that the lessons that they have learned are disseminated.

**George Foulkes:** Thank you.

**The Convener:** Mr Mercer, what are the accountability lines in your organisation? Where does the accountability lie? Does it lie with the board and the chair of the board, or does the chief executive drive the policy agenda?

**Ronnie Mercer (Scottish Water):** We think of ourselves as a unitary board. The board agrees the company strategy, and we take it from there. All major recommendations from parts of the board, such as the audit and remuneration committees, come to the main board for approval. The same applies to recommendations from various other parts of the organisation.

Under the regulatory contract, the board had to accept a five-year deal from the regulator. Approval came only after a number of iterations and negotiations, and the deal was eventually accepted. The capital expenditure programme is set out for five years. The board agrees all spends and outputs, which have to cover ministerial directives.

There is a load of checks and balances in the set-up. I report to the minister and ultimately to the cabinet secretary. Everything that we do goes to the Scottish Government officials as well. We like to think that the executive board members run the company, as they should. The non-executives are there for various functions, for example related to governance and reputation, and to direct, support and challenge the executive. Ultimately, they are there to change executive members, if that is necessary. The non-execs try to create the conditions for success that the executives can

achieve. There is also a distinct division between the chief executive and the chairman.

**The Convener:** In the health service, is the chair of the board in control of setting policy directives? Are they influenced by the chief executive of the health board?

**Mary Wilson:** That is the chair's responsibility, although the chief executive is the accountable officer. It is for the chair to direct the board and work with it under the chair's leadership to set the strategic direction, the governance framework and the agenda for the board. That is principally done through committees. Health board governance committees are populated by non-executives. The chair of the health board may attend those governance committees, but they are not a member and do not chair the meetings. So there are those checks in the system, and that is reported in turn to the board.

The chair has a relationship with the cabinet secretary on policy and other matters. The chief executive is accountable to the permanent secretary, who has devolved responsibility to chief executives of health boards.

**The Convener:** Other members want to discuss the relationship between the chair and chief executive.

**Murdo Fraser:** One of the issues that came out of the Audit Scotland report was the need for clearly defined leadership, particularly at a time when the public sector is facing cut-backs in its finances and organisations may have to go through restructuring. Where we have chairs and chief executives, there is the opportunity for there to be tensions between the two as to the direction that should be taken. I wonder whether the relationship between what the chair has to do and what the chief executive has to do is understood. Are the roles and responsibilities of each clear? Perhaps Mr Riddle and Mr Mercer could say something about that from their different perspectives.

**Philip Riddle (Former Chief Executive, VisitScotland):** First, thank you very much for the invitation to address the committee and to contribute on this important subject. In my experience, there is dual accountability, which generally works well. We can look at leadership in many different ways, but I will look at it in two ways: one is to ask where we are going and to set the direction; and the other is to ask how we get there and to lead a team to get there. It is clearly the board's responsibility to set where we are going through interpreting the Government's national framework or the minister's express wishes. It is a bit like the general saying, "That's the hill we want to take." It is the executive's responsibility then to translate that into an

operational plan and to lead the organisation to deliver that operational plan. That is a bit like the captain going back to his troops to say, "We've got to take the hill and we've got to take it by Saturday. Here's how we're going to do it."

The separation of powers balances quite well in doing that. You have somebody monitoring the day-to-day operational side and there is legal accountability for the handling of public funds, which is quite important. If the organisation is working well, there is no issue; if the organisation is not working well, that is not usually what the issue is.

**Ronnie Mercer:** There is a pretty clear difference between the two. First, the chairman is non-executive and part-time, as are the non-executives, and the executives are there to run the company. In our case, it is a company—a business. With the strategy, for example, we see what direction the executives would like to go in, not for the next five years but for the next 25 years. We speak to the non-executives about what they would like to see in the strategy, and we try to get them on board with the executives' thoughts. The non-executives have a bit of a right of veto. If they feel really strongly about something, they can say, "I don't think we should do that."

As the chair, my job is to balance all that and go the right way. Some things do come to the board when the non-execs say, "We don't really want to do that," so there can be a divide. However, by and large, we finish up in a pretty unitary position, because we need strong leadership at the moment, given the financial situation and so on. We let the executives largely run the board—the executive part of it—but when it comes to specifics, a bit of help might be needed. I will give you two examples.

We have leakage targets to hit. In the first two years, we did not hit them—it was really difficult. I asked a non-executive—who happened to be the head of engineering at Heriot-Watt University and had good experience in civils—to sit with the executive people who were addressing that and to help them to get there. We have also had issues with cap ex, because we have a huge and really difficult capital programme. On one occasion, I asked another non-exec to step in there and work with them. We can do that because the non-execs are chosen according to a skills matrix, which I have here if anybody wants to read it. It says what we are looking for from those people. We want them to see that our business strategy meets the requirements of the owner—that is you, the Government—and there are also all the things that need to be challenged. So although we are a unitary board, I see the non-execs having a different role from the execs.



**Murdo Fraser:** You have almost led into my follow-up question. What you have said is fine, but how does it work when the chief executive and the chair have a challenging relationship or there is potential for conflict? How are such conflicts resolved?

**Ronnie Mercer:** Well, I have not had a conflict yet that has not been resolved, so it is difficult to say what happens if you cannot resolve it. However, by and large, a non-executive chairman is different from a chief executive. I have been both, so I can see the difference. The chief executive leads a team and, by and large, the buck stops at his door. He can listen to everybody, but he largely sets the direction that he wants to go in. That is what he is paid to do.

The non-executive chair has a group of non-executive directors—I have seven—and he has to take their views heavily on board when deciding whether or not to challenge things. On occasions, we stop things. That is done amicably, because there is logic to what we say. We ask, “Do you mind saying why you think this?” We reach an accommodation; that is how things work.

In effect, non-execs have a right of veto. It is seldom used, but it is used occasionally. Sometimes, capital schemes of more than £10 million will come to the board and be sent back. It is not that we will not do the scheme; it is that we will not do it exactly as proposed. One scheme came back twice before it could be done properly.

There is a divide—there is no doubt about that.

**Philip Riddle:** I largely agree. Formally, the arrangements might look a bit difficult: it might look as if conflict could arise between one arm of governance that says we must do this, and another arm of governance that says we must do that. However, I have never seen that happen, and I do not think that it normally should. The important element is the dialogue between the non-execs and the executives, which needs to be a healthy dialogue.

I went through the Audit Scotland report, which is very good, but it missed out the emphasis that should be placed on the board not just to monitor the executive and set a direction but to listen to the executive and, if necessary, represent its views with regard to the direction to be taken. We must take from below as well as above. It is no good just saying, “Here’s where we’re going,” and taking instruction from the top; we have to listen to and take on board what is said from below, and we must ask people whether they think that proposals are right and achievable, and whether they represent the proper way of doing things.

At non-executive level, the board must synthesise those views with the executive. If necessary, the board must go back up the way

and, while acknowledging the desired direction, argue a slightly different case or modify the proposals that have been made. As long as an informal mechanism like that is in place, there should be no conflict.

**George Foulkes:** I preface my remarks by saying that I was at VisitScotland the week before last with some tourism ministers from the Caribbean, and I was very impressed by what is going on there.

I return to what happened earlier this year—I hope that this is not too painful for Mr Riddle. He may recall that, on 30 May, the new chairman of VisitScotland, Dr Mike Cantlay, said on television:

“I think VisitScotland, led by Philip and his team, are prepared to deliver big-time for Scotland this year”.

That sounded like the chairman of a football club saying how pleased he was with his manager.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** Not everybody is a Romanov. *[Laughter.]*

**George Foulkes:** That was on 30 May. On 3 June, Mr Riddle, you were sacked. What “healthy dialogue” took place between you and your chairman between 30 May and 3 June?

**Philip Riddle:** There was very little dialogue. My departure from VisitScotland is not something that will throw great light on the deliberations over the role of the board. I am not sure what happened. I was told that the board thought that I should leave. It was made very clear to me that it was not a question of governance or of a shortfall in performance. It was not a question of a change in strategy, nor one of a lack of confidence. It was not about any specific dispute or difference of opinion. The time was right.

I asked to talk to the board about it, but I was told that that would not be possible. I really do not know any more than that.

**George Foulkes:** But you did not think that the time was right, did you?

**Philip Riddle:** No, I did not.

**George Foulkes:** So there was a direct difference of view between the new chair Dr Mike Cantlay and you. His view predominated, the board’s view predominated and you had to leave.

**Philip Riddle:** Yes. I would have liked to investigate the matter more fully, but I was not given the opportunity. If the board unanimously says that it believes that it is the right time for the chief executive to leave, the organisation is in a very difficult position, and trying to battle it out through lines of authority or governance would be damaging for everybody involved.

**George Foulkes:** You asked why, but they would not tell you.

**Philip Riddle:** Well, I was told that the time was right.

10:30

**George Foulkes:** Did you pursue that through a tribunal or any other legal route?

**Philip Riddle:** I did bring in a lawyer in order to understand the position. At the end of the day, given the potential problems for the organisation and the fact that it was not going to benefit me particularly to pursue a lawsuit all the way, I reached a settlement.

**George Foulkes:** Was it an enhanced settlement?

**Philip Riddle:** Enhanced on what? It was certainly not on the terms that would have been given to anybody else who left VisitScotland.

**George Foulkes:** It was better.

**Philip Riddle:** No.

**George Foulkes:** It was not?

**Philip Riddle:** No.

**George Foulkes:** But you did not feel that you should pursue it further. You decided to leave.

**Philip Riddle:** I did.

**George Foulkes:** Do you feel in your guts, as it were, that the decision on your departure was made by the VisitScotland board or was any external pressure applied by ministers, for example?

**Philip Riddle:** I really have no comment. I cannot comment on that.

**George Foulkes:** It was suggested in the media at the time that you were appointed under a chairman who was appointed by the previous Administration, that the new Administration brought in this young, dynamic chair, that the new Administration wanted a change, and that it asked the chair to make a change in the leadership—in the chief executive. Are you saying that you did not get that impression at all?

**Philip Riddle:** I did not. I was told by two former board members that the new chairman, when he was previously on the board, had talked to them about removing me from the position, but I have no idea what the reason was. It was never made specific to me what the problem might be.

**George Foulkes:** So you think that the problem was with the new chairman Dr Cantlay, rather than with ministers.

**Philip Riddle:** I really cannot say. I am just reporting what was reported to me. It would be remiss of me to conjecture, because I do not have

enough solid evidence or background information. I find it rather odd, but I really do not know.

**George Foulkes:** When the chief executive of Transport Scotland went early, he got an enhanced payment. We have seen—and, in fact, investigated—other people leaving early under not exactly the same but similar circumstances, and they got an enhanced payment. Did you or your lawyers not feel that you should press for an enhanced settlement?

**The Convener:** I do not think that Mr Riddle should comment on his personal circumstances. The issue is not about any enhanced payment but about the relationship between boards and executives and how money is used. Were you asked to sign a confidentiality agreement?

**Philip Riddle:** A confidentiality agreement was part of my contract.

**The Convener:** There is an issue about how public bodies operate. There is a lack of transparency and accountability. We have come across that before with Transport Scotland. It makes it difficult to hold public organisations to account when confidentiality agreements are signed. I do not think that you should be obliged to give any specific details about your personal circumstances, but there is a principled issue about confidentiality agreements. Frankly, I think that they are wrong.

Before I ask Nicol Stephen to come in, will you clarify something for me? George Foulkes mentioned the date of 30 May.

