

EDUCATION, CULTURE AND SPORT COMMITTEE

Tuesday 11 December 2001
(*Afternoon*)

Session 1

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EDUCATION, CULTURE AND SPORT COMMITTEE

33rd Meeting 2001, Session 1

CONVENER

*Karen Gillon (Clydesdale) (Lab)

DEPUTY CONVENER

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

*Irene McGugan (North-East Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

*Michael Russell (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED

David Mundell (South of Scotland) (Con)

Mr Murray Tosh (South of Scotland) (Con)

WITNESSES

Ron Dalziel (Historic Scotland)

Councillor David Suckling (Scottish Borders Council)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Judith Evans

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 2

Scottish Parliament

Education, Culture and Sport Committee

Tuesday 11 December 2001

(Afternoon)

[THE CONVENER *opened the meeting in private at 14:08*]

14:54

Meeting continued in public.

Deputy Convener

The Convener (Karen Gillon): As the committee is now in public session, I ask committee members and members of the public to ensure that all mobile telephones and pagers are switched off or are in silent mode.

Agenda item 2 is the appointment of a deputy convener. I will go through the procedure. The Parliament agreed in December 1999 that the deputy convener of the Education, Culture and Sport Committee should be a member of the Labour party. Under standing order 12.1.9, when a deputy convener ceases to hold office, the committee must choose the successor from the same party. I therefore invite members to nominate a Labour member to be deputy convener. A seconder is not required.

Jackie Baillie (Dumbarton) (Lab): I nominate Frank McAveety.

The Convener: Do you accept the nomination, Mr McAveety?

Mr Frank McAveety (Glasgow Shettleston) (Lab): Yes.

The Convener: Are there any other nominations?

Mr McAveety: With my luck, there probably will be.

Jackie Baillie: There are no further nominations.

Mr Frank McAveety was chosen as deputy convener.

The Convener: I welcome Mr McAveety to the post of deputy convener. I will keep him very busy.

Scottish Borders Inquiry

The Convener: Agenda item 3 is evidence in the Scottish Borders education inquiry. I welcome Councillor David Suckling and Ian Wilkie from Scottish Borders Council and Murray Tosh MSP and David Mundell MSP, who are list members for the South of Scotland.

Members will be aware that we had hoped that Mr John Christie, who is director of education at Scottish Borders Council, would be at the meeting. However, Mr Christie has been suspended from that post and, due to medical advice, is unable to attend the meeting. He has indicated that he is willing to come to the committee in the future or to answer written questions, should the committee have any. Mr John Taylor is in the same situation. He was an employee in Scottish Borders Council's education department.

If members agree, I shall write to Mr Taylor and Mr Christie with questions to answer over Christmas. I will also ask them to come to the committee on 8 January, should medical circumstances allow. If that is not possible, the committee will need to consider the matter again on 8 January. Do members agree that I should proceed on that basis?

Members indicated agreement.

The Convener: Councillor David Suckling was previously convener of the education committee at Scottish Borders Council and Ian Wilkie is the head of legal services at the council. Councillor Suckling, do you wish to make any introductory comments or do you wish to proceed straight to questions?

Councillor David Suckling (Scottish Borders Council): I would like to make some introductory remarks to set a framework, if that is all right.

There was little sign of any financial problem during the council's first three years. During that time, the council's policy and resources committee recognised the difficulties surrounding special needs and transport and granted those service areas exemption from the budget flexibility scheme. That meant that deficits in those services would be written off in the years in which they arose. Looking back, I might have taken too much comfort from that in considering those service areas.

By the time the policy and resources committee decided on the revised budget for education in November 2000, it was impossible to accommodate its instructions to stay within the reduced figure. The decision ran counter to the practice to which I have just referred. I am aware that there was a lot of discussion between the

education department and financial services before and after that and that a number of staff had been allocated the task of investigating the problem areas. I was also aware that the chief executive was working with the directors of education, technical services and financial services to deal with the developing situation. As chairman of the education committee, I considered those actions to be appropriate in the circumstances.

15:00

At that time, I was advised that the chief executive had acknowledged the probability of residual overspend and that a recovery programme covering more than a year would be acceptable. I advised the committee that the situation was serious and that remedial action had to be taken. The officials who were present can back that up.

Contrary to what Audit Scotland said, questions were put by the committee when it was considering the various monitoring reports. I have a note of the questions with me. The council is also on record as contradicting Audit Scotland's finding. Education officials reassured the committee and me about the action that they were taking to address financial issues. In all those circumstances, those assurances were solid and definite enough to satisfy me as to their effectiveness.

The detailed report given to the committee in January covered many areas where changes had been made or were in train to address the changed financial situation. Given the content of the report, the assurances that the education officials gave to the committee and the short period left to the year end, it is difficult to envisage what else the committee could realistically have done other than note the position and all the actions that were being taken.

Before the March monitoring report was presented, the council had agreed to set up a special working group to examine the various problem areas in detail. Given that discussion, the education committee meeting in March was unexpectedly low key. At the meeting, the committee considered a report that recommended changes to the devolved school management scheme in order to address the problems. The committee did not fully accept the advice from the assistant director of financial services that the financial situation required more stringent changes to be made.

In summary, I have three points. It has been the council's practice to recognise the specific problems around key service areas. I was therefore perhaps a little too relaxed by the

knowledge of that past practice. By the time key corporate decisions to overturn past practice had been taken, it was too late to alter significantly the outturn spend. My education officials assured me that actions that had been taken and that were in train would make reasonable inroads into the overspend.

The Convener: Can you clarify which education officials gave you the assurances that everything was being dealt with?

Councillor Suckling: The director of education was invariably at education committee meetings along with all four assistant directors. Each would speak on his area of expertise. If the problem was financial, the assistant director with responsibility for finance would speak; if the problem was a continuing education one, the assistant director with that responsibility would speak. Those officials were almost always at all the meetings.

The Convener: Were any other officials from the finance department at the education committee meetings?

Councillor Suckling: Yes. The finance department used to send one of its assistant directors, Mr Bowman. I believe that you spoke to him in Galashiels.

Mr McAveety: You mentioned the Audit Scotland report. When you read about the questions that were not asked, were you surprised? If questions were asked, were actions taken as a result of those questions?

Councillor Suckling: I was very surprised. I spoke to the gentleman from Audit Scotland who came and spent a few weeks with the council and I told him what had happened. Quite a few things did not get into the Audit Scotland report.

Mr McAveety: If you had that discussion with officials—it is a central element of any committee to ask such questions—why did the Audit Scotland report overlook that?

Councillor Suckling: I do not understand.

Mr McAveety: Have you raised the issue with Audit Scotland subsequently? Have you received a response?

Councillor Suckling: The council produced a response saying that several points were missed out in the information that Audit Scotland was given.

Mr McAveety: Were questions or actions recorded in the council minute? One of the problems is lack of clarity in how things were recorded.

Councillor Suckling: Responses were almost always not recorded. I am very impressed with the verbatim report of all meetings here. The council

to which I belong does not have such a report. A minute of a meeting would be cut down and would note only the outcome of the report.

