



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 14 December 2016**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Wednesday 14 December 2016**

**CONTENTS**

	<b>Col.</b>
<b>“LOCAL GOVERNMENT IN SCOTLAND: FINANCIAL OVERVIEW 2015/16” .....</b>	<b>1</b>
<b>BREXIT (IMPLICATIONS FOR SCOTTISH LOCAL GOVERNMENT) .....</b>	<b>19</b>

---

**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**15<sup>th</sup> Meeting 2016, Session 5**

**CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**DEPUTY CONVENER**

\*Elaine Smith (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Ruth Maguire (Cunninghame South) (SNP)

\*Graham Simpson (Central Scotland) (Con)

Alexander Stewart (Mid Scotland and Fife) (Con)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Stuart Black (Highlands and Islands European Partnership)

Ronnie Hinds (Accounts Commission)

Helen Martin (Scottish Trades Union Congress)

Fraser McKinlay (Accounts Commission)

Martin McLauchlan (Audit Scotland)

Professor James Mitchell (University of Edinburgh)

Councillor David O'Neill (Convention of Scottish Local Authorities)

Jim Savege (Society of Local Authority Chief Executives and Senior Managers)

**CLERK TO THE COMMITTEE**

Clare Hawthorne

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Local Government and Communities Committee

Wednesday 14 December 2016

*[The Convener opened the meeting at 09:37]*

### “Local government in Scotland: Financial overview 2015/16”

**The Convener (Bob Doris):** Good morning. Welcome to the 15th meeting in session 5 of the Local Government and Communities Committee. I remind everyone to turn off their mobile phones. Meeting papers are provided in digital format, so members might use tablets during the meeting.

We have received apologies from Alexander Stewart.

Agenda item 1 is an evidence session on the Accounts Commission report, “Local government in Scotland: Financial overview 2015/16”. I am delighted to welcome from the Accounts Commission Ronnie Hinds, who is the deputy chair, and Fraser McKinlay, who is the controller of audit; and, from Audit Scotland, senior auditor Martin McLauchlan. I invite Ronnie Hinds to make a short opening statement.

**Ronnie Hinds (Accounts Commission):** I had prepared some opening remarks, but the committee will be pleased to hear that I am not going to stick to them. I will make one or two brief observations and then we can devote our time to the questions that you want to ask.

At the risk of stating the obvious, local government finance is exceedingly complex. I say that because I want to sound a cautionary note in relation to everything that we have said in the report. We departed from our previous practice—which, as the committee will know, has been to produce an annual overview report that covers not only local government finance but other aspects of local government services, governance and so on—precisely because the issue is complex. We thought that it would be better to try to devote some dedicated time and space to an exposition of some of the more obscure but important aspects of how local government is funded.

The timing of the report is no accident, either. We took the view that, at this time of year, a piece of work that tries to shed some light on some of those issues in the context of the annual debate about how local government is funded and how the money is spent would be of great use to the public, the committee and other interested parties.

With that in mind, we are more than happy to answer questions that the committee might have about the report.

**Graham Simpson (Central Scotland) (Con):** You say in your summary that

“All councils face future funding gaps”.

What do you mean by “funding gaps”?

**Ronnie Hinds:** At a later section of the report, we set out the nature of the gaps that local government is likely to face. I will make one or two brief remarks, then Fraser McKinlay and Martin McLauchlan might want to say more.

There is a limit to how much crystal-ball gazing auditors can undertake, but what we are doing is making some assumptions based partly on what we have seen in the past but also on current trends about what is likely to happen in local government funding over the next two to three years. The reason why we think it likely that there will be funding gaps is that there have been funding gaps already. A similar standpoint taken two, three or five years ago would have shown that pattern emerging, although perhaps not quite to the same extent.

I caution that the term “funding gaps” might be interpreted by some people as meaning that there is some kind of black hole in local government finance. That is not what we are saying. We are saying that, at this point in time, councils that are looking at a two or three-year horizon will not have managed to anticipate how they will square off the budget, as they have to do under statute, by reconciling, on the one hand, pressures that they have in relation to service delivery and demand and, on the other hand, a likely reduction in funding. As the report makes clear, we are using estimates and assumptions to try to get a picture of that.

The main point that we make is that even if nothing else were done, there is, generally speaking, good cover for the first couple of years, in terms of the reserves. We do not think that use of reserves is a sustainable way of closing the gaps and reconciling the difference between expenditure requirement and funding. However, in every case in recent years when there has been a gap, local government has gone back to the drawing board and come up with further options for savings. We fully anticipate that that is what will happen in the next few years; it is just that we cannot, at this point, identify what the savings will be in every case.

**Graham Simpson:** For clarity, your definition of a funding gap essentially concerns the difference between forecast income and likely expenditure. Is that correct?

**Ronnie Hinds:** Yes.

**Martin McLauchlan (Audit Scotland):** It might be useful to add that we are talking about expenditure reduced for the approved savings in 2016-17. We are saying that the funding gap is the difference between what will be spent, assuming that all the savings are made, and the income. In the model, we have shown that that is being funded from the general fund reserve.

**Graham Simpson:** You say that that is not a black hole, but that sounds like a black hole to me.

**Ronnie Hinds:** Well, it is not a black hole. Elsewhere in the report, we make the point that we strongly think that councils should take a long-term view in their financial planning, and we identify where that is happening and where it is not happening. We accept that it is more difficult to do when they have to deal with one-year settlements, as they have for the past couple of years. There is no way of knowing at this point in time whether that pattern will be repeated in the years that lie ahead. However, we think that councils should plan for the long term.

One of the reasons why there is a difference between councils' projected expenditure and their projected income is that we cannot, in every instance, see how councils would close those gaps based on the assumptions that they would have to make. However, we know that in every case in the past when that has been an issue, councils have squared that off, which you can see from the performance on the outturn. We say at the beginning of the report that councils have managed their finances well, even though two to three years ago they might have had funding gaps. In such situations, councils find other savings, so there is not a black hole.

**The Convener:** When the report was published, the biggest piece of publicity about it was that it was not as bad as people thought it was going to be. It shows quite shrewd financial planning on the part of local authorities and the existence of robust reserves, although it also shows that there are quite significant challenges to be faced. The bit that has attracted some political attention concerns the on-going debate about whether local government has been targeted more or less than the public sector more generally. The report says fairly early on that the 8.4 per cent real-terms cut over the period is, by and large, similar to the revenue cut to the Scottish budget. That will be used by all political parties in Parliament and interpreted in various ways, but what would you say about it?

09:45

**Ronnie Hinds:** I will ask Martin McLauchlan to give a detailed explanation of how we came up with the statistics on that. All that I will say is that

we stand by the figures in the report. It depends on what question you are trying to answer. The question that we were trying to answer was this: in relation to the flow of funds from the Westminster Government through the Scottish Government and eventually down to local government, what is the comparison between the reductions that have been faced by the Scottish Government on the one hand and local government on the other? We asked that question with an open mind, not knowing what the answer would be, and the answer is what we say in the report. In coming to that conclusion, we have treated certain relevant flows of funds, including non-domestic rates, in a particular way. I will ask Martin McLauchlan to explain more about that and why we have done it.

**The Convener:** That is helpful, because I was going to ask about non-domestic rates, so you have saved me from asking the question. It would be helpful if Martin McLauchlan could say how those have been accounted for.

**Martin McLauchlan:** Certainly. The easiest way of thinking about it is that we looked at the totality of funding for local government against the available Scottish Government budget, making the assumption that non-domestic rates will flow directly to local government. Taking the revenue grant funding, the non-domestic rates and capital grant funding, we get the cut of 8.4 per cent that we included in the report. We compared that to the revenue and capital DEL—departmental expenditure limit—elements, or spending limits, of the Scottish Government budget, in which there was an 8.7 per cent reduction.

As I said, we looked at the total against the available, so we excluded NDR from the Scottish Government side. The Scottish Government provides guaranteed revenue funding, which is from non-domestic rates and revenue grants. As we say in the report, in recent years non-domestic rates have been making up an increasing proportion of that total revenue funding. The figures in exhibit 2 and the paragraphs leading up to it can be used to demonstrate that an increase in non-domestic rates has offset some larger reductions in the revenue grant proportion of that funding. It really depends on what you compare.

**The Convener:** I seek clarity on the cash flow from non-domestic rates. We looked at the issue when we considered council tax matters. The rates are retained by local authorities, but there is a revenue adjustment that takes into account what the Government calls a needs-based formula. The rates therefore appear in the income side for councils and not on the revenue support side from Government to local authorities.

**Martin McLauchlan:** If you like, the revenue support side is calculated as a total revenue support, and the grant is a balancing figure

between the total and the non-domestic rates. If a council, for whatever reason, achieved an increase in its non-domestic rates over and above what was forecast, there would be a corresponding reduction in the revenue grant support. The totality of revenue funding is made up of those two balancing figures.

**The Convener:** Okay. So, in essence, the rates are counted.

**Martin McLauchlan:** They are counted—

**The Convener:** I am not an accountant. I am just looking for simple clarity.

**Martin McLauchlan:** In calculating the reduction in the Scottish Government budget, we have not included non-domestic rates. We looked at the departmental expenditure limits, on the capital and revenue sides, that have been set for the Scottish Government.

**The Convener:** Right. It might be helpful, for my benefit if not for the rest of the committee's, if you could send the committee a note outlining that in more detail.

I want to ask whether other amounts were included. We want to understand the figures better but—local authorities will not appreciate my saying this—I am pleasantly surprised by the numbers, given the heat around local authority budgets at the moment. Did you include the £250 million that comes from the Scottish Government to health board budgets but that is transferred pretty much in its entirety to local authority social work services, irrespective of the delivery model for that?

**Martin McLauchlan:** No. We exclude that, because it does not appear within local government funding settlements and it does not appear within the portfolio that it is part of. It appears within the health budget. We have excluded that money because it is not explicitly within the local government funding settlements. However, it is recognised within councils' accounts as a source of income.

**The Convener:** Okay. I think I understand why you have treated the money that way: if it were to show up in both the health budget and the local authority budget that could be deemed to be double counting, I suppose.

The committee is still doing its budget scrutiny on local government, cost pressures and everything else. The Scottish Government has asserted on several occasions that the real fall is about 1 per cent in budgets if we include that £250 million. The money definitely alleviates potential cost pressures within local authorities' statutory duties, but it does not show up in their funding. Would you consider doing a small piece of work so that we can see whether the Scottish Government

is accurate in its assertions or what the real position is? It would be helpful for the committee to understand that better.

**Fraser McKinlay (Accounts Commission):** You might remember that we had this very discussion regarding the overview report that we presented to you earlier in the year. There was some disagreement between us and the Government about the numbers that we came up with. We did not come up with the 1 per cent figure—it was the Government's number and we can see how it came up with it. For the reasons that Martin McLauchlan set out, however, that £250 million officially went into the health budget. Beyond that, there is a debate about exactly what then happened to that money. You heard some of that in the committee a few weeks ago, when you had what looked like a very interesting discussion with folk from local government.

I take the convener's point about simplicity and clarity. We are trying to get to that, but the situation is very complicated, and is further complicated when Government says, "This money is kind of for local government but we are putting it into the health budget." We are not including that amount in the numbers because, in practical terms, it was not there. As you know, at least half the money, or thereabouts, was taken up by the living wage element. For those reasons, we have excluded that figure from our calculations on the local government settlement.