**George Foulkes:** That was the date of the television interview.

**The Convener:** Yes. It contained a full statement of support. However, a few days later, on the—

**George Foulkes:** Third of June.

**The Convener:** You have said that, by then, the board had lost confidence or thought that it was right that you should go. Was there a board meeting between 30 May and 3 or 4 June?

**Philip Riddle:** I must admit that I was not aware that I was going to get into detail on this specific subject. If my memory serves me correctly, the board meeting was in mid-May, and I was informed after it that the board would like me to go. I was just going on holiday, so I was not aware of much else happening in the interim period.

**The Convener:** The principled issue is whether boards hold board discussions in removing chief executives or senior officers, or whether that is done outside the agenda. How does a board come to such a decision? Does it sit as a board and discuss the matter? I am using your case as an example.

**Philip Riddle:** The board has every right to sit as a board on its own. In my experience that has not happened very often, but I believe that it happened on that occasion, and it has happened on previous occasions in relation to quite different matters. I think that board members feel that it is healthy to bond as a board.

In general I prefer the entire executive team, not just the chief executive, to be present at board meetings. It is not crucial that the chief executive is a member of the board, but it is healthy to have all the managers present in the main board meetings so that the board and the managers can hear one another talk.

That is the fashion that we would normally employ in VisitScotland; it is nice and open and engaging, so that people can take ownership of targets. In those circumstances, it is understandable that every so often the board should have a separate meeting with board members only.

**The Convener:** I understand why boards should sometimes have separate meetings. Is it quite intimidating for boards if the whole management team is there? Does it shift the power from the board to management?

**Philip Riddle:** I hesitate to say that it is intimidating; in my experience, board members are not easily intimidated and most of them come with a great deal of experience. The executive has the advantage of having better access to information because they deal with it day to day. If there is a detailed discussion about something, executives could be at a slight advantage as they have access to up-to-date information and know what has happened in the previous week.

However, that does not really cause a problem, because it is up to the board member to say, "I need more information and more data, and I need to investigate the matter further." A board member is always entitled to do that, and the board and the executive would always oblige. They would provide more information, separate briefings and papers, a visit to the organisation and discussion with different departments so that the board member could find out more about what lay behind any specific issue.

**Nicol Stephen:** My questions are almost identical to the convener's questions. I wonder whether we could broaden the discussion and move away from the situation in VisitScotland to ask Ronnie Mercer and Mary Wilson similar questions.

From your direct experience or observations in your industry sector or the health service, you will know of situations in which chief executives have departed and chairmen have also been required to depart. I am interested in your thoughts and

comments on whether a chief executive should be a member of the board. If that is the case, can the board meet without a member—namely, the chief executive—present? Is that a healthy thing to do? In other words, when things start to go badly wrong, what should be the protocol and the approach? Some situations are unique and extreme, but there must be a way to approach those difficult issues that makes sense to you, given your background and experience, and which is as professional and appropriate as possible in such difficult circumstances.

**Ronnie Mercer:** Sure. I have an example in which the executive presented a proposal to do something quite different with our non-regulated businesses. The non-executives listened to the proposal and were not persuaded. I handled that by saying, "Look—the proposal is very interesting, but I have no consensus on the non-executive side to proceed at this stage. You have not made your case well enough to persuade them that it is a good proposal." The executive then withdrew the proposal and said, "Okay, we haven't done so—if it was a really good case, we would all go with it." There is a balance there. It is quite rare for that to happen. The executive took the proposal away and it has not yet been brought back; it might be brought back a year from now. In effect, the non-execs vetoed the idea, because they were not persuaded to go with it. The executive did not run away. It just said, "Okay. We haven't persuaded you. We'll maybe try again later."

**Nicol Stephen:** But in those circumstances, would you meet separately from the executive or would you do it all—

**Ronnie Mercer:** In the circumstances in question, that was done with everyone there, but the governance arrangements of Scottish Water have it that I meet the non-execs alone from time to time. We do not have a special meeting—we have half an hour together before or after a meeting. We have a governance system that says that we have to do that, and we do.

**Nicol Stephen:** Do you believe that that is valuable and appropriate?

**Ronnie Mercer:** It is, because the non-execs can give a slightly different view. If they are edgy about something, they can say so better at that time.

**Nicol Stephen:** If, for example, the chief executive had repeatedly resisted the advice of the non-executives on particular capital projects or whatever and it came to a crisis, it would be in that gathering of non-execs that you would discuss the future of—

**Ronnie Mercer:** We would have a wee think about what we were doing and what was wrong. That has not happened but, hypothetically, if such

a situation arose, that would be the context in which we would have a wee think about it.

**Nicol Stephen:** How is that handled by NHS Borders?

**Mary Wilson:** In our board, I have a number of arrangements, processes and tools to manage such matters, some of which I will enumerate. First, there is the balance on the board—there are more non-executive than executive members. We also have a remuneration committee, so through performance management and appraisal, we have various mechanisms that allow us to set the agenda so that it is clear what is expected of people, including the chief executive. There is a mid-year review of that, as well as the end-of-year review. Performance management is very important in that regard.

**Nicol Stephen:** I am asking what happens when things go badly wrong. What would you expect to happen in those circumstances?

**Mary Wilson:** So you are asking not how we might prevent things from going wrong, but what we would do should things go wrong.

**Nicol Stephen:** Yes. Do you get a call from the minister, or is it your decision to call together the non-execs separately from the execs? How do you handle the situation?

**Mary Wilson:** I have no personal experience of things having gone wrong.

**Nicol Stephen:** But you have seen that happen in other health boards.

**Mary Wilson:** Yes. It is very much the responsibility of the chair to manage the relationship between the chair and the chief executive. Although there is a dual responsibility to behave professionally and to conduct business in the way that it ought to be conducted, I feel quite strongly that managing that relationship is one of a chair's principal leadership responsibilities.

If things were to go badly wrong, discussions would be held with the chief executive. In addition, the non-executives meet as a group on a bimonthly basis, when any emerging matters of concern could be discussed. In our board meetings, the challenge role that is the job of non-executives is sufficiently robust. From time to time, there have been examples—although, as in Ronnie Mercer's case, not many—of situations in which proposals have been made and through the challenge and questioning process, a sense has emerged that more work needs to be done, or that a particular area has not been sufficiently attended to or dealt with. In such circumstances, it would be for the executive team to take away those proposals and, under the leadership of the chief executive, to make them more robust, clarify them or do additional work on them.

**Nicol Stephen:** So you, too, can trigger a procedure whereby only the non-executives would be present around a table. In those circumstances, not even the chief executive would be there.

**Mary Wilson:** We can.

**Nicol Stephen:** Okay. Thanks very much.

**The Convener:** Would that be the case even if the chief executive was a member of the board?

10:45

**Mary Wilson:** The meeting to which I am referring is a bimonthly meeting of non-executives. It is open and transparent and people know about it. From time to time, there are issues that do not need to go anywhere else, as they are for the support and development of ourselves, but at other times there are things to communicate to the executive team.

**Jamie Hepburn (Central Scotland) (SNP):** I want to return to Mr Riddle. He said that he did not expect to answer some of the questions that were posed to him. I can understand that, as it was not clear to me that George Foulkes's interest was entirely to do with the role of boards. Nonetheless, Mr Riddle raised the issue of confidentiality and the convener explored that. Mr Riddle, did you say that there was a contractual obligation?

**Philip Riddle:** Yes.

**Jamie Hepburn:** Was that in your original contract when you took up post?

**Philip Riddle:** Yes.

**Jamie Hepburn:** That is interesting. That would have been when you first took up post, which was, as George Foulkes mentioned, under the previous Administration.

**Philip Riddle:** It was in 2001.

**Jamie Hepburn:** Okay. I have a general question for all the witnesses. How widespread are confidentiality arrangements? Are they a long-standing practice and a feature of the way in which boards and their executives act throughout the public sector?

**Philip Riddle:** From my experience, as far as I can remember, I have always had confidentiality agreements when working in the private sector. One is bound not to pass on information that is gained through one's work to potential competitors, for example.

**Jamie Hepburn:** But that was the private sector, which by its nature is private. I am talking more about the public sector, for which we have a responsibility.

**Mary Wilson:** In health, the only confidentiality that I am aware of is patient confidentiality. Other than that, I am not aware of anything.

**June Smyth (NHS Borders):** Every member of staff in NHS Borders signs a confidentiality agreement when they start employment, because of the sensitive nature of some of the information that they might come across.

**Jamie Hepburn:** That is understandable. I am talking more about information on wider operational arrangements, not information that pertains to individuals. We would all accept that such information should be confidential. The convener suggested that the committee has come across the issue of confidentiality before. I am new to the committee, so I am not sure about that.

**The Convener:** Yes, we have come across it before. The context that has attracted our interest is not so much confidentiality about operations that organisations understandably might want to ensure remain confidential so as not to jeopardise their organisation. I was talking about the exceptional use of public funds to make payments above and beyond that to which people are legally entitled, and confidentiality agreements being signed to ensure that no public scrutiny of that use of public funds is carried out. That is the context in which the committee had an interest.

**Jamie Hepburn:** Does any of the other witnesses have a perspective on the issue?

**Ronnie Mercer:** I do not know about Philip Riddle's situation but, in the private sector, people might finish up with what we call a compromise agreement, which limits where they can work after that for a bit. That is an extension of confidentiality. I have not seen compromise agreements in the public sector, but they are not uncommon in the private sector.

**Mary Wilson:** I can confirm that a compromise agreement is a possibility in health, anyway.

**Neil Cuthbert:** I am not aware of the circumstances that have been described occurring in colleges, but it is important to say that colleges are independent and autonomous employers.

**Mr McAveety:** The debate is more about severance package issues and trying to deal with the sensitive discussions that take place, or do not take place, before someone is asked to move on. That is the fundamental concern.

I had better confess that I was the Minister for Tourism, Culture and Sport when Philip Riddle was the chief executive of VisitScotland and I inherited some of the agreements under which he worked. I had better make another confession, which is that I have known Ian Graham for a considerable period. I should probably finish the sentence at that, but I will just point out that,

because of John Wheatley College's impact on my area, I have had correspondence on his or the college's behalf on developments at the college and many of the issues that he touched on initially.

I have two issues. One is about models of accountability, which is really what all the questions are about. It is that unknown world that is the problem. There are issues about when it is somebody's time to go and the nuances of that. I have been a minister and I know that politicians' natural intentions are to want to intrude on an issue to influence the decision-making process. I get the sense that you have different models—there are public sector bodies such as the health service and the colleges and a kind of hybrid between Scottish Water and VisitScotland. They are not exactly the same type of bodies. When ministers are keen to have their perspective put, do you detect changes in your relationships with boards or your role as chairperson on those issues?

**Philip Riddle:** I am not completely sure of the crux of your question. Dual accountability is a good thing. I am not speaking of any specific event, especially during your time as the tourism minister, but there is a danger—

**Mr McAveety:** I called it the golden age, incidentally.

**Philip Riddle:** I am sure that will catch on.

Theoretically, there must be a danger of the politicians saying that one avenue is the way in which an organisation should go. Theoretically, it could get overtly political although a body exists primarily not to meet political ends, but to deliver services or—as in the case of VisitScotland—support for tourism and the maximisation of tourism for the economy. There could be that disconnect.

