

# **AUDIT COMMITTEE**

Tuesday 17 June 2003  
(*Morning*)

Session 2

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## AUDIT COMMITTEE

### 2<sup>nd</sup> Meeting 2003, Session 2

#### CONVENER

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

#### DEPUTY CONVENER

\*Mr Kenny MacAskill (Lothians) (SNP)

#### COMMITTEE MEMBERS

\*Rhona Brankin (Midlothian) (Lab)

\*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

\*Robin Harper (Lothians) (Green)

\*Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

\*George Lyon (Argyll and Bute) (LD)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Mr Robert Black (Auditor General for Scotland)

Lesley Bloomer (Audit Scotland)

Caroline Gardner (Audit Scotland)

Graeme Greenhill (Audit Scotland)

#### CLERK TO THE COMMITTEE

Shelagh McKinlay

#### SENIOR ASSISTANT CLERK

Joanna Hardy

#### ASSISTANT CLERK

Seán Wixted

#### LOCATION

Committee Room 4



## Scottish Parliament

### Audit Committee

*Tuesday 17 June 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 10:31*]

### Items in Private

**The Convener (Mr Brian Monteith):** I welcome members of the Parliament, members of the public and our guests to the second meeting of the Audit Committee. Everyone should ensure that their mobile phones and pagers are off.

We have not received any apologies. We hope that Robin Harper can make it, but I know that he was unwell on Friday, so that may tell us something.

We would normally take items 6 and 7 on the agenda in private. I say “we” advisedly, as this is a new committee, but our predecessor committee took such items in private in the past. Under those items, we shall be discussing the briefings given by the Auditor General for Scotland. The reason for holding them in private is so that we can have a full and frank discussion about whom we should call as witnesses, what procedures we should follow and what remit we might want. It is therefore suggested that we should take agenda items 6 and 7 in private. Are members agreed?

**Members** *indicated agreement.*

**The Convener:** Thank you. Once we have bedded in the committee, of course, we might take a different view on how we discuss such briefings. For the moment, however, I think it best that we follow previous procedures until we are more comfortable with how things progress.

Robin Harper is not here yet, so we shall keep item 2 in abeyance until such time as he is able to attend.

## Work Programme (Audit Scotland)

**The Convener:** I invite Robert Black to address the committee and explain the work programme for Audit Scotland.

**Mr Robert Black (Auditor General for Scotland):** Caroline Gardner, who is the deputy auditor general, and I will do a double act on this briefing, if you are agreeable to that suggestion, convener.

**The Convener:** Very good.

**Mr Black:** I would like to start by reminding the committee, particularly new members, of what our role is. The post of Auditor General for Scotland was created under the Scotland Act 1998. I am independent of both the Parliament and the Executive and I have responsibility for securing the audit of most public bodies in Scotland, including the departments of the Scottish Executive, the major non-departmental public bodies, national health service boards and trusts, further education colleges and the water authority—in other words, most of the public sector, with the significant exceptions of individual local authorities and police and fire authorities.

The responsibility for securing and reporting the audit of councils rests with the Accounts Commission for Scotland, which has existed since the mid-1970s. You might ask why that is. When we were designing the arrangements for the Parliament, the view was taken that it was important to maintain the constitutional separation between elected councils and the elected Parliament. The Accounts Commission therefore exists as a body that can hold individual local authorities to account for what they do without arrangements being necessary for individual local authorities to be held to account directly by the Parliament.

The Auditor General audits most public expenditure in Scotland and the Accounts Commission has a specific remit for looking at individual local authorities. Audit Scotland, which is our brand name, if you like, is a creature of the Public Finance and Accountability (Scotland) Act 2000. It is a statutory body created under that act and it exists to provide services to the Auditor General and to the Accounts Commission. In effect, therefore, public audit in Scotland operates in a joined-up way. The Accounts Commission and the Auditor General work closely together, and Audit Scotland provides us with services, not only in relation to financial audit but in looking at governance arrangements for public bodies and in making reports on the performance of public bodies.

How we do the audit is based on three principles. The first principle is that the auditor of a public body should be independent of that body. I am therefore charged with either undertaking the audit of a public body or arranging for it to be undertaken by suitably qualified people. Most of the audits of public bodies such as NHS boards and trusts, further education colleges or Scottish Enterprise are undertaken by auditors appointed by me. Quite often, they are from Audit Scotland, but in some cases they are from private firms. Similarly, the Accounts Commission appoints the auditors of individual local authorities.

Another feature of how we do the audit is the wide scope of audit. Not only do we cover performance issues, which tend to be reported frequently in Parliament, but we cover the corporate governance of public bodies as well as giving an opinion on the financial statements.

How do we report the audits? There is local reporting to local management. I personally encourage the appointed auditors to liaise and work closely with the management of audited bodies. If there are local problems that need to be addressed, they can then be tackled locally without the need for every issue to be reported to the Scottish Parliament or to the Accounts Commission. Those local reports are an important part of the stewardship of the public sector. I may report to the Scottish Parliament at a time of my choosing, and I draw extensively on the local audit work in making those reports to Parliament.

There are two types of report that I can make under the legislation. One category consists of reports that I may make to accompany the laid accounts of an audited body. If there are matters arising from the audit that I feel require a report to be made, I will lay that report at the same time as ministers are laying the accounts, and those reports are notified to the committee. At the back of today's agenda, there is a list of various laid accounts and a few reports are mentioned.

The other type of report that I may make is on value-for-money topics. That is quite a discrete category of report and most, if not all, of the performance audit reports that are listed in the work programme fall into that category. So far, they have tended to be the main diet of information for this committee.

That is the context. I do everything apart from local government, the Accounts Commission looks after individual local authorities and Audit Scotland provides us both with a service. We operate in a joined-up way in doing that. The Audit Scotland work programme is also developed jointly by the Accounts Commission and us after consultation with the Audit Committee and other stakeholders. Caroline Gardner will talk about that in a moment.

I would like to touch briefly on three outstanding pieces of business—significant reports that were laid before the elections and before the end of the previous parliamentary session—that have not been formally considered by the Audit Committee and on which evidence has not been heard.