**The Convener:** Would you consider doing a piece of work on that? We are here as committee members, but we also sit as party members in plenary sessions in the chamber, and we latch on to such numbers to make the most convenient use of them during debates for whatever political party we happen to represent. It would be quite good from a committee point of view to have clarity on the impact of the numbers.

**Ronnie Hinds:** The Accounts Commission has already produced a report on health and social care integration, which is the first of three reports that we intend to produce. The second one, which is due in the next year to 18 months, will examine, among other things, what has happened with the new authorities—the integration joint boards that are in the early stages of their development. Part of that will have to be about what funding flowed to them and from where, how it was used and how effectively it was used. Was it used out of necessity? We will have to consider the questions that you are asking. All that we have been able to say about the joint boards at this stage is that they, too, are complicated, which is partly because of the governance that surrounds them; compounding the complications that we have already described around local government finance, we have the complexities of the

governance of those bodies. Until that settles down, we will not know for sure how much money flowed into them and for what purposes it was used, but we will certainly be considering that as part of the next phase of that work.

**The Convener:** I will move on.

The Scottish Parliament information centre has prepared a really helpful briefing on some of the numbers. I want to get a couple of questions on the record before I bring in my colleagues. How do you account for the transfer of police and fire service powers and the associated funding in 2013 to make figures comparable between different years? Does your approach in that differ from that of the Scottish Government?

**Martin McLauchlan:** Up to the point when the services were transferred from local government to central Government, there were elements in the local government funding settlement for police and fire services grant.

Our approach to using draft budget documentation has always been to remove the police and fire service budgets from it. We slightly altered our method this year because, as well as the overall grant for those services in the funding settlements prior to 2013-14, there were elements of ring-fenced funding—commonly referred to as top-slicing—for police and fire service pension costs. Therefore, to create a better distinction between the two funding flows, we have removed that from our prior year figures.

Our approach differs slightly from the work that I have seen from SPICe researchers in that they have taken the opposite approach. From 2012-13 onwards, they added the police and fire service funding back in in order to compare it on that basis. The two approaches are equally valid, but we take our approach so that it ties back directly to the settlement figures.

**The Convener:** The key thing is that you exclude the figures, irrespective of where they appear in the budget line, so that we look at comparable figures throughout the years. Is that correct?

**Martin McLauchlan:** Yes.

**The Convener:** That is simple and clear for me. I like that answer.

Why is the figure for the revenue reduction since 2010-11—deemed to be 6.8 per cent—different to the figure that is cited in the local government overview report that was published in March 2016, which mentioned 11 per cent? That is not from my reading of the reports, but from information that was prepared for the committee. It has been pointed out that there is a difference, so an explanation of that would be helpful.

**Martin McLauchlan:** For the reason that I just outlined, where we have made a further adjustment for the ring-fenced funding that is primarily for police and fire service pensions, that has had the net effect of reducing what we classify as local government funding for 2010-11 by approximately £300 million. If you compare the current year to 2010-11, that follows through, and the corresponding percentage reduction is reduced.

Although the funding settlements are comparable across the years, there are elements of funding—for ring-fenced national priorities, for other ring-fenced priorities or for any other priorities—that are included. Although we treat it as total local government funding, there are discrepancies in what is included each year. We felt that this year, in order to better separate the impact of police and fire service funding being reclassified, we would look again at our earlier figures and adjust for the top-slicing.

**Elaine Smith (Central Scotland) (Lab):** Welcome to the committee. Mr McLauchlan, you mentioned the ring fencing and, in paragraph 15 of your report, you talk about funding to support the implementation of national policies. Is that included in the 8.4 per cent—it is mentioned in paragraph 14—that the Scottish Government gives to local government for national purposes?

**Martin McLauchlan:** Yes, that would be included in the totality of the funding. In paragraph 16 of the report and in the footnotes to exhibit 2, we outline some of the larger elements that perhaps do not appear in each year.

**The Convener:** I will leave that sitting as I know that Mr Wightman wants to come in; perhaps you could come back to us with a note on that. It made me think about the national and local priorities. We have the £100 million attainment fund that will be raised each year. That is a national priority that is raised locally, but education is a statutory duty of local authorities. It is not always clear what is national and what is local. Coming into the mix, we also have city deals with support from Westminster and from the Scottish Government. Some of that could deal with projects that local authorities have already commenced, so financial pressures elsewhere could be alleviated.

It is becoming overly complicated to look at the local authorities' financial position. Government, by definition, tries to make the position look as strong as possible for local authorities, while local authorities, by definition, try to make the position look as bleak as possible. The committee wants to look at the specific figures as best as we can, and you guys are best placed to do that job. Please answer if you want to, Mr McKinlay; some information in writing would also be helpful.



**Fraser McKinlay:** We absolutely agree. One of our reasons for doing the report was to bring some clarity to the situation. Now that the report is out, we will gather people together in the early months of next year for a wider conversation about how best to present that stuff. SPICe does it a bit differently, we do it a bit differently and well-respected organisations such as the Fraser of Allander institute produce stuff, too—those reports all have slightly different numbers. The Accounts Commission can bring together all those people and have a conversation about how we can best present some of this very complex data in a way that is consistent and which might provide a bit of clarity. We can try to influence that over the next few months.

10:00

**The Convener:** That is helpful.

**Andy Wightman (Lothian) (Green):** I thank the witnesses for coming. I was about to make the very point to which Fraser McKinlay has just responded. All the internal advice that we have had in respect of funding for local government vis-à-vis the Scottish Government shows that local government has suffered a disproportionate cut. To this day, I simply do not understand—**notwithstanding Martin McLauchlan's** explanation—how non-domestic rates can be included on one side of the equation but not on the other. However, I will leave that issue for now—we can revisit it. It would be helpful for members and the public to have one set of data with figures that could be understood, given that what we are seeing today is different from other sources, although you have addressed that issue.

I move on to fees and charges, which now account for quite a large portion—£4.8 billion—of local government's income. Have you investigated the extent to which those fees and charges have grown, and in which services that growth has occurred?

**Ronnie Hinds:** The short answer is no; we have not done so as yet. One of the reasons that we thought it would be worth our while to do a separate piece of work was that—as I described earlier—it allowed us an opportunity to peel away the layers of the onion. As you said, fees and charges are a significant component.

The hypothesis might be that, in light of other funding pressures, councils have increased fees and charges in order to avoid cutting services, but at this stage it would be only a hypothesis—we do not have the evidence to show whether that is the case. As a result, we are minded to do a dedicated piece of work as part of our performance audit programme, or to look at the area in more detail at an overview level, perhaps as early as next March

when we produce the overall report on local government. We think that fees and charges are an interesting issue.

As an aside, we know that south of the border—where the funding pressures on councils are, if anything, more extreme—there has been a significant increase in fees and charges as a way for councils to avoid some of the worst cuts that they face. At this stage, there is no way of saying whether that is happening to any extent north of the border, but it would be an interesting area to look at.

Our sister organisation in Wales has taken a detailed look at how fees and charges in local government have been treated there. That has raised many interesting questions, not only in respect of the level of the increase—if there has been one—but on the policies, strategies and so on that inform those fees and charges. We think that that area is worthy of investigation, but at this stage all that we can tell you is what we say in the report—namely, that fees and charges are a growing and significant component but that we do not have a breakdown.

The other key point that we make in the report is that, from our point of view, the current way of counting for fees and charges is less than wholly satisfactory. It is difficult to pull fees and charges by themselves out of the local authority accounts because there are other elements of funding that we would not regard as fees and charges but which are accounted for in that fashion. We would like to see some changes to that, because it would help with our work and it would help the public to understand what is happening with fees and charges in their area.

**Andy Wightman:** Thank you—that is useful. For me, and for many of us, the worry is that fees and charges are, in a sense, a regressive flat tax.

I have one final question, which I raised with you at a previous meeting. What are your thoughts on the establishment of a fiscal framework for local government funding, similar to that which exists between the UK Government and Holyrood, in order to provide some certainty? You have identified a funding gap, but one of the problems for local government in planning its finances is that it is never entirely sure what the consequences will be of the actions that it takes at its hand vis-à-vis the national policies that Government may want to implement. In my view, that leads to a degree of uncertainty. Have you had any further thoughts on that question?

**Fraser McKinlay:** As we said previously, it is clearly for the Scottish Government and local government to decide whether there should be a version of a fiscal framework. We would say that anything that helps with clarity and the ability to

plan for the long term is a good thing. Whether that would be a framework or a set of assumptions is up for debate, but anything that helps, in this instance, councils—we say the same thing about health boards in other parts of our work—with that longer-term and more strategic financial planning has to be a good thing. We absolutely recognise the challenge of doing that in a world where we have annual settlements but, if anything, that makes it even more important that councils can plan for the medium and long term.

**Elaine Smith:** Can we go back to fees and charges for a moment, please? Overall, the report seems to indicate—as you said at the beginning, Mr Hinds—that the state of financial health of councils is perhaps not as dire as might have been thought previously. However, is that due to councils managing cuts by looking at things such as the loss of staff? If a council loses staff, it faces big costs at the beginning but it may save money further down the line. However, people will lose their services, because a big part of what local government does is providing services through the people that it employs. Is that part of what you will be looking at?

**Ronnie Hinds:** As part of a review of fees and charges?

**Elaine Smith:** Yes. Will you be looking across the whole state of council finances? I presume that fees and charges have to fit in with that whole picture.

**Ronnie Hinds:** We have not yet sat down and specified the piece of work that I described earlier, so I cannot say for sure whether we will include workforce issues as part of it. However, they are significant and largely distinct elements of what councils have to do, not just to set their budget every year but to address the reductions that they have had to make in recent years.

The lion's share of the reductions that we see councils making impacts directly on the workforce. We have commented on that in previous reports and we touch on it again in the report that we are discussing today. Our line on that is that we fully understand why it has to happen. Over 60 per cent of the costs of local government are the costs of paying staff, so there is no way of making the savings without making staff reductions. However, we would like to see a more consistent approach to workforce planning accompanying that.

The concern might be that, without that consistent approach—this is a parallel to what Fraser McKinlay said about taking a long-term view in financial planning—we will find ourselves in a situation where the ways in which we have to deliver services because of the transformation programmes and the changes that we have had to make to address funding do not fit the workforce.

We might end up with square pegs in round holes, if you like.

It is all very well to take a long-term view, plan for scenarios and adjust the workforce down the way because that is the way that funding is going, but we want to ensure that we are left with a workforce that is fit for purpose. To the extent that that touches on fees and charges, I agree with you, but they are a separate sphere of the budget process and we will probably want to focus on them because they raise interesting questions in their own right.

**Elaine Smith:** On fees and charges and some of the questions that they raise, do you envisage looking at the changing nature of local government around that? We have perhaps moved away from the universal approach where local government took its grant from Government and drew in funding as it desired through its tax elements and then provided services universally. Now, we find that, if we take the example of community alarms, certain elements of the population are paying rather than there being a universal approach. Burial charges are perhaps another example. Will you consider that as part of your review?

**Ronnie Hinds:** Absolutely. If we do it, we will want to look at fees and charges across the board, because they cover a multitude of areas and they are all different. You mentioned a couple of examples. We will be interested in a range of questions. I will not detain you by covering them all, but one is the policies that the councils are employing.

Under one approach, a council will say, "Needs must—we have to avoid the worst of the savings, so we'll increase fees across the board by the rate of inflation or some other figure." That is a valid approach, but we would ask whether it sufficiently respects the differences between charges for one thing and fees for another. Another council could take a different, more forensic approach, looking at the different fees and charges in their own right and coming up with individual policies around them, and there could be different points on that spectrum. Those are the kind of questions that we would be interested in.

