



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 2 March 2011

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PUBLIC AUDIT COMMITTEE

6th Meeting 2011, 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:

Malcolm Chisholm (Edinburgh North and Leith) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Ainslie McLaughlin (Transport Scotland)

David Middleton (Transport Scotland)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 4

Scottish Parliament

Public Audit Committee

Wednesday 2 March 2011

[The Convener *opened the meeting at 09:32*]

The Convener (Hugh Henry): I welcome everyone to the sixth meeting in 2011 of the Public Audit Committee. I remind members, staff and members of the public to ensure that all electronic devices are switched off so that they do not interfere with the recording equipment. I have apologies only from Willie Coffey.

Before I get to the substance of this morning's business, I will take a moment to refer members to an item that has arisen from our report, "The Gathering 2009". Members will be aware that a copy of the report was leaked to the press, specifically *The Scotsman*, which quoted extensively from it. The item in *The Scotsman* was accurate—as far as I can see, it was not conjecture—and published in advance of the publication time and date. No embargoed copies of the report or press release were provided to the media or to any other organisation.

This is not the first time something like this has happened. On at least two previous occasions, I have had to raise with committee members the issue of a leaked report, and now our report on the gathering has been leaked. I remind members that unauthorised disclosure of confidential committee material constitutes a breach of section 7.4.2 of the "Code of Conduct for Members of the Scottish Parliament". That apart, the leak undermines the committee's work. We worked long and hard to get consensus on the report. I know that anxiety was caused for many members in getting wording that reflected the committee discussion. It is disappointing, to say the least, that the leak has happened. Frankly, I find it unacceptable.

As I said on the previous occasions, I would consider taking further action. On this occasion, the problem in taking action is timing; the leak has come just before dissolution. It may therefore be difficult to go into the matter in any great detail. Had the leak happened sometime other than just before dissolution, I would have referred the matter to the Scottish Parliamentary Standards Commissioner for consideration. I am somewhat hamstrung on this in terms of the timing, but it is profoundly disappointing that it has happened.

Jamie Hepburn (Central Scotland) (SNP): I echo your comments, convener. I raised the matter with the clerk on the day the leak was reported. It is very unfortunate that it has occurred. It is unfair on the committee members, who have

compiled a report, and on the individuals who were the subject of the inquiry.

You are probably correct about the timing of it all, which is rather unfortunate. I am not saying that there would be a good time for any leak to happen, but your comments are well advised.

Anne McLaughlin (Glasgow) (SNP): My understanding is that despite dissolution, you can still refer matters to the standards commissioner, who would continue investigations during dissolution.

Last week, after our meeting, we had a private briefing from one of the parties in the dispute over the trams. Was that not also leaked? I am sure that the *Evening News* carried details of it.

The Convener: We did not get any private briefing; we specifically decided that we would not do anything in private. We did everything in public.

Anne McLaughlin: No. I did not mean that. I meant that we had a paper that was supposed to be confidential.

The Convener: Yes. Do you mean the letter from the contractor?

Anne McLaughlin: Yes.

The Convener: Right. I am not aware of any reference being made to that. It would be a matter for individual members, if they wish to take that further.

George Foulkes (Lothians) (Lab): Which letter was that? I missed that.

The Convener: The contractor sent a joint letter on behalf of a number of bodies, which we circulated to members.

George Foulkes: Was that the one that mentioned that—

The Convener: I would rather that we did not get into any discussion on the details that were circulated. If any member feels that there has been a leak of something that was circulated in private, it would be for that member to take it further.

I note what Anne McLaughlin says, but I am not sure exactly how productive it would be to go to a full-scale inquiry at this stage, given that none of us will be members after 22 March. We will have a new Parliament and a new committee. If we are going to do anything, we would want to be able to see it through in order to improve and reflect on the work that we do. It is a matter for the standards commissioner in the first instance anyway, so he can consider it, if he sees fit.

I see that there are no other comments, so we will move on with the agenda.

Decision on Taking Business in Private

09:38

The Convener: Do we agree to take item 6 in private?

Members *indicated agreement.*

Section 23 Report

“Edinburgh trams interim report”

09:39

The Convener: We have with us this morning David Middleton, the chief executive of Transport Scotland, and Ainslie McLaughlin, the director of major transport infrastructure projects at Transport Scotland. Would either of you like to make an opening comment?

David Middleton (Transport Scotland): I will make one or two comments if I may, convener. It might be helpful if I comment on some aspects of the Edinburgh trams issue prior to taking questions.

Transport Scotland, with the agreement of ministers, stepped down from the trams project board following the July 2007 meeting. With the Scottish Government having capped its contribution to the project at £500 million, Transport Scotland was clearly in the role of funder on behalf of Scottish ministers. The City of Edinburgh Council was the project owner, and Transport Initiatives Edinburgh Ltd was the project director. We considered it to be good governance for those roles to be separated out to avoid a situation in which Transport Scotland was part of a project board that might make representations to itself as funder.

In the context of that proper separation of roles, Transport Scotland continued to monitor the project's progress: monthly and quarterly progress meetings were held. As the committee is aware from previous evidence, the Cabinet Secretary for Finance and Sustainable Growth and the Minister for Transport and Infrastructure and Transport Scotland officials have on a number of occasions discussed the issues that have emerged regarding the trams scheme with the City of Edinburgh Council and TIE. We have always offered any help that we could to progress the project, and we shall assist in the mediation talks that are to commence next week.

However, that does not alter the existing clear roles of funder, owner and project manager for ourselves, the City of Edinburgh Council and TIE. Our role as funder is set out in the grant agreement between Scottish ministers and the City of Edinburgh Council. Given the difficulties that have been encountered, there has been speculation as to whether we should have withheld grant. At no stage did Scottish ministers feel justified in taking such an approach. However regrettable is the project's delay due to the contractual disputes, expenditure has been legitimately incurred. That is subject to audit, and

the city council is required to provide us with certificates to verify that payments have been appropriately claimed.

The contractual disputes have meant that the costs of certain items have risen, and we are aware that the City of Edinburgh Council intends that the full project will be completed incrementally. Those issues have been considered extensively at monthly and quarterly meetings, as well as at ad hoc meetings between the Government, the City of Edinburgh Council and TIE. At no time did the withholding of grant appear to be justified or likely to assist in resolving the disputes.

Ministers have been clear in their wish for all parties to resolve the on-going dispute so that the project can progress. The immediate priority is to secure a positive outcome to the mediation, and we shall do our best to assist with that process. The issues of re-evaluating the benefits of the project and of considering future governance have to await resolution of the contractual issues. We must all hope that the mediation succeeds.

The Convener: Thank you for that, Mr Middleton. Essentially, you are the guardians of the public grant that has been given to the City of Edinburgh Council. You are supervising the disbursement of that grant on behalf of Scottish ministers. Is that correct?

David Middleton: That is to satisfy the process of paying that grant in line with the conditions.

The Convener: Were the conditions that were laid down subject to negotiation between Transport Scotland, on behalf of Scottish ministers, and the City of Edinburgh Council?

David Middleton: They were certainly put to the City of Edinburgh Council, although they were drawn from standard grant conditions that are used in such situations.

The Convener: So, Transport Scotland put those grant conditions to the City of Edinburgh Council, and they were cleared by Scottish ministers.

David Middleton: Yes. They were all drawn from the "Scottish Public Finance Manual".

The Convener: Okay.

Is it a condition of grant that the project should demonstrate a benefit to cost ratio above 1?

Ainslie McLaughlin (Transport Scotland): That was a condition precedent of the grant: in order for the grant to kick in, the council had to show, through its business case, that the benefit to cost ratio was in excess of 1. Once the grant starts, that is not a continued condition of the grant payment—it is a condition precedent.

