



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 5 October 2011

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PUBLIC AUDIT COMMITTEE

5th Meeting 2011, Session 4

CONVENER

*Hugh Henry (Renfrewshire South) (Lab)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Mark McDonald (North East Scotland) (SNP)

Tavish Scott (Shetland Islands) (LD)

*Drew Smith (Glasgow) (Lab)

Humza Yousaf (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mr Robert Black (Auditor General for Scotland)

Barbara Hurst (Audit Scotland)

Liam McArthur (Orkney Islands) (LD) (Committee Substitute)

Fraser McKinlay (Audit Scotland)

Gil Paterson (Clydebank and Milngavie) (SNP) (Committee Substitute)

Mark Roberts (Audit Scotland)

Douglas Sinclair (Accounts Commission)

Gordon Smail (Audit Scotland)

Kirsty Whyte (Audit Scotland)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 5

Scottish Parliament

Public Audit Committee

Wednesday 5 October 2011

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

Decision on Taking Business in Private

The Convener (Hugh Henry): I convene the Public Audit Committee's fifth meeting of 2011 in session 4. I remind members and anyone else who is attending to ensure that all electronic devices are switched off. I have received apologies from Tavish Scott—Liam McArthur will attend in his place at some point—and from Humza Yousaf. Gil Paterson is here in Humza Yousaf's place. I do not think that he requires to declare any interests; he has done that before.

Gil Paterson (Clydebank and Milngavie) (SNP): I have declared my interests before. I have just turned off my phone, though—I will declare that.

The Convener: Good man.

I welcome the Auditor General for Scotland and Audit Scotland representatives. Later, we will hear from Accounts Commission representatives.

Under agenda item 1, does the committee agree to take in private items 4 and 5?

Members indicated agreement.

Section 23 Report

"Modernising the planning system"

10:01

The Convener: Item 2 is the section 23 report entitled "Modernising the planning system". Along with the Auditor General are Barbara Hurst, Mark Roberts and Kirsty Whyte.

Mr Robert Black (Auditor General for Scotland): Good morning, convener. With your agreement, I will invite Barbara Hurst to introduce the item.

The Convener: I agree.

Barbara Hurst (Audit Scotland): The report on planning is a joint report for the Accounts Commission and the Auditor General that was published on 15 September by Audit Scotland.

The planning system is central to balancing the interests of individuals, communities, businesses, the wider economy and our built and natural environment and it contributes significantly to the Scottish Government's goal of sustainable economic growth. The report examines the progress that the public sector as a whole has made in modernising the planning system since the Parliament passed legislation in 2006; councils' performance in managing planning applications; and the planning system's financing.

First, and by way of context, it is important to note that much of the work to modernise the planning system has taken place in challenging economic circumstances. That has significantly reduced the number of planning applications that have been received—the figure has fallen by 29 per cent from a peak of more than 56,000 applications in 2004-05 to just over 40,000 in 2009-10.

I will highlight three key findings from the report. The Scottish Government, key national bodies such as Transport Scotland, Scottish Water and the Scottish Environment Protection Agency, and planning authorities have made progress in modernising the planning system and are working together better. However, more progress is needed to realise modernisation's full potential.

The Scottish Government needs to introduce legislation to allow some smaller developments to proceed without going through the formal planning application process. The Scottish Government has estimated that such legislation could remove 8 per cent of all planning applications from the planning system.

The process of establishing new, up-to-date local and strategic development plans in all 38

planning authorities—the 32 councils, the two national park authorities and the four strategic development planning authorities—must be completed. That is important as the new system was intended to be plan led, and individual decisions about planning applications are to be made in the context of an up-to-date plan. When our fieldwork was done in May, half the local development plans had slipped from their original timescales—we highlight that in exhibit 5 on page 16 of the main report.

The performance of the planning system is currently assessed on the basis of the time that is taken to decide a planning application. The vast majority of applications are for smaller, local developments. It is expected that planning authorities should make a decision on such applications within two months. Since 2004-05, performance has remained fairly consistent, with around two thirds of applications being decided within the two-month timescale.

Time is clearly an important factor in assessing performance, but it is only one measure. Another measure of performance is user satisfaction. As part of our audit, we surveyed users of the planning system and found that the majority of recent applicants for planning permission were satisfied with the process for planning applications. Exhibit 11 on page 25 of the report shows that more than a quarter of users said that they were very satisfied and half said that they were fairly satisfied. However, a key area in which a third of applicants—householders, in particular—raised concerns was that of how well they had been kept informed of the progress of their application.

Therefore, our report recommends that a broader perspective of performance should be taken. Exhibit 12 on page 26 of the report makes suggestions for other criteria that could be used to assess planning authorities' performance, including costs, user satisfaction and contribution to outcomes. It is encouraging to note that five planning authorities are already piloting a wider performance framework, following work by the Scottish Government, the Convention of Scottish Local Authorities and Heads of Planning Scotland.

Finally, our report highlights that the funding model for planning applications is becoming unsustainable. Planning authorities charge fees for processing applications, but the gap between the income that is received from fees and expenditure on processing applications is widening. In 2004-05, 81 per cent of expenditure was covered by income. By 2009-10, that figure had reduced to 50 per cent. During the same six-year period, income from planning fees reduced by 28 per cent, in line with the fall in the number of planning applications, but expenditure on processing applications

increased. Exhibit 14 on page 32 of the main report illustrates the widening gap. Although we tried to understand the reasons for that gap, it remains unclear why expenditure rose during a period when the number of applications declined. To help understand costs, set appropriate fees and take action to reduce the gap, it is important that councils get a better understanding of the costs of handling planning applications.

It is fair to say that the report has generated a large amount of interest. We are following it through with a number of speaking engagements with key groups of people who are in a position to be able to influence change and improvement in the planning system. I will stop there but, as ever, we are happy to answer any questions that the committee may have.

The Convener: Thank you very much.