The first of those outstanding items is a report accompanying the laid accounts of the Scottish Parliamentary Corporate Body for 2001-02, which touched on contract management issues relating to the new Parliament building at Holyrood, about which I had some concerns. Another outstanding item was the issue of individual learning accounts, which is on your agenda for consideration today. The third related to hospital cleaning. Our report on that in the spring received quite a lot of media coverage. That report has been laid in the Parliament, but has not yet been formally considered by the Audit Committee. The committee might want to consider those reports at future meetings.

At this point, I will pass over to Caroline Gardner, who will explain how we put the work programme together and talk about some of its main features.

**Caroline Gardner (Audit Scotland):** As Bob Black has said, Audit Scotland covers all public sector services, including the Scottish Executive, the national health service and councils. In choosing what our work programme will be, the question is what to leave out. To help us to set a worthwhile work programme that adds value, we have a number of safeguards in place. The first is a range of criteria that focus on obvious things such as the amount of money spent on a particular service, its impact on members of the public and the evidence that there is room for improvement, based on comparisons in Scotland or elsewhere. Those criteria are publicly available.

We also go through a regular process of consultation with a wide range of people to seek views on what we should be working on. We last carried out that exercise about 12 months ago, when we set out, in a weighty document, a range of suggestions that have come either from people contacting us directly or from our views of where there might be scope to investigate particular areas in more detail. We seek views from this committee, from subject committees and, more widely, from public sector bodies, professional associations and others who have a view on the process. We draw those views together, assess subjects against our criteria and arrive at a work programme that is balanced in that it looks across the public sector, picks up significant issues and is likely to produce worthwhile work that identifies improvements that need to be made to public services.

The paper before you sets out the planned publications that will be produced as a result of that process in the next few months, where we have those dates in place. I am happy to answer any questions on those. It is worth highlighting the two overview reports, one into further education and one into the NHS. Those reports aim to pull together from the range of different audits going on in further education and the NHS either common issues that arise or significant issues that we think that you might want to know more about. Those overview documents are, in a way, summaries of all the audit work that has taken place in those areas in the past year.

The second page of our work programme paper sets out the work that is just getting under way and which we plan to publish reports on in 2004-05. Some of the studies are significant, such as the one on prescribing in hospitals. It is difficult to gather information on that subject and a lot of work has to be done to pull the information together, which is why the lead time is as long as it is. The paper shows what is currently planned, but there is room for flexibility to reflect changing circumstances or the views of the Audit Committee.

We are planning to consult again at the beginning of 2004 on what work we might include next in the audit programme. However, if people have particularly strong views at this stage, we are happy to discuss them informally. I should say that, in addition to the planned work programme, we also have to be able to respond to issues that arise at short notice on particular areas of public concern. You will be informed of such issues over the coming period.

## Interests

**The Convener:** Before I open up discussion and allow members to comment on the forward work programme, I will ask Robin Harper to declare any interests, so that he can participate in the subsequent discussion.

10:45

**Robin Harper (Lothians) (Green):** I have nothing to add to the interests that I have declared to the Standards Committee, which are that I have a flat that I rent out and that I am a member of a large number of environmental organisations—however, I will not take up people's time by identifying them all at the moment. I am also the director or a board member of several drama companies, including the Traverse Theatre, 2000 & 3 Estaites, Theatre Workshop Edinburgh and Forth Children's Theatre.

I apologise for being late.

**The Convener:** Apologies accepted.

## Work Programme (Audit Scotland)

**The Convener:** We will return to our discussion of Audit Scotland's forward work programme. Does anyone have any questions?

**George Lyon (Argyll and Bute) (LD):** It was announced last week that Audit Scotland would play some sort of role in the investigation into the Holyrood project. How will that fit into your forward work programme? What might the role of the Audit Committee be?

**Mr Black:** Members will recall that I produced a major report on this subject in September 2000, which led to three or four meetings of the Audit Committee at which extensive evidence was taken. That means that there is a body of evidence and a report from the Audit Committee that extensively covers the early events surrounding the project. As I intimated a few moments ago, I prepared a second report in December 2002 that examined some contract management issues in the period up to, roughly speaking, last summer.

I understand that the First Minister and the Presiding Officer intend to have Lord Fraser of Carmyllie institute an inquiry, which I will be invited to assist in. It is difficult for me to say more at this stage as events are unfolding and I have not yet had the opportunity to discuss the form of the inquiry with the Executive and the Parliament. However, I can say that it would be my intention to undertake a full examination of the management of the Holyrood project towards the end of the life of the project, under my powers. That report would be laid in the Parliament in due course and would be available for the Parliament to dispose of as it wished.

**George Lyon:** I take it that your original report contains full information on what happened from 1997 to 1999. Is that correct?

**Mr Black:** The committee will be aware that I assumed powers following devolution, in the spring of 2000. Therefore, the extent to which my report goes into detail regarding matters preceding devolution is rather limited. Having said that, I point out that the Scottish Executive co-operated in giving me access to information and that there are sections of my report that describe some of the early events around the forming of the contract structure. That matter was addressed quite fully by the Audit Committee when it took evidence.

I am not empowered to consider any matters of a policy nature and, therefore, when I undertook that examination in 2000, I explicitly did not consider matters such as the decision to create a new building or the choice of site.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** As the Auditor General said, following the publication of his report in 2000, there was considerable discussion in the committee and we took a great deal of evidence on the matter. I would be interested to learn what actions have since been taken on the basis of the findings of the Audit Committee and the Auditor General. I do not know whether it would be appropriate for the Audit Committee to examine that while the independent inquiry is on-going, however.

There should be consultation with the public, public authorities and the committee on the Auditor General's work programme, but there should also be discussions with the Scottish Commission for Public Audit, as the commission must be assured that there is sufficient money in the budget for work to be undertaken. I make that plug so that new committee members are aware that there is a body that, in effect, oversees Audit Scotland's work.

**The Convener:** Auditor General, would you care to say something about resources and lessons that might be learned from previous reports?