The report points out well enough why we would want to look at that matter, although that is a bit of a gleam in our eye at this point. Fees and charges are a significant part of overall funding. As other elements reduce, of necessity fees and charges go up as a proportion.

**Elaine Smith:** I think that the committee would be interested in coming back to that.

**The Convener:** We could certainly consider that.

**Kenneth Gibson (Cunninghame North) (SNP):** I endorse that. I would certainly be interested in coming back to that, and I am sure that we all would.

It really hits us between the eyes that the figure for service income, fees and charges is £4.8 billion. That is significantly higher than the housing and council tax income combined for local authorities, which is £3.3 billion, and is more than a quarter of the total income. We often hear that local government apparently raises only around 20 per cent or less of its income, but the graph in the report seems to suggest that it raises slightly more than 40 per cent when we include fees and charges.

In response to Elaine Smith, Mr Hinds talked about uncertainty. Paragraphs 72 to 74 of the report emphasise that

“Good financial planning and management are required to ensure the impact of spending decisions is fully understood”.

Those paragraphs say that it is “imperative” that councils have “long-term financial strategies” and that

“the absence of indicative funding should not prevent councils projecting future income and spending”.

They go on to point out:

“Three councils (East Renfrewshire, Glasgow City and Highland) do not have a financial strategy covering the medium or long term.”

What is the potential impact of not having a financial strategy in place?

**Ronnie Hinds:** If people have not looked far enough into the future to see what situation they might be faced with against the expectation or assumption that they have to make about their funding and the demand for their services, the risk is that, when they come to the annual budget-setting exercise, which is a highly pressured event, as MSPs will no doubt appreciate, they might not make the optimal decisions or might make decisions that, a year later, they will regret or seek to amend because of events that have transpired. We cannot say that we have evidence of that happening on an individual council basis, but that seems to us to be a prima facie risk. That is said in that section of the report.

We also think that the longer-term financial plans or strategies should ideally be aligned with a bigger plan or strategy for the council. Councils have those plans and strategies for themselves and as part of their membership of community planning partnerships. Therefore, the bigger picture of the vision and the strategies exists, but we find that they are not always aligned or joined with the financial plans. Sometimes they are out of sync because they have been produced at

different times and they expire at different times, and sometimes the connections that could have been made are not made because they are treated as separate exercises. That seems to us to compound the risk that the savings that have to be made in an annual budget exercise will be the wrong ones or not the best ones, because they have not been looked at in the context of a financial plan that clearly marries up with the overall strategy. Those are risks.

I would not single out the three councils that were mentioned and say that they are more at risk in that regard, but we think that it is fair to point out that some councils are able to look beyond the one-year horizon, so there is no reason why they cannot all do that.

**Kenneth Gibson:** Given what you have said, it seems to me that those three local authorities would be at greater risk. Surely if there is no financial planning, that could mean, as you have indicated, greater pain than would otherwise be the case. It could mean a mismatch between the staff who are required, the resources that are available to pay them and, indeed, the service demands that are put on them. Surely we have to do more to encourage all local authorities to take forward medium-term and long-term financial planning.

**Ronnie Hinds:** I agree. That is very much the message that we have communicated in the report and some of its predecessor reports.

**The Convener:** There are a couple of issues that I want to ask about before we end this session.

The report talks about planned spending and underspends and overspends across various services in local authorities. I am interested in that, as I asked a similar question during our budget scrutiny about a £160 million reported underspend in nursery provision. Money was provided to local authorities, and the Government said that it had not been spent for that purpose. It is fair to say that one or two of the local authority representatives got a little bit prickly when I asked about that.

10:15

The reason for asking about that was not to question why they had not spent the money; rather, it was to do with the dynamic around the use of money. For example, if money is given to local authorities for a particular function and the work can be done efficiently and the underspend can be transferred from one service to another, that would be a good use of resources. I would not quibble with that.

How should we read statistics on underspends or overspends in the report? Is a piece of work needed to follow the public pound—whether it is ring-fenced revenue support from the Scottish Government or otherwise—and look at the outturn report at a local level? It seems to me that if authorities do not hit their budgets on the nose, they might be worried that they would get less money next time. Consequently, they hit the budgets on the nose, but that does not necessarily encourage efficiencies in delivering the systems.

Do you have any comments on local authority underspends at a departmental level?

**Fraser McKinlay:** There are two slightly different issues at play there. One issue—this would require a specific piece of work—is the amount of money, which we have referred to, that the Scottish Government gives to local government for specific purposes and the extent to which that is then spent on that purpose, which might be an overspend or an underspend. Our report focuses mainly on the more general overspend and underspend position. If it would be helpful to the committee, we can write to you with a bit more detail about some of the individual service areas that make up the likes of exhibit 5, where we talk about the overall underspend and overspend.

The picture is complex. There are some patterns, but there is also enormous variation across the country, depending on which council you are in.

Our general observation is that the nature of the underspend or overspend is as important as its size. We are most interested in the extent to which it is planned or unplanned. If, at the end of the year, you suddenly discover that you have underspent your budget by 10 per cent, that would not be a terribly good thing if that was not the plan, because presumably that money had been earmarked to be spent on something. Equally, if you discover at the last minute that you will be overspent, that is not great either. If you plan to do the work as part of a longer-term strategy, that is quite a different set of circumstances. Therefore, a more qualitative assessment of the nature of the spend is needed. In the report, we were trying to give a sense of where councils are overall in relation to living within their means.

**The Convener:** That is very helpful. I am sure that Mr Gibson, given his time convening the Finance Committee, will concur that, as legislation goes through the Parliament, there is a tussle—or negotiation—between the Convention of Scottish Local Authorities and the Scottish Government over what should or should not be in a financial memorandum and what the numbers should look like. However, we are not the Finance Committee; we are the Local Government and Communities

Committee. I am quite interested to know what happens in practice in years 2 and 3. Any work in that regard would be quite helpful.

I want to mop up on another issue—my question is inspired by the deputy convener's question on staffing. I met workers from Glasgow City Council's information and communications technology team who were striking over an outsourcing dispute and their employment moving from Glasgow City Council to a private company. I will make no comment on the dispute, but they made the point that they would no longer be employed by Glasgow City Council if the plans were to go ahead. Would such a change show up in figures on staff cuts? They would still be employed, but they would say that that employment could have weaker terms and conditions—and therein lies the dispute. Across local authorities there could be examples of headcount not going down, but the number of directly employed public sector staff going down. Arm's-length external organisations would sit within that, too. Do you have any comments on that?

**Ronnie Hinds:** Your reference to ALEOs is apposite. An issue that we have to contend with when trying to analyse workforce trends is that what first might appear to be a reduction turns out to be just what you are describing—a transfer. Ostensibly, the same number of staff could be employed, but by a different employer so they would no longer feature in a given council's employment records. We always have to keep an eye open for that and make an adjustment.

That takes us back nicely to the opening discussion. It depends on the question that you are trying to answer. If the simple question is how many people the council employs, there is a ready-made answer to that. If the question is how many people provide public services, the answer would be different. You need to be clear about what it is that you are trying to demonstrate.

**The Convener:** The clerking team has helpfully passed me a note to say that I should remind everyone that, on 21 December, we will hear from the Cabinet Secretary for Finance and the Constitution and the Minister for Local Government and Housing as part of our budget scrutiny work. If the panellists want to provide any information, it would be helpful if we could get that—along with the additional information that we have already asked for—before then, although I do not want to put any pressure on you in that regard.

As this evidence session is pretty much concluded, I afford the witnesses the opportunity to add a comment before I suspend the meeting. We will then move on to the next agenda item.

**Ronnie Hinds:** I will raise a point that has not come up in discussion but which might be quite significant in the context of the report. The easiest way to explain this is to ask you to look at exhibit 4, where we try to demonstrate, on a net expenditure basis—we have knocked off the fees and charges that we talked about—a trend in relation to the impact of the reduction in spending over the five-year period.

I make the simple point that, as we have said, there is a debate about how much of the funding available to the Scottish Government is being dedicated to local government. When you get past that stage and into local government itself, there is then a debate about how best to spend the money—however much it is—including the council tax. Clearly, priorities come into those decisions, just as they do at the national level.

Exhibit 4 shows that—in a rough-and-ready sense—priority is being given to the preservation of some level of expenditure for education and social care. That can be seen in the diagram. However, because overall funding is on a downward trend, the impact on other services is commensurately significant. Furthermore, because those services represent a smaller proportion of the spending in the first place, any cut imposed is a bigger issue for them.

I will not say more than that at this stage, except to add that, if it is a five-year pattern that we are seeing and we anticipate that the next five years might look similar, that emphasises the point that we keep making about the importance of scenario and long-term planning. It would be better to go into the situation with one's eyes open, to see how things might look for transportation, for environmental services or for leisure and cultural services at the end of the five-year period, rather than to go through that period and then look back and say, "This is an interesting place that we find ourselves in."

**The Convener:** I apologise to the witnesses who are waiting for our next evidence session. Given that an important point has been drawn to the committee's attention, it is reasonable to allow Elaine Smith to ask a brief—I hope—follow-up question.

**Elaine Smith:** My question is on that issue; it is also on another issue—the debt—which has not been mentioned and which would affect the issue that has just been raised. We have not discussed the debt in any depth.

The report mentions the private finance initiative and the non-profit-distributing model in the same sentence. How do they fit together? In addition, Unite—I declare an interest as a member of Unite—has been talking about historical debt and

how that affects local government finance. Do you have any opinion on that at all?

**Ronnie Hinds:** So the question is about the debt—

**Elaine Smith:** —and how local government services are squeezed, as shown in exhibit 4.

**Ronnie Hinds:** I will take the second part, and I will ask Fraser McKinlay to handle the wider question about the impact of indebtedness.

You are absolutely right: if you have to look at making budget reductions, your room for manoeuvre is a key consideration. On the face of it, there is less room for manoeuvre. That is not to say that there is no room for manoeuvre, but there is less in relation to things that look like fixed costs, such as the repayment of debt and the interest charges that go with it. There is an exhibit in the report that shows the impact of that. It would be a further squeeze on the services that I have described as being afforded relatively less protection, if I can put it in those terms.

I ask Fraser McKinlay to have a go at the wider question about indebtedness and the affordability of repayments.

**Fraser McKinlay:** I have nothing much to add, other than to say that the commission has asked us to look at those issues as part of the forward work programme. It will probably be into 2018 by the time that we look to publish that report.

We recognise that the historical debt that PFI, public-private partnerships and their predecessors have established is an increasingly important part of the story for exactly the reasons that have just been described.

**The Convener:** Part of the debt that local authorities are struggling with might even be pre-devolution public debt from the Treasury. That debt might carry significant interest rates compared with current rates. That might reflect some of Unite's campaign, which you may or may not be aware of. It might be quite good to have a look at that. I do not have to declare an interest, but I have met the union, so I just wanted to reinforce the deputy convener's point.

I thank the witnesses very much for their time this morning. We have found their evidence very helpful, and I look forward to continuing the relationship.

10:24

*Meeting suspended.*

10:28

*On resuming—*

## **Brexit (Implications for Scottish Local Government)**

**The Convener:** Good morning, everyone, unless you have been following the meeting—in which case, welcome back. I am sure that someone out there is following this online.