The Convener: You say that, before the project started, there should have been a benefit to cost ratio of 1; you wrote nothing into the condition of grant such that, if the project started to show a different benefit to cost ratio, it really would not matter, and the full amount of money could continue to be obtained irrespective of how badly the project was going.

Ainslie McLaughlin: That reflected the fact that, once the city council had entered a contract, there was an expectation that the contract payments would be met. The council was contractually committed to the project. The purpose of the grant is to support the council—it is effectively a subsidy to the project. The Scottish ministers' position was protected in as far as there was a £500 million cap on the total cost to the Government.

The Convener: You saw your role as being simply to sign the cheques, and not to ask questions on behalf of taxpayers.

Ainslie McLaughlin: No, that is not the case. We require the City of Edinburgh Council to submit detailed invoices, on a four-weekly basis, of the money that was spent the previous month. Those are backed up by a detailed monthly report, which matches the progress on the actual project. We then reconcile the monthly project report with the invoice that the council has submitted, and then pay that invoice. The council is required annually to give us a certificate of compliance from its director of finance, backed up by a certificate from its independent auditor, to show that all the costs that are submitted are eligible costs under the terms of the grant.

09:45

The Convener: Did you at any time consider and report to ministers on whether the project remained affordable within the limits that had been set?

Ainslie McLaughlin: The Scottish ministers' commitment to the project is capped at £500 million. At one point last year, there were indications from the council that the cost of the project was likely to exceed its original estimated total of £545 million, and we reported that to ministers.

The Convener: So, it became apparent only last year that the cap was likely to be exceeded. You had no prior—

Ainslie McLaughlin: The cap is not going to be exceeded. It is the council's estimate of the total cost of the contract that will be exceeded.

The Convener: Yes. I am sorry. On what date did you first become aware that the project cost was likely to exceed the cap?

Ainslie McLaughlin: The timeline that I have tells me that, on 4 March 2010, in the fifth quarterly report, Transport Scotland received initial indications from the council that, because of the impact of the on-going contractual dispute, it was unlikely that the full scope of phase 1a of the contract was likely to be achievable for £545 million.

The Convener: So, the first indication that the project was running into difficulties was a year ago.

Ainslie McLaughlin: Yes—in terms of the likelihood of its breaching the council's estimate of the total cost.

The Convener: When you draw up a grant agreement with another organisation for the disbursement of public funds, particularly funds in excess of £500 million, do you ever think of asking those who receive the funds not only to submit invoices that the money is being wisely or well spent, but to prove that the public purse is getting value for the money that is being paid? That is something that perhaps needs to be reflected on for future projects.

David Middleton: The value for money judgment is in essence made at the outset, when the Scottish ministers consider whether they wish to contribute. If you are talking about the formal stage at which the City of Edinburgh Council said that there might be difficulties with the project meeting its overall limits, that was reported to us, as Ainslie McLaughlin pointed out. That there were difficulties and contractual disputes was obvious and in the public domain for some time before that, and the Scottish ministers were aware of that. The question was whether probing the City of Edinburgh Council on the value for money of on-going grant payments bore any relation to dealing with the problems that had emerged on the project, which were clearly contractual disputes with the contractor.

The Convener: Forgive me for my naivety but, with projects where a grant of £545 million is required, I would have thought that certain practices pertain that would not apply to smaller projects. For example, I do not know whether you are a car driver, but I am, and if I put my car in to be repaired, I expect the garage to tell me if major work is required beyond what was originally estimated. I then check at the end, before I hand over any money, that the work that had been agreed has been done. Before you handed over any money, did anyone from Transport Scotland check that the work was being carried out, and being carried out satisfactorily?

David Middleton: I refer you to the points that Mr McLaughlin has already made on the checks that the claims were legitimate.

The Convener: So you cannot think of anything that Transport Scotland could have done that would have protected the public purse from the situation that now confronts us?

David Middleton: That would imply that protecting the public purse involved our withholding grant. As I attempted to explain in my opening comments, it was not open to us to withhold grant. The council, through TIE, was entering into a contract, so it would probably have challenged us on any arrangement for central Government money that implied decision points by central Government that were out of kilter with the operation of the contract. However, all that was subject to the fact that Scottish ministers had capped their contribution at £500 million.

The Convener: So if Scottish ministers had not been so unreasonable and had said "You can have a blank cheque," everything would have been okay.

David Middleton: No, we are not saying that. The fact is that contractual disputes emerged relatively early in the project. The Auditor General said in his report:

"Contractual disputes between tie and BBS began almost as soon as infrastructure construction commenced."

The fact that the project has had difficulties and problems around the contract has not been unknown to us. We have discussed such matters at progress meetings, monthly meetings and other meetings. The problem is that once a contract was signed and once contractual disputes emerged, the only solutions to those problems ultimately lay with the two parties to the contracts.

The Convener: For future projects, are you reflecting on the way in which the different procedures were drawn up, drafted and implemented, or will the same procedures pertain to other major infrastructure projects?

David Middleton: We would always reflect on practice and look at future procedures. We would be foolish not to do that. However, the procedures that have been involved were drawn from standard conditions, which obviously did not anticipate the level of contractual disagreement that emerged in this project.

Jamie Hepburn: The Scottish Government's arrangements for capping the cost at £500 million, Transport Scotland's grant arrangements and the contracts for the project itself were all put in place after the Scottish Parliament voted for the project to proceed. Am I correct?

David Middleton: Yes.

Jamie Hepburn: What would have happened if the Scottish Parliament had not voted for it to proceed?

David Middleton: That would have been a matter for Scottish ministers to determine. It is not from me to speak on their behalf, but—

Jamie Hepburn: Hazard a guess.

David Middleton: If the Parliament had not voted for the project, I assume that it would not have proceeded.

Jamie Hepburn: The genesis of the project's problems was partly the vote for the project to proceed in the first place.

David Middleton: It is not for me to comment on the vote, as such.

The Convener: Can I just clarify a point? That is an interesting line of argument. You suggest that if Parliament had not voted for the project, ministers would probably not have proceeded with it.

David Middleton: I made that suggestion because I was invited to speculate. Perhaps I should not have.

The Convener: It is just that I am aware that Parliament has voted on matters such as the national conversation, which ministers proceeded with anyway. There is perhaps a fault with the Parliament's procedures in this regard. However, ministers can decide whether to proceed with certain matters irrespective of the vote of Parliament. I just wondered whether what you said would have happened was a specific line from Government officials.

David Middleton: No. I would not dream of inventing a new doctrine of any kind.

Jamie Hepburn: I think that you developed an interesting line of argument there as well, convener.

To return to the question, the City of Edinburgh Council does not know how much the project is likely to cost, but it will exceed the original £545 million estimate. At our previous committee meeting, the council said in evidence that it may seek additional funding by turning to Transport Scotland. How do you feel about that?

David Middleton: Having been chastened after my attempt to speculate, even though I was invited to do so, I must simply say that Scottish ministers have said that their commitment is capped at £500 million. To reopen that commitment can clearly be a matter only for Scottish ministers.

Jamie Hepburn: Interestingly, you said in your opening remarks that withholding grant funding would at no time have been justified or likely to resolve the problems between the contractor and TIE and the City of Edinburgh Council. What do you mean by that?

