



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

PUBLIC AUDIT COMMITTEE

Wednesday 29 January 2014

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000

Wednesday 29 January 2014

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	2047
SCOTLAND ACT 2012	2048
SECTION 23 REPORTS	2079
“NHS Financial Performance 2012/13”	2079
“Management of patients on NHS waiting lists—audit update”	2079

PUBLIC AUDIT COMMITTEE

2nd Meeting 2014, Session 4

CONVENER

*Hugh Henry (Renfrewshire South) (Lab)

DEPUTY CONVENER

*Mary Scanlon (Highlands and Islands) (Con)

COMMITTEE MEMBERS

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

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

Bob Doris (Glasgow) (SNP)

*James Dornan (Glasgow Cathcart) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

*Ken Macintosh (Eastwood) (Lab)

Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alistair Brown (Scottish Government)

John Connaghan (Scottish Government)

Russell Frith (Audit Scotland)

Caroline Gardner (Auditor General for Scotland)

Paul Gray (Scottish Government)

Dr Aileen Keel (Scottish Government)

John Matheson (Scottish Government)

Jonathan Sewell (Scottish Government)

Mark Taylor (Audit Scotland)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

Committee Room 5

Scottish Parliament

Public Audit Committee

Wednesday 29 January 2014

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Convener (Hugh Henry): Welcome to the second meeting of the Public Audit Committee in 2014. I ask members of the public, members of the committee and witnesses to ensure that their electronic devices are switched off.

I have received apologies from Bob Doris. I am not sure yet whether he will be able to attend later but, for the time being, his apologies are in. We also have apologies from Tavish Scott, who has some constituency commitments, I think.

Under item 1 on the agenda, can we agree to take items 4 and 5 in private?

Members *indicated agreement.*

Scotland Act 2012

09:31

The Convener: Agenda item 2 is on the Scotland Act 2012. At our last meeting, we heard from representatives of the National Audit Office and HM Revenue and Customs. This morning, we have with us Alistair Brown, deputy director of the Scottish Government finance directorate, and Jonathan Sewell, the directorate's principal policy analyst. We also have Caroline Gardner, the Auditor General for Scotland; Russell Frith, the assistant auditor general; and Mark Taylor, the assistant director of Audit Scotland. Welcome.

Before committee members ask questions, I wish to ask the witnesses: do any of you have any comments on what you heard or read of what was said at our previous meeting?

Alistair Brown (Scottish Government): I have no specific comments, but I am happy to answer questions from committee members.

Caroline Gardner (Auditor General for Scotland): The same applies to us, convener.

The Convener: What are the views of either the Scottish Government or Audit Scotland on how adequate the draft amendment is? Does anything need to be done to strengthen it to ensure that all the relevant issues are addressed? We have already heard that reports or accounts would be laid in the Scottish Parliament, so the committee would have the opportunity to look at them. Does the amendment address sufficiently the concerns or worries that have been expressed?

Alistair Brown: I believe that the amendment addresses the key issues. The Auditor General will probably have a better view of the issues than I do, as they concern the matter of accountability and audit most closely. The proposed amendment, which the United Kingdom Government intends to include in the forthcoming finance bill 2014, appropriately fills out the role and responsibilities of the additional accounting officer. We have known about the role itself for some time, and the amendment seems to fill it out in a sensible way.

Caroline Gardner: Our view is that the amendment, in so far as it relates to the responsibilities of the Comptroller and Auditor General in relation to the audit of HMRC's performance in collecting the Scottish rate of income tax, does what is required. It covers the requirement to report on the way in which the amounts collected are reported, the cost of reporting that, and the discretion to examine value for money in relation to all of that, which are the three most important areas to us.

It was clear from the committee's previous evidence session that some other areas will benefit from being fleshed out and agreed before the Scottish rate of income tax comes into effect in 2016, including the form of the report and the way in which Audit Scotland works with the National Audit Office to provide assurance to you about the coverage of Scottish interests and about how you can take evidence on that. That can all be dealt with subsequently, in places such as a memorandum of understanding, but in our view the proposed legislation provides a good basis for that.

The Convener: We heard at our previous meeting that there are legal impediments to Audit Scotland accessing information on taxation and revenues. That is understandable, because HMRC and the National Audit Office operate within a clear legal framework. It is fair to say that we also heard, particularly from the National Audit Office, a willingness to co-operate with Audit Scotland. Nevertheless, would operating on the basis of good will or a memorandum of understanding for some of the work give Audit Scotland sufficient capability to delve into the accounts to ensure not just transparency but—more to the point—fairness and competence in identifying and collecting the Scottish element of income tax?

Caroline Gardner: It is worth saying first that the way in which the Scottish rate of income tax is constructed—with a shared tax base that is administered through a UK-wide system—throws up challenges that we all need to work together to resolve in order to assure the committee and the Parliament about the amounts that are collected and the cost of that.

It is clear that HMRC is a UK-wide body and that, in line with all other UK-wide bodies, audit responsibility is with the National Audit Office. In HMRC, there are strong protections for taxpayer confidentiality, as we would all expect. That means that we would not have access to taxpayer records, whatever we were doing to work with the NAO on the audit work that it does.

We have been very much part of discussing the proposals that the committee heard about two weeks ago, which suggest that we in Audit Scotland would have a role in discussing with the National Audit Office its planned audit work and the findings of that work and in giving evidence to the committee through the lens of our audit of the Scottish Government. That would all help to give the committee the assurance that it is looking for.

The issues that the committee heard about, particularly in relation to compliance and collection, are difficult for a tax system that is designed to operate on a UK-wide basis. The most important aspects for the committee to pursue are how Scottish taxpayers are identified and how

records are maintained, as that will be a key foundation for the new tax to work properly. The committee also has a proper interest in levels of service to Scottish taxpayers, particularly in the collection of the Scottish rate of income tax. Compliance and collection in the middle will be harder to unpick for the Scottish tax alone.

The Convener: How soon will the agreement—the memorandum of understanding or whatever you intend to call it—be reached?

Caroline Gardner: The memorandum of understanding between us and the NAO is under discussion, but it cannot be finalised until the arrangements for putting in place the tax are worked through. I guess that that will be at the beginning of 2015-16—about a year from now. A lot of what we do will follow from the agreements that are being developed and worked up between the Scottish Government and HMRC.

The Convener: That is very late in the process, and a lot will happen between now and then. Will you be given the same level of access now, before any memorandum is signed, as you will have after a memorandum is signed?

Caroline Gardner: No audit work in formal terms—if I can put it in that way—is going on. The NAO is staying close to the HMRC's preparations and is discussing and seeking to influence the arrangements that will be in place, and we are doing the same with the Scottish Government. Russell Frith and Mark Taylor can tell you more about the detail of that, as can Alistair Brown from the Scottish Government's point of view.

In the 2014-15 audit of the Scottish Government, we will report on the state of preparation. That is the place where we would report to the committee any concerns that we had about preparations. However, until the tax comes in, we are auditing the state of preparation.

The Convener: I ask Mr Brown how engaged the Scottish Government is in ensuring that the systems that are being set up will accurately identify and return the appropriate levels of the Scottish rate of income tax.

Alistair Brown: I would describe our level of engagement as pretty thorough. There are arrangements in HMRC to manage and oversee its programme of work on the Scottish rate of income tax. The work is overseen by a programme board, which is chaired by a senior HMRC official. I sit on that programme board, so I get all the papers and I participate in discussions.

Jonathan Sewell is a member of the project board that is managing the specific Scottish rate project, so, again, we see all the papers. Key decision points are flagged up to us in advance and we in the Scottish Government have the

opportunity to consider the pros and cons and, if necessary, discuss them with colleagues who have specific knowledge. HMRC has been constructive and helpful in giving us time to examine issues and understand their implications.

On the identification of Scottish taxpayers, we are in the middle of discussing the detail of the process with HMRC and responding to its proposals. The matter is important, for the reason that you and the Auditor General gave: the identification of Scottish taxpayers is central to the whole endeavour. Scottish taxpayers must be correctly identified in the first place; we must then keep the list up to date, which is obviously important. A lot of effort is going into that. We are scrutinising pretty closely what HMRC suggests, and we are coming back with our proposals on how things might be made more accurate or more specific.

The Convener: From what we have heard at a previous meeting and today from the Auditor General, we know that the issue is complex and technical and requires a degree of knowledge about systems, procedures and how financial regulations work. I know that the civil service has a history of giving people a taste of or experience in different departments, so people might move from prisons to education, fisheries or whatever. Given the complexities of what we are talking about, can you assure us that the key people who are involved on the Scottish Government side have the relevant experience or are qualified accountants?

Alistair Brown: I do not have experience in taxation, nor am I a qualified accountant—I have colleagues who are. In particular, we have access to tax expertise through revenue Scotland, which was recently formed on an administrative basis and whose chief operating officer, Nicky Harrison, was recruited from HMRC last spring. Therefore, I have a source of Scotland-based tax knowledge and expertise to which I can go for help with particularly technical issues.

On your general point, the process by which one goes about identifying Scottish taxpayers has to do with where people live rather than the complexities of a tax system, and the issues that we are discussing with HMRC are general rather than technical. Of course, there are other issues, to do with how the United Kingdom HMRC pay-as-you-earn system and other elements of the income tax system operate, which are deeply technical, and when it comes to them we look for assurance from HMRC and descriptions of how its systems work. HMRC is responsible for the integrity and accuracy of the internal operation of its systems.

The Convener: You explained about revenue Scotland, but are the key people around you in the

finance directorate experienced in taxation or qualified accountants?

Alistair Brown: I certainly have colleagues who are qualified accountants—

The Convener: I am talking about the key people who are involved in the project. Are they qualified accountants?

Alistair Brown: I am not a qualified accountant and neither is Jonathan Sewell. However, he is an economist and a financial analyst, and I would suggest that that is as relevant in this context as having specific accounting skills.

The Convener: Okay. Thank you.

09:45

Jonathan Sewell (Scottish Government): As Alistair Brown said, it is clear that elements of the project require a good, in-depth working knowledge of HMRC's tax systems, so we are reliant on HMRC in the first instance, although I have been on the project for a long time and I am developing those skills. What we add is scrutiny of what HMRC is doing. We have to take some of the work that it does on trust but, as both Alistair Brown and Caroline Gardner said, one of the most important elements of the project lies in being able to identify Scottish taxpayers. HMRC would say that, although that is linked to how its systems work, it is a new task for it, and there are areas of that project in which the Scottish Government has much more expertise and is adding value to the project. One of the important things is to be able to identify the number of people who move in and out of Scotland through the year and between years, and that is heavily reliant on our migration data and our analysis of that. That is an example of where, within the project, HMRC comes to the Scottish Government for our expertise. I hope that you will take some reassurance from that.

The Convener: I think that what the committee heard from HMRC at our previous meeting was encouraging. There was a positive attitude and a willingness to co-operate. I do not think that we heard anything that would give us cause for concern. Ultimately, however, we have two parties involved in the process that have different sets of responsibilities and are accountable to different political masters. In that situation, where there is a tension in to whom people are accountable and on whose behalf they are operating, is it not a bit naive to operate, as you have suggested, on the basis of trust?

I am not suggesting that HMRC will try to do anything disreputable, but you have a responsibility to the Scottish Government and Scottish taxpayers, and if you are telling us that you will operate on the basis of trust, that would

suggest that you will not have access to all the facts.

Alistair Brown: I would suggest that we operate on the basis of trust but verify, as President Reagan used to say quite a number of years ago. Clearly, part of that verification is through formal audit processes.

I will give an example of that. You asked earlier about the statutory amendment that the UK Government is bringing forward in the 2014 finance bill on the responsibilities of the Comptroller and Auditor General and the NAO. That amendment will place an obligation on the NAO to report on HMRC's work on the Scottish rate starting from—if I have got this right—the financial year 2014-15. At the end of that financial year, in the summer or autumn of 2015, the NAO will audit the work that HMRC has done in preparing for the Scottish rate. HMRC will not yet be running it at that time, but it will have done the preparatory work. In particular, it will have done a lot of work on identifying Scottish taxpayers, and the NAO will be responsible for auditing that work and producing a report on it. That degree of verification will go on, and Audit Scotland has a role in co-operating with the NAO to ensure that we in Scotland think that its work is appropriate. That is one example of verification.

The Convener: Okay. Thank you. I open up the discussion to members, starting with Colin Beattie, to be followed by Mary Scanlon.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Audit generally operates on the basis of certainty. Where there is less than certainty, the second best is to audit and test processes and procedures that result in the outcome that we see. When we had the NAO here, it was clear that it would look at the process for identifying Scottish taxpayers, which is critical, but it said that it would not give any certification or undertaking that the process had been done correctly, and it would not give any comfort on the process—it would look at the process, but that would be it. That seems to be a limitation, which is a concern. I think that there is a gap in relation to identifying Scottish taxpayers. Another gap relates to HMRC's ability to disaggregate information either on compliance activity or on tax risk in respect of Scottish taxpayers who are employed by UK-wide employers. So there seem to be a lot of gaps, but it was not clear from what the NAO said that it is capable of or willing to plug those gaps in terms of audit. I am interested to hear any comments on that.

Caroline Gardner: You are right that there is a tension there. That goes back to my opening comment that we are talking about a UK-wide tax and a shared tax base, part of the proceeds of which will come to the Scottish Government and

Parliament. To try to put it simply, the nub of the challenge is that the estimated receipts from the tax are currently about £4.5 billion, against total income tax receipts of around £152 billion, I think. So the issue is material in Scottish terms, but it is not material in relation to the UK as a whole. Obviously, it is of huge interest and concern to the Scottish Parliament and the Scottish Government. The question of how we can work with the NAO to give you assurance about that sum of the income tax receipts, alongside the assurance that the NAO gives to the UK Parliament about the overall receipts, is at the heart of what we are trying to resolve.

My view is that the proposed amendment to the Scotland Act 1998 in the forthcoming finance bill focuses on the right issues. It focuses on the correctness of the amounts that are identified as being the proceeds of the Scottish rate of income tax, the costs of collecting them and the ability of the NAO to carry out value-for-money studies of the way in which the system operates. However, there is still that two-tier focus on what is material for the UK Government and what is material for the Scottish Parliament.

In giving evidence to the committee and in discussion with us, the NAO has been clear that it cannot give the usual form of audit opinion—the true and fair view—on the proceeds of the Scottish rate of income tax, because that is a relatively small part of HMRC's overall operations, and those proceeds will be collected as part of the overall income tax system and the overall collection of personal taxes. We can compensate for that to a great extent by the mechanism that we have discussed, which is our working closely with the NAO, as we already do, to understand the work that it plans to carry out, the risks that it will address and the judgments that it will make. When the NAO has done that work, we will then discuss with it the results of the work and the conclusions that it has drawn, and we will supplement the NAO's report to the Scottish Parliament with our own report, if the committee would find that useful.

All that is entirely appropriate in giving the Parliament the assurance that it wants and needs about the way in which its interests are being looked after by HMRC in the process. However, we do not have direct access to HMRC and there would be real challenges in that because of the taxpayer confidentiality issue. That is why the current stage is important—we need to discuss the way in which the process will work in practice and what the form of reporting might be, and ensure that the mechanisms are nailed down for the committee to explore with me and with the Comptroller and Auditor General at UK level and with HMRC what is happening, in the way that the committee discussed at its previous meeting.