Item 2 is an evidence session on the implications for Scottish local government of the United Kingdom leaving the European Union. My script says that today's session will take place in a round-table format—no, it will not. However, we have a number of witnesses attending. First, I convey apologies from David Eiser, a research associate of the Fraser of Allander institute at the University of Strathclyde, who was hoping to come along today but who is unable to make it.

I welcome Councillor David O'Neill, president of the Convention of Scottish Local Authorities; Jim Savege, Society of Local Authority Chief Executives and Senior Managers and chief executive of Aberdeenshire Council; Helen Martin, assistant secretary of the Scottish Trades Union Congress; Professor James Mitchell, co-director of the academy of government at the University of Edinburgh; and Stuart Black, Highlands and Islands European partnership and director of development and infrastructure at Highland Council. Thank you, everyone, for coming to this short session on the implications of Brexit for Scottish—indeed, United Kingdom—local government.

10:30

I will open the questioning by asking about one of the most striking aspects of funding for local government. As you will know, politicians are often drawn to the public pound and want to see what the financial position is. I see that the level of funding from European structural funds has been guaranteed to be met by the UK Government up until 2020. Someone might want to clarify that, but that is my understanding. Local authorities deliver roughly 30 per cent of those funds and, from 2014 to 2020, that will be roughly 30 per cent of about £900 million, depending on what is committed. That is a huge chunk of cash trickling through local authorities.

My local authority, Glasgow City Council, is the most significant delivery agent of those moneys and, as a constituency MSP, I am concerned about what could happen post-2020. Anything that our witnesses could say about assurances that have been given or the process pre-2020 would

be very welcome, given that around £450 million is still to be allocated through that process. That might be a good starting point—following the moneys and highlighting any reassurances or concerns that there are about the process pre-2020 or what will happen after 2020.

**Councillor David O'Neill (Convention of Scottish Local Authorities):** That is a very good question, especially following the evidence session that you have just had. In terms of long-term planning for local authorities, the only place where we currently have certainty for funding is European money. The settlements that we currently get from the Scottish Government are set on a year-to-year basis and we cannot do serious long-term financial planning on the basis of them.

So far, we have been assured that the programmes will be funded up to 2020. It is called M plus 2 funding and, if my understanding is right, we have two years after the end of a programme to continue the spend. That is reassuring. What is not reassuring is that we should be starting the planning for after that right now. We should be in that process, but there is absolutely no certainty about that, and that is a problem for us.

**The Convener:** That is helpful. Do any other witnesses want to add anything on the theme of structural funds?

**Jim Savege (Society of Local Authority Chief Executives and Senior Managers):** I reinforce that point. Many organisations are involved with the schemes and funding arrangements that are already available. Inevitably, as Councillor O'Neill has said, they will be looking forward to the next term and the next programme in drawing up a medium-term plan for their businesses, organisations and communities. The level of uncertainty that exists in looking forward even to two, three or four years' time is impacting people's confidence now in their ability to plan and look ahead. That may impact some of the existing commitments to programmes and delivery, as well, so there is potentially a double whammy.

**The Convener:** Does anyone want to add to that?

**Stuart Black (Highlands and Islands European Partnership):** The other point that came up in the previous evidence session was about the decrease in spending that is not protected by the Scottish Government. Match funding becomes a real challenge. For example, employability programmes are a major feature of some of the EU schemes at the moment and the council has to provide 50 per cent, or thereby, in match funding for those programmes, although that figure can vary. As local government spending is reducing in those areas at a higher rate, match

funding becomes a challenge. That is another issue that is worth considering.

**The Convener:** We may want to follow up on that. Councillor O'Neill, you talked about long-term planning; had the Brexit vote gone the other way—had there been a vote to remain—would local authorities, in all honesty, be planning now for spends in 2021 and 2022? Would they be doing the work on that? Is work being done on the assumption that there should be no detriment, and are local authorities gearing up for what potential applications would have looked like? Is that work still on-going?

**Councillor O'Neill:** The short answer is yes. European regional development funding is, by and large, for infrastructure projects and there is long-term planning involved in that. The European social fund is for employability and things of that nature, which tend to be fairly long term, so there is forward planning for that.

**Professor James Mitchell (University of Edinburgh):** One thing to note is that the EU is always forward planning. It will have already started planning for post-2020. Local authorities over decades of membership have been very much involved in those discussions from the outset—that is the key to understanding the EU and being successful in the EU. There is that process.

The point now is that, of course, local authorities in Scotland will not be involved in the next round. Local authorities will have to engage not with the EU but with the UK Government and the Scottish Government. It is a different ball game, and in that respect we do not know where we are. We cannot criticise local authorities for that. Until we have a clearer idea from the UK Government as to what is happening and what Brexit actually means, it is very difficult to engage.

**Stuart Black:** I also sit on the joint programme monitoring committee for European structural funds, which looks at the funds across Scotland. There is about to be a review of the programme's implementation. The programme was supposed to be from 2014 to 2020, and we are some way into that period. There is a mid-term review process. At that committee, I asked what is being done to look at the post-2020 scenario, because it is important that communities that are used to receiving community economic development funding, such as through the LEADER programme, should have some idea of what might come after Brexit.

**The Convener:** We are not in normal circumstances, Councillor O'Neill, but if we were, would local authorities be having direct discussions now at a European level as to what the structural funds will look like post-2020? Have you been excluded from that process?

**Councillor O'Neill:** Normally, the discussions would be starting just now. Have we been excluded from the process? I will tell you next week when the process starts. What we are clear about is that we need to be engaged in long-term discussions with the UK Government and the Scottish Government.

**The Convener:** I was going to ask more about that in a second. I am trying to get my head round whether local government is still involved in those discussions, because article 50 has not been commenced. Teasing out what spending might look like post-2020 would almost create an expectation about what you will get from the UK Government or the Scottish Government once we are no longer in the EU. I suppose that I am asking whether you are keen to still be involved in the discussions at the European level.

**Councillor O'Neill:** I suspect that the answer is yes. Part of the reason why I suspect that is that Phil Hammond, the Chancellor of the Exchequer, said in the media recently that it might take longer than two years and that there might be a transition. I do not think that anybody really knows what will happen, so we will hedge our bets.

**Jim Savege:** This goes back to a point from a previous session, which is about scenarios. What we have—city region deals are an illustration of this—are economic strategies in different parts of the country that are covering five, 10 and 15-year periods, so local authorities are looking forward to that extent. There is ambiguity over what the funding opportunities will be, and therefore there is hesitation over which conversations to have with who, in order to be able to deliver those strategies.

The long-term intention is there, but the point in question is where to put one's efforts into the conversations and discussions. It could be folly to invest all one's time and effort in one route, given the uncertainty over when and how an exit may happen. We are working through the different scenarios to try to work out the best route forward to secure long-term funding.

**Professor Mitchell:** One has to consider the issue from the point of view not only of the UK and local authorities here but of EU partners. The expectation is that article 50 will be invoked early next year and that the UK will leave. That does not create conditions for local authorities here to have much impact on those negotiations, and we have to be very clear and honest about that. We are marginalised, as it were. There may well be an opportunity to take part initially, but we will not have a voice that will be listened to very closely. That is not a criticism of local authorities at all. They are in a weak position. Consider the issue from the point of view of any other member state—why would you want to listen to UK local authorities post-2020?

**The Convener:** I suppose that local authorities might not want to spend much time, energy and effort in an area that they know will ultimately not hold the levers of spending power and influence. The question is then where they should direct their efforts, which brings us back to the UK Government and the Scottish Government. What kind of formal efforts have COSLA made to contact and enter into a process with the Scottish Government and the UK Government?

**Councillor O'Neill:** It would be fair to say that the level of engagement that COSLA is having, along with other local government associations in the UK, with the UK Government has been excellent; the level of engagement that we have had with the Scottish Government has been a meeting.

**The Convener:** Do you want to expand on that? I do not think that the Scottish Government would describe its level of communication with the UK Government as “excellent”, so I am surprised to hear that you have had a different level of engagement with it.

**Councillor O'Neill:** Through the Secretary of State for Scotland, we are getting access to civil servants and getting meetings arranged with the Brexit secretary. As I said, the four local government associations are working together. The English Local Government Association in particular is doing a substantial body of work, which it is sharing with the other associations, including COSLA. We are getting a good level of engagement with the UK Government.

**The Convener:** Can you give any details about the one meeting that you have had with the Scottish Government?

**Councillor O'Neill:** We met Mike Russell and Alasdair Allan for what was meant to be an initial meeting. We offered to supply information to assist the Scottish Government with the Brexit situation. COSLA shared the view of the Scottish Government during the referendum campaign, because it was the unanimous view of COSLA that we should remain in the EU. However, the vote went the other way, so to help with the process of dealing with that we offered to share local government's knowledge and expertise in EU matters with the Scottish Government. There is a considerable degree of knowledge about EU matters in local government—more than there is in the Scottish Government, I would say. However, other than the one meeting that took place, I do not think that there has been any engagement at all with the Scottish Government.

**The Convener:** I apologise, because we seem to be having a one-to-one dialogue here. However, I just want to mop this up, and then I will allow you other guys in.

With regard to what you have said, Councillor O'Neill, I think that this committee could have a purpose and a role. I suspect that what you are saying is that you want to be of assistance to the Scottish Government—

**Councillor O'Neill:** Yes.

**The Convener:** —and to take a co-ordinated approach in relation to Brexit. Whether or not it is in relation to direct Brexit negotiations, it is certainly in relation to how those affect local government. You want to work in a co-ordinated fashion with the Scottish Government in relation to that.

**Councillor O'Neill:** Yes. We want to work with both the Scottish Government and the UK Government on that. When powers get repatriated to the UK from the EU, where those powers end up will be important. Subsidiarity is important and getting the powers to the most appropriate place is very important. If powers end up in an inappropriate place, they will not necessarily function as well as they should for communities.

**The Convener:** That is helpful. I will bring in Elaine Smith for a supplementary question and then I will bring in Graham Simpson.

**Elaine Smith:** I suppose that my question goes a bit further into what the convener has been exploring with COSLA. Paragraph 15 of COSLA's written submission states:

“COSLA believes that the **appropriate mechanisms should be put in place at political and officer level so that Local Government is embedded in the Scottish Government and UK Government negotiation structures** ... The same approach has already been confirmed by the UK Government ... for reserved areas for Scottish Local Government”.

What exactly are you asking of the Scottish Government? Is it exactly the same as what has happened with the reserved areas?

**Councillor O'Neill:** We want to be embedded in the Brexit process; we do not want merely to be a consultee or to be lumped in with others. We not only deliver a lot of EU programmes but are part of the formal governance of Scotland. We should therefore be embedded in the Brexit process.

**Elaine Smith:** But can we clarify whether you are embedded in it as far as the reserved issues are concerned? You state in paragraph 15 of your written submission that you are embedded in that process, but you are saying that that is not what has happened in Scotland.

**Councillor O'Neill:** That is not what has happened in Scotland—so far.

**Elaine Smith:** Thank you. Convener, could I ask Professor Mitchell something about what he said, or do you want to move on?



**The Convener:** I have had bids for supplementary questions from Graham Simpson and Kenny Gibson, but I just want to check whether they are on the point that we are discussing. If they are, we will hear them before moving on to another issue. Graham, is your question on the current point?

**Graham Simpson:** Yes, very much so.

**The Convener:** Okay.

**Graham Simpson:** I am very interested in what you have been saying, Councillor O'Neill. What have you discussed with the UK Government in the various conversations that you have had with it?

