

# **AUDIT COMMITTEE**

Tuesday 26 October 2004

Session 2

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## **AUDIT COMMITTEE**

### **† 18<sup>th</sup> Meeting 2004, Session 2**

#### **CONVENER**

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

#### **DEPUTY CONVENER**

\*Mr Andrew Welsh (Angus) (SNP)

#### **COMMITTEE MEMBERS**

Rhona Brankin (Midlothian) (Lab)

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

\*Robin Harper (Lothians) (Green)

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

George Lyon (Argyll and Bute) (LD)

#### **COMMITTEE SUBSTITUTES**

Chris Ballance (South of Scotland) (Green)

Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

Marlyn Glen (North East Scotland) (Lab)

Mr John Swinney (North Tayside) (SNP)

\*attended

#### **THE FOLLOWING ALSO ATTENDED:**

Mr Robert Black (Auditor General for Scotland)

Russell Frith (Audit Scotland)

Caroline Gardner (Audit Scotland)

Graeme Greenhill (Audit Scotland)

Arwel Roberts (Audit Scotland)

#### **CLERK TO THE COMMITTEE**

Shelagh McKinlay

#### **SENIOR ASSISTANT CLERK**

David McLaren

#### **ASSISTANT CLERK**

Clare O'Neill

#### **LOCATION**

Committee Room 5

**† 17<sup>th</sup> Meeting 2004, Session 2—held in private.**



## Scottish Parliament

### Audit Committee

*Tuesday 26 October 2004*

[THE CONVENER *opened the meeting at 10:05*]

### Items in Private

**The Convener (Mr Brian Monteith):** I open the 18<sup>th</sup> meeting of the Audit Committee of the Scottish Parliament in 2004. I welcome the representatives of Audit Scotland—the Auditor General for Scotland and members of his team—together with members of the press and public.

I remind everyone, including committee members, to turn off their mobile phones and pagers—if anyone still uses pagers. I have apologies from George Lyon, who cannot make today's meeting, and apologies for late arrival from Susan Deacon, who is at another parliamentary meeting but who will join us later.

There is a busy agenda today. Under agenda item 1, it is proposed that items 6, 7, 8 and 9 be taken in private. Item 6 is to enable the committee to consider its approach to the report by the Auditor General entitled “Scottish Prison Service: Contract for the provision of prisoner escort and court custody services”. Item 7 is to enable the committee to further consider its approach to the report by the Auditor General entitled “An overview of the performance of the NHS in Scotland”. Item 8 is to enable the committee to consider its approach to the section 22 reports that were recently laid before the Parliament and item 9 is to enable the committee to consider further its approach to the Auditor General's reports “Commissioning community care services for older people” and “Adapting to the future: Management of community equipment and adaptations”. It is customary that such items are taken in private. Are members agreed that we take agenda items 6, 7, 8 and 9 in private?

**Members** *indicated agreement.*

**The Convener:** If the meeting goes according to schedule, we will probably have a short comfort break before we take those items.

## “Scottish Prison Service: Contract for the provision of prisoner escort and court custody services”

10:08

**The Convener:** We now move on to item 2, on the Scottish Prison Service. I invite the Auditor General to brief the committee on the report that was recently published by Audit Scotland.

**Mr Robert Black (Auditor General for Scotland):** In November 2003, the Scottish Prison Service signed a contract, on behalf of Scottish ministers, with Reliance Secure Task Management Ltd—commonly referred to as Reliance—for the provision of prisoner escort and court custody services throughout Scotland. The contract is worth about £126 million over seven years and covers the transport of prisoners between prisons and police stations, for example, and court, and the safe custody of prisoners while at court. In 2003-04, there were some 140,000 prisoner escorts throughout Scotland.

The contract is based on a phased programme of implementation, which started in Glasgow and the surrounding area from April 2004. A further four stages were planned. It was originally intended that Reliance would be responsible for all prisoner escort and court custody services in Scotland by October 2004.

From the very start of the contract in April, there has been a lot of media attention because of a number of incidents involving alleged escapes or releases in error. The Minister for Justice asked me to bring forward audit work relating to the procurement of the contract and, under the circumstances, I agreed to do that. This is not a normal audit report but the result of a special exercise that I have undertaken, through the audit resource, in order to report early on a matter that is of public concern and of concern to the minister.

I asked Audit Scotland to review four key issues: first, whether the Scottish Prison Service had set clear objectives for the contract, consistent with achieving value for money; secondly, whether the SPS properly specified and awarded the contract; thirdly, whether the SPS established robust and clear arrangements for managing the contract as soon as the contract period began and for monitoring the contractor's performance; and, finally, to consider how well the SPS is implementing and monitoring the contract in the early days.

The report that I have made to the Parliament is based on the auditors' examination. It might be helpful if I summarise my findings in relation to the

key issues that I mentioned, the first of which was contract objectives. Prior to the introduction of the Reliance contract, the police undertook the main work of managing prisoners at court and the Scottish Prison Service escorted prisoners to and from court. However, there was concern that the arrangements involved the duplication of resources, with little co-ordination between police, prisons and courts. Vehicles with spare capacity could pass each other en route to the same court. A review team was established and on the basis of the team's findings the SPS, with ministerial approval, decided in January 2002 to contract out prisoner escort and court custody services. The SPS set clear objectives for the project to procure the restructured service and contracted out prisoner escort and court custody services because that would provide an opportunity for the better use of resources. The existing arrangement involved the use of police officers and prison officials for duties that did not require the full range of legislative powers or skills that such people have. It was intended that the contract would remove duplication of effort and free up police officers and prison staff for other duties. It would also allow more efficient practices to be introduced.

It is too early to say whether those objectives have been achieved. However, the SPS has estimated that the service that Reliance provides will produce savings of about £20 million over the seven years of the life of the contract. The Prison Service will carry out a review of the contract after Reliance has taken over full responsibility for prisoner escorting and court custody. Clearly, the review should consider the extent to which the original aims of the project have been achieved.