Therefore, it is quite good that somebody else is saying, "Look, you may have been told to go that way but we are looking at the way in which public money is being spent and we do not think that it should be spent in that way." For a chief executive, it is quite good to know that there is that outlet. If we feel that one way is too political, we can say, "You are perfectly within your rights, through the board, to say that that is the way in which the organisation should go; however, is it the best use of public money? I have another avenue to test out." I am talking not about causing Armageddon, but about testing out a different way, talking about it and coming back through the civil servants and the lines of accountability. It is quite comforting to have that option, although I have not experienced its needing to be used. Without meaning to overdramatise it, I suggest that it is perhaps like nuclear weapons—the fact that it is there keeps the whole system sane.

**Ronnie Mercer:** We agree a five-year plan with ministers, which is a series of what we call ministerial directives. Those are outcomes that they want to see over the lifetime of, say, a regulatory contract. The regulators themselves—the economic one, the Water Industry Commission for Scotland, the Scottish Environment Protection Agency and the drinking water people—then turn those directives into a series of outputs that Scottish Water has to agree with them through an iterative process, which can take a wee while. Once the plan is agreed, we will know where we stand, which will be helpful. In my perfect world, I would then take the list and say, “Let me go on and do it,” as that is what I think I do best. That works quite well.

Now that we are in a tighter financial situation, we have discussed whether we can get the money that we need to borrow each year in a different way and whether we can still get through our process. We are talking to ministers about that—there is no great clash there. We are trying to find a way, given the present financial circumstances. By and large, we try to deliver those outputs, but we might have to manoeuvre because of what we are hit with from the financial scene. Right now, we are looking at not borrowing next year what we intended to borrow but keeping the programme running and borrowing it in the year after and the year after that. That has been agreed. If the ministers absolutely thought that we could never borrow again, that would lead to something different, but they have not said that. I am happy with the arrangement.

**Mary Wilson:** I add my considerable agreement with what Philip Riddle has said. The duality of accountability is a strength—it acts as a check and a balance. However, in terms of what chief executives and chairs understand they are to deliver and what they are accountable for, we are going in the same direction. Both are delivering and leading in the same policy framework. I have not encountered an example—I cannot think of one—of chief executives down some other route having been charged with activity or delivery that is different from what the board and chairs understand is to happen.

**Mr McAveety:** But colleges, for example, are not directly accountable to ministers or, according to the Audit Scotland report, to the funding council, apart from the question of funding. I know that there are nuances to take account of in all that, but it would be helpful if you could clear up what seems to be a bit of discrepancy.

**Ian Graham:** I have been where I am at the moment for nearly 20 years and cannot ever remember getting a direct nudge from a minister. The minister issues an annual letter of guidance,

which is translated into our plan for addressing Government priorities.

Although I cannot recall a minister ever intervening personally in an institution, I point out that in order to preserve colleges’ charitable status the Parliament itself decided to dislocate ministers’ power of direction, which now rests with the intermediary body, the funding council. As you will recall, John Wheatley College was the first college to be told that it would lose its charitable status but removing such status from all colleges would cost them tens of millions of pounds in funding. The system is carefully adhered to and I do not believe that there has ever been a behind-the-chair nudge to a college about a certain route that it alone should take. I should also say that, although we are obliged to submit to the funding council an annual plan based on our interpretation of ministerial guidance, we never get any direct feedback about it.

**The Convener:** Before Anne McLaughlin asks about the appointment of non-executive board members in colleges, I believe that in appointing board members you are all subject to the Commissioner for Public Appointments in Scotland process.

**Mary Wilson:** Yes.

**The Convener:** And then ministers make the final decision. There seems to be a quite open and transparent system in which applications are made, applicants are vetted and then recommendations are made to ministers. Is that correct?

**Philip Riddle:** That is right.

**The Convener:** Okay. We move on to the specific issue of colleges.

**Anne McLaughlin (Glasgow) (SNP):** Before I ask specific questions about the colleges, I know that there has been an issue with the number of applications to become non-executive board members. Of course, that does not apply so much to colleges, which are independent and whose boards appoint their own non-executive members. What are your thoughts on the matter? The Auditor General’s report, for example, says that in the four-year period from 2004-05 the average number of applications for each round of public appointments roughly halved to 19 and that

“The number of times when the Commissioner has granted an exception because there has been no choice of candidate available”

to the Government

“has risen from two in 2005/06 to 12 in 2008/09.”

There is clearly a problem in that respect—indeed, things might well become more difficult in future—and Audit Scotland has given a few reasons why

that might be, suggesting that the Scottish Government carry out some research on the matter. I do not know whether the Government plans to do that, but I would like to hear the panellists' views on why the number of applications has dropped so dramatically in the past four or five years.

**Philip Riddle:** The Audit Scotland report sets out the various reasons, particularly the quite weighty nature of the application process. Sometimes a board wants people who do not necessarily want to sit on it—or, at least, who do not automatically aspire to or think about doing so—and the use of rather elaborate, heavy and anonymous application procedures to cut out direct approaches actually deters some people or stops people getting nudged into place. I recognise that all that must be balanced with fairness, transparency and avoidance of preferential treatment, but the fact is that the best people for boards will simply not go through that process.

11:00

**Mary Wilson:** I think that the process has changed quite a lot in that time. I cannot really comment on the change, but the process is considerable. Candidates or prospective candidates need to put in quite a lot of thought to fill in the forms and go through the process, but the more interesting bit is the time before that. I am not sure that we promote sufficiently well, although that is changing. Grampian, for instance, is one of the non-statutory pilot areas for membership of boards. Apparently, NHS Grampian has received 80 to 90 applications because of the way in which the process has been conducted. There is scope for things to change.

The general public are possibly fairly unaware of opportunities to participate in the democratic process. We still hear people expressing pleasure that they have appointed somebody who was previously a chief executive or was at a high level in some organisation or another. That ignores the fact that, in a country the size of Scotland, there will naturally, through the bottleneck, be only so many people who will reach such positions. If we confine ourselves to looking for and being pleased about appointing people with such a career history, we will not consider a swathe of the public who could probably contribute very well.

**Anne McLaughlin:** So, there is a combination of a lack of awareness among people and a lengthy process that has to be gone through, and a person needs to be ultra-enthusiastic to go through that process.

**Mary Wilson:** Yes.

**Anne McLaughlin:** Are colleges experiencing reductions in the number of applications for non-executive board members?

**Ian Graham:** Experience is mixed. We do not have any difficulty in attracting applicants at John Wheatley College. In general, we have a pretty healthy pool of potential board members. However, I understand that there are difficulties in some areas—not necessarily on a rural as opposed to urban basis. The general feeling is that attracting applicants is perhaps not as easy in rural areas, but there does not appear to be that linkage.

**Neil Cuthbert:** I back that up. We get a mixed picture of evidence. Nowadays, colleges generally advertise for board members in the local press or the national press if they are based in the central belt. They are encouraged to keep unsuccessful applicants on the stocks, and they can sometimes co-opt them on to board committees, for example. We sometimes get feedback that there was not the type of response to an advert that would have been liked, although sometimes the responses are very good. It seems to depend on the time. I suspect that the overall picture is similar to the picture for public appointments more generally.

**Anne McLaughlin:** If the Government is going to conduct research on the matter, it might be worth considering colleges that have received high numbers of applications. Mary Wilson mentioned Grampian, where there have been high numbers of applications.

What is the college sector doing in general to promote diversity and equality on boards?

**Ian Graham:** We have worked hard at getting appropriate balances in board membership. I think that my college has managed to get a gender balance once in three years; unfortunately, domestic circumstances changed and it suddenly all went wrong. Only a change of staff membership or student president is needed for a change in representation and an apparently quite fierce swing in the balance of members. However, we currently have people with disabilities, a member of an ethnic minority and a reasonable number of women members on our board. We are focusing advertising in particular areas in which we expect to pick up people from groups that we are looking to attract on to boards. Our adverts make it very clear that we are interested in receiving applications from individuals or groups of people who are not currently represented.

**Neil Cuthbert:** The make-up of college boards is specified in the Further and Higher Education (Scotland) Act 1992, and the boards must have representatives of the business community, staff and students. There is also a phrase in the legislation about having regard to the local

education authority of the area in which the college is based.

Going beyond that, the modern interpretation of the Scottish funding council, which is based on financial memoranda and the code of corporate governance, among other things, suggests that members should have recent and relevant financial experience, for example, or experience of human resources. The parameters within which the boards work to recruit members are reasonably narrow.

**Ian Graham:** We make pretty good use of co-option, which is a nice way of giving a relatively long induction to people who might want to join the boards. We have used it as a way of ensuring that, if people fall by the wayside during a four-year appointment, we can make relatively quick appointments to the board of people who can make a contribution almost immediately.

**Anne McLaughlin:** Does the college sector do anything proactive, other than saying in its advertising that the board is looking to be represented by people with disabilities or from minority ethnic backgrounds and hoping that people will see it? Does it have a diversity strategy?

**Neil Cuthbert:** There is no national strategy, but individual college boards, which are responsible for their own appointments, try to get the mix that you describe. They are aware of the context in which they are operating with the Scottish Government and under the procedures on public appointments.

We did some analysis at the time of the review of Scotland's colleges in 2007, when the previous Administration looked at the issue. Generally speaking, the mix was similar on college boards to what it is in the rest of the public sector.

**Anne McLaughlin:** I ask that question because Mary Wilson made a very good point about the bottleneck—sometimes all we see are the same old faces. That is true of people with disabilities and people from minority ethnic backgrounds. Many people in those diverse communities could do an excellent job but they are not finding out about it.

**Ian Graham:** That is a fair point. My college makes a big effort to take part in community engagement events, which means that we go out to the community and to activists, say what we propose to do and ask what people think. That raises some confidence among local people that they might have a role to play. I understand that the board, when it is appointing my successor, will bring together a panel of local people to see whether the individuals who are coming up are appropriate, and they will link that with the way in which they expect the college to relate to the

community. Such engagement will make a difference over a period of time. People will become more confident that they can be involved.

**The Convener:** Just before I bring George Foulkes back in, I have a question for Ian Graham. Are most of the people whom you bring on to your board, either through co-option or advertising, known to you in some capacity?

**Ian Graham:** Virtually none of them is known to me. I take no part in the selection process. As the principal or chief executive of the organisation, I take no part, other than to advise the board about the skills matrix that we might be looking for. At that stage, general advice is given. We are not running a golf club here; this is a genuine and open process, and people are coming in who are not known to me.

**The Convener:** Given that the college board is responsible for a fairly closed process compared with the more open and objective process that takes place in other bodies, how do you ensure that you get the right skills mix and people of sufficiently strong character that they are prepared to stand up when necessary and occasionally confront strong characters such as you?

**Ian Graham:** That is a bit unkind, really.

**The Convener:** What—are you not a strong character? [*Laughter.*]

**Ian Graham:** I cannot speak for the sector as a whole, but my college takes that on by appointing external scrutineers of the process. The past two times that we have appointed members, the chief executive of a local charity, who has a fair amount of public sector experience, has sat in from the stage of putting together the grid of skills that we are looking for to appointment. That individual has given reports to the board, which are in the public domain, that have said, "This is how we went about it." She has said on occasion, "You've got it wrong; you have missed the possibility of appointing somebody with direct educational experience." She has been willing to make that comment to the board and the board has taken it on board.