David Middleton: Clearly, if at any time in the disbursement of public money you think that the body to which you are disbursing moneys is mismanaging or misgoverning resources, you would then think of a range of actions that you might take to deal with the situation. You would do so where, from all information and evidence, it is apparent that the problem is an extensive contractual dispute. The Auditor General confirmed that in his report. Also, although expenditure was slower and more difficult than the project would have wished, there was no suggestion in the Auditor General's report other than that expenditure had been incurred legitimately on aspects of the project such as the laying of tram rails in Princes Street. At no point did deciding to withhold grant seem to be an appropriate course of action. Apart from anything else, there is a legal arrangement between ourselves and the City of Edinburgh Council. We would have had to have thought carefully about any such action. I cannot see any circumstances in which we had any justification in taking that course of action to deal with the problem of the project. As reported, the problem was the extensive contractual disagreement between the City of Edinburgh Council and TIE, and the consortium.

Jamie Hepburn: Under questioning at a previous committee meeting, the Auditor General made reference to the fact that costs had exceeded projections in other places where new tram or light rail projects have been undertaken. Was not enough regard given to experience elsewhere in advance of this project?

David Middleton: I could not comment on that.

Jamie Hepburn: Those are all my questions for now, convener.

George Foulkes: When Transport Scotland was set up, my recollection is that it was set up as a hands-on agency at arm's length from Government, if you excuse the mixed metaphor. Is that right?

David Middleton: Yes. Transport Scotland was set up as an executive agency of Government.

George Foulkes: It has special emphasis on expertise in transport projects.

David Middleton: Yes. A range of transport projects in Scotland were planned around that time and it was felt that an agency that was dedicated to the purpose with its own chief executive who would also be the accountable officer would be a suitable vehicle for taking forward those projects.

George Foulkes: Is that still the case?

David Middleton: It is very much still the case. We have a range of significant projects, some of

which are nearing completion and others that will begin soon.

George Foulkes: Why did you see this project merely as a sort of accounting exercise in which you check the expenditure every six months and pay on receipt of invoice rather than one in which you would get involved? Surely Transport Scotland should have used the expertise that it has built up. Surely it should have got involved and advised the City of Edinburgh Council using all the experts that you have on hand who know all about transportation and allied matters. Why were you not hands on? Would it not have been sensible to continue on the project board?

David Middleton: In formal terms, while being arm's length in one sense, we are still part of Government. We do not pursue projects because we decide that they are good or bad; we progress the projects that Scottish ministers invite us to take forward on their behalf.

George Foulkes: You are not, however, like an ordinary department of Government. Transport Scotland was set up to be an agency that would help to ensure proper delivery. You opted out of the trams project. Why?

David Middleton: We did not opt out. I am happy to return to our expertise in a second or two. The role of the Scottish Government, of which we are part, is to take forward projects where Scottish ministers wish it. The role of Scottish ministers in relation to the Edinburgh tram project was that of funder—funder up to the maximum of £500 million. You cannot have multiple project owners; there has to be clear project governance. In this case, the project owner was the City of Edinburgh Council which—in turn—appointed TIE as its project director.

I turn to our expertise. Although we remained the funder rather than the owner of the tram project, we continued to meet and discuss the project with CEC and TIE on regular occasions. As I think colleagues from CEC and TIE acknowledged in your previous evidence session, we have been open for consultation and discussion and we have given advice. Clearly, as the Auditor General said, problems emerged on this project from relatively early days. It has been a source of concern to all those involved in public administration in Scotland that these matters be resolved. We have endeavoured to offer whatever assistance and advice is possible, but the ultimate owner of the project remains the City of Edinburgh Council.

George Foulkes: We know that. Transport Scotland was a member of the project board—it is not as if you declined to be a member. Did you not think that withdrawing from day-to-day

participation on the project board would send a negative signal to the City of Edinburgh Council?

10:00

David Middleton: I do not believe that I have heard any suggestion from City of Edinburgh Council that it took a negative angle on that. The issue of governance and the separation of roles was explained at that time, and I believe that the position was accepted.

I know that the council would like to draw on our expertise. It has asked for our assistance and we will assist it in the mediation, but our role is to assist while its role is owner.

George Foulkes: This is my last question. Is it not true, Mr Middleton, that under your directorship Transport Scotland has now reverted to being just like any other department of the Scottish Executive?

David Middleton: I am not sure that the description,

“just like any other department of the Scottish Executive”

is necessarily good or bad. We are, I hope, an effective functioning unit of Government. We have delivered a number of projects, programmes and services—in road, rail and other modes—that benefit the people of Scotland.

George Foulkes: I think that that is a yes. Thank you.

The Convener: Before I bring in Murdo Fraser, I want to ask a question. You have described that, in the process, you were merely paying over money on the presentation of invoices, and you were not involved in any technical analysis or comment. Why did the finance directorate not take responsibility for that, as it was merely a matter of issuing cheques rather than offering any opinion?

David Middleton: It is rather more than just issuing cheques. Ainslie McLaughlin might want to say something.

Ainslie McLaughlin: We provide an informed view for the Scottish Government from the monthly reports that the City of Edinburgh Council provides us with to support the monthly invoices that it submits. We are able to look at those reports, assess whether they are credible in terms of reporting progress on the works and reconcile that against the amount that is being invoiced. At the monthly meetings that we have to discuss the invoicing and the progress of the works, we can ask intelligent questions about that progress.

The Convener: So, all the way through, you have been asking intelligent questions and offering informed reports to ministers.

Ainslie McLaughlin: We have been saying to ministers that the invoices that the City of Edinburgh Council has submitted are for legitimate costs incurred on the project. There is no suggestion, despite the contractual difficulties and disputes, that the money is being misdirected to any other purpose.

The Convener: Did you offer any informed comments about whether problems were developing?

Ainslie McLaughlin: Indeed. As Mr Middleton said, it has been quite apparent for some time that contractual disputes were emerging. We were giving ministers advice on how TIE was progressing with its efforts to try to resolve those disputes.

The Convener: But that is only since March 2010—or were you ringing alarm bells for ministers before March 2010?

David Middleton: We were certainly reporting the fact that there were contractual difficulties before March 2010.

The Convener: How early did you start to identify problems?

David Middleton: It is hard to put a specific date on it. Given the fact that the project was being covered regularly in the media, it was well known that there were difficulties from, I would say, much earlier than 2009—possibly even the back end of 2008. We could clarify that precisely, but I do not think that there was any great national secret about the fact that there were contractual disputes.

The Convener: So from 2008, it was clear that problems were starting to develop.

David Middleton: Yes.

The Convener: What was the significance of what you reported in March 2010?

David Middleton: That was the first time that the council gave indications that it thought that it would be unlikely to complete the full scope of the project for the £545 million total.

The Convener: Had you any doubts or suspicions between 2008 and March 2010 that it might not be able to stay within budget?

David Middleton: We were not surprised in March 2010.

The Convener: You were not surprised, so you must have had some suspicions. Were the suspicions that the project was likely to go over budget reported to ministers before March 2010?

David Middleton: We would never have reported it as a statement of fact.

The Convener: But you would have given some suggestion.

David Middleton: We would have suggested to ministers that there were difficulties with the contract.

The Convener: Okay. How early did you start to advise ministers that the project could have difficulties in staying within budget?

David Middleton: The specific point about staying in budget in total was more formally made in March 2010.

The Convener: You say “formally”, but you also said that that did not come as a surprise, so you obviously had suspicions before then. At what point did you first say to ministers that there were looming problems?

David Middleton: I draw a distinction between saying that there were looming problems because there were contractual disputes and saying that there was a definite risk to the budget of £545 million.

The Convener: Right. When did you suggest to ministers that there might be a risk to the £545 million budget?

David Middleton: We would not have done that in any formal sense before March 2010.

The Convener: Okay. When did you do it in an informal sense?