Secondly, the specification and award of the contract were generally handled well. The SPS used consultants to help to determine how long the contract should run and took on board lessons from England and Wales, where prisoner escort duties have been contracted out for a number of years. The contract is based on the outputs that are expected to be delivered and not on staff and other resource inputs. The invitation to tender specifies the range of activities and tasks to be performed and there are quality requirements that relate to prisoner care, security, the maintenance of good order and the general contribution to the justice system. In general, the auditors found that the information provided at tender was sufficient to enable high-quality bids to be made. Some of the background information could have been better, but the SPS and partner agencies subsequently provided Reliance with activity data and discussed proposed staffing numbers for each phase of contract implementation.

The SPS followed good practice in managing the procurement process. There was a

comprehensive project plan and the SPS took steps to identify and manage risks to the achievement of the project. The tendering process was in accordance with the relevant European Community regulations. Five companies expressed an interest in the contract and three bids were considered. The number of bids was comparatively small, but the SPS considers that the three bids that it received represented a good competition in the circumstances, given the specialist nature of the services being tendered. The SPS subjected the three bids to a technical, financial, legal and commercial assessment. Reliance's bid was the cheapest and resulted in a contract value of £126 million, some £20 million below what the SPS considered that it would cost to retain the service in-house. Reliance was ranked third in the technical evaluation, but the SPS considered that the level of service offered fully met its requirements. The SPS therefore concluded that the bid from Reliance promised the best value for money.

Finally, I mentioned contract management and monitoring. Because of early problems, the timetable for the contract's implementation has been extended to early 2005. The SPS and its partner agencies must indicate their agreement before the contract is rolled out throughout Scotland. However, contingency plans are still to be finalised to ensure continuity of service should Reliance withdraw or be withdrawn from the contract.

A key strength of the new arrangements is that Reliance is required to report regularly on performance against a set of 33 performance measures, which cover delivery of the service, prisoner care, security of custody and the maintenance of good order. Failure to deliver against the performance measures results in reduced payments to Reliance. There are early signs that Reliance's performance is improving and I have asked the auditors to continue to review how the SPS monitors and reports on Reliance's performance.

As always, my colleagues and I will be happy to answer any questions that the committee might have.

10:15

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** Throughout the report, it appears that the information that was available from the police and the SPS about what happened in the past was not reliable. I am therefore concerned that some of the anticipated savings might well not be achieved, but there seems to be no tracking of that. Do you have further information on that point?

I am also concerned about what would happen if the contract were to go belly up. How long has the SPS been in discussions to finalise the high-level contingency plan and is there a timescale for the plan's completion?

Finally, Mr Riall of Reliance dismissed your report in a newspaper article on 3 October. Will you comment on that?

**Mr Black:** You asked first about the information that was available. The SPS has advised us that one of the subsidiary reasons for considering the form of contract that was used was the fact that in the past very poor information about performance was available. It is not unfair to say that, generally, the agencies that carried out the service in the past did not retain and manage good information about how the service was delivered. As a consequence, the SPS reached the general conclusion that it would not be practical to attempt to gather such information so long after the event, which meant that limited information could be provided to potential tenderers about what they would be taking on. I referred to that in my opening comments.

I will consider each of your questions in turn, as my colleagues might expand on my answers and give you more assistance.

**Arwel Roberts (Audit Scotland):** As the Auditor General said, the main difference between the service that was provided in-house and the service that Reliance performs is that the former was based on input whereas the latter is based on outputs. There is a shortage of information about input and even if such information were available it would be difficult to compare it with the output performance against which the new contract is measured—that is not to diminish the disadvantage of not having the information but to recognise that it would be difficult to compare one type of information with the other.

**Margaret Jamieson:** That is why I am concerned. How can we say that savings are being made when we do not know how many hours used to be input by the SPS, the police and Kilmarnock prison, for example? Where does the figure come from?

**Arwel Roberts:** The figure of £20 million represents savings against the calculation of what might be called the public sector comparator. It is a calculation of what the public sector cost of continuing to pay for the service in-house would have been, as against what the contract is costing. It is a calculation, but with the disadvantage that it does not have all the information behind it about what was being spent.

**Margaret Jamieson:** So the figure may not be as robust as we would like.

**Mr Black:** I am sure that the Scottish Prison Service would say that it was not an absolutely accurate, guaranteed figure but the best estimate, using the public sector comparator, of what could be saved.

Your second question was about what would happen in the event of a contract default. I emphasise that the Prison Service does not think that that is likely. However, our role as auditors is to be cautious in such matters, which is why we asked the Prison Service about its contingency plans in case either party feels obliged to withdraw from the contract because of performance failure or other reasons. Because the operation of the contract is at an early stage, full arrangements are still not in place, but when we closed down our study, discussions were taking place with partner agencies with the aim of putting in place contingency plans for continuity of service in case of failure for whatever reason. For example, if vehicles were no longer available, something would have to be put in place quickly to keep the service running. The Prison Service is considering that issue seriously.

As I say, the Prison Service believes that it is highly unlikely that the contract will fail, but if it did fail for any reason, significant penalty clauses and liquidated damages would be payable by the contractor. It would therefore be inappropriate for the committee to have a concern on that matter at this time.

**Arwel Roberts:** The concept of a contingency may for some people imply a catastrophic failure. However, if the contract is not a success, it will not necessarily close suddenly—it could wind down and leave time for contingency measures to be put in place. That is not to say that a catastrophic failure is impossible, but it is the least likely outcome.

**Margaret Jamieson:** The Auditor General said that it would be “inappropriate” for the committee to be concerned about such a failure. Why did you use that term?

**Mr Black:** The contract has been properly formed and at present is being rolled out with a longer timescale. I assure the committee that I see no immediate prospect that the contract will not continue to plan.

**Mr Andrew Welsh (Angus) (SNP):** What is the plan? You say that the contract is properly formed, but it strikes me that it was based on poor or limited information. The contract is supposed to save £20 million. The use of penalty clauses comes after the event—we should not need them because we should get the saving that is predicted. However, the estimate for the saving seems to be poorly based. Is it not the case that the SPS estimate of a saving of £20 million was

largely speculative, especially given that the costing was not based on specific activity data?