**Mr Black:** I shall resist the temptation to delve into Audit Scotland's resource needs and simply say that we do our best to deliver the maximum programme within the resources that are allowed. Such matters will be explored with the commission over the summer. It goes without saying that there will be resource implications if we are invited to undertake major work in addition to what is in the programme.

**Mr Kenny MacAskill (Lothians) (SNP):** Will you expand on the brief that you have been given with regard to Lord Fraser of Carmyllie's independent inquiry? I assume that you have not been invited to give evidence as a witness. In what capacity have you been asked to assist Lord Fraser with his inquiry? Will you be a special adviser? If not, what will be your relationship with that investigation? Have you been asked to assist as an individual or has Audit Scotland been asked to assist? What resource implications are there? If Audit Scotland has been asked to assist, what are the implications in respect of an independent inquiry? Perhaps a brief has not been given, but I am intrigued by interactions between you, your office and Lord Fraser.

**Mr Black:** I cannot give a full answer to your questions, as there has not yet been a formal discussion with the Executive or the Presiding Officer about the matter. Before the First Minister's announcement last week that he intended to invite Lord Fraser to institute an inquiry, I was informally approached and asked whether I and colleagues in Audit Scotland would assist. I said that we would certainly do so to the best of our abilities.



I mentioned to Mr Lyon that a large body of evidence already exists. At the very least, it might be helpful to Lord Fraser if I were to assist him in gaining a good understanding of that evidence in order to avoid wasted effort in trawling over ground that has been well explored. My powers and duties to audit, examine and report to the Parliament are clearly laid out in statute. There would have to be an understanding about the procedures that would be used to allow me to contribute beyond simply assisting Lord Fraser with evidence that is already in the public domain. As I said, I intend to make a report to the Parliament in due course on the project as a whole, but I will be sensitive to and accommodate Lord Fraser's inquiry intentions as far as possible in making a report to the Parliament.

**George Lyon:** A document has been laid before the Parliament that looks into the corporate body's accounts and, at the very least, we should consider that document at some stage. Obviously, we cannot fit that in before the recess, but interesting issues will arise out of it that will be worth exploring.

**The Convener:** Are you saying that to me or to the Auditor General?

**George Lyon:** To you.

**The Convener:** I suggest that that matter should be an agenda item for consideration at our away day, when we will discuss our work programme—we can then decide on the merits of taking the matter further. The point is well made and we need to consider it.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** I would like three points to be clarified, although some of what I will say has been addressed. On the model that is being adopted for the independent inquiry into the Holyrood project, will the Auditor General say whether there are any precedents for the relationship that has been mentioned between an independent expert group and his office? Secondly, it is important to be clear for the *Official Report* that it is within the committee's power to consider any report that is laid before the Parliament, wherever it comes from, either on the issue in question or on any other issue. Thirdly, given the activity and interest around the issue, when and how should the committee become involved in the process? I think that the convener has answered that question.

**Mr Black:** On your first question, I can think of no precedent in the Parliament's short life for such an arrangement. On your second question, it is absolutely true that the Audit Committee may consider any report that I lay in the Parliament, including any forthcoming report that I might make on the Holyrood project. Thirdly, on timing, my

considered view is that it would be better to wait until the project is nearing completion before I proceed with a major examination and produce a major report on the whole project. At this point, it is difficult to comment on time scales.

**The Convener:** That is notwithstanding the difficulty of knowing when the project will finish.

**Mr MacAskill:** Given that there is no precedent for the relationship in question, do you foresee any possible conflict of interest? To some extent, you are a creature of statute and have set responsibilities. There will be an independent and welcome inquiry. Given your remit and the investigations that you will conduct in whatever time scale, do you see any difficulties with wherever Lord Fraser may be going? If so, should we seek clarification from the First Minister or the Presiding Officer about whether there should be a separation of powers and perhaps remits and roles?

**Mr Black:** On the basis of the informal understanding that I have, I see no conflict of interest. We will require detailed discussions on practical matters relating to how Lord Fraser envisages his inquiry taking place, but it would be perfectly possible to envisage his inquiry and my examination using formal powers complementing each other and enabling the Parliament and the public to get a picture of everything that has happened with the project.

**The Convener:** I think that we have covered all the points that we need to cover under this agenda item. I should mention that another aspect of the committee's work in its relationship with Audit Scotland is consideration of Scottish Executive responses to committee reports. In the not-too-distant future, there will be a report on dealing with offending by young people, for which we would expect an Executive response. I will put that matter on the agenda for the away day so that we can consider whether we need to address that matter as an item of business along with Audit Scotland's work programme.

**Susan Deacon:** We have focused our comments on Audit Scotland's work programme and specifically on the important topical issue of the Holyrood project. I am sure that the committee will wish to consider and discuss further a wide range of other issues with the Auditor General. What mechanisms are available for us to have input, either individually or collectively, in the process of shaping the programme? I appreciate that the decision lies ultimately with the Auditor General, but what opportunities will there be for us to shape the programme in the weeks and months to come?

11:00

**The Convener:** We have the opportunity to raise ad hoc items that we feel might be investigated or subject to audit and which we can put to the Auditor General. Given that the Auditor General must protect his independence, we can only put a view. In a sense, it is probably best that we do so sparingly.

**Mr Black:** We welcome at any time members' thoughts about issues that should be included in the programme. As Caroline Gardner said, it is usually a case of deciding what not to do rather than what to do. The convener said that the committee might consider having an away day, which would be an opportunity to explore generally the longer-term thinking about what might be in the programme. We will certainly have the opportunity between September and the end of the year to consider the practicalities and implications of taking on some of the topics that are raised. It would be enormously helpful for us to have an indication of that thinking. As Caroline Gardner said, we will come back for a full consultation with the committee early next year about which topics should be included.

There might be issues around the role of the Audit Committee vis-à-vis other committees of the Parliament, particularly the subject committees, which are increasingly interested in our work. I would welcome a situation where the Audit Committee acts as a clearing house for opinion on certain matters, in view of the clear position that it has under the standing orders. There might be a useful discussion in the early part of next year not only about the priorities that emerge from our discussions with the committee, but in relation to views expressed by other committees about what we might consider.