You partly answered the first question that I had, which was on the rising expenditure on processing planning applications and the growth in the gap between that expenditure and income at a time when staff numbers fell. You said that you had not received a detailed explanation for that, but I find it bizarre that councils can report increases in expenditure and falls in staff numbers but cannot tell you why the expenditure is rising. What other factors do they report as part of rising expenditure?

Barbara Hurst: This is becoming a common theme for the committee. I invite Mark Roberts to help the committee with that issue.

Mark Roberts (Audit Scotland): As the convener said, there was no compelling answer to the question of why the gap was increasing. Various arguments were put to us, such as the impact of the introduction of e-planning during the period and changes in how councils reported their expenditure within the local government financial return, which is where the data come from. It may be that some councils include some costs, whereas others include different costs—councils do not seem to have reported in a systematic way. However, none of those arguments for the existence of a gap was ever supported or gave a compelling reason for it.

The Convener: Am I missing something? It is astonishing that, despite the fact that we have a plethora of well-qualified accounting staff in local authorities, and despite Audit Scotland's evident ability to ask relevant and searching questions, a factor as simple as falling staff numbers, which should mean falling expenditure, does not correlate with the rising expenditure that has been presented. What is missing?

Mark Roberts: There perhaps needs to be a systematic look at what activity, and therefore cost, is included in the local government financial

returns, so that there is systematic reporting across all councils.

The Convener: Are you suggesting not only that councils report things differently but that councils do not know what they are reporting?

Mark Roberts: As we said in the report, there is fairly limited understanding within councils of the costs of processing planning applications. Such understanding is a necessary first step in trying to ascertain how much time is being spent on processing planning applications and, over and above what council planning officers do, what other parts of the council are contributing to consideration of planning applications. I suspect that that is where some of the anomalies lie.

The Convener: When you said that there is "limited understanding", was that a polite way of saying that councils do not know what they are doing?

Mark Roberts: I am not sure how I can answer that. There needs to be a consistent basis, which all councils share, for what is articulated as expenditure on handling planning applications.

Murdo Fraser (Mid Scotland and Fife) (Con): Perth and Kinross Council, in my area, spends a huge amount of time and resource on planning appeals to the reporters in the Scottish Government directorate for planning and environmental appeals. That has been particularly evident in recent years in relation to applications for wind farms. When the council rejects an application and there is an appeal and a public inquiry, the resource that is taken up in the planning department is huge, in terms of the time that planning officers take to prepare submissions to the inquiry and the cost of engaging legal representation to represent the council's position. Have you picked up that that is an issue across the country? Is it a factor in the rising costs?

Mark Roberts: The simple answer is that it might be, but we did not go into such a level of detail. I do not remember that argument being expressed to us when we did the fieldwork, but Kirsty Whyte might have more insight into the matter.

Kirsty Whyte (Audit Scotland): As Mark Roberts said, the argument did not come up. Expenditure on processing planning applications, which is the main issue that we considered in the report, would not necessarily include all the time that is spent on appeals to the Government.

Murdo Fraser: Are you saying that the figures in the report are purely on expenditure on processing planning applications and do not apply to other expenditure, such as dealing with appeals?

Mark Roberts: That is right.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Is there a breakdown of costs of the planning process by local authority, so that we can see the picture authority by authority? Such a breakdown might help to inform the committee.

Mark Roberts: Yes. We can provide the committee with a detailed breakdown by individual council.

Willie Coffey: That is helpful.

In your report you say that there are two main parts to the planning system: development planning, which involves local consultation on local planning; and the management of applications as they come in. I think that the costs that you are talking about relate to the second part.

Kirsty Whyte: Yes.

Willie Coffey: Do you have figures on the cost of consultations on local planning and development? Are the costs going up or down?

Mark Roberts: In 2009-10, total expenditure on planning was £105 million, of which about £50 million was spent on the development planning side and £54 million was spent on development management, which included £41 million on processing planning applications.

Willie Coffey: Is the trend upwards, downwards or steady?

Mark Roberts: I cannot remember off the top of my head, but I can provide the information along with the breakdown of expenditure on development management.

10:15

The Convener: Although it would be helpful to have the breakdown by local authority that Willie Coffey sought, is it your understanding that what you show reflects a general trend or, from what you can remember, is it skewed by a couple of authorities that, compared with others, are particularly high spending?

Mark Roberts: We think that this is a general trend across all local authorities. When we have discussed the matter with COSLA and Heads of Planning, they have recognised the pattern.

The Convener: Okay. It will be interesting to see that information.

Mark McDonald (North East Scotland) (SNP): It is important to bear it in mind that, although they might not necessarily form part of planning applications, development and local plans will still add costs.

Willie Coffey's request for a breakdown by local authority is relevant in light of the report's comments about significant variations in local

authority uptake of e-planning. One might well find that in authorities where more e-planning applications have been submitted costs might have reduced while other authorities have been unable to generate the same reductions. Have you examined what local councils might be doing to encourage—or, indeed, not to encourage—the submission of e-planning applications?

Mark Roberts: Yes. First, however, I should say that although there has been significant variation across councils, the overall uptake of e-planning has been way above the Scottish Government's expectations. We looked in detail at five councils in our fieldwork but I do not think that we found any particular moves to encourage or promote e-planning to a greater or lesser extent. We could examine whether there might be a correlation between the level of uptake and cost and expenditure issues but I have to say that I do not recall a pattern emerging in any systematic way when we went through all the numbers earlier this year. We could have another look at that and get back to you.

The Convener: In paragraph 89 on page 26 of the report you say:

"Councils have reduced staff numbers in recent years in response to budget pressures"

and point out that

"two per cent of planning department staff left West Lothian Council and"

a quite staggering

"29 per cent of planning staff left Dumfries & Galloway Council."

I suspect that across Scotland the staff who are leaving are going under early retirement and voluntary schemes and have many years of experience and expertise behind them; they are not the staff who are at the start of their career and still building up their experience.

Do you have any indication of how the loss of experienced and highly qualified staff will affect efficiency, effectiveness and knowledge not only of the wider planning system but local conditions? Surely if we remove that level of experience and leave the work to younger members of staff who, although undoubtedly able, are still learning, we will affect the whole quality of the application process.