Colin Beattie: I accept your point that, in UK terms, we are talking about small potatoes but, equally, as you said, the issue is significant to us. Certainly from an audit point of view, there is a responsibility to ensure that the process is right and is properly audited. I realise that you are still in discussions on the issue, but I think that it is a key matter. The Public Audit Committee has to be satisfied that someone has signed off the process and said that it is fair and right and has been done properly and, we hope, that as a consequence the results are correct. At present, I do not think that we are in that position.

Caroline Gardner: I think that you are right that we are not fully there yet. I give you the assurance that, as you would expect, I take the responsibility to look after this committee's and this Parliament's interests very seriously and I am very comfortable with the extent to which colleagues in the National Audit Office and HMRC are open to working with us to put together a system that does what you require. It is right to note that we need to be aware of that tension in the way that this tax is constructed when we put those safeguards together.

Twelve months from now we will all be in a better position to identify exactly how the arrangements will work in practice, but we are trying to make something quite unusual work in ways that are both cost-effective and, most important, fulfil the democratic accountability to the Parliament that is necessary here.

Colin Beattie: Are you including in this discussion the question of the disaggregation?

Caroline Gardner: Disaggregation of?

Colin Beattie: We are talking about when it is a UK-wide company.

Caroline Gardner: That is an interesting question. We listened closely to HMRC's evidence two weeks ago about the way in which compliance and collection work. We came away with a great deal of comfort not only that HMRC is not likely to apply a differential approach to Scottish taxpayers versus taxpayers in the rest of the UK, but that it would be quite difficult for it to do that because of the way that its compliance and collection works.

I think that our interest has moved upstream to the whole question of how a Scottish-rate taxpayer is identified in the first place and how to ensure that that information remains up to date. We will certainly discuss that very closely with colleagues in the NAO over the next 12 months as that identification process gets under way.

Colin Beattie: Clearly, as everybody round the table has identified, the key to the process is to identify Scottish taxpayers. The question of disaggregation is quite significant, because we do

not know how that will impact overall on various statistics that we receive, on the compliance issues and on tax at risk. We will not be able to have full reliance on those calculations or a full understanding of the overall position if we do not have disaggregation.

Caroline Gardner: Alistair Brown is probably in a better position to answer that question than we are at this stage.

Alistair Brown: I will do my best to provide some sort of an answer to Mr Beattie's question. I think that the context in which you raise the issue of disaggregation is compliance. I check that that is what you have in mind and play back some of the evidence that HMRC and NAO officials gave the committee a fortnight ago. They said—we understand this to be the case—that approximately 99 per cent of income tax is collected automatically through computerised systems or through self-assessment returns, with self-assessment taxpayers paying their tax in that way. HMRC's compliance activity therefore relates to the 1 per cent of income tax that we might say does not come in automatically.

Edward Troup explained that a lot of compliance activity is to do with checking the pay-as-you-earn—PAYE—systems operated by employers to see whether they have operated the arrangements correctly. He gave the example of including taxable allowances, for example, in the calculation that generates the monthly PAYE payover from an employers' payroll system to HMRC. In practice, HMRC adopts a risk-based approach to auditing employers. It identifies groups of companies that it sees as potentially of higher risk and puts compliance resource into checking the PAYE computer systems and associated clerical systems that are operated by these employers. It looks for errors or misapplications of the rules that would result in an undercalculation and an underreturn of tax. All of that is happening within the 1 per cent.

The point that HMRC would make is that it goes at this from an employer point of view rather than from a taxpayer point of view. If an employer shows certain characteristics that indicate that there might be a heightened risk of error in tax calculations, HMRC will apply compliance resource to that employer.

10:00

If the employer is a local firm in England, it is unlikely to employ Scottish taxpayers; if it is a local firm in Scotland, it will employ Scottish taxpayers; and if it is a national organisation, it will employ Scottish and rest of UK taxpayers. HMRC's point is that if, for example, it intervenes through compliance activity with a national employer and a cheque for, say, £100,000 is sent to make up for

some error in the way that PAYE has operated for the previous year, it will find it very difficult to say how much of that £100,000 relates to Scottish and non-Scottish taxpayers employed by the company in question. It would be possible to arrive at a figure with a good deal of clerical work, or one might, for example, choose to divide the money up with reference to the proportion of Scottish taxpayers on the employer's payroll, but the question then is how much further forward one would be as a result.

If the committee will indulge me, I would like to make an important point about the 1 per cent figure that HMRC has used—

Colin Beattie: I am sorry to interrupt, but I seem to remember that the figure for self-assessment was 10 per cent. Do the clerks have that figure?

Alistair Brown: The 99 per cent is the proportion of income tax that comes in automatically through PAYE and self-assessment without any further follow-up work by HMRC.

Colin Beattie: So the 1 per cent relates to interventions by HMRC.

Alistair Brown: Exactly.

Colin Beattie: That is slightly different. As I recall, Mr Troup said that 90 per cent of income tax came in through PAYE and 10 per cent through self-assessment, and there was a small fraction where HMRC intervened.

Alistair Brown: Or where HMRC carried out compliance work.

Colin Beattie: Yes.

Alistair Brown: That is how I understand it.

Colin Beattie: But as far as disaggregation is concerned it will be the 10 per cent overall that, theoretically, will cause the problems.

Alistair Brown: Overall, 99 per cent will absolutely be allocated to either Scottish or non-Scottish taxpayers. HMRC's computer systems will be able to calculate very accurately—indeed, to the penny—how much of the payover made by an employer or self-assessment taxpayer is attributable to the Scottish rate, and the auditors will be able to check that that routine works as expected.

The issue of disaggregation will apply to the 1 per cent in which the money comes in as a result not of automatic income tax processes, including self-assessment taxpayers sending their cheques or making their credit transfers, but of compliance activity or intervention by HMRC. The difficulty for HMRC is that most of the money that comes in through compliance activity comes in from an employer without its being disaggregated among

the employees, some of whom will be Scottish taxpayers and some of whom will not.

I ask the committee to bear with me a moment longer. In general, the 1 per cent of income tax receipts that come in following HMRC intervention are received more than a year after the end of the tax year to which they relate. That is, of course, understandable. If there is a dispute or disagreement or if HMRC mounts an inquiry and sends officers into an employer, the work involved in that will take a while to carry out. If HMRC concludes that tax has been underpaid and raises an assessment with an employer to pay the balance, it might take many months—indeed, years—for the matter to be settled and for the money to come in.

As set out in its command paper back in 2010, the UK Government's proposal with regard to the overall financial operation of the Scottish rate of income tax is that the amount of SRIT received should be struck at a point of time one year after the end of the tax year in question. In other words, the end of the tax year 2016-17, which will be the first year in which SRIT is applied, is the beginning of April 2017, and HMRC will count all the Scottish rate receipts throughout that year and onwards until the beginning of April 2018.

At that point it will settle up. It will say what the Scottish rate receipts are and will prepare an estimate of the unpaid amount of tax—the amount of tax that is still in dispute. Its best estimate is that that will be 1 per cent. It will then add that estimated 1 per cent to the actual receipts of the Scottish rate of income tax and the treasury will use that amount to calculate our block grant.

That is pretty complex and I apologise for that, but it is important to lay hold of the point that if there was a complete failure to collect any of that 1 per cent—although I am not saying that that would happen—the Scottish budget would not suffer, because an estimate would have been made of the amount of the 1 per cent, which would have been added to the Scottish rate receipts that were received up until the one-year point.

Colin Beattie: There are a couple of audit issues that the committee should keep in front of it and come back to later, because, as the Auditor General says, it will take some time before the area that she is discussing will be properly clarified and resolved. We need to keep an eye on it, as there are gaps.

Mary Scanlon (Highlands and Islands) (Con): I am very pleased to hear that there has been and is positive and constructive engagement. That is what we heard from HMRC. Anyone in Scotland, including taxpayers and businesses, would expect no less. I find that very reassuring.

My question follows on from Colin Beattie's. It is on performance information, on which there has been quite a bit of discussion. I appreciate that significant preparation and progress is being made on compliance and prosecution rates, error and fraud levels, tax gap and the debt roll rate, and taxes written off, and I appreciate that we are looking at what satisfies the Scottish Government and what satisfies Audit Scotland, in terms of good governance of the Scottish economy. Are Audit Scotland and the Scottish Government seeking any information that HMRC and the NAO say is far too difficult to provide? Is something essential to the good governance of the Scottish economy being refused or difficult to get? Perhaps both Alistair Brown and the Auditor General could answer.

Alistair Brown: I am not aware of any information that would fall into the category of information essential to the correct operation of the Scottish rate and to which we are not being given access. There is information that, as HMRC has explained to us and the committee, is quite difficult to obtain from automated systems. We have asked it about that information and it has given responses that are consistent with what it said to the committee, so it is not telling us anything different from what it would say in public.

I will give an example, as it is always helpful to offer an example, and go back to the answer that I attempted to give to Colin Beattie on compliance. HMRC puts effort into its compliance work, on which it is closely examined—the House of Commons Public Accounts Committee takes an interest in it. Its compliance work yield is a big issue, which HMRC is audited on. It has to justify its investment in compliance by reference to the yield that it gets from it.

HMRC is saying to us that its compliance work will be quite difficult to disaggregate on the Scottish rate, which is the point that Mr Beattie made earlier. HMRC has explained the reasons for that and it is fair to say that we can see the logic behind its reasoning. If it is dealing with a compliance situation, it generally does so from the point of view of the employer. Its tax recovery—if it gets extra tax back—is from the employer as a whole. It is not attributed to individual employees. Obviously, it is only at the individual employee level that one is able to see whether a taxpayer is Scottish or not. That is an example of information that, ideally, it would be good to have, but HMRC has explained why that information is not available, and its explanation has been cogent, from my point of view.

Mary Scanlon: Are you quite satisfied with that explanation?

Alistair Brown: Yes, I am satisfied with it. If issues arose in future as to the compliance activity

of HMRC and any suggestion that it was differentiated between Scottish firms and non-Scottish firms, that is something that we would clearly take up, but we have HMRC's assurance that its compliance activity is risk based. As it has said in public, it would be applied in the same way, pound for pound, to employers and employees in Scotland as it would to those in any other part of the UK. Indeed, most of HMRC's compliance activity is broadly sectoral, so it might identify a particular sector of businesses with which there may have been issues in the past about the accuracy of tax calculation, and it would look at that sector of business across the UK without concentrating on any region.

Caroline Gardner: I agree entirely with Alistair Brown's comments on collection and compliance. It is worth restating the importance of the identification and maintenance of Scottish-rate taxpayers, which will be critical, and it will be important to have good performance information for that. I also said in my response to the committee last year that, although it would be difficult to break down service performance information between Scottish taxpayers and others, because all of us in Scotland will be both under that regime, it would be helpful to have information on complaints specifically about the Scottish rate of income tax, because they could be a useful marker of the way in which the system is operating across the piece. That may require additional data collection by HMRC, but in my view it would be worth exploring the costs of collecting that, because it could be helpful both to Government and to Parliament in providing assurance that the system is working as intended.

Mary Scanlon: I would like to go back to Alistair Brown and ask whether that is an issue that the Scottish Government has discussed with the NAO or HMRC.

Alistair Brown: Jonathan Sewell can answer that.

Jonathan Sewell: We had a workshop just before Christmas with HMRC, which is looking at how its current phone-based system can track those calls that are specifically to do with the Scottish rate, as opposed to those calls that are general calls from Scottish taxpayers about the UK tax system. It is quite a tricky issue to disaggregate the two, but HMRC is certainly looking at how to do it and it is something that we are keeping a close eye on.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will continue on the theme of the level of assurance that we are getting. The discussion seems to be focusing on whether we can or cannot identify who all the Scottish taxpayers are, but what level of assurance will we ultimately get if we do not know who the Scottish taxpayers are?

Auditor General, did you say in your response to my colleague Colin Beattie that it is not the usual level of assurance? Could you clarify that for me, please?

Caroline Gardner: Certainly, and I shall ask Russell Frith to come in on this in a moment, as he is our professional lead person on audit matters.

The amendment to the Scotland Act 1998 that is proposed in the finance bill will require the Comptroller and Auditor General in the NAO to prepare a report on a number of matters that must be covered, and give him a discretionary power to look at value-for-money issues, which he may consider. That is not the same as the usual requirement that he and we have to audit a body and prepare an opinion on the financial statements, although it can give a great deal of assurance.

I shall ask Russell Frith to talk you through that distinction.

Russell Frith (Audit Scotland): It will be an unusual audit for the NAO, in that it is auditing an extract from a set of accounts. The NAO audits the whole HMRC set of accounts. Within that set of accounts, there will be certain numbers that relate to the Scottish rate of income tax, but those numbers will be individual numbers and will not themselves form a separate, discrete set of accounts. That is one of the reasons why the amendment is as it is. It requires the NAO to report specifically on the adequacy of HMRC's rules and procedures and the correctness of the sums brought to account. The first part, about the adequacy of HMRC's rules and procedures and about compliance with those rules, is important in relation to the identification, and maintenance of the identification, of the Scottish taxpayers.

10:15

When we discuss with the NAO the scope of its work and, later, its findings, I believe that we should concentrate our efforts on ensuring that it is doing enough work on the key risk areas—the identification of Scottish taxpayers is the main one—to provide a similar level of assurance on those as we would provide on any other part of the expenditure or income of the Scottish Administration. What we are looking to achieve is similar levels of comfort, but in professional terms we would have to use slightly different words from what we would use for a full set of accounts.

My overall expectation from what the NAO is required to do and what we will do in providing what I hope will be a constructive challenge and review of what the NAO does is that the committee will end up with the same level of comfort in relation to the SRIT figures as it would for anything else that it considers.

Willie Coffey: I think that I follow that. I would expect the same rigour to be applied to systems and processes, and so on. However, I come back to the point that we do not know who the Scottish taxpayers are. I am sure that any member of the public listening to or watching this evidence session would probably ask the same question that I will ask: how can you give an assurance about the correctness of the sums if we do not know the numbers of people involved?

Russell Frith: We would expect both HMRC and the NAO to look at how we identify those taxpayers to a sufficient degree of accuracy. There are lots of other areas of audit where we are looking for things that might be there but are not being disclosed. That work in itself is not unique. With regard to the Scottish taxpayers who have identified themselves, provided that the Scottish rate of tax remains the same as the UK one, there is no particular incentive for people to declare themselves to be Scottish taxpayers or not, because they will pay the same amount.

The risk increases if the Scottish rate of income tax differs from what is applied in the rest of the UK. For example, if the Scottish rate is set higher, we might expect there to be a move of people who no longer consider themselves to be Scottish taxpayers. We would therefore expect both HMRC and the NAO to focus on the reasons for such movements and their acceptability. Similarly, in the opposite direction, if the Scottish rate is set lower, we might expect a lot of people who previously did not declare themselves to be Scottish taxpayers to begin to do so.

From an audit of risk point of view, it is about looking predominantly at the movements in Scottish rate taxpayers and the reasons for those movements. That would be done once we have got over the initial process of identifying the core Scottish taxpayers the first time round. For that, we will look to HMRC to develop its approach to looking at, for example, its address databases and, in particular, to determine how it will test the people who it has not identified through its initial trawl.

Willie Coffey: On that point, I refer to a submission from the HMRC team in June 2013 on the issue of the tax gap, which my colleague Colin Beattie raised—the difference between tax due and tax collected. The submission states quite clearly that HMRC

“would not have sufficient data to make meaningful estimates in respect of Scottish taxpayers alone.”

That statement raises questions about the quality of the whole assurance that can be given to the Scottish Parliament and the Scottish public. I do not know whether we will get any closer to that assurance or whether in effect we are just doing

the best we can with this. However, it is almost as if we are being handed the responsibility but being asked to wear dark glasses—or in some cases a blindfold—which interferes with our ability to see what is going on. If we cannot get a complete picture, how can we give assurance? That is my final question on that issue.

Alistair Brown: I can offer the first part of an answer to Mr Coffey's question. The Auditor General might wish to comment, too. As I recall, the route statement that Mr Coffey quotes from was explaining something of the mechanics or dynamics of how tax compliance operates, so again, we are talking about the 1 per cent of income tax receipts that require compliance intervention by HMRC.

HMRC is saying that it does not expect to have a detailed breakdown of the results of its intervention activity by reference to the status of the taxpayer. It will know what effort it puts into income tax compliance work and it will know what the yield is from that work, but it will not be able to say that 10 per cent of that yield is attributable to Scottish taxpayers, for example. It will not have that data.

HMRC would be able to say that, on average, taking a number of years together, the yield from income tax compliance is a certain percentage of the total income tax receipts. The estimate that it has used in discussion with the committee is 1 per cent so, looking back over previous years, HMRC would expect to raise something like 1 per cent of the total income tax receipts from compliance activity.

HMRC would also say that it has no information that suggests that Scottish taxpayers and people who employ Scottish taxpayers are more or less likely to be the subject of compliance activity than taxpayers and employers in the rest of the UK. Therefore, a reasonable extrapolation is that 1 per cent of Scottish rate income—that is, the income from the SRIT—can safely be estimated to come in through compliance activity. In other words, the Scottish rate is a representative sample of UK income tax as a whole.

That is what I understand the HMRC evidence to be conveying, but the Auditor General may want to comment on that.

Caroline Gardner: Alistair Brown is right about the compliance element of the tax gap. My understanding is that it also includes estimates made by HMRC about the effects of tax avoidance schemes and of what it terms the hidden economy—cash transactions that are never declared. HMRC does not feel that it would be possible to disaggregate those figures to show the effect for Scottish taxpayers or the Scottish rate of income tax against the effect for the rest of the

UK. That is not a surprise to us. Again, it is one of the features of collecting the SRIT on a shared tax base through a shared and common system.

On the broader question that Mr Coffey raised about the absolute importance of identifying who Scottish taxpayers are, we can only agree with that whole-heartedly. As Russell Frith said, the first exercise will be to make sure that there is a complete database of Scottish taxpayers who are eligible to pay the new SRIT when it is introduced in 2016. That information has not been needed in the past because there has never been a tax of that kind. That will be a major focus of interest for the NAO and for us under the proposed new clause in the finance bill.

Once that initial exercise is complete and we are satisfied with it, the focus will shift to how HMRC will ensure that it is kept up to date against the background of the potential risks that Russell Frith has identified, which may give individual taxpayers an incentive to opt into or out of registration as a Scottish taxpayer. Compliance activity will focus on that and minimise the possibility of it.

Willie Coffey: I have a final question on the role of Audit Scotland in this process. When we embarked on this, I think that members were keen to make sure that the role of Audit Scotland in the entire process would be positive and influential—that there would be a real role for Audit Scotland to play. In your response to the question that we put to you about that, you say:

“Audit Scotland could discuss with the National Audit Office their planned work in areas relating to the SRIT”.

I was hoping that you would have a more formal role. I do not want to suggest that there be duplication of effort—an issue that was mentioned in some of the responses. However, given your role in providing assurance to us, I was hoping that your organisation would have a more positive and proactive role in giving us an overview. I would be a wee bit concerned if we were to have meetings in future in which we had colleagues from the United Kingdom department in front of us but you did not have a role. I suggest that if reports from UK departments are laid before the Scottish Parliament, your agency should have some kind of oversight of them or ability to reflect on them and give us your opinion of their worth and accuracy. Otherwise, we would be losing the valuable input that Audit Scotland has given this committee over many years.

Caroline Gardner: I understand that aspiration entirely. All our thinking has moved on since we gave our response last summer. We have reached a clear understanding with the NAO, HMRC and the Scottish Government that our role would be to discuss with the NAO the work that it needs to do to fulfil the new requirements under the finance bill

and that we would have the chance to influence that work, respecting the Comptroller and Auditor General's discretion, which reflects mine, to make his own decisions about the work that he will do.

Once the work is complete, there will be a second formal discussion in order to understand the findings and the reporting that is due to come from it. Alongside the report that would come to this committee from the NAO on HMRC's extract of accounts, I would be very happy to provide my own report, either to reassure you that we were fully content with the work that the NAO had done or to raise with you any questions about its work's coverage or findings of which I thought you should be aware. My powers already enable me to do that, but it would be useful to capture it in a memorandum of understanding once the new arrangements are in place from 2015 onwards.

I hope that that would give you a higher level of assurance than you are suggesting you have at the moment, without getting into the complexities of Audit Scotland's statutory rights of access to HMRC as a UK body. I think that that would give you the reassurance that you need that Scotland's interests are being fully taken into account in that audit work. I am reassured by the commitment that we have experienced so far from the NAO and HMRC to making that work in your interests as well as the UK Parliament's interests.

Willie Coffey: Thank you.

Ken Macintosh (Eastwood) (Lab): I thank Mr Brown for his comments, which have helped my understanding of the new system, which is quite complex. We are here to look at the role of the auditing systems, but we have not introduced the finance systems in the first place. I hope that you do not mind clarifying a couple of issues for me. What is the role of revenue Scotland? You said that you can call on its expertise.

Alistair Brown: We do not expect revenue Scotland to have any formal role in the collection of the Scottish rate of income tax. The calculation of the amount due and the paying over are entirely HMRC's responsibility. My earlier reference to revenue Scotland was simply to draw attention to the fact that I have a colleague there who is well versed in UK tax matters.

Ken Macintosh: I just want to clarify this. Clearly, it is the issue of accountability that is vexing us. The Scottish Government, not HMRC, is the body that we hold accountable for raising the SRIT.

Alistair Brown: I remind the committee that HMRC has appointed an additional accounting officer—Edward Troup—who gave evidence here two weeks ago. There is therefore a direct line of accountability—it is a very special one that was set up only for the Scottish rate of income tax—

from Edward Troup, on behalf of HMRC, to the Scottish Parliament and, largely, to this committee.

Ken Macintosh: Do you think that Mr Troup is accountable to the Scottish Parliament? My understanding is that he is accountable to the Scottish Government and that it is the Scottish Government that is accountable to the Parliament for raising revenue through the SRIT.

10:30

Alistair Brown: I can certainly verify this for the committee, but my understanding of the position is that the arrangements that have been put in place by HMRC, which informally name Edward Troup as accounting officer, represent an expression of an accounting relationship to the Parliament. If I can lay my hands on anything that confirms as much before this evidence session ends, I will say so. If not, I will be happy to send the committee a note to confirm that.

Ken Macintosh: Caroline Gardner looks as if she is keen to come in and clarify the point.

Caroline Gardner: I was simply going to add to Alistair Brown's comments by pointing out that I think that there are two important lines of accountability. It is clear that HMRC will collect this tax and that arrangements are being put in place to provide accountability to the Parliament but, equally, when I audit the Scottish Government I will look at its arrangements, the adequacy of the agreements between the Scottish Government and HMRC and the monitoring and oversight of what is going on in ways that can be reported very directly to the committee.

Ken Macintosh: I want to make sure that I understand this. It is very helpful that HMRC has appointed Mr Troup as accounting officer and, indeed, Mr Morse was also very helpful in his evidence last week. They are clearly willing to come to the Parliament to talk about the reports that they have laid and so on. However, they and indeed HMRC have also made it very clear that they are not answerable or accountable to Parliament in that sense. We cannot, for example, demand that they come before us; they will come if we ask them to, but we cannot make them come, which, in my view, is quite a clear line of accountability.

On the other hand, the Scottish Government is answerable to Parliament. My understanding, therefore, is that, although we will get very helpful and informative administrative information from HMRC, strict legal accountability will lie with the Scottish Government. The Government will be responsible for raising the Scottish rate of income tax and will be accountable to this Parliament for the amounts that have been raised, the accuracy

of that information and so on. Am I right or wrong in that?

Caroline Gardner: Both are true. As Russell Frith has pointed out, this tax is unique in that it will be set by the Scottish Parliament but collected by a UK-wide body. As a result, the accountability arrangements, too, are unique. The Scottish Government clearly has an accountability that I will be monitoring through my audit work and on which I will report to the committee and the Parliament, and the new arrangements that have been put in place for HMRC via the NAO will provide you with an additional line of accountability.

Ken Macintosh: Just for clarification, as far as audit responsibility is concerned, you will not only have a working relationship with the NAO but audit the Scottish Government's role in collecting the SRIT.

Caroline Gardner: Yes, and we are already looking at that through the lens of the Government's preparations for the tax. Mark Taylor, who leads for me on the audit of the Scottish Government, might want to say a little more about the audit work that we are planning in that area for the audit year that is just starting.

Mark Taylor (Audit Scotland): First of all, I point out that, as part of our on-going audit work, we are continuing to engage in understanding the Scottish Government's arrangements. As we get closer to the date on which the SRIT will be introduced, we will ramp up that engagement and understanding.

Our focus at the moment is very much on the Government's oversight arrangements and its engagement with HMRC and how they are operating in practice to protect Scottish interests. We do not have any initial concerns about that but, as we have been discussing this morning, there is a lot of practical work still to be done and we will continue to keep all that under review. As the Auditor General has said, if concerns start to emerge about the Scottish Government's performance of that role, we will have clear opportunities to bring them to the committee's attention.

Ken Macintosh: Can Mr Taylor or Mr Brown clarify whether the Scottish Government will have a separate and distinct line in its accounts for the specific amount that will be raised by the SRIT?

Alistair Brown: My expectation is that the amount that will be raised by the SRIT will not be separately identified in the accounts because the amount that will be due to the Scottish budget as a result of the Scottish rate will be included in the block grant, which is obviously a Treasury matter. As the Treasury advises us on what the block grant is, we also expect that it will advise us on how it has calculated it.

It is important to bear in mind the point that the amount that will be added to the block grant will be the amount that is raised from the Scottish rate, less the block grant adjustment that the UK Government will make in recognition of the fact that its Exchequer is no longer receiving that proportion of UK income tax. Our focus is on the net effect of the amount that will be raised through the Scottish rate minus the block grant adjustment, because that is what actually impinges on the Scottish budget. We are obviously very interested in the calculation of the block grant adjustment, which is a matter that the Parliament is interested in and which the Finance Committee has pursued and is pursuing with us.

Ken Macintosh: We will be very interested in that. Am I right that there is an incentive built into the new system, in that if we increase the amount of tax take in Scotland, we can keep a proportion of it?

Alistair Brown: Yes. If the Scottish Parliament were to approve a resolution that set a Scottish rate at either more or less than 10p in the pound, the Scottish budget would see the financial consequences of that. In technical terms, those financial consequences would be calculated by the Office for Budget Responsibility, and we would take a close interest in its calculation. If a resolution were made before the beginning of the tax year to which it related—as it would have to be—the pay-over from the UK Government in the block grant would immediately reflect the calculated impact of a variation in the Scottish rate from 10p.

Ken Macintosh: Why would you not report on that directly in the Scottish Government accounts, or to Parliament?

Alistair Brown: Audit Scotland colleagues will be able to keep me right here. As far as financial accounting is concerned, the income to the Scottish Government's budget, which it then spends—our funding—is simply a single line of funding from the Treasury, at the moment. In the future, that will be made up from a calculation involving the Scottish rate. As far as our accounts are concerned, the source is the Treasury's block grant. How the Treasury calculates that is upstream of our accounts. That is not at all to say that there will not be information available, but it might not be in our accounts.

Ken Macintosh: Perhaps the Auditor General can answer this question. How will we be able to check that?

Caroline Gardner: You certainly should be able to check it. The committee may recall that, in my submission on the issue last summer, my final point was on the importance of ensuring transparency about the proceeds from the Scottish

rate of income tax, and about the consequent adjustment to the block grant.

Alistair Brown has accurately described the question of the accounting treatment, and there is also the wider question about how the Scottish Government reports that. That is part of the broader information that the Parliament needs, and that all of us as citizens and taxpayers need in order to understand the state of the Scottish public finances, and it will be the basis for decision making in the future. It is very important to have that transparency, and we will be keeping an eye on that in our audit work over the next couple of years.

Alistair Brown: I very much agree with what the Auditor General says about transparency. Accurate and full information is very important, and we all do everything that we can to provide it. Mr Swinney has recently written to the convener of the Finance Committee, setting out the information that he expects the Scottish Government to provide to Parliament in future draft budgets, including information about tax receipts.

The immediate context of Mr Swinney's letter was devolved taxes—the land and buildings transaction tax and the Scottish landfill tax. In his letter, he said that he expects the same provision of information in relation to the Scottish rate once it starts a year later, in 2016. The Scottish Government is, essentially, saying that it will provide all the relevant information that it has about actual and forecast Scottish rate receipts at draft budget time, which is normally in September.

Ken Macintosh: What is the mechanism or process by which we will see that calculation? Will it be provided by the Government through the budget papers? Will we have to approach the National Audit Office? I cannot work it out. Will it be the report that is laid before us by the NAO, or will a Scottish Government report be laid before us that provides the vehicle through which we can make our own judgment and do our own scrutiny of the calculation that has been made of the amount that has been raised through the SRIT?

Alistair Brown: The Parliament would have information in the draft budget, some six or seven months before the beginning of the financial year, about the details of the calculation that the Treasury had provided to us on the Scottish rate and the block grant adjustment.

Caroline Gardner: As we develop this new world of greater financial autonomy for Scotland, there is a question about how the Scottish Government's financial reporting will develop to reflect that. I published a report on the matter in June, on which the committee took evidence, and we identified that issue as being one that needs

further thought. We are engaged with the Government on that.

My sense is that the cabinet secretary's commitment to producing more information at budget stage is welcome, but there is further discussion to be had about broader financial reporting, how the proceeds of the Scottish rate of income tax are made transparent to Parliament and others who have an interest, the impact on reconciliation of the block grant, and the broader picture of the state of Scotland's public finances. The provision of such information is good practice in any case, but it will become increasingly important as we have more financial autonomy, more decisions to make and more volatility risk to bear, in that context.

Ken Macintosh: May I clarify one issue?

The Convener: This should be your last question.

Ken Macintosh: My question is about the 1 per cent of receipts that we were talking about. I have more than one question—I am sorry, convener, I can see your face sinking into despair. I think that Mr Brown clarified that the Treasury calculates that figure because, in effect, 1 per cent is what is raised every year through compliance activity. Is that where the 1 per cent comes from?

Alistair Brown: Yes.

Ken Macintosh: I think that in evidence two weeks ago Sarah Walker told us that even a year after the end of the tax year, most of that 1 per cent will not have been collected—

Alistair Brown: That is correct, yes.

Ken Macintosh: Therefore, the Treasury is still making an estimate, even at that stage. We heard that estimated receipts from the tax are about £4.5 billion, so 1 per cent of that would be £45 million. How do we check whether it is 1 per cent, 2 per cent or 0.5 per cent?

Alistair Brown: As we understand it, the proposition from HMRC, and from the Treasury, which is also involved in this, is that by looking through a number of years' data from income tax collection files or records, HMRC will be able to provide an accurate estimate—in general, taking one year with another—of how much of its income tax receipts come in after the plus-one-year cut-off point. On the assumption that future years are fairly like previous years, HMRC believes that that is an accurate enough basis for estimating the proportion of tax that is still to come. It will then uprate the actual receipts by that 1 per cent—or whatever the amount is found to be when there is fully accurate sampling of previous years' data—and add the figure to the actual receipts to give the estimated 100 per cent of Scottish rate receipts.

Ken Macintosh: That is relatively reassuring. The point that Mr Frith pursued, which I raised at our meeting two weeks ago, is more disconcerting. What happens if we in Scotland change the rate or create different rates for collection? As I tried to say earlier, the intention is not just to change the rate but to grow the Scottish economy and to reap the benefits of a faster-growing economy.

I assume that we will identify a lot more than 99 per cent of residents who are liable to pay income tax in Scotland—I assume that the rate will be 99.99 per cent. Am I wrong?

Caroline Gardner: The honest answer is that we do not yet know. There has never before been a need to identify Scottish taxpayers. The Government and HMRC are planning the exercise, which will be a fundamental building block of the new tax, and we and the National Audit Office will take a close interest in the matter, because getting the number right will be the foundation for the tax being fair and equitable as well as for it raising as much as it can for the Scottish Government and the Scottish Parliament's programme for public services and economic development.

Ken Macintosh: So, we still do not know. Do we have an estimate of how many Scottish taxpayers we will be able to identify? I think that Jonathan Sewell suggested that the Scottish Government will do most of the work to identify those people.

Jonathan Sewell: HMRC is leading on that work, but we have had a number of sessions with analysts from across the Scottish Government on the various data sets that we have, such as national health service data and migration data, which are contributing to the process.

The process is on-going. HMRC has done some work to clean up its database of addresses and I think that Mr Troup told you two weeks ago that he would be happy to come back and give you more reassurance on the matter.

10:45

I cannot at this point give you certainty about the final number, because we have not reached that point. We are driven by the incentive to know the total number of Scottish taxpayers as best we can. We will set the limits when we are further down the line. We have every incentive to ensure that the figure is as accurate as possible, so that we get as much money as possible. The system will have to prove that. As I said, the system will be transparent; the NAO and Audit Scotland will look at it, as will we.

Ken Macintosh made a point about the risk of Scotland's having different rates from the rest of the UK. That is a big risk, and a line of work is

being done with HMRC to consider how a compliance system might deal with that. As Sarah Walker said to the committee, we have from Scottish Government data a reasonable idea of migration between the rest of the UK and Scotland. If those data were to change in a way that was different from what we expected, that would be a clear signal to do more compliance work and would give a head start on where that should be based. A lot of work has been done, but because the issue is so important, more work is being done to improve the robustness of the approach.

Ken Macintosh: It is difficult to audit if we do not know things. The question will be crucial. When the system is introduced and the rates are the same, the system will be robust and fair. However, as soon as the rates change, that will create an important difference, which is when fairness comes in. It could be quite easy for somebody with two homes, for example, to change their place of residence. If HMRC could not identify that, I cannot work out how the Auditor General could reassure us that HMRC's calculations were right.

Caroline Gardner: HMRC will have to do the work. That is the foundation on which the whole Scottish rate of income tax system is built. As Alistair Brown and Jonathan Sewell have said, a big part of the project plan for implementation in 2014-15 is identifying Scottish rate taxpayers, testing that, looking for people who might be missing from the database, looking at people who might be able to claim either status, and testing which status is right.

Getting that right will be a crucial initial exercise in which we and the NAO will have an interest. We can, at the appropriate point, provide the committee with some assurance about how well, or not, that has been done. For HMRC, the job will then shift to ensuring that changes are appropriate—especially if the Scottish rate changes, which might give people an incentive to misstate their place of residence.

Such work is not easy, but it is not unprecedented in taxation. It is the key focus of our interest at this stage in the implementation plan.

The Convener: Mr Brown said that the main responsibility is with HMRC. Will you clarify what exactly is revenue Scotland's function?

Alistair Brown: Revenue Scotland exists as an administrative entity at the moment. It will be given a statutory basis through the Revenue Scotland and Tax Powers Bill, which has been introduced in Parliament. Revenue Scotland's function will be to collect devolved taxes, of which there are two at the moment.

The Convener: So, revenue Scotland will have no input whatever into the Scottish rate of income tax.

Alistair Brown: That is right: revenue Scotland will have no role in collecting the SRIT.

The Convener: When we scrutinise what goes on, an expert tax function will have been set up in the Scottish Government, called revenue Scotland, but it will make no comment on the significant issues in dealing with the Scottish rate of income tax. Will that be left to another Scottish Government department?

Alistair Brown: I will make it clear: revenue Scotland will have no function that is to do with collecting the Scottish rate of income tax. However, revenue Scotland officials are colleagues of ours, so it would be entirely appropriate for us to ask them for help, information or comment internally in the Scottish Government.

The Convener: That would happen only if you chose to do so. Otherwise, a separate section in the Scottish Government will deal with the Scottish rate of income tax, and we will have an expert tax body called revenue Scotland that will have nothing at all to do with commenting on the Scottish rate of income tax, unless you decide to ask it to comment.

Alistair Brown: You are correct that revenue Scotland will have no formal role in collecting the Scottish rate.

The Convener: I am not talking about the collection, because we understand that that will remain with HMRC. However, with regard to all the responsibility and functions that you will have as part of your engagement with the Scottish rate of income tax and ensuring that it is done properly and that you get your fair share, all that expertise will be in a separate section within the Scottish Government and will not be within revenue Scotland.

Alistair Brown: No. The expertise will be called on, as necessary, from the office of the chief economic adviser, for example. When it comes to forecasting and tax receipts at a UK level, that is done by the Office for Budget Responsibility. In Scotland, our expertise in forecasting lies with our economist colleagues in the office of the chief economic adviser, so we would go there for expertise on tax forecasting. There may well be issues for which we will also want to go to our colleagues in revenue Scotland.

The Convener: But, formally, revenue Scotland will have nothing at all to do with any aspect of the Scottish rate of income tax.

Alistair Brown: Its formal functions do not include the Scottish rate.

The Convener: Okay. Thank you.

James Dornan (Glasgow Cathcart) (SNP): Ken Macintosh talked about the tax take, but the response that we got was about the tax rate. Can you clarify the point that if, for any reason, a future Scottish Government raised the tax rate it would get to keep the money, but if the Scottish economy grew at a greater rate than that of the rest of the UK, we would get the tax back but there would then be a readjustment of the block grant that would probably nullify the growth?

Alistair Brown: You raise the issue of the interaction between Scottish rate receipts and the calculation of the block grant adjustment, around which there is a lot of complexity. Briefly, the Scottish rate receipts will be driven first of all by the tax rate that is set by resolution of the Scottish Parliament on a proposal from a Scottish minister, then by the tax base to which the rate is applied. In effect, the tax base is the non-savings, non-dividend income of Scottish taxpayers. As the Scottish economy grows and the income of Scottish taxpayers grows, the tax base is increased. That is all on the side of receipts from the tax.

Offsetting that there is the block grant adjustment. The agreement between the two Governments, which has been reached at ministerial level and discussed publicly, is that the block grant adjustment will be indexed to movements in the UK tax base. The effect of that is that if the Scottish economy grows by reference to the UK economy—that is, if both economies are growing but the Scottish economy grows faster—there would be benefit to the Scottish budget. If the Scottish economy grew more slowly in comparison with the UK economy, the block grant adjustment would, by a small margin, exceed the income from the Scottish rate.

James Dornan: To clarify, if the Scottish economy grows faster than that of the rest of the UK, would the tax benefits all come back to Scotland?

Alistair Brown: Yes, they would. The system is designed to deliver that.

James Dornan: Good. Earlier on, the Attorney General—sorry, I mean the Auditor General. I was going to say that you have been promoted, but I am not sure whether that would be a promotion.

The Auditor General talked about confidentiality. Is that a matter of concern? Will anyone in the Scottish Government have access to the confidential information that HMRC holds? If not, is that a matter of concern? Again, we return to the issue of recognising who Scottish taxpayers are. However, there is also the question whether we are getting a fair deal. Will confidentiality work as a block to either of those targets?

Caroline Gardner: I will kick off from the audit perspective, but I am sure that Alistair Brown will want to add to that on the second part of your question.

As it stands, HMRC is jealous of taxpayer confidentiality, for good reason—as taxpayers, we would all expect that—and who has access to taxpayer information is clearly and tightly defined. At present, the National Audit Office has statutory rights of access to the information for the purposes of its audit work. Again, that is closely controlled to ensure that it is used only for those purposes and not more widely. We in Audit Scotland do not have such access. However, subject to the agreement of the new audit arrangements in the way that we have discussed, I do not think that we need that access. I think that we can provide you with the assurance that you need about the audit work that the National Audit Office has done without needing to look at individual taxpayer records.

Alistair Brown is better placed to answer the broader question of the extent to which the Scottish Government has or might need such access, but my answer is that the arrangements that we are talking about should give you assurance about Scotland's fair treatment within the UK system. The question about the impact on tax management is for Alistair Brown.

Alistair Brown: We are interested in anything that would impact on the aggregate of tax receipts. I am not aware of any way in which the operation of taxpayer confidentiality would cut across our ability to satisfy ourselves or to look for systems or reporting arrangements that satisfied us about that. The short answer is that, at the moment, we do not see proper taxpayer confidentiality on HMRC's part as something that would block us in doing the work that we feel that we need to do.

James Dornan: That takes me on to a different point. Do we have any mechanism in place to deal with the situation in which the NAO finds that there is a difference or that the sums that are attributable to the SRIT are not correct?

Caroline Gardner: The amendment to the Scotland Act 1998 that is proposed in the draft finance bill places a duty on the NAO to report both on the amounts that are collected under the Scottish rate of income tax and on HMRC's procedures and rules for collecting it. If the NAO found that there were material problems with that collection or that the amounts that HMRC had reported in the extract from its accounts were not correct, the NAO would report that to the Parliament and I would have the ability to report alongside it to you about the work that the NAO had done and my view of the implications for the Scottish Government's finances.

James Dornan: Would there be a role for the Scottish Government to take that back to HMRC?

Alistair Brown: The memorandum of understanding that has been signed—the committee saw a draft of it at the end of 2012—puts in place dispute resolution arrangements whereby, if there were a disagreement about the administration or collection of the Scottish rate, the issue would first be escalated to senior officials and then, if necessary, to ministers in the Joint Exchequer Committee, which brings together Scottish and UK Government ministers.

James Dornan: So you are happy with the arrangements.

Alistair Brown: Yes.

Colin Keir (Edinburgh Western) (SNP): My question picks up on the point about the function of the Auditor General's office. The information will be given to you, and you are working through the audit process to bring it back in whatever shape or form. However, I am not totally clear about a couple of things. First, to what point in the information will you be able to audit? Obviously, there will be figures to which you do not have access, because they come from HMRC. Given that you will have to work with a top-line figure, how can we check back? We politicians sometimes have a punch-up or whatever on the odd occasion that we talk about money, particularly when there are different Administrations sitting 400 miles apart. How far back can you go to give the Public Audit Committee comfort in the knowledge that the information is absolutely correct, given the changes in the policy on gathering information?

I am pretty sure that you have had a bash at answering my second point, but how will you determine the value of the service that we get in terms of data gathering and reporting mechanisms?

11:00

Caroline Gardner: The first assurance for the committee and the Parliament can be found in the requirements in the finance bill amendment to the Scotland Act 1998, which specifically requires my Whitehall counterpart to audit HMRC's extract of accounts and to provide assurance on the procedures and rules that are being used to administer and collect the Scottish rate of income tax, the amounts that are being calculated as due to the Scottish Government from the tax and the amounts that are being billed to the Scottish Government for the marginal costs of running the system. Assuming that the legislation is passed, my counterpart will be able to do those things.

The other line of comfort for the committee is that every year my team will sit down with the National Audit Office team and talk through the audit work that it plans to carry out in order to fulfil those responsibilities. Given our existing working relationship, I expect that we will have the chance to drill down into all this, ask questions about the decisions that it has made and suggest areas of work that it should consider in order to carry out its responsibilities. Moreover, we would sit down with the team at the other end of the process to talk through what it had found, what it planned to report and any implications for the Scottish Government.

The third and final line of assurance is that when the Comptroller and Auditor General's report is laid before this Parliament I will be willing and very able to lay a report that sets out any matters that have arisen in the process that I think should be drawn to your attention. The report might simply say that I am satisfied that the NAO's work covers the requirements in the Scotland Act as amended and that there is nothing to draw to the committee's attention. However, in the unlikely event that I thought there was a concern, my report would be able to say, for example, that the work that had been done to identify Scottish taxpayers might not be adequate to give you the assurance that you require. I am not at all suggesting that that is likely to be the outcome but, if it were, I would have a vehicle for reporting to the committee and the Parliament on the NAO's work under the new legislation.

Alistair Brown: On the back of those comments about the assurances and reassurances that the committee can take from this, I should also point out that there will be a transition period at the beginning of the SRIT's operation. The UK Government's command paper, which was published in November 2010, says that the transition period will be two or three years. No decision has yet been taken on that matter; nevertheless, during the transition period, fluctuations in Scottish rate of income tax receipts will not affect the Scottish budget. The block grant adjustment will be set at exactly the same level as receipts from the Scottish rate. By definition, therefore, the net result will be zero and the Scottish budget will not be affected.

In any case, the point of the transition period is to give the systems an opportunity to settle in and demonstrate that they are working adequately. When it ends, the system will become real.

The Convener: Thank you very much for contributing to what has been an unexpectedly long session on a very dry but nevertheless important issue. We still have some way to go on this matter and look forward to getting an update

from the Scottish Government and Audit Scotland as matters develop.

I suspend the meeting for a few minutes to allow a changeover of witnesses and a comfort break.

11:03

Meeting suspended.

11:08

On resuming—

Section 23 Reports

“NHS Financial Performance 2012/13”

“Management of patients on NHS waiting lists—audit update”

The Convener: I reconvene the meeting and welcome Paul Gray, director general for health and social care at the Scottish Government and chief executive of NHS Scotland, and his colleagues. I believe, Mr Gray, that this is your first appearance at a committee of the Scottish Parliament since your new appointment. I congratulate you on your appointment. An immense challenge is ahead of you, given some of the issues involved. The job and its responsibility are of significance to every individual in Scotland and I know that you will be excited at the prospect. I believe that you wish to make an opening contribution.

Paul Gray (Scottish Government): Thank you, convener. I appreciate your words of congratulation. It is a privilege, a challenge and a real responsibility.

I am grateful for the opportunity to discuss the two Audit Scotland reports “NHS Financial Performance 2012/13” and “Management of patients on NHS waiting lists—audit update”. As you said, this is my first appearance before the committee in my new role. I am very pleased to have the support of John Matheson, who leads on finance; John Connaghan, who leads on performance, delivery and workforce; and Dr Aileen Keel, who is our deputy chief medical officer. I assure the committee that we take these sessions very seriously indeed, and I will feed back the key issues raised today to the chairs and chief executives of NHS Scotland boards.

The report “NHS Financial Performance 2012/13” helpfully acknowledges that the NHS managed its overall finances well in the short run and that, for the fifth year running, all boards achieved their financial targets. I also welcome the short key messages document, which I found very helpful. It includes a number of important recommendations that set out areas for further improvement.

However, I want to assure the committee that I am not by any stretch complacent. At a previous meeting, the committee referred to exhibit 15 in the report, which shows areas of significant progress but also a number of areas where we must continue to improve. Should the committee wish, we can say more about what we and the

boards are doing to secure that continued improvement.

The public sector faces pressures—demographic trends alone make that clear. Our significant commitment in the NHS to improvement and service redesign forms part of our response to those, as does our approach to the integration of health and social care, which of course is the subject of legislation in the Parliament.

Overall, the NHS has delivered a strong financial performance that reflects effective financial planning and close partnership working between the Scottish Government and the boards. However, we always want to do better and we will work closely with Audit Scotland to address the recommendations in the report, which we are happy to discuss further if the committee would find that helpful.

I also welcome the report “Management of patients on NHS waiting lists—audit update”, which clearly highlights significant improvements in the recording, monitoring and reporting of waiting times since Audit Scotland’s previous report in February 2013. A significant majority of the recommendations covered by the previous report and by reports by this committee and internal auditors have been implemented. There remain a few outstanding actions in a couple of boards that relate to information technology upgrades. For example, NHS Highland will change to the TrakCare patient administration system this year.

As the committee will be aware, our work on waiting times follows one of the most significant audits of public services ever carried out. Millions of records were scrutinised over a two-year period by Audit Scotland and internal auditors. I want to ensure that the people served by NHS Scotland can have confidence in our management and reporting of waiting times. I therefore assure the committee that we will not lose focus on that important issue.

The Convener: Thank you.

What is the purpose of your targets and what status do they have? For example, what is the point of your HEAT—health improvement, efficiency and governance, access to services and treatment—standards?

Paul Gray: I will ask John Connaghan to come in on that in a moment. There are three purposes. The first is to ensure that boards are clear about the performance standards that are expected of them. The second is to stretch—they are not there as an indicator of what is happening; they are stretching. The third, and in some senses most important, is to give the public and the Parliament information with which they can confidently assess

the performance of the NHS. It is important that we maintain confidence in the NHS.

The Convener: In “Management of patients on NHS waiting lists—audit update”, we can see that in September 2013 not one health board in Scotland met the target of no out-patient having to wait more than 12 weeks for their first appointment. Where is the confidence when no single health board meets your target?

Paul Gray: The point of having a target is to get health boards to move towards it. I ask John Connaghan to give the latest position on out-patients. It is an important matter.

John Connaghan (Scottish Government): I reassure the committee that we take targets seriously. They are something for the NHS to aim for and then deliver continuously and sustainably.

The committee should be aware that Scotland has made tremendous strides over the course of the past 10 years. The 12-week out-patient target has been with us for some time—at least 10 years. When we started to look seriously at waiting times, out-patient waits of a year and a half, two years or three years were not uncommon. Over the past few years, we have given the NHS additional targets, one of which is the 18-week referral-to-treatment target. That is an all-encompassing target and it includes an element of out-patient waits. When we introduced it, we gave some thought to whether we needed an additional target for out-patients, but we decided to keep it because it would give us a handle on the entire cohort performance, if I can put it in that way. If I was recommending that target to the committee today, I might want to consider whether we should attach a small tolerance to it.

11:15

However, leaving that aside, I note that Scotland is performing at 95 per cent against that target. Is that good enough? The answer is clearly no. Our ambition is to reach 100 per cent, so that everyone has an offer of an out-patient appointment within the time period. If you want, I can say a little more about what we are doing with boards to redress the situation.

The Convener: Mr Gray used the word “confidence”. Apparently, targets are set to give the public confidence in the way in which the NHS is performing. There is a target for accident and emergency, yet NHS Tayside is the only major mainland health authority in Scotland that is meeting it. Many areas of Scotland can have no confidence, to use Mr Gray’s term, in relation to the 12-week target. As far as accident and emergency is concerned, if we leave aside Orkney, Shetland and the Western Isles, only people in Tayside can have any confidence in your

targets. In the rest of Scotland, that does not apply.

John Connaghan: I think that you are referring to the position over the course of winter 2012-13, when Scotland had a relatively tough winter. We recognise the pressures in relation to performance that were brought to Scotland by increased incidence of norovirus and a significant increase in respiratory illness.

What have we done since the statistics were brought to light more than a year ago? We have worked with boards and partners such as the College of Emergency Medicine to produce a much better and more robust plan for this winter. I think that, if we were to look at the situation a year hence and reflect on this winter, we would find that our planning had been much better, that there was much more confidence in the system and that the standard had been maintained. I look forward to seeing what the statistics for the quarter that ended in December show us in relation to that when they are published at the end of February.

The Convener: Okay. You are suggesting that, when Audit Scotland reports on the subsequent year, we will see a list of health boards that met the target for no out-patient to wait more than 12 weeks for their first appointment, instead of a list of health boards that did not meet that target.

John Connaghan: That is certainly the plan, convener. We now have detailed—

The Convener: Sorry, but I assume that it is always the plan to meet the targets. I am not asking what your plan is; I am asking whether that will happen.

John Connaghan: We already know that some of that change is happening. I return to A and E, some statistics on which are already available in the public domain. A survey that was conducted by some of the national press in the past month shows that we have seen a significant increase in performance in the NHS this winter, with a large reduction in the number of patients breaching the target and many more boards now reaching it. We set out our ambition for the figures for accident and emergency to reach 95 per cent by 2014, and I am confident in saying to the committee that the next time you look at the subject, you will see that the statistics have improved significantly.

The Convener: You mentioned a survey that was done by the national press.

John Connaghan: Yes.

The Convener: Have you done a survey?

John Connaghan: We obtain weekly management information reports from boards, and we have them validated. We do not normally provide those reports to the public until they are

validated and published as part of the statistical protocols agreed with ISD Scotland. Those statistics are published on a quarterly basis—they will be published next at the end of February.

The Convener: Mr Gray, legislation is now in place on treatment time guarantees. The Parliament passed that legislation. What is its purpose?

Paul Gray: The purpose of the legislation, among other things, is to state clearly the will of Parliament in relation to the matter that it has considered.

The Convener: And you implement the will of Parliament.

Paul Gray: That would be my duty.

The Convener: So it is your duty to implement the will of Parliament. If we look at the will of Parliament to give a guarantee to all eligible in-patients that they will be seen within 12 weeks, why is it only in the NHS Greater Glasgow and Clyde, NHS Lanarkshire, NHS Orkney, NHS Shetland and NHS Western Isles areas, along with the Golden Jubilee hospital, that that legal guarantee has been met, while in the rest of Scotland the legal guarantee is not met by the vast majority of boards?

Paul Gray: The boards are working towards meeting the guarantee, convener. I entirely accept the point that they are not yet doing so. It is a legal guarantee and the boards are expending considerable effort to ensure that they get there. I revert to my point about targets: they are meant to be stretching. If a target was set that everybody met on the first day, it would scarcely be a challenge. I take seriously the position agreed by Parliament that there ought to be a 12-week treatment time guarantee. That is another issue that we not only discuss with boards as a matter of routine but draw to their attention at both chairs and chief executives meetings. John Connaghan and others responsible for performance management monitor that regularly. It is a target that I judge ought to be met, and we are working towards that.

The Convener: You rightly say that targets are stretching and challenging. You also say that you are working towards meeting that target and that the legal guarantee is a target towards which you should be working. However, there is a difference between a target and a legal guarantee. A legal guarantee is far more than a target. It is enshrined in law that people have the legal right to be seen within 12 weeks if they are an eligible in-patient. That legal right is not being met, so you are not fulfilling the will of Parliament, the boards are not implementing the will of Parliament, and patients across Scotland are not having their legal entitlement observed, guaranteed or implemented.

Is not it a farce that they have a legal right and you can ignore it?

Paul Gray: We are not ignoring it, and I absolutely want to assure the committee that we are not ignoring it. We are working towards it. I accept the points that you make, but John Connaghan can tell you more about what we are doing to get ourselves into a better position on that.

The Parliament also made its position clear on how it thought that that legal guarantee ought to be implemented and the redress that was available. We work within that and seek to give the patients of Scotland confidence that we are working towards that. I emphasise that we are also meeting that 12-week target in many cases—it is not that there is a shortfall of tens of percentage points. However, I make no claim at all that we are meeting it altogether at present.

The Convener: You say that you are working within the redress. What is the redress if the guarantee is not met?

Paul Gray: Ultimately, patients could seek judicial review if they wished. Patients also have access to a means of raising their case with the board in question, but John Connaghan will give you more detail on how we are working towards that and on the principles that we are adopting.

The Convener: Before Mr Connaghan explains how you are working towards that, I would like to pursue that point about redress. If you have deep pockets and the money to go for judicial review, you might just possibly have some success.

However, if you are poor, if you have limited resources and if you do not have the knowledge, the confidence or the financial wherewithal to go for judicial review, the message is, "Tough—there is nothing that you can do." So the rich, the articulate and the confident will be able to pursue some redress but the rest of the country can just go whistle as far as redress is concerned.

Paul Gray: No, convener. I take your point, but I can only work within the legislation as it is presented in Parliament. I do not hold the view that the poor can go whistle. One thing that I have made absolutely clear since I started in this job is that tackling the persistent health inequalities in Scotland is an absolute top priority for me. I believe that it ought to be, and is, a top priority for the NHS, and I believe that it ought to be a top priority for the wider public sector. I accept your point about the fact that we are not meeting the target. I do not accept your point that I believe that the poor can go whistle—I believe quite the opposite.

The Convener: Okay. If someone is poor and living in fairly distressed circumstances and the guarantee is not met, what redress is there?

Paul Gray: They would be able to approach the board and seek confirmation that their case would be handled as quickly as possible. They could seek redress or access via their MSP, or they could go via their local councillor. Those options are available.

The Convener: No, no. The committee members are all MSPs, and I know that I and each of my colleagues on the committee have taken up cases with health boards. I know the limitations of that. First, you will not give us any information unless the patient confidentiality forms are signed. That is perfectly understandable, but we have to go through that authorisation process, which can take time.

We know that we can ask and inquire; we know that we cannot order you. I cannot write to you or to the chief executive of a health board and say, "Here is the legal guarantee. I want you to implement it." We do not have that power. In a sense, you are putting another obstacle in the way of patients. Why should they have to come to me to get you to implement their legal right?

Paul Gray: They should not have to, Mr Henry. They should not have to.

The Convener: You say that people can approach the health board. What statistics do you have on the number of people who have complained about their legal right not being met and who have then had that legal right implemented?

Paul Gray: Clearly, if people have not had their legal right met, they will already be over the 12-week treatment time guarantee. I do not have the statistics with me. I will find out what statistics are available and I will be happy to present such statistics as we have to the committee. I stress to the committee that my priority is to get everyone treated within 12 weeks. That is my priority.

The Convener: I understand that. I understand your personal commitment and I know from the many tasks that you have carried out in the Scottish Government where your passions lie. There is the work that you have done in relation to people living in poorer communities, for example—your work on tackling poverty and deprivation. I do not doubt your commitment for a moment. I am asking about what happens if someone's legal right as regards that 12-week treatment time guarantee is not met. What is being done? It is not a target, it is not an aspiration, it is not a hope and it is not a personal desire—it is a legal right that is not being met. What is being done? If a legal right is not immediately implemented, what is the point

of having one when nothing can be done to achieve it?

Paul Gray: As I said, we can only operate within the boundaries set by the legislation that is passed by Parliament. I ask John Connaghan to give you some detail on what we are doing to ensure that we meet that guarantee.

John Connaghan: The duty on boards is that, if they cannot make an appointment for treatment within 12 weeks, they have to offer the next available appointment. We need to look at the general performance of the NHS in that respect. It has come a long way. The waiting list is now half what it was 10 years ago. We have 50,000 people on the waiting list, but 10 years ago, we had between 110,000 to 112,000 people on the waiting list, so we have come a long way.

The NHS has been set progressively tougher targets by the Parliament. The targets are the toughest in the UK and I do not see anywhere else in Europe that is operating to the same level. We can supply that data to you if you want—it is from a recent study by the Office for National Statistics.

11:30

Where are we currently against the 12-week treatment time guarantee? Scotland is achieving 98.5 per cent of it. To put it in context, we have a 1.5 per cent gap. I take seriously the point that we should achieve 100 per cent. Currently, we are working with two boards that have a gap that is a bit bigger. One is NHS Lothian, but I think that we have discussed at some length why it is in that position. It currently has a recovery plan in which it is investing over £20 million per annum to achieve much better performance for patients. The other is NHS Grampian, which is investing a similar amount to put in some additional theatre capacity. Those things take a bit of time, but Grampian's additional theatres should be open shortly.

If the committee looks at the position in a year's time, it will see a significant change in the overall cohort performance as we move from 98.5 per cent towards eventual delivery of the target of 100 per cent.

The Convener: I do not doubt for a moment that there has been huge progress in the NHS in Scotland; nor do I doubt the commitment and dedication of the staff. They often perform miracles, given the circumstances in which they work and the challenges that confront them. What is achieved is fantastic and something of which we can all be proud. That is why I think that there is support across all the parties for the NHS in Scotland.

I suppose that, in a sense, I am questioning the wisdom of Parliament in introducing legislation that

has been ignored and whose provisions have not been met. We begin to question the sanity of politicians when they bring in laws that can be blithely ignored and are seen largely as targets. We can have targets, or we can have laws and guarantees. If we have a law, it should be implemented. Will the legal treatment time guarantee be met 100 per cent right across Scotland? If so, when?

John Connaghan: We need to think about the delivery of that guarantee of 100 per cent when we might have some unusual circumstances. Let me give you an example. The 12-week target is pretty tight, but we have set out our stall to achieve it. However, if a consultant is due to treat a patient on a Friday within the 12 weeks but the consultant is sick and no one else can treat the patient, we will automatically trip into a failure.

I can understand that situation in certain respects. To achieve 100 per cent, we probably need to move the threshold back so that we have a bit of leeway. We will certainly want to do that and will work with boards to achieve that over the course of the next couple of years.

Therefore, at this stage I do not think that I would want to venture an absolute answer to you, convener. However, I would probably refer you to the plans that we currently have in place to achieve the target on a sustainable basis, notwithstanding odd events such as sickness.

The Convener: I actually understand your caution. I also understand your frustration, because you are saying to me that you cannot give a 100 per cent guarantee that the law will be implemented. In a sense, that poses questions about the stupidity of politicians in making laws that cannot be implemented. That is not your problem; that is our problem. We have a law but you are telling me that you cannot give an absolute guarantee that it will be implemented for everyone in Scotland.

John Connaghan: Sorry, but I must clarify the distinction that I made. I am cautious about giving you a guarantee today, but I think that in the fullness of time I might be less cautious about giving you a guarantee that the target will be sustained in the future. As of today, I think that I need to be a little cautious about saying exactly when we will deliver the 100 per cent guarantee.

The Convener: But listen: leaving aside your caution and the issue of the fullness of time, we have a law today. If we have a law today, people should be able to have their legal rights recognised. I suspect from what you are saying that the health service in Scotland is not in a position to fulfil people's legal rights, which begs the question of what the point was in trying to deliver a legal right that could not be delivered.

I will bring in Mr Gray, and then we will move to other members.

Paul Gray: Thank you, convener. I will not be drawn on the wisdom of the Parliament. I will just say two things.

First, I do not wholly accept that we are ignoring the legal guarantee. We are working very hard to meet it, and it has given a useful signal to both the public and the NHS about Parliament's expectations. Secondly, I do not think that any health service in the world would guarantee that a consultant will not go off sick on a day when they are meant to perform an operation.

I was fortunate enough that my daughter had an operation done by a very distinguished orthopaedic consultant and has had a very successful recovery. To be honest, I would rather have waited for him to do the operation, had it been necessary to do so. I welcome the fact that you have been generous in your comments about our own personal commitment and the commitment of the NHS.

The Convener: I do not doubt the wisdom of what you say. Any parent would want to wait and ensure that the operation is done properly rather than rush and botch things to meet a commitment. You are right that no health service in the world can guarantee that a consultant does not go off sick. That makes me wonder why the health service in Scotland tells people that they have a legal right when you and Mr Connaghan tell me that you cannot guarantee that someone will not go off sick and the standard will therefore not be met. It is bizarre that the legal guarantee is in place.

Mary Scanlon: I echo the convener's comments about the national health service. As we speak, my granddaughter is back in Royal Aberdeen children's hospital. Nobody is more grateful for the work that the NHS does than my family and my party.

I will pick up on the convener's comments and those of Mr Connaghan, who said that 98 per cent of people received their out-patient appointment within 12 weeks. I refer to the Audit Scotland audit update on the management of waiting lists that was published in December—a month ago. Mr Gray said several times in response to the convener that you are working towards your target, but in fact you are working further away from your target. Paragraph 16 of the December update indicates that in September 2012 5,993 people waited for more than 12 weeks and in September 2013 the figure rose to 11,544. The figure almost doubled from 2.7 per cent to 4.6 per cent.

How can you say that you are working towards your target when the 12-week target has been

missed for almost double the number of people? How can Mr Connaghan say that 98 per cent of people received their out-patient appointment within 12 weeks when the figure for those who did not has gone up from 2.7 to 4.6 per cent?

John Connaghan: Let me clarify what I said. My reference to 98.5 per cent was in relation to in-patients rather than out-patients. I think that I referred to 95.4 per cent in relation to out-patients. One figure was for in-patients and the other one was for out-patients.

Mary Scanlon: Do you agree that you are further away from your target? Many out-patients become in-patients, so the longer that they have to wait, the more detrimental it is. Do you agree with the figures in paragraph 16 of the Audit Scotland audit update report, which show that the target has been missed for almost twice as many people in September 2013 compared with September 2012?

John Connaghan: Yes, I do for out-patients. I recognise that the figure comes from an ISD publication and that it is an accurate representation.

Mary Scanlon: So would you say that “working towards the target” is also an inaccurate representation of where you are at the moment?

John Connaghan: I do not agree with that. I know from the plans that boards have laid that they have increased staff and they have total planned investment of more than £67 million to address the issue, albeit that that is across all NHS boards, not just NHS Grampian and NHS Lothian, to which I referred previously.

We are working seriously towards the target; it is part of the performance management regime and I discuss progress on it with boards regularly. However, I recognise the figure that you quote, which I think is in exhibit 1 in the Audit Scotland report of December 2013.

Mary Scanlon: I welcome the plans for the future very much, but our task is to look at the Audit Scotland reports that are presented to this Parliament.

John Connaghan: I have another brief comment about activity. I was looking at some of the statistics this morning, which show that the NHS has been doing quite a lot more in the past few years. The figures show that the NHS is seeing about 9 per cent more out-patients now than it saw in 2009. Therefore, “working towards the target” means that we are carrying out more activity. The questions are: how much further do we need to push the envelope, and what more do we need in the way of resources to address the demand?

I want to put the 95.4 per cent figure on out-patients that you quoted in context. We see 4

million out-patients per annum. The rise in the waiting list and the deterioration in performance represent a very tiny proportion of that 4 million—it is about 2 per cent of new out-patients. I just want to put the figures in the context of the entire performance of the NHS, which sees many millions of patients.

Mary Scanlon: Yes, but we are looking at the targets that have been set, which is our duty.

I refer you to page 9 of the December 2013 update report. I am a wee bit confused about this. The footnotes state:

“In January 2012, 18 weeks referral to treatment became a standard rather than a target. ... In April 2011, the 12 weeks wait for a new outpatient appointment became a standard rather than a target.”

What is the difference between a standard and a target?

John Connaghan: That is a very good question.

Mary Scanlon: I am looking for a very good answer.

John Connaghan: I hope that I can give one.

I understand the confusion between a standard and a target; I will not pretend that the use of that terminology is easy. This year we are embarking on a bit of a review of our entire HEAT standard set-up. I hope that when we next attend we will have something that is simpler to explain to you.

Let me explain how a target becomes a standard. Over the past few years there have generally been anywhere between 20 and 30 HEAT targets for the NHS to pursue on an annual basis. Some of those have a predetermined time limit, whereby we need to achieve X by Y date. Ministers sometimes take the decision to maintain those targets as something that the NHS should always achieve. They distinguish them from new HEAT targets by calling legacy targets “standards”.

I will take one example that is clinically relevant—Dr Keel will recognise it—which is the target that we had on patients being treated within a certain time period for hip fracture. We achieved that target back in 2008-09, but we decided that it was such an important target that we would not let it slip or forget about it, so it became a standard that we expected the NHS always to maintain thereafter.

I know that that is a little confusing, but we are in the process of trying to unclutter the situation. We can write to the committee about it in due course.

The Convener: Forgive me, Mr Connaghan: I am maybe not the sharpest tool in the box, but I

still do not understand the difference between a standard and a target.

Paul Gray: I can perhaps respond. Audit Scotland gives the explanation at footnote 5, on page 9 of the report, to which Mrs Scanlon has referred. It says:

“Standards are used for targets that are past the target date, but are maintained to monitor progress or for other purposes such as benchmarking.”

In other words, a target is something that we are broadly aspiring to meet and working towards; a standard is something that we want to maintain. That is about as simple as I can make it.

11:45

Mary Scanlon: So when you do not meet the target, it becomes a standard.

Paul Gray: No.

Mary Scanlon: The footnote says:

“Standards are used for targets that are past the target date”.

Paul Gray: In other words, if a target has been met, we could say, “We have met that target so we’ll just drop it”; on the other hand, we could say, as Mr Connaghan has said, that the target is of sufficient importance that, although we have met it, we want to continue to meet it. It therefore becomes a standard.

Mary Scanlon: It says:

“Standards are used for targets that are past the target date, but are maintained to monitor progress”.

Paul Gray: Yes. Once the target date—

Mary Scanlon: Once you have not met the target date—once it is past the target date—you call it a standard.

Paul Gray: No. Let us suppose in the abstract that we had said that, by June 2012, we would achieve a certain target. Having achieved that target, we say that it is an important target for the health service in Scotland so, instead of saying that the target is gone, we say that we will maintain it as a standard. Having achieved it, we will maintain it: that is the principle.

Mary Scanlon: Okay.

I refer to the point that the convener made about sanctions and the legal right. Nowhere in this argument have I heard about the legal right that people in Scotland, being part of a member state of the European Union, have to go to any other country in Europe, should the targets or standards for in-patient surgery and so on not be met. Are patients in Scotland offered the cross-border healthcare that they are entitled to when targets or standards are not met?

Paul Gray: Yes, they are. I met my opposite numbers from England, Wales and Northern Ireland on Thursday and Friday last week, and that was one of the issues that we discussed. We are seeking to simplify arrangements for cross-border charging. I am sure that John Matheson and John Connaghan can give you more detail on that, but the simple answer to your question is yes, cross-border healthcare is offered—and it is indeed taken up.

Mary Scanlon: I turn to another point in the report. Vacancy rates have increased; NHS boards are temporarily not filling posts in order to make savings or to redesign services; there are difficulties attracting staff; and more is being spent on agency bank nurses and the private sector.

In its update report, Audit Scotland said that performance against the standard for outpatients “has been deteriorating,” as we have been saying. The report indicated difficulties within the health service that would make it very difficult, both now and in the future, to meet the targets. Do you acknowledge that those difficulties are there, as Audit Scotland highlighted, and that the targets will be more difficult to achieve in future?

Paul Gray: John Connaghan will say more about the workforce issues in a second. I would say, as a broad outline, that staffing numbers in the NHS have risen slightly, but not substantially, whereas the demographic trends that we face in Scotland, as is the case in the rest of the world, mean that there is additional pressure. John Connaghan has already alluded to the increase in out-patient presentations over time.

I do not think that the situation in staffing makes it impossible to meet the targets that we have set ourselves. We are working closely with the boards, in accordance with their workforce planning, to ensure that we have the right resources in the right place at the right time. However, I am not going to say that there is never a case in which it is difficult to recruit—it would be wrong of me to say that.

Mary Scanlon: If it is taking longer to fill vacancies and money is being saved through vacancy management, that could counter the small increase in staffing.

Paul Gray: That would be the case if there was not proper workforce management, but I believe that, generally speaking, the boards have good and robust workforce management processes and strategies in place.

John Connaghan can give more detail on where we have come to.

John Connaghan: Mary Scanlon has made a valid point about the length of time that vacancies are advertised for. We scrutinise boards in that

respect: we look at vacancies that have been advertised for less than three months and those that have been advertised for more than three months. I do not have the statistics on them at hand, but I am happy to supply them to the committee.

I do have at hand the general staffing statistics, particularly those for medical staff. Since 2006, the number of medical consultants has increased by nearly 1,000. That is a 28 per cent increase in staffing. When you look at the number of vacancies that are advertised, I therefore ask you to do so against a background of increased staffing over that period. New posts have been created.

On vacancies as a percentage of establishments in the same time period, in September 2006 7 per cent of consultant vacancies were unfilled, and as at September 2013 4.4 per cent were unfilled. Therefore, I would not necessarily agree that there has been an increase in vacancies. It depends on what time period we look at and when boards advertised newly created posts.

Mary Scanlon: There was also a significant increase in agency staff and a fivefold increase in the use of the private sector.

I know that the convener is looking at me, so I will briefly ask about paragraph 52 of the report and the gaps in the in-patient information that is currently submitted to ISD Scotland. Obviously, the committee is always looking for accurate information. The gaps include those in

“patient level data ... data broken down by specialty”

and

“the number of patients removed from the waiting list and the reasons”

and so on. I do not want to read out all the categories, but there are five separate ones in which, as Audit Scotland’s report says, there are “gaps in inpatient information”. When do you expect to be able to provide that information to ISD Scotland in order to get the accuracy that the committee looks for?

John Connaghan: I can answer that question.

The information set is the result of an extensive audit. Many millions of patient records were scrutinised in the past year and a half by internal audit and by Audit Scotland. A series of recommendations on how we could improve accuracy was put to the NHS over a year ago, and the NHS has worked hard to ensure that all the IT and data collection systems are up to speed.

I am happy to say to the committee that, in this quarter, we are starting to gather all that information as the first cut of information. In the

next quarter—from 1 April to June—we should have a complete data set in the new format for the whole of Scotland. I think that it will take one or two quarters thereafter to ensure that we have ironed out all the bumps in respect of that data collection. However, if we look at the information in a year’s time, we should be able to report that we have fulfilled that requirement 100 per cent.

Mary Scanlon: So in April this year we will be able to get more accurate information about waiting times and waiting lists.

John Connaghan: From April this year, you will be able to get much more accurate information. It should be borne in mind that the data for April to June will be published around eight weeks, I think, after that period end.

James Dornan: I will go back briefly to the legal guarantees, if you do not mind. I do not think that there is any law that we can guarantee 100 per cent that we can implement 100 per cent of the time, so it would be unrealistic for us to think that we should be doing that in this context. However, even if—as the convener said—people cannot get a legal guarantee, have there been spin-off benefits? For example, the responsibility to give the patient the first available appointment after the 12 weeks has been talked about.

John Connaghan: That is a good point. Boards are now absolutely focused on ensuring that performance for that cohort of patients is as tight as we can make it. An example of a spin-off benefit is the significant drop in the median wait. The median wait for a hip replacement was 122 days in 2006-07, compared with 67 days in 2012-13, which is the best in the UK. That is much tighter.

Another spin-off benefit is that the legal guarantee forces boards seriously to reconsider capacity and demand. We can see that reflected in the additional resources of £67 million that are going in to support delivery 100 per cent.

I was cautious about giving the committee a date because the approach involves recruiting, building and expanding capacity, and we need to fling that against the increase in demand that I have discussed with the committee previously. Enormous spin-off benefits accrue, as I think some recent statistics demonstrate.

James Dornan: In evidence to the Health and Sport Committee in October 2013, the Cabinet Secretary for Health and Wellbeing said that the Scottish Government is looking at ways to increase flexibility in the current system. What action has the Scottish Government taken in response to the Auditor General’s recommendation that it should consider moving away from the current system of annual financial targets? What options have been identified for

introducing increased flexibility, and how would the arrangements work in practice?

Paul Gray: We already engage in five-year forward financial planning with boards, but I recognise the point that Audit Scotland made about the annuality of expenditure. Of course, we are working within Treasury rules in some respects. John Matheson will be able to give you detail on the precise steps that we are taking to provide greater flexibility to boards, which we think is increasingly important. He and I were discussing the matter last night.

John Matheson (Scottish Government): There are three or four points to be made in that regard. First, I agree with Audit Scotland that an annual approach to financial planning is not the best approach. There is something artificial about trying to land at a particular financial situation at 31 March each year. An overfocus on doing that creates a propensity for short-termism in financial planning. That is why we take exactly the opposite approach.

As Mr Gray said, we have to recognise that we have by statute a requirement under HM Treasury to deliver a particular financial position at the end of the financial year. However, having taken that as a given, we seek to work with boards to develop financial plans that have a much broader horizon. The norm for boards is a three-year to five-year spectrum. Where boards have significant capital investment, we look for a 10-year profile.