**Neil Cuthbert:** I will answer more broadly the question on recruitment practices for the appointment of board members. Scotland's Colleges does a lot of work in that regard. We have a governance development programme and a range of guidance information for boards that we are always updating, part of which is about recruitment. One of the committee members mentioned the Commissioner for Public Appointments in Scotland. The Office of the Commissioner for Public Appointments in England and Wales has published a good little guidance booklet called "A Simple Step Guide to Recruitment". It is targeted at organisations such



as colleges, which are considered to be in the public service, and which are looking for members to join their boards, such as members of charities. That guidance gives good advice about how to undertake a process that involves external scrutiny and which might be open to being looked at closely. We make reference to that in our guidance for boards and suggest that they should follow those procedures.

**The Convener:** College board members are not remunerated, yet you say that you have managed to get strong characters and strong boards that are capable of doing the job that is asked of them. On the other hand, all the other bodies that are represented here today have board members who are remunerated. One of the things referred to in the Audit Scotland report is that there might be some causal link between the level of remuneration and the interest shown in serving. If college board members can do that job properly unremunerated, why would the other bodies require remuneration for board members? Conversely, if those other organisations require remuneration, why should we not do the same for colleges? Why the difference?

**Ian Graham:** It is an interesting question. Aside from remuneration, in the past 20 years no member of my board has claimed an expense. I have to make that clear. People come on to college boards because they have an affinity with the community in which the college operates. People genuinely want to give something back to the common good and we should be careful about dismissing public-spiritedness. We have close to 90 per cent attendance at board meetings and standing committees. People turn up to board meetings on dark, windy, snowy nights; they do not miss them, because they enjoy the notion of being linked to an institution that is making a genuine contribution to the development of its community.

**The Convener:** If that works for colleges, why does it not work for other organisations?

**Ian Graham:** Maybe they are too big and are operating on a level that is less immediately linked to the community in which the organisations operate. For example, with all due respect to it, Scottish Water is a distance away from communities except when the drains get blocked, which happens fairly frequently in east Glasgow—I am sorry that Mr McAveety is not here to hear that. We recently paid about £500,000 to improve the drainage system. That is one reason why the outline business case for our new building in the east end cost £500,000 more than it originally did: post-planning, we were hit with a bill for half a million pounds. However, we handle those things and, frankly, we do not have difficulty. Other organisations are a long way away from the

service, but we are close. People quite enjoy the local link.

11:15

**The Convener:** Except in the case of the health service, which provides services that impact directly on the public—

**Ian Graham:** I think that the board itself is seen as remote.

**The Convener:** That is true.

**Neil Cuthbert:** The issue comes up from time to time, and it was looked at in the widespread review of the college sector in 2007. It is also debated by the chairs when they gather. The position is that the non-remunerated status should remain. That puts colleges in the same camp as colleges in the rest of the United Kingdom and the higher education sector. Although the position is different from that of other members of the panel, it is a common position in the context of further and higher education in the UK.

**Mary Wilson:** I would be very sorry if the health board that I chair was remote from the community that it serves. It is well connected, and a number of members of the public contribute in all sorts of ways, in committees, consultations and so on—there is a list of them. I like to think that we have a good track record in public involvement. Indeed, we have a public governance committee that is charged with ensuring that the organisation does that work thoroughly and effectively.

None of those people is remunerated, but the non-executives are. That has been the case ever since I have been aware of there being such an opportunity in the public sector. I believe that it is determined elsewhere. It is certainly not determined locally, so it is not in my gift to decide it one way or the other.

We share with colleges the motivation of people who want to give something back. However, at the time that I first became a non-executive, I had not long started a small information technology business in the Borders, employing a few people, and for me to give the time and be out of the office there had to be some balance. To be frank, I would not have been able to take part otherwise, and that might be the case for others. Some element of remuneration encourages a wider group of people.

I encourage people to claim their expenses because, in a rural area such as ours, people can attend the range and number of meetings only if they have a car and can afford to put fuel in it. As an organisation, we would support someone if they could not, but that is another factor, and it is that kind of constraint that people consider when deciding whether to apply.

**Ronnie Mercer:** As flooding has been mentioned, I will deal with it offline.

**Mr McAveety:** Can I go to the meeting as well?

**Ronnie Mercer:** It will be execs and non-execs—let me say that. [*Laughter.*]

It looks as if Scottish Water should have the easiest task because we pay the most. It is true that we do, but I do not know whether that alone answers the question.

We do not have a problem in manning the board. All the non-executive members of the board have changed in the past two years as members' terms have ended, and I am delighted with what I have got. We need to challenge what is done in asset management, commercial activity, building, finance and regulation.

We have people on the board who are chief executives of FTSE 100 companies. I will not tell you who they are, but you can go and look them up. Would they really take a job with us for the money we pay? The answer has to be no—that cannot be why they are doing it. I am not looking for the non-executive people on our board to make their reputation; I am looking for people who arrive with a reputation to lose. That is what I need, and that is what I have. The people earn huge sums of money in their jobs, and they will do ours for what we pay—which is a lot less than a normal FTSE 100 company. I agree that it helps that we pay more, but that cannot be the only reason why the people whom I have are doing the job.

**George Foulkes:** Two points arise from Anne McLaughlin's excellent line of questioning. Could Ronnie Mercer explain how he heard about the vacancy and what motivated him to apply for the job of chair?

**Ronnie Mercer:** I was living in North America and was about to retire when I was approached to do an interim job because of what was happening here—I was not here to see that. I did the job on an interim basis for a while. When it was advertised anew, I was already there, so the process was fairly straightforward.

**George Foulkes:** So you did not go through the Office of the Commissioner for Public Appointments in Scotland system.

**Ronnie Mercer:** I did—not for the interim post but for the appointment proper.

**George Foulkes:** You were appointed interim chair.

**Ronnie Mercer:** Yes.

**George Foulkes:** So you were the favourite for the OCPAS appointment.

**Ronnie Mercer:** I have no idea—I did not phone Ladbrokes.

**George Foulkes:** When you put in your application and went through the OCPAS procedure, you did not expect not to get the job, did you?

**Ronnie Mercer:** To this day, I do not know who else was in the running for the job. I have never asked.

**George Foulkes:** Where did Mary Wilson hear about her job? What motivated her to apply for it?

**Mary Wilson:** I was first a non-executive in the days of the Borders Primary Care NHS Trust; I was appointed as a trustee to the body in 1999. I heard about it through businesswomen's networks, a fellow member of which was the chair of the previous body. I had noticed in the press the changes that were being made and talked to her a little about how they had affected her. Once the new body was established and was recruiting, she put it to me that, having been interested, I should look at the advert and consider making an application, which I did. I came across the job through networking.

**George Foulkes:** The people who put their names forward tend to be those of us—I am one of them—who are part of such networks. One difficulty is that, unfortunately, not many postmen or bus drivers apply.

**Mary Wilson:** Having been on a panel to appoint non-executives over the piece, I suggest that we get applications from a wide range of people. It is not always obvious quite what their position is—some expose that in their application and others do not. Philip Riddle spoke about the nature of the forms for the OCPAS process, which makes a difference. My application for the post that I hold was 13 pages long, as there was so much to fill in. There is a skill to doing that, and not everyone has it. Even some people who have operated at a high level do not have it, because they are not practised and have not had to submit an application for a long time. We need to enable people to do that.

**George Foulkes:** I agree. My criticism is not directed at who is in government—the same thing happened under a Government of my party's persuasion. There is a big problem in getting people from working-class backgrounds to put themselves forward for such posts; we need to find ways of encouraging them to do so. We have encountered the same problem with children's panels.

There are age limits to a number of appointments. By imposing such limits, are we not losing out on a lot of able people with a lot of time?

**Mary Wilson:** My understanding is that there are no age limits—in fact, it would be contrary to legislation for there to be any.

**George Foulkes:** I asked a parliamentary question about the issue. Unfortunately, some public appointments are excluded from the legislation and are subject to age limits.

**Mary Wilson:** I am unaware of those.

**Ian Graham:** The Further and Higher Education (Scotland) Act 1992 says that no one over the age of 70 can be appointed as a board member. That is outrageous. Until recently, we had on the board a consultant cardiac surgeon who regularly carries out heart transplants and was previously on the board of the University of Strathclyde. Regrettably, when he reached the age of 70, he was not eligible for reappointment. That practice must stop. Schedule 2 to the 1992 act requires to be reviewed to take such overt discrimination out of the system. Now, almost 20 years after that act was passed, it is inappropriate that equalities legislation is being subverted.

**The Convener:** That point is useful and the committee will reflect on it.

We will move on to board operations.

**Mr McAveety:** One or two witnesses have mentioned how to deal with big issues such as risk management and major project development. Will you give us an insight from your experience into how you have tried to keep board members informed? The Audit Scotland report says that the information that is available for executive and non-executive board members varies widely. I know that several of the witnesses have developed major projects in recent years, so I would like to hear about that.

**Ronnie Mercer:** As members know, we spend a lot of money on projects—we will spend £2.5 billion in the next five years. Our non-executive board members are often familiar with such projects because they have been involved in asset management, construction or other parts of the commercial world. When new members join—we have renewed the whole board in the past two years—we give them quite an induction, which the report mentions.

We continually update board members. I do not find time to do that at board meetings, because the board is busy and has decisions to make all the time, so I hold four workshops a year on the day before board meetings. Next week, the board meeting is on Wednesday, so all the members will come in on Tuesday afternoon for workshops on work that the company does with which they might not be familiar.

For example, I bring in the leakage team and say, “You’ve got an hour to tell these people how

you handle leakage,” and the team comes in with all its hearing devices, rods, dials and all the rest of it. My board members cannot all get out to see such work; some of them have full-time jobs, which I like, because that means that they are still in the live world of work every day. We take hours out with board meetings to cover IT, health and safety, new forward scheduling and the efficiency programme, as board meetings do not offer the chance to do that.

Board members have all told me that such activity helps them to get a grip of all that they do not see and are not aware of at board level. The board deals with the agenda and all the decisions that it must make, so such activity is done outside that. We tend to do such work quite a bit, and we ask board members from time to time to join groups of people. By and large, we like to think that our decisions are reasonably informed, because we go out of our way to make them informed. Next week, we will deal with IT and the efficiency programme for the year.

**Mr McAveety:** I know that others want to speak, but I have a question for Ronnie Mercer. Have board members ever told you that they did not have enough information on projects and risk or on financial management?

**Ronnie Mercer:** I do not know whether they have, to be honest. Most of them are used to ferreting for themselves to find out whether they do not have information. They are all encouraged to have access to the executives at any time. If they are not sure about something that we are doing financially, they can phone Douglas Millican, and he will tell them. That is how we operate.

We have a remuneration committee and an audit committee. The audit committee covers risks in depth—it considers the top five risks and all that stuff. That work goes to the board for approval, so that the task is not just landed on the three or four people who run the audit committee. We ensure that the board sees that information, that it—I hope—understands it and that it agrees to it. That is how we ensure that the board, rather than the sub-committees, takes the decisions.

**Ian Graham:** The college follows the Chartered Institute of Public Finance and Accountancy guidance for colleges and universities on risk management, which means that we do effective risk management at board and standing committee meetings. Every meeting of the board or a standing committee of our board has a risk summary at the end. Anything that has been discussed in the meeting and which seems to constitute a new risk is thrown up at that stage. The management team is then told to go away and find a means of mitigating the risk, if possible, and the issue comes back at the next meeting.

The risk register is reviewed at least twice a year, but probably quarterly. It is a live document. When we were running capital projects, there was a separate capital risk register because the risks were considered to be a bit out of the ordinary. Over and above that, a sensitivity analysis is built into all our budgets in case we have got some of the assumptions wrong. We look to see what would happen and what the implications would be if we were 2 per cent out on the income assessment, or 3 per cent, 5 per cent, or whatever.