Mark Roberts: That was a deeply held and profound concern of almost everyone we spoke to not only in the five fieldwork councils but in the wider planning system community, including applicants and other stakeholders. The data in our report run up only to July 2010 and a lot of the early retirement and voluntary severance schemes that you mentioned have continued to run since then. By way of illustration, I point out that when

we were carrying out our fieldwork we were asked whether we wanted to speak to the planners who were going to be in on Friday or those who were going to be in on Monday, because the numbers were significantly different.

Taking more of a glass-half-full perspective, I suggest that the introduction of a whole new planning system gives new groups of the younger planners the opportunity to take that work forward. However, it all comes with the big risk of losing the experience of the large numbers of people who have left the planning profession in recent months.

The Convener: It is all very well to say that there is a new system and a new generation—sometimes such things happen whatever field we are in. However, the new generation sometimes just needs some consolidation and support in order to be able to develop to their full potential. I worry that short-term, expedient measures that are taken to alleviate budget pressures could lead to longer-term problems that could involve costs. There is also an argument about who pays for many of these schemes, which is not an issue for this report but it is one that we have touched on before.

Mr Black: Just to follow on from your question, one of the things that the team picked up in the study was the opportunity for shared services for specialist expertise. I would imagine—we have no evidence on this, but the team might be able to help us—that there must be a risk of bottlenecks in local authorities if the specialists who used to be employed by them are no longer there. I think that we have examples of the Ayrshire councils sharing services in areas such as ecology and archaeology. However, it is fair to say that the team did not find anything much in the way of shared services that might help during a time of staff reductions.

Mark Roberts: That is absolutely right. There were odd examples here and there, but there was no major sharing of activity across councils.

The Convener: My final question is on one of the key recommendations in the report's summary section. It is suggested that the Scottish Government

"consider replacing the four-month timescale for deciding major applications and work with planning authorities to agree a new way of assessing performance for these applications as part of a new performance measurement framework for development management".

What would that "new way" mean specifically for timescales?

Mark Roberts: Rather than have a fixed four-month timescale, we think that major developments, such as housing developments of more than 50 houses, ought to have a timescale that is agreed between the planning authority, the

applicant and the other key agencies involved, who would discuss how long the planning application would take to process. That would take the form of a processing agreement. It may mean that the application takes 12 months to process, but that might be appropriate for the application. Once the agreement is signed up to by all who participate in processing the planning application, that timescale becomes the target.

The reason behind that approach is that developers are saying to planning authorities that they want certainty about how long it will take to process a planning application. They do not want to be told that it will take four months when it will actually take eight months; they just want to know that it will take eight months. Such processing agreements have been around for a while. The City of Edinburgh Council uses them reasonably frequently, and it thinks that they are a great success. However, we did not find evidence of significant take-up of them by other councils.

We suggest that we replace the four-month timescale with a bespoke timescale for each individual application that would have to be agreed and then adhered to by all the participants in the planning application process.

The Convener: Who would make the decision about that bespoke timescale?

Mark Roberts: It would be a shared agreement between the planning authority, the applicant and any other bodies that participated in assessing the planning application.

The Convener: Are you saying that it would be agreed not council by council but application by application?

Mark Roberts: That is right.

The Convener: Applicants would not have a benchmark against which they could measure the timescale that applied in their case, because every application would be different.

Mark Roberts: Given the complex nature of major applications, they are very different, to an extent. I guess that the benchmark would be the extent to which councils managed to perform against what they agreed to.

The Convener: But if you are going to measure councils against what they agree to, you can measure only what they agree to for an individual planning application.

We would not know whether one authority was doing better or worse than a neighbouring authority, because there would be no guidelines against which performance could be measured. We would need to examine all the individual applications in each authority. Would not such an approach allow authorities that were not

performing well to hide that fact, because there would be nothing against which to measure their performance?

Mark Roberts: There will obviously be downward pressure from applicants for different councils to come up with compatible processing agreements. Developers may well operate across council areas, and they will share experience with other developers. That is where the compatibility issue comes in.

The Convener: But you could be introducing a charter for inefficiency. We would have no way of knowing what was going on.

Mark Roberts: Within the wider performance issue, we have suggested that authorities might want to examine the cost of processing planning applications. That would be the measure of efficiency, and we would hope to drive down costs council by council.

The Convener: Okay.

Mark McDonald: On staffing and knowledge retention, it is fair to say that that issue is not peculiar to the planning system.

In my usual fashion I have forgotten to declare my interest as a councillor, so I do so now.

At a local council level, I have dealt with the issue of how to ensure the retention of knowledge in relation to finance and information technology. That does not have to mean that we retain the staff who have that knowledge; we just need a system in place to ensure that knowledge transfer takes place.

You mentioned that major reforms in the planning system have taken place and are still bedding in. On the timing of the report, do you feel that this is an appropriate time to make a fair assessment of the system? Might the system have benefited from a report further down the line on how councils are coping with such major reforms?

Barbara Hurst: As I said, we will go out and promote the report, but we will follow it up through our usual audit processes. We want to give councils some time to implement our recommendations, but we certainly plan to follow them up in about a year's time to see what is happening on the ground.

On staffing, I remind the committee that we are starting a study on the implications of staffing reductions across the public sector. We are therefore keen to pick up the issues that members have raised this morning around knowledge transfer and the need to ensure that skills are retained and that staff reduction is not being used simply as a quick fix for budget reductions.

Drew Smith (Glasgow) (Lab): Good morning. It is clear that the Government thinks that 8 per cent

of applications could be taken out of the process if permitted development was in place, which is potentially a massive saving. What explanations have you had from the Government as to why we are no further forward with that?

Mark Roberts: The Government has conducted two consultations on how that might be implemented. However, the details of how it will work and what will be removed from the requirement for planning applications has proved complicated to work out with councils and the planning profession.