David Middleton: I do not think that I could put any specific date on that.

The Convener: But it was done.

David Middleton: It would have been in informal conversations and discussions; it would not necessarily have been a formal item in the minutes.

The Convener: I appreciate the difference between formal and informal. I am asking whether it was done informally before March 2010.

David Middleton: I think that we would have speculated informally, but we would not have advised before March 2010.

The Convener: So have you any idea when that informal speculation first started?

David Middleton: No, I do not.

Anne McLaughlin: Can I come in on that point? I am not sure that I understand why there has been questioning on how early Transport Scotland advised the Government that the project might exceed its budget. My recollection is that Scottish Government ministers warned the Parliament about that, which is why they and the Scottish National Party voted against the project in the first place and why they capped the contribution at

£500 million. All the evidence on previous tram projects in other parts of Europe, and specifically projects in England, showed that they always run into such difficulties.

Nicol Stephen (Aberdeen South) (LD): That is not a question.

Anne McLaughlin: No, it is not a question. It is a statement—a clarification to aid the committee.

The Convener: Except that there are stated reports that the project was on schedule and on cost. Is that not the case, Mr Middleton?

David Middleton: Yes. There were reports from CEC and TIE to that effect.

The Convener: Therefore, after Parliament voted, reports were produced to say that the project was on cost and on schedule, and I am now trying to find out when the alarm bells started ringing to show that that might not have been the case.

I call Murdo Fraser.

Murdo Fraser (Mid Scotland and Fife) (Con): Thank you, convener. I observe on that last point that, if I remember correctly, the vote in Parliament was informed by an Audit Scotland report into the trams project that gave it a clean bill of health. That is why Parliament proceeded with the trams project as opposed to the Edinburgh airport rail link project, which had received a pretty damning report from the Auditor General at the same point. However, that is by the by.

I want to take Mr Middleton and Mr McLaughlin back to the offer of grant letter and its terms. I do not think that the committee has seen that letter. It is a public document? Is it available to us?

David Middleton: Yes.

Murdo Fraser: Perhaps we can obtain a copy of it.

Mr Middleton said earlier that the payments that Transport Scotland made to the City of Edinburgh Council were made in exchange for certification that works had been done. Was there any process of verification by Transport Scotland that the certificates were accurate?

Ainslie McLaughlin: The verification comes through the processes that the council put in place and is a requirement of the grant conditions. In relation to the money that is paid to the contractor on a monthly basis, TIE must measure the work on a monthly basis, certify the payment as correct and pass it to the City of Edinburgh Council, along with any other payments due to other contractors and suppliers to the project. The council then assembles the invoices, adds the project management costs—the TIE costs, in effect—deducts the contribution that the council makes

itself and passes the invoices to us. As I said, as a further check, the council is required on an annual basis to give us a certificate of compliance backed up by an independent auditor's certificate.

Murdo Fraser: Did anything in the offer of grant letter tie payments of moneys to completion of specific milestones in the project's construction, rather than to reimbursement of invoices alone?

Ainslie McLaughlin: No. The standard grant process ensures that the council is not put in a position where it has any payments outstanding to contractors. Had we introduced milestones stipulating that money would be released only when a certain section of the work was completed, the council would have had to bear finance charges, which would have been passed on to the project cost. Somewhere along the line, that money would have had to be found and the charges financed.

Murdo Fraser: That clarifies things helpfully. One of my concerns is that out of the £500 million that Transport Scotland is obliged to pay it has, I think, paid over £402 million so far—

Ainslie McLaughlin: We have paid over £386 million to date.

Murdo Fraser: According to the figures that I have seen, that is about 79 per cent of the total. However, only 28 per cent of the infrastructure works have actually been completed. It sounds as though you have paid out a large proportion of the sums that the Scottish Government is contributing without there being any commensurate delivery of the project on the ground. Given those figures, do you think that the offer of grant letter's terms were sufficiently rigorous to ensure that the public was getting a proper return on its investment in this project?

Ainslie McLaughlin: I think that we need to separate out progress on the infrastructure works, which is just one part of the project—albeit a significant one—from other project costs that we were covering. For example, a significant amount of money was spent on the advance works, particularly the diversion of utilities under the multi-utilities diversion framework agreement—or MUDFA—which itself amounted to £60 million or more. There were further advance works of about £30 million, and the trams themselves had to be paid for—some have been delivered—at a cost of around £50 million. In common with many other projects, the cost of the actual construction is only a part of the overall project cost. Costs of up to nearly £200 million incurred on value of the work done were not actually associated with the infrastructure project that is currently in dispute.

Murdo Fraser: You just said that a total of £386 million has been paid out so far.

Ainslie McLaughlin: I believe that that is the figure.

Murdo Fraser: So £114 million is left in the kitty. Could all of that be paid over in exchange for certificates from the City of Edinburgh Council without the project actually being delivered?

Ainslie McLaughlin: Given that the council is now of the view that the project will not be delivered for £545 million, it is possible that the £500 million grant could be paid out without the project being completed. Indeed, the council has already said that it will need to find additional money to complete the project.

Murdo Fraser: On reflection, then, do you not think that the offer of grant letter was inadequate in the way it was set up and that it should have put in better protections for this public investment? For example, should it not have been tied to completion of the project?

Ainslie McLaughlin: I point out that standard terms in the grant protect Scottish ministers' position should the project not be completed.

Murdo Fraser: What would happen then?

Ainslie McLaughlin: Technically, if the project were not completed, the council could be obliged to pay back the money that the Government had paid out. There is, therefore, an ultimate protection. I am not pretending that such a move would not present the council with a challenge—

Murdo Fraser: I suspect that that is putting it mildly.

Ainslie McLaughlin: Nevertheless, the grant is made in good faith that the project will be completed.

Murdo Fraser: That is interesting. So Scottish ministers could seek to recover the sums that have been spent if the project does not progress.

Paragraph 72 of the Auditor General's report says:

"Transport Scotland and CEC are reviewing the conditions contained in the grant offer letter."

Why are you carrying out that review?

10:15

Ainslie McLaughlin: It is clear that the project is overrunning. The grant was put in place for three years, but the council is now looking at phasing the delivery, so we must consider how the grant conditions should be amended to reflect how the project will progress. We are looking at that.

David Middleton: The mediation talks will start next week. The reality is that, in many respects, the mediation talks—which we hope will be fruitful—are the dominant factor on the horizon.

The review of the grant arrangements—or reviews of anything else—will follow on from what we hope will be a positive outcome from the mediation.

Murdo Fraser: I am unclear about one issue. Is the grant offer letter in effect a contract, so any change to its terms must be agreed by both parties?

David Middleton: Yes.

The Convener: I want to clarify two points following Murdo Fraser's questions. Are you absolutely clear that the grant offer imposed the condition that, if the project was not completed, the City of Edinburgh Council could be liable to repay all the grant that the Scottish ministers provided?

Ainslie McLaughlin: That is a possibility.

David Middleton: That possibility exists, but I do not think that the Scottish ministers have suggested—

The Convener: No. Is what I described a condition—not just a possibility—that is written into the contract?

David Middleton: It is in the contract. If the circumstances arise in which the Scottish ministers want to and feel able to exercise that measure, it is there.

The Convener: You have described how you approve payments on the presentation of invoices. Which of the partners that are involved is responsible for managing the process and determining whether invoices accurately reflect work that has been done?

Ainslie McLaughlin: TIE deals with the payments to its contractors—principally the contractor for the infrastructure construction contract. The City of Edinburgh Council deals with the moneys that it pays for its overheads—principally TIE and project management.