11:30

Like almost all of us, the college has already been involved in scenario planning, asking what-if questions about reductions in the overall quantum of resource. Most organisations have at least tested out ways in which they will be able to deal with the coming reductions in public spending. We certainly have a big emphasis on contingency planning and considering how we will deal with the situation if anything goes wrong. That is pretty well spelled out and, again, it involves both the management of the college and senior board members.

**Willie Coffey:** Can we stick with the issue of risk management for a moment? The Audit Scotland report suggests that, in many cases, direct responsibility for risk management assessment is devolved to audit committees and so on. I think the flavour of what the report says is that Audit Scotland would expect risk to be dealt with directly and routinely by the boards. I heard what Mr Graham said, and I read his written submission, which is quite encouraging, but will the rest of the guys round the table comment? Do your boards routinely discuss risk assessment and management rather than just taking reports from an audit committee?

**Mary Wilson:** We have addressed two types of risk. On an annual to 18-month basis, we look at strategic risk together, as a board, in a workshop that is facilitated by external auditors. We develop the risk register, then we charge the executive team to take it away and come back and report on how the risks are going to be managed. Some prioritisation and ranking is done to weight the risks.

We also have operational risks, which are divided into clinical and non-clinical, so we have three risk registers. The risk management board is populated by clinical and management people, and they analyse and manage the risk, reporting it as required. That board reports to the audit committee. Over and above that, every board paper that comes before us has a risk analysis attached to it. The cover sheet has a template and the risk analysis is a required bit of information.

Where there are risks, they are identified in the finance reports that we have for every public board meeting, and the management actions are described within that.

On capital projects, again, the risks are identified and recorded and they are factored into the option appraisals that are undertaken. All those processes have non-executive people involved in them. An option appraisal of a capital project would come before the whole board. We use our information and communication technology system to maintain the risk registers, so business planning staff and all staff who have a management role have access to that information and input to it. In that way, there is consistency across the system. Over and above that, as has already been said, we have emergency and contingency plans that are approved by the board.

**June Smyth:** In NHS Borders, we see risk as part of everybody's business and not just as the responsibility of the audit committee or the risk management board. Every committee has responsibility for risk within its individual area, and the operational and clinical boards in the organisation have the key responsibility for keeping it alive. It is a dynamic, on-going process. Risk is actively considered at various stages of accountability right up to the board. It is mitigated where possible, and where that is not possible, it is escalated up to the board for consideration.

**Willie Coffey:** Can I have a view from Mr Mercer? Is that the position of Scottish Water? Is risk routinely discussed by the board, or is it just reported to it?

**Ronnie Mercer:** The people who look at the risks in the most depth and prepare a report for the board are the audit committee. The board is then asked to agree not only that those are the risks, but whether they are in the right order and whether we are mitigating them through our actions. The board has to read the report, talk about it and approve it. That happens several times a year. The audit committee prepares the list and the papers, which then come along to the board. The board agrees that it is all members' risk, not the audit committee's—that is how we see it.

**Willie Coffey:** We can probably pick that up in our later discussion.

My question is about openness and accountability to the public, especially regarding the business that the boards transact. According to the Audit Scotland report, there is quite a wide variation in that regard. Your own dear Scottish Water is mentioned as having none of its board meetings open to the public, Mr Mercer, whereas the health service has all its board meetings open to the public. Is there a guideline or any regulation

about that? Why have you chosen to act as you do? What are the panel's views on making board meetings more open to the public across the board? Perhaps you can start, Mr Mercer.

**Ronnie Mercer:** As you mentioned me, I will go first.

It might not be appropriate for board meetings to be held in public, and I do not know what interest there would be—I was told that there was none before. Therefore, when I came to Scottish Water, I decided to do something else. I am very keen to put our executives in front of the public at a distance of 3ft, to put it crudely, as it is a lot harder to answer them when they are right there than it is to answer in a letter or an e-mail. So, four times a year, we hold advertised public meetings at which the executives explain what they are doing across the country and what they are doing in that particular area. The most recent meeting was held last week in Inverness.

I chair those meetings, which are often attended not just by members of the public, but by councillors who represent hundreds of people. That is exactly what we want. Developers, house builders and all sorts come along. Last week, the meeting was in Inverness; in September, it was in Haddington; in June, it was in Stirling; and in March, it was in Paisley. Previous meetings were held in Glenrothes, the Western Isles, Kilmarnock, Falkirk, Glasgow, Lochgilphead, Aberdeen and Motherwell, so we hold those meetings right around the country. People are always more interested in the second part of the meeting, which is about what we are doing in their local area. Last week, they said, "What you are doing in Scotland is very interesting, but what are you doing in Inverness and the area?" We get really informed questioning—last week we had a very good meeting. I can tell within five minutes whether we are doing well in an area, and if we are not we still have to soldier on with the meeting.

That works well. We tell the public what we are doing and they can ask us anything. We answer them or take the question away and get back to them with an answer. We have found that that works very well for us. It is better than having public board meetings, which would not really interest people.

**Philip Riddle:** There is sometimes too much focus on board meetings. At VisitScotland, we try to keep board meetings as discussions about specific issues, projects and, possibly, problems. If the meetings were public, there might be a tendency to have an open discussion about general progress, and some of the value of a board meeting would be lost.

The issue has a bearing on other topics, such as watching risk and board members' other

responsibilities. What has come across from what Mary Wilson and Ronnie Mercer have said is that a lot of a board member's job lies outside board meetings. We should remember that. The board meeting is a periodic meeting at which people come together—by which time they should be well informed about what is going on—to make decisions and perhaps thrash out certain issues. Board members have to put in a lot of work outside the meetings. An issue in attracting board members is the amount of time that they have to put in to ensure that they are aware of how the risk register is running, how the financial system is going and what the general mood is in the company and that we have proper engagement with all the stakeholders in Scotland. All of that must happen outside board meetings. It is quite a responsibility, but it is generally handled quite well.

**Willie Coffey:** I will follow up on Mr Mercer's response. It is great that you have all those public meetings in places around the country, including Kilmarnock, but are you averse in principle to opening board meetings to the public? All boards have non-confidential items as well as confidential items, which can be separated quite easily. Is that not worth doing? Have you tested such arrangements in any way? Are you willing to consider opening up to the public Scottish Water's board meetings, just to test the water?

**Ronnie Mercer:** I have never done it, and the feeling was that it had not worked before. However, the public meetings that I described have worked, with hundreds of people attending, representing thousands of other people.

I find it quite difficult to separate out the confidential things. We spend £10 million a week in capital. Can you imagine what that looks like, given the number of jobs that we do? Can you imagine how those jobs are spread across the board's agenda?

The first thing on the agenda is the health and safety section. That is the most important thing that we do. We might discuss companies if something in particular has happened or if some contractors have done something that needs to be discussed. Just about every part of our agenda can contain that sort of thing.

It is difficult to say that nothing commercially awkward might be mentioned, given the size of the capital programme. I would not like to do things in that way, and I would not wish to compromise the board's debate on what we are doing because of somebody listening in—it would be impossible to mention one thing or another. I am not that keen, therefore, on holding board meetings in public. If you tell me that I must do it, I will give it a try, but it is not what I wish to do at the moment.

My antidote is the other meetings that I have mentioned—the public meetings—which have worked very well for us.

**Ian Graham:** We do not have any specific reason why members of the public could not attend our college's board, but there has never been a request to do so. We prefer to do things the other way round by ensuring that we are accountable at other local fora for what we do. The college provides regular reports on its activities at community planning partnership boards, and their meetings are open to the public.

All our papers are available, including the agendas of board meetings and standing committee meetings. Members of the public may consult those. We previously did not put those on the web until the relevant report was published, but we now have them all on the web. If anyone wants our reports, they can get them. The only ones that people cannot get are those that are embargoed by Audit Scotland—the unapproved annual reports and annual accounts. However, that is about the only thing that is ever embargoed at John Wheatley College.

We sometimes deal with information concerning other colleges that they deem to be confidential, and we generally do not make such information available, but I reckon that 99 per cent of our papers and documents are available for public scrutiny.

**Mary Wilson:** Our board meetings are held in public, and the public may attend them. However, there is no dialogue with the public at those meetings. Despite the work that we do in communities and with organisations to advertise our board meetings, which follow a cycle that is easy to understand, we do not get many members of the public turning up. I believe that that is because the answer to the question, "What is in it for them?" might be, "Not very much", when it comes to that sort of meeting.

We do lots of other things that engage the public and give them opportunities to get involved. Our annual review is held in public, and there is a part of that meeting where questions from the floor may be asked and responded to. If they cannot be answered at the time, they are followed up in writing.

We publish all our papers online, so they are available to the public. Our public board meetings travel around the region, and there is a bit of work attached to that to make community councillors and others aware of where we will be.

In addition, there are 18 individual voluntary members in our public involvement network, with 10 voluntary organisations represented. The network is widespread, and the organisations that are represented on the network have channels of

communication with about 80 organisations in the region. We also make use of the local authority's citizens panel when consultation or other things that people might be interested in take place.

In those ways we endeavour to have as much public engagement and involvement as possible. It certainly strengthens what we do a great deal, and it is much appreciated by clinical staff in particular.

I will highlight two examples. Members of the public were on the design panel that steered the way through to completion of the endoscopy unit that we opened at Borders general hospital. The same is happening with a renal unit that we are currently expanding.

We engage with the public in many ways—it is not just about meetings being held in public.

**The Convener:** I draw this evidence session to a close and thank the panel for their attendance, participation and answers. The session has been highly informative and has thrown up one or two issues that I suspect committee members will wish to pursue further.

11:45

*Meeting suspended.*

11:55

*On resuming—*

## Section 22 Report

### **“The 2009/2010 audit of the Scottish Government consolidated accounts”**

**The Convener:** Before we turn to item 3, can we agree to take item 6 after item 3?

**Members** *indicated agreement.*

**The Convener:** I invite the Auditor General for Scotland to give us his comments on his report “The 2009/10 audit of the Scottish Government consolidated accounts”.

**Mr Robert Black (Auditor General for Scotland):** Thank you, convener.

The Scottish Government consolidated accounts make a substantial document of well over 130 pages. I recall suggesting, perhaps rather rashly, that the information in the consolidated accounts might be used to help improve and inform Parliament’s budget scrutiny process. I suggested back in March that Audit Scotland might be able to assist that process by providing an analysis of variation between the outturn and the budget, and related matters.

The accounts are not qualified and, in general terms, the Scottish Government and associated bodies managed their budgets well, with the financial outturn being within 1 per cent of the budget as a whole. The Audit Scotland team prepare a final report on the accounts, which states that the Scottish Government has made significant improvements in both the timing and the quality of the accounts presented for audit. The audit was completed in early September this year, which is significantly earlier than in previous years. That was a great achievement for both the Scottish Government and the Audit Scotland team, particularly given that it was the first full year of the application of the international financial reporting standards, which are a bit of a challenge to everyone professionally.

I will comment briefly on some of the developments in reporting on the Scottish budget. As members are aware, the Scottish Government’s spending plans are usually published in the autumn, followed by a budget bill, which is usually presented to the Scottish Parliament the following January for the financial year that starts in April.

There are opportunities to change a budget during the year, with Parliament’s approval, and that is most commonly done through the autumn and spring budget review process. At each of those stages, supporting documents provide

additional detailed spending information at what are generally known as level 2 and level 3. However, there is no statutory requirement for the Scottish Government to stay within these lower limits.