The Government anticipates that it will introduce secondary legislation on permitted development during 2012. Planning authorities say that the introduction of permitted development is really important because it will allow them to concentrate on the complex, contentious and difficult applications, and they are asking when it is going to happen.

I am afraid that I do not know the details of exactly what the sticking points have been. The Government might be better placed to answer that question.

10:30

Drew Smith: I suppose that I am just interested in whether you have a sense that the Government has a sense of urgency about this. The proposal appears to offer a huge saving in a complex process. I am still not completely clear from the report why the legislation is three years late.

Mark Roberts: I think that there is a desire to make sure that, once the legislation is brought in, it is right and workable. Planning authorities are putting a lot of pressure on the Government to get the measures into legislation as soon as possible. I suspect that the Government might say that it wants to ensure that the measures are wholly workable before introducing the legislation. It has listened to the feedback that it got from the consultations and has tried to resolve those issues.

Drew Smith: I would hope that the Government wants to get any regulation right; that is not necessarily an excuse for taking three years longer than anticipated.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Mark McDonald has just reminded me that I should declare an interest as a member of the planning committee of Midlothian Council.

On page 19, the report says that some planning authorities commented that community councils

“do not have the capacity to contribute fully to the planning process”,

in which they are statutory consultees. During the audit, did you get a feeling for the quality of community councils' contributions? Did you see what was coming into the planning department? Were you able to evaluate the quality of community councils' involvement, in view of the comments that were made?

Kirsty Whyte: The first point that is worth making is that the extent of community councils varies across the country. Some areas have a number of community councils, whereas others have none. As part of our fieldwork, we spoke to a few community councils and to various officers in the planning authorities. One of the main issues that kept cropping up was the capacity of community councils. Many planning applications are coming through now, some of which are complex, and some of which are major applications that require early engagement and take up a lot of time. Many community councils do not have many members and have neither the expertise nor the funding to participate fully in the process. The extent to which community councils are able to fully engage in the planning process is therefore variable across the country.

Colin Beattie: You seem to be saying that, as statutory consultees, community councils are fairly weak organisations on which to rely at this time. The report raises the possibility of planning authorities engaging with community councils, presumably to hold their hands through the more complex applications. Is there any indication that that could happen widely? Are planning departments gearing up to do that?

Kirsty Whyte: Some of the authorities that we spoke to provide further support to community councils. They hold meetings and provide further information to try to help them. Other authorities have less involvement.

It might be worth splitting the two aspects of the planning process. Community councils are statutory consultees for planning applications but, as representatives of their area, they should also be involved in their local development plans and strategic development plans. However, because their involvement in the development side is not statutory, the incidence of that involvement is variable. Under the modernisation process, the move towards public involvement is about getting people involved much earlier, at the stage when strategic and local plans are being developed so that, when a planning application comes in downstream, it should be much less contentious, because people will know that a certain site has been allocated for whatever purpose.

Willie Coffey: I can sympathise with everything that my colleague Colin Beattie and Kirsty Whyte from Audit Scotland have said. As another currently serving local authority councillor, I would

say that that is very much my experience. Community councils feel that they have missed the boat in relation to the local development planning process. There needs to be a better way of engaging not only with them but with the wider public as the development planning process makes its merry way to the local plan. I was drawn to the Tayside study, case study 5, which gives some interesting pointers as to how the situation could generally be improved. I might have expected something like that to have been incorporated in the Planning etc (Scotland) Bill, as long ago as 2006. Given that Audit Scotland recommends that there needs to be better engagement, there is a lesson there for us about engaging better and more thoroughly with the wider community.

This issue is not covered in the report, but I will take a chance anyway—the role of elected members in local authorities when a planning application comes in. There are clear frustrations for everyone—for elected members and for developers and objectors who want a word with them. Generally, of course, the advice to elected members is not to engage with either developers or objectors, or to engage on an equal basis, but having to remain quiet and objective until the issue is determined at a planning meeting creates a hell of a lot of frustration for elected members who want to carry out their duties properly. Does your study capture any sense of that frustration? Could we look to make any improvements so that the situation is better all round in the future?

Mark Roberts: We are probably quite limited in how we can respond to that. An area in which there is quite marked variation between councils is in the levels of delegation. In some councils, there is quite a lot of delegation to officers for the smaller, less contentious applications and in others there is virtually none. When we spoke to elected members and subsequently, we heard the suggestion many times that the scheme of delegation needs to be reviewed to concentrate elected members' time and efforts on the high-profile, difficult and complex cases, hence the recommendation that planning authorities should review their schemes of delegation to enable the best use of elected members' time. That is probably the most important issue that came up on that front.

The Convener: If no one else would like to comment, I thank the Auditor General and staff from Audit Scotland for their contribution. We will reflect on what we have heard.

10:37

Meeting suspended.

10:39

On resuming—

“How councils work: an improvement series for councillors and officers—Arm’s-length external organisations (ALEOs): are you getting it right?”

The Convener: I welcome Douglas Sinclair, who is the deputy chair of the Accounts Commission. He is joined by Fraser McKinlay and Gordon Smail, who are both from Audit Scotland, which supports the Accounts Commission.

George Adam (Paisley) (SNP): As I did not do so earlier, I declare that, as is stated in my published declaration of interests, I am a board member of Renfrewshire Leisure Trust. It is not an arm’s-length external organisation, but it is one of the trusts of Renfrewshire Council.

Douglas Sinclair (Accounts Commission): The Accounts Commission welcomes the opportunity to brief the committee on its report on arm’s-length external organisations—or ALEOs as they have come to be known. John Baillie, the commission’s chair, sends his apologies for not being able to attend this morning.

This report is the second in a new series of Accounts Commission reports called “How councils work”, in which we examine specific areas of local government with a view to stimulating challenge and encouraging improvement in each of our 32 councils. We select topics on the basis of themes and issues recurring in our audit work in order to highlight them to councillors and council officers and, instead of undertaking new or additional audit work, we make best use of the material that is already available.