**George Lyon:** I have a small point about processes. The Auditor General engages with the committee through the formal mechanism of our hearing evidence on individual reports. Are committee members allowed to speak to the Auditor General either individually or collectively to receive briefings on issues that are contained in reports once they are laid before Parliament in order to seek clarification? Can we request such briefing sessions from the Auditor General and his officials? Is that part of the relationship that we have?

**Mr Black:** We try to ensure that, as far as possible, reports that are laid before the Parliament appear, through the good offices of the clerk and the convener, on an early committee agenda. That allows us to brief all members of the committee on the same basis about what is in the report. It also allows the committee to consider formally how it wishes to respond. There might be occasions, particularly during the recess, when

reports are published but will not be considered by the committee for some considerable time. In such cases, I recognise the need for members to seek further information or clarification from us. I certainly encourage committee members and indeed any MSP to contact the office if they would like to do so. If members have concerns, I encourage them to telephone us or drop us an e-mail or a note and we will do our best to respond. We endeavour to ensure that there is a short gap between a report's coming out and the opportunity for the committee to consider its contents formally.

**The Convener:** I note what the Auditor General said about the committee's acting as a clearing house. There is no doubt that there is a concern that more work could be done in the Parliament on scrutiny and on holding the Executive or the process to account. We might wish to discuss at our away day the belief that more such work needs to be done. There is no doubt that that would have resource implications for Audit Scotland as well as implications for the Audit Committee's role. We will take the matter up another day.

## “Individual Learning Accounts in Scotland”

**The Convener:** We come to agenda item 4. I invite the Auditor General to give the committee a briefing on the report “Individual Learning Accounts in Scotland”.

**Mr Black:** In March, I provided the previous Audit Committee with a briefing on the report, but I thought that it would be useful to revisit that briefing and summarise some of the key messages in the report.

The individual learning accounts scheme covered the whole of the United Kingdom. Its objective was to increase adult participation in education and training by offering people the opportunity to get discounts on the cost of a wide range of training provision. One of the key conclusions of the report is that the ILA scheme was an innovative programme that proved very popular with genuine learners and learning providers. However, it suffered from a number of administrative errors and failings.

The scheme was successful throughout the United Kingdom in attracting people to open individual learning accounts. The target to have 100,000 accounts opened in Scotland was met significantly ahead of schedule. However, during the summer of 2001, the bodies involved in administering the scheme began to receive complaints from throughout the UK concerning the activities of some of the learning providers, including allegations that expenditure was non-compliant and potentially fraudulent. Those complaints led to the closure of the scheme throughout the United Kingdom by December 2001.

The UK National Audit Office has reported to the Westminster Parliament on the operation of the scheme in England, and the Public Accounts Committee at Westminster took evidence on the matter and has produced its own report. The report that I have prepared investigates only the Scottish situation. It examines the reasons for non-compliant and potentially fraudulent activity and attempts to estimate the amount of expenditure involved. I also comment briefly on what has happened since the scheme closed in December 2001 and outline some of the lessons that might be learned for future schemes.

I will start with the reasons for non-compliant and potentially fraudulent activity. The scheme was administratively complex, as it involved five separate organisations in Scotland. Although overall responsibility rested with the accountable officer in the Scottish Executive Enterprise and Lifelong Learning Department, accountability for

the scheme's expenditure rested with Scottish Enterprise and Highlands and Islands Enterprise. It might be argued that the large number of bodies involved in administering the scheme contributed to some of the problems, errors and failings.

My report indicates a number of measures that could reduce the risk of improper activity and highlights several areas of concern. The first is an important one. Since devolution, it has become increasingly important that where Scotland participates in UK-wide programmes, the Executive should ensure that it is represented adequately on the programme boards that are responsible for implementing policy throughout the United Kingdom.

Secondly, the Department for Education and Skills at Westminster was responsible for developing the scheme's national framework and for procuring a service provider. If the ELLD had been more involved in the scheme's design and implementation, it could have been made aware earlier of some of the interim measures that allowed English-based learning providers to self-certify that their learning was eligible for funding.

A third concern is that there was no formal accreditation of learning providers. Formal accreditation could have helped to prevent unscrupulous providers from gaining access to the ILA programme.

A fourth point that I make in the report is that the ELLD did not fully appreciate the risk of fraudulent activity. Risk assessments were undertaken, but better risk management procedures could have helped the department to be more aware of the risks, which might have allowed it to put in place better strategies to counter fraud.

Fifthly, there were weaknesses in the overall control environment. A formal evaluation of systems controls could have helped to identify those weaknesses before the scheme was introduced.

My sixth point is that the guidance on the operation and administration of the scheme was inadequate when the scheme was introduced. Let me put it simply: the guidance could have assisted learning providers to identify the dos and don'ts of the scheme and might have helped to prevent accidental non-compliance with the scheme's regulations.

Finally, it appears that responsibilities for monitoring the scheme were unclear or were not fully agreed. Partly because of that, there was a delay in the introduction of effective monitoring and audit arrangements. The prompt introduction of such arrangements could have provided a deterrent for, and a means of detecting, improper activity by learning providers.

Scottish Enterprise and HIE estimate that, of a total of £18.8 million of received claims under the ILA scheme in Scotland, up to £4.5 million-worth of claims might be irregular. Scottish Enterprise received the majority—98 per cent—of the possibly irregular claims.

Acting on the instructions of the Crown Office and Procurator Fiscal Service, the police executed search warrants against 10 learning providers where it was believed that there was a high risk of fraudulent activity having taken place. It has taken considerable time to analyse the recovered data and the COPFS has not announced yet whether it will start prosecutions against any learning providers. The recovery of any moneys lost because of fraudulent activity will be a matter for the courts to decide.

I want to mention briefly the development of a new scheme to succeed the ILA scheme. The ELLD's evaluation work confirmed that many people acknowledged the strengths of the ILA concept and the benefits that the scheme delivered. In the light of that, the Executive announced its commitment to relaunch the scheme in 2003-04 as part of its lifelong learning strategy, which it published last February.

I understand from our discussions with the ELLD that it is taking into account the lessons that were learned from the scheme and is endeavouring to complete a full risk analysis before the new scheme is introduced. I intend to ask the appointed auditors to monitor the new scheme and to report on it after its first year of operation.