**Councillor O'Neill:** We have talked about the repatriation of powers and the continuation of European funding. We are considering how we influence changes that will take place. I will give two examples of things that will be repatriated. One is state aid; what role will local government play in that? The other is procurement; what role will local government and localism be able to play in that in future? We want to be in there at the start of the matter to shape how those processes deliver for our communities. We need to be embedded in the process to do that and not merely to be a consultee.

10:45

**Graham Simpson:** You have mentioned all the areas that I had hoped to ask you all about.

**Councillor O'Neill:** That is good.

**Graham Simpson:** Have you asked the Scottish Government for meetings and been refused them?

**Councillor O'Neill:** No, we have not been refused meetings.

**Graham Simpson:** So the approach came from the Scottish Government for the meeting that you had.

**Councillor O'Neill:** No, the approach came from us. We offered to meet the Government and assist it as we could, but there has been nothing since that meeting.

**Graham Simpson:** Why has there been nothing since then?

**Councillor O'Neill:** I do not know.

**Graham Simpson:** However, you have not asked for a meeting.

**Councillor O'Neill:** We left it that we were available. We offered our knowledge. There has not been any substantive contact since then. I am sure that the Scottish Government would tell you

that it is finding its feet. We are offering to help it find its feet.

**The Convener:** Would you like a second meeting as soon as possible to discuss the matter further?

**Councillor O'Neill:** I would be more than happy to meet as soon as possible.

**The Convener:** It is really about whoever picks up the phone to call the other person. We will ask about that as well. There was an initial meeting; I suspect that both parties thought that there would be more, but they have not happened, so we should just make them happen. By "we" I do not mean the committee: I mean that COSLA should seek a meeting as soon as possible. If there are issues with that, the committee would be interested to hear them.

Councillor O'Neill keeps talking about repatriation and subsidiarity. My question is this: subsidiarity from what? Would the UK Government pass powers directly to local authorities, which would mean that powers were reserved at UK level and then, via subsidiarity, given to local authorities, or would the powers be passed to the Scottish Parliament, which would then pass them down? Is not the conversation that you are having with the UK Government slightly odd? If we are talking about where power sits within the UK, that should be a tripartite discussion between the UK Government, the Scottish Government and Scottish local authorities. It seems odd to me that COSLA and the UK Government are discussing where power over fisheries or agriculture or whatever would sit. Sovereignty would sit with the UK Government, which would pass powers down to local government. Is that COSLA's ambition, or would you prefer that the powers be passed down to local government with sovereignty sitting at Scotland level? What is your mission? What outcome do you seek?

**Councillor O'Neill:** I think that the phrase that I used earlier was that the powers should rest at "the most appropriate place". No doubt some should rest at UK level—although I dislike the word "level". Some powers should rest in the UK sphere, some in the Scottish sphere and some in the local government sphere. Those things are not mutually exclusive. I suspect that, in the fullness of time, some of the powers will be devolved or repatriated to each of the three spheres. It is important that, thereafter, they do not operate in isolation. We all have to operate in partnership in such a way that we secure maximum benefit for our communities.

It would not be sensible to put all the powers in a single place. Some would be appropriate for the UK Government, some for the Scottish Government and some for local government. We

have the advantage of the four local government associations working together, which gives us a way into the UK Government that we otherwise would not have had. It is a useful conduit for us.

**The Convener:** That is interesting. Do you want to add anything to that, Professor Mitchell?

**Professor Mitchell:** Councillor O'Neill made the point that I was going to make. I reiterate, with due respect, that I do not think that the concept of "sovereignty" is terribly helpful in this case, in that it implies an ultimate resting place of power. In public policy, different spheres are engaged in the same policy areas.

Let us take the example of the environment, in which the EU, the UK Government, the Scottish Government, local authorities and many other bodies are involved. There is sharing of responsibility—it is a partnership. That is one of the interesting things about the nature of policy in many of the areas in which the EU works, not least because the EU is, to be frank, incapable of delivering. Local authorities are the delivery agencies and must be involved.

We should try to conceive of the future as involving partnership, sharing and working together. I agree strongly with COSLA that the issue is not about levels; it is much more complex than that. As I said in my submission, the metaphor of the marble cake rather than the layer cake reflects the reality of policy making and policy implementation with respect to so much of what the EU has been involved in. We now have a situation in which the EU will no longer be involved, but there will still have to be partnership, sharing and engagement, including on everything from setting agendas and submitting ideas for policy making through to delivery—although delivery is almost invariably and inevitably a local authority responsibility. Delivery is one of the few areas in which there is a monopoly, in the sense that one sphere has control.

**The Convener:** That was very helpful.

**Helen Martin (Scottish Trades Union Congress):** This is an interesting conversation, and it relates to one of our key concerns in the process, which is about transparency and how we hear the voices of communities, workers and civil society actors in general, in the negotiations.

The STUC has had a slightly different experience from COSLA. We have had open access to the Scottish Government, which has been supportive, but very limited access to the UK Government, which has not really been interested in meeting us or, for that matter, the Trades Union Congress. We are still in a process of ad hoc meetings, whereby we meet up to discuss certain issues and take the temperature of the situation.

In the future, we would be interested in the creation of more formal structures that would allow civil society to play a more formal role in the negotiation process. We would like to see that at UK Government and Scottish Government levels, because it is important that we have a discussion about how society is shaped, where power lies and how we deal with the very difficult issues that will arise because of Brexit. Formal processes are needed for that, and civil society and actors such as COSLA and local government need to have roles.

**The Convener:** My deputy convener will come back on that, but I promised to bring in Kenneth Gibson.

**Kenneth Gibson:** It is interesting to hear about the different experiences of the STUC and COSLA. Councillor O'Neill, I have been told that I am not supposed to call you David; from now on, I must call you Councillor O'Neill. Sorry, David.

**Councillor O'Neill:** That's all right, Kenny. *[Laughter.]*

**The Convener:** I should point out that it was not me who said that.

**Kenneth Gibson:** I am intrigued by an issue that is raised in the COSLA submission. Paragraph 30 states:

"as the recent controversy with TTIP shows, any trade agreement that touches upon local service provision requires to be negotiated with the input and expertise of Local Government. This is not the case at the moment."

Paragraph 14 says:

"One of its key international agreements is the Charter of Local Self Government which the UK and Scottish Parliaments and Governments are bound to implement but have failed to do so—unlike most European countries. The current negotiations to repatriate powers from the EU thus present an opportunity to finally address this."

The UK Government and, to a lesser extent, the Scottish Government have never been keen to speak to COSLA about issues such as the transatlantic trade and investment partnership, why are they suddenly very keen to speak to you? They have not previously been interested in negotiating with you on such key issues.

**Councillor O'Neill:** President-elect Trump is probably going to kick TTIP into the dustbin, so we are all waiting to see what the outcome there will be.

We have discussed the European charter of local self-government with the Scottish Government on many occasions. Local government asks that we sign up to it because the UK and Scotland are unique in Europe in that we have not signed up to, or have not implemented, the charter. The Scottish Government's argument has always been that that would require

independence and a written constitution, in which local government was embedded. Our argument has been that if it were put into legislation that we had signed up to the charter, legislation would then be required to overturn that. In other words, it would have to be a thought-out process. However, the Government has said that that could happen quite easily and has steadfastly refused to sign up to the charter. That remains an ask of local government.

**Kenneth Gibson:** I am asking why the UK Government is suddenly really keen to talk to you when it has not been keen to talk to the Scottish Government about issues such as TTIP and the charter of local self government, and it is clearly not particularly interested in speaking to the STUC or the TUC. Why does the UK Government suddenly want to speak to COSLA? At present, the Scottish Government does not seem to be having that great a time of it in terms of negotiating with the UK Government.

**Councillor O'Neill:** I must admit that I do not know why the UK Government is not keen on speaking to the STUC, although I share your concern and think that it ought to be doing so. Perhaps it is down to the fact that COSLA is approaching the Brexit issue along with the other three local government associations, and down to the attitude that we are expressing, which is that we are where we are with Brexit and we need to ask how we can make the best of it. We are going into it almost in a positive light, despite the fact that COSLA was unanimously for remaining in the EU. As I said, we are where we are: perhaps that attitude is making a difference. However, I suspect that it is more to do with the fact that the four local government associations are working together.

**Kenneth Gibson:** I have some more ideas on that, but I will leave them for now, because I want to move on to a different topic.

**Elaine Smith:** I want to talk about that final point, too. Councillor O'Neill said that we are the only country with EU membership that is without constitutional protection for local democracy. Is that a reserved issue? You went on to talk about the UK and Scotland, so can you clarify whether the UK has to decide to implement the charter, or could Scotland do it separately?

**Councillor O'Neill:** My understanding is that Scotland could implement the charter separately.

**Elaine Smith:** Okay. Thank you.

**Councillor O'Neill:** I would like both Scotland and the UK to implement the charter.

**Elaine Smith:** Yes, but it was important to clarify that, because it was not clear from the discussion paper.

I have a question for Helen Martin. You mentioned the involvement of wider civil society, and you specifically said that neither the TUC nor the STUC is engaged at UK level. What do you mean by "civil society", and how would you envisage that engagement happening? Are you talking about some kind of committee?

**Helen Martin:** I will not pretend to have a fully worked-up answer to that, but it is important that in the negotiation process it is not just the UK Government that is talking to countries in Europe and having closed-door negotiations, given that we do not know the direction of travel, what is likely to happen or what will come out the other side.

I hope that we could have some sort of discussion—some sort of constitutional convention, if you will—about how we can bring those powers back to the UK, what the shape of our country will be and the shapes of trade deals with other places. There is a role in that discussion for different levels of society, including local government, trade unions and, equally, churches and community groups. There are a range of ways in which people can be consulted and engaged, but it is important that the process is transparent, that there is buy-in from communities and that there is an attempt to help people to understand the decisions that are being made and our direction of travel. It is not good enough that Brexit becomes a black box and we are presented with a final answer. That is not healthy or democratic and would not lead to good outcomes.

**Elaine Smith:** If article 50 is to be triggered at some point early in the new year, should the Scottish Government at present be taking it upon itself to lead the way in Scotland? Could whatever is happening at UK level also happen at Scotland level, in the meantime?

**Helen Martin:** That could absolutely happen. It was remiss of me not to mention it before, but I think that the Scottish Government should, with the other devolved Governments, have a key role in the process, because it is a key actor in our democracy. The Scottish Government's position should be informed by the views of Scottish people and by the various layers of government and different civil society actors in Scotland. That should help Scottish people to have their voices heard in the wider debate, which is important.

**The Convener:** Professor Mitchell, do you want to add to that?

**Professor Mitchell:** I want to come back to the constitutional question, because those of us at the table are perhaps using the term "constitution" in different ways. If Councillor O'Neill is referring to constitutional entrenchment, which is a right that is embodied in primary law and cannot be affected

by normal law, there is nothing that the Scottish Government—nor indeed the Westminster Government—can do without a formal written constitution. The Scottish Parliament could pass a law that would give local authorities a great deal of power, or more power than they have at present—I would be an advocate for that—but it could not really entrench that because it has no entrenchment powers. Equally, the UK Parliament does not have entrenchment powers. I do not think that Brexit affects that in any way whatsoever. We must remember that formally, the constitution is a reserved matter.

11:00

**Ruth Maguire (Cunninghame South) (SNP):** Good morning, everyone. We have been debating migration in the chamber this week, so I would be interested to hear the panel's views on freedom of movement and how restriction of, or the ending of, freedom of movement will impact on local government, specifically in relation to skills shortages and how we might address them, and how it will impact on growing our economy.