We try to assist boards to use brokerage and banking around the financial year end. For example, in the current financial year we have had money returned to us from NHS Dumfries and Galloway, and from NHS Greater Glasgow and Clyde, because the boards are preparing for the double-running costs that they will face in relation to, respectively, the development of the new Dumfries and Galloway royal infirmary in two to three years and the opening of the south Glasgow hospital—the site will have had capital investment of £842 million—in just over a year. Those are good examples of boards taking a long-term perspective and taking account of double-running costs going forward.

The Scottish Government has access to the budget exchange mechanism. We are in discussion with colleagues in the Scottish Government about whether an element of that could be applicable to the health budget, to give us additional flexibility. I could make other points but I am conscious of time, convener, so I will stop there.

James Dornan: You said that HM Treasury places some restrictions on you. Am I right that boards have a responsibility to do annual accounts?

John Matheson: Yes.

James Dornan: However, you are trying to find other ways to finance things, so that boards can look forward with a three-year or a five-year plan.

John Matheson: Yes—absolutely. We recognise and acknowledge the absolute statutory requirement to live within our financial resources in any financial year; however, we are trying to use legitimate approaches to maximise flexibility.

James Dornan: Thank you.

12:00

Ken Macintosh: The use of social unavailability codes increased dramatically between 2008 and 2011 and then fell from 36 to 18 per cent over the next two years. Do you know why?

John Connaghan: I can pick that up.

Paul Gray: Before John Connaghan does that, I will give Mr Macintosh a brief answer. I think that it shows the benefit of this and other committees paying close attention to things.

Ken Macintosh: Can you expand on that?

Paul Gray: Transparency in the NHS makes sense. Public scrutiny is an important function of any Parliament and the availability of that scrutiny—uncomfortable though it might be for people like me at times—means that we get better. That is my broad answer to your question; John Connaghan is well placed to give you the specifics.

The Convener: Just before we hear from Mr Connaghan, Mr Gray, does what you have just said mean that, had such scrutiny not been applied to NHS Lothian, it would still have been manipulating the figures?

Paul Gray: No it does not, because the chief executive of the NHS at the time—Derek Feeley—put in place procedures to consider what was going on in NHS Lothian based on information that he had. I know that, because I was part of the team that went in to provide support. I am simply acknowledging the benefit of a committee such as this one conducting public scrutiny, because it brings into public view the circumstances of the NHS in general and other parts of the public sector.

John Connaghan: The issue that Mr Macintosh has raised has been the subject of much debate in previous committee meetings. Indeed, I remember looking at Audit Scotland's February 2013 reports.

I think that there are two main reasons why unavailability fell. It peaked in late September 2010, when we saw an unusually big spike for in-patients, day cases and, indeed, outpatients, much of which was occasioned by the bad winter

of 2010. Early in 2011, I agreed with most NHS boards an investment package, some of which was short term and non-recurring, to address the spike in unavailability. If patients could not get to their appointments through no fault of their own or if staff could not get into hospital because they could not make their travel arrangements, we had a responsibility to try to redress things.

A year or so before NHS Lothian came to the committee's attention, unavailability began to fall. From what I recall, that evidence was submitted not just by Mr Feeley but by a number of chief executives who sat around this table.

Ken Macintosh: Are you suggesting that the whistleblowing about NHS Lothian had nothing to do with what happened?

John Connaghan: I can remember exactly what happened with NHS Lothian because I was the whistleblower. It was my letter of 6 January 2012 to NHS Lothian that indicated dissatisfaction with its first report to its board. I did not think that it was extensive enough and I asked NHS Lothian to ask its independent internal auditors to take a closer look at the matter. That report was made public in, I think, March 2012. As I said, I was the whistleblower.

Ken Macintosh: That is an interesting take on events. Last week, the Auditor General made it clear to us that the committee played a key role in this because of the whistleblowing, and that she had not been able to use audit to reveal why the use of unavailability codes was going up. She said that there was a direct correlation between the whistleblowing in NHS Lothian and the decline in the use of unavailability codes. It was not because the audit was able to identify that.

John Connaghan: I merely point you to exhibit 6 on page 20 of the Auditor General's February 2013 report and ask you to take a look at the timescales. I can clearly see that in-patient and day-case unavailability peaked at about 40 per cent and that, a year later, in 2012—at the time when the NHS Lothian issue surfaced—the figure was 25 per cent.

Ken Macintosh: Are you saying that the reduction was nothing to do with the whistleblowing in NHS Lothian?

John Connaghan: I think that there was much greater focus thereafter. The unavailability percentage dropped from about 25 per cent to about 20 per cent in the following year. So, as Mr Gray said, the focus on unavailability during that period undoubtedly had an impact, but can I—

Ken Macintosh: Quite—but my point is that it is clear that the NHS got into an absolute panic over misuse of unavailability codes. The trouble is that one board was found out, not through public audit

but through a whistleblower. It was not through scrutiny. Scrutiny then turned on the issues that the whistleblower had raised, and all the other NHS boards got in a panic. You have since put in resources, but surely you must admit that it was the whistleblower who raised the issue in the first place?

John Connaghan: No. I can clearly remember the events of that autumn and late 2011 and of early 2012. It was the investigation that we asked NHS Lothian to carry out at that stage that—

Ken Macintosh: At that point, the whistleblowing had already happened, though.

John Connaghan: I cannot recall any whistleblower asking about use of social unavailability codes. However, I can recall a case that appeared in late 2011 in which somebody had refused to go to England for treatment and complained about that. That is what surfaced. The issue that you are referring to about the use of social unavailability codes was uncovered only through the detailed audit that we requested NHS Lothian to undertake as part of the programme from the early part of 2011 onwards.

Ken Macintosh: The way that you put it is interesting. I think that that happened after public anxiety had already been expressed. When the committee discussed the issue previously, I said to Caroline Gardner:

"You highlight the fact that it"—

"it" being use of unavailability codes—

"began to fall at the same time as you identified NHS Lothian as abusing the system."

She replied:

"There is definitely a correlation. It is worth being clear about the fact that we"—

that, is the Auditor General—

"did not identify that in Lothian; it was identified, as the committee highlighted at the time, as a result of whistleblowing within Lothian. The same trend was apparent in the use of unavailability codes across other health boards, but despite extensive audit work on our part the audit trail simply was not strong enough to explain why that happened elsewhere."—[*Official Report, Public Audit Committee*, 18 December 2013; c 1908.]

What do you make of that remark?

John Connaghan: I recognise the remark to the extent that, from April onwards, the detailed patient information to which Ms Scanlon referred will be available, but at that time we had what was called an aggregate return on all patients, so it was impossible for Audit Scotland or even an NHS board to drill down into the application of social availability for each individual patient. To go back to remarks that Mr Gray made, we now have a system in which the scrutiny and focus of this

committee mean that if a period of unavailability is to be applied, the patient must agree to it and it must be explained in writing to them. So, scrutiny has helped, and it came in in 2012.

Ken Macintosh: I make it clear that I am pleased that you are concerned about misuse of the codes to disguise the length of time for which people wait for operations and urgent care in the NHS. However, I am slightly concerned that the audit trail was not available to Parliament, which meant that we did not come across the issue through audit. I am concerned about the use of gagging and confidentiality clauses. Between 2007 and 2013, there were 697 compromise agreements in the NHS. Do you know how many of them included confidentiality or gagging clauses?

Paul Gray: I do not; my understanding is that information on that is held at board level. To put it simply, I do not know the answer to your question.

Ken Macintosh: From a letter to the committee, my understanding is that every one of those agreements in NHS Lothian included a gagging clause, which was inserted by the central legal office. Do you think that most or all of the others had gagging clauses?

Paul Gray: On the basis that I do not know, I think that it is safer to say that I do not know.

Ken Macintosh: What is your policy on the use of confidentiality agreements from now on in the NHS?

Paul Gray: The policy on the use of confidentiality agreements is a matter about which I and other officials are currently in discussion with the cabinet secretary. I am sure that, once the cabinet secretary has reached a view, we will be happy to let the committee know about it. I would not like to pre-empt the cabinet secretary's decision on the matter.

Ken Macintosh: Do you support whistleblowing or not?

Paul Gray: I support ministers, Mr Macintosh. I support whistleblowing as a principle, but my advice to ministers is, clearly, a matter that I keep private.

Ken Macintosh: You support whistleblowing as a principle, but you do not mind the fact that NHS Lothian has a gagging clause in every single one of its compromise agreements.

Paul Gray: I think that you would be drawing me too far were I to say what I mind and I do not mind. What I mind and do not mind personally is not a basis on which policy is made.

Ken Macintosh: Okay. You are in charge of the NHS in Scotland. Do you think that there should

be gagging clauses in all those compromise agreements?

Paul Gray: That is a matter that I am discussing with the cabinet secretary. I would prefer to wait until he has reached his view on that policy before I describe to the committee what the position is.

Ken Macintosh: Do you think that it is cause for concern that whistleblowing is the only reason why use of unavailability codes in the NHS has declined, and yet we are inserting gagging clauses in all our compromise agreements?

Paul Gray: I do not think that the only reason why use of social unavailability codes has declined is as you describe. Mr Connaghan gave a good account, for which I can vouch, of work that he undertook before the NHS Lothian matter came to the surface. I have acknowledged, however, the benefit of public scrutiny. I am not sure about the link that you are making. I am not saying that just to deflect the question; I am genuinely not quite sure about the link that you are making between gagging clauses and social unavailability codes.

John Connaghan: I will just add to that. We have a national confidential alert line, which was set up to receive calls from concerned members of staff who wish to highlight issues and which is in a pilot phase that has been running for about nine months. We will evaluate it between now and the end of the financial year in order that we can determine its future. However, I think that it provides another arm that shows that we take whistleblowing seriously.

Ken Macintosh: If I may, I will just summarise. It is of great concern that one of the biggest scandals in the NHS in the past few years—use of unavailability codes to disguise waiting lists in the NHS in Scotland—was revealed not through audit trails but through whistleblowing. It is therefore of great concern to me—if to no one else—that we are, through overuse and misuse of gagging clauses in the NHS, actually promoting a culture of secrecy rather than one of transparency. If every single compromise settlement with staff in the NHS includes a gagging clause, that is not a culture of transparency. However, you are saying, Mr Gray, that you support a culture of transparency.

Paul Gray: I am grateful for the opportunity, Mr McIntosh, to reiterate that I support a culture of transparency. I am simply and properly not at this stage in a position to say what my advice to the cabinet secretary would be or what his response to that advice would be. However, I am willing to commit to ensuring that the committee is made aware as quickly as possible of the position on confidentiality agreements, once the cabinet secretary has reached a view.

The Convener: Before we move on, can I just have it clarified that, in respect of whistleblowing and NHS Lothian, you said on at least two occasions, Mr Connaghan, that you were that whistleblower?

John Connaghan: Yes. I am referring to the events that took place in the early part of 2012. The committee might remember that we had asked NHS Lothian to look into why there had been retrospective adjustments to waiting list information in one department in NHS Lothian. That report was furnished to the NHS Lothian board and was, I think, discussed at the December 2012 board meeting. I reflected on that and thought that more needed to be done. We could easily have accepted the report and said that it was fine, but over that Christmas and new year period I took a decision—with my director of performance hat on—that I needed to look at the matter in a bit more detail. It was only after that that the stuff on unavailability came out.

The Convener: I appreciate that. I just wanted to make sure that it was put on the record that, when there was discussion about unavailability codes and whistleblowing in Lothian, any reference to whistleblowing should show that it was you who started the process.

John Connaghan: I am happy to supply my letter of 6 January 2012 to the committee.

The Convener: We can reflect on whether that is needed. Thanks very much.

12:15

Colin Beattie: Statistics are fine, but it is what you do with them that counts. One of the most important aspects of statistics coming forward is that they enable planning and reaction to pressure as it arises at any place in the system. That can happen at any time, through some winter bug or whatever affecting one or more hospitals. How do you monitor and react to that? What support do you give to individual elements of the NHS as and when they need it? How long is the delay before it hits your desk?

Paul Gray: John Connaghan will give you the detail of our performance management arrangements to the extent that the committee requires it. Although for any public statements we are bound by the official publication of statistics—we respect that—we do not wait until the official publication before we take any action that may be required. John Connaghan and his team of performance managers receive regular updates from boards, which are monitored on a monthly basis. We meet the board chairs and chief executives monthly and put before them the latest information that we have both in a collective

setting and in an individual setting. There is regular performance management.

I would not like to leave the committee with the impression that we wait until the official statistics come out before we decide what to do. Our approach is more proactive than that. John Connaghan may be able to give you more information on that.

John Connaghan: I have very little to add to that, convener. I draw the committee's attention to the annual report from our quality and efficiency support team, which is called QuEST. In that report, there are more than 30 case studies, covering each territorial and special board, outlining the interventions that have been made to improve things across the NHS. Mr Gray has outlined the process that we follow; we also report on that in public.

Colin Beattie: If there is pressure at a certain point, what do you do? Do you provide resources or advice? How do you work with that particular area?

John Connaghan: It is tailored support, as not all issues require additional resources. In recent years, our ambition has been—as John Matheson might describe it if asked to do so—to maximise the amount that the Scottish Government gives at the start of each financial year, so that the boards know what they are getting and can plan. If a particular issue arises through a board experiencing service pressure, we look at how we can supply expert help. It is all about spreading good practice. For example, if a board is running into difficulty because of a particular issue relating to cancer or if it has an issue with recruitment, we look to see what else has worked in Scotland and we promote innovation and the spread of good practice. We have excellent and frequent communication with boards to ensure that that happens.

Colin Beattie: How quickly are you advised of those pressure points?

John Connaghan: Each year, we conduct a risk assessment of board annual plans, which we call local delivery plans, in which each board gives us an idea of how it is setting out its stall for the coming year—you would call it a business plan. That gives us an idea of where some of the greatest risks are. I referred earlier to the fact that we gather management statistics, and for some key indicators—for example, accident and emergency statistics—I gather those weekly. That means that I and boards can track weekly how they are doing on those key indicators. If a board is in trouble, we gather those statistics on a daily basis. That is not as bureaucratic as you might think, and it gives us an immediate hint as to why there is a pressure.

If you were to ask, let us say, a clinical director and a local manager of one of our big hospitals how often they look at pressures in the system and how they react to them, the answer would be that they do so daily. I would suggest that the committee visit NHS Fife, for example. I was at one of its hospitals last week looking at its discharge hub and I attended the daily meeting to look at the pressures in the hospital and how it was balancing staff versus activity. It is pretty immediate.

John Matheson: I have two or three points from a financial perspective. How do we try to assist boards? It links back to Mr Dornan's comments about long-term planning. We try to give boards indicative budgets. As well as for 2014-15, we are giving boards indicative budgets for 2015-16, which assists them in their long-term financial planning, and we work with them to accommodate planning assumptions about future pay awards and other pressures.

We try to give boards the majority of their allocations as early as possible in the financial year. By the end of July, boards will have received 96 per cent of their allocations for the year.

We try to reduce the level of micromanagement by giving boards budgets for individual policy areas and bundling allocations around common themes such as health promotion and healthy intervention. There are a number of themes within that. The bundles amount to about £250 million per annum. It goes back to targets. We leave the boards with an outcome and output-focused target to achieve, without micromanaging how they deliver those targets.

My final point is that we also have a review process with boards. We have the formal annual review with the cabinet secretary or the minister, but we also have mid-year reviews with boards, which John Connaghan and I carry out, where we can look at boards' in-year performance, not just from a financial perspective but against clinical performance targets and activity performance targets. We also look at their efficiency plans for future years.

In response to Mr Dornan's comments, I referred to the brokerage that we have given to a number of boards. Brokerage is not given lightly. It is given only where we have reassurance that boards need support with a short-term issue and that they have a sustainable long-term plan.

Colin Beattie: I hear you talk about planning and risk assessment and so on, but the very nature of the health service is that there can be a crisis at one or other hospital at any time because of some local issue or whatever, for example flu or some sort of bug. How promptly do you put

support in, how do you put that support in and what are your contingency plans?

John Connaghan: I think that I referred to the fact that in most major hospitals there is a daily morning meeting to assess what the pressures are in the system, for example whether the hospital is experiencing rather more accident and emergency referrals and whether someone is off sick. All boards have very good contingency arrangements that swing into place if they have a particular pressure in a particular department. Boards rebalance the resources to ensure that the service is maintained. I refer you again to the annual report from the quality and efficiency support team. There are some excellent examples that might illustrate in detail the answer to Mr Beattie's point.

Willie Coffey: I apologise, because I need to leave at about half past 12.

I have only two questions for the witnesses, one on each aspect of the reports that we are considering. The first question is on the financial performance report from Audit Scotland. In the Auditor General's key messages, she highlighted the success of NHS boards throughout Scotland in meeting their financial targets and the savings that they were making. She also referred to the improved outcomes in Scotland in survival rates for heart disease, strokes and cancer.

My colleague James Dornan asked about the annual financial planning arrangement, and Mr Matheson answered that, but I have an additional question. Is there any scope for us to make further improvements in relation to, for example, NHS capital assets such as property and savings from drugs coming off patent? An issue that is not covered in the Auditor General's report is things such as medical negligence pay-outs, for which substantial funds are always set aside. I know that, unfortunately, such pay-outs are required, but annually substantial sums of money in that category are not deployed. Is there further scope there for assisting our NHS boards to make the five or 10-year long-term plans to which the Auditor General referred?

John Matheson: Thank you for the question. You raise a number of points, all of which I will try to cover, but if I miss anything, please do not hesitate to come back to me.

The capital infrastructure is essential, but it is there to deliver the strategic direction of NHS Scotland, so it is important that the buildings are identified, located and so on to ensure that they support delivery of the quality strategy, which is the overarching strategy within NHS Scotland.

We have a highly significant capital programme. I mentioned the south Glasgow development, in which £842 million has been invested. We have a

number of specific projects that are following the non-profit-distributing route, such as the new sick children's hospital in Edinburgh, the replacement of Dumfries and Galloway royal infirmary, Ayrshire and Arran community hospital, Balfour hospital up in Kirkwall and the Scottish National Blood Transfusion Service project. A significant reinvestment programme is under way.

We are also conscious of the primary care dynamic and have a specific capital funding mechanism that will take forward some highly innovative community projects. The Aberdeen health village has just been completed and handed over. Developments are taking place in Tain in Highland and Forres and Woodside in Grampian, so a lot is happening. The aim of the hub is to look at how we can use our capital investment not just in the health element of the public sector but across health, local government and, indeed, police and fire.

Backlog maintenance is an issue that this committee and the Health and Sport Committee have raised previously. We recognise that significant backlog maintenance has been identified. We are very focused on prioritising the high-risk elements of backlog maintenance, and that has reduced by 60 per cent over the past few years. Some of the residual backlog maintenance will be removed as we move out of existing premises such as the sick children's hospital in Edinburgh and the existing Dumfries and Galloway royal infirmary. That is on the capital side.

Our performance on clinical negligence from the point of view of cost compares extremely favourably with that in England. Currently, expenditure on that for 2013-14 will be around £34 million, so it is still—even to a finance director—a significant sum of money. I have been working with legal colleagues to deal with clinical negligence claims in relation to which our liability is accepted—in other words, in cases in which we have accepted that we have done something wrong and have harmed a patient. It is a question of recognising that, and the cost of that, in as fair a way as possible. Previously, the mechanism for doing that was to make a one-off payment of a lump sum. The disadvantage of that—this is where we get into tragic circumstances—was that if the life expectancy of the person concerned turned out to be longer than was anticipated at the time of settlement, the funding stream was inadequate; and if, sadly, the reverse was the case, there was financial gain, which was the last thing that anyone wanted.

I have got agreement from the lawyers that we will move to making a reduced lump-sum payment to deal with things such as housing adaptations and transport, which will be followed by an annual payment for the duration of the individual's life.

That has been welcomed by legal colleagues and is now taking place. It is called a PPO—that is the acronym for periodical payment order.

There are significant areas of pressure. I will give an example on the capital side. We need to look at capital assets not just in individual health board areas but on more of a regional basis. For example, the new laboratory infrastructure that is in place and is being used in the south Glasgow development, which operates on a racetrack system, has the potential to serve areas beyond greater Glasgow and Clyde. We must ensure that our assets are not only located appropriately but used effectively.

12:30

Finally—and I realise that this will be difficult in a less than buoyant housing market—we need to ensure that our surplus assets are disposed of not only cost effectively, so that we get value for money, but as timeously as possible.

Willie Coffey: Going back to the £34 million that you mentioned, I understand that NHS Scotland's set-asides for, say, medical negligence are far in excess of that. Can you comment on that?

John Matheson: Certainly. The previous NHS Scotland budget for medical negligence claims going back three or four years was £50 million, which means that the current level of settlements has fallen over the period. I get directly involved in some of the high-value claims and the details of the negotiations, and the PPO approach has helped to reduce the figure.

Willie Coffey: With regard to waiting times, Mr Connaghan mentioned a number of figures, including 95.4 per cent and 98.5 per cent. I cannot remember which was which, but were they in relation to the 12-week treatment time guarantee?

John Connaghan: I can clarify this in writing if you want, but the figures for the 12-week treatment time guarantee are 98.5 per cent for in-patients and 95.4 per cent for out-patients.

Willie Coffey: If we take that in the round, it is clear that we are meeting the target for 98 per cent of people, although I acknowledge that the figure is not 100 per cent. When do those for whom the 12-week treatment time guarantee is not met get their treatment? Is there any data that shows that they get it in, say, week 13 or whatever? After all, that is clearly important to patients.

John Connaghan: That data is available and can be requested.

Willie Coffey: Would they get their treatment close to the 12 weeks?

John Connaghan: I do not have that data with me, but I can tell you that we regularly scrutinise

the matter. There is a duty on NHS boards to slot patients into the next available appointment that is suitable for them, but the situation is complicated a bit by the fact that someone who gets to, say, 12 weeks will not have been classified as an urgent case. Most urgent cases are seen and never get on a waiting list at all; in fact, most patients in Scotland are seen within the first two, three or four weeks. The situation with routine cases might be complicated by the person in question being slotted in in week 13 or 14 and their saying, "I'm unavailable for that. Can I have a little bit more notice?" We monitor this issue. As I have said, I do not have the statistics with me, but there is a duty on NHS boards to slot these patients into the next available appointment.

Willie Coffey: Given the previous discussion about specific targets, percentages and time slots and the calamity thereafter if these things are not met, I am keen to find out about the patient's experience in and around that target and how soon they are seen beyond the target.

Paul Gray: I think that we should write to the committee on this subject. It would help to clarify the matter.

Willie Coffey: Thank you.

The Convener: Before I let in Colin Keir, I wonder, Mr Matheson, whether you can tell us whether you take out insurance against medical negligence or whether you, in effect, self-insure.

John Matheson: We self-insure through the health boards' budget provision.

Colin Keir: I am trying to fathom the issue that has been raised of the rather significant rise in the number of consultants over the past couple of years. Have any particular areas of concern been identified in which we have been unable to recruit consultants? If so, is the inability to recruit that particular group of people unique to our area or is it a UK or Europe-wide issue?

John Connaghan: I can give you two examples of areas in which we have increased the number of consultants but still find it difficult to recruit. However, first of all, I should say that that is down to the nature of the job. For example, recruiting to an emergency medicine post that is part of the rota in an accident and emergency department is more difficult than recruiting to an orthopaedic surgeon post, because of the 24/7 working that is required to staff the accident and emergency department continuously.

The situation will very much depend on the consultant vacancy. We are not unique in that sense—the phenomenon applies throughout the UK. That is perhaps the best example that I can give of where such issues arise. We try to make jobs as attractive as we can. We link jobs between

teaching boards and non-teaching boards, so that clinicians can undertake research, which is attractive to them.

Dr Keel might be better placed than me to comment on how we recruit people.

Dr Aileen Keel (Scottish Government): I am happy to comment. As Mr Connaghan said, some specialties are more difficult to recruit to than others. One of the pressure points is emergency medicine posts; another is cancer specialists, in particular radiotherapy consultants, of which there is a shortage worldwide and not just in the UK. That manifested itself recently in the north of Scotland, where NHS Grampian faced a number of vacancies.

We have worked closely with NHS Grampian to manage the process. Unfortunately, the situation has meant in the short term that patient pathways have had to be altered and that patients have had to go mainly to Glasgow and Edinburgh for treatment. However, I am glad to say that the board recently appointed two consultant radiotherapists, so we hope that we are out of the woods. Nonetheless, we must ensure that the NHS in the north of Scotland—in conjunction with the rest of NHS Scotland—has in place contingency plans so that we can manage such a situation, should it occur again.

As for attracting consultants to jobs in Scotland, NHS Education for Scotland has the strategy for attracting and retaining trainees—START—initiative, which is intended to market NHS Scotland better south of the border and more widely, so that we are better placed to recruit to key positions and avoid shortages. Some shortages are more predictable than others. We usually know when people will retire, but maternity leave is a bit less predictable. Some specialties are more feminised than others—paediatrics is the obvious one. Sickness, which has been mentioned, is a complicating factor.

All boards are conscious of the need to plan as cleverly as they can and to use NHS Education for Scotland to help with recruitment processes.

Colin Keir: Are the recruitment problems the same Scotland-wide? Are the same consultants required Scotland-wide or does it vary around the country?

Dr Keel: Scotland's geography means that we have more remote and rural communities, which require not just secondary care but primary care. In some areas of the country, recruiting general practitioners has been difficult. Some specialties, such as emergency medicine, appear to be less attractive to trainees who are coming out. We must take that on board and make those posts as friendly as possible for their work-life balance.

NES, which I mentioned, is very conscious of the need to attract people to remote and rural posts.

The Convener: I want to follow up on the recruitment of consultants. Is there a volume of patients or cases that a consultant needs to see in order to maintain professional standards of expertise?

Dr Keel: That is a tricky area. Until fairly recently, there was not a strong evidence base on the relationship between the volume of cases that a consultant deals with and outcomes, but in certain specialties—highly specialised surgical techniques are an obvious example—evidence is beginning to emerge that seems to associate the rate or volume of surgery that is carried out with improved patient outcomes. I am thinking of areas such as oesophageal-gastric surgery for cancer, which is highly specialised.

In respect of the management of major trauma, there is evidence that bigger centres have better outcomes. That has been demonstrated for decades in the United States of America. We are also beginning to move to a more structured system for the management of major trauma in Scotland, so that all A and E departments will not see major trauma cases.

The Convener: That is interesting. Does it mean that, to ensure that patients have access to top-quality expertise, it is sometimes better to concentrate resources and facilities than it is to spread them evenly across many centres in Scotland?

Dr Keel: It might do. We are a bit of a way from being able to say that definitively. We need better data. I am particularly interested in cancer—I chair the Scottish cancer task force—and we are beginning to gather better cancer data through the development of quality performance indicators for individual tumours in the lung, breast and so on. There are perhaps 10 or 12 indicators that clinicians think it is of prime importance to measure if they are to improve patient outcomes. In some—but not all—examples, one indicator is the volume of cases that clinicians should see.

We have been gathering the data over the past year, and this year we will begin to collate it at national level and take a look at it. That kind of data will enable us to make more evidence-based statements about who should be doing what and where the volume of patients should be concentrated.

The Convener: Do all patients who are admitted to accident and emergency receive the same quality of care, irrespective of the unit to which they are admitted? Are there circumstances in which a medical decision will be taken to take a person straight to a centre where there is identified

expertise that could mean a better patient outcome?

Dr Keel: Both things are true. In a lot of cases, roadside triage by our paramedic ambulance service is crucial in determining whether it should take a patient to their local A and E or bypass that unit and take them to one of the trauma centres. Equally, if a patient comes into their local A and E and it is clear that they are a major trauma case and would be better transferred to one of the four major trauma centres, that should happen. It is about patient triage.

The Convener: Consideration will therefore be given at some point to whether current levels of patient service and care can adequately be provided in an A and E service. Consideration will be given to how best to treat the patient and where the expertise lies.

Dr Keel: For major trauma patients, that work is under way, but we are not talking about the majority of cases that present to A and E.

The Convener: Does sustaining current levels of A and E in Scotland put pressure on the rest of the health service?

12:45

Dr Keel: Emergency medicine has already been mentioned in the context of its being a pinchpoint, because an increasing number of patients choose to access the NHS via that route. A raft of work is going on around unscheduled care, to try to prevent patients who would be better dealt with by another bit of the NHS from going to A and E, and—this comes back to the four-hour wait issue—to try to ensure that patient flows through the whole hospital system are smoothed out, so that beds become vacant for patients who need to be admitted. There is a lot of work going on on that.

The Convener: Are the recommendations of the Kerr report now redundant?

Dr Keel: That is going back a bit. There were many recommendations in that report. I think that some of them have been implemented.

The Convener: Yes, but not all of them, and the ones that have not been implemented are, in effect, redundant.

Dr Keel: You would have to specify the recommendations that you mean.

The Convener: We do not have time to get into a debate on the Kerr report, which is unfortunate. I will leave that sticking to the wall.

Ken Macintosh: May I ask for clarification? I thank Mr Gray for his answers earlier but, on information and guidance from the health

secretary on the use of confidentiality agreements, I recollect that the health secretary wrote to all boards last February suggesting that they do not use such agreements as a matter of course, and that he followed the matter up at a conference on whistleblowing, I think in the summer, when he said that he approved of whistleblowing.

Will you write to the committee to say what decision you expect from the health secretary? More important, are you able to provide information about whether the 697 compromise agreements that were made between 2007 and 2013 included gagging clauses? Perhaps even more pertinent, will you say whether compromise agreements that have been signed since then include confidentiality clauses?

The Convener: I will leave that with you, Mr Gray. I thank the witnesses for their time. We have had a full and informative session, which has given us something on which to reflect.

12:47

Meeting continued in private until 13:04.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICe.

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78392-618-3

Revised e-format available
ISBN 978-1-78392-635-0

Printed in Scotland by APS Group Scotland