As always, my colleagues and I are happy to answer members' questions.

**The Convener:** Thank you. I inform members that, given that agenda item 6 is consideration of our response to the Auditor General's report, the purpose of their questions should be to clarify matters in the report.

**Margaret Jamieson:** I am interested in what the COPFS is doing, because I was one of those who passed on information from constituents who thought that fraud was taking place. Given that a decision is awaited from the COPFS, can the convener clarify whether that will make it difficult for us to inquire into the situation?

**The Convener:** Our legal advice is that nothing is sub judice, because legal proceedings are not active. However, that position might change.

**George Lyon:** The report makes it clear that there was an utter failure of governance and of control of spending. Were the same mistakes replicated south of the border as were made in Scotland, or were there different aspects?

**Mr Black:** The scheme got going south of the border before it did so in Scotland, but it had

similar difficulties with getting accountability right and with the failure to undertake proper risk management. The National Audit Office report addresses those issues in detail, as does the Public Accounts Committee's report.

**Mr MacAskill:** My point follows on from that of Margaret Jamieson. Does the Auditor General's office intend to hold a review following any decision by the COPFS? If it were decided that offences had taken place, a subsequent prosecution might elucidate how a fraud was carried out. Does the Auditor General intend to monitor and review matters? The Audit Committee could decide on that basis whether to deal with the ILA issue sooner or later.

**Mr Black:** It is, of course, not known whether court action will be taken. However, if court action resulted in a prosecution from which new information became available, such information should be considered primarily by the department responsible and taken into account when it designs the new scheme.

When we audit the new scheme after its first year of operation, we will look closely at how rigorous the scheme's risk assessment procedures have been. I confidently expect the new scheme to take into account any lessons that arise from court proceedings, if they were available in time.

11:15

**Susan Deacon:** It might be more appropriate to consider one of my points later, but I will raise it now and the convener can slap me down for doing so if he wants. The new members of the Audit Committee in particular need a benchmark for assessing the seriousness of the conclusions in the Auditor General's report. Can the Auditor General comment on the extent to which the report's observations and recommendations were made with the benefit of hindsight—which is the essence of the audit process—and the extent to which the ELLD ought to have anticipated better the governance issues? Perhaps that is a more substantive question that should be dealt with elsewhere. In addition, I have two simple points for clarification.

**The Convener:** What you said seemed like clarification to me.

**Susan Deacon:** Did it? That is fine. In that case, I will leave that question standing.

I have two further, brief points on which I want the Auditor General to comment. First, I was struck by the fact that the impact of the scheme's failure on training providers seems to get relatively little consideration in the report. There is simply a bald statement that the ELLD has

"no plans to compensate providers."

However, the impact of the scheme's failure was substantial for some smaller providers.

My second point is definitely for clarification. At which stage of development is the new scheme? We need to know so that we can judge how best to input into and influence it.

**Mr Black:** It is difficult to give a succinct answer to your first question because we are talking about a complex story. There were failures at various points in the system, but there were also points where people took action—for example, instituting a risk-management procedure. However, such action did not produce the results that we might have expected.

On the impact on providers, my duty to the Parliament is to report on public expenditure, state whether it has been used legally and appropriately and indicate where there has been any loss or poor value for money. I do not have a significant duty to comment on impacts on third parties. It might seem a bit hardnosed, but that is essentially the limit of my powers. However, if the Audit Committee were minded to take evidence, I would have thought that it would be entirely reasonable to have a line of questioning for accountable officers and any other witnesses from whom the committee wanted information on the impact of the scheme's failure on third parties.

My colleague Graeme Greenhill might be able to give us an update on the stage that the new scheme has reached, because he has been directly involved with the ELLD on it.

**Graeme Greenhill (Audit Scotland):** We understand that the ELLD is working hard to develop the new scheme although our indications are that the department is unlikely to introduce the new scheme much before the turn of the year.

**Rhona Brankin (Midlothian) (Lab):** I am interested in the report's finding that there was no formal accreditation of learning providers. Does formal accreditation mean that a provider is deemed able to deliver a particular form of education or training? If not, does such accreditation refer to business accreditation, which confirms that a provider has a properly constituted training business?

**Mr Black:** I suggest that we are talking about both those aspects. A provider must be a properly constituted organisation that is in the business of training and that must be coupled with a proper professional assessment of the organisation's capacity to deliver. Within that, I expect to see some understanding of how well the organisation is managed, how well it controls expenditure and how good its recording systems are, so that the

information that it supplies to the funders—the paymasters—is credible and sound.

**The Convener:** I will ask about the percentages of irregular claims facing Scottish Enterprise and Highlands and Islands Enterprise. The report shows that Scottish Enterprise faced approximately 98 per cent of the estimated £4.5 million-worth of claims that may have been irregular. Exhibit 11 in the report indicates that suspected irregular claims made up 25 per cent of the total claims received by Scottish Enterprise, but only 6 per cent of the total claims received by HIE. Was that due to procedural management issues or to higher activity and more irregular claims being made in the areas governed by Scottish Enterprise? Was it, to a degree, due to both?

**Mr Black:** Let me highlight a couple of features, as that might help to explain the pattern of expenditure. First, Scottish Enterprise was operating on a much larger scale than HIE was. Scottish Enterprise's remit covers the central belt of Scotland, where there is the largest concentration of population and economic activity. The scale issue is significant.

The second issue has been relayed to us informally, but it is probably appropriate to mention it. People who were seeking to use the money inappropriately—in extreme cases, fraudulent providers—seem to have begun their activities in England, where the scheme started. There seems to be some evidence that they then moved into the central belt of Scotland and latterly moved into the Highlands and Islands area. The view expressed by HIE was that the dubious providers hardly got going before the scheme was closed down. That explains the pattern.

**The Convener:** Thank you. That is helpful.

## “Moving to mainstream”

**The Convener:** Item 5 is the Auditor General's report on “Moving to mainstream”.

**Mr Black:** Around 44,000 children and young people in Scotland—approximately one in 20 of the population—have special educational needs. Expenditure on special educational needs in Scotland is considerable at about £388 million. Most of that represents expenditure by education authorities; the remainder comes from social work or the national health service or is funded through various specific grants.