**Councillor O'Neill:** There has been a marked difference in attitudes north and south of the border in relation to free movement and growing the population. Anyone who makes use of the hospitality industry will be very much aware of the number of people from outwith the UK who work in that industry. Within our health service, the number of people who come from outwith the UK is critical. An awful lot of childcare workers and other care workers are from outwith the UK. If such people lose the ability to come to Scotland, it will be a really big problem for us; industry certainly seems to be making that point. In the east of Scotland, the fruit-growing areas rely very heavily on people from outwith the UK coming in. It would be a real problem for the Scottish economy and the wider UK economy if freedom of movement were to be stopped.

**Stuart Black:** If you look at population statistics for the Highlands and Islands, you will see that most of the growth has been driven by migration and that a lot of that has come from eastern Europe. About 23 per cent of businesses in the Highlands and Islands have EU employees—that is, non-UK EU employees. If we look at Scotland as a whole, statistics on the tourism sector show that 24 per cent of employees in hotels and 30 per cent of employees in restaurants are migrant workers. The ending of freedom of movement would therefore have a huge impact on the tourism sector—which is, of course, our biggest industry in the Highlands and Islands.

The care sector is another sector that will be impacted, as will some of our food and fish-processing industries, which are heavily reliant on

EU nationals. The ending of freedom of movement poses a number of challenges. There are also very high-skilled EU migrants working in life sciences businesses such as LifeScan in Inverness, which is a research and development company, and in the national health service, of course.

My department in the council lost a number of EU migrants following the referendum result. They said that they did not feel welcome, so they left. Our losing that freedom of movement will have a big impact: it is already having an impact.

**Helen Martin:** The STUC's members are feeling increasingly anxious about the matter. We have quite a large number of EU nationals in membership of trade unions and we are seeing more and more requests from those nationals about how they can secure their status. They have questions about whether they should be applying for citizenship at this point in order to make sure that they can maintain their ability to live and work here. We find that quite disturbing because it shows that some of the reassurances that have been given—by the Scottish Government, in particular—are not necessarily acting as genuine reassurances for workers, so that insecurity is continuing within the population.

In local government, one of the key areas that are at risk is social care, in which many foreign nationals work. It is, potentially, at particular risk of not being able to fill roles if we do not have access to EU labour.

We hope that freedom of movement will not be removed, but if it is, we as a society will have to consider what to do to help the industries that have been mentioned. Right now, the points-based system offers no option for low-skilled-worker migration. That does not seem to be a sustainable position, given the needs of some industries and that it is very difficult to fill seasonal jobs in agriculture, for example. If we are to have a complete cessation of free movement of people, we need to reconsider how our immigration system works in order to allow low-skilled workers through.

**Jim Saveg:** I echo the points that colleagues have made and will add two points. First, we should focus on the challenges that higher education institutions may face in their long-term plans in attracting international students and staff. They have expressed clearly their concerns about the inhibition that that might cause.

I would link the point about migration and immigration back to the discussion on structural funds. My understanding is that a lot of the economic growth that we have had in recent years has been based on migration and immigration and not on productivity increases. If we are to restrict

and inhibit the influx of population into Scotland at the same time as there are questions about structural funds—which exist to support youth employment and employability and to provide business support—how will we support our existing workforce and community to increase productivity and thereby increase economic growth? It seems as though we could end up impacting on two sides of the agenda, which would have a negative economic impact. We need to choose whether we want to sustain and increase migration or sustain and increase investment in our existing communities to increase their productivity.

**Professor Mitchell:** It is best to broaden out the migration issue and to conceive of it as a question of citizenship rights. EU citizenship has been a developing concept. It covers the panoply of rights—including the right to free movement, which is vital for the reasons that have been articulated—as well as access to services. Another important question is about voting rights. EU citizens have the right to vote in local elections, but will that continue to be the case? Is it possible that there could be changes to and loss of some rights that currently exist for citizens, while other rights are maintained? Some of those decisions are in the gift of the Scottish Parliament and some are UK Parliament decisions.

Freedom of movement is fundamental, but we can have freedom of movement with very limited rights. There is the notion of the “Gastarbeiter”, which the EU has fought very hard against. It would be very worrying if we were simply to allow migrant workers to come here with only limited citizenship rights.

**Ruth Maguire:** Thank you for those answers. It is beyond sad to hear of people leaving because they do not feel welcome, and I take on board James Mitchell’s point about citizenship rights.

I have a question for Councillor O’Neill. What planning has COSLA done? Have you done any work specifically on the care sector, where we know that there are lots of workers from elsewhere? How might the gaps be plugged if those people leave?

**Councillor O’Neill:** A lot of that work is going on at individual local authority level. The earlier panel talked about long-term financial and workforce planning. Local authorities are at a relatively early stage with that because, like everybody else, we were taken by surprise by the result of the referendum. Maybe the lesson is not to have referendums.

**The Convener:** We might not get unity on that suggestion.

**Councillor O’Neill:** I thought not.

**Jim Savege:** I will skip that last point and come back to the point about scenarios. To illustrate, this week, I was actively involved in a conversation in my area of the north-east that involved the local authorities, the chamber of commerce, the college and the universities about how we develop clearer pathways to employment and a career in care and in early years and childcare. We understand clearly that there is a gap in the workforce provision, and there is a joined-up approach to looking at how we deal with that. That reinforces my earlier point that, although we can develop the scenarios, we also need certainty on funding, whether that is European, UK or Scottish funding, so that we can have confidence and assurance that we can invest in implementing the changes as part of a joined-up sector.

**Helen Martin:** It is important also to think about the opportunity. If we are leaving the European Union, we should be able to use procurement to improve workforce standards, particularly in social care, and to drive up terms and conditions for staff. That should help to attract people into the sector and keep a sustainable workforce. At present, the way in which social care functions is unacceptable and there needs to be a drive for the living wage and good-quality terms and conditions. Perhaps there will be more tools to achieve that in the future.

**The Convener:** Does Stuart Black want to come in here? I had forgotten that, in another existence, you are the director of development and infrastructure at Highland Council. Has your local authority done some of the planning work that Ruth Maguire asked about?

**Stuart Black:** The position is similar to what Mr Savege outlined. We have done work with our community planning partners, which include NHS Highland and the University of the Highlands and Islands. We have looked at the issue, which is a challenge.

The construction sector has not been mentioned. We have a city region deal, as do Aberdeen and Aberdeenshire, that will involve significant construction work, and work is already being done on projects such as the A9 dualling, so there is a big concern.

Migrant labour has been really important to some of our remoter communities where there is a dearth of young people. In many cases, it would be a requirement to attract young people from elsewhere in Scotland to live in those communities to sustain some of the facilities that have been talked about. That poses a challenge when our demographic is shifting towards an older population.

**The Convener:** Does Ruth Maguire want to come back on that?

**Ruth Maguire:** No. Thank you for those answers.

**The Convener:** The clerks have helpfully informed me that the Culture, Tourism, Europe and External Relations Committee will take evidence tomorrow morning on citizenship rights for European citizens in Scotland and will look at that in the round, which I think that we would all welcome.

Councillor O'Neill, the more the discussions go on, the more it seems frustrating—that is the mildest way of putting it—that there are quite detailed discussions that involve COSLA, other local authority partners at the UK level and the UK Brexit minister, but not so much with the STUC and the Scottish Government in the context of citizenship and rights. Should we reconfigure the debate a bit?

I hate platitudes such as Theresa May's reference to a red, white and blue Brexit; when I talk about team Scotland, I mean that not as a platitude but as a co-ordinated civic and governmental approach to what Brexit would look like in Scotland. Should we do more of that and reconfigure our approach? I namechecked Councillor O'Neill because I am interested in hearing his thoughts on that, as well as those of the other witnesses.

**Councillor O'Neill:** The concept of team Scotland is good, but so is the concept of team UK—that is where the primary negotiations will take place. Perhaps part of the reason why we are having a better degree of success than the likes of the STUC is that, in working with the three other local government associations, we are working closely with David Mundell and his office and we are getting a good service from there. There might be some benefit in trying that route.

**The Convener:** I am not talking about COSLA going to David Mundell to get success or the STUC going to David Mundell to get success; I am talking about a co-ordinated approach in which civic and political representatives, when there is consensus, go forward together to put the strongest of cases for society in Scotland. I would be slightly worried about individual groups, including COSLA, being picked off one by one by a UK Government in which there is not much trust from civic Scotland or political Scotland.

I will bring others in; maybe Councillor O'Neill can come back at the end on the point about one group being picked off over another.

**Graham Simpson:** He did not say that.

**The Convener:** I was not talking about you, Mr Simpson.

**Helen Martin:** The key is that we want to get the best outcome for people in Scotland, we want

to get the best economic success that we can for our businesses and we want to maintain people's rights. We would be interested in anything that helped us to do that. We would absolutely participate in any team Scotland approach that the Scottish Government proposed.

**The Convener:** Forget that I referred to team Scotland, because it sounds like a platitude and that is not the point that I was making. I was talking about a more co-ordinated approach.

**Helen Martin:** I know what you mean. We would be more than happy to participate in a co-ordinated approach in Scotland. We hope that you would want to hear workers' voices in any such approach and we would be happy to supply them.

That would not preclude any work that we were doing elsewhere. We would still make direct approaches to the UK Government, we would still work with the TUC and we would still want to do things with the Irish Congress of Trade Unions. We would continue our work in lots of different areas, because our main aim is to defend the rights of Scottish workers, and we will use whatever tools we can to do that, but we would be more than happy to support the Scottish Government's work.

11:15

**The Convener:** The question is more about having a more co-ordinated approach at a Scottish level. Do any other witnesses have reflections to make on that before we move to our next question? I will take Councillor O'Neill back in to make a further comment at the end.

**Jim Savege:** SOLACE has a good dialogue with civil servants, which is effective at UK and Scottish levels. We are keen for that to continue. To have one co-ordinated approach would be very much welcomed.

**Stuart Black:** The third sector is another group that has not been mentioned. In relation to the European social fund, it is often voluntary organisations and social economy organisations that deliver projects on local government's behalf. That is an important group that needs to be considered. The sector is represented on the programme monitoring committee that I sit on and is regularly looking for more input into the process.

**The Convener:** If there are no further reflections on the topic, I will give Councillor O'Neill the last word on it, and we will then move to the next question.

**Councillor O'Neill:** I am also a trade unionist—I am a member of Community. Spheres of government do not have a monopoly on good ideas. Should we be engaging with others?

Absolutely. Would it be a good idea to do that in a co-ordinated way? Absolutely.

**The Convener:** That is a good way to end that line of questioning.

**Andy Wightman:** I want to ask a question about EU legislation but, before I do that, I request a point of clarification from Councillor O'Neill regarding the European charter of local self-government. One question is about implementing its provision on recognising local government in the constitution. There are issues around that, which have been dealt with. When you talk about transposing, are you talking about incorporating the treaty into Scots law, such that it becomes justiciable in Scotland?

**Councillor O'Neill:** Yes.

**Andy Wightman:** Okay—it is useful to have that clarified.

The COSLA submission makes a number of points, to which Professor Mitchell's submission also refers, on European legislation, which is now extensive regarding environmental protections, consumer protection, trading standards, how much noise lawnmowers make and so on. You are clearly concerned about those standards, as they provide what is widely regarded in broad terms as a net benefit to consumers and society. To the extent that EU legislation and the observance of it are a requirement of being a member of the single market, the extent to which we have access to or are members of the single market will determine the flexibility that we have to amend any EU legislation in those fields, will it not?