Mr McAveety: Could you take me through the meeting? If questions were asked, could you identify two of the key questions? If those questions were of such central importance, would not actions have been identified in the council minute?

Councillor Suckling: Sorry. I did not quite get your point.

Mr McAveety: You say that those questions were asked at a meeting. Can you remind me what those questions were? Given that they may relate to the central concern of overspend, what actions arose from the committee meetings? To be blunt, information has not come out in any evidence that we have received. Can you enlighten me?

Councillor Suckling: I do not have a list of the questions that were asked during the meetings. I happen to have a list of the people who asked questions because, when I chair a meeting, I tend to take a note of everyone who has their hands up to ask questions. At the January meeting, 14 committee members asked questions. Some of those questions were multiple ones and some would have covered other folks' questions as well. I do not have a note of the questions that were asked.

Mr McAveety: That is worrying. We are talking about an articulated lorry going down the road at 90 mph without the driver. Did anyone say, "Haud on a minute; let's see what strategies could stop this"? From memory, do you have any recollection of the questions that were asked? Meetings were held in November, January and then two or three months later.

Councillor Suckling: A meeting was held on 27 March, at which 13 councillors and committee members asked questions. The only note that I have indicates that one or two questions were asked about inflation and about the virements that were being suggested. Those are the only notes that I have from that meeting.

The Convener: Is that the March meeting?

Councillor Suckling: Yes. That is the meeting on 27 March.

Mr Murray Tosh (South of Scotland) (Con): Like Frank McAveety, I have some experience of local government. I would not expect the convener of the committee to keep notes, but I would have expected a clerk or assistant clerk to the committee to keep notes of questions that were asked and answered and to have notes that were much fuller than would appear in the minutes and that would cover the need for action or any follow-

up. Does the council keep such records? Do such records exist? Have you been able to access them subsequently?

Councillor Suckling: That is a fair question. The council reached a watershed when we moved to an electronic system. Everything is now available on computer. One or two items seem to have got lost from the last stages of the paper era. I know that the director kept much better notes than I did, but I have not been able to access them as he has been off sick recently. I asked for copies of quite a few things, but they were not available because of that.

Mr Tosh: Although we cannot know what records the director might have, I suggest that it might be appropriate for this committee to draw his attention to the information that Councillor Suckling has given and to ask to be given access to records that the director or anyone working for him might have about those key meetings.

The Convener: That is a helpful suggestion.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): You mentioned that, after the November meeting, you were aware that discussions between various officials were taking place. At our evidence session in Gala, it appeared that those discussions were not noted and that there was no record of their taking place. We asked about the lack of minutes and advisory notes for those meetings. Do you see the fact that those discussions were not recorded as an important error? Is it fair to accept that, if you knew about them, other members of the council would have known about them? Were the deficit that you were running at the time and the fact that you were in a spending round in which expenditure was going to overrun widely known? Was that going to come as a surprise to people in January and March?

Councillor Suckling: It was going to come as a bit of a surprise. In November, the apparent deficit was in the low hundreds of thousands, which, although a lot of money, is less than 0.5 per cent of what was a budget of around £60 million. A lot can happen before the end of the year with that scale of budgeting. Problems with special education had been flagged up in previous years, but not to the same extent as those that were flagged up last year. Problems with transport seem to be perennial. Those problems would come up in the meetings that the director and I had. By the November meeting, the true amount was not known and could not be guessed. In November, it seemed that something could be done about the deficit level of less than 0.5 per cent of the budget.

The Convener: I take you back to the situation slightly before November. As I understand it, there

was an overspend from the previous financial year. The evidence that we took suggests that by November no action had been taken to make up for the overspend that had accumulated. What role did your committee play in the discussions? An overspend in the education department has implications for the council's education committee. How did you find yourself with another overspend in November without having done something about the previous year's overspend?

Councillor Suckling: As I said in my opening preamble, it had become the norm that the overspends were absorbed—rightly or wrongly. The overspend had been absorbed wrongly in this case, but we had got used to the fact that genuine overspends would be absorbed.

Michael Russell (South of Scotland) (SNP): You use the word "absorbed", but there must be a limit to that.

Councillor Suckling: The necessary money tended to come back from council reserves.

Michael Russell: So the overspend was not absorbed in the education department budgets, but taken from council reserves.

Councillor Suckling: Towards the end of the year, the education department would be able to find out whether unspent money was available from other sources. The department tended to look to the reserves for any money that its budget could not cover.

Michael Russell: Was that a normal procedure?

Councillor Suckling: It had worked for a few years before last year.

Michael Russell: I could be forgiven for understanding from the first evidence session that we held on this matter that, according to Councillor Tulley, it was wholly exceptional to charge overspends to council reserves. Are you saying that that was normal practice?

Councillor Suckling: I should qualify what I said. That had happened during the previous two years, but it had not been the norm over a long period.

Michael Russell: The real problem last year was that the possibility for absorption had been used completely. The spillage could not be absorbed by the council's reserves. Is that what you are saying?

Councillor Suckling: Yes; that is fair.

The Convener: Did you assume that the overspend from the previous year would be absorbed by the council's reserves and that the education department would not have to do anything about it?

Councillor Suckling: No, not quite. The education department would cover as much as it could and hope that the council could absorb the rest.

The Convener: I would like to get my head clear about the situation because, to an outsider, Scottish Borders Council's internal workings are confusing, especially as there is no written record. Am I right to say that you had an overspend in the previous financial year, which started in April 1999?

Councillor Suckling: Yes.

The Convener: We took evidence in Galashiels that, by November 2000, it had not been agreed how the previous year's overspend would be paid. Is that right?

15:15

Councillor Suckling: For the year to November 2000, yes.

The Convener: I am confused. How did you go six months down the road without dealing with the overspend from the previous financial year and then have an overspend in what was the current financial year?

Councillor Suckling: The overspend in the financial year 2000-01 arose partly because the previous year's budget provided the basis for the budget in that year.

Michael Russell: That is a key point. We would like to understand the matter fully. Everything that happened is complex and difficult to understand. According to what you say, when an overspend was identified at the year end in the past two or three years, you had said, "Heck, we've got to find the money from somewhere. How much is left in this pot in the education committee?" The answer seems to have been, "Oh, we haven't got enough, we'll just find the rest from the council reserves."

Councillor Suckling: That had happened in the two previous years. In the year before that, the education budget had a small surplus.

Michael Russell: This is important for the future. Was it the culture of budget observance that, if there was an overspend, the money would be found from somewhere?

Councillor Suckling: Yes, but strenuous efforts were made to find the money from within the budget.

Michael Russell: You say that, but your response started "Yes, but—"

Councillor Suckling: The money was to be found from somewhere.

Michael Russell: We will consider a specific

budgetary figure. The staff turnover budget had a deficit of £577,977, because fewer people than expected had left. One education official was quoted in the *Southern Reporter* on 26 July as saying that the committee had been unsuccessfully “gambling with staff slippage”. That was thought acceptable because, in previous years, money had been found and the overspend had been absorbed.

Councillor Suckling: Every committee had a staff turnover budget and was expected to meet those figures. In the current year, the education committee is expected to meet a figure of £545,000, which is also proving impossible.

Michael Russell: I want to be absolutely clear about the position. The council had budgets that were impossible to meet and had been impossible to meet year on year. However, the belief was that, at the end of the year, money would be found from somewhere. That was the culture in the committee in relation to its public responsibility and that was the culture that you operated as chair of the committee.

Councillor Suckling: That is a reasonable way of putting it.

Jackie Baillie: Was that the culture throughout the council? You talked about information being fairly up to date and in focus from the council's inception and said that problems started to arise in 1999-2000. Did that culture spread throughout the council? Was that the style of financial monitoring?

Councillor Suckling: I do not think so. I think that the approach was taken by one committee. Other committees had run into financial problems and had to do much serious rethinking and restructuring, but they had sorted out the problems, so I do not think that that culture applied throughout the council.

In the mid-1990s reorganisation, many services, such as education and transport, went from the old regions to the new councils virtually unchanged. The committees that faced the most drastic changes were mostly those that came from district councils, which took a different approach. The older committees—if I can call them that—probably soldiered on as they had done for some time.

Jackie Baillie: What you said about reorganisation notwithstanding, I am keen to hear what you think your remit was as convener of the education committee. What were your everyday tasks and what were your specific areas of responsibility?

Councillor Suckling: My job was to represent the department and to ensure that it fitted in with the rest of the council. I fostered relations across the department and assisted the director in coming

to some of his decisions—many decisions were bounced off me and the vice-chairman to test the political aspects.

Jackie Baillie: Your role would be not only that of an ambassador for the education department. Did you have a role in monitoring the progress of the department towards key targets?

Councillor Suckling: I had a certain role to play in that. As I said, the department had been working for some time in a way that almost meant that it did not need a chairman or a vice-chairman. There were certain areas on which I would have liked to have been better informed, but I found it difficult to get certain information.

Jackie Baillie: I wondered whether, as the convener of the committee, you had responsibility for monitoring the department's progress. I used to work in local government and I was aware that the convener of the committee always determined the committee's direction and set its reporting style.

I want to ask about relationships. You referred to regular meetings with the director. Did you meet the senior management team or the director outwith the committee meetings in order to monitor progress? Did you have pre-agenda meetings and were those minuted? I ask that because many issues come up informally and in greater detail in pre-agenda meetings than in committee meetings. Are minutes of those meetings still available or have they, too, been lost?

What was your relationship with the policy and resources committee? Were you a member of that committee and therefore able to reflect to the council leader, Councillor Tulley, whether the education issues were being highlighted in that committee?

Councillor Suckling: The first note that I made is to do with the meetings with the director. The vice-chairman and I would meet the director on a Monday. He would spend the morning with his assistant directors and we would come in for an hour or so after that. At lunch time, we would have a sandwich and a chat about issues. We were all present for most Monday meetings.

The vice-chairman and I did not go to pre-agenda meetings, at which the agenda for the meetings was set. We discussed some of the agenda items with the director at our weekly meetings if he wanted to hear our initial response. However, the first time that we saw the full agenda was when it was sent out a week before the meeting. We knew about perhaps 60 per cent of what would be dealt with, but not formally.

Both the vice-chairman and I were members of the policy and resources committee.

The Convener: Is that the same procedure for every committee of Borders Council? Are none of

the chairmen and vice-chairmen involved in drawing up the agenda?

Councillor Suckling: The procedure is not the same across the council. Some of my colleagues were much more involved in the formulation of the agenda. I did not tell you about the pre-meeting that often took place a day or two before the council meeting. At that meeting, the director, the assistant director and the finance people—anyone who would be speaking to a report—would discuss each item on the agenda with the vice-chairman and me.

Mr Tosh: I understand why, in a financial year, there can be an unanticipated overspend under a single heading, especially in a demand-led service. Similarly, income can be underachieved, as happened in the council's nursery budget. I also understand why there are ups and downs at the end of the year, when the whole issue is settled, and how budgets can be set without a clear idea of the outturn from the previous year. However, I do not understand why, when you had the outturn from the first of the two difficult financial years, you did not crawl all over your budget again. You would have seen, from that outturn, what the variables had been, how far they were under control and how likely they were to be repeated. You might have been confident that the overspend in that first year could be met from the balances. However, surely you would have assumed that some of the factors could recur, which would have meant that you had to act urgently and decisively to rebalance the budget in the second year, having learned lessons from the outturn from the first of the two years. Did that not happen?

Councillor Suckling: With hindsight, it is obvious that things should have been done in that way. However, the officials tried to regularise things. They reported, through the director, to me. As you pointed out, a long time elapses after the budget is set before it is passed and one starts working with it. The previous year's figures are not available at that point, but the figures from the year before that are. I know that work was being done, based on that year's outturn, to anticipate what would happen.

Mr Tosh: It is difficult to see how the education department could have assumed that it would achieve the staff turnover adjustment figure of £545,000 when it had signally failed to meet the target of £438,000 in the previous year. The Borders area has a relatively low staff turnover. That section in the Audit Commission report read to me almost like creative accounting. Having had your fingers burned, surely you would not let that happen again.

Councillor Suckling: To be honest, strenuous efforts were made to make the staff turnover figure

more realistic, because it caused problems not only in the education department, but throughout the council. That has now been recognised. The matter was discussed by the finance department, but no changes were made at that point.

The Convener: How were those staff turnover figures drawn up? I left Jedburgh Grammar School in 1985. I went back there, with the Education, Culture and Sport Committee, a few weeks ago, and a substantial number of the teachers who worked there in 1985 were still there. I do not know whether it was me or them who found that a sad fact. That visit took place 16 years after I left Jedburgh Grammar School, but teachers are still working there who joined the school at the same time as me or as I was leaving. That is probably representative of the staff situation throughout the Borders. Given that, how were those staff turnover figures arrived at? People who move to the Borders tend to stay, as it is a nice place in which to live. Teachers might move between schools, but tend not to move out of the Borders once they are there. Who decided on that huge staff turnover figure?

Councillor Suckling: I completely agree with you. Staff turnover is low. Perhaps Mr Jenkins can tell us why that is so, as I am sure that he has more experience in the matter. The turnover figure came from the financial department, which set it as a target that each department had to try to meet. I do not think that anyone thought of adjusting the figure because the education department had a low turnover of teachers. The formula was perhaps based on the total revenue budget, or something like that. I do not know how the staff turnover figure was made up.

The Convener: Did the finance department draw up the turnover figure?

Councillor Suckling: I believe so.

The Convener: The clerk will take a note to try to find out how those figures were decided on, because this area has caused a particular problem.

Michael Russell: I have two issues to raise. First, I ask you to turn your mind back to December last year and January this year, when the Scottish Executive gave Scottish Borders Council £416,000 of additional resources. Your director of education signed a statement saying that the resources were additional to planned expenditure. Did the director of education discuss that with you?

Councillor Suckling: Yes.

Michael Russell: You are therefore aware that, some weeks earlier, the council cut £350,000 from the schools budget, as a result of which the greater part of the £416,000 was essentially

absorbed, which meant that there was no increase of £416,000 in the budget.

15:30

Councillor Suckling: I think that the £350,000 would have been taken out regardless of whether the £416,000 had arrived. With hindsight, perhaps we can look back and say, "Right, we had £66,000 more." However, the £350,000 would have been taken out anyway.

Michael Russell: Your director of education, who reported to you, signed a statement that said that the £416,000 was accepted as additional to planned expenditure. That was not true; the figures say that it was not true. Did you, at any time, remonstrate with your director of education about the possibility that he might have signed a document that misled the Scottish Executive and that the money was received under false pretences? Did you raise that with the director of education on any occasion?

Councillor Suckling: I would have to take advice on that, to be honest, Mr Russell. I do not believe that there was anything illegal, but I would have to take advice on that.

Michael Russell: Well, it is a point that is being raised. I turn now to my second point.

The Convener: Is it on the same issue?

Michael Russell: It is on the virement of an additional sum.

The Convener: May I ask a question for clarification?

Michael Russell: Of course.

The Convener: Councillor Suckling, are you aware that the letter that was sent to schools in the Borders in February indicated on one side of an A4 sheet the additional amount that they would receive from the Scottish Executive and listed on the other side the money that was being clawed back as part of the redistribution of money from the staff turnover budget? Were you aware that that one letter contained all that information?

Councillor Suckling: I was not aware that the information was all in one letter, but I was aware that two letters had gone out in some form or another.

Michael Russell: With hindsight, do you not now think that that was a crass thing to do?

Councillor Suckling: It was an unfortunate thing to do in many ways. In the circumstances, it was probably difficult to know what else to do.

Michael Russell: So you do not accept that it was a crass thing to do or that the head teachers' anger was justified.

Councillor Suckling: I accept that the head teachers' anger was justified. I know how I would feel, if I got a letter giving me money and taking it away.

The Convener: When we were in the Borders, much play was made by the leader of Scottish Borders Council of the difficulties that are caused to the council when the Scottish Executive ring-fences money for education spending, which he said was one of the reasons for the council's problems. The evidence that we took from schools was that, if they had not had the additional ring-fenced money from the Scottish Executive, many of them would have gone under. How do you square our saying that education is a priority and putting in extra resources with a local council's taking that money back? How do we provide additional resources if we do not ring-fence the money? How can we trust local councils when they put out that kind of financial information to schools?

Councillor Suckling: I side with the schools. Most schools have developed a good housekeeping system using the DSM money. They, and especially their school boards, have come to rely on that. Understandably, school boards have been vocal on that point. I feel—this is not the view of the council or the view that you heard in Galashiels—that ring-fenced money is essential, not just for education but for other disciplines.

Michael Russell: Let us consider another virement that had unexpected consequences: that from the excellence fund. That was agreed to on the basis that, in the words of Jack McConnell, the then Minister for Education, Europe and External Affairs, it would not impact on children with SEN.

However, because of that virement, the planned special autistic unit will no longer go ahead. In addition, there have been substantial changes to transport allocations for children with SEN and cuts in auxiliary hours for speech therapy. Can you honestly say that what has taken place has had no impact on children with SEN?

Councillor Suckling: I do not think that I have said that there was no impact.

Michael Russell: The virement was permitted only on the basis that there would be no impact on children with SEN. Do you not think that, because of the impact that there has been on children with SEN, the council has breached its word about that, even to the Scottish Executive?

Councillor Suckling: Let me comment on the autistic unit, which was, I think, to be located at Innerleithen. There has been no impact on the situation, in that we have one autistic unit in the Borders. Although one was planned, it was not put in place.

Michael Russell: That is splitting hairs, is it not? Parents and other people were counting on that planned unit.

Councillor Suckling: Yes.

Michael Russell: Their expectation has been dashed.

Councillor Suckling: The Borders is a big place and transport is quite a problem. The more that provision is split up around the Borders, the easier it is for a lot of folk. As you can imagine, it is expensive to maintain things in that way.

Michael Russell: Do you now accept that the cuts fell more heavily on children with SEN than they should have, that they have been cruel for parents of children with SEN and that, in retrospect, the council was—I think that this is the kindest word to use—wrong to undertake such an action?

Councillor Suckling: I take it that you are not suggesting that we were singling out children with SEN.

Michael Russell: I am not suggesting that; I am suggesting that not enough thought was taken to protect the most vulnerable in the education system.

Councillor Suckling: I think that a lot of thought was taken over that. There has been a big increase in the budget for SEN, although it was not enough, which we acknowledge. I do not have the figures with me, but I believe that you obtained the figure for the annual increase in the budget for SEN when the committee visited Galashiels. That increase was due to the fact that more children were requiring that attention. The budget went up severalfold.

Michael Russell: Have you read the committee's report on special educational needs?

Councillor Suckling: No, I do not have a copy of it.

Michael Russell: If you had read it, you would perhaps be able to say—as I think the council should say—that the cuts are contrary to the spirit and the letter of this committee's views, which were unanimously accepted in the Parliament.

Councillor Suckling: I suggest that provision for SEN children has gone up, although not by as much as your report indicates you would like.

Ian Jenkins: Let us move forward. Do you accept that the whole episode has caused something of a fracture between Scottish Borders Council and those whom it serves? How do you think that the council and parliamentarians can move the situation forward in a more positive direction than has been the case?

Councillor Suckling: There is no doubt that a big fissure has formed between the Borders public and the council. That can be seen every week in the newspapers, whose stories have been fuelled from various sources. Some of the concerns have been justifiable and some unjustifiable. They are still being fuelled.

I am not sure how we can try to get out of the situation. As you are perhaps aware, I have been completely out of the education scene for about six months. I have been formally out of the scene since 5 September, when I resigned my position. I have had nothing to do with anything in education since late July. I have very little to do with the committee structure of the council at the moment. I do not have any suggestions about how to improve the council's relationship with the Borders public.

Ian Jenkins: Do you accept that, given the publicity that there has been and the effect that it has had on the morale of youngsters and teachers, any attempt to pick out education as the source of a clawback of the £3.9 million overspend from previous years would be totally unacceptable to the people whom you serve?

Councillor Suckling: I agree. I do not think that it is possible to claw back £3.9 million from next year's budget or the budget of the two following years. Some other mechanism has to be found. As you are aware, the Borders has a good education system. We have had very good results. I am sure that the situation has not helped, but that shows the resilience of youngsters in the Borders.

Ian Jenkins: When we took evidence in the Borders there were two or three issues that shocked us: the cleaning of the schools, the cut in provision of services for youngsters with learning difficulties, such as speech therapy and the tightness of the per capita budget and materials that the schools were working with. When the council is setting its budget, would you—if you were still chair of the education executive—be pushing hard for a bigger slice of the cake for education?

Councillor Suckling: We always pushed hard for as big a slice of cake as possible. It is perhaps a little harder to do when one has the biggest slice of the cake anyway, without putting up the backs of one's colleagues. Until now, there has been little problem in making the case—it has been a question of the allocation of resources after one has made the case.

Ian Jenkins: Those are three elements that are right at the front line and which must be protected.

Councillor Suckling: Yes. The cleaning was a serious problem and, as the committee will be aware, there was significant comeback on that. The system has already changed.

Speech therapy is provided in conjunction with the health board, which complicates matters.

As I mentioned earlier, some head teachers managed to build up a good reserve in their per capita budget and that gave them a slight cushion. However, those reserves are being eaten into, so the problem cannot continue for too long.

Ian Jenkins: The worry is that, although schools can hold their breath for some time, it looks as though such problems will carry on for another year, so the situation is serious.

Councillor Suckling: At the moment, we are not quite sure what is happening next year. It certainly looks as though the situation will continue.

Mr Tosh: I am aware of the risks of saying that you should increase the expenditure in one area. You will be as aware as anyone else who reads the local papers that there is great pressure on other areas of expenditure, such as care in the community and essential roads maintenance. Is there not an argument that the issue in respect of special educational needs is not that the council has overspent its budget, but that, as you acknowledged, the budget that was set did not match the level of demand? Has there been a failure to set an adequate budget?

Councillor Suckling: Yes. Back in March, some of the officials, the vice-chairman and I held a series of meetings to consider special education and the reasons why demand for it had increased so much and had completely outstripped the increased budget that it had been given. We had three meetings—it would have been four, but the heavy snow knocked out one of them. We concluded that we did not know where the increase in demand came from. If the increase had been quantified when children were younger, we would have known about it in advance. We thought that children were moving into the Borders and, in certain cases, that was true. However, demand shot up and although the resources increased annually, they were insufficient to meet that increased demand.

Mr Tosh: Did you envisage making recommendations to deal with that increase?

Councillor Suckling: After a series of meetings, we applied the criteria that governed the way in which we funded SEN much more rigorously than before.

15:45

Mr Tosh: What does that mean?

Councillor Suckling: Policies can be either loosely or tightly interpreted. Sometimes, one has to interpret a policy a bit more tightly, perhaps by

not being so accommodating.

Mr Tosh: Do you mean that you were going to squeeze the budget by trying to make the money go further?

Councillor Suckling: Yes. We had started to do that.

Jackie Baillie: I will ask a process question, followed by a political question—I know that I am treading on dangerous ground, convener, but I would like some clarification.

You said that the issue relates more to the sufficiency of the resource than to the effectiveness of the spend. Did I pick up that point correctly?

Councillor Suckling: Yes.

Jackie Baillie: On that basis, let me establish what the council's priorities are. You are about to engage in the budget-setting process. Some evidence has been collected on the use of reserves. From statements that you have made today, it appears that past practice was to share the pain. Is education the political priority for Scottish Borders Council? If so, how will you reflect that priority in your budget deliberations?

Councillor Suckling: If you think back to your local council days, you will probably realise that the budget process for next year has started—it is well under way. The major difference this year is that I am not part of that process.

After what has happened in the past six or eight months, the use of reserves will probably stop completely, unless there is an emergency. The level of reserves is not as high as the level that we have enjoyed for several years. We are getting down to—in fact, we have probably dipped below—the average percentage reserve of councils in Scotland.

The political push behind education is similar to that in the Scottish Parliament—education is extremely important in the Borders. However, we must also remember that lifelong care and getting to work safely on the roads are also extremely important. Resources have gone into education every year, probably at the expense of some other departments.

Jackie Baillie: Let me press you on this issue. These days, the language of politics is about priorities. I can set five different priorities and give them equal weighting, but I am trying to push you into telling me what is the political priority of Scottish Borders Council. If, as has been said elsewhere, education is the priority, how will you make that priority a reality? You have talked about what the education department has done previously, but how do you make that a reality in the context of the budget-setting exercise for next

year? To be frank, the local authority for which I worked never had reserves.

Councillor Suckling: I read about the average level of council reserves in—I think—Audit Scotland's report. I think that the figure was 2.8 per cent, but I take your point.

You ask how the council is going to treat education in this budget round and beyond. I do not know the answer to that, as I am not part of the process nor have I been consulted. The council committee that reported on the education situation did not consult me and I do not know what the council's political plans are. I am not a political animal in that way, so I do not go to group meetings.

Like a number of the members of Scottish Borders Council, I am an independent councillor, so I receive no input from any political group. I do not know how the council will deal with education. The process will probably start this Friday when, at an informal council meeting, recommendations will be made about the future structure of the education department. I do not know what has been suggested.

The Convener: Are you aware of any plans for public consultation on the council's budget?

Councillor Suckling: Not at the moment. I am aware that there is consultation as part of the budget process, especially if one is working with budget holders in other organisations. However, as far as I am aware, the budget is not subject to public consultation.

Mr McAveety: In the evidence that we have received so far, people have said either that the decision-making process in the council was centralised or that it was decentralised. How would you define it?

Councillor Suckling: Recently the process changed—we now work to the executive structure. The executive meets formally and informally to deal with most business.

Mr McAveety: In percentage terms, how much influence do you think the convener of the education committee has when key decisions are made, compared to the influence of, say, the council leader? Let us pluck him from obscurity.

Councillor Suckling: As the committee is aware, the leader of Scottish Borders Council is a strong personality who holds the council together quite rigorously. The holder of the education portfolio, as it now is, will have as much say in the executive as the other portfolio holders.

Mr McAveety: Do you think that when you were the convener of the education committee you were well served by the directorate of the education department?

Councillor Suckling: I thought so at the time.

Mr McAveety: Do you think so now?

Councillor Suckling: Looking back, I see one or two things that I would have changed, had I known about them. For example, I was not informed that one of the assistant directors of education had been suspended until just after that happened. A week later that assistant director lost his job.

The Convener: So you were not aware that there were concerns about one of the assistant directors of education.

Councillor Suckling: I was not. I first heard about that at 5.45 pm on 1 June, when I was about to go to our local village celebrations, which Mr Jenkins may remember. I was phoned by John Christie, who said that he had just suspended the assistant director of education with responsibility for finance. That was the first that I knew about it.

The Convener: I want to be clear about this: are you saying that the convener of the education committee was not informed that the council was about to suspend one of the assistant directors of education?

Councillor Suckling: That is correct.

The Convener: Do you know whether the leader of the council knew about that and was part of the decision-making process?

Councillor Suckling: I do not know. I feel that he must have been, but I do not know.

The Convener: What is the role of the elected members of Scottish Borders Council, if they are not informed that members of staff are about to be suspended or that there are concerns about their conduct?

Councillor Suckling: That is a valid question.

Michael Russell: What is the role of an education convener? With the greatest of respect, I have the feeling that all afternoon we have heard the story of a bystander at a traffic accident, who watches the accident happen but is not involved and cannot remember some of the details.

I remind you that, in evidence to the committee on 5 November, Councillor Tulley said:

"We were aware from early on in this financial year that the education budget for this year had not been adequately constructed."—[*Official Report, Education, Culture and Sport Committee*, 5 November 2001; c 2750.]

If we were dealing with any other council, I would take that as criticism of you, Councillor Suckling, by the leader of the council, because you were responsible for the education committee and what happened on it. According to Councillor Tulley, you and the education committee did not construct the budget adequately. Do you take that as a

personal criticism? How do you square that with your stand-off role that you have been talking about all afternoon?

Councillor Suckling: I take it as a personal criticism. I do not know whether it is justified. The situation had arisen before in other departments. It is not the first time that we have heard such comments.

Michael Russell: So, on previous occasions, Councillor Tulley has said that you were responsible.

Councillor Suckling: As committee convener I have to be responsible.

Michael Russell: Were you responsible?

Councillor Suckling: In many cases, the department went its own way and perhaps did not inform the convener of everything that, in hindsight, I realise it would have been useful to know.

Michael Russell: Let me ask that question again. Were you responsible?

Councillor Suckling: I do not think I need to answer that, Mr Russell.

The Convener: I want to ask about the role of the policy and resources committee. There are individual budget headings and departments, but it appears that the policy and resources committee of the council has a particular role. I understand that an order was issued in November that steps were to be taken to bring the education budget into line. How was that done? Were you involved in that? Was the policy and resources committee or the education committee responsible for overseeing that?

Councillor Suckling: The policy and resources committee consisted of all the chairmen and vice-chairmen of the council committees. Apart from its remit of looking after the policy and resources of the council, it looks after what is now called the corporate services department—the council's central administration unit. At the meeting in November, the chair of the policy and resources committee pointed out that there was an overspend in education of £265,000—that was the figure that I gave earlier—and indicated that it was less than half of 1 per cent. It was said that all departments should try to keep within budget.

Most departments would usually be able to make up a shortfall of less than half of 1 per cent in a matter of months, if necessary. However, it appears that the figure of £265,000 was inaccurate and that the situation was much worse. If that had been known at the time, things might have got moving a little earlier. What started off as an overspend of less than £300,000—it started at £300,000 and was reduced to £265,000—

eventually came to £3.9 million when added to the previous years' figures. If there had been any inkling that that was the figure concerned, things would have started at a different stage.

The Convener: But you knew about the previous years' figures and nothing seems to have been done about it.

Councillor Suckling: The money had been absorbed through the use of reserves. I was of the opinion that once that had happened, that budget would be back in balance. Obviously that was not the case. It had been decided to count the previous year's overspend.

The Convener: Could you clarify that for me? As convener of the education committee, you assumed or were under the impression that the previous years' overspend had been absorbed by the council's reserve and had so been dealt with?

Councillor Suckling: Yes—wiped off.

The Convener: Somewhere along the line, a decision was made not to do that.

Councillor Suckling: Yes.

The Convener: Who made that decision?

Councillor Suckling: I take it that it was the current convener.

The Convener: The convener of the council?

Councillor Suckling: Yes.

The Convener: Did that happen without consultation with you or your committee?

Councillor Suckling: Yes.

Michael Russell: When were you notified that that decision had been taken?

Councillor Suckling: During the spring when somebody said, "And then of course there is the money from the year before and the year before."

Michael Russell: So, Mr Tulley does not ring you up and say, "By the way, we're not actually going to pay this out of reserves this year as we've done in previous years." Instead, he just thinks that somebody might tell you at some stage. Is that what you are telling us?

Councillor Suckling: It seemed to work like that sometimes, yes.

Michael Russell: Gosh.

16:00

Jackie Baillie: You said that you learned about this in the spring, yet all the evidence suggests that the £1.6 million overspend from the previous year was learned about in November 2000. I would like that point to be cleared up.

Secondly, you said that you were a member of the policy and resources committee. Unless you are about to tell me otherwise, the kind of decision that we are talking about would have been taken at the policy and resources committee and not by the leader alone—or are you telling me that that is what happened? Does your scheme of delegated responsibility enable the council leader to take decisions of that nature?

Councillor Suckling: I think that what came out of the policy and resources committee is a matter of interpretation. I did not realise that the decision applied to money from previous years.

Jackie Baillie: With respect, the minutes of the policy and resources committee meeting are a matter not of interpretation but of factual record. Clearly, if the convener of the policy and resources committee had taken a decision—whether at the committee meeting or through a scheme of delegated responsibility, which, again, is a matter of public record within each local authority—that decision would have been written down somewhere. Something of that significance would have been brought to all councillors' attention and to spending conveners' attention. Yet you say that you did not know anything about it.

Councillor Suckling: No, I did not.

Mr Tosh: What did you do when you became aware of the convener's decision? Did you challenge it in any meeting with him?

Councillor Suckling: I am not saying that it was the convener's decision. I do not quite know where the decision came from.

Mr Tosh: I accept that. When you became aware of the decision—which you must have interpreted as either a political or a management decision—did you raise the matter at any level within the council? Did you take it to the committee?

Councillor Suckling: No. We took it up within the education management team.

Mr Tosh: I do not understand that, because you have implied that the decision was taken outside the education department and then given to the education department. Are you saying that the director challenged the decision within the council's corporate management structure?

Councillor Suckling: This is going back almost a year and a lot has happened. I am sorry, but I cannot really help you on that one.

Mr Tosh: I would have thought that in the distressing circumstances of recent months, you had the opportunity to think over such matters and try to work out where that decision might have come from. If you decided that you were not going to challenge the decision or could not challenge it,

it would be instructive for this committee to know why you did not think that you could change a decision that had been taken elsewhere within the structure.

Councillor Suckling: It may be that I thought that I had made a serious mistake at that point—I am not really sure, to be honest.

Mr McAveety: Do you see yourself as a victim in this process?

Councillor Suckling: I see myself as having followed an inevitable course. As one knows if one reads the papers and is aware of things, in local politics the ultimate responsibility lies with the chair. If something serious has happened, the chair has responsibility. I do not see myself as a victim.

Mr McAveety: Did you decide not to continue as convener, or were you asked to make that decision?

Councillor Suckling: I would have resigned my chairmanship at some point. By that, I do not mean simply at some point in the future. I would have resigned as chairman, but the thing that pushed me to resign on 5 September was that there was a council meeting that day. Had the decision been completely up to me, I would have left it until the council's report on the situation had been published.

Mr McAveety: Did you make that decision on your own or in discussion with others?

Councillor Suckling: It was discussed at a pre-meeting.

Mr McAveety: With whom did you discuss that?

Councillor Suckling: At that point, I discussed my decision with the new executive committee.

Mr McAveety: How many folk were involved in that discussion?

Councillor Suckling: About 10.

Mr McAveety: Did anyone from the executive ask you to tender your resignation as convener of the committee?

Councillor Suckling: Yes.

Mr McAveety: Did the council convener ask you to do that?

Councillor Suckling: He was one of them.

Mr McAveety: Was he the first to ask?

Councillor Suckling: Yes. He was conducting the meeting.

Mr McAveety: When Jackie Baillie asked you about the role of the education convener, you said that your role was to represent the department in the council. In retrospect, do you agree that that is

probably not the education convener's role? Your role should have been to ensure that the education service was delivered effectively for pupils and families in the Borders.

Councillor Suckling: Not only those who work at headquarters but the whole education service wants to be represented on the council somewhere. That is an important role.

Irene McGugan (North-East Scotland) (SNP): I can safely say that people from the Borders who listen to your comments today or read about them later may not be very reassured, especially given your response to Jackie Baillie's question about the council's priorities.

The council may be unclear about its priorities, but the people in the Borders are clear. One of the strongest messages that we took from our visit to the Borders was that the children and young people of the Borders should not suffer because of the council's inefficiencies. The implication was that children are suffering and that the council was, or is, inefficient. What is your view on that? Can you understand why people should say that?

Councillor Suckling: That is a view that is being put around the Borders. I quite accept that some children will be disadvantaged but the level of disadvantage across the whole school population—and across the population in general—is probably fairly small. For instance, the level of disadvantage is probably not noticed by most pupils.

Irene McGugan: Are you really saying that? When we visited the Borders, we were told a whole catalogue of cutbacks: people having to carry out extra functions; no staff development; nursery teachers moving on to temporary contracts; cuts in the provision of information communications technology; and schools being unable to implement the national grid for learning. The list went on and on. You seem to be minimising that.

I know that you are no longer education convener, but you are still a councillor and are part of the council. I do not think that people in the Borders will have much confidence in the council. I do not detect that the council is acknowledging that things may need to be done differently and that major lessons need to be learnt. Do you want to make any statement on that?

Councillor Suckling: We shall hear this coming Friday morning the suggested changes to the way in which the education department is run. That will be part of the start of the process. Until now, the cuts that have taken place have been amplified, as it were. I have a daughter at a high school in the Borders. I am sure that there must be some impact, but nothing has come to light as a real problem because of the cuts. The average child in

the Borders is still being educated to a high standard—we are used to that. It is easy to seize upon situations where the faults are obvious.

Ian Jenkins: Would you say that the kind of evidence that you have given to us today and that we gathered during our visit to the Borders indicates that the management style of the council is not responsive to the customers it is supposed to be serving?

Councillor Suckling: I think that that is a popular misconception. The council's management style is very customer orientated. However, perhaps that is hard to pick up and it is not reported. The executive committee, including the leader and chair of the council, is responsive to what happens and will promote the Borders at any opportunity. I do not think that that is reported a lot.

Ian Jenkins: There is a problem with the public's perception of the council.

Councillor Suckling: Undoubtedly.

The Convener: Do you not think it is a problem that the convener of the education committee was not told that one of his staff was going to be suspended? Is that not part of the management style?

Councillor Suckling: I do not know where that came from, to be honest. I do not think that that was typical. I stand by what I said. I remember the day very well.

Michael Russell: Do you not think that it is a problem that you were not told that the previous practice for absorbing overspend had been countermanded?

Councillor Suckling: The provision of financial information in the education department was done by one person, as you are aware. Sometimes information was difficult to follow up.

Michael Russell: After listening to your evidence, some might think that you have been remarkably frank with us in certain areas. However, in answering the question on the management style of the council, you became the defender of the council executive again. Is that an unfair thing to say?

Councillor Suckling: I would never stop defending the council. It is a good council and it does a good job in the Borders.

Michael Russell: I was not talking about the council. I think that there is a difference between Councillor Tulley and the council, even if he does not think so. You seem to be defending the executive committee. Considering that you have accepted, for example, that Councillor Tulley has made a direct criticism of you, why are you doing that?

Councillor Suckling: It is easy to find a scapegoat. I admit that management style varies from person to person and I would not use that kind of management style. However, Councillor Tulley has a vast amount of local government experience, going back 30 or 40 years. His knowledge of the Borders and what has happened in that time is huge. His backing of the people of the Borders is also strong. I have no problem with that at all.

Michael Russell: So you are loyal to the last.

The Convener: We are in danger of straying into an area that is outwith our responsibility.

Mr Tosh: Finally, I want to reflect on two matters that have come out: the decision about the clawback; and the sacking of the former assistant directors. If I were in your position, Councillor Suckling, and that were sprung on me, I would think that I had been treated badly by somebody in the system. Do you agree with that and who do you think treated you badly by depriving you of involvement in and knowledge of those decisions?

Councillor Suckling: I had a word with the director of education and the council leadership and asked why I knew nothing about what had apparently been going on for about three or four months by then.

The Convener: There are no further questions.

I thank you for your evidence and your honesty to the committee. If there is anything else, we will be back in touch.

16:14

Meeting adjourned.

16:26

On resuming—

Scottish Affairs Committee

The Convener: Item 4 on the agenda is consideration of a letter from the Scottish Affairs Committee, which is currently undertaking an investigation into the effects of devolution on the structure of news and current affairs broadcasting in Scotland. The committee has said that it would appreciate the views of a cross-section of MSPs. It has asked us to consider contributing to its inquiry, either individually or collectively, initially in the form of written evidence. We have a problem with the request, because we have not considered the matter. We have no collective view on the impact of devolution on such broadcasting. I am sure that individual members have their own views.

I do not know whether there is time for us to consider the issue in sufficient detail to agree a committee position. I will take guidance from members on that. If we are to give oral evidence as a committee, we will have to do that on Wednesday 6 February 2002. We will have to consider whether to go into more detail or whether we are content for members in their party roles to make their views known to the Scottish Affairs Committee.

Michael Russell: It would have been nice to agree a common position on the issue. Although there are individual party perspectives, there is a common Scottish position on broadcasting news and current affairs. However, there is not enough time to hear from witnesses and to carry out the consultation that would be required for us to reach that common position. Would it be possible for us to discuss the issue early in the new year to discover whether there is any common ground and to decide whether we want to give oral evidence? I will submit evidence on behalf of the SNP and I hope to give oral evidence to the Scottish Affairs Committee. I think that we could find a common position on certain developments in Scotland.

The Convener: The other difficulty is that if we were to give evidence on behalf of the committee, we would have to report to the Scottish Parliament before reporting to Westminster. I do not know whether the Parliament's programme has time for that.

Michael Russell: I suspect that time will not permit that. Could we discuss the matter early in the new year?

The Convener: Yes. We will put it on the agenda for our first meeting in the new year.

Subordinate Legislation

Protection of Wrecks (Designation) (No 2) (Scotland) Order 2001 (SSI 2001/384)

The Convener: Agenda item 5 is consideration of two pieces of subordinate legislation. With us are representatives of Historic Scotland and of the Scottish Executive.

First, we will consider Protection of Wrecks (Designation) (No 2) (Scotland) Order 2001 (SSI 2001/384) under the negative procedure. Members have the Executive note on the instrument. Does anyone have questions?

16:30

Michael Russell: I have asked several parliamentary questions about orders on wrecks. A general issue arises from the order. The wreck to which the order applies was discovered in 1993 and was visited again last year. An emergency procedure exists for designation of a site, which involves Westminster ministers. A wreck can become

“increasingly vulnerable to sport divers and trophy hunters”, as the Executive note says, at any time. The time lag between 1993 and now is considerable. Even the time between the visit last year and now is pretty considerable.

As members know, individuals can do damage over a weekend. Can such orders be produced more quickly to designate wrecks before they are in danger, instead of allowing time for difficulty to occur? For instance, a temporary designation that was subject to confirmation by a statutory instrument could be made.

I am dissatisfied with the Westminster procedure, which involves Westminster ministers. According to the written answer that I received, that procedure does not automatically involve Scottish ministers, although perhaps that answer is in error.

The order came into force on 1 December 2001. Today is 11 December. How does that work with the negative procedure, should we wish to overturn the order?

Martin Verity (Clerk): The instrument remains in force unless annulled within the 40-day period, which expires on 18 December.

Michael Russell: If we wanted to annul the order, we would have six days to do so. We would have to approach the Parliamentary Bureau about that.

Martin Verity: A member would need to lodge a

motion with the chamber clerks.

Michael Russell: The time is tight.

The Convener: I understand the point that Mr Russell makes.

Michael Russell: My more general point concerns the time between the wreck's discovery, the decision to recommend designation from the University of St Andrews and the appropriate organisation, and the order's coming into force.

Ron Dalziel (Historic Scotland): Section 1(4) of the Protection of Wrecks Act 1973 allows Scottish ministers to consult about a proposed order. It also says that if Scottish ministers are

“satisfied that the case is one in which an order should be made as a matter of immediate urgency”,

they can dispense with the consultation procedure and make an order straight away. Therefore, an emergency designation procedure exists.

Michael Russell: If, in the judgment of those who judge such matters, a wreck is worthy of preservation, a default protection procedure, confirmed or otherwise by statutory instrument, would be a better procedure than the present procedure, which includes a time lag. That time lag is not as great as that for the previous order on protection of wrecks that we considered, but such time lags provide the possibility for damage to be done.

The wreck to which the present order applies has already been damaged by the explosives that were used to reduce its height, but I understand that the rest of the wreck is well preserved.

Ron Dalziel: That is right.

Michael Russell: That situation might have changed on 30 November—the order came into force on 1 December—but we would not know that. A default procedure would be better. I realise that we cannot deal with that here, but I put that on record for consideration.

Ron Dalziel: There is another designated site in the Firth of Forth, which is close to the site that we are discussing. It is offshore from Burntisland. If somebody had been diving on the site that is subject to this order, it would have been reported to Historic Scotland and the emergency procedure could have been enacted.

Michael Russell: I understand that, but I would like consideration to be given to a default procedure.

The Convener: We could write to the appropriate minister and ask for their views on the subject.

Michael Russell: That would be the right way to approach the matter.

The Convener: We could also note the time scale and consider that again for future Scottish statutory instruments that come to the committee. Unless there are strong objections, I suggest that we agree that the instrument proceeds.

Members *indicated agreement.*

**Scottish Social Services Council
(Consultation on Codes of Practice) Order
2001 (SSI 2001/424)**

The Convener: We now turn to Scottish Social Services Council (Consultation on Codes of Practice) Order 2001 (SSI 2001/424) under the negative procedure. I like the fact that those SSIs have succinct titles, which conveners can quickly read out.

Ian Jenkins: The convener might be interested to know that the Subordinate Legislation Committee has drawn attention to the awkwardness of some of the titles. I am not sure that it is easy to change the system.

The Convener: I knew that Margo MacDonald would have a significant impact on the Subordinate Legislation Committee.

Do members have questions on the order?

Michael Russell: I misunderstood point 11 in the extract from the Subordinate Legislation Committee report. It talks about unnecessarily referential drafting. I thought that it said unnecessarily deferential drafting. We should note the Subordinate Legislation Committee's point that it seems to be a long way round to do something.

The Convener: It seems that there are no strong views and the committee does not want to make any recommendations in its report to the Parliament.

Petition

Borders (Education Budget) (PE402)

The Convener: Item 6 on the agenda is petition PE402, from Ms Augusta Greenlees, on the Scottish Borders Council overspend. Members have the petition in front of them. The Public Petitions Committee considered the petition on 23 October 2001 and agreed to refer it to us, with the request that it be taken into account as part of our Scottish Borders inquiry. Members also have the remit of our inquiry in front of them. I suggest that we include as part of our inquiry the aspects of the petition that are pertinent to the roles and responsibilities of the committee and lie alongside the remit of the inquiry that we have already agreed.

Michael Russell: Christine Grahame wanted to make clear that she gave her apologies for the whole afternoon, because she is chairing the Justice 1 Committee. I know that she has a strong interest in this, as I have. The points raised in the petition are being dealt with by the inquiry—those involved witnessed the evidence-taking session this afternoon. I hope that we can return to points that have not been dealt with by the inquiry. If the petitioners think that we have not received full answers, perhaps they could come back to the committee to say that we have not addressed certain points properly. Given what we have heard from witnesses this afternoon, I do not know how we can get full answers.

The Convener: We can deal only with the points that are within the competency of the Parliament. Issues in the petition about the posts and responsibilities of elected members are outwith the responsibilities of the Parliament. It is for the people of the Scottish Borders to determine whether those people are competent to hold positions of responsibility.

Jackie Baillie: It struck me that, in the remit of the committee and the inquiry, we could address point (c) rather than points (a) and (b), as the responsibility for those lies elsewhere.

Michael Russell: Except that in the course of taking evidence, certain germane matters are being raised—as we heard this afternoon—that I am sure those responsible for the petition will note.

Jackie Baillie: We must be careful not to overstep our responsibilities as a committee. We must focus on the responsibility for making recommendations on the matters within our remit. It would damage the integrity of the committee to go beyond that, especially if an external body were to ignore the recommendations.

Michael Russell: I disagree that it would damage the integrity of the committee. People expect us to ask questions and get answers. We cannot and should not do certain things, but we would disappoint a lot of people if we did not see our role on issues such as this as being to ask questions that members of the public do not get the chance to ask. I accept that our final report may not be able to encompass certain issues.

The Convener: We will be able to live with that compromise position.

Ian Jenkins: Our inquiry has brought some openness by taking evidence and asking people to account for themselves. I hope that our inquiry will encompass the aims of the petition in a sense and that comments that are on the record will answer some of the questions that lie behind the petition. It is not for us to take some of the actions that are requested in the petition, but we can explore the issues. By doing that, the Parliament will have filled a gap that would not have been filled before it existed.

The Convener: The petition strays between the inquiry that we have been conducting and those that Audit Scotland have been conducting. The fitness of councillors in the Borders to hold office is a matter for the people there. The positions that people hold within the council is a matter for the elected councillors in the Borders, who are responsible for the election of office bearers to the council. We are dealing with some aspects and I hope that we will report on those in due course.

Meeting closed at 16:40.

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