Recent legislation will have a substantial impact on councils' provision for children and young people with special educational needs. The resumption of mainstreaming is introduced by the Standards in Scotland's Schools etc Act 2000, while the Education (Disability Strategies and Pupils' Educational Records) (Scotland) Act 2002 requires councils to prepare accessibility strategies.

Our study attempts to examine the inclusion of children and young people with special educational needs in mainstream schools in the light of the new legislative environment. The study was carried out by Audit Scotland in partnership with Her Majesty's Inspectorate of Education. I am grateful to HMIE for its support in that work. The report was a joint study for the Accounts Commission and the Auditor General, as significant expenditure by education authorities is involved.

We considered how many pupils with special educational needs are likely to be educated in mainstream schools in the future; how much the changes are likely to cost; whether councils and other agencies are in a position to deliver the changes required; and how well the needs of children and young people with special educational needs can be met in mainstream schools.

I will highlight the main findings. The estimate is that between 2,000 and 5,000 more children with special educational needs will be educated in mainstream schools in future, an increase of approximately 9 per cent on where we are now. The report attempts to prepare a comprehensive estimate of the first costs that relate to the change, and we estimate a range of between £38 million and £121 million a year. The figure of £121 million sounds spuriously accurate, but it is just that factoring up produces that sum—roughly speaking, the costs will be between £40 million and £120 million.

The second finding is that all pupils can benefit from mainstreaming when teachers and pupils are

well supported. However, mainstreaming does not work for every pupil.

Another feature is that published attainment information may not fully reflect the success of inclusive schools. Such schools are obviously taking on a particular problem that may not be reflected in how their performance is measured. That is an important issue.

We have found that planning for the changes is patchy among councils and NHS bodies, which are waiting for councils to take the lead. We make 42 recommendations to help the various agencies involved—primarily councils but also NHS bodies and others—to prepare for the changes. We are exhorting councils and NHS bodies to work together to plan for the changes. They need to examine mainstreaming options and consult parents, head teachers and the voluntary sector more fully than is currently the case in a number of authorities.

We state that councils in particular must consider the needs of pupils with special educational needs when they build schools and refurbish existing schools. They should ensure that senior teaching staff have enough time and resources to support the needs of pupils with special educational needs. They should also ensure that all their staff are properly trained.

Health bodies must ensure that they have the capacity to meet the needs of pupils with special educational needs. In particular, the health service needs to look at its therapy services, child and adolescent mental health services and school nursing services.

We also suggest that the Scottish Executive and councils work together to consider how best to reflect the success of inclusive schools when they publish attainment information. We think that the performance information that is published needs to be more sensitive to the pressures that some schools accommodate, often quite well.

A separate issue that came up as we were doing the study relates to the Parliament. I suggest that the Parliament needs better information on the costs that might be attached to bills and amendments to bills. To be frank, the financial memorandum for the Standards in Scotland's Schools etc Bill was short and rather vague, and the financial resolution that accompanied the bill was broad in scope. The mainstreaming presumption came in as an amendment at stage 2 and therefore was not costed. The likely financial consequences of proposed legislation, including amendments, should be considered carefully by the Parliament.

The Parliament, of course, recognises that and standing orders now oblige the lead committee, as well as the Finance Committee, to consider and

report on financial memorandums at stage 1. The Finance Committee now reviews the memorandums in more detail than in the past to ensure that they are robust. Both those measures will help the consideration of costs, but they will help only when bills are introduced. As the situation stands, they will not deal with the problem of later amendments that may carry significant costs. I therefore suggest to the committee that the Parliament be invited to consider how best to take account of relevant costs when bills and amendments are scrutinised.

Along with my colleagues, I am happy to answer the committee's questions.

**Margaret Jamieson:** On the work that councils have had to undertake, do you have a feel for which councils have completed their strategy for overcoming the difficulties with some buildings? Was your report influenced by the fact that schools and local authorities must be fully compliant with the Disability Discrimination Act 1995?

11:30

**Mr Black:** We understand that accessibility strategies were produced by all local authorities by the due date of April 2003. In our assessment of the position in local authorities, we were limited by the fact that this is a baseline study, rather than a comprehensive examination of the whole project. It is a kind of wake-up call to everyone involved.

A new legislative requirement has been introduced and much more needs to be done in many public bodies to accommodate that. Because this is a baseline report, we sampled local authorities. We worked closely with seven local authorities across Scotland, which—together with the consultations that took place with professionals involved in delivering the service—provided us with an adequate base of information for the report. I am sure that Lesley Bloomer, the director who headed up the study, has other points to add.

**Lesley Bloomer (Audit Scotland):** As Robert Black said, we examined in detail seven authorities: Aberdeen City Council, Dundee City Council, Glasgow City Council, Highland Council, North Lanarkshire Council, Orkney Islands Council and Stirling Council. We also wrote to all 32 councils to ask them about the position in their area. That exercise provided us with a mixed picture. As members know, when we produce baseline reports, we highlight good practice and—as Robert Black said—issue a wake-up call to all the relevant authorities. When we revisit the matter in two or three years' time, we will report on the performance of each of the 32 councils. At this stage, we have detailed information on only seven councils and additional information that touches on

the remaining 25 authorities.

**Margaret Jamieson:** The Auditor General mentioned the cost attached to amendments to the Standards in Scotland's Schools etc Bill and suggested that the Parliament's procedures were lacking in dealing with that issue. Because the Parliament allows members to lodge manuscript amendments, the problem of uncostered amendments being agreed to is even greater than the Auditor General suggests. We might want to consider that issue, as none of us wants to agree to amendments that negate all the good work that is done elsewhere in legislation. We may be able to assist the Procedures Committee in dealing with the matter. I am grateful to the Auditor General for highlighting it to us.

**The Convener:** In his oral report, the Auditor General said that Audit Scotland had prepared "the first costs" for the inclusion of children with special educational needs in mainstream schools. I suspect that those words were carefully chosen, but is the suggestion that those were the first costs that had ever been prepared?