In recent years the Scottish Government has made a number of significant improvements to the way in which financial information is presented to the Scottish Parliament, but we believe that there is scope further to improve the clarity of reporting to Parliament, particularly on the reasons for proposed changes to the budget.

The Audit Scotland report provides an overview of how individual Scottish Government portfolio budgets changed at the autumn and spring budget review points. For example, the report says that nearly a third of the 65 level 2 budget lines showed significant changes between the original budget and the spring budget revision.

The supporting documents provide some explanation of why budget changes are proposed. Although in some cases changes to level 2 budget lines are the result of ministerial funding announcements, which are explained in the supporting documents, it is not always clear which level 3 budget lines are affected. For example, it is not immediately clear that the additional funding for modern apprenticeships, which is a significant policy initiative, resulted in an increase in Skills Development Scotland’s budget.

Most budget changes are the result of the transfer of resources within and between portfolios and, generally speaking, there is limited information about why such transfers were necessary. I suggest that the provision of more detailed information could allow Parliament to exercise more effective scrutiny by helping the committees to understand better the reasons for proposed budget changes.

I will touch briefly, if I may, on the variations between the 2009-10 outturn and the approved budget. A summary of the total outturn is on page 30 of the accounts. The accounts also contain, from page 32 onwards, individual portfolio outturn statements, and there is a single outturn statement that details each portfolio’s capital spend against budget.

There is no formal requirement for the Scottish Government’s consolidated accounts or any other document to report the outturn at the end of the financial year in comparison with the budget at level 3. I think that subject committees would find it useful to have information at that level to inform their consideration of the budgets for future years.

12:00

One purpose of the Audit Scotland report is to provide more detail on the variations between the outturn and the budget than one can find in the accounts. There are many reasons why outturn will not match budget—for example, some budget lines are demand-led, which will affect the outturn. In other cases, the implementation of policies and projects might be faster or slower than anticipated, which will result in expenditure that is greater or less than has been estimated.

The Audit Scotland report concentrates on the significant variances at level 2. There were 11 instances in which the net resource outturn varied from the budget by more than £10 million and 5 per cent of the budget. In three portfolios, capital outturn also varied from the budget by more than £10 million. One can derive a lot of things from the accounts, but they are not always explained as clearly as they might be.

I offer two thoughts in conclusion. First, given the financial constraints that the Scottish Government will face in future, it is more important than ever that high-quality and detailed financial information is made available so that Parliament can exercise adequate and well-informed scrutiny of the proposed budget. With that in mind, there is scope for further improvement in the clarity of reporting to Parliament; for explaining the reasons for proposed budget changes; and for providing more detailed financial information to Parliament on outturn against budget. Subject committees in particular may find it useful to receive more detailed reports on the outturn at portfolio level as part of their scrutiny of the subsequent year's budget. It is important to understand what was spent in the previous year before determining the spending needs in the year to come.

In that context, I remind the committee that under the Budget (Scotland) Act 2010 a new arrangement will be introduced: for the first time, there will be only one overall statutory budget limit that will apply to the Scottish Government as a whole, which means that a breach of the legislation would be possible only if the overall total for all portfolios was to be exceeded. That will have the advantage of allowing the Scottish Government to move money more easily between portfolios without the need for approval by Parliament. There may be less emphasis on using the formal autumn and spring budget review process to secure Parliament's approval for changes to the budget. As a result, at the end of the year there might be greater variances between budget and outturn than we have seen in the past. It will be important to ensure that the change to a single overall control total under the 2010 act, which will bring some advantages for the Scottish Government, does not result in less detailed

information being available to support the parliamentary scrutiny process, especially in future years when budgets will be under severe pressure.

Secondly, I have an obvious comment that takes me back to the report that I produced last year on "Scotland's public finances: preparing for the future". The accounts relate primarily to the audited financial numbers, and say hardly anything at all about the activities, outputs and outcomes that are delivered from the spending. The Scotland performs part of the Scottish Government website provides useful information on progress with outcomes, but as I mentioned in "Scotland's public finances", the improvements in that regard need to build a link between the money that is spent and the delivery of outputs and outcomes. If we do not get that link, the ability to scrutinise the value for money of spending programmes will be somewhat limited. I encourage the Scottish Government to continue working towards filling in that missing link.

As ever, my colleagues and I will do our best to answer any questions.

**The Convener:** I want to ask the Auditor General about one of the issues that he raised towards the end of his remarks. He suggested that it would be necessary for us to consider the reasons for proposed budget changes, but he went on to discuss the single overall control total.

My understanding from what has been said is that the Scottish Government can vire money between different budget headings without bringing such proposals back to Parliament for discussion or approval. By contrast, councils in Scotland set out their budgets and councillors make policy directions, and any major changes such as, say, making a substantial cut to the social work budget in order to invest in education would be subject to discussion and a degree of accountability. We are supposed to believe that the Scottish Government is accountable to the Scottish Parliament and that the Scottish Parliament is responsible for holding the Scottish Government to account, but we are actually moving to a situation in which the Scottish Government is less accountable to the Scottish Parliament than Scottish local authorities are to their members. Given the sums of money that we are considering and the stage that we have reached in the very difficult process to which the Auditor General has referred, surely it cannot be right or helpful for there to be less accountability for and less scrutiny of the Government than ever before.

**Mr Black:** As the form and content of budget acts are clearly policy matters for the Scottish Government and, in particular, the Finance Committee on behalf of the Parliament, I hesitate



to say too much on the issue. However, the point that I was endeavouring to make was that until now the Scottish Government has been required to present in the autumn and spring budget revisions any significant adjustments at portfolio level. In other words, it has been required to obtain Parliament's approval to move money within or between portfolios. There will be advantages for the Scottish Government in having single-budget-line approval but the word of caution that I offer is that it will be important to find a way of being very transparent about those movements to ensure that at the end of the financial year account can be taken of them in any scrutiny of the Government's overall financial performance.

It is perhaps also worth making the point that the financial information accompanying the autumn budget revision, for example, has improved over the years and is useful for the Finance Committee and the subject committees in considering budget planning for the following year. We simply need to be vigilant about certain issues.

**Nicol Stephen:** The report is very valuable and I agree with everything that Robert Black has had to say on these issues. I certainly think that this is the start of a process that will become increasingly valuable in years to come as we scrutinise outturn in greater detail. In many cases the information is complex and difficult to understand; indeed, one can see from the report that Mr Black has produced that underspends and overspends have to be read in the context of

"Variances as a result of technical accounting adjustments  
... Variances as a result of budget classifications"

and

"Variances as a result of amendments to provisions".

Only after taking all that into account does one get to other general underspends against budget, which can be those that we really want to drill down into. Audit Scotland's assistance in understanding and drilling down into these matters and scrutinising what ministers and officials do will be key. I think that we will be able to do that more and more in future but at the moment things are, at times, as clear as mud.

Tricks get played—sometimes by officials as well as by ministers. For example, we have just heard about the funding for modern apprenticeships. A minister can make an announcement and refer to additional funding, but officials can then go to the body that is responsible and say that it is still expected to deliver everything within its current budget because they believe either that it was on track to underspend, or that it could make efficiency savings within the financial year. A minister can make an announcement that we think is mainstreamed into the future departmental budget, but officials,

sometimes without the minister's knowledge, will take the money out the following year, saying that the minister's announcement was for that year only. It is particularly easy for officials to do that when there is a change of Government.

All of that goes on all the time in government. The process should be clearer and more transparent and open. At the moment it is, and will continue to be for some time, complex and opaque. The reporting process is very important.

**Murdo Fraser:** I am looking for clarification more than anything else. Paragraph 12 of the Auditor General's report, and exhibit 1 below that, show the changes to the budget between the original budget and the spring budget review. I was interested to see that the net budget increased by £440 million during that period. How did that come about? Where did that additional money come from?

**Mr Black:** As ever, these things are not straightforward. I will start the answer, and then I might invite Fiona Kordiak to continue. The committee has not had the pleasure of interacting with her before. She is the director of audit services and is in charge of all the local auditing, including the audit of the consolidated accounts. She might be able to help with the detail.

The net increase in the Scottish Government's budget comes from a number of sources. Some involve additional funding from HM Treasury arising from the well-known Barnett consequential that happen during the year.

By far the biggest reasons for the increase are technical adjustments resulting from the implementation of IFRS. Those were agreed by the Treasury but the spending power is neutral as the adjustments do not involve additional cash becoming available.

I turn to some of the specific increases in the health, education and local government portfolios. The main reason for the increase in the health budget was a technical adjustment under IFRS, and the education budget increased largely because an extra £116 million was provided to the Scottish Further and Higher Education Funding Council. Extra grant funding was also provided to local authorities, but the Scottish Government would be best placed to give the committee more information on that.

Meanwhile, there have been reductions in the finance, justice and environment portfolios. Again, we can analyse that at a high level, but detailed information will have to be supplied by the Scottish Government.

**Fiona Kordiak (Audit Scotland):** I do not think that I have much to add. Basically, there was an increase of £292 million because of the IFRS

adjustments. It is not real money, in a way, so it does not mean that the Scottish Government has any additional resources; there was just a change in accounting rules. As Bob Black said, some of the rest came from Barnett consequentials and other sources, but the main increase was IFRS money.

**Murdo Fraser:** That is helpful. I was just trying to understand why the budget had increased. It sounds as if most of it came through technicalities, but there is an element of what I presume were additional announcements by the UK Government, followed by unexpected Barnett consequentials. That is interesting. We are dealing with next year's budget, for which a sum has been presented, but, on past trends, the amount of money that is available to spend might be higher than anticipated because the same sort of increases might apply in the coming year.

**Mr Black:** Yes.

**Murdo Fraser:** Okay. Thank you.

12:15

**Jamie Hepburn:** I am slightly confused, because the convener seemed concerned that the powers that are available to the Scottish Government under the budget bill allow for less scrutiny. If I understood him correctly, he suggested that the Government could move funds between budget lines without parliamentary scrutiny. However, I think that the Auditor General said that that is not the case and that parliamentary approval is still required. Is that right?

**Mr Black:** Our understanding is that, for the new budget bill, the formal approval that is required of Parliament will be for one overall control total for all the spending that is controlled by the Scottish Government.

**Jamie Hepburn:** The budget bill is liable to approval, or otherwise, by the Scottish Parliament.

**Mr Black:** Yes, that is right. That is the intention at the moment. It will be a single sum.

**Jamie Hepburn:** Notwithstanding the concerns, it is still for the Parliament as a whole to scrutinise the bill and to decide whether to pass it.

**Mr Black:** Oh, yes: there is no doubt that Parliament may scrutinise in any way that it wishes. The point that I was endeavouring to make was that appropriate arrangements will need to be in place so that the Parliament receives, at the right time, sufficient information to enable it to understand well how the resources are being moved in year, both within and between portfolios.

**The Convener:** Will you clarify that? As I understand it, you are saying that any substantial

changes that are made during the year between portfolios do not have to come back to Parliament for discussion or approval. As long as the Government stays within the total sum and does not exceed it, there is no obligation to come back for parliamentary scrutiny.

**Mr Black:** My understanding is that, on a strict interpretation, that is what the budget bill means. However, I immediately say that, in recent years, the Scottish Government and, before that, the Scottish Executive have progressively improved and widened the amount of information that is available to the Parliament. I am sure that the Scottish Government has no intention of drawing back from that, but it needs to be aware of the implications of how information comes through to the Parliament at the right time and to which committee.

**Jamie Hepburn:** The bottom line is that power over the budget is retained by Parliament.

**George Foulkes:** I have another question, but first I want to clarify that point. Does that—I assume that it does—include transfers between revenue and capital and vice versa?

**Mr Black:** Transfers between revenue and capital could occur in any case within a portfolio. The balance between revenue and capital within any particular portfolio is an administrative decision.

**George Foulkes:** I am not sure that it has been clear to everyone that the budget bill allows for that. I thought that it was about approval of specifics and not just of the overall total. That is interesting and helpful.

I have another question. Until 2007, the accounts contained a figure of £50,000 paid every year to Her Majesty's Revenue and Customs for updating the database for collection of tax changes of plus or minus 3p in the pound. In 2007, the Treasury asked for just over £1 million, rather than the annual payment. That would have enabled us to raise £1 billion through thruppence in the pound extra in tax. It is a small amount to raise a huge amount. Was it ever reported to the Auditor General that the money was no longer being paid?

**Mr Black:** No, that was not reported to us and, to be frank, I would not expect it to be, because the sum involved in payment to the Treasury was relatively small compared with the size of the budget and would be well below the threshold of what auditors of accounts call materiality.

**George Foulkes:** So, it would not have been included in the accounts.

**Mr Black:** The amount that was being spent would be in there somewhere, but it is a relatively

small sum compared with the multimillion pound figures that we are talking about in the report.

**George Foulkes:** It is a relatively small sum compared with the multimillion pound figures; you are absolutely right.

**Willie Coffey:** One helpful comment at the tail-end of the Auditor General's report suggests that more detailed financial information could be presented to the subject committees from time to time so that they can keep an eye on outturn against budget.

Am I right in saying that this is the 11<sup>th</sup> or 12<sup>th</sup> year of the consolidated accounts in the Scottish Parliament? Has the issue not arisen before of broadening and making available to subject committees regular reports on outturn against budget? It seems to be a particularly wise and sensible thing to share. Is this the first time we have thought about it?

**Mr Black:** As I mentioned earlier, both the previous Scottish Executive and the current Scottish Government have steadily improved the quality of financial information that is available. Perhaps the point that I am really trying to make here is that the section 22 report is a very complicated document, which is principally about the audited financial numbers and related matters. In that form, it is not very helpful to subject committees that are trying to come to terms with the financial performance and the spend profile within their areas of interest. It is not intended to do that.

However, I would certainly encourage the Parliament and the Scottish Government to think seriously about whether it would be possible to continue to improve the information that is available. For example, it might be possible for the Scottish Government to provide a separate document for subject committees that would provide a more detailed explanation of outturn against budget, with explanations of why variances have occurred. If we are to move to a situation where the Scottish Parliament is approving a single line, then it seems to me to be even more important that the subject committees get that kind of analysis presented to them in an easily digestible form.

**Willie Coffey:** That was really helpful. I have probably a more technical question on the main report—the consolidated accounts. I draw members' attention to pages 106 and 107, which refer to contingent assets and contingent liabilities. My question is: is it real money? There are substantial amounts of money mentioned there. I draw members' attention to the column on contingent assets headed "31 March 2010" and to the items there relating to, for example, Glasgow Housing Association and contingent liabilities for

medical negligence. Under the same column heading for contingent liabilities, there is an item in the "Health and Wellbeing" category for a potential liability from the Glasgow stock transfer of £75 million. If we add up the figures, the total comes to about £400 million. Is that real money as Fiona Kordiak described earlier? Is it set-aside money? Is it a reasonable amount of money to be set aside? How do we know whether that is enough, not enough or too much? I presume that with budgets being very tight at the moment, we could do with deploying that, if it is real money, directly to front-line services.

**Fiona Kordiak:** Contingent liabilities are not moneys that are set aside. They differ from provisions, which are moneys that are set aside. Contingent assets and contingent liabilities are, by their very nature, uncertain. That is why they are not provisions. They are disclosures of something that may or may not happen in the future that may give rise to future economic benefit or cost. There are accounting rules that need to be followed as to when something moves from being a contingent asset or contingent liability to being a provision. It is all down to predictions about how certain the event is to occur. The crucial question is whether the amount involved can be estimated with reasonable reliability. Contingent assets and liabilities have not been set aside, but are merely disclosures in the accounts.

**Willie Coffey:** If they were required to be provided for and set aside, what would be the impact?

**Fiona Kordiak:** If a liability was required, that would be a cost in the year of account in which it was decided that provision had to be made.

**Willie Coffey:** Can you see what I am getting at, convener? I ask because £300 million or so is an incredible amount of money to find if some circumstance were to arise. That would put an enormous hole in any Government's budget, at this time.

**Fiona Kordiak:** Some of the contingent assets and liabilities can be quite long term, so they may not involve issues that would ever crystallise in any one year.

**Willie Coffey:** So, we do not really have to worry too much about it, do we? *[Laughter.]*

**Fiona Kordiak:** The very fact that the amounts are disclosed means that they have to be considered and reviewed frequently.

**Willie Coffey:** Thank you very much for that.

**Mr McAveety:** The last time that question was asked was by an Irish finance minister.

**Nicol Stephen:** I am looking at paragraph 19 of the summary report, which covers variations

between the 2009-10 outturn and the budget. I am interested in the fact that the underspend was £253 million. The fair point is made that that is less than 1 per cent of the budget, but it is still more than £0.25 billion. Committee members who were in Parliament in the early years from 1999 will recall that major criticisms were made of the Government at that time for underspends of substantially less than £253 million. My first point is that that is a significant sum of money—the spending of an additional £253 million in Scotland could have made a substantial difference. Such sums of money will become even more important in future years, as the public spending situation becomes tighter and tighter.

What happens to that £253 million? What are the options for future spend of that money? Is it rolled forward? Is it still available to the Scottish Government? It is important to make the point that the sum of money that the Scottish Government required to fulfil its functions and responsibilities in 2009-10 was not the budget figure but the actual spend, which was £253 million less than the budget figure. Former councillors will be well aware of zero-based budgeting. Such an approach means that for the Government to get best value as regards future spend, it is important for it to take into account the fact that it required £253 million less to deliver services in that year, rather than just to parrot or repeat the 2009-10 budget figure.

**Fiona Kordiak:** As far as the underspend is concerned, the Scottish Government has to undertake a very fine balancing act as it comes towards the end of the financial year, because it never wants to overspend against the budgets that Parliament has approved, which would lead to automatic qualification of the Auditor General's audit opinion on the accounts.

In itself, £253 million is quite a lot of money, but as a proportion of the Scottish Government's budget, it is not. It is less than 1 per cent.

**Nicol Stephen:** In the past, the underspend has been much lower than that. As I recall, it has been less than £100 million on many occasions.

**Fiona Kordiak:** In recent years, the level of underspend has been fairly consistent. In 2008-09, it was less than 1 per cent, so it has been fairly steady in recent memory.

As regards what happens to underspends, in general, any underspend in the existing comprehensive spending review period would be returned to Westminster, to HM Treasury, and would not be reconsidered until the next CSR period. I have not yet had time to analyse—

**Nicol Stephen:** So, is the money lost to Scotland?

**Fiona Kordiak:** It would be lost to Scotland in that CSR period, unless the Scottish Government made an exceptional case to HM Treasury for retaining some of that money. It was part of the agreement that was struck between the Scottish Government and the Treasury that the funds that were sitting with the Treasury prior to the present CSR period could be released, and those have since been drawn down and released to Scotland.

**George Foulkes:** Some of that money could have been used for updating the HMRC's revenue database, could it not?

**Nicol Stephen:** It would therefore have had no cost.

**George Foulkes:** Is not it the case that £7 million of that £253 million could have been used for updating the HMRC database?

**Mr Black:** I think that that is probably a policy matter, so your question would be best directed to the Government.

**George Foulkes:** Very wise. There is a job for you in the diplomatic service.

**Jamie Hepburn:** I will just put it on the record that that is a policy matter over which we have no control, given that we have no control over HMRC.

That aside—

**The Convener:** It would be good to get that clarified on the record. I think that Jamie Hepburn is suggesting that we would have no control over paying the money to HMRC.

12:30

**Jamie Hepburn:** No. My point is that we had no influence over HMRC's decision on whether to renew the computer system.

**The Convener:** I do not think that that was the question that George Foulkes was asking; he was asking whether some of the underspend could have been used to pay the bill.

**Jamie Hepburn:** That was the point that I was making—although it was not the point that I wanted to ask about.

I am a little confused about the underspend. I understood that there was something called end-year flexibility and that money that has not been spent could be retained under the so-called end-year flexibility arrangements. Could you explain the situation?

**Graeme Greenhill (Audit Scotland):** In the fairly distant past, the levels of underspend were significantly greater than they are at the moment, and money was built up in the Treasury through the adding up of all the underspends. As part of the agreement between the Scottish Government

and the Treasury, the end-year flexibility was set aside, Scotland could get access to the money that had built up in the Treasury, and any underspends in subsequent years would not be available until the next spending review period or unless Scotland could make a specific case to argue for the release of the underspend.

**Jamie Hepburn:** The situation is just as Fiona Kordiak described.

**Graeme Greenhill:** Yes.

**Jamie Hepburn:** It is interesting to hear that underspends were much higher in the past.

**Nicol Stephen:** Could I make a point?

**The Convener:** I will bring you back in shortly, Nicol.

**Jamie Hepburn:** On contingent asset liabilities, I want to double-check that I am reading the information correctly and, maybe, set Willie Coffey's mind at ease. The figure of £293.3 million is not actually a liability, is it? It is an asset—money that could be accrued—and if you add the assets all up, the total is greater than the liabilities. Is that correct?

**Fiona Kordiak:** Yes. Some of them are assets and some are liabilities.

**Willie Coffey:** But none of them is real. *[Laughter.]*

**Nicol Stephen:** Could I simply ask that the committee be given a note of the underspends since 1999?

**The Convener:** Yes.

**Willie Coffey:** On the question of the underspend, Nicol Stephen mentioned the figure of £253 million, but the chart shows a greater underspend of £314 million. That is balanced against an overspend in capital of £61 million. What has actually been returned to HM Treasury—£314 million or £253 million?

**Fiona Kordiak:** It is £253 million.

**Willie Coffey:** In that case, if a capital project—I cannot think of one, but perhaps a capital project in Edinburgh or somewhere else—

**Jamie Hepburn:** Or Kilmarnock.

**Willie Coffey:** Yes, or Kilmarnock.

If a capital project overspent by £314 million in one particular year, could the underspend be set against that to balance it?

**Fiona Kordiak:** Yes. Money can be transferred from revenue to capital for that purpose, under how the money is accounted for.

**Willie Coffey:** If a big capital project that is currently under way has overspent significantly—I

cannot think of any such project off the top of my head—an underspend could be set against that.

**Fiona Kordiak:** Yes.

**Willie Coffey:** Great. Thank you.

**The Convener:** In conclusion, I have a couple of questions related to what the Auditor General said. Will financial performance information be sustained at a significant level of detail, or is that something that we need to ask for?

**Mr Black:** A considerable volume of information supports both the accounts and, during the course of the financial year, the budget and the autumn and spring budget revisions. There is an opportunity to work with the Scottish Government to ensure that the financial information that is provided to assist budget planning is improved, particularly in the way that information is supplied to the subject committees to assist them in their work.

**The Convener:** That would be useful. The last question is this: will we be able to see progress linking Scotland performs to the money that is actually spent?