The Convener: Is the City of Edinburgh Council responsible for—

Ainslie McLaughlin: Ultimately, the council must do certification and give us certificates of compliance annually.

Jamie Hepburn: David Middleton said that, if the project was not completed, measures of recourse would be available to the Scottish ministers, whether or not they chose to exercise them. The grant offer was for three years. Is that correct?

Ainslie McLaughlin: The current grant is for three years.

Jamie Hepburn: By what measure do we say that the project is not complete? After three years, is that sanction available? Do we say that the

project has not been completed in three years, so it is not complete, or do we have to wait for a time further down the line?

David Middleton: What you say is a statement of fact. The Scottish ministers are aware of the contract situation and of the pending mediation talks. They have not attached particular significance to the three-year period—doing so would destabilise the situation.

Jamie Hepburn: You say that a statement of fact is involved. Under the grant letter, does the project have to be completed within three years?

Ainslie McLaughlin: No. The letter says that the Scottish ministers' obligations under the grant's terms expire after three years.

Nicol Stephen: Good morning. As you know, many people are astonished that, when £500 million of public money was committed to the project, the Scottish Government decided to step back from the project board. Have you backed off in that way—from being at the table, a full partner in the project and a full member of the project board to no longer being so—from other major projects?

David Middleton: I confess that I cannot immediately quote a precise example. Not very many projects of a similar size and significance have taken place—a range of examples does not exist. In the trams project, the decision was taken that good governance pointed to us as the funder not being part of the project board.

Nicol Stephen: Who decided on the withdrawal from the board?

David Middleton: It was the Scottish ministers, which are all of us, legally—Transport Scotland is legally part of the Scottish ministers. As officials, we consulted ministers and agreed on the course of action.

Nicol Stephen: Was it a ministerial decision on which you made a recommendation?

David Middleton: I did not make any recommendations at that time, but I do not believe that it was a recommendation or a decision or a direction—I think that there was a discussion and an agreement between ministers and officials that that was the appropriate course of action.

Nicol Stephen: Have you reviewed the papers from that time? You are telling us that you were not the chief executive at the time, but have you reviewed the papers so as to be able to give us an accurate description of what happened?

David Middleton: I am not sure that it is appropriate to say whether an official was told, officials advised or an option was chosen. In such a position, it is simpler to view Government as being seamless, with ministers and officials

agreeing that it was appropriate for Transport Scotland, as the agency, not to be on the board. I do not think that it is a question of going back through other options and so on—it is simply what was decided by the Scottish Government.

Nicol Stephen: I am asking you to talk us through that decision-making process. A lot of people view the decision that was made as crucially important, and we are very interested to know what the executive agency responsible for transport in Scotland recommended to ministers in relation to a £500 million investment of taxpayers' money.

David Middleton: I do not think that there was any disagreement between officials and ministers; officials and ministers reached a straightforward conclusion that it was appropriate to adopt the role of funder and not to be part of the project board that would run the project and which might make representations back to the funding body.

Nicol Stephen: So, on the fourth-largest capital project in Scotland, with £500 million of taxpayers' money involved, the transport experts—the executive agency responsible for transport—were quite relaxed about withdrawing from the project board.

David Middleton: I do not think that it was a question of being relaxed or otherwise. That is the decision that was taken. Someone is either the project owner or director and is in that seat or they are not. We were not in either of those roles.

Nicol Stephen: That momentous decision did not require a ministerial direction, then. It was something that officials were content with. Is that correct?

David Middleton: Officials are always content with ministerial decisions.

Nicol Stephen: That is not correct, Mr Middleton.

David Middleton: I feel slightly hesitant about getting into what was said between ministers and officials. There is still a degree of confidentiality about that. One thing is a statement of fact: there was no direction by ministers in the formal sense in which that term is understood.

Nicol Stephen: That is helpful—that is what I was asking about.

Are there any major projects where you have moved the other way and brought a project in house, rather than leaving it with a different project owner?

David Middleton: I believe that there is one project in that category, which I suspect you are leading me towards: the Stirling-Alloa-Kincardine rail project.

Nicol Stephen: That is helpful.

Are there other projects where £500 million is put in by the Government as the funder and not the owner?

David Middleton: As I said, I cannot immediately think of precise examples in the Edinburgh trams category. I am not sure that there is a whole range of precise comparators. Each large project is different. Edinburgh trams was a particular project for the city of Edinburgh, and it was clear that the City of Edinburgh Council would be the owner.

Nicol Stephen: What is the largest other capital project in Scotland where you have been, or are, the funder and not the owner, with no place on the project board?

David Middleton: I cannot immediately give an example in that category.

Nicol Stephen: So there is no other example.

Ainslie McLaughlin: No—I cannot recall any other such example at the moment.

Nicol Stephen: Is there any other capital project that Transport Scotland is involved in where it has chosen not to have a place on the project board or equivalent body?

David Middleton: I do not believe that there would be any other project of that size that has local ownership, so I am not sure that I can immediately see a comparator. The other projects of any great significance—the M74, the M80, the impending Forth replacement crossing, the planned M8 upgrade and the Aberdeen western peripheral road—are all projects that Scottish ministers had in their programme and which Scottish ministers decided that they wished to pursue, at one scale and pace or another.

We know that there was a vote in Parliament on the Edinburgh trams project, and we know the position of Scottish ministers. The owner was always going to be the City of Edinburgh Council, but Scottish ministers agreed to provide funding. It is its own story in that context.

Nicol Stephen: So, uniquely, you decided to withdraw from the project board in relation to the trams project, and although you can be clear with us that it was a ministerial decision, you cannot tell us anything more about it. Is that a reasonable summary?

David Middleton: I can tell you that it was a decision that was agreed with ministers, yes.

Nicol Stephen: It was a decision that was agreed with ministers—you are very careful in your wording there. Was it a ministerial decision? Was it a decision of—

David Middleton: It was a ministerial decision, but I am not saying that it was a ministerial decision to imply in any sense that officials were not entirely comfortable with that decision. I am not saying that they were or that they were not. Officials and ministers reached a view; I do not think that it was a particularly difficult view to reach, given the nature of this particular project.

The particular circumstances were that the City of Edinburgh Council was to be the owner and that it was appropriate for us, in the role of funder for the project, to take a different role rather than being on the project board. As we have outlined, we have always taken an interest in the project and sought to help and assist its progress where possible.

The Convener: So, just to be clear, it was a decision taken by ministers.

David Middleton: Yes.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): You have given the impression that you were in fact more involved with the project than some people have implied, and yet one of the key recommendations in the Auditor General's report is that you should get involved in the future. Is it true to say that your involvement has been minimal, and that it could have been a lot more extensive and probably will be in the future?

David Middleton: I would not like to describe our involvement as “minimal”, given that we have described today our arrangements for paying over the grant in line with the grant conditions. We have sought, with the agreement of ministers, to be helpful to the project when it has clearly run into difficulties. Colleagues from CEC and TIE are on record, I am glad to say, as saying that they found the discussions that they had with us and any informal advice that they received to be helpful.

As for our future role, we have agreed, with ministers' endorsement, to participate in the mediation talks, because there is clearly a collective will among many parties—with a small ‘p’—in Scotland to secure progress in this difficult project.

Ministers have said that now is not the right time, in advance of the mediation talks, to discuss future governance. We will be open to discussing with ministers and others what our future role might be, but the crucial immediate angle to the Edinburgh trams project is that the mediation talks should succeed and that some understanding and a way forward should be agreed among the various parties to the main contract so that the project can make progress. That is the central issue of the moment.