**Mr Black:** When we undertook the examination we attempted to find out whether there was existing cost information on which we could draw, but we quickly concluded that we would have to carry out our own analysis. That is fully documented in the report. Whether the cost is £40 million or £120 million is important, but it is not the end of the story—it is the start of the story. The point is that a significant resource need is attached to mainstreaming that had not been calculated before.

**Lesley Bloomer:** Our reports cover efficiency, effectiveness and economy. As Robert Black said, one of the first things that we did was to seek estimates of the cost of including children with special educational needs in mainstream schools, but there were none. We produced estimates to the best of our ability. The wide range between the figures that we cite reflects the fact that no one yet knows how many children will move into mainstream education, the nature of their needs and the cost of supporting them. This is the first time that estimated costs have been produced.

**George Lyon:** I was astonished to read that one amendment has committed the Executive to substantial spending without any attempt having been made to clarify the figure involved. I seek clarification on two points. First, did ministers and officials attempt to clarify the cost of the amendment at stage 2, before it was agreed to? If not, why not?

Secondly, there is always a chance to deal with such issues at stage 3. Was there an attempt to inform the Parliament at stage 3—before the bill was passed—of what the true cost implications of

the stage 2 amendment would be? I understand that that there had not been an attempt to estimate the costs, but surely it must have been known that a substantial cost would have to be allocated.

**Mr Black:** I will turn to Lesley Bloomer at this point but, to the best of our knowledge, no analysis of that type was presented to the Parliament.

**Lesley Bloomer:** That is correct. At stage 2, the Education, Culture and Sport Committee raised in passing the question of costs. The then Deputy Minister for Children and Education noted:

"If our policy thrust works, there will be fewer children in special schools and more in mainstream schools, which will make possible a transfer of resources."—[*Official Report, Education, Culture and Sport Committee*, 9 May 2000; c 940.]

Therefore, the point was picked up on. However, from the many hours we spent trawling through the *Official Report*, we did not find that greater consideration had been given to costs.

**George Lyon:** So there was no mention of costs at stage 3, and officials did not go back to do any investigative work after that mention by the minister of an anticipated transfer of resources.

**Mr Black:** Our understanding of the issue is limited by what we examined. Other events or discussions of which we do not have knowledge might well have taken place. Such a question might be addressed more appropriately to the accountable officer, if the committee wished to take evidence.

**George Lyon:** Do you have any recommendations on how the system might be tightened up, which we could investigate before passing the matter on to the Procedures Committee? It seems incredible to think that such an amount of money could be committed with no investigation whatever of the impact.

**The Convener:** That could be more easily discussed under a later item, but—

**George Lyon:** It is central to the whole question.

**The Convener:** We will return to it.

**Mr MacAskill:** These might also be appropriate to discuss later, but I have two points to raise. First, should there be a specification to cover de minimis amendments, which have limited or no costs? Are there any thoughts on setting a threshold for that? If so, from where should such a threshold come?

I am not sure whether my second point comes under the ambit of this committee; as with matters that we were discussing earlier, it might be a question of making a referral to another committee. The Auditor General said that

mainstreaming is generally beneficial for most children where the appropriate resources are available. Clearly, there are some children for whom mainstreaming is not beneficial. Each of us will know of cases of distress on the part of parents and children alike, where a square peg might be getting put into a round hole.

Does Mr Black have any views about where we are heading and about the risk that we might be replicating the difficulties that followed the wholesale drive towards community care? Should we be addressing the matter in the context of maintaining specialist special needs education, as opposed to having a wholesale drive towards mainstreaming? It might not be for the committee to determine where to strike the balance on that, but we should perhaps be asking for a review, or for a delineation or definition to be set.

**Mr Black:** On how amendments might be classified, I respectfully suggest that that is not a subject for the Auditor General. However, it might well be a subject that the committee wishes to pursue in consultation with other committees, and we could certainly help informally with ideas at a later stage, if the committee is minded to go in that direction.

On the benefits of mainstreaming, the committee will have noted that Her Majesty's Inspectorate of Education was heavily involved in the study behind our report. It was enormously helpful for us to have the inspectorate's professional assessment of the circumstances under which mainstreaming seems to work well and under which there are barriers to making it work well. One chapter in our report goes into that in some detail.

Some matters of general concern stem from that. First, the needs of the child must be addressed sensibly and professionally at the level of the individual. Secondly, before mainstreaming becomes a commitment, resources must be available for accommodation and staffing, and for training and support for everyone involved. The area is highly complex and, in doing our study, we became aware that there are deeply held views among people who know a lot about it, so it was helpful to have HMIE involved.

**Lesley Bloomer:** A couple of legal points will affect the extent to which special schools have to be retained. The first one has to do with exclusions to the mainstreaming presumption. There are three possible reasons for an education authority not to seek to mainstream children and nobody will know exactly how things will be interpreted until there is case law. The second legal point is the provision to make placing requests. If an education authority proposes to educate a particular child in a particular school, the parents can say no and can request that their



child be educated in a special school. Those are two important reasons why it is not possible at the moment to say whether the legislation could result in a reduction in special school places or, indeed, in the closure of special schools.

**Susan Deacon:** I echo the views of others in that I hope that we will consider further the financial implications of legislation and, specifically, of the amendment process. Some committee colleagues have asked whether officials investigate the cost implications of proposals. That takes us into an interesting debate about implementation. Politicians have a huge responsibility and must be aware of the cost implications of their proposals. Would the Auditor General like to comment on that? I suspect that officials and advisers, in both the Executive and the Parliament, might hold back because they feel that it is for us to guide and decide on policy. The buck stops with us.

I was struck in this report—as I have been in other reports but particularly so in this one—by the number of what I would call generic points, which come through time and again in comparable pieces of work that have been done in other areas. I am thinking, for example, of work done on children's and older people's services, and on community care and the like. Some issues stand in the way of organisational efficiency and effectiveness in the delivery of policy objectives: local authority and NHS boundaries are not coterminous; there are staff shortages in key areas; there is a time lag between increasing the capacity in specialist professions such as therapy and delivering the policy; there is a need for greater joint working and, as has been mentioned, resource transfer; and huge issues arise to do with culture change and consultation with parents and pupils. I would very much welcome the Auditor General's comments on how he and Audit Scotland deal with some of those generic issues that arise repeatedly. How can he, or we, attempt to deal with some of the clear themes that emerged during the first session of the Parliament to do with the blockages to the delivery of our policy aspirations? Those are big questions, so I will leave it at that.

11:45

**Mr Black:** Those are two significant questions. On the financial component of proposals, my thought—for what it is worth—is that the Executive should be encouraged strongly by the Parliament and the Audit Committee to ensure that bills are accompanied by financial memoranda that contain the best possible analysis of the financial consequences. The original financial memorandum for the legislation that we are discussing consisted of only a couple of lines,

which stated that, in effect, few additional costs would arise. I am clear in my view that when bills are introduced by the Executive, it is the Executive's responsibility to provide financial analysis to the satisfaction of the Parliament.

The situation is more complicated with amendments to bills. In terms of risk management—to use the language that we tend to use—amendments are a risky area for the Parliament, because as committees take evidence they will, quite properly, take soundings from the general public, clients, experts, and voluntary organisations who have good proposals to make. Understandably, members who sit on a committee will be minded to be as responsive as possible to those proposals, but there is a risk that some of the proposals might have a significant pound sign attached to them. It is not for me to comment or advise on how the Parliament should address that, but it is a risk management issue that it is quite appropriate for us to mention.

On the second question, on generic issues, if I may say so, I think that Susan Deacon has hit the nail on the head. It is surprising how often we come up against the same types of issues when we examine different policy areas. Generally speaking, we must take generic issues about coterminosity, staff problems and so on and apply them to a specific circumstance if what we say is to mean anything, because we cannot do anything about public sector staff shortages in the round. The fact that Audit Scotland is a single body means that we have the opportunity to examine barriers to delivery at all levels, from Executive departments, through health boards, to local service providers—for example NHS trusts, as they used to be called. Increasingly, our reports attempt to do that in a sensible way.

There is no simple answer, but members can rest assured that, when we are doing our work, increasingly we attempt to examine the whole system and the barriers to change at different levels. A noticeable feature of our studies now is that there are usually recommendations for departments and recommendations for service providers in the one report.

**Robin Harper:** I have an observation on the chapter of the report on how well the needs of pupils with special educational needs can be met in mainstream schools. For purposes of comparison, would it not have been quite useful to have a chapter on how well their needs are already being met in special schools?

**Mr Black:** The report is intended primarily to examine the extent to which the various agencies—primarily local authorities and health bodies—are tooling up for the implications of the new legislative duty, which is the presumption of mainstreaming. The report is not on what is

happening in our special schools at the moment. Such a report would be a separate piece of work, which others would be much better qualified to undertake. It would probably be undertaken by HMIE.

**Rhona Brankin:** I am interested in how the effectiveness of inclusive practice was measured. Was that done by examining examples of good practice on the advice of HMIE?

**Lesley Bloomer:** HMIE asked the local authorities with which we were working for examples of schools that they thought were really good. When we set up the study, we took a decision to examine solely schools where there was good practice, rather than examining a cross-section.

We wanted the report to be a resource for authorities and schools and we wanted to ensure that good practice was followed. The report says what can be done and what authorities and schools need to do to ensure that their practice is effective. When we do the follow-up in two or three years' time, we will examine a cross-section of mainstream schools and determine in how many of those there is good practice and in how many the practice is not good enough.

The assessment of effectiveness was based on whether the features were in place that HMIE said needed to be in place for a school to be effective in meeting the needs of children with SEN. The inspectors assessed against those criteria. They visited schools, observed what was happening and talked to pupils, parents, teachers and visiting staff in making their assessment against the standard of what they considered to be good.

As for all our studies, we had an advisory group made up of a wide range of professionals involved in the field. They were a touchstone for us in ensuring that what we were assessing against was right. They also acted as a touchstone when the findings came out. We asked them, "Does this seem real to you? Does this feel right to you?" and the answer was yes. That was an additional safeguard on how we measured effectiveness.

**Rhona Brankin:** You have highlighted a difficulty in predicting the costs of inclusion because of the exclusions to mainstreaming and the extent to which the sort of separate special needs provision that will be made is unknown. How did you take that into account in your costings? Were your assumptions different from ministers'? Does that account for some of the concerns and differences in costings?

**Lesley Bloomer:** We wrote to special needs managers in all 32 councils and told them that the mainstream presumption was being introduced. We asked them to tell us, based on their experience and local provision, how many more

children with special needs they thought would move across into mainstream schools in five years' time and what the nature of their needs would be. That gave us a wide range of figures, and our costings of £40 million to £120 million take into account the low-level and high-level predictions of the number of such children who will move across. From memory, I think that 3,000 was the lowest estimate of the number of children who would move across and 9,000 was the highest estimate. When we did the costings, we considered those extremes and factored in the nature of the needs and how much it might cost to support children with the different needs.

**Rhona Brankin:** The element that is difficult to predict is obviously parental choice.

**Lesley Bloomer:** Absolutely. If local authorities can work with the health service and other agencies to make mainstream provision really good and give the pupils, teachers and other staff a lot of support, that will influence parents and more parents than before will see mainstream schools as their first choice. We asked the education managers to predict the extent to which parents' views will be engaged, but the views themselves will vary according to how well supported the provision is.

**Rhona Brankin:** I have one last question. In considering the costs associated with training, did you focus on training specialist support teachers—for example, with a postgraduate diploma or a certificate in special needs teaching—or did you consider the need to train classroom teachers and non-teaching support staff as well?

**Lesley Bloomer:** The costings at the back of the report are based on training teaching staff, so they are conservative. We provide a range of costs, based on whether all primary school teachers are trained or whether only a third of primary school teachers are trained. The figures reflect the range of what might happen. They are conservative, as we do not include costings for the training of auxiliary staff but focus on the training of professional staff.

**The Convener:** As those are all the questions on the "Moving to mainstream" report, I thank the Auditor General and his staff.

11:55

*Meeting continued in private until 12:34.*

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