**The Convener:** Professor Mitchell nodded his head first.

**Professor Mitchell:** One likely or possible outcome of negotiations is that we will continue to shadow EU regulations in law. That happens—Norway does that. Although Norway is outside the EU, much of Norwegian law essentially follows EU law, not least because the Norwegians want to sell their goods and services. If we are manufacturing goods and services and we want to sell them to the rest of the EU, we will have to abide by EU laws and regulations.

The other aspect, which Mr Wightman mentioned, is that some of those provisions are attractive. In following good practice, we will want to keep an eye on what is happening in the EU.

One of the things that the EU has offered—in a sense, we take this for granted and it is immeasurable—is in the policy transfer field. We learn and we get best policy. There is no doubt about that, although some of it is not good policy and we would want to change it.

The nub of the question, if I understand it correctly, will come down to our relationship with the single market. I tend to think that the descriptions of hard and soft Brexit oversimplify the situation. It is difficult to believe that we would not continue to follow EU rules. The one problem is that, if we are outside, we will have no voice in any of that. To be frank, we will have to follow the rules if we want to sell our goods and services, whether or not we are in the single market.

**Councillor O'Neill:** I agree whole-heartedly with Professor Mitchell, who has spoken much more eloquently than I could. However, as a politician, I cannot help but have a soundbite: this must not become a race to the bottom.

**The Convener:** As a politician, I will resist the temptation of asking more about that.

**Andy Wightman:** Given the duties that local government has on trading standards, the environment and so on, and given the broader legislative requirement around activities such as procurement, is there a line to be drawn between the EU regulations and laws that are mandatory if we are to have access to and/or membership of the single market and those that are not? If we were to continue to be a member of the single market, would we be able to change our procurement legislation, for example, to enhance and support local economies more, or would that be a breach? Arguably, that is about buying things that others are selling to us.

**Councillor O'Neill:** I can tell you what local government's ambition would be, but I do not know whether that ambition can be achieved. On procurement, localism should mean that we can do more through local purchasing. Some of us who are sitting around the table are old enough to remember when the Clyde used to build the world's ships. It builds few ships now—the Caledonian MacBrayne fleet by and large comes from abroad, as do our fishery protection vessels. Our ambition is that we should be able to do something about local procurement for the sake of our industries and local businesses but, as I said, I do not know whether that ambition can be achieved.

**Professor Mitchell:** To understand the issue, one must go back to the origin of the single market and the debates that led up to 1992. The single market was conceived of as a mechanism by which we could achieve a level playing field, and that remains the case. If you did something that the EU 27 perceived as advantaging the United Kingdom, you would be in difficulty. In other words, if we thought that we could amend the procurement regulations or any others in a way that might make it cheaper or easier for us to sell goods inside the single market, that would be objected to.

One of the things that I find slightly odd about much of the post-referendum debate is the assumption in the UK that what happens next will be a decision for us. That is not the case; we are dealing with a negotiation process. Each of the 27 other countries in the EU will individually have a vote and a say, and their interests will have to be taken into account. It is important to try to understand how they would respond to a requirement, demand or request—it could really be only a request—for the UK to have some advantage.

That is a non-starter. I suspect that we will be in a position in which, if we want to continue to have access to the single market, we will have to follow single market rules and regulations, but without having a voice.

**Helen Martin:** The crux of the debate is about what we will negotiate and how much wriggle room we will have with regard to the *acquis communautaire*. It is a matter of *realpolitik*. There are issues on which that will work against us—Andy Wightman cited procurement. However, equally, there are issues on which it might help—for instance, it might protect workers' rights, such as all the workers' rights that come from Europe.

Questions about the status of the European Court of Justice are interesting. Will we have to abide by its rulings? What will be the mechanism for enforcement? Will we have our own court, as the European Free Trade Association has, or will we have something more like what Switzerland has? How will that work? That is an important issue for trade unionists, because the ability to take cases to the European Court of Justice, with UK courts having to follow its rulings, is important to defending workers' rights and keeping progress going. Questions about how the system will work in practice are extremely important.

**Jim Savege:** I will make two observations. Working through the legislative framework in deciding whether we change what we have will be a complex process. We must think about what the unintended consequences might be of what might appear to be simple choices. For example, many local authorities have a strong focus on procuring goods and services as locally as possible in order to stimulate their local economy. That is a well-worn path.

However, at the same time as wanting to support local businesses by buying locally, we want them to be successful nationally and internationally, which means that they have to compete on someone else's turf, too. If we start closing things down too much, we will potentially inhibit companies' ability to grow.

We have to work on a spectrum. We use social clauses extensively to encourage businesses to

invest in a local supply chain, in apprenticeships and so on. If we made it an absolute that we bought only from local companies, that might start to have an unintended effect on the supply chain. We encourage companies to be successful nationally and internationally and to trade in their own right in other markets, rather than relying on local authority spending. It would be interesting to hear thoughts about where we wish to get to.

I will make a final point that links to state aid. Regarding how we expect companies to do business, if we intervene with legislation and they start to see the hand of the public sector come in and determine to take more, that might start to impact the extent to which the private sector expects the public sector to pick up the bill for investment in infrastructure and growth. What state aid tries to encourage is a more balanced economy in which there is a balance of public investment and private investment. Part of the unintended consequence of choosing local could be a pressure on the public sector purse to pick up more of the tab than we do at the moment.

**Stuart Black:** I was going to raise the state-aid point. Very local transport services in remoter parts of the Highlands, ferry services to the islands, community buy-outs and such things have also been affected by state-aid rules. A range of things that sit alongside procurement and state aid need careful examination.

**The Convener:** We have a supplementary question from Elaine Smith.

**Elaine Smith:** Given that Councillor O'Neill mentioned the use of local provisions, I was going to ask about what opportunities might exist, but most of that has been covered.

Stuart Black mentioned ferries. On CalMac, the Scottish Government made the point—which some dispute—that European legislation meant that those routes had to be tendered. Is the possibility that tendering might not have to be done in future an advantage?

**Stuart Black:** The legislation is for the Government to decide. Certainly, state aid tends to get involved in very micro things. I have examples of small community organisations that run cafes and restaurants in which state aid has come into play. Just as we would like to look at procurement, we have a range of opportunities to think about whether such things are proportionate, whether they can be changed and whether there is scope for more flexibility.

**Elaine Smith:** The point that I am trying to make is that there might be opportunities, rather than only disadvantages—that has to be considered.



**Kenneth Gibson:** First, I point out to Councillor O'Neill that the two new ferries that are being built by CalMac are being built in Port Glasgow at Ferguson Marine with investment of £97 million, the preservation of 125 jobs and the creation of 101 new jobs. The £12.3 million MV Catriona went into service on 26 September.

We need to talk about whether we can have our cake and eat it. I think that the answer is no, and that we cannot possibly withdraw from the single market and expect to have all the benefits that come with access to it. That is the whole point of the single market. At least two members of this committee are Brexiteers—I am not one of them, but there must be some advantages from Brexit for local government. Can colleagues specify what they are?

I was going to ask about procurement, but colleagues have amply covered the issues—for example, Helen Martin talked about the potential to pay the real living wage. Another area that is talked about in paragraph 43 of the COSLA submission is the possibility of

“greater investment being made into the rural and coastal communities to increase their economic resilience in the face of the uncertainties before us.”

What possible advantages could there be? Whether we like it or not, we are going forward with Brexit, so let us see whether we can take anything positive from it. My personal view is that the UK voting to leave—Scotland voted to stay, of course—will create more difficulties than it will resolve.

**The Convener:** Irrespective of where people stood on leave or remain, what are the opportunities that present themselves now? We have perhaps not quite explored them all yet.

**Kenneth Gibson:** Yes, that is it in a nutshell, convener.

**Councillor O'Neill:** An approach that used to be used was the SWOT—strengths, weaknesses, opportunities and threats—analysis. We should be engaging in such an analysis right now.

**The Convener:** Have you engaged in that process? I do not think that Mr Gibson was asking about methodology.

**Councillor O'Neill:** Local government is in the process of doing that right now.

**Kenneth Gibson:** Another slogan is “Every threat is an opportunity”. At the end of the day, I want to know where the opportunities lie.

11:30

**The Convener:** “Every threat is an opportunity”, “You can't have your cake and eat it”, and SWOT analyses—I think that the substance of the

question is whether we can identify some of the opportunities. It may be that we cannot, or that we do a SWOT analysis and find that they do not fly. Let me put it this way: what are the potential opportunities? Does anyone want to have a go at answering that?

**Professor Mitchell:** Procurement is area that is worth looking at. Anyone who has done any work on the area will be aware that there is a great deal of concern across public services about procurement rules, and some of that is because of the EU. It is impossible to give a detailed answer at this stage, but that is certainly one of the areas that I would begin to focus on.

It is crucial that we carefully consider the possible unintended consequences of any proposal to alter the current state of play. In that regard, one thing to be constantly aware of is the view of the EU 27, because although something might work to our advantage locally—whether that is at the local authority level, the Scottish level or indeed the UK level—it might mean that it would be difficult to access the EU. It is a mistake to think, “We have left the EU,” as it will still be there and it will still influence what we do. We should take that into account as we move forward.

Given that there are so many concerns about procurement, it is an area that you need to go into in great detail. There will be others, but that is the one that jumps out at me as an example of an area where there are opportunities to grasp.

**Jim Savege:** This might be slightly parochial, but the opportunities might come forward on a sector-by-sector basis, and the picture will be different in different parts of the country. From a north-east point of view, I think that it is important to look at the fishing industry. At present, negotiations are continuing overnight on the current quotas. We understand that the fishing sector and the fishing community voted in a particular pattern given their views on Brexit. The sector envisages more positive opportunities from Brexit, given what its quotas might be.

If we look at the issues more broadly, we get into the unintended consequences of huge, dynamic changes that are yet to be worked through. The market might change completely. However, from a business point of view, we believe that we need to look at the issues sector by sector and area by area.

My second point on the upside and the opportunities is that the decision has clearly stimulated a lot of thinking about and consideration of—without being too simplistic about it—the different scenarios and long-term plans that each area and community need to have and to sharpen up. The existing plans for school rolls, house building and the services that will be

provided in future are all coming into sharp focus and we need to reappraise them and consider what the different options might be. We might not have done that consideration quite so diligently or effectively had Brexit not come forward to stimulate it. That has to be an upside.

**Helen Martin:** It is right to think about the opportunities. This is an opportunity to reshape our economy—to think about how we give workers better protections in the workplace and how we can redesign workplace democracy to ensure that the worker's voice is heard better and that we get better outcomes in businesses.

However, we have to be alive to the fact that there are a lot of challenges. The economic figures post Brexit are not brilliant and it looks as if we are going to have some economic problems. There is a whole spectrum of analyses and it is difficult to predict all the different scenarios that may play out, but a clear direction of travel is starting to form, in that the UK Government's vision seems to be a low-tax, low-regulation economy. We would like the UK economy to develop in a different direction. There is an opportunity to have that debate—to think about the economy that we live in and the rules that we put around business—but there is also a threat that we will move backwards even from where we are.

**Stuart Black:** One example of something that has happened quite recently is that we have strengthened our twinning relationships with different parts of the world. For example, we had a delegation across from Augsburg in Germany, which is twinned with Inverness, to look at ways that we could work together in future. They were concerned about what would happen post-Brexit, as were we, and we particularly looked at the health sector, life sciences and tourism as industries in which we could develop stronger links. That is a good example of something that has happened because of the impact of the vote.