Our “How councils work” reports set out practical examples and signpost other material in a different way from section 23 reports and in a style that we hope is of practical help to councils. It is important to note that the reports do not name specific councils. Where problems arise in individual councils in relation to ALEOs, the Accounts Commission will pursue them, using its statutory powers to hold local authorities to account.

Our first report in this series examined roles and responsibilities and the working relationships that are, of course, central to good governance and the success of any organisation. Our audit work tells us time and again that getting roles and relationships right is enormously important to a

council's performance. Quite simply, if those elements are not right, the council will not perform effectively.

The second report is on ALEOs, which deliver a wide range of council-related activities, including leisure services and economic development. It is fair to say that they are now an established part of the local government landscape—indeed, we estimate that there are more than 130 major ALEOs across Scotland's councils—and they are used increasingly by councils as an alternative way of delivering services. Although they offer the potential for reduced costs and greater flexibility in services, they also, as we highlight, come with risks. We say in the report that, although councils should not be risk averse they still need to be risk aware.

Our report neither promotes nor discourages the use of ALEOs; instead, it focuses on the principles of good governance and accountability in relation to them. After all, if such principles hold for councils, they should also hold for these organisations. In particular, it is important to maintain governance and accountability with regard to finance and service performance in what can be an increasingly challenging environment for all involved. For example, asking councillors to take on a role in an ALEO alongside their day-to-day council responsibilities adds another dimension to the already complex and demanding elected member role.

We have received very positive feedback on our "How councils work" series; indeed, we send the report to every councillor in Scotland. The next report in the series is on understanding cost information, which is another recurring theme in our local government audit work.

My colleagues and I are very happy to answer members' questions on the ALEOs report and to explore in more detail the principles involved and how they are being applied more generally in local government.

The Convener: Are you able to confirm that not all ALEOs pay the people who discharge their duties on the boards?

Douglas Sinclair: That issue has been overtaken by Scottish Government regulations prohibiting councils from making such payments.

The Convener: But, even up until those regulations came into force, some chose to make payments and some chose not to.

Douglas Sinclair: Absolutely. It was a matter for councils. The Scottish Local Authorities Remuneration Committee thought that the payments with regard to ALEOs had to be considered in the context of the special responsibility schemes that councils operate under

and that moving that responsibility from one part to another did not increase the quantum of payments. Indeed, that view has been endorsed and legislated for by Government.

The Convener: Can I explore the responsibility of those who serve on the boards of ALEOs? If someone serves on the board of a private company as a director, they have a legal obligation to the board and to the company generally. When someone sits on the board of an arm's-length organisation such as the ones that you considered, to whom do they owe their primary allegiance? Is it the council that nominates them or the organisation on whose board they sit?

10:45

Douglas Sinclair: Councillors in that position have a dual responsibility, but it also depends on the nature of the body. If the body is a company that the council has established, then, under company legislation, they have a duty as a company director. They must balance their duty to the council as a whole against their duty to look after the best interests of the ALEO on whose board they sit. We do not suggest that that is easy, but councillors must be aware that they must balance their interests. They also need to be supported and trained in understanding their responsibilities. For example, we highlight in the report a situation in which a councillor felt that his job on the ALEO was to protect the council's interests. However, that was part of his job but not his whole job. He also had a duty as a member of the ALEO to further its best interests. If a councillor finds himself in a situation in which he believes that it is difficult to balance those two roles, he should seek advice—that is a principle of good governance.

The Convener: Yes, but you suggest that some ALEOs have been constituted as limited liability companies, in which case board members have a different set of responsibilities.

Douglas Sinclair: Yes.

The Convener: I take it from what you say that not all board members are clear that a completely different set of responsibilities pertain to them once they enter into that role.

Douglas Sinclair: That is true from our report. It underlines the importance of a council, when it establishes an ALEO, taking the time and effort to ensure that whoever it appoints to the ALEO understands their role and responsibilities and knows where to get support and advice. For example, in one case a councillor was not effectively supported by his own council when he was on the ALEO and was unclear as to his responsibilities. That is not a good position for a councillor to be in. It is important that the council

provides the necessary training so that councillors who are appointed to ALEOs understand their responsibilities.

That would also be true if a council established an ALEO as a charity. Clearly, the member who is appointed to the charity has a responsibility to further its best interests. There is a tension in such roles that councillors must understand when they are appointed to them. They must also have support and access to information when they perceive that they have a conflict of interest.

The Convener: From what I perceive happening and from what you have just said, it is quite clear that councillors, whether they are on the board of a company or the board of a charity that a council has established, often think that they are there to represent the council's interests rather than to carry out separate, independent duties as members of the board. If that is still the case, we will still hit problems. It would appear that it is a bit of a dog's breakfast across Scotland.

Douglas Sinclair: I do not think that we suggested that. There is no evidence from our audit of widespread problems in ALEOs. There are occasionally specific instances where the principles of good governance have not been reflected, but I would not like to give the impression that it is a dog's breakfast—it is far from that.

The Convener: You believe that the majority of members of the types of organisation that you just described—charities and limited liability companies—are quite clear that their responsibility is to the body on which they sit rather than to the council.

Douglas Sinclair: They have a dual responsibility. However, we have no evidence to suggest that there is a widespread lack of understanding about the respective roles of elected members on ALEOs. If it were otherwise, there would be many more instances of ALEOs not functioning effectively.

The Convener: Some ALEOs have limited liability and some are charities. Is there another group of ALEOs that are neither charities nor limited liability companies but which exist independently of the local authority?

Gordon Smail (Audit Scotland): There could well be. The ones that we look at tend to be companies of various sorts—limited by guarantee or whatever—or trusts that are subject to legislation. However, there are examples of unincorporated bodies that lie in the middle ground.

On the main point, it is about going into this with your eyes wide open, as Mr Sinclair said. It is about knowing what your responsibilities are as a

councillor and in your role on the ALEO. Our experience is that some elected members almost wander into the role as a member of the ALEO and it is only when push comes to shove, things start to go wrong and questions get asked that things start to untangle a bit. The report is saying that people have to be made fully aware of their respective responsibilities from the start.

The Convener: I have asked questions about the role of councillors, but concerns could equally be expressed about staff. If a member of staff is transferred or seconded from a local authority to a limited liability company, a charity or some other unincorporated body, their responsibility is to that body and no longer to the council. The distinction for them should be even clearer than it is for councillors.

Gordon Smail: Absolutely. We saw from looking at cases in individual councils that that has quite often been a problem. The report says that, in cases where a conscious decision is made to second somebody to the ALEO, things are a bit more clear cut—people understand exactly what their roles and responsibilities are. We have seen one or two examples—this happens as a result of the good intentions of the officers involved—where the ALEO perhaps starts to get into financial difficulty and somebody from the council's finance department takes on more and more of a role, to the extent that they take on a formal role in the ALEO, which compromises their position so that they are caught between their responsibilities to the finance department of the council, which employs them, and their role in relation to the finances of the company for which they are now acting as treasurer, for example.

The Convener: Where a senior member of staff of an ALEO, who is responsible to the board of that ALEO and no longer to the council, continues publicly to articulate and advocate council policy, surely that creates a conflict of interest for them, because they are no longer responsible to the local authority but are responsible to the ALEO. By engaging in the advocacy of council policy, they are potentially compromising their role as a senior member of staff.

Douglas Sinclair: There is a distinction between an officer who is employed by the ALEO and an officer who is appointed to the board by the council.

The Convener: Could you stick to the example where they are employed by the ALEO?

Douglas Sinclair: If they are employed by the ALEO, their duty is to further the best interests of the ALEO. Where a senior officer is appointed to the board of the ALEO, there can be a tension between his responsibilities as a board member and his accountability to the chief executive of the

council. In a long-term relationship, that can give rise to some pretty serious difficulties.

The Convener: In that respect, they are no different from a councillor in the way that they need to manage things.

Douglas Sinclair: Indeed.

The Convener: I want to stick with the scenario where there is a senior member of staff of an ALEO publicly articulating and advocating council policy. There is a potential conflict of interest there and that person would surely have confused their roles. What sanctions are available when someone behaves in such a manner?

Fraser McKinlay (Audit Scotland): If things are working properly, the situation that you describe should not come up. The point that we are trying to make in the report is that, if a council is thinking about setting up an ALEO, it needs to be very clear that that ALEO is going to further the policies and interests of the council. That is why the governance mechanism that is set up between the ALEO and the council is so important. It would be very problematic if a senior officer or member of an ALEO were doing or saying something that was in conflict with what the council was trying to achieve—that would be a sign that the governance was not working. That is why we tried to draw out examples of good practice in relation to working and communication at political and officer levels.

You are absolutely right to make the point. ALEOs create uncertainty and duplication of roles, and people need to think their way carefully through the issues. There is no easy answer. That is why the Accounts Commission decided to bring out the report.

The Convener: I understand what you are saying. There would be problems if a senior member of staff in an ALEO articulated a view that contradicted the view of the council that had set up the ALEO.

If an ALEO had been set up to manage a particular service and the council was then proposing to embark on relatively contentious change, it would be inappropriate for a senior member of the ALEO board to articulate and advocate the council's position ahead of the council making a decision on the policy. Is that not the case?

Fraser McKinlay: It is rather difficult to comment on a hypothetical situation, without knowing exactly what we are talking about. In theory, I suppose that it would depend on whether the policy was going to have a direct impact on the ALEO's operation. You could probably argue that the chief officer for the ALEO, as the person with responsibility for the good and effective operation of the organisation, might think that they were

within their rights to comment. As I said, though, that is—

The Convener: They should not be used as a surrogate member of the local authority, to act on behalf of the local authority. There should be a separation of interests, should there not?

Fraser McKinlay: Yes, there should be a separation of interests.

The Convener: If that is not happening, who should take action? Does it fall to the council to impose sanctions? Does it fall to the ALEO? Does it fall to the board?

Douglas Sinclair: That takes us back to good governance. At the outset, the council and the ALEO should have a clear understanding of how they will communicate with each other and resolve issues. For example, in the context of the debate about the next year's budget, there should be protocols that enable both parties to deal with the issue effectively, rather than getting into a situation such as you described, in which—if I followed you correctly—an officer of the ALEO publicly criticises the council before the council has taken a decision on the ALEO's future. If the council and the ALEO get into such a situation, they are in a bad place. They should have set the thing up properly, with agreed protocols on how to resolve the difficulties and differences that will inevitably arise, particularly as money gets tighter.

The Convener: We have talked about conflicts of interest and the tensions that undoubtedly exist. Do you have a view on councillors going to work for the ALEO? Do you think that that is good practice? How might it influence the councillor?

Douglas Sinclair: The recruitment policies of the ALEO should be in line with best practice. As long as the councillor is appointed on merit and is considered to be the best candidate for the job, I see no difficulty with that.

The Convener: Should such a councillor declare an interest when they are performing their duties in the council?

Douglas Sinclair: They absolutely should.

Murdo Fraser: The convener raised the important issue of conflict of interest between a councillor's responsibilities as a member of the board of an ALEO and their council responsibilities. On page 16 of your report you quoted three councillors who serve on ALEO boards, who all said—I paraphrase—that they were there to represent the council. Such an approach seems to be a pretty clear breach of the fiduciary duty of a charity trustee or company director. You have said that there is a serious issue in that regard. What work is being done to clarify the responsibilities of councillors who serve on the boards of ALEOs?

11:00

Gordon Smail: It is worth returning to our first report in the “How councils work” series, which was about roles and responsibilities. A section in that report draws out important points. We spoke to a sample of councillors for that report—around 60 in five councils—and those quotes came back. We asked them specifically about ALEOs. The first report brings some clarity about things that people should look for, and we hope that we have developed that a bit more in our report on the specific issue of ALEOs.

There are things that we can do and things that the Accounts Commission can do through its reports. We are also working with the Improvement Service, for example, on things to look out for and guidance notes for its information for elected members series. Those documents are included in the online training that the Improvement Service provides.