**The Convener:** Before the Auditor General answers that question, I ask him to answer Margaret Jamieson's third question, which was about a newspaper report.

**Mr Black:** I am sorry, but you have the advantage on me on that issue—I may not have been around when the press report came out. Will Margaret Jamieson help me with that?

**Margaret Jamieson:** The report was by the home affairs correspondent for *Scotland on Sunday*, Kate Foster, and appeared in that newspaper on 3 October 2004. It states:

"Riall dismissed the criticisms in the report despite admitting he had not read it on the day it was officially published, but only seen press reports."

I will provide the Auditor General with a copy of the article, which contains a number of concerns that I would like to discuss in private.

**Mr Black:** Thank you for helping me with that. I am sure that the committee appreciates that my role as the Auditor General is to report to Parliament on matters relating to accounts for which accountable officers are responsible. I do not have powers or duties to report on contractors or what they might say.

**The Convener:** Very good. We will now deal with Andrew Welsh's question.

**Mr Black:** As Arwel Roberts and I said, the Prison Service calculated its best estimate of the potential saving using the public sector comparator, which is an appropriate action for all departments or agencies in considering such matters. I would not wish to hold bodies to a requirement that there be an exact calculation of savings that will eventually be achieved. I imagine that the Prison Service takes useful knowledge from the fact that the Reliance tender was the lowest of the three tenders and that there was good competition for what is a fairly specialist job. The Prison Service accepted the lowest tender and is satisfied with the technical specification. It is not my role to second-guess the decisions that the Prison Service took, but I am satisfied that it undertook a proper and robust process and that, under the circumstances, it probably let the contract well.

**Mr Welsh:** The contract could be technically correct, but it may not have been sensible. Is it the case that Reliance was supplied with specific activity data and advice on staffing numbers only after the contract was awarded?

**Arwel Roberts:** Reliance was provided with that information when the tenders were considered. Before the contract was let, Reliance and other

potential contractors were given information. Subsequently, after the contract was let, Reliance was given more information.

**Mr Welsh:** It is the word "subsequently" that bothers me. How significant was the subsequent information? When the contract was signed, how much did Reliance know about what it had to do?

**Arwel Roberts:** I refer you to paragraph 2.11 of our report, which states:

"The invitation to tender ... did outline indicative levels of activity ... Both documents also outlined 'quality requirements'."

The point is that information was available when potential contractors were invited to tender, but that it was subsequently supplemented with more information when Reliance asked for that.

**Mr Welsh:** How significant was the subsequent information? What was the contract based on when it was signed? Was the basis of the awarding of the contract adequate, or was there important subsequent information that would have affected negotiations?

**Arwel Roberts:** The Prison Service reacted to Reliance's request for additional information. Reliance clearly did not feel that the information in the invitation to tender was sufficient, so that information was subsequently supplemented.

**Mr Black:** In tendering processes for public contracts, it is not uncommon for potential tenderers to ask for additional information. Paragraphs 2.12 and 2.13 of our report, which attempt to explain what happened as precisely as possible, state:

"Although the invitation to tender was a comprehensive document, all bidders had the opportunity to ask questions throughout the process. Bidders used this opportunity to clarify ambiguous points and to request further information. On a periodic basis, the SPS issued to all bidders its responses to questions asked ... One bidder asked about the availability of a more extensive breakdown of police escorts activity to identify peaks and troughs. The SPS's response indicated that 'Mondays and days following public holidays would be particularly busy days'. It also supplied bidders with activity data on a daily basis for Glasgow courts for the month of September 2002. This period covered a public holiday and clearly indicated that activity increased on Mondays and after public holidays".

My judgment is that the Prison Service was as helpful as possible in supplying information and that potential tenderers for the service would have had sufficient knowledge of the business to be able to use the information in order to structure their tenders appropriately.

10:30

**Mr Welsh:** How realistic was the £20 million projected saving?



**Mr Black:** I have attempted to answer that question; any more specific questions would have to be put to the accountable officer in person. However, I assure the committee that the Scottish Prison Service used its best endeavours to compare bids with the public sector comparator, based on the best information that it had. That is a significant assurance.

**Mr Welsh:** On management and monitoring, you say that the SPS

"should also finalise those service agreements documenting the relationship between the SPS and other agency partners which are still outstanding."

Will you give us an indication of how many such agreements are outstanding and of the content of such agreements? How difficult a task will it be to complete them?

**Mr Black:** We will find it difficult to provide a comprehensive and reliable response to that question because, as I described, the audit is unusual in that it was undertaken partly in response to a request from the minister to provide independent assurance and the contract is still bedding in. Moreover, much of the information for which you ask is not fully available to us and the situation changes weekly as work proceeds to bed the contract in. However, I ask the team whether it can help you with some information on that.

**Graeme Greenhill (Audit Scotland):** I refer the committee to paragraph 3.8, which is on page 15 of the report. It indicates that the SPS has finalised service-level agreements with individual prison establishments, the Scottish Court Service, the Crown Office and Procurator Fiscal Service and four local authorities. Service-level agreements have still to be finalised with the remaining local authorities and the eight Scottish police forces, but there is a working group that is seeking to finalise those agreements as soon as possible.

**Mr Welsh:** It strikes me that the situation is still in the melting pot rather than being set and in operation. Have any of the penalty clauses been implemented yet?

**Arwel Roberts:** We understand that they have.

**Robin Harper (Lothians) (Green):** In paragraph 6 of the report's summary, you say:

"The overall aim of contracting out was to free up time for police and prison officers and to secure better value for money."

You have explained to us that securing better value for money means making a £20 million saving. You have also indicated that we do not have sound figures from the SPS—its figures are indicative—but I would have thought that, where the police are concerned, it would be relatively easy to find out, using police time records and log sheets, how much time and money the police were

putting into prisoner escorts before the contract was let and whether the contract represents significant savings for the police. Will such information from the police become available?