Malcolm Chisholm: In reply to a question that I asked the Auditor General, he said:

“the Scottish Government facilitates the provision of central hubs of expert advice to support local authorities and health authorities in the commissioning of major projects. In this case, it seems to me that it would be appropriate to bring in the expertise that resides in Transport Scotland to support and advise a local authority in delivering a major and complex project.”—[*Official Report, Public Audit Committee*, 9 February 2011; c 2542.]

Would you be content to assume that role in relation to this project?

David Middleton: We will be content to assume whatever role is decided by ministers, CEC or others in the light of a way forward on the project, if and when the mediation produces a resolution of the contractual disputes. The contractual disputes are the central hurdle that must be overcome in the Edinburgh trams project.

Malcolm Chisholm: The withdrawal from the board has been a key issue this morning. You have given what I regard as a technical explanation for that, but is it a credible explanation, given that the type of financial relationships that you have described meant that the payment of the money was more or less automatic? Would it really have been a conflict of interest for Transport Scotland to sit on the board, or is that, as some may suspect, a smokescreen for what may have been the real reason?

David Middleton: I do not think that there is any reason to use terms such as “smokescreen” at all. We took a decision; it happened at the time. I do not believe that CEC or TIE were critical of or resistant to it. They may have taken it as a “fait accompli”—I think that that was the phrase used at the previous evidence session. I simply do not believe that it bears that construction. We took a decision to act as the funder, and to withdraw from the project board. I have really nothing to add to what I said earlier.

10:30

Malcolm Chisholm: You said to Nicol Stephen that you have not withdrawn from the board of any other project. In that regard and, indeed, in relation to the project as a whole, are you saying that the fact that the Scottish Government did not initially support the project has not had any influence on Transport Scotland’s behaviour at any point in the process?

David Middleton: I do not believe that it has.

Malcolm Chisholm: Some people have commented on how odd it was that when the Auditor General’s report came out, the first sentence of your press release referred to the Scottish Government not supporting the project.

David Middleton: We speak on behalf of Scottish ministers and our lines to the media reflect the views of Scottish ministers. What you

refer to was clearly a point to be made. There have been political angles to this discussion and Scottish ministers have sought to emphasise that point in a number of their comments. However, although they have emphasised that point in political debate, as I think CEC and TIE would acknowledge, the cabinet secretary and successive transport ministers have always had their doors open for discussions with the various parties to assist and advise.

The cabinet secretary has made it clear on a number of occasions that he wanted to see the project progress, notwithstanding the views that he offered at the outset. Once the commitment was made, he wanted to see the project progress and the contractual disputes resolved. He has offered our assistance in the mediation. Whatever the political debate was in 2007, the cabinet secretary is anxious that we do all that we can to help the project go forward.

Malcolm Chisholm: So if the Scottish Government had been an enthusiastic supporter of the project, you do not think that that would have influenced the decision about the level of your involvement or your presence on the board.

David Middleton: I do not believe so.

Malcolm Chisholm: I will pick up a point that the convener made. You accept that it was ultimately a decision of the Scottish ministers to go ahead with the project, because they were not obliged to accept the vote of Parliament. In that sense, is there a different relationship with this project in comparison with other projects that Scottish ministers have supported?

David Middleton: There is a different relationship in the governance sense. You are either the project owner or you are not. We are not the project owner of the Edinburgh trams project; the City of Edinburgh Council is. That is the difference. The issue of which parliamentary votes are binding and which are not is secondary to that point.

The Convener: Can I just clarify something before I bring Anne McLaughlin in? Going back to the decision to withdraw from the project board, I understand the protocol that advice from officials to ministers remains confidential, but in this case we know what the issue is and about the decision to withdraw from the project board. Can you just go back again to the sequence? Did ministers indicate that they wanted to withdraw from the board?

David Middleton: Ministers agreed the proposition. I really do feel uncomfortable—

The Convener: But I am not seeking the advice that was given. What I am seeking is where the suggestion came from. We are legitimately entitled

to know whether the suggestion of withdrawal from the board came from ministers.

David Middleton: I do not believe so. When you look back at exchanges, it is not always possible to determine who initiated something. However, I do not believe that ministers in any way told us, informally directed us or led us to that conclusion. There was a consideration between ministers and officials around the governance of the project, given that we would be funder and not project owner and director, and it was decided that we would withdraw from the board on that basis.

The Convener: Okay.

Anne McLaughlin: It is interesting to listen to this. It would be amusing were it not for the fact that so much public money is involved. I have listened to the difference between Mr Middleton's interpretation of the decision not to be on the board and that of some of my committee colleagues. Nicol Stephen called it a "momentous decision", whereas you seemed to suggest, Mr Middleton, that it is fairly standard practice. In fact, I think that you said that it is good governance for funders not to be on the board because they could be approached by the board for funding. My first question is, if it was good governance to do that, would it have been bad governance for you to be on the board?

David Middleton: It could have clouded roles and responsibilities. In that sense, it would have been bad governance. Bad is quite an extreme term, but it was good governance to withdraw from the board; it clarified roles.

Anne McLaughlin: I turn to the support that Transport Scotland has given to the project. In the previous evidence session, when I asked the City of Edinburgh Council and TIE whether Transport Scotland had an open-door policy in terms of its advice and support, they seemed clear that it did. I have just heard you say, Mr Middleton, that Scottish Government ministers have an open-door policy—I think that that was what you called it—in terms of their interest in ensuring that the money is not wasted and that the project works. Notwithstanding the fact that you feel that being on the board would have been bad governance and that it was not standard practice, what difference would it have made in practical terms if you had stayed on the board?

David Middleton: The honest answer is I really do not know. It would probably be a mistake to speculate. It is very tempting to say, "If only we had been on the board, all would have been well," but I have no basis for saying that. I do not wish to be glib in any way on the matter.

In so far as we are aware, including from what we have learned from our extensive conversations with colleagues in TIE and the City of Edinburgh

Council, there is considerable disagreement around the contract, not just in the sense of whether it is good or bad but about the interpretation of what things mean. If circumstances had been different, I hope that we could have offered more help on that, whether informally or formally. However, I cannot make any categorical statement that our direct involvement would somehow have overcome those fundamental disagreements about what the contract means—disagreements that seem to have affected the project for some time and which we hope we can help to resolve in the next week or so.

Anne McLaughlin: I take on board that you remain involved, but we have heard calls for Transport Scotland to be involved in a more formal capacity. I do not know whether that will happen. Will it happen? Mediation talks are coming up. What could Transport Scotland's role be in all that? What can you do to add to what you are already doing?

David Middleton: I am not sure that there is anything that we can add at present. We need to go through the mediation and get a satisfactory way forward to progress the project. We and the Scottish ministers would be happy to discuss with any party the Auditor General's recommendation on how we might adjust our role in some way. I really would not like to speculate on that at the moment. This is not the time to be discussing precise changes in governance. The most important thing is to find a way forward on the contractual disputes.

Anne McLaughlin: It has been suggested that you simply signed blank cheques every month. From what you have said, it seems that you get invoices every month and a detailed monthly report. You then have to reconcile the two before you pay out any cheques. Is that correct?

David Middleton: Mr McLaughlin gave full answers on that. I am happy to amplify what he said.

Anne McLaughlin: That is what you said, Mr McLaughlin.

Ainslie McLaughlin: Yes.

Anne McLaughlin: And, at all times, you were satisfied that there was no reason in terms of the contract letter to withhold money from the project.

Ainslie McLaughlin: Indeed. Yes.

George Foulkes: I have an entirely different point that I want to raise at some point, convener, when we have time.

Mr Middleton, your reply to Anne McLaughlin has confused me. You said that it is not standard practice to be on this kind of board—that it is bad

governance to be on it and good governance not to be on it. Why were you on the board in the first place?

David Middleton: The project was at a different stage of development at that time. It had not reached the point where a final commitment on funding and the form of funding had been made.

George Foulkes: You mean it had not got into trouble.

David Middleton: I do not think that anyone has said that our reason to withdraw in July 2007 was because the project had got into trouble. We withdrew in July 2007 because our role as funder had been clarified by Scottish ministers by that time, or at least informed by the Parliament debate—

George Foulkes: How was that different to when you were on the board? In spite of all the questions, you have not indicated the trigger that prompted you to say, “Hey, we’ve got to get off this board.”

David Middleton: The specific trigger was that there was a final decision to proceed with the project, that the Government would commit £500 million as funder, and that the project owner was clearly established as the City of Edinburgh Council, with its own project director, TIE. The point when the project clearly was going to move forward was an appropriate time to take stock of the governance. Given the Scottish Government’s role as funder through Transport Scotland, the decision was taken that Transport Scotland would withdraw from the board and adopt its role as funder—through all the arrangements that we have discussed with you this morning.

The Convener: Before you go on to another subject, George, I will invite Frank McAveety and Nicol Stephen to come in on this point.

Mr Frank McAveety (Glasgow Shettleston) (Lab): When Transport Scotland was on the board, was there any discussion about whether, once funding was acquired, it would be good practice to come off the board? Have you seen any evidence of that?

David Middleton: I cannot comment about any considerations before the time at which the decision was taken.

Mr McAveety: In earlier evidence, you said that you had reviewed some papers. Could anything be lurking in paragraphs in the murky recesses of those papers that could help us to understand the thinking?

David Middleton: I recall reviewing the papers around the time at which the decision was taken, in July 2007, but I was not inclined to go back over

tram project board papers to find murky recesses—whatever that term might represent.

Mr McAveety: From your recollection of the papers that you read, were there any debates about coming off the board once funding had been acquired?

David Middleton: No, I would not like to offer recollections. The key issues were that funding was agreed, that the project had reached a particular stage in its life and was about to proceed, and that clear governance should be established. The City of Edinburgh Council was clearly in the role of project owner and had its project director in TIE. That was an appropriate time to take the decision.

Mr McAveety: I understand that, but I am asking whether there was anything in the papers that you have seen to indicate that there were any discussions over whether, if funding were acquired, Transport Scotland would come off the board?

David Middleton: I cannot recall.

Mr McAveety: Nicol Stephen asked earlier about equivalent projects. Obviously, this is an especially large project with particular governance structures in Edinburgh. This is not a speculative question, but will you confirm that there are no other projects of similar stature that Transport Scotland is not part of?

David Middleton: There is no other project of this size in which we have the role of funder as opposed to the role of project owner or project director.

Mr McAveety: I think that the term “shared discussions” was used in response to Nicol Stephen, on the subject of discussions between officials and ministers. Did ministers say that they thought that, once funding was acquired, it might be sensible for Transport Scotland to come off the board because there might be governance issues?

David Middleton: I do not think that I would like to refer to any prior conversations or discussions with ministers. I think that I have already said that the decision for us to come off the board was discussed and agreed with ministers.

Mr McAveety: In answer to Anne McLaughlin, you said that you thought that the word “bad” was difficult. Why do you not feel the same about the word “good”?

David Middleton: I was uncomfortable about using the word “bad”. In the particular set of circumstances, we thought that best governance would be achieved by our acting in the role of funder, and that is the decision that was taken. Someone else put the word “bad” to me, and I did not feel comfortable about the word being put in

my mouth. However, I have said—and I do not depart from this—that I thought that it was good governance that we clarified our role as funder, given that the project owner was the City of Edinburgh Council, with its own project director, TIE.

Nicol Stephen: You have just repeated that you thought that it was good governance to take your approach. Can you be clear for us whether the explanation that you have given in relation to the Scottish Government's withdrawal from the project board is your view and your explanation or whether it was the rationale and the view at the time?

10:45

David Middleton: It is both. It is fundamentally the rationale of Scottish Government ministers and officials. Perhaps if I have used the words "I think" at all, I have been too presumptuous in offering personal thoughts but, to the extent that I am being invited to do so, I obviously think that the way in which the structure was established following the decision that Transport Scotland be the funder was good governance.

Nicol Stephen: Does it follow, then, that it is good governance for the Scottish Government to fund a project and yet not be involved in the project board?

David Middleton: It depends. The list of large projects is not long and each of them might well be slightly different. However, on this project, in which the City of Edinburgh Council is project owner and Transport Scotland, as part of the Scottish Government, is the funder, I believe, we believe and the Scottish Government believes that we established the right governance structure.

Nicol Stephen: As you know, there are many projects—not only capital projects but many others across Government—for which the Government provides funds and in which it plays a role in their management and project boards. What makes this particular project unique or different?

David Middleton: I can talk only about transport projects, and there is no other transport project in which we are the funder and someone else is the owner. The arrangements seem to be appropriate for this project. I have described other projects in which we have been the owner and in which, therefore, we have adopted a different role.

Nicol Stephen: But I am asking about good governance and Government's role in providing funding for projects. What makes this project different? Government normally and regularly gets involved in project boards when it is providing funding, but you are now using terms such as "good governance" and "clearer governance"—I

note that you have not talked about "bad governance"—to describe your approach to this project and this project alone.

David Middleton: This project is unique among the major transport projects in Scotland that have been debated, discussed and progressed in the past few years, in that the project owner is the City of Edinburgh Council and we have played the role of funder to the project owner, which has in turn employed a project director in the form of TIE. That set of circumstances is unique in the transport portfolio of recent years. I am afraid that I cannot comment on any other projects that you have alluded to, but I am happy to consider whether there are other projects that I should be looking to for comparisons. However, compared with other projects in the transport portfolio that I have mentioned, such as the M74, the M80 and the Forth replacement crossing, this particular project has a different set of circumstances.

Nicol Stephen: Do you ever take a place on the project boards for rail projects in Scotland?

David Middleton: Yes.

Nicol Stephen: And do you fund those projects?

David Middleton: We will eventually do so. The immediate funder is Network Rail through its regulatory asset base, and once the project is completed arrangements will be in place for us to refund those payments through an income stream over time.

Nicol Stephen: And you see yourself withdrawing at that point.

David Middleton: I expect that we will do so, but I do not want to comment on any particular projects looking forward.

Nicol Stephen: As you know, in his recommendation on the role of Transport Scotland, the Auditor General takes a diametrically opposite view to your own. Do you accept that recommendation?

David Middleton: Forgive me, but I do not think that the Auditor General has recommended that we resume membership of the project board. Instead, I think that he has recommended that we look at whether Transport Scotland should play a fuller role. I have already said that if in this project, whose delays and difficulties have greatly concerned many in Scotland, we can get over the immediate hurdle of the contractual disputes between the project owner and director and the contractor—in which we will, I hope, assist—it will be a matter for all parties, including Scottish ministers, ourselves and others, to take stock of the situation. However, the City of Edinburgh Council remains the project owner and we will clearly be interested in having discussions with it

in the first instance. I do not think that there is anything more that we can do. I do not think that the Auditor General specifically recommended that we resume membership of the project board, although I am not suggesting that he has excluded that possibility.

Nicol Stephen: Indeed. That is what I was going to ask you. What are the possibilities as far as the recommendations are concerned? They would include your resuming a role on the project board and your taking on full responsibility for the project. Are there other approaches that would fulfil the terms of the Auditor General's report that we have not discussed yet?

David Middleton: I have not come to the meeting with a list of potential ways of fulfilling the Auditor General's recommendations. Like others with a role in the trams project, as funder, we simply look forward to the mediation talks and hope that the contractual disputes that have blighted the project can be resolved and a way forward found. That is what we are looking for, above all.

George Foulkes: I want to ask about an entirely different matter. From what you said earlier, it is obvious that you have reviewed the evidence that we got from the City of Edinburgh Council and TIE the other week, so you will have seen that TIE and the council envisage that the trams and the buses in Edinburgh will be run together as one operation. Is that your understanding of the way forward as well?

David Middleton: As funder of the trams project, I am not sure that I have a clear understanding of that. I am not immediately au fait with the precise proposals in that regard.

George Foulkes: You did not see that part of the evidence. Did you have a look at the evidence?

David Middleton: I did have a look at the evidence.

George Foulkes: You cannot remember.

David Middleton: I am sorry that I have not been briefed on that particular point.

George Foulkes: I can tell you that that is what we were told. Assuming that the trams and the buses will be run together as a unified operation—that is the evidence that we got last week—will travel on the trams be covered by the concessionary fares scheme that the Scottish Government operates?

David Middleton: That is still to be determined.

George Foulkes: Have you not thought of looking at it?

David Middleton: That matter will be determined once we get towards the point at which the trams are running.

George Foulkes: You do not think that it would be wise to have a look at it. There is an independent budget review of concessionary fares. Would it not be prudent to include that issue in that review?

David Middleton: Future policies on concessionary fares will be a matter for ministers. You questioned me about that on another occasion, and I think that I made it clear that Scottish ministers attach great importance to the national concessionary travel scheme and have committed to continue it. However, I do not think that I am empowered to give specific commitments on the operation of that scheme.

George Foulkes: I am not asking you to give commitments. I am asking you whether it would be prudent for you, as director of Transport Scotland, to be thinking about the implications of the trams project for the concessionary fares scheme that the Scottish Government operates.

David Middleton: I am sure that we will take account of any estimates of costs arising from concessionary travel on the trams when we come to the point at which the trams begin to operate. I am not suggesting that we are somehow not aware of the issue; I am just saying that I am not in a position to give commitments as to how—

George Foulkes: I am not asking you for commitments; I am asking about your awareness of the issue. You are aware of the issue.

David Middleton: I am aware of the issue, but I am not here to give you a specific response—

George Foulkes: If you are aware of the issue, can you tell me whether new legislation would be needed to include travel on the trams in the concessionary fares scheme?

David Middleton: I think that I would have to write to the committee on that.

George Foulkes: You have not started to think about it yet.

David Middleton: Rather than give speculative answers or appear to dissemble in front of the committee, I would prefer to take the opportunity to be precise. It may be an answer that I can give very swiftly.

George Foulkes: Okay. You will write to us with a full and detailed response. I am surprised that you have not thought about the issue, but I look forward to receiving your letter.

David Middleton: There is a difference between being aware of an issue and having a

precise position to offer. I will certainly try to get you a precise position.

The Convener: We look forward to receiving that letter, but there is something that I want to clarify. You said that the matter is yet to be determined, so the concessionary fares scheme, which applies to buses, would not automatically apply to trams. Is that correct?

David Middleton: I think that I will write to you. Instead of saying that the matter is yet to be determined, I might be better to say that I will write to you on it.

The Convener: I thought that you said that you would write to us about whether legislation would be required. You are the head of Transport Scotland, so you must know how the concessionary fares scheme operates. Am I correct in saying that it operates in relation to buses?

David Middleton: Yes.

The Convener: Trams are not buses.

David Middleton: No.

The Convener: So the concessionary fares scheme would not apply to the trams.

David Middleton: I would not like to say that it cannot apply to the trams, and I am not really in a position to make the policy positions on that.

The Convener: I am not asking you to make the policy position, because ministers may come back to us and say that as a matter of policy they want concessionary fares to apply to trams. That would be an entirely reasonable discussion to have. What I am trying to find out is what the position is as things stand. The concessionary fares scheme applies to buses, and you have already told me that trams are not buses, so the concessionary fares scheme presumably would not apply to trams. There could be financial implications, because if the scheme were extended there would be additional cost to the Scottish Government, and if it were not extended that could impact on passenger usage. Also, when the City of Edinburgh Council makes future decisions about what it should do to move the trams project forward, it may have to revise its passenger calculations if the concessionary fares scheme does not apply to trams. Is that a reasonable comment?

David Middleton: I understand that the issue that I highlighted has a range of implications, which is why I would like to write swiftly to the committee about these matters.

The Convener: So at the moment there has been no indication to the City of Edinburgh Council that the concessionary fares scheme would apply to the trams. As you indicated, that has yet to be

determined, and it will have financial implications either for the Scottish Government in extending the scheme or for the City of Edinburgh Council in terms of passenger usage. That could be a major factor in deciding how to take the trams project forward. Significant discussions will therefore need to take place between Transport Scotland and the City of Edinburgh Council. Is that correct?

David Middleton: There will be an appropriate time for those discussions. As I think I pointed out, the mediation talks, resolving the contractual disputes and getting trams in place at a reasonable date in the future are overwhelmingly the main considerations. However, I fully understand the issues that you have highlighted and I will be very happy to write to the committee about them.

The Convener: So you will confirm to the committee whether the concessionary fares scheme currently applies to the trams, and if it does not you will indicate whether legislation is required to extend the scheme to the trams. It will then, of course, be for Scottish ministers to decide whether they wish to undertake that policy initiative.

Malcolm Chisholm: As I think the former transport minister who is sitting beside me will confirm, legislation was not required to set up the concessionary travel scheme for buses, so, with respect, I feel that we are making a bit of a meal of this issue.

David Middleton: I will endeavour in a letter to be as helpful to the committee as I can be on these issues.

The Convener: Can you also indicate in the letter whether, in calculating the project's running costs and the benefit cost ratio, a calculation was made about usage by concessionary travel card holders or whether that requires to be looked at for future use?

David Middleton: I will endeavour to write on matters that are our direct concern. If we stray into matters that may be the concern of the City of Edinburgh Council, we shall say whatever we can about them.

The Convener: I thank Mr Middleton and Mr McLaughlin for their contribution to the meeting. We look forward to receiving the further clarification that they have offered to make.

Public Audit Committee Report (Response)

“Session 3 reports of the Public Audit Committee—key themes”

10:59

The Convener: Item 3 is consideration of a response from the accountable officer on the report “Session 3 reports of the Public Audit Committee—key themes”.

Does anyone wish to make a comment, or do we just note the report?

George Foulkes: On the key themes?

The Convener: Yes.

George Foulkes: What happens now?

The Convener: We can note the report, then it is for us to determine how we use it.

Murdo Fraser: We should note it.

George Foulkes: Is this what we are debating tomorrow?

The Convener: Yes. It is the response from the accountable officer. Do we agree to do as suggested?

Members *indicated agreement.*

Section 23 Reports (Responses)

“The role of boards”

10:59

The Convener: Item 4 is consideration of responses from the accountable officer, the Office of the Commissioner for Public Appointments in Scotland and the Scottish Further and Higher Education Funding Council on the section 23 report “The role of boards”. Do we agree just to note the responses?

Members *indicated agreement.*

“Improving energy efficiency: A follow-up report”

The Convener: Item 5 is consideration of correspondence from the accountable officer and the United Kingdom Government on the report “Improving energy efficiency: A follow-up report”. Do we agree just to note the correspondence?

Members *indicated agreement.*

The Convener: We now move into private session.

11:00

Meeting continued in private until 11:22.

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