There is an important juncture coming up, of course. Local authority elections will be held next year and there is the possibility of quite a turnover again, with elected members coming into councils and elected members finding themselves on the boards of ALEOs, whether they are trusts or companies. What elected members need to support them as they face the difficult questions that we have talked about must be anticipated.

Murdo Fraser: Will Audit Scotland return to ALEOs to ensure that good practice is being followed?

Gordon Smail: Absolutely. We produced the report because of a recurring theme in the audit work that we see. As we said in the report, we know that ALEOs are an established part of the landscape and we expect auditors to follow through the work. We will consider the impact work that has been done in councils as a result of our report, and auditors are very much more attuned to the kinds of problems that arise.

ALEOs are a two-way street. More ALEOs have been set up in recent years as a result of consideration being given to new ways of delivering services, but quite a number of them have been wound up by councils and brought in-house. The picture is moving; that has implications for everybody involved, whether they are elected members or officers.

Murdo Fraser: I want to ask a question about a different issue: the remuneration of councillors who serve on ALEO boards, which is mentioned in paragraph 53 of the report. I am sure that you know that accusations have been made in the past. It has been said that having councillors sitting on ALEO boards is simply a way of topping up their income and that they get payments that they would not otherwise get if they simply sat on

council committees. I noticed your comments about the Scottish Local Authorities Remuneration Committee, which believes that such payments undermine

“the principles of the existing remuneration scheme for councillors.”

Does Audit Scotland share that concern? If it does, what action is being taken to address the issue?

Douglas Sinclair: As I mentioned in response to a question by the convener, the Government has addressed that issue. Councils are no longer legally able to make those payments. The point was well made by the Scottish Local Authorities Remuneration Committee that, if a councillor is getting a responsibility payment for leisure in the council, transferring does not change that fact. It means that a person is doing less work as a councillor—the work is done by another body. Therefore, the totality of expenditure to councillors for the special responsibility allowance should remain the same. The Government reflected that in its decision to stop councils making those payments.

The Convener: The Government is to be commended for the speed with which it acted.

Douglas Sinclair: Absolutely.

George Adam: I quite agree with what was said about the balance of the board being particularly important. From my experience, Renfrewshire Leisure trust has a balance of members of the public and representatives and employees of the ALEO. We have skited about with many other ALEOs and not really mentioned that representation has not happened at that level. Do you agree that that could be where some ALEOs have gone wrong?

Fraser McKinlay: We support the principle that having a balance on the board is a good thing. If there are benefits to be had from creating ALEOs, one of those benefits must be the ability to bring in expertise from different places and a different skills mix. Elected members will continue to be included, but one would hope that other kinds of experience would be brought in, as well. We would absolutely support that. Councils need to think very hard about the make-up of the board when they look to set up such a body.

George Adam: If users are involved, that gives a different dynamic to the group.

Douglas Sinclair: Yes.

George Adam: With a lot of the ALEOs, part of the problem was that there was no user involvement. Users offer a distinct voice. When there is a debate, their voice often changes the whole dynamic.

Douglas Sinclair: That is absolutely right. If one of the justifications for setting up an ALEO is to improve service performance, the voice of the user needs to be heard as part of that process.

Gordon Smail: Yes. From a service user perspective, it should not matter whether the provision comes directly from the council or through an ALEO. We recognise that.

I have one more point to add on the composition of boards. We have seen a number of examples in which the activity that the ALEO is undertaking involves quite a technical aspect. Sometimes the technical wherewithal might lie in the council, whereas the ALEO is one step removed—

George Adam: That is an extremely valid point. With some of the ALEOs that we are not mentioning, the problem was that they were quite technical. In effect, they were full council departments that became stand-alone companies. I can see how that became a problem.

Gordon Smail: It is extremely important that that expertise is not lost. When a decision is taken to make an activity arm's length, consideration should be given to the risks that are associated with that. Councils should have their eyes wide open to such matters at the start.

George Adam: As an elected member of Renfrewshire Council, I was concerned about the idea of councillors getting money from sitting on ALEO boards, as used to happen. My belief is that it is like becoming a member of a board of directors. It is possible to be on the board of three or four different companies, but when you make a decision for a particular board, you make the decision purely for that company. I think that councillors needed to understand that.

Douglas Sinclair: One of the points in the report goes back to Murdo Fraser's question on what we were doing to reinforce these messages. The fact that the report will be sent to all councils and councillors will reinforce the message. We expect all councils and councillors to go to the checklist at the back and to test their performance against that checklist.

Willie Coffey: Could you say a wee bit more about what the performance, accountability and scrutiny landscape looks like? I notice that page 18 gives a good example of a council setting up an external scrutiny committee to look at the performance of an ALEO. Is there a consistent picture? Do ALEOs report to their boards? Do they report back to the councils on performance? Are scrutiny committees set up specifically to look at their performance? Is there a preference? What direction of travel should we be going in?

Douglas Sinclair: I will start and then ask my colleagues to come in.

One of the principles of establishing an ALEO is that there should be effective performance arrangements and the performance of the ALEO should be scrutinised by the council—I think that we suggest at least every quarter—to ensure that it is sustainable and that it continues to deliver on its objectives, particularly with regard to value for money.

Gordon Smail might want to add to that.

Gordon Smail: I think that the picture is quite mixed, which is a good thing. One of the phrases that we use quite a lot in the report is that monitoring of ALEOs should be “risk-based and proportionate”. That is absolutely true. It is about understanding right from the start what kind of activity is involved, what is expected of it, and what governance and scrutiny arrangements are appropriate to match the activity. It is horses for courses. It is vital that councils think about what the ALEO will look like before getting involved, and that that view is adjusted over time as necessary.

The approach that is adopted has to be risk based and proportionate. The focus in our report was on the biggest companies and trusts that councils are in—of which I think we counted 130—but there are many other similar arrangements in which even quarterly scrutiny might be overly burdensome for everyone involved.

Scrutiny is not necessarily directly linked to money—we do not expect more scrutiny if more money is involved. What matters is an activity's risk. Some activities might involve a relatively low level of money but be very risky and raise huge issues for the ALEO's finances, service performance and the council's reputation if things did not go right.

Douglas Sinclair: The commission supports the principle of good governance in councils, which I suppose applies equally to ALEOs. A scrutiny committee of a council should always be chaired by a member not of the ruling administration but of the opposition, to ensure transparency and objectivity.

Willie Coffey: Even with the mixed picture, are you content from your study that sufficient quality scrutiny is going on to give the public the sense that ALEOs are delivering value for money and so on? Did you reach that view?

Douglas Sinclair: I repeat that there is no sense of widespread problems with the ALEOs, of which more than 130 exist. Where problems exist, the Accounts Commission has powers to take action.

Fraser McKinlay: Annually, our auditors routinely examine and report on every council's governance arrangements for ALEOs. If that flags

up concerns about a lack of governance or of scrutiny, we pick that up.

How the public are helped to understand how services are delivered is probably still an issue in some places. I am not sure whether most people who use a leisure centre know whether it is run by the council, a trust or another body. That relates to basic stuff, such as to whom people complain if they are unhappy, how that relates to their council and how that works.

Even if governance is okay in terms of the following the public pound principles and looking after how a bit of the business is run, councils have a way to go in helping the public in some places to understand how services are delivered, what a trust is and why a trust rather than something else is being used. Public performance reporting on those matters has a way to go.

The Convener: How do ordinary councillors exercise their role on their constituents' behalf when things go wrong? If a council decided to put the delivery of school meals out to an arm's-length organisation and parents approached a councillor about the quality of the meals, that councillor would no longer be able to question that at committee or hold directors to account, because the service would be delivered by an ALEO. Annually, the councillor could examine performance measurements, if such information was fed back to the council. If tenants complained about the quality or efficiency of a building works department's repair service, councillors would no longer be able to influence that.

We can take that to the logical conclusion. If a council decided to put all its services out to an arm's-length organisation, how would a councillor exercise any control over what happened to the people whom they represented?

Fraser McKinlay: You ask a good question. As Douglas Sinclair said at the beginning, we have not taken a view on whether ALEOs are good or bad. We audit the framework that we have. There are bodies called ALEOs, so our interest and the commission's interest is in ensuring that they are set up and run properly.

I return to the exhibits on page 18. One reason why they represent good practice is that they give councillors the avenue—the mechanism—by which they can challenge ALEOs' performance appropriately. The convener is right that that differs from being on a committee.

To be fair, that is where the tension between being an elected member and being an ALEO board member comes into sharp focus. If a councillor's colleague says that their constituent is complaining about the quality of school meals, will that councillor—as the ALEO board member—stay quiet about that or think that it is perfectly

legitimate to raise the issue in a board meeting? When councillors decide whether to create ALEOs—we should bear it in mind that they make the ultimate decision—we propose that they need to think through exactly those issues.

The Convener: As well as taking action to address payments, should the Government set a framework that requires local authorities and ALEOs to adhere to minimum standards of accountability and scrutiny, such as the best practice examples that are given in the report? If that is not done, councillors could be left disenfranchised and communities could be left vulnerable.

11:15

Douglas Sinclair: I would not have thought that that would necessarily be the case. To take your example, if there were substantial complaints to councils about the performance of an ALEO that was delivering school meals, the council would not necessarily have to wait until the annual performance report to do something about that. It set up the ALEO and it can abolish it if it so wishes. It can call for an immediate report on the performance of the ALEO and hold the ALEO to account.

The Convener: Yes, but you do not have the four-weekly, six-weekly or eight-weekly reports to the council by the director of the department, on which that director could be challenged.

Douglas Sinclair: That comes back to Gordon Smail's point about risk. If there were a sense that the school meals service were on the point of collapse—if it were simply not performing—it would be within the council's gift to require more frequent reports on the performance of the ALEO, by the ALEO, to the council. That contractual relationship does not change.

Gordon Smail: That is absolutely correct and relates to our point about getting things right from the start. In putting together the report, I got the sense that councils could be a bit more prescriptive in drawing up the terms for the ALEO. The issue might well be about the complaints-handling system and the feedback that arises from that, but it extends into all kinds of areas, such as expectations around equalities.

On the issue of the framework, a code of guidance was put together by the Accounts Commission and COSLA in 1996. In 2005, under the Local Government in Scotland Act 2003, that guidance was given statutory backing. That means that there is a framework that is more than just best practice. That helps us, as auditors, make criticisms and hold to account individual councils by reports to the Accounts Commission.

The Convener: Am I right in thinking that councillors cannot work for the local authority in which they serve?

Douglas Sinclair: Yes. Under the previous system, with regional and district councils, it was possible for a district council employee to be a regional councillor and vice versa.

The Convener: So someone who works in the catering service of a local authority would not be able to serve as a councillor in that local authority.

Fraser McKinlay: We can double-check that, but I think that it is correct.

Douglas Sinclair: Yes, I think that that is correct.

The Convener: However, if the local authority decides to turn the catering service into an ALEO, councillors could work in it.

Douglas Sinclair: If the councillor were directly employed by the ALEO, that would be the case.

The Convener: Is that not a bit of a loophole? If councils decide to make a service an arm's-length service, councillors who are prohibited—for good reason—from working for that local authority could go and work with the arm's-length body.

Fraser McKinlay: That is a good point. We will think about it. I have no idea how widespread that might be or whether it has created any issues, but we can check.

The Convener: The issue is not whether it is widespread; it is about safeguards to ensure that there are no potential abuses and that councillors cannot get round a prohibition simply by establishing arm's-length organisations. If that loophole exists, I would argue that action should be taken to close it.

Douglas Sinclair: Can we come back to you on that?

The Convener: Yes.

As there are no further questions, I thank our witnesses for their contribution. It has been extremely interesting. I look forward to the Accounts Commission contributing to the work of the committee over the coming years.

11:19

Meeting continued in private until 11:36.

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