**Mr Black:** On the point about value for money being equivalent to the £20 million saving, neither the SPS nor Audit Scotland would expect best value to be equivalent to cost reduction. The SPS is hopeful that it will get a better quality of service, as well as a more efficient one, measured against the public sector comparator.

On the main part of the question, the reality is that the police forces do not have accurate, detailed records of how police time was deployed in prisoner escort services. That has been a problem for the Prison Service and it will make a before-and-after comparison more challenging. However, it will be possible in future to undertake an evaluation of whether the service that is being delivered conforms to the specification. Perhaps the team can add to that.

**Arwel Roberts:** I can only repeat the point that because the contract with Reliance is based on a definition of outputs, to make a comparison with historical inputs might not give an accurate picture of the value for money to which Robin Harper refers. I stress that the £20 million figure is based on an estimate, due to the difficulty of obtaining information. The concept of the public sector comparator is similar to the one that is used when a contract is put together under the private finance initiative. Under that system, estimates are made of the likely public cost against the private cost. Similarly, with the prisoner escort contract, an estimate of the cost of delivering a particular output was made and compared with the cost that Reliance offered. That is what influences the cost element of value for money, separately from quality.

**Robin Harper:** I take the Auditor General's point about best value involving quality. Is he saying that, in our monitoring of the audit over the years to come, we should concentrate entirely on outputs?

**Mr Black:** Yes.

**The Convener:** Some aspects of the contract are commercially confidential. To what extent might that change in the future as a result of the operation of the freedom of information legislation and to what extent would more availability of commercial information be in the public interest? Would it help to drive down costs as competitors become better able to compare costs?

**Mr Black:** It is fair to predict that the freedom of information legislation will make it more difficult for any party to use commercial confidentiality as a reason for withholding information that would otherwise be put into the public domain. That

would have to be considered case by case. In the instance about which we are talking, the contract provides for Reliance to have significant control over the release of what it considers to be commercial information.

It is a matter of speculation whether the release of more commercially confidential information would lead to better competition. It could be argued that more information about the lowest cost would cause potential bidders to sharpen their pencils more but, in an imperfect market, it might in theory—not in the case of the prisoner escort contract, I am sure—lead to collusion between potential bidders. Therefore, it is difficult to predict in general terms how the greater release of such information would play out. I suspect that it would depend on the specific markets for individual goods and services.

**Mr Welsh:** One thing that still bothers me is that Reliance's bid was the cheapest and that the present tendering system tends to lead to the cheapest bid being accepted. Reliance's bid was accepted even though it was not technically the best, but it had enough in it to satisfy the technical requirements and was the cheapest. However, there were no activity data, and it bothers me that those involved seem to have talked about the detailed activity in an activity-based process after the contract had been signed. Is that normal practice and would you recommend it?

**Mr Black:** I apologise, because I am not giving a good explanation of what happened in the contracting-out process. The SPS specified the contract appropriately and included sufficient information for the tenderers to prepare their bids. In the course of preparing their bids, the tenderers came back and asked for various pieces of additional information, which were provided. That in turn led to a good competition under the circumstances. The lowest bid was accepted, but only after an extensive technical evaluation, which included a range of factors that I have detailed in the report. Therefore, there was a careful assessment of whether the contractor with the lowest bid was capable of delivering the required standard of service, and the Prison Service satisfied itself that that was the case.

As I have said in the past and again this morning, it is not for me to second-guess a decision of management. However, I am satisfied that the processes that the tenderers went through were appropriate and robust.

**Mr Welsh:** Thank you for that clarification.

**The Convener:** With that, we close agenda item 2. Members will be able to consider, under a later agenda item, what action, if any, the committee wishes to take in regard to the discussion that we have just had.

## “Overview of the National Health Service in Scotland 2002/03”

10:40

**The Convener:** Agenda item 3 is discussion of the committee's eighth report in 2004, on the “Overview of the National Health Service in Scotland 2002/03”. Members have received the Executive's response to our report and will have had a chance to read it. I invite members to comment on the response, after which I will invite observations from the Auditor General and his team. Do members have any comments to make with regard to the letter from the Executive?

**Margaret Jamieson:** I have concerns about the way in which the response is framed. The Executive could have rolled together all the questions that we asked and just said, “It's nothing to do with us.” Throughout the response, we hear about “anticipated cost” or “anticipated increase” that it is “not possible ... to predict”. Given the fact that a significant amount of money is going into the health service, one wonders what exactly we will get out of the system if the Scottish Executive Health Department treats the committee in that way. The Executive also gives examples of practices that it is seeking to pursue but which have been in place in some health board areas for several years.

I do not know where we go from here. If we ask the Executive the questions again, we might well get the same absolute rubbish that we have already got. Throughout the letter, dates are not given. I do not know the Auditor General's view on the information. We have, at last, managed to get the latest information on the number of one-stop clinics. We know that, as at June 2004, we have 471 of those clinics—something that we did not have before. There is that little chink of light. However, I am concerned about the terminology that is used in the letter; everything seems to have been plucked out of the air.

**The Convener:** We will discuss how we will respond to the Executive under agenda item 7. Before we do that, this is our opportunity to ask the Auditor General and his team for their comments in public.

**Mr Welsh:** I have great difficulty with the responses that we have received from the Executive. Sir Humphrey Appleby would be quite proud of them. The responses are deliberately obfuscatory, they do not answer the questions that were posed, and I almost do not know where to start in looking at them.

On the budget, the Executive says that planning is carried out on the basis of

“an indicative increase in unified budget ... which equates to additional funding of £447 million”

with anticipated cost pressures of £81 million, payroll figures, and so on. However, unless my arithmetic is wrong, when the figures are added up it becomes clear that the Executive is planning a £13 million-plus deficit before it even starts.

We asked how the Executive measures the improvements and whether the efficiency savings are real or imaginary. However, it is absolutely unclear from the response how the Executive's agenda for change will directly benefit health care users and how such benefits will be measured other than by potential financial savings. Paragraph 2 on page 2 of the letter is an example of that type of answer. It states that the agenda for change will still

“play a part in such change”

but that,

“because it is an enabling tool ... rather than a direct agent of delivery, it is not possible to attribute specific changes/benefits directly to it, or to predict precisely what they might be, how soon they will flow, in what volume, and with what impact.”

In other words, the Executive does not know. That is typical of the verbiage in the letter. I would like plainer English rather than the Executive hiding the fact that it does not know.

We are told that the action that is being taken is an additional letter

“outlining the approach to and monitoring of integrated benefits”,

which is

“currently in initial draft form”

and will be followed by meetings and an assessment framework. However, in the table that details the framework, under the heading of “Developmental Issues”, we are told that the expected benefits are unknown because future assessment

“will focus on the emerging issues and on realising the benefits derived from the new contracts.”

By the Executive's own admission, those benefits are unknown. The response talks about demonstrating the benefits but, at the foot of page 3, we are informed that the indicators are “currently being developed” although they “will outline specific objectives”. The Executive is definitely giving a promise, but everything else tells us that the matter is up in the air.

How are staff to be incentivised? I almost do not know where to start. All that I can say is that this response is most unsatisfactory. It is time that the

Executive got out a dictionary and was subjected to the Plain English Campaign, so that we could be given a better view of what has happened. I do not know whether the committee wants another example, convener.

10:45

**The Convener:** No, I think that we have got the message about the agenda being only for possible change.

**Mr Welsh:** I point members to the Executive's answer to question 9.2. In the Auditor General's report, we were told that

“total investment is not known and it will be difficult to measure whether targets are being met ... targets need to be more measurable and timely.”

We asked for the Health Department's response to that. The response states:

“Health improvement is an opportunity and a challenge for the Community Planning Partnerships (CPP). Local Authorities have a duty of wellbeing and the NHS has a duty to deliver health improvement. CPPs and Community Health Partnerships (CHPs) produce Joint Health Improvement Plans (JHIPs) and Regeneration Outcome Agreements. Local Health Plans for each NHS board reflect local JHIPs.”

There is a lot of planning and many acronyms, but a dearth of action. The response continues:

“SR2004 restates the Health Improvement objective ‘working across Scottish Executive Departments and with other delivery partners to improve the health of everyone in Scotland and reduce the health gap between people living in the most affluent and most deprived communities’. CPPs involving all partners including Health Boards and local authorities work to deliver that objective for each of their local communities.”

In other words, it is an additional target that supports the previous targets. I wonder whether the Executive has hit any targets yet.

I find the response completely unsatisfactory. It is endemic in the health service that people speak in acronyms and that, when we ask for details and action, we get verbiage. I really think that a Plain English Campaign guide would be of benefit to the Executive. I would like answers that actually mean something.

**The Convener:** Does Robin Harper have any comments to make?

**Robin Harper:** I think that it has all been said.

**The Convener:** Are there any comments that the Auditor General and his team want to make?

**Mr Black:** There is very little that I can say that would be of help to the committee at this stage. One of the general themes that came through in the performance overview that we published in the summer was the difficulty that the NHS has with its information systems, which are lagging well

behind developments in the modern NHS. It would, therefore, be somewhat surprising if the Health Department was able, in such a short time, to produce a great deal more information that would be helpful to the committee. As you can imagine, when we wrote our report we analysed thoroughly all the available data sets and attempted to pool them for you.

We will use the Executive's response as a source of information in undertaking our performance audits in the health service, so the analysis that it contains will be used to the best effect that we can make of it in that regard. It may be appropriate for the committee to take that into account in deciding whether it wishes to take the matter any further at this stage.

**The Convener:** I remind the committee that this is the second response to the committee's request for information, as the first response generated a need for further questioning.

Given that agenda item 7 is on a related, although separate, overview report, I signal to the committee that we perhaps need to consider how much further we can go in our deliberations with the Health Department if this is the type of response that we receive at the second time of asking. Perhaps a different approach is needed. We can discuss that under agenda item 7.

**Mr Welsh:** Does the Auditor General believe that the department cannot give us an answer at the minute? For example, paragraph 9.3 states:

"a key strand of work being taken forward ... is workforce redesign, looking at the co-ordinated development and facilitation of new roles in ways which will improve service delivery and have real impact."

That is certainly what should be done, but that does not seem to be the reality. In other words, it seems like the deckchairs are being moved.

Does the Auditor General believe that the information is not known and that the department cannot be more specific? The department says that it is relying on a report that will be published next spring and on other planners planning planning. We were told that the health service had specific objectives to move on and that unless the changes work, the health service will not be improved. There seems to be some tail chasing going on. If that is the case, the department should make it plain or it should tell us the timetable for when the planners will be able to plan the planning. To be given such a response to our very specific questions is inadequate. Is there something that makes it impossible for the Health Department to tell us what it is doing?

**Mr Black:** Health service work-force redesign is hugely complicated, so it is important to understand what is happening in different aspects of the service. Work force redesign includes: the

general medical services contract, on which planning is moving ahead comparatively well; the consultant contract, on which Audit Scotland may well do a specific report; and agenda for change, which is the most significant initiative because it covers the bulk of staff who are employed in the service. Agenda for change is business that is very much in hand at the moment, so it is true that the department is not in a position to advise what the outcomes are likely to be. Caroline Gardner can expand on that.

**Caroline Gardner (Audit Scotland):** All three of those contracts are UK-wide initiatives, as the committee will know from its previous discussions on their impact. The consultant contract and the GMS contract are being rolled out or are in place, but negotiations are still continuing on agenda for change, which will affect the largest group of staff in the health service and which will probably provide the most scope for changing roles and responsibilities across professional boundaries. However, there is still work to be done on that. If the committee wants to know more about what information the department has and what issues are genuinely still work in progress, that is a question for the department. Perhaps the issue is how best the committee can put that question to the department to get the information that it seeks.

**Mr Welsh:** I still wonder whether there is something endemic in the health service whereby CPPs talk to CHPs and health boards about JHIPs. There seems to be a systemic problem in the NHS that things end up in endless conversations but not much action.

**The Convener:** There are certainly lots of meetings.

**Mr Welsh:** Indeed.

**The Convener:** With that observation, we have probably exhausted agenda item 3, although we may continue the discussion under agenda item 7. I thank committee members and Audit Scotland for their contributions.

## Section 22 Reports

10:54

**The Convener:** For agenda item 4, I invite the Auditor General to brief the committee on section 22 reports. Perhaps we need some preamble to put the reports into context before we go into the detail of each one.

**Mr Black:** Under section 22 of the Public Finance and Accountability (Scotland) Act 2000, I have the power to make reports on the audited accounts of public bodies in Scotland. Section 22 reports are very much tied to the audited financial statements of public bodies, so they are not full performance audits. They address matters that are raised from the audited accounts—they do not range more widely than that—so the extent to which they go into detail about the underlying causes and effects is quite limited. However, in the section 22 reports that I make from time to time as the years roll on, it is right that I take the opportunity to alert the Audit Committee to matters of significance that arise from the audited accounts.

In practice, what happens is that, if the final audit report that I receive from the auditor contains a matter of significance, I will make a section 22 report to accompany the accounts. The report and the accounts go to Scottish ministers, who have the responsibility of laying the accounts along with my report. That means that there can be a gap of even a few weeks between the conclusion of the audit and the section 22 report being laid, but that matter is entirely under the control of Scottish ministers. I do not control the flow of the reports out of the system into the public domain.

It seems right that, at the next appropriate meeting after such a report has been laid, I alert the committee to the fact that a section 22 report exists on a significant matter. That will give the committee the opportunity to consider the report and to advise on whether there is anything else that it wishes to be done.

**The Convener:** For the record and for the benefit of those who are listening or watching, I remind committee members that, because section 22 reports contain matters of significance that arise from the accounts, it will be the committee's practice that such reports will be an item on our agenda once they have been laid. That will give the Auditor General an opportunity to explain the report and it will give members an opportunity to hear his briefing and to put any questions to him. That will now be our standard practice to allow those deliberations to take place.

**Mr Black:** Shall I take each of the section 22 reports in turn?

**The Convener:** Yes. Start with the report on the 2002-03 audit of the National Library of Scotland.

**Mr Black:** I issued the report on the National Library of Scotland accounts because ministers did not lay the accounts for financial years 2000-01, 2001-02 and 2002-03 within the statutory deadline of nine months after the end of the financial year to which the accounts relate. Due to some significant staffing difficulties in the NLS, especially within the finance function, the preparation of the accounts and the completion of the audit were delayed. The situation was quite unsatisfactory for a period, but I am pleased to say that the audited accounts for financial year 2003-04 were laid on 29 September 2004, which is well within the statutory deadline.

The National Library of Scotland appointed a part-time consultant to help in the preparation of the accounts. It also appointed a full-time assistant to the head of finance, who will have the task of preparing the annual financial accounts. Therefore, the situation has improved significantly but, in view of the obviously unsatisfactory situation in previous years, I have made the section 22 report to inform the committee.

**The Convener:** That provokes me to ask a simple question. What procedure, if any, exists to deal with situations in which the accounts are late or have not been laid by ministers? Is there any early warning system for that or do MSPs simply have to ask questions constantly on the whereabouts of the information? Is there any automatic switch that requires ministers to say that they have not yet laid the accounts?

11:00

**Mr Black:** There is no automatic procedure whereby the committee would be advised if audited accounts were late. Indeed, the absence of any such procedure is the reason why today is the first time that the committee has heard about the situation that has existed in the National Library of Scotland for the past three years or so. If a significant issue were to delay the laying of a major account—such as the accounts for the health service—I would use my overview reporting powers to alert the committee to the situation at an appropriate point in the cycle. Alternatively, in a case like this, it might be more appropriate for me to refer to the issue in a section 22 report that accompanied the accounts of the Scottish Executive as a whole.

In relation to something of this scale, however, it would probably be inappropriate—measured against what we call the materiality or the significance of the issues—to draw the matter out

at the level of the Executive because the activity is comparatively small in the context of the National Library of Scotland's system.

**The Convener:** I thank you for that answer, but it makes me wonder whether there should be some alternative system, in as much as, currently, members of the Scottish Parliament have to rely on whistleblowers to provoke us to ask questions about why something has not happened. I do not wish to resolve that here and now, but it is something that this committee or other members of the Parliament might want to think about at a later date.

**Mr Black:** If the committee were interested, it would be perfectly possible for us to produce an information note at an appropriate point in the financial year to update the committee on the situation in relation to the audits and the closure of accounts and to highlight any areas in which there were significant slippages against the statutory deadlines.

**The Convener:** The committee would find that useful. It would give us an idea of how things stand in relation not only to the large areas such as the NHS but to not insignificant areas such as the National Library of Scotland and other important institutions.

We will now deal with the section 22 report on the 2003-04 audit of the Scottish Prison Service.

**Mr Black:** As you might expect, the section 22 report on the 2003-04 audit of the Scottish Prison Service draws attention to the report on the Reliance contract that we discussed earlier. For present purposes, I draw your attention to the fact that the report points out that the 2003-04 accounts include a provision of £26 million and a contingent liability of £136 million to reflect the potential cost to the SPS of settling court cases from existing and former prisoners who claim that the conditions in which they were held or are being held breached or are breaching their rights under the European convention on human rights.

The basis for the disclosure being made by the SPS in these accounts is Lord Bonomy's April 2004 judgment in a court case. Lord Bonomy found that considerations relating to overcrowding, the requirement to slop out and general conditions relating to the prison regime were

"capable of attaining the minimum level of severity necessary to constitute degrading treatment and thus to infringe Article 3".

However, I would emphasise that the judgment is not that those factors of themselves represent an infringement of article 3 of the ECHR. What also has to be taken into account is the effect of the prison conditions on the individual prisoner. This particular case does not establish that requiring

prisoners to undergo slopping out is, of itself, an infringement of article 3.

There are similar cases before the courts and the Prison Service has been notified that further cases might be brought. However, in each of those cases, the petitioner will have to demonstrate that the prison conditions in which they were held had some kind of negative effect on the prisoner such that they represented degrading treatment.

It is not clear how much expenditure the SPS will be required to incur to settle cases brought by prisoners alleging breaches of human rights—or, indeed, whether there will have to be any expenditure. The Scottish Executive is appealing the decision by Lord Bonomy. If the appeal were successful, the requirement to recognise a provision and the contingent liability would disappear. In recognising the provision and the contingent liability in its accounts, the SPS has acted properly and in accordance with accepted accounting convention. In effect, the provision puts money aside to meet potential future liabilities and, in layman's terms, reduces the organisation's profitability in the year in which the provision is recognised. I am making this report because it relates to a significant potential sum of money, but it is not an expenditure that will necessarily be incurred and it should be borne in mind that Lord Bonomy's decision is being contested.

**Mr Welsh:** The NHS has similar problems and has to make similar provisions. Is the practice spreading throughout other public services? Are public resources being tied up in this way across the public sector?

**Mr Black:** It is the accepted practice of all public bodies to observe normal accounting standards and make provisions and note contingencies if they think that those are likely to occur.

**Caroline Gardner:** The contingent liabilities have no impact on the body's financial performance for the year. A note is made to the accounts disclosing the fact that the liability might come into effect. The liabilities do not constitute an item in the accounts that would affect the financial performance.

**Margaret Jamieson:** Are there going to be section 22 reports for every organisation that makes a provision of this nature? As Andrew Welsh said, the NHS has to make such provisions. Why treat the SPS differently now as opposed to the way in which it was treated in the past?

**Mr Black:** I have not treated the SPS differently from any other organisation. If there were a significant provision or contingent liability being made elsewhere, I would draw that to the attention of the Audit Committee.

In relation to the NHS, if an overview of the financial performance of the health service were due to come out, I might refer to a contingent liability in that context. As there was no way of reporting on the matter of the SPS's contingent liability other than through a section 22 report, I have chosen this route.

You have my assurance that any significant provisions and contingencies will be reported in an appropriate way to the Audit Committee.

**The Convener:** I presume that "significant" is a relative concept and that a significant sum for the NHS would be much larger than a significant sum for the SPS, given that the NHS spends some £5 billion a year.

**Mr Black:** That is absolutely true. To take that thought further, an organisation such as the National Library of Scotland might make a provision that, in absolute terms, is a small sum of money but which is significant for its business. Therefore, the judgment is taken relative to the size of the business. In effect, we are talking about matters that would, in accounting parlance, hit the going concern-ability of the organisation.

**The Convener:** We will now deal with the section 22 report on the 2003-04 audit of Argyll and Clyde NHS Board and then move on to consideration of the section 22 report on the 2003-04 audit of Lanarkshire NHS Board.

**Mr Black:** NHS boards are required to remain within an annual revenue resource limit, as the committee well knows. That limit is set by the Health Department. I reported under section 22 in relation to the 2003-04 accounts of Argyll and Clyde NHS Board because the board did not achieve its financial target in that year and, more significantly in this case, because of the auditor's concern that the board is forecasting that it will not balance in-year until 2007-08. By that time, the accumulated deficit will be in the region of £70 million or more. Serious concerns have been raised about the ability of the board to sustain service levels and retrieve the deficit.

The section 22 report is not a full performance audit of the board. As I said, it is a notification of a matter raised in the accounts that is of public concern. However, behind the section 22 report there is a detailed auditor's report, which is a publicly available document. If the committee were minded to take further its consideration of this matter or the matter of Lanarkshire NHS Board's failure to achieve its financial target in 2003-04, more information could be provided. It might be easier for me to answer questions on a subsequent occasion, but we will do our best to answer general questions today if that would be helpful.

**Margaret Jamieson:** Given the response of the Health Department to the NHS overview report, which we heard about earlier, I would have to ask why we are surprised about the situation with Argyll and Clyde NHS Board. Obviously, there are particular issues in Argyll and Clyde and this committee has taken evidence in that regard. From the section 22 report, it appears that Argyll and Clyde NHS Board is still not finding a way through its problems. When we move into private session, we should consider ways in which we can take account of what we have heard in relation to the overview report. I do not want to say too much more at the moment.

**The Convener:** If there are no further comments on the report on Argyll and Clyde NHS Board, the Auditor General can speak about the report on Lanarkshire NHS Board.

**Mr Black:** Like Argyll and Clyde NHS Board, Lanarkshire NHS Board did not achieve its financial target in 2003-04. The increase in the cumulative deficit in 2003-04 indicates that there might be an underlying financial pressure that could affect the sustainability of services in the longer term, although the situation is clearly by no means as self-evidently severe as it is in Argyll and Clyde.

The issue of financial performance, including an analysis of some of the underlying reasons for a failure to achieve targets will, of course, feature as part of my financial overview report on the audit of the NHS, which will be with you before the end of the year. That will give you a more general picture of what is happening across Scotland.

**Mr Welsh:** Our concern relates to systemic problems. We need to know what they are and what can be done about them. That needs to be brought to the fore.

**Mr Black:** The committee is right to be concerned about systemic problems.

**The Convener:** I welcome Susan Deacon to the committee.

**Susan Deacon (Edinburgh East and Musselburgh) (Lab):** I apologise for my late arrival.

**The Convener:** Your apologies have already been given.

**Susan Deacon:** I told the clerks yesterday that I had another engagement this morning.

I was not present for the committee's earlier discussion of the Health Department's response to previous communications, but I would like to endorse Andrew Welsh's comments about systemic problems. I hope that, in examining those problems, we can get to the heart of management practice issues in the health service. We often

discuss these issues in terms of the accountability of boards and so on but, in order to understand why certain elements of certain services go belly up financially and operationally, we need to drill down to management practice and capacity in the service. I hope that the work that the Auditor General is doing will provide us with an opportunity to do that.

**Mr Black:** I support Susan Deacon's sentiments. It is true that much of the financial overview reporting tends to take a top-down perspective. It is also true that when the Audit Committee has engaged with the individual health boards, a different perspective on what is happening in the system has been provided.

With specific regard to Argyll and Clyde NHS Board, I am confident that the past year's audit has given us quite a reliable and detailed picture of financial management and control. We might therefore be in a position to take that to the next level with you, which would go some way to addressing the concerns that Susan Deacon has raised, but that would clearly have to be done with the active engagement of the accountable officer concerned.

**The Convener:** If there are no further questions, we can discuss, under a later agenda item, section 22 reports and our response to them.

## National Fraud Initiative

11:15

**The Convener:** Under item 5, we shall hear a briefing from Russell Frith, director of audit strategy, on the national fraud initiative. Welcome to the committee, Russell. The floor is yours.

**Russell Frith (Audit Scotland):** Thank you, convener. The national fraud initiative is a major fraud detection exercise, which has been carried out by the Audit Commission in England and Wales since 1998. It puts the public sector payrolls, pensions and housing benefit data all together in a pot and looks, using computer techniques, for matches. Those matches are then reported back to the bodies that have contributed so that they can follow them up further and determine whether any fraud has taken place.

I shall give a couple of examples of the type of things that emerge, which should help to illustrate how the exercise works. In local government and in the NHS, examples have been found of an employee having full-time employment at more than one local authority or more than one NHS body. That is clearly an incompatible position and it is only by carrying out an exercise such as the national fraud initiative across a whole range of public sector bodies that we can hope to detect that type of fraud.

Similarly, there have been a large number of cases in which employees in the public sector have not declared their income when they have been claiming housing benefit or council tax benefit. Occasionally, that is within the same authority, but more often it happens when employees have been living in one authority area and working in another. In England and Wales, there have been several hundred cases of that each time the exercise has been run.

In Scotland, in 2002, we carried out a pilot exercise covering only the local authority pension schemes and the NHS and teachers' pension schemes. That data-matching exercise was relatively limited, because what it was doing was matching those records against the Department for Work and Pensions data on deceased persons. All pension schemes, as part of their normal control procedures, write out to their pensioners every few years, essentially to establish whether they are still alive. That can pick up error, but if the pension is being claimed fraudulently after the pensioner has died, it is a very easy system to defraud. However, the matching exercise does a 100 per cent match of pensioner records against the DWP's register, and the 2002 exercise detected 199 cases in Scotland where the pension was still being claimed after the pensioner had



died. We estimate that there were overpayments of £720,000 and, given that those fraudulent claims would probably not have been detected, the estimated saving to the public purse is around £8 million. Therefore, even that pilot exercise was very worth while.

For the 2004 exercise, we are widening the data sets quite considerably. We are including local government employees, police and fire service employees, all the pensioners who were previously housing benefit recipients and student award recipients. So that we can be seen to be whiter than white, our own payroll will also be included. The exercise will be carried out on our behalf by the Audit Commission; because the commission has the infrastructure and technology in place, it is much more efficient and effective for us to buy into that system.

The data will be drawn down this month. The matches will take place over the next few months and be reported back on early in the new year to the participating bodies, which will then spend the following months examining and prioritising the matches that they have been given and following up those that have a high priority. Once the whole exercise has been completed, we hope to come back with a summary report, but that will not happen until the end of 2005 at the earliest.

**The Convener:** Will that report be laid?

**Russell Frith:** That has yet to be determined, because the content will have a very strong local government element. As a result, it could be a joint report with the Accounts Commission.

**The Convener:** Thank you for that briefing, which I think might have provoked a few questions. Do members want to raise any points of clarification or information?

**Mr Welsh:** I am somewhat struck by the fact that so much of the committee's work comes down to plain common sense, which simply leaves us to ask why such an exercise has never been carried out before. Indeed, we should welcome it, given the fact that large sums that could be used for other services are being defrauded from the public purse. I wish you every success in your efforts.

**Margaret Jamieson:** I welcome the fact that this exercise is being carried out at a Scottish level, but we will be able to learn lessons from it that will allow us to introduce it in each of the audited bodies to ensure that they are carrying out checks themselves. Obviously, such an exercise will apply to those bodies' own internal audit procedures. When your report is complete, will you consider which elements of best practice should be disseminated to all the audited bodies?

**Russell Frith:** Yes, to an extent. Most of the audited bodies already have internal control

procedures. Instead, this exercise looks across organisations. Although we would prefer it to be carried out as part of the usual control mechanisms within bodies, we found that the legal powers to do so lay better with auditors than with those bodies.

**Margaret Jamieson:** Is the exercise being carried out to comply with the Data Protection Act 1998?

**Russell Frith:** Yes. That is also the reason why we cannot currently carry out cross-border matches. Scottish data will be matched only with other Scottish data, not with English data, because our powers to obtain information in Scotland and the Audit Commission's powers to obtain information in England relate only to our own geographical areas. The UK information commissioner has expressed considerable concern about carrying out cross-border matches.

**Susan Deacon:** Margaret Jamieson has anticipated my question about the cross-border issue and the legal constraints in that respect. Should we query that matter?

**The Convener:** I certainly think that, as a member of the Scottish Parliament, you can query the matter, because it highlights an area in which freedom of information and data protection come into conflict. It is only proper to ask whether such an approach is right in this case. However, I suspect that it will not be easy for the committee to take up the matter.

Mr Frith, I found your information very illuminating and, like Mr Welsh, I am encouraged by the fact that such action is being taken. Is there a communications strategy that lets people know that this work is being carried out and highlights the type of evidence that is being sought from participants to make it clear to those who might be thinking about defrauding the public purse that efforts are being made to track down such activity and that they can be caught? I imagine that the knowledge that such action is being taken will reduce the incidence of such behaviour.

**Russell Frith:** Over the past couple of weeks, we have put out a press release about the exercise, and all the participating employees and pensioners are being individually notified that it is being carried out.

**The Convener:** That answer is useful. As members have no other questions, I thank Russell Frith for his helpful briefing. We will now move into private for item 6. I ask members of the public and the press to vacate the room.

11:24

*Meeting suspended until 11:42 and thereafter continued in private until 12:45.*



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