**Mr Black:** That question is probably best addressed to the Government. I am not sure whether the team has any information about on-going work, but that link certainly cannot be made easily at the moment.

**The Convener:** We can follow that up. Thank you for your contribution.

## Section 23 Report

### “The Gathering 2009”

12:34

**The Convener:** We had originally considered taking consideration of the section 23 report “The Gathering 2009” in private, but have since agreed to take it in public. Given that the papers for this item will not have been circulated, I point out for the public record that it refers to our on-going inquiry into the events surrounding the gathering.

I circulated for members’ consideration a draft letter to the permanent secretary, Sir Peter Housden, seeking confirmation that the normal civil service rules pertained to phone calls made by the First Minister in connection with the gathering—in other words, that any such phone calls were listened to by an official and the subject recorded—and asking whether a list could be provided of all telephone calls between the First Minister and any other person, organisation or body outwith the Scottish Government in relation to The Gathering 2009 Ltd.

I suggest that we send such a letter because, from what we have heard so far, it is clear that the First Minister was very closely involved and spoke to a number of people; indeed, Councillor Cardownie referred to a phone call that he received from the First Minister. I thought that, ahead of the First Minister’s appearance before the committee, we might want to consider having such information as useful background material.

I have taken soundings from committee members, the majority of whom are happy with the draft letter’s content; however, the three Scottish National Party members asked for the matter not to proceed until the committee had discussed it. That is the reason for this item’s appearance on the agenda.

**Willie Coffey:** I asked for this item to be taken in public so that we could have a closer look at the wording of the proposed letter. My recollection is that we did not reach agreement on asking whether the civil service listens to telephone calls and I certainly do not recall anything about asking for a list of all telephone calls that the First Minister had made.

My recollection is that the focus of our letter to the permanent secretary was to be the press release, given his understanding that the City of Edinburgh Council had agreed it and the evidence from council officials that it had not. I was therefore surprised to see these questions being asked as a result of our meeting and I wonder how we arrived at them; I do not recollect that they are what the committee agreed.

**The Convener:** The committee has not arrived at anything. What has been circulated is a suggested draft in my name. One of the roles that I see myself playing is facilitating and expediting the committee’s work. I am aware that questions have been asked about phone calls and I thought that it might be helpful for committee members to have that information ahead of the First Minister’s appearance before the committee. I asked for the letter to be drafted and circulated it to committee members for their consideration and, as I previously indicated, a majority of members are content with the content. Three members—Willie Coffey, Jamie Hepburn and Anne McLaughlin—indicated that they did not wish the letter to go out until the committee had had an opportunity to discuss it. It has no formal status until the committee makes a decision.

**Anne McLaughlin:** I was not happy for the letter to go out because my understanding is that any letters that go out as a result of discussions held in private are supposed to reflect those discussions and the committee’s decisions. I do not even recall the issue being discussed, never mind decided on.

We have had many discussions on the gathering—in fact, we talk about almost nothing else—but I had no idea that we could have those discussions, decide on letters that have to go out and that you, as the convener, could decide at a later date that you would like to ask other questions that the committee had not discussed. That is why I wanted the matter brought to the committee—so that we could discuss it.

**The Convener:** No. I suggested in a draft letter that was circulated to committee members that the committee might want that information to be pursued; however, that is for the committee to decide. As convener, I drafted a letter to facilitate the work of the committee. If the committee decides that it would rather not have that information, it does not need to pursue it. Any one of us individually can pursue that information from the permanent secretary, but this is a decision for the committee.

**George Foulkes:** As you say, convener, it would be possible for each or any of us to get the information through an FOI request. However, it is important to the deliberations of the committee that we have as much information as possible. I do not understand why Anne McLaughlin, Jamie Hepburn and Willie Coffey want to hide it. I thought that they were in favour of openness and transparency and would want as much information as possible to be made available to not just individual members, but the committee. I am disappointed that we have lost a few days. The letter could have been sent and work could have been under way to get the information together. I

propose that we agree to the draft letter and request the information by 30 November, so that it will be available to us when we meet next Wednesday.

**Jamie Hepburn:** I would like to respond to George Foulkes. I am coming at this from a slightly awkward position as I have not been involved in the committee's previous deliberations. However, I have spoken to my party colleagues who have been on the committee for the duration of its inquiry and I think that it is entirely reasonable to have the matter delayed, as there are concerns about the letter that is to be issued on behalf of the committee. I do not see that it is unreasonable to want to discuss it as a committee. As for the point about being in favour of transparency and openness, we are clearly in favour of those things because we are having this discussion on the public record, which is to the committee's credit. Whether the committee wants to issue the letter will be clearer in a moment, but it is useful for the public record to know that the initiative has come not from committee discussion but from the convener. I am not criticising you or questioning your right to take that initiative, convener; I am just making an observation.

**Nicol Stephen:** I think that we should strongly support the convener's right to assist the committee in this way. It is an important role that the convener plays. If there are initiatives that the convener can take to provide us with more information to suggest appropriate lines of inquiry, as long as those are approved by the committee members, that is to be strongly encouraged. We want a full inquiry that is as open as possible.

I understand why certain committee members might want to take the heat off the First Minister by not sending the letter, but I strongly hope that, on this issue, we can unanimously support the letter being sent. Our responsibility is as members of the committee, rather than as members who are loyal to a particular party. We want a full and open inquiry, and we have taken evidence on the issue from representatives of just about every political party. It is a complex inquiry that needs full disclosure and all the facts. The letter is part of the thorough process that the committee should have a reputation for.

**Anne McLaughlin:** Nicol Stephen is completely wrong. I am not bothered so much by the content of the letter, as by the fact that it was not discussed at the meeting. As I say, we have had meeting after meeting about the gathering. If it was so crucial to get the information, why was it not discussed at the meeting? Why did the convener wait until later? If any one of us comes up with something and would like a letter written to someone, can we approach you and send the letter round to the rest of the committee members,

and say, "I've a great idea that I never thought about at the meeting. We should do this"?

12:45

**The Convener:** There are two questions there. First, the reason that it was not discussed in committee was that it occurred to me after the meeting. I thought it might be useful information to have.

My response to the second question is yes: if any member of the committee identifies an issue that they think is pertinent and they wish a letter to go out in my name as convener, they can approach me. It would then be for the committee to decide what to do.

That does not prevent any one of us, in our individual capacities, from pursuing information from anyone in relation to any of our inquiries. We all have members of staff who seek out information for us in relation to our inquiries, and I reserve the right as an individual MSP to ask for some of that information.

What I am not doing, however, is asking for it as the convener of the committee. That would be a matter for the committee to decide on.

**Willie Coffey:** It is not a question of hiding behind things and not wanting to bring people to account; it is about principle, and whether a piece of paper that has supposedly been produced on behalf of us all is a true and accurate reflection of what we all asked to happen.

I am concerned that the letter would go behind the scenes and become something completely different—it would grow arms and legs, perhaps. That is the point, and that is why I am unhappy with it. We can all ask those questions individually, as the convener and other members have said, but I feel strongly that the draft questions that follow on from our committee discussion should reflect what the committee said.

It might be worth asking as a footnote whether members would further agree to such and such, having considered the matter, but it is wrong to claim that the committee agreed on a line of questioning when we did not in fact discuss it, and that must be brought to the committee's attention.

I would like to seek the Presiding Officer's guidance on whether it is competent to construct a letter that is not based on discussion at the committee and submit it on the committee's behalf.

**The Convener:** Before I bring in Murdo Fraser, the point is that it is a draft letter, not a committee letter. I have no problem in rewording that particular paragraph and taking out the first part, so that it simply states:

“it would be helpful if you could confirm”.

There is no difficulty with that, if it is what committee members wish to do and if it better reflects the committee’s view.

**Murdo Fraser:** We are in danger of getting hung up on process. It seems to me that the convener operated entirely properly. Subsequent to the meeting, an issue occurred to him—which, in fairness, we had not discussed—as being salient to our investigation. Rather than firing off a letter in his own name as convener, without referring it back to members, he quite properly produced a draft of the proposed letter and circulated it to members.

The draft that is before us has no standing of any kind; it is purely a draft letter for discussion. Unless or until the letter is issued, there is no issue whatsoever. If members want to adjust the letter I am entirely relaxed about that, but the convener has not done anything that is improper or outwith his office as committee convener. All that he has sought to do is bring members of the committee along with him in a proposed course of action.

**Mr McAveety:** The principle is that the committee will determine what is sent under its name, if it is agreed once the committee has discussed it.

The committee and the convener have been commended by no less an institution than Scottish political journalism in its wonderful wisdom. Part of that is about finding a level of interrogation and inquisitiveness that really gets to the heart of things.

Irrespective of where we stand on the evidence that we have had so far—on which we are still to reach a conclusion—or even on the quality of that evidence, we need to keep burrowing away on some of the issues because there are still fundamental contradictions. If we are having discussions, as we currently are, and if we are clear about the authority by which the committee authorises the convener to send a letter in the committee’s name, we can agree on that. If members want to look at the wording of the letter, that is fine, although I do not have a problem with the wording as it is.

**The Convener:** If we are going to look at it, I suggest that we just take out the words

“Having considered the evidence received”

and start with “the Committee agreed”.

**George Foulkes:** If we agree to it today, the original wording is correct. If we had sent the letter last week, it would not have been correct.

**The Convener:** Okay.

**Anne McLaughlin:** I want to comment on the substance of the letter.

**The Convener:** We will decide now whether the letter should be sent in the name of the committee.

**Anne McLaughlin:** I have something to say. Such letters should be discussed at meetings rather than sent around afterwards. The convener said that he was surprised that the First Minister should make his own phone calls, which does not surprise me. Other than that, I am not sure that I understand the purpose of the letter and what we are looking for.

**The Convener:** We are looking at the record of who received phone calls in relation to The Gathering 2009 Ltd. We know that Steve Cardownie received one, but we do not yet know whether officials were aware of the content of that or whether it was a personal phone call. We also do not know whether other people received phone calls from the First Minister about the issue. The purpose of the letter is to determine exactly who received such calls.

**Anne McLaughlin:** Why does that matter, given that we know that the people who had to be invited to the meeting were invited to it? I genuinely do not understand why it matters. If we discover from this interrogation that the First Minister phoned two people and his officials phoned three, what does that tell us?

**The Convener:** We are in danger of getting into a much wider discussion. For example, did the First Minister phone Lord Sempill or any of the organisations that were participating in considering the use of public money? There is information that it would be helpful for us to have before the First Minister appears before us, but I will not get into a huge debate on the issue. We will decide shortly whether to send the letter.

**George Foulkes:** If Anne McLaughlin is right, she should not worry, as we will get a nil or an uninteresting response. However, if she is wrong, it will be very interesting and we should act.

**The Convener:** The question is, does the committee agree to issue the letter to the permanent secretary in the name of the committee?

**Members:** No.

**The Convener:** There will be a division.

**For**

Foulkes, George (Lothians) (Lab)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Henry, Hugh (Paisley South) (Lab)  
McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
Stephen, Nicol (Aberdeen South) (LD)

**Against**



Coffey, Willie (Kilmarnock and Loudoun) (SNP)  
McLaughlin, Anne (Glasgow) (SNP)

12:53

*Meeting continued in private until 12:58.*

**Abstentions**

Hepburn, Jamie (Central Scotland) (SNP)

**The Convener:** The result of the division is: For  
5, Against 2, Abstentions 1.



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