**Kenneth Gibson:** There does not seem to be much of an upside for local government. I know that everyone is looking for straws to clutch here and there, but I do not hear that there is much for local government.

**Graham Simpson:** I agree with Helen Martin that we should be looking at the opportunities. We are engaged in a process and we have to get the best out of it. What is best for local government in Scotland in the process? We have covered procurement but are there any other powers that you think could flow from Europe to Scottish local government that would be to our benefit?

**Professor Mitchell:** First of all, we need to see what will flow to the UK, and we do not know that yet. One of the great challenges with scenario planning is that we have no idea at this stage what

will come here. Scenario planning should be done, but it is difficult and we may plan for something that is not going to happen. It really depends on the outcome.

Up to a point, I understand why the UK Government is not willing to give a running commentary—people do not normally give a running commentary during negotiations. On the other hand, it would be good to have a sense of direction and of what the UK Government wants. The problem is that the UK Government is internally divided on this. Until we have clarity on that, scenario planning will be very difficult. We need to do it, though. The position may become clearer towards the end of next year, but until then it will be difficult to look to the future in that way.

**The Convener:** Councillor O'Neill wants to add something.

**Councillor O'Neill:** Yes. We need to keep to the front of our minds the question of who we are trying to benefit. I do not think that we are trying to benefit the structure of local government, the Scottish Government or the UK Government; we are trying to benefit communities and individuals. We need to ensure that whatever comes our way goes to the most appropriate place, where it can have the most positive impact for communities and individuals, rather than structures.

**Helen Martin:** Much of the debate about Brexit, and even before the referendum, has been about taking back control and people being able to influence the decisions that affect them at a community level. Some of my members voted to leave because they felt as if decisions were being taken all the way up at a high level, and they could not understand those decisions, could not see them coming and could not influence them.

There is a potential opportunity, in that we can discuss how to make communities feel as if they can influence decisions. As part of that conversation, we might be able to reinvigorate local government and local democracy. It is not necessarily a good outcome if we take back control that then sits at the UK Government level or the Scottish Parliament level, and the community never sees it. There is an important issue, as a result of the change, to do with democratisation, hearing people's voices and giving people powers.

**Jim Savage:** In my experience, people are looking at the macro position, such as the economic changes and the anticipated effect on migration. The ambition for communities has not changed in the midst of the debate. We still want strong, vibrant, economically sustainable, well-looked-after, flourishing communities throughout the country, and what we need to put in place to achieve that has not changed. Let us take the

example of care. I do not think that we have a list of the powers that local government wants or needs to have. To be able to provide good care services for our communities, the outcome that we need to achieve is a well-resourced supply chain and staffing cohort, but quite how we achieve that is yet to be determined.

This goes back to the start of the conversation about ensuring that we have joined-up approach involving all parts of all the institutions in society in deciding how we can best pull this off between us. To answer Graham Simpson's question, as I understand it, there is no list sitting there yet.

**Graham Simpson:** Professor Mitchell is right in saying that we do not have a clear picture yet of what the UK Government's ask is, but what do you think it should be in terms of local government in Scotland?

**Professor Mitchell:** Going back to the idea of an approach that brings in local authorities, the Scottish Government and various other organisations, it is important that a clear consensus in Scotland is articulated, and that is beginning to happen. Maybe that needs to be joined together more, but my sense is that there is probably more common ground on the single market in Scotland than there is elsewhere. That voice needs to be heard loudly and clearly.

It would be unfortunate—that word does not capture my real feeling on the matter—if we could not find a way of articulating the common voice that seems to exist. Local authorities are an ally for the Scottish Government in that. That voice needs to be heard in the wide debate on access to the single market. What will follow from that will depend on what the UK Government thinks, but that voice desperately needs to be heard loudly and clearly and in a unified way as far as possible.

We know from experience—even pre-devolution experience—that, when Scotland can unite, its voice is more likely to be heard. That has been the history of Scottish politics over decades and, indeed, centuries. It would be good if that were possible, especially given that it sounds as though there is not a great deal of difference on the broader picture. I hope that that can be fed into the process, and I understand that that is what the Scottish Government is trying to do.

The standing council on Europe that has been established looks to be an interesting example. It may be worth mentioning the fact that it does not include local authority representation. Could it have an additional member? Perhaps that additional member could be Councillor O'Neill—I do not know. That would be symbolically important and would lend weight to the Scottish Government's current position.

**Graham Simpson:** What would Councillor O'Neill say to that?

**The Convener:** We are not having a three-way conversation. Offering that position is not the job of anyone at this table. We can ask the question—perhaps we will discuss that after the meeting. Would you like to add anything substantive, Mr Simpson?

**Councillor O'Neill:** Yes.

**Graham Simpson:** Councillor O'Neill has just said yes. That is enough.

**The Convener:** Excellent. He is taking the team Scotland approach. Superb. That is what I like to hear.

**Elaine Smith:** I want to go back to the team Scotland approach—or the co-ordinated approach, as the convener prefers to call it.

**The Convener:** I wish that I had never referred to team Scotland now.

**Elaine Smith:** My colleague Kenny Gibson has made the point on the record that Scotland voted to remain. We have to be careful about saying that, because it was the majority of people who voted in Scotland but not the majority of the population of Scotland who voted to remain. That has to be recognised. I voted to leave from a lexit—or left exit—point of view. Obviously, I put it out there that that was where I was coming from. There was not just a Scotland-wide vote; it was a UK vote.

Going back to the team Scotland or co-ordinated approach, matters cannot be left up to the Scottish Government. We have discussed whether the Scottish Government has engaged with COSLA and how it has engaged with the STUC, but any team Scotland approach must include not just the Scottish Government but the UK Government, our members of Parliament, the Secretary of State for Scotland, the civil servants in Scotland who work for the UK Government, and civic Scotland. I would like opinions on that. We are a Scottish Parliament committee and we have a tendency to ask, "What is the Scottish Government doing and who is it engaging with?" However, given that the vote was a UK one, a whole-of-Scotland co-ordinated approach must pull in much more than just the Scottish Government and civic Scotland.

I see Professor Mitchell nodding.

11:45

**Professor Mitchell:** Yes, but I have one caveat. I am all in favour of democracy, participation, engagement and bringing people in, but it will be a fast-moving, two-year exercise, and it must be able to respond quickly and get things out there.

What are the costs of public engagement in that context? The reality is that public engagement will slow down the process. I am not against public engagement, but we should be willing to acknowledge that point. That is why I suggest that it would be good to find consensus and as broad a range of participants as possible.

It sounds as though COSLA is very much in the same place as the Scottish Government in terms of the policy areas, which is why I raised the possibility of COSLA's involvement. However, I would be deeply concerned if we simply kept adding to the list of participants, because that would slow the process down. That is not to say that I disagree with the fundamental point that is being made about public engagement, but we need to be able to respond quickly. We have very little time, because we are told that the process is going to start early next year and it is a two-year process, so we have to move fast.

**The Convener:** Are there any other comments on the issue?

**Helen Martin:** Yes, although I fear that I might be adding to the list. The Scottish Government should think about who our allies in Europe are and who might want to respond to the arguments and concerns that people in Scotland have regarding Europe. The STUC has already met the European Trade Union Confederation to discuss the idea that defending the rights of workers in the UK is not a UK interest but a European workers' interest. There must be ways in which we can break down issues like that at a governmental level, and there might be allies in different parts of Europe who could support our positions from within the EU bloc. That would make the process less adversarial in terms of its being the UK versus the EU, and it would help the negotiation process.

**The Convener:** Does anyone want to add to that?

**Elaine Smith:** That may be what the Scottish Government was embarking on when the First Minister talked with different organisations across Europe early in the summer. However, the point is whether that has all been pulled together. Helen Martin suggested that we bring in civic Scotland, but I do not know what that would consist of. We need people across Scotland to get together and discuss the issues around Brexit. As Professor Mitchell said, that needs to happen quickly, and somebody needs to take the lead on taking it forward.

**The Convener:** It would be interesting to know how that would work. We would need to ensure that we did not end up having the kind of discussion that we will have in private after this evidence session, when we consider the evidence that we have taken. We need a wider discussion

about what a Scottish approach should be, but it is not unreasonable to suggest that there might be a strong consensus in Scotland about what Scotland would like to see come out of negotiations with the EU 27 following Brexit and what that deal would look like. A discussion in Scotland about that could be different from the discussion that David Mundell and the UK Government want to have, because it would be about trying to influence the terms of the negotiations before they commence.

It would be difficult to have a team UK approach to what could be a distinct Scottish view as expressed in the referendum. It would be helpful if you had any comments or observations to make about how we could get what I would consider to be a unique Scottish approach to what will be UK negotiations and about the structures around that. At the end of the day, we have all said that it is about not just the structures but ensuring that civic Scotland and the people whom we and all of you represent get the best out of the Brexit negotiations. Any additional reflections on that issue before we tie up this evidence session would be welcome.

**Councillor O'Neill:** Devolution has meant that we have four different systems in the UK. The Scottish Parliament is a very powerful devolved Parliament; the National Assembly for Wales is getting some additional powers, but it has a different set of competences; the Northern Ireland Assembly is different again; and then there is what remains with the UK Parliament. It is therefore right and proper that we should deal with Brexit in both a UK and a devolved sense.

**The Convener:** That is very helpful. Are there any other reflections before we end this evidence session?

**Professor Mitchell:** The only thing that I would say is that one of the reasons why the Scottish Parliament was established was to be the voice of Scotland and to draw in opinion from civic Scotland. I am tempted to throw that aspect back at the Parliament—to you and other members of the Parliament—and say that you need to find a way of doing that and articulating that opinion. We are not in a position to do that, but the Parliament, as a form of representative democracy, has a role in that regard and must acknowledge that.

Since its establishment, the Parliament has had a very good record on drawing in other voices. Perhaps the Conveners Group could find a forum or a means of drawing in such voices on Brexit. This committee is looking at Brexit, and it has been mentioned that another committee will do the same tomorrow. One of the dangers with Parliaments, which is often referred to, is that a lot of work gets done in committee silos. It would be useful if the work on Brexit was brought together

to articulate a common Scottish voice on the matter.

**The Convener:** Are there any additional comments?

**Helen Martin:** It is good to remember that our pursuit of a co-ordinated Scottish approach can be supported by other parts of the UK. For example, the Northern Ireland Assembly is an obvious ally, particularly on freedom of movement issues, and the TUC is an obvious ally, particularly on workers' rights. There are times when it is important to remember that there are other interests in the UK that will make us stronger.

**The Convener:** That is very helpful. Stuart Black, do you want to add anything?

**Stuart Black:** This is just a minor point about the regional dimension. The Highlands and Islands region has benefited from European funds for a long time. In any attempt to hear voices from across the country, we must ensure that we hear voices from the north of Shetland, the west of Lewis and other places further afield, rather than just from around the central belt.

**The Convener:** Yes—that point is well made.

We have reached the end of this evidence session. I think that I can give Professor Mitchell and others some comfort by pointing out that various Scottish Parliament committees are considering the issue of Brexit, so any matters that we have not raised in this committee will be dealt with by other committees. You will understand that this committee has tried to focus as much as possible on the local government aspect. However, we will take stock of the evidence that we have heard today and hope eventually to have an approach to Brexit that is co-ordinated between the parliamentary committees.

I thank you all for giving evidence this morning.

11:51

*Meeting continued in private until 12:36.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba