

MEETING OF THE COMMISSION

Wednesday 1 October 2008

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2008.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR
Donnelley.

CONTENTS

Wednesday 1 October 2008

	Col.
AUDIT SCOTLAND (CORPORATE GOVERNANCE)	105

SCOTTISH COMMISSION FOR PUBLIC AUDIT 6th Meeting 2008, Session 3

CONVENER

*Angela Constance (Livingston) (SNP)

COMMISSION MEMBERS

*Robert Brown (Glasgow) (LD)

*Derek Brownlee (South of Scotland) (Con)

*George Foulkes (Lothians) (Lab)

*Hugh Henry (Paisley South) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Professor John Baillie (Accounts Commission and Audit Scotland)

Mr Robert Black (Auditor General for Scotland)

Gillian Fawcett (Office for Public Management)

Caroline Gardner (Audit Scotland)

Angela Scott (Chartered Institute of Public Finance and Accountancy)

Phil Taylor (Audit Scotland)

SECRETARY TO THE COMMISSION

Mark Brough

LOCATION

Committee Room 5

Scottish Parliament

Meeting of the Commission

Wednesday 1 October 2008

[THE CONVENER *opened the meeting at 09:44*]

Audit Scotland (Corporate Governance)

The Convener (Angela Constance): Good morning, colleagues. I apologise for the meeting's delayed start.

This is the third session in our review of the corporate governance of Audit Scotland, examining how arrangements are working eight years on. In earlier sessions, we heard from the Scottish Government and the Scottish Parliamentary Corporate Body. We agreed that it would also be useful to hear from independent experts on corporate governance issues as part of the process.

I warmly welcome Gillian Fawcett, who is a senior fellow with the Office for Public Management, and Angela Scott, who is head of CIPFA—I always pronounce that wrongly—in Scotland. The OPM and CIPFA have been involved in the development and use of “The Good Governance Standard for Public Services”. We hope that that involvement will allow us to understand some of the generic benchmarks and the principles of how governance should be applied.

I understand that both witnesses wish to make an opening statement.

Gillian Fawcett (Office for Public Management): Thank you. I am delighted to be here on behalf of the Office for Public Management, which is an independent consultancy company. I specialise in corporate governance and ethical governance. Before joining the OPM, I led on the corporate governance strategy for the Audit Commission. I also headed up the United Kingdom Parliament's scrutiny unit as deputy head of finance and performance. Therefore, I have a particular interest in corporate governance.

The OPM strongly believes that good corporate governance is at the heart of effective public services and that a body that has effective governance arrangements generally performs well. Last year, we were delighted to pick up the fact that “The Good Governance Standard for Public Services” is being widely used. Some 5,000 copies of the document have been downloaded or

purchased from the OPM, which was one of three bodies that developed it.

Bodies are using the standard in unique and different ways, which is not unexpected, because there are, obviously, different corporate governance models in different sectors. I will give a couple of examples. The Audit Commission uses the principles to assess how effective local government bodies' governance arrangements are and has developed a self-assessment toolkit for governing bodies, and the Department of Health has referred to the standard in its “Integrated Governance Handbook”. Those are just two examples of how public bodies are using the standard. We are pleased that they are, and we are pleased that we have been invited here to talk about the principles that are set out in “The Good Governance Standard for Public Services” and about how they are being used by the different bodies that the OPM works with.

Angela Scott (Chartered Institute of Public Finance and Accountancy): CIPFA stands for the Chartered Institute of Public Finance and Accountancy. There are six accountancy bodies in the UK; CIPFA is the one that specialises in the public sector. We worked with the OPM on the good governance standard, and we set the accounting framework for local government, which opens a door for us to share our professional views on several issues, one of which is governance. Since working with the OPM on the good governance standard, we have spent a fair amount of energy trying to adapt that standard for local government, and we now have a framework around the good governance standard for local government.

One concern that I have had as head of CIPFA's Scottish office is that the public policy agenda in Scotland is markedly different from the one down south. In particular, the change in the local government voting system and the number of coalition governments that we now have bear directly on decision making in that arena.

I was tasked with putting CIPFA's good governance framework for local government into the Scottish local government context. In our guidance notes, we wanted to demonstrate how a local authority could evidence its good governance standard and determine for itself a self-improvement plan. I am here today to share the experience from local government and talk about how local government is evidencing its good governance and setting itself a self-improvement plan.

The Convener: Thank you very much for your informative opening statements. I now invite my colleagues to ask questions.

Hugh Henry (Paisley South) (Lab): I have a question for Gillian Fawcett. You said that a body that has good governance arrangements generally works well. I do not think that anyone could complain about the efficiency or effectiveness of Audit Scotland, which is held in high regard. From a parliamentary perspective, the quality of Audit Scotland's work is extremely useful. What are your observations on governance issues? From your perspective, what is the purpose of a board?

Gillian Fawcett: I would put the purpose of a board into three categories. As set out in the good governance standard, the first purpose is to establish and approve a strategy in conjunction with the executive. The second purpose is to support, challenge and scrutinise the strategy. Scrutiny is an important function of any board, and that cuts across a number of different sectors. For example, I am doing work with the university sector that involves considering what makes an effective board; the scrutiny aspect tends to be associated much more with high-performing boards. The third purpose is to focus on outcomes, through performance monitoring, to ensure that they are delivered in the way that the strategy set out. Those are the three primary functions and purposes of the board.

There are many add-ons to that. For example, the board could have an ambassadorial role in terms of its public role and accountability to the public. There are other aspects to a board, so the list that I gave is not exhaustive.

Angela Scott: I suppose Audit Scotland is a different beast. CIPFA produced for the Government "On Board: A Guide for Board Members of Public Bodies in Scotland", which talks about governance in public bodies and roles and responsibilities. Early on, the guide sets out what the purpose of the board is. The first purpose for the board of an ordinary public body is to represent the interests of ministers. That creates a dichotomy for Audit Scotland because the Auditor General for Scotland must be independent.

The guide goes on to say that, as Gillian Fawcett described, the second purpose of the board is to provide active leadership. The third purpose is to hold the chief executive and the staff to account for their performance.

Hugh Henry: Can I follow through on that last point? I accept implicitly the need to keep ministers out of the process. However, what should the relationship be between the board and the organisation?

Angela Scott: The whole thrust of the board is to be independent, and the independence comes in part from the membership of the board. However, as Gillian Fawcett described, the purpose of the board is to set the strategic

direction for the organisation. In an ordinary public body, that would be about taking the ministerial direction and applying it to the board of that body. It is about setting the direction, then holding management and staff to account for the delivery and implementation of that.

Hugh Henry: That is what I want to tease out. You have talked about holding the board to account and independence. However, notwithstanding the excellent work that Audit Scotland does, it has a strange set-up because its board consists, in law, of the Auditor General and the chair of the Accounts Commission. Many in the outside world do not see the difference between those roles. The witnesses and some of us may understand, but I do not think that the wider world does. Further, the Auditor General and the chair of the Accounts Commission appoint the three other members of the board.

The Audit Scotland board states that the executive members of the board are the Auditor General and the deputy auditor general and controller of audit, with a non-executive majority being secured by having two members drawn from the Accounts Commission and a third member appointed by open competition. The current independent non-executive member has just stood down from the post, and the board will appoint the new member.

Given what the witnesses said about holding to account and independence, and given the narrow sphere from which the Audit Scotland board is drawn, how does a board prove to the wider world that it is independent?

Angela Scott: It is worth going back to the code that applies to the private sector: "The Combined Code on Corporate Governance". It makes the distinction between the boards of large organisations and smaller boards, and states that there must be a balance on the board between the executive officers and the non-executive. A condition of our appearance here is that we are not to comment specifically on Audit Scotland, so I think that your question on the board's composition is better directed to Audit Scotland colleagues. However, the combined code says that smaller organisations should probably have three non-executive members, with a balance of three executive officers.

Hugh Henry: Yes, but what I am trying to get at is whether, from where you sit—external and extraneous to the organisation—you think that there is clear independence and objectivity in a board that is appointed in the way that the current Audit Scotland board is.

Gillian Fawcett: Again, I cannot comment on Audit Scotland's arrangements. However, for a board in any sector to gain public trust and

confidence, it is important that it can demonstrate objectivity and independence in fulfilling its public value role. In essence, the boards of public services are there to represent the public and give them a voice, which is obviously different from the purpose of boards in the private sector.

The good governance standard makes it clear that the boards that work well and effectively are those that can exercise objectivity and independence. I say that without commenting on the arrangements for Audit Scotland.

George Foulkes (Lothians) (Lab): It is difficult when you cannot comment specifically. We will have to be a bit more hypothetical. Is it unusual for a chief executive who is accountable to a board to be responsible for selecting members of that board? Do you know of examples of other organisations in which the chief executive has that choice? I am leaving aside colleges in Scotland, which are another story—you ought to do something about that, Gillian

Gillian Fawcett: I cannot think of an example of the chief executive choosing the chair of the board in any public sector organisation that I have come across or worked in, but that is not to say that it has not happened. We are doing work in the university sector, but I have not come across, for example, a vice-chancellor who has appointed the chair of a university governing board, although it might be different in Scotland.

George Foulkes: Under the arrangements for appointing non-executive members of boards of organisations with which you have worked, they must be clearly seen not to be involved in any way. They can be chief executives of other organisations, but they should not be involved in any way with the organisation whose board they are a non-executive member of. Is that right?

Gillian Fawcett: They should not be involved in the day-to-day operational activities of the organisation. That responsibility should be delegated to the chief executive and the team. From our experience, there is often a problem when people who are chief executives in another sphere come on to a board, because they cannot help wanting to get involved in the day-to-day activities. That causes a great deal of tension, for example between the chief executive and the chair.

10:00

George Foulkes: Angela Scott might be better placed to answer the following question. Let us suppose that we are starting from scratch, and we want to set up a body with a board of five, with three non-executive members. We are considering whether ministers, the Parliament or some other structure should appoint those board members.

Perhaps both witnesses can answer. What would you recommend as the best way to ensure that those three people are clearly independent non-executive members?

Angela Scott: There are two aspects to that: there is the process that you wish to undertake; and there are the conditions that a non-executive member must satisfy. It goes back to your previous question. I refer you to “The Combined Code on Corporate Governance”, which sets out the conditions that a non-executive member should satisfy to ensure that they are independent when they go on to the board. For instance, they should not have been an employee of the company within the previous five years. They should not have close family ties, and members of their family should not be giving advice to, or be employed by, the organisation. They should not have a significant shareholding or interest in it. There are a number of conditions to ensure that the non-executive members are independent.

We would probably want to discuss principles and generalities for the process. The process would need to be transparent, with clear criteria against which any potential non-executive board member is assessed. The board should itself have a clear understanding about the skills that it needs. That makes it quite different from a local authority, where the elected members are in effect non-executive, and the required skills set cannot be prescribed—whereas it can be prescribed in the case of a public body.

To reiterate, you would need to consider the transparency of the process and you would wish to set clear criteria against which to assess the candidates, with a clear sense of the skills that the board needs. There must also be representation of the stakeholders whom the board serves.

Gillian Fawcett: I must agree with Angela Scott on that. I would emphasise the skills aspect of the make-up of boards. Many boards contain skills gaps. If someone with financial skills is required, it is important to have that person sitting on the organisation’s audit committee. Skills are a vital aspect. Often, people with the right skills might be attracted to an organisation but get left outside the boardroom. A financial director might be appointed to sit on an audit committee, but they might think that they are there for a different purpose and might forget that they need to use their skills. We do a lot of work with boards where that is the case.

George Foulkes: The criteria that Angela Scott read out are more appropriate to private organisations, which have shareholdings and so on, than to Audit Scotland. That does not help us too much in the public sector. It is a problem in the public sector to work out the best way of doing things. If a minister—or the First Minister or Prime Minister—appoints board members, people say

that that is political patronage. If, as in this case, the chief executive appoints the board members, he is appointing the people to whom he is responsible. What about Parliament—or this commission, or a committee of Parliament? Do you know of any other public bodies like Audit Scotland, from whose experience you could cite parallels for us?

Angela Scott: My experience is that most public sector organisations use the public appointments process, through the public appointments unit.

George Foulkes: That comes under the Nolan process.

Angela Scott: Alternatively, there are election systems. I am not aware of any alternative systems that sit outside that—which I think is what you are looking for.

George Foulkes: The appointment of the chair of the board is even more important. Is that usually done by the board itself, or is it done under a separate process, whereby people with skills are sought? I have recently seen adverts for public appointments. The position of chair of the board of a non-departmental public body will be advertised, and then those of the board members. The chair is usually chosen separately. Is that the norm?

Gillian Fawcett: Different rules apply in different sectors. Sometimes, boards will elect their own chair. As you have just pointed out, they will sometimes advertise externally. In the health sector, for example, the appointment will be approved by the Appointments Commission. The system in local government is very different. In English local government, the leading party will elect the cabinet, or policy-making body. It depends on the sector—different rules and criteria apply. I would not like to say which model works the best. They are all fairly unique, and are pertinent to their respective sectors.

George Foulkes: English local government still has first past the post—lucky people.

Angela Scott: There needs to be clarity about the roles of the chair of the board and of the chief executive. We suggest that there should be some form of job description in the local government framework, outlining those respective responsibilities. There has to be a partnership between the two, but there will be distinct functions.

The Convener: You spoke about checks and balances earlier and you touched on the issue of multiple roles. Do you have any further views on the matter? Is it good practice for someone in effect to be the executive officer—and also, therefore, the accountable officer—and the person who appoints committee members and who gives statutory direction? Could you speak a bit more

about how multiple roles can be balanced, with independent checks and balances?

Angela Scott: My understanding is that the accountable officer is a designated executive officer with responsibility to discharge certain functions. I also understand that boards have a responsibility to assist that accountable officer in discharging their responsibilities. There is a challenge for board members in retaining independence—supporting the discharging of the executive officer's responsibilities but being able to challenge them and hold them to account. It is therefore important to invest in the skills, training and induction of any non-executive members. It is an unusual role to have to play.

Robert Brown (Glasgow) (LD): One nuance of the functions of the Auditor General and of Audit Scotland is that the Auditor General is an office-holder. Like chief constables, he has to have operational independence, for fairly obvious reasons. Does that have any implications for how the chief executive of Audit Scotland relates to the board to which he is accountable?

Gillian Fawcett: I cannot really answer that.

Robert Brown: I mentioned chief constables; that was the obvious example that I could think of.

Gillian Fawcett: The system for the police in England is different, with police authorities made up of non-executive members, who will hold the chief constable and the constabulary to account. That arrangement seems to work relatively effectively. However, to return to what Angela Scott said, in terms of building the skills and capacity of boards to hold the chief constable to account, the demands are quite exacting.

Angela Scott: Clearly, the independence of the Auditor General must be maintained. That does not in itself prohibit holding the Auditor General and his staff to account for their performance against the strategy that the board has agreed. Like a chief constable, the Auditor General must determine the best way to discharge and implement the agreed strategy. There is not necessarily a tension there. Independence does not have to be compromised. The board is in place to monitor the implementation of the strategy and to ensure that measures are on budget and on time. There is a distinction to be drawn between the two roles.

Robert Brown: Do the arrangements put greater emphasis on the need to define the roles of the chair and the chief executive in corporate governance terms? You touched on the subject earlier, and you suggested that it is a good idea to have some sort of definition of the roles. Would you expect to have a written document saying that the chair's role is to do X, Y and Z?

Gillian Fawcett: That would be helpful to a number of sectors. Certainly in some of the sectors in which I have worked, there has been tension because of a misunderstanding of each other's responsibility. A definition might differ depending on the sector, but it would be useful and could be used in training and development programmes. It would be useful to have something against which performance could be explicitly monitored.

Angela Scott: I agree. We have included that in the local government framework to ensure that the chair or leader is clear about their purpose and that they do not become involved in operational delivery and implementation.

Robert Brown: What about other members of the board? Is it normal to have a definition of their role, or is it fairly obvious as it follows from the role of the chair?

Angela Scott: For the non-executives of public bodies, the public appointments process defines the roles and responsibilities so that there is clarity. In the local government sector, there is a form of definition of the role of local elected members in their job descriptions.

Robert Brown: You spoke earlier about the board having a strategy. Would you expect that to be a written document developed over time rather than an informal understanding? How should that to be in place?

Gillian Fawcett: A strategy would deal with how to take the organisation forward, including clear outcomes. As covered in the good governance standard, the key is to focus on the organisation's outcomes and delivering what it sets out to deliver. That is the collective responsibility of the board and the executive.

Robert Brown: You touched on the principles of how boards work and what the roles are. One aspect might be the question of appraising performance and general monitoring. Do the processes and techniques for doing that feed into the arrangements for the operation of the board?

Gillian Fawcett: Yes. We just spoke about strategy. There are different ways in which boards interact with executives in developing a strategy. The worst example is a board just rubber-stamping a strategy without challenging whether its delivery is realistic. On the other side, boards can get actively engaged in setting the strategy, which might be done outside a committee room or as part of a policy or away day. Boards can get involved at the beginning when the policy and strategy are set or, at the other end, just to rubber-stamp it. In my view, the latter would not make for an effective governing board.

Angela Scott: There are several strands to performance evaluation: individual board members; the chair; the board collectively; and the staff employed by the board. It is a question of bringing all that together and having a rigour to the performance evaluation of both the non-executives and the chair. There is a lot of guidance about how that performance evaluation should be done and how the views of the non-executives should be taken on board in evaluating the chair and chief executive.

The Convener: I have a question on good practice. Should board members be appointed for a fixed length of time and, if so, should the term be renewable?

Gillian Fawcett: From my experience of being a board member of a national charity, I believe that board members should be on the board for a certain amount of time, which may be fixed, mainly because people run out of momentum and steam. They give up a lot of time, and the job requires a lot of motivation. A period of two or three years is the maturity of a company, so to get fresh blood into the board I would recommend a fixed term.

Angela Scott: We support those comments. The question takes us back to the issue of independence. If someone is around for a long time, is their independence compromised? Do they start to become operational in their thinking? "The Combined Code on Corporate Governance" says that the minimum should be a fixed term of three years that can be renewed. With renewable terms, performance evaluation becomes even more important to ensure that non-executives have their performance appraised and still make a valid contribution. There is a question of independence within renewal.

The Convener: Finally, are there any other issues in considering best governance practice for a board that have not been covered this morning?

Gillian Fawcett: No. I cannot think of any other issues. One example of good practice in measuring the effectiveness of boards is when boards do not just self-assess but ask organisations to assess their performance against the standards. Mature organisations, which believe that they are delivering and have effective governance in place, will do that. That helps the board to concentrate on where the gaps are and how to plug them in a more focused way.

The Convener: Thank you both very much for your time this morning; we are much obliged. We will suspend for a few moments while we change the seating arrangements.

10:16

Meeting suspended.

10:18

On resuming—

The Convener: We will conclude taking evidence for our review by hearing from members of Audit Scotland's board. I warmly welcome John Baillie, who chairs the Accounts Commission and Audit Scotland's board; Robert Black, who is the Auditor General for Scotland; Caroline Gardner, who is the deputy auditor general and the controller of audit; and Phil Taylor, who is a non-executive member of Audit Scotland's board.

We appreciate your taking time to come along this morning. I hope that you heard members say that we value and appreciate the good work that Audit Scotland does. I re-emphasise that the review, which takes place post-devolution and eight years on from Audit Scotland's establishment, is about not being complacent; it is about casting a fresh eye over arrangements, particularly in response to the Tiner review. I want the witnesses to be under no illusions—we value, appreciate and understand Audit Scotland's good reputation.

John Baillie would like to make an opening statement.

Professor John Baillie (Accounts Commission and Audit Scotland): I thank the convener for her kind words. We welcome the opportunity to introduce our comments and, collectively, to present the views of Audit Scotland's board. When I wrote to the SCPA in May and in September to share our thoughts on the Tiner report, our intention was to discuss with the SCPA our governance arrangements and to focus together on whether, in the context of Tiner and eight years' experience since Audit Scotland's creation—to which the convener referred—we could make improvements. We thought that we could do so, and we are pleased that the commission has given time to the issue.

I will touch on two key subjects in which the commission is interested. The first is Audit Scotland's governance arrangements, the board's role and any consequences for a revised protocol with the SCPA. The second is the Auditor General's appointment and terms and conditions.

Before discussing those issues, I will make two important points. First, one feature is so crucial to the audit function that, without it, that function would be irretrievably damaged. As members will know, that feature is independence. It is from the independence of the audit function that the audit derives its authority and credibility to gather and evaluate evidence and to report conclusions. That independence must be perceived as well as real. By independence, I mean not only an objective mind but processes that are unfettered by influences outside the auditor's deliberations.

Secondly, Scotland has a public audit system of which we can be extremely proud. It is cost efficient and it delivers results. Most important, it is independent and is seen to be so. For public and parliamentary accountability, we have only to look at the work by the Parliament's Audit Committee in holding inquiries that are based on Auditor General reports, and at the work by the Accounts Commission, not only in its published studies but in holding public hearings, such as the recent meeting at Aberdeen City Council.

Audit Scotland was established as a shared services organisation: it exists to provide services to the Auditor General and the Accounts Commission. The board's structure reflects that clear shared services model. Audit Scotland has no functions of its own that are not performed under the direction of the AGS or the Accounts Commission. The current model stands up well and is fit for the purpose of running a shared services organisation. However, we can improve the relationship between the board—and particularly its chair—and the SCPA. That could make far more transparent how the relationships and structures work to support Audit Scotland.

The Public Finance and Accountability (Scotland) Act 2000 specifies that Audit Scotland's board should comprise the Auditor General, the Accounts Commission's chair and three other members, who are to be appointed jointly by the Accounts Commission's chair and the Auditor General. The board's independent non-executive member is appointed after a full open competition. We understand that it is felt that the system for appointing board members could be more transparent. We would be happy for the SCPA to have an increased role in approving the appointment of board members.

I turn to the Auditor General's terms and conditions. We believe that a 10-year term—as has been proposed at Westminster for the Comptroller and Auditor General—or an eight-year term is preferable. That would provide the Auditor General with time to become established, to deliver an effective programme of work and to provide an independent, effective and informed service to the Audit Committee. That would be even more the case if the Auditor General's eight or 10-year term straddled three parliamentary sessions because the appointment was made mid-session.

Another issue is how the Auditor General's remuneration is reviewed regularly. Currently, any such review is considered by the Scottish Parliamentary Corporate Body. As the SPCB is itself audited by the Auditor General, the current arrangement is a threat to the perception of independence of the Auditor General. An alternative route for the regular updating of the

remuneration would be to link it to that of another role, such as permanent secretary or a member of the judiciary. However the linking is done, it should be in accordance with the principle of independence.

I thank the convener for allowing me to make those opening remarks, which I hope have been helpful. We are, of course, happy to answer any questions that members have.

The Convener: I thank Mr Baillie for those opening remarks. I am certainly a believer in independence, but I cannot comment on behalf of my colleagues.

The questions that we will pursue this morning are on five main themes: the appointment of the Auditor General, which has been mentioned; the terms and conditions of the Auditor General; the board arrangements of Audit Scotland; the public audit structure in general; and, of course, the SCPA's role—it would be unfair of us to be constantly turning our eyes to others without inviting others to reciprocate.

Hugh Henry: My question is on structures. Professor Baillie talked about a shared services organisation whose functions are shared by the Auditor General and the Accounts Commission. I understand the historical development of that differentiation, but does the Accounts Commission need to operate almost as a separate organisation when, to all intents and purposes, it exists within the umbrella of the broader audit function? Arguably, would it not be better to have a simplified organisation to deal with the audit function? A subset of that issue is whether, apart from those in the know, anyone in the wider public understands the distinction between the Auditor General, Audit Scotland and the Accounts Commission.

Professor Baillie: That was several questions. I will deal with them one at a time.

In anticipation of the question, I prepared an answer on whether the Accounts Commission's role could be subsumed in some way. Forgive me, because it is a little long, but some important points need to be made.

The Accounts Commission exists for a very good reason, which is to secure the audit of local authorities—all 32 of them—plus their associated bodies. In that role, we aim to meet the highest standards of financial stewardship and to achieve economy, efficiency and effectiveness in the local authorities and the other audited bodies. Likewise, we aim to review them from the best-value point of view.

The role of the Accounts Commission includes reaching findings that arise from the controller of audit's best-value reports on each of the 32

councils, which include comments on where each council has to improve. The findings are arrived at after detailed discussion and challenge of the controller of audit's findings. The best-value exercise is part of a process of continuous improvement that is enshrined in legislation.

Once the Accounts Commission publishes its findings, we follow them up by face-to-face meetings with councils. Those meetings are chaired by myself or the commission's deputy chair and are supported by two other commission members and the controller of audit. The council's improvement plan is prepared prior to that meeting, and we challenge it and the timetable. The process contributes significantly towards continuous improvement.

If we in the Accounts Commission suspect that there are serious issues, we will hold a public hearing. Over the past eight years, under the best-value regime, two such hearings have been held, which have served the useful purpose of allowing citizens to understand better the issues that the Accounts Commission is pursuing.

I am sorry if that is all stuff that you already know, Mr Henry. I suspect that it is, but I give that background because, in considering the issue, I found it helpful to think about what would happen if the Accounts Commission were disbanded.

10:30

Hugh Henry: I was not suggesting for a moment that the work that you have just outlined should be stopped, nor am I suggesting that the function should be disbanded. I am merely asking whether Scotland could have a simplified audit structure to carry out the functions that the Accounts Commission, the Auditor General and Audit Scotland carry out.

Mr Robert Black (Auditor General for Scotland): Perhaps I could help with that. As the commission is aware, I have been in my post for some time, and I must say that I feel a degree of ownership of and pride in the system. I was also a member of the financial issues advisory group, the recommendations of which were accepted by the Scottish ministers of the time and then by the Parliament in the legislation that was promulgated.

The architecture is simple, although the general public have some difficulty with how it operates in practice, which I fully understand. In essence, the Auditor General for Scotland has responsibility for the independent auditor reporting of all devolved functions apart from local government; the Accounts Commission looks after local government; and Audit Scotland is a shared services organisation that provides services to us both. That triangle is relatively simple to understand. I suspect that it is sometimes

challenging to understand how it works in practice, but I echo what John Baillie said: it works extremely well. I believe that, last week, you took evidence from John Swinney, in which he commented on the value that he attaches to the Accounts Commission reports on matters relating to local authorities in Scotland.

I will offer you another thought: the structure creates a useful parallel between the work that Audit Scotland does on my behalf for the Parliament's Audit Committee and the work that it does for the Accounts Commission through Caroline Gardner wearing her controller of audit hat. It is to do with how far the audit process can be taken.

Members of the commission—not least yourself, Mr Henry, as the Audit Committee's convener—know the Audit Committee's work well and know that, in the reports that we take to it, we push the audit process as far as the objective evidence allows and, in my name, make such findings as we can on the basis of that evidence. Where the Audit Committee kicks in is in the holding to account: it finishes the process because it can ask questions of the accountable officers—the senior civil servants—on the meaning, significance and implications of what is in the audit reports. That is done in public and is a healthy process that often leads to action being taken.

The Accounts Commission does the same in relation to local authorities. If a best-value report has some challenging findings, the Accounts Commission can challenge the local authorities from its position of independence. It is unusual for there to be a public hearing but, behind the scenes, a lot of good work is undertaken to engage with local authorities to try to generate improvement. Caroline Gardner is much better placed than I am to speak about the detail of that, but the process is not complex.

Hugh Henry: It might not be complex for you, but there is no transparency for the public. Indeed, there is confusion for many of the recipients of your functions. I have had several phone calls from people in local government wanting to know whether the Audit Committee can look at this, that or the next thing, and I have had to say no, or they have wanted to know whether Audit Scotland can look at this, that or the next thing, and I have had to say, "No, you go to the Accounts Commission." Even elected representatives are unclear about the separation of interests.

I am struggling to understand why we cannot have an audit function—you could call it Audit Scotland if you want or change the name—headed by the Auditor General that has responsibility for the things that you currently report on to us in Parliament and for the issues that are dealt with by the Accounts Commission. In that way, everyone

would know where the executive and accountability heads of the audit function lay in the form of a board that would hold you and your organisation to account.

I do not suggest that the Parliament should be able to go into the details of all local authorities, because I recognise the separation of interests—they are accountable to their public. However, merely from management, organisation and accountability perspectives, why cannot we have a simplified structure? Why do we need the current confusing relationships?

Professor Baillie: Where would the challenging of findings and the holding to account of local authorities go if we did not have the Accounts Commission? In the structure that I think you contemplate, the audit work would be done by Audit Scotland and the Auditor General. Would the holding to account of local authorities go to the minister? If so, the minister would require some staff to go through all the considerations that are done currently by the Accounts Commission. On top of that, the minister would be of a particular political persuasion, and no matter whether the local council that was being held to account was of the same or a different persuasion, there might be a public perception that the process was not wholly independent.

Hugh Henry: I could indulge in a discussion in which I sketch out the future for the audit function in Scotland, but that is not what we are here to do today. I am merely asking a question about what I think is a lack of understanding about a system that could be simplified. I have the luxury of asking the questions today without having to provide all the answers. However, if the convener wants to indulge me, I could keep us all here for a while, talking about everything. I am asking you whether the structure could be simplified.

Professor Baillie: The reason why I originally wrote to the convener on behalf of us all is that we are concerned to ensure that Audit Scotland's structure and its relationship with the commission is as transparent as it can be. That is why we are delighted that you have taken up the issue and that we are here.

The Convener: Do you have a view on whether the structure could or should be simplified, or do you favour the status quo?

Professor Baillie: Much of the discussion is about the role of the Accounts Commission, because effectively it serves the function that the Parliament's Audit Committee serves with respect to the Auditor General's reports. If you can find another way of serving that holding-to-account function, it would simply replace the Accounts Commission. Caroline Gardner wants to say something.

Caroline Gardner (Audit Scotland): Our view is that the current structure gives us the best of both worlds. It provides a buffer between Parliament and ministers and the separately elected tier of local government—the 32 councils—and it means that all the audit work in the public sector in Scotland is done by one organisation. That means that we get all the economies of scale and efficiencies that come from that, and that we can look across local government and health, and from central Government through councils, to view the whole picture. Other structures might be possible, but our sense is that the present structure has stood the test of time pretty well in the past eight years and gives those two important sets of advantages.

The Convener: Do you have any follow-up questions, Hugh?

Hugh Henry: No. I have issues about the board, but I will return to them.

George Foulkes: I am a simple person, so my questions will be much simpler than Hugh Henry's. The Audit Scotland board has five members. Professor Baillie is on it as chairman of the Accounts Commission. How were you appointed as chairman of the Accounts Commission, Professor Baillie?

Professor Baillie: By ministers, after an open competition.

George Foulkes: And who appoints the Auditor General for Scotland?

Professor Baillie: The Crown, on the recommendation of Parliament.

George Foulkes: And then you two appoint the other three members of the Audit Scotland board. Is that right?

Professor Baillie: That is exactly right. We do that jointly.

George Foulkes: So you appoint board members who are supposed to be independent.

Professor Baillie: The independent member with no connection either to the Auditor General function or the Accounts Commission is Phil Taylor, who is here today. We appointed Phil Taylor after an open competition and the same will apply to his successor.

George Foulkes: The fifth board member is not here today.

Professor Baillie: The fifth member is the deputy chair of the Accounts Commission, but she is not here today.

George Foulkes: Caroline Gardner is a member, and she is Robert Black's deputy.

Professor Baillie: She is also controller of audit.

George Foulkes: Yes, but she is Robert Black's deputy. Robert Black is her boss, so she is not an independent member.

Professor Baillie: Not in that structure.

George Foulkes: And the deputy chair of the Accounts Commission is a member, but he is not really an independent member.

Professor Baillie: She—

George Foulkes: Sorry—she.

Professor Baillie: Like me, she represents the interests of the Accounts Commission.

George Foulkes: Right. So the only truly independent member is Phil Taylor.

Professor Baillie: That is correct.

George Foulkes: How were you appointed, Phil?

Phil Taylor (Audit Scotland): I saw an advert in the newspaper and thought that the post looked interesting, so I applied. I do not know how many other people applied, but it was an open competition. I went through an interview process.

George Foulkes: Who interviewed you?

Phil Taylor: The former chairman of the Accounts Commission Ian Percy and Mr Black.

George Foulkes: So you were appointed by the chairman of the Accounts Commission and the Auditor General for Scotland.

Phil Taylor: Correct.

George Foulkes: How can we describe any of the five members as truly independent, Professor Baillie?

Professor Baillie: That is one of the points that we wanted to raise with the commission and one reason for our writing to the commission in the first place. We think that, via the protocol or maybe a change of legislation, the SCPA should perhaps look to have a hand in the process.

George Foulkes: So when Caroline Gardner says that the arrangements give you the best of both worlds, that does not include the way in which the five members of the Audit Scotland board are chosen.

Professor Baillie: No. I think that Caroline Gardner was referring to the Accounts Commission. She was talking about the auditing function, rather than the supervision of the resources that deliver the function. Remember that Audit Scotland does not of itself issue audit reports that are not the property of the AGS, the controller of audit or the Accounts Commission.

George Foulkes: We need to look ahead to a time when we do not have people with the depth of experience and background that Robert Black, Caroline Gardner, you and your colleagues have. We must ensure that the organisation can stand the test of time and be seen to be independent. None of us is saying that there is a problem of perception, but that could change. Do you agree that your present structure does not conform to the standards for good governance in public service that we heard about earlier?

Professor Baillie: We must be careful in answering that question, for good reason. We are dealing with a shared services organisation. The only reason that it exists is to marshal the resources in order to deliver the work that is required by the Auditor General and the Accounts Commission. That is its *raison d'être*—nothing more.

10:45

Mr Black: As auditors, we would expect a shared services organisation, such as the ones that are being set up by various local authorities, to have its principal stakeholders on the board, looking after the interests of the stakeholders. That, in essence, is what we have got. You could almost say that Audit Scotland was a shared services organisation before its time. It was set up in order to attain a critical mass that would enable us to do the work well, attract good staff, act in a cross-cutting way and also achieve economies of scale, and I think that we deliver all of that.

The Audit Scotland board does not exist as the principal means of accountability for Audit Scotland. As far as I am concerned, the SCPA is one of the principal means of accountability, because you have duties to receive the budget estimates, question me, make reports to the Finance Committee, appoint the external auditor, receive independent audit reports and receive the annual report and question me on it. You are a key element of the accountability framework.

The Audit Scotland board does a different job. It ensures that the internal processes by which Audit Scotland marshals its resources, to use John Baillie's excellent phrase, work in accordance with proper standards. It is important to distinguish between the high level accountability and the operational accountability of the Audit Scotland board. I am not sure that that came out particularly well in your previous evidence-taking session.

George Foulkes: But we have no role in appointing your successor.

Mr Black: Not as I understand it, as reflected in the standing orders. You might wish to converse with us about that.

George Foulkes: And we do not have a role in appointing any of the other members of the Audit Scotland board.

Mr Black: That is correct. As John Baillie indicated, that is why we propose that this commission could have a role in formally approving the membership. That would give you and the wider constituency confidence that the appointments were being made properly.

The Convener: Are the size and composition of the board correct?

Professor Baillie: As you know, there are five members at the moment. When we discussed this matter last week, Caroline Gardner—I think—said that it was a matter of judgment whether there should be six members. I argue that there should always be an odd number, for good reason. I also argue that the non-executive members should always have a majority. In any consideration of an increase in size, you have to consider whether the extra value that would be brought by the additional members would be worth the cost.

Hugh Henry: Robert Black said that Audit Scotland was almost ahead of its time in the way that it delivers all its various functions. We are also told that the Accounts Commission has a completely separate function from that of the Auditor General. What is the relationship between the Auditor General and the Accounts Commission?

Professor Baillie: It is actually a very good one, and—

Hugh Henry: I mean the structural, organisational relationship.

Professor Baillie: I see. The Accounts Commission is very happy with the services that are provided by Audit Scotland, and I suspect that the same is true of the Auditor General.

The Accounts Commission places two thirds of its work with Audit Scotland and one third with external private firms, so that good ideas can be shared, bad ideas can be ditched and people can keep up with developments. That is a policy matter.

Hugh Henry: I was asking what the relationship between the Auditor General and the Accounts Commission is. Is there no relationship whatsoever?

Professor Baillie: Only via the Audit Scotland board. Of course, we share all sorts of things on a—

Hugh Henry: Yes, but as George Foulkes pointed out earlier, Caroline Gardner is deputy to the Auditor General.

Caroline Gardner: Can I have a go at answering that? I am the most senior person in Audit Scotland who reports to both the Auditor General, as his deputy, and the Accounts Commission, as the controller of audit, which is a statutory function.

In formal terms, the Accounts Commission is responsible for local government and the AGS is responsible for health and central Government. That said, we all know that, increasingly, public services require those organisations to work together. The way in which the system works in practice is that, through the single audit organisation, the commission receives reports on individual councils and the Audit Committee of the Parliament receives reports on health boards and central Government bodies. However, there is scope in the current arrangements for joint work on all areas where there is joint responsibility.

Recently, the Audit Committee received a piece of work on the school estate that Audit Scotland had carried out jointly for the AGS and the commission to enable us to take a look across the whole strategy and expenditure in that area and to draw common themes. As members would expect, that relies on a close working relationship between the AGS and the commission. That is expressed through the protocol that was agreed when the arrangements were first set up and which is refreshed regularly. Audit Scotland can therefore balance the demands of both bodies and ensure that its work is done in a way that is proper and which provides value for money.

Phil Taylor: I return to a point that was made earlier on the role of the non-executive and independent members. I assure members that I have adopted a wholly independent view that is based on my experience in the private and public sectors over 20 or 30 years. I have been able to express those independent views without fear or favour. If the non-executive member, or non-executive members in future, were to gain the backing of the Parliament in some form—perhaps through one of its committees—that would add to their authority. That said, I have not found that to be an issue.

Robert Brown: Difficult issues are involved. Although the Accounts Commission may not have been the focus of our discussions in the past, we need to have a greater understanding of its composition. How many members sit on its board?

Professor Baillie: The maximum is 12 members, and we currently have 11. Members are appointed by ministers following open competition.

Robert Brown: Do their names emerge as a result of council recommendations?

Professor Baillie: No. They are all individual appointments; there are no representative

members. Every member is there as an individual and the magic word “independence” is stressed in their terms. Indeed, members defend that independence quite fiercely at times in meetings.

Robert Brown: I am sure that that is absolutely right.

Bearing in mind what you said earlier about your involvement and that of other members of the Accounts Commission in the processes of engagement and reiteration with local authorities, what time commitment is asked of members of the Accounts Commission and Audit Scotland? I appreciate that there is a degree of overlap.

Professor Baillie: Commission members meet every month; beyond that, and when necessary, we meet to discuss best-value reports on councils. As I said earlier, we also attend meetings with councils to discuss the outcomes of their best-value reports. In addition, we have two committees: the financial, audit and assurance committee, which discusses matters of that nature; and a performance audit committee, which takes on the role of looking at studies, including joint studies with the Auditor General. Those committees meet three or four times a year and report to the commission. On top of all that, we have the usual strategy seminars and other such gatherings to keep people up to speed.

Robert Brown: When someone takes up such a post, is there an understanding that it will involve a day a week, or five days a week? Also, are members, including the chairman, remunerated?

Professor Baillie: None of the members of the board, other than the independent member, is paid a penny for the role that they play. The open competition advertisement for the chair specified a figure of around 92 days. Predictably, that was an understatement. As a former commission member, I know that the time that is devoted by commission members is usually more than that. Aside from preparation for meetings, a lot of other time is involved in keeping up to date on unusual stuff—

George Foulkes: Giving evidence to parliamentary committees and so on.

Professor Baillie: That is part of it. However, given that we wrote to you in the first place, we are obviously delighted to be here.

Caroline Gardner: I have just one point of clarification to make. The terms “board” and “commission” got a bit lost there. Members of the commission are remunerated for their time. I think that the understanding on time commitment is about one and a half days a month as a basic commitment for members and a greater commitment for the chair, as John Baillie said. The arrangements for board members are slightly different. They are not remunerated for their

involvement with the board, with the exception of Phil Taylor as the independent member. I just wanted to make that clear for the record.

Robert Brown: That brings out the important difference in relation to the time commitments of the boards of the two bodies, which is important to know.

Phil Taylor: My role is different from those of the others on the board in how it has developed. Time-wise, we have about five board meetings a year. We have two committees of the board: the audit committee, which meets about four times a year, and the remuneration committee, which meets roughly three times a year. We also have to attend ad hoc meetings such as this one and others in a similar vein. My original commitment was about 18 days a year, but it is now probably about 24 days a year.

Robert Brown: Caroline Gardner's function is to be the controller of audit. What does that mean in practical terms?

Caroline Gardner: In practical terms, the role is a close parallel to the role of the Auditor General in relation to health and central Government bodies and reporting to the Audit Committee. As the controller of audit, I take the results of the audit work on the 32 councils and the other local government bodies and, when appropriate, I report them formally to the Accounts Commission so that it can play the role that John Baillie outlined earlier in holding those bodies to account. I make formal reports to the Accounts Commission, which has powers to hold hearings and to make findings and recommendations to councils and ministers on the back of my reports.

Robert Brown: In that role, are you an independent office-holder as opposed to being Robert Black's deputy?

Caroline Gardner: Yes. I am appointed by Scottish ministers to carry out that role.

Robert Brown: So, that is a slightly different arrangement again. It is slightly anomalous that you have two separate roles and that, in certain parts of your function, you are accountable to Robert Black.

Caroline Gardner: That is right. Again, that shows that we are very good value for money.

Robert Brown: On the structural issue, we are aware of the example of Wales, where there has been a unified body from the early days of the Welsh Assembly, which has not had the history that we have had in Scotland. From the written submissions that we have received on that, the arrangement seems to work reasonably well although there are some question marks relating to the size of the Assembly and the need for a body like the SCPA, as opposed to that work

being done by the Welsh Assembly's Audit Committee. It is clearly possible to have a structure in which both the local authority function and the central Government function are fulfilled in one organisation. The Welsh body seems to take on board the different reiteration processes and everything that you talked about before.

Our concern is about the top level of the board structure and relates to the complexity and lack of transparency around that. Do you think that it is possible, without losing the essence of the good work that you do, to have a more satisfactory top-level role for a board—however it is described—that would perform both the role of the Accounts Commission's board and the role of Audit Scotland's board as they are performed at the moment?

Professor Baillie: In relation to the Welsh example, the issue that may arise in the future is what that body does when it challenges a council. In Scotland, the Accounts Commission might challenge a council via a public hearing. That might be an issue for the Welsh body.

Mr Black: John Baillie is absolutely right. If there were to be a significant audit report on a Welsh local authority—concerning its governance and performance—that was of serious public concern and of concern to the Welsh Assembly, it is not clear to me or to Caroline Gardner what would happen to that report. I do not want to say more than we know about the Welsh situation but, frankly, I believe that the situation in Scotland is significantly better. We have a robust set of arrangements in place that have been tried and tested in the real world.

I would guess that, if a council in Wales were falling over in some way, the Welsh Assembly would have to find some way of engaging directly with that local authority. However, that would introduce the further complication of possible political differences between the Assembly members and the local authority members, depending on the political make-up of each.

I am always anxious to keep audit out of two areas—one is politics and the other is the courts. In England, the Audit Commission in many ways fulfils a similar function to that of the Accounts Commission, but the Audit Commission does not have a duty and power to hold hearings and make recommendations to ministers in situations in which local authorities are found to be at fault.

11:00

The highest profile case in recent times that came under the auspices of the Audit Commission was the report into Westminster Council many years ago when Shirley Porter was in charge of that local authority. There was no alternative but

for the audit firm that the Audit Commission appointed to interact directly with the courts, because there was no other resort. The Scottish model, whereby we have a tribunal-type body in the Accounts Commission and independently appointed people of standing and experience to deal with such matters, is far preferable to either of the alternatives.

Hugh Henry: In the example that was given, the Westminster Council issue ended up in the courts. What powers to act would the Accounts Commission have if a similar problem was found in Scotland?

Caroline Gardner: The formal process is that, as controller of audit, I would make a statutory report to the Accounts Commission, which has the powers to hold a hearing if it believes that that is necessary, to make findings, and to make recommendations to ministers. There used to be a power of surcharge in both Scotland and England, but it was removed some years ago as part of the changes around the Human Rights Act 1998.

The commission separates out the role of judge and jury. The reporting comes from me as controller of audit and the commission then considers my report. It can find my report to be at fault as well as finding the council at fault, so that introduces an element of natural justice and provides a public forum in which issues can be aired in a way that we have seen in Scotland recently in relation to much less significant issues.

Hugh Henry: Yes, but ultimately the commission has no power other than to refer something to ministers. Despite what you said earlier about keeping ministers out of the process, when something goes wrong, it is ultimately ministers who have the power to act and not the commission.

Professor Baillie: That is correct, but the minister can be confident that the conclusions in the Accounts Commission's report were reached independently and are untainted by any suggestion of political favouritism or antagonism.

Hugh Henry: I am sure that ministers act properly, but you raised a worry about politicians and ministers acting on political grounds. Despite what we say about keeping the Parliament out of the functions of what is an independent, elected body, if something goes wrong in a local authority and an adverse report is produced, it is only ministers, who are appointed through the Parliament, who can do anything.

If it was felt that the minister was acting inappropriately in relation to a local authority, how would they be held to account for their actions?

Professor Baillie: At that stage, the minister would be held to account through the normal processes of the Parliament.

Hugh Henry: So, de facto, the Parliament has an interest in the process when something goes wrong.

Professor Baillie: Ultimately.

Hugh Henry: Despite our saying that we try to keep Parliament out of the process, there is ultimately a parliamentary responsibility to hold the minister to account.

Professor Baillie: I should draw a distinction between the independent findings that allow the process of holding to account to be considered valid and the judgment on what to do as a consequence of those independent findings.

Hugh Henry: Yes, and it is a distinction that we value and cherish and would want to embed. I do not think for a moment that anyone is suggesting that our system is different from that. However, it is useful to have the clarification that, ultimately, the problems identified by the Accounts Commission will be acted on by politicians here, not in local government.

Professor Baillie: That is correct.

Caroline Gardner: Mr Henry is absolutely right, but, to clarify the point completely, I should add that the Accounts Commission provides a mechanism for making deliberations public. For example, a recent public hearing in Aberdeen attracted a lot of attention from local people and the media, allowed the issues to be aired and provided a public basis for the commission's recommendations. That very powerful check and balance in the system ensures that such powers are properly exercised.

Robert Brown: I think that Robert Black summed this all up very well. We have the Accounts Commission, the Audit Scotland function and the SCPA, which provides external accountability. As long as we understand the difference between Audit Scotland's more operational role and the Accounts Commission's tribunal role and as long as those powers and arrangements are kept intact, there is no reason why they should not be part of a single accountability structure. However, as we heard earlier, the fact that the Auditor General is on the Audit Scotland board is a bit of an oddity, and the slightly bizarre and unusual arrangements for appointing other board members do not seem to accord with the best principles of public governance and accountability. I think that those are our areas of concern, if I have not misunderstood my colleagues.

Mr Black: I think that any attempt to conflate the Accounts Commission and Audit Scotland would

lead to a great deal more confusion about the accountability regime in Scotland. I would still have to rely on this combined body—Accounts Scotland, or whatever it might be called—to help me deliver services to the Parliament. However, the local government work, which has to go through a different process to get to ministers, would still have to remain distinct. The Accounts Commission's role—which you have very perceptively described as a tribunal role—would either disappear or be captured somehow in Audit Scotland. As Audit Scotland is essentially a provider body, such a move would change its nature. Frankly, people out there might become even more confused about the reach of the Auditor General's role and about whether I would be expected, for example, to have a role in issues relating to individual councils. I respectfully suggest that going in that direction would raise as many questions as it would answer.

Robert Brown: It certainly raises quite a few questions, some of which have been teased out this morning. However, as Caroline Gardner pointed out, lessons are starting to be learned right across the public sector, and common standards and approaches are increasingly being introduced with, for example, health boards working with local authorities. As a result, the logic behind that division is perhaps less manifest than it might have been when the structure was first set up.

Mr Black: What is absolutely true is that the strengths of the Scottish model are now coming to the fore. I believe with some passion that we can cope with the cross-cutting issues that you have highlighted not only because we work so closely together but because we have a shared services organisation that, for example, does all the business and drafts the programme of performance audits, including the cross-cutting studies that the Accounts Commission and I sign off. The system works remarkably well.

Hugh Henry: Why is it a strength that you as the Auditor General do not have a function in relation to the Accounts Commission but your deputy does?

Mr Black: It might be helpful to try to capture exactly what the legislation says. The Scotland Act 1998 states:

“There shall be an Auditor General for Scotland”

and the Parliament has kept on the statute book the legislation that created and governs the work of the Accounts Commission. The legislation requires that there be a controller of audit who makes reports to the Accounts Commission. That is how things are done. Within that fairly straightforward triangular structure, we somehow need to find a way of getting all the reports to the

Accounts Commission. With my full support, we asked whether we could attach the statutory duty of controller of audit to a senior Audit Scotland official. It is a bit like a council in which officers such as directors of law and administration have statutory duties as monitoring or finance officers. A significant element of Caroline Gardner's extremely wide-ranging and demanding job remit is to be the controller of audit. That is how things operate. However, in theory, the Accounts Commission could have determined that the Auditor General should be the controller of audit.

Hugh Henry: That is what I asked about. You have explained how things work, but my question was why it is a strength that you do not have a function in relation to the Accounts Commission but your deputy does, as the controller of audit. Why should your deputy rather than you have such a function? What is the strength of that arrangement?

Mr Black: The Accounts Commission took a policy decision on that, so John Baillie is probably better able to answer your question.

Hugh Henry: So the Accounts Commission rather than anyone else determined that.

Mr Black: The Accounts Commission determined, with my approval, that the deputy Auditor General should carry that function. It is clear that the function must reside at a very senior level in the organisation.

Hugh Henry: That is right, but the Accounts Commission could have decided that you rather than your deputy should have that function. That takes us back to the questions that George Foulkes asked about the relationships between individuals at board level and other levels.

Professor Baillie: In theory, one person could deliver reports to the Parliament's Audit Committee and to the Accounts Commission, in terms of its current function. However, a question might arise, about whether the audited bodies would see that person as carrying information that was biased in some way as they moved between the two types of reporting responsibilities.

Hugh Henry: I understand that, but the decision about which person should have that role was taken by the Accounts Commission, which has a board with a strange appointment structure, to say the least.

Caroline Gardner: No. Members of the Accounts Commission are appointed by ministers. The Audit Scotland board is appointed somewhat differently.

Hugh Henry: I beg your pardon; I am sorry. The Accounts Commission, members of which are appointed by ministers, took that decision. It could

decide that someone else should have that function if it so wished.

Mr Black: That is correct in law.

Professor Baillie: Yes. That is within our gift.

The Convener: I want to ask about the Auditor General's multiple roles. You heard the question that I asked our earlier witnesses. Could the Auditor General's multiple roles be considered to be a weakness in the system?

Mr Black: Would you help my understanding of the term "multiple roles", convener?

The Convener: My understanding is that you are an executive member of the Audit Scotland board, that you have the right to give statutory direction to that board, that you are the accountable officer—the chief executive, in effect—and that you have the right to choose new board members. Hugh Henry touched on some of the complexities that are involved. In fairness, I asked our earlier witnesses the same question, and they intimated that it might be more appropriately directed at this panel.

11:15

Mr Black: The role that I exercise as Auditor General is laid out in the Scotland Act 1998 and supported by the provisions of the Public Finance and Accountability (Scotland) Act 2000. My main responsibility is to exercise the duties of Auditor General, but the Parliament has determined that I should be the accountable officer for the main delivery agency. That is Audit Scotland, which undertakes work on my behalf and for the Accounts Commission. The advantage of that is that I am the person who comes before the Scottish Commission for Public Audit to give an account of Audit Scotland's budget needs, spending and performance. I cover that in its totality, but with a particular focus on everything that is of concern to the Parliament: the work in the health service and central Government.

At the top of any organisation there is a coming together of different roles. The model that we have is robust and works well. In our answers to earlier questions, we endeavoured to explain that I am comfortable that the chairman of the Accounts Commission and I should be the principle stakeholders in the shared services organisation, which is what the 2000 act says we should be. I am also comfortable that the board should identify the skill mix that it requires. As John Baillie outlined earlier, it would be appropriate for the commission to have a role in the formal approval of non-executive board members.

The Convener: I will pick up on that point in a second. First, if you will forgive me, I will ask a direct and blunt question, although I am not quite

sure who would be best to answer it. Do you feel that the current arrangements for Audit Scotland's board—the authority, independence and roles that everybody on it has—give it sufficient authority to challenge the Auditor General if need be?

Mr Black: Yes, I do. I have always believed and still believe that independence comes with the need for robust accountability. It is absolutely right to recognise the independence of judgment that goes with the post of Auditor General, and we do that well in Scotland. It means independence from auditor bodies but, nevertheless, robust accountability.

The arrangements work well. The Audit Scotland board members challenge me. I am sure that Phil Taylor in particular will be able to help you with that. In fact, I sometimes say in private, "My God! I am the most held-to-account person in Scotland." We put together our budget proposals, which then go to the Audit Scotland board members, who ask pretty robust and focused questions, similar to those that the SCPA asks. They are advised and supported by our internal auditors, whom the board appoints after open competition. Once the board is satisfied with it, the budget comes to the SPCA, which has an audit adviser and appoints Audit Scotland's external auditor and also asks us pretty challenging and perceptive questions.

We set standards for the degree of rigour and accountability that is applied to an auditor general in a public audit regime.

Phil Taylor: I will supplement that. My experience on the board has been that, on occasion, issues have cropped up on which, as the chairman of the board of Audit Scotland, the chairman of the Accounts Commission has not agreed with the Auditor General. I assure the commission that such issues are brought up, challenged and thoroughly explored. The board consists of two members of the Accounts Commission and me so, in theory, there is a majority who could vote if it ever came to a vote. The board is a challenging environment, despite how it is composed. I wanted to make that plain.

The Convener: I want to return to the comments by Mr Black and Professor Baillie on a possible new relationship between Audit Scotland and the SCPA with regard to the appointment of the non-executive member of the board. I stand to be corrected, but I believe that there is no specified procedure for selecting the chair of Audit Scotland. Should that be changed or amended?

Professor Baillie: There are two parts to the answer. First, the reason why the chairmanship of Audit Scotland goes to the Accounts Commission chair is to have an equal and opposite check and balance on the Auditor General, who is the chief executive. That is to allow the two stakeholders—

not the principal two stakeholders, the only two stakeholders—to have an equal and opposite say in the command of the resources that are used to deliver the programmes of both of them. For as long as the chief executive role is part of the AGS role, which Bob Black talked about and which I support, it is important to have a clear balance between that role and the role of the chair, by giving that post to the Accounts Commission chair.

George Foulkes: Robert Black spoke about accountability purely in financial terms, but surely accountability covers a range of other things. This would not happen in your case, Mr Black, but if an Auditor General went to the press regularly and leaked reports in advance for particular purposes, who would hold them to account on that? I am not asking you to answer that; I am just saying that accountability also relates to that sort of issue, not just your budget.

Mr Black: Absolutely. I will comment on that quickly and I am sure that John Baillie will too. In relation to the exercise of my professional and statutory duties, I would be held to account by the Parliament, and the Audit Scotland board would have no role in that. The board's role is to provide the operational services that are needed. To put it very crudely, the Parliament would have a clear line of fire at the Auditor General if it felt that he or she was abusing their position in any way whatever.

George Foulkes: We know what happened in England with the Comptroller and Auditor General, which we have discussed previously. The Parliament had the ultimate say on that. Although nothing happened formally, it was clear that the Committee of Public Accounts was unhappy about what the Auditor General was doing.

Mr Black: If I recall clearly, the previous convener of the SCPA asked questions about the expenses of the Auditor General for Scotland. That was entirely appropriate and the commission received an answer that I think was satisfactory.

Professor Baillie: Bob Black has said what has to be said about professional judgments. If, heaven forbid, the Auditor General went gaga with expenses or anything else, I can assure you that I and the rest of the board would be in touch with the SCPA so quickly that it would have to convene a special meeting. When we wrote to the commission we began with the issue of accountability. That is one reason why we are keen to build the commission's relationship with not only Bob Black as the chief executive of Audit Scotland, but the chair of Audit Scotland.

The Convener: Do colleagues have any more questions on the overall public audit structure or the Audit Scotland board?

Robert Brown: We asked about strategy and the role of the chair. Just for completeness, is there a written strategy document for Audit Scotland and a written document that identifies the role of the chair and others?

Professor Baillie: I will answer the second part of your question and Bob Black will talk about strategy. It is fairly straightforward to say what the chair does. The Audit Scotland board deals with six areas. We have touched on the corporate plan and the budgets. The third area is key policies; the fourth is procurement of significant assets; the fifth is the terms and conditions for staff; and the sixth is the monitoring of operations, including financial operations. Our role is to approve those areas, but only if we agree. We give the staff a stiff challenge when they present their monthly reports. So, that is the role of the chair.

To answer Robert Brown's point, one of the reasons for coming to you is to suggest, if I may, that, because the chair must give a steer on all those areas, it must all be enshrined in the protocol between Audit Scotland and the SCPA.

The Convener: We are ready to move on to more specific issues in relation to the appointment of the Auditor General and terms and conditions.

Derek Brownlee (South of Scotland) (Con): In your opening remarks, Professor Baillie, you referred to the period of tenure of a future Auditor General. In your initial correspondence with us, you suggested 10 years, but today you have floated the suggestion of eight years. Can you outline why you have decided on that length of tenure? When giving evidence a few weeks ago, the Scottish Parliamentary Corporate Body suggested a shorter term of four to five years.

Professor Baillie: There are several reasons for my suggestion. First, a longer term of tenure should not be a renewable one that has been broken up somewhere in the middle because that would compromise, or be perceived as compromising, independence. A tenure of eight years would have the simplicity of straddling three parliamentary sessions, if the appointment were made mid-session, with all the advantages that that would convey. In addition, such a tenure would give the Auditor General time to get established, learn what was going on and sense the areas that he or she thought should be pursued more fully. It is one thing to be appointed, but another to do the research necessary to come to a view on what should be pursued. Doing that takes time, as it does to build relationships and to start to inquire.

Another reason is that our study programme often takes three years from initial conception—sorry, I mean the Auditor General's study programme. I was thinking of the cross cutting that

we do with it. That programme takes maybe three years from initial conception through to delivery. All those reasons point to the thought that anything less than about eight years is not a long time to do anything other than one cycle of the job. There would be an issue then about whether we would get proper effectiveness from the post of Auditor General. It is for those reasons that we believe that eight to 10 years is the right term.

Derek Brownlee: Did you consider a longer period? The proposal in England is for a 10-year maximum. Given the point that you just made, which I understand, where do you draw the upper line? Why do you decide that it would be appropriate to have a change of personnel after eight or 10 years?

Professor Baillie: My personal view, which I have not shared with colleagues, is that for anything beyond X—I will come back to X in a second—the individual grows stale and finds a sameness about the job and that it is perhaps less of a challenge. Indeed, a good point made earlier by an SCPA member or a witness was that there could be a gradual erosion of independence. I have not thought through carefully what X—the upper limit—should be. However, I would have thought that it should not be much more than, say, 10 or 12 years, for the reason that I gave.

Robert Brown: I have a question on a linked point, which is about what happens when the Auditor General leaves office before retirement age. Are there issues regarding jobs that he can take on after that, or disqualifications that should be in existence and so on? That has been the subject of some controversy in different decision-making arrangements. Does the board have a view on that?

Professor Baillie: We do. The proposal in England that virtually no job should be available to someone in that position is quite severe. In real terms, it would preclude the use and exploitation of all that expertise and experience in a field in which it would be useful. For example, the Auditor General just now is responsible for the audits of further education colleges. Does that mean that, in terms of an academic career, the Auditor General could not take on a role as an academic in those colleges? That seems a bit strange. I think that, two weeks ago, somebody used the word “draconian”, which is the word that I would use. We need a far more practical approach. We think that it would be reasonable to preclude the Auditor General from taking work that would be regarded as sensitive for a period of about two years. There could also be the safety net of a referral to an appropriate official. That would cover both the reality and the perception.

11:30

Robert Brown: Are there some jobs that the Auditor General should not take on? I am thinking, for example, of a senior role in a local authority or health board that has been audited by the Accounts Commission.

Professor Baillie: It would be difficult for the Auditor General to justify taking on certain high-profile pieces of work. I will not presume to go into the specifics now, but a list could be prepared quite easily. Again, we could have a safety net; in the event of other roles arising that were not as sensitive, an appropriate person could take a view.

Mr Black: May I offer a thought on that? Clearly, I have no interest in the matter regarding the future, so I feel that I can offer a comment or two.

I support what John Baillie said about a reasonable term of office. I would not be willing to suggest a maximum, but it seems to me that there are lots of arguments in favour of a period of eight years.

On the point about restricting the Auditor General from accepting posts after he demits office, we must be aware that similar factors must be taken into account in appointing an incoming Auditor General. One could consider that it was inappropriate to appoint someone from a senior position who had been in charge of a large area of devolved spending. For such a person to audit her or himself would offer at least as much of a challenge as what happens to the old stager when they go out of the door. That is one reason why it is essential that we have a system that avoids any sense of there being a revolving door of auditors general.

Although I would like to think that there will be very good candidates for the job, we have to handle the issue of the incoming person and possible conflicts of interest as well as the issue of the outgoing person.

Robert Brown: I entirely understand your point, but on the other hand I imagine that the pool of potential auditors general, although significant, is not vast. If we were too draconian or stringent about who could apply for the job, we would run the risk of eliminating experienced people, would we not? It is difficult to strike the right balance, but I wonder whether you can give us any further thoughts on that.

Mr Black: I agree with that, and I agree that it is difficult to strike the right balance. As I think I mentioned a moment ago, the thoughts that John Baillie shared with you about length of office seemed to me entirely appropriate.

Robert Brown: On the question of—God forbid—the incapacity of the Auditor General, it has been suggested that there should be some

statutory recognition of the matter, particularly given the independence of the position and its importance in the body politic in Scotland. Should we have in place formal arrangements to deal with the incapacity of the Auditor General, other than an automatic delegation to the deputy, who herself might not have a statutory role?

Mr Black: I believe that that is reflected in the Public Finance and Accountability (Scotland) Act 2000. If it would help the secretary to advise you, we can certainly provide you with a note on that.

Caroline, can you recall more accurately what is in the legislation?

Caroline Gardner: We are both working from memory, but I think that the legislation already provides for the SCPA to appoint an interim Auditor General for Scotland pending decisions about the incumbent and a future permanent appointment.

The Convener: I am being advised that that is only the case in the event of a vacancy.

Caroline Gardner: So the question is when the vacancy occurs.

The Convener: Yes. There is still an issue about what would happen if someone who was in post became incapacitated for whatever reason.

Robert Brown: A similar issue occurred recently with the Lord President and legislation was passed to deal with it.

Phil Taylor: I have another point, which Mr Brown made in a way. Parliament will obviously want a sufficiently large number of candidates to apply for the role of Auditor General. If the term, the office-holder's activities afterwards and the remuneration are or are perceived to be restricted, that will limit the number of candidates from which Parliament will be able to choose. I urge the commission to consider that in whatever new structures or proposals are introduced.

George Foulkes: The word "protocol" was mentioned on several occasions. Do you want to send us some more thoughts about what the protocol might be in relation to the SCPA, the Accounts Commission and the Audit Scotland board?

Professor Baillie: Yes, we would welcome that. You will not be surprised to learn that we have already done some work on that, which we can provide to you.

George Foulkes: I thought that you might have—thank you.

The Convener: Professor Baillie, you spoke earlier about the need for appropriate benchmarks for the Auditor General's salary. Is there anything more that you want to say about that?

Professor Baillie: I have covered the point in principle; I guess that it is for the commission to deliberate on its thrust.

The Convener: I have a few questions about the role of the SCPA. Do you have any views on the strengths or weaknesses in practice of the split of responsibilities between the SPCB and the SCPA with regard to Audit Scotland and the Auditor General?

Mr Black: I say this genuinely: the current role of the commission is a good one. The model works well when you are considering matters such as Audit Scotland's budget and annual report, and there is a robust process. The system is entirely appropriate.

As we have discussed, there would be merit in providing clear understanding of the role played by the Audit Scotland board in the budget scrutiny compared with the SCPA. It is not a big issue, but a protocol might help to provide some clarity.

I welcome the fact that a small but significant duty of the SCPA is to appoint the external auditor of Audit Scotland, and I would not recommend any change to that. As John Baillie has rightly said several times, one of the core principles of public audit is the independence of the auditor from the audited body. The arrangement in Scotland is that either the Accounts Commission or I appoint and remunerate all the auditors of all the devolved public bodies in Scotland. That means that they are completely independent from the bodies that are being audited, which is a great strength.

On the SCPA's relationship with the Finance Committee, I believe that you have a letter from the convener of that committee that accurately captures the reporting arrangements that exist between the two of you. I would not want to second-guess that—it is not my role—but it appears in general that the reporting arrangements are appropriate and fit for purpose.

On the relationship between the SCPA and the SPCB, I recommend, as John Baillie has hinted, that you consider seriously the extent to which the SCPA as opposed to the SPCB has any oversight role on the Auditor General because the SPCB is one of my principal auditees. It would be in accordance with good governance for there to be a degree of distance. I will leave that thought with you.

As I said earlier, I think that the overall accountability arrangements for Audit Scotland and the Auditor General are robust and in some respects provide a model for other bodies to follow. I do not think that it is entirely accidental that the architecture that Westminster is talking about bears a close resemblance to what we have been doing in Scotland since 2000. Parliament did well, generally speaking, in its creation of the

arrangements. However, as John Baillie and I have both said several times, we think that some elements could be refined, not least in how the appointments of the non-executive members of the Audit Scotland board are approved.

The Convener: Does Audit Scotland have any views on whether the SCPA and our proceedings should be covered by the privilege from defamation?

Mr Black: It is entirely reasonable to ask for that protection. We have suggested to the Scottish Government that that privilege should be afforded to the Auditor General—it already exists for the Accounts Commission—and it would be a simple argument to say that the SCPA should have a similar status.

Professor Baillie: I support that; the SCPA is part of the architecture of public audit.

The Convener: Thank you for your time. This has been a lengthy evidence session, but I hope that, like me, you feel that it has been worth while and illuminating to explore the issues face to face and in depth. Sincere thanks to one and all.

Professor Baillie: On behalf of us all, I thank the SCPA for inviting us. We looked forward to the meeting as an opportunity to get our thoughts on the little refinements and so on across to you, and we look forward to working with you on the development of a protocol. Thank you very much.

11:42

Meeting continued in private until 12:32.

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

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 10 October 2008

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers