



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 24 January 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 24 January 2019

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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
3rd Meeting 2019, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

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

*Bill Bowman (North East Scotland) (Con)

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

*Alex Neil (Airdrie and Shotts) (SNP)

Anas Sarwar (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kerry Alexander (Scottish Futures Trust)

Rachel Gwyon (Scottish Government)

Daniel Johnson (Edinburgh Southern) (Lab)

Paul Johnston (Scottish Government)

Donna MacKinnon (Scottish Government)

Alan Morrison (Scottish Government)

Peter Reekie (Scottish Futures Trust)

Bill Reeve (Transport Scotland)

Neil Rennick (Scottish Government)

Michelle Rennie (Transport Scotland)

Alyson Stafford (Scottish Government)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 24 January 2019

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Jenny Marra): Good morning and welcome to the third meeting in 2019 of the Public Audit and Post-legislative Scrutiny Committee. We have apologies from Anas Sarwar. I welcome Daniel Johnson, who is attending both evidence sessions this morning.

I ask everyone in the gallery to switch off their electronic devices or turn them to silent, so that they do not affect the committee's work.

Item 1 a decision on whether to take business in private. Do members agree to take items 4, 5 and 6 in private?

Members indicated agreement.

Section 22 Report

"The 2017/18 audit of Community Justice Scotland"

09:01

The Convener: Item 2 is an evidence session on the section 22 report "The 2017/18 audit of Community Justice Scotland". I welcome our witnesses from the Scottish Government: Paul Johnston, director general of education, communities and justice; Neil Rennick, director for justice; and Donna MacKinnon, deputy director and head of the community justice division.

I understand that Paul Johnston wants to make an opening statement.

Paul Johnston (Scottish Government): Yes, thank you. I appreciate the opportunity to provide evidence to the committee in response to the Auditor General for Scotland's report on Community Justice Scotland.

As director general for education, communities and justice, I am the portfolio accountable officer for the Scottish Government. Sponsorship responsibility sits in the justice directorate, which is led by my colleague Neil Rennick, and community justice sits in the division that is the responsibility of my colleague Donna MacKinnon.

The accountable officer for Community Justice Scotland is its chief executive, Karyn McCluskey. Community Justice Scotland is the national body for community justice in Scotland. It was launched on 1 April 2017 following the passage of the Community Justice (Scotland) Act 2016. It aims to create a more robust and effective system of community justice across Scotland, based on local planning and delivery by a wide range of partners.

The Auditor General's report relates to Community Justice Scotland's first full year of operation. We fully acknowledge her findings. The report acknowledges that some actions have been taken to address the issues raised, including the recruitment of four new board members. A recruitment round for a new permanent chair is currently open for applicants.

Both the chief executive and the acting chair have confirmed that Community Justice Scotland has taken actions in response to the report, including the appointment of a deputy chair and the strengthening of financial capability.

There is wider learning to be taken from the report, including the actions that are needed when our public appointments process does not identify sufficient numbers of board members. The report also reminds us of our need to work tirelessly to

ensure that those on our public body boards have the necessary skills and diversity.

Community Justice Scotland is a relatively new organisation. It has a key role in our justice system. Over its first 20 months of operation, it has already made progress on a number of areas—I hope that we will have the opportunity to describe and discuss some of that progress—including training and developing a wide range of community justice workers and widespread public engagement and communication.

I am happy to take questions on the actions that have been and are being taken in response to the Auditor General's report.

The Convener: Thank you, Mr Johnston. I ask Colin Beattie to open the committee's questioning.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I have a very straightforward question. Given that, over a number of years, the committee has expressed concern about governance as a result of reports from the Auditor General, why did you take your eye off the ball on this one?

Paul Johnston: I do not accept that I took my eye off the ball. We are looking at an organisation that has made real progress in its first 20 months of operation, as I said in my opening statement. Whenever a new organisation is established, we hand responsibility over to a new board for it to discharge its functions. We seek to support the board to do that, and we can describe the wide range of support that we provided to Community Justice Scotland in setting up the body—my colleague Neil Rennick has been at the forefront of that work over the 20 months—which has helped the board to get established and, ultimately, to get a clean audit report, in that the accounts are unqualified. Of course, not everything is perfect. We have had issues and challenges, and it is important that we take those on board and learn lessons.

Colin Beattie: When did you become aware that the board's membership arrangements were not compliant?

Paul Johnston: I will explain a little bit about the 2016 act's requirements with regard to board members. It is quite important that—

The Convener: Would you answer Colin Beattie's question first and then elaborate? I think that he asked about when you—

Paul Johnston: My point is that the act makes provision for the situation. The important point and qualification is that the situation was not non-compliant.

The 2016 act states that the number of board members should be between five and eight, but it

has a provision that anticipates the possibility of membership vacancies. When we recognised that the initial recruitment process had produced only four members, we relied on the act's vacancy provision and appointed another individual to act as a board adviser. Neil Rennick might like to say a little more about those provisions and the steps that we took, if that would be helpful for the committee.

Colin Beattie: Can I ask for clarification? That is not what the Auditor General says about the act in her report. She quotes the act, which says that Community Justice Scotland consists of

"a member appointed by the Scottish Ministers to chair Community Justice Scotland, and ... at least 5 but no more than 8 other members".

There is no mention of any qualifications or variations.

Paul Johnston: I refer you to paragraph 12 of schedule 1 to the act, in which Parliament stated:

"The validity of anything done by Community Justice Scotland ... is not affected by ... a vacancy in membership".

On the basis of the advice that we took, we concluded that the board could continue to properly discharge its responsibilities on the basis that there was a vacancy.

Our intention when initially recruiting was to appoint up to eight members. You will appreciate that we must conduct a rigorous public appointments process and, indeed, the process was scrutinised at all points by the adviser from the office of the Commissioner for Ethical Standards in Public Life in Scotland. The process produced only four appointable members; we therefore relied on the provision on vacancies in membership, pending a further appointment round.

Colin Beattie: Are you saying that the Auditor General's report is incorrect?

Paul Johnston: The Auditor General has correctly quoted the provision in the act; I am simply seeking to explain the other provision that enabled us to proceed.

Colin Beattie: Do you accept the Auditor General's report?

Paul Johnston: I accept the conclusions and the findings of her report. In particular, I accept that there was a need to strengthen the board and increase the number of members. Part of our learning from the process and from considering carefully the Auditor General's findings is that we could have taken earlier steps to recruit additional board members.

Colin Beattie: I ask for a yes or no answer. Do you accept the Auditor General's report and the criticism in paragraph 6 of that report?

Paul Johnston: It is important that I provide a qualification relating to the legal basis that the Scottish Government had for proceeding. I accept the report, subject to the necessary qualification that there was such a legal basis.

Colin Beattie: Your qualification effectively means that the Auditor General's report is incorrect or incomplete.

Neil Rennick (Scottish Government): It may be helpful if I clarify the position and reassure the committee. A full public appointments process was undertaken, as Paul Johnston has said, that set out to seek eight members for the board. The full process was followed. It is the only process that we have for recruiting members to public boards. An assessor from the commissioner's office was part of that process and was assured that it was followed appropriately.

As Paul Johnston said, although it got a large number of responses and a number of people were interviewed, unfortunately that process resulted in only four people being identified as appointable. The Auditor General is right that our process identified only four members against the five that the 2016 act refers to. The action that we took in response to that was to check the legislation to ensure that the work of the board would continue to be valid with four members, and to place on the board an expert adviser with experience of community justice delivery. That was based on an assessment of the skills mix, including the skills that were required following the appointments process.

Colin Beattie: Based on what you say, I have to take it that you do not accept the content of the report.

Neil Rennick: No, I accept that it correctly reflects the legislation as it is and that we identified only four members. As Paul Johnstone said, however, we ensured that the actions of Community Justice Scotland would be valid under the law, even though it had only four members. We also ensured that there would be five people around the board table, in addition to the chair, by placing an expert adviser on the board, reflecting the necessary skills mix, as assessed with the chair.

Alex Neil (Airdrie and Shotts) (SNP): What is the definition of "vacancy"?

Paul Johnston: To the best of my knowledge, the 2016 act does not specifically define "vacancy". As I mentioned, we took advice on the matter and concluded that, in circumstances where we had sought to fill up to eight posts and had filled only four of them, we could proceed on the basis that there was a vacancy.

Alex Neil: I would interpret a vacancy as being where someone who has served on a board steps down from the board. That creates a vacancy. A vacancy is not created because you cannot find the right number of people for the board. The word "vacancy" is misapplied here.

When the Auditor General did her section 22 report, did you explain your definition of "vacancy" to her staff, as you have explained it to the committee?

Paul Johnston: I am not sure whether we took the opportunity to explain it. That is a fair point. My colleague Neil Rennick may wish to say more on that.

Neil Rennick: We met Audit Scotland at an earlier stage. The discussion focused on the actions that we had taken to appoint new board members. At that stage, we were about to appoint the additional members to the board. The focus of the discussion was on the remedial actions that we had taken. I made the error of not advising Audit Scotland of the legal basis on which we had done that—it was not part of the discussion.

Alex Neil: Given the report, that was a major error, was it not?

Neil Rennick: To clarify, the Government does not share the legal advice that it receives, but we followed the legal advice.

Alex Neil: You do not share the legal advice, but surely you should have explained to the Auditor General that your interpretation of "vacancy" meant that the process was legal?

Neil Rennick: If there had been any question about whether the actions of Community Justice Scotland were not valid, I would have been happy to clarify that we had ensured that they were valid.

09:15

Alex Neil: Just to be clear, was it the case that, when the minister signed off the recruitment exercise for the board, the papers on that suggested that eight members be recruited and then the issue that you could not find eight appointable members who had the skill set that you were looking for?

Neil Rennick: That is correct. The original submission to ministers was on the basis that we would seek eight members, and that was the basis on which we advertised and sought to recruit members. However, the process identified only four members, and we do not have any other process with which to identify people. Consideration was given to whether we could delay starting the work of the board, but the existing community justice authorities were already winding down and staff were being

recruited to Community Justice Scotland. Clearly, the organisation has an important role. We had to decide whether we could allow it to start with four board members. We tried to remedy the smaller number of members by adding an advisory member with significant experience of community justice. Our only other option would have been to delay the start of the organisation until a full appointment round could be progressed.

Alex Neil: Did you then recommend to the minister that there should be a further round to try to recruit additional members and that that should be done reasonably quickly?

Neil Rennick: Yes. At the time, there was discussion of the right timescale for that. As we had just gone through a recruitment round that identified only four members, there was a question about whether another recruitment round on the same basis would identify more members. In dialogue with the chair, a decision was taken that it was best to allow the board a number of months to operate and assess its skills requirements and then run a further appointment round to bring the board up to full strength.

Alex Neil: It would be helpful if the committee could get a copy of the relevant recommendations to ministers, in relation to the first and second rounds, so that we can see what actually happened.

Has any attempt been made to recruit to the board people who have been through the community justice system, or is it all people in suits?

Neil Rennick: In the initial recruitment round and in the second one there was a deliberate intention to recruit people with lived experience of the justice system. One member who was recruited initially has lived experience of the justice system through a family member.

Alex Neil: But there are no people who have directly been through the system.

Neil Rennick: Such people certainly were not excluded. I cannot say whether any of the members—

Alex Neil: That is not what I am asking about. Was any attempt made to recruit such people?

Neil Rennick: Yes. The criteria specifically sought people who had experience of going through the community justice system as someone accused of a crime.

Alex Neil: Including the new recruits, is there anyone on the board who has direct experience of going through the community justice system?

Neil Rennick: That falls into the category of information that I would not be able to reveal. If I did—

Alex Neil: Could you write to us and let us know?

Neil Rennick: I would not want to commit to release information that I am not sure I am able to release, but I will certainly check what I can reveal.

Alex Neil: It is a simple question.

The Convener: To be fair, I think that Mr Rennick is saying that he has to check whether he is allowed to give us those details and that, if he is allowed to, he will furnish us with them.

Neil Rennick: Yes.

Alex Neil: Right—okay.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to give our witnesses an opportunity to give us a flavour of where the organisation is now. I am sure that we would all agree that it has made a bit of a shaky start, let us say. In terms of the audit principles that we are interested in and issues such as structures, governance and audit and risk, where is the organisation now? Are you confident that the organisation is up and running and is delivering what is needed for the period ahead?

Paul Johnston: The board has taken steps to engage actively with the auditors and take on board the recommendations that have been made. In particular, the board now has a full complement of members, with new members coming on board. My understanding is that, only yesterday, the board agreed that a deputy chair should be formally appointed, which is sensible in light of some of the learning from the audit report. The board has also strengthened committee structures, as the operation of the committees was one of the matters to which the Auditor General referred.

I would say that the full board has been operating with a high degree of effectiveness. Board minutes are published on the website, from which we can see that, although the board has taken time to get established, it has been dealing with the issues of planning, strategy, finance, people and risk, as we would expect of any board. The actions that the board has taken should serve to strengthen its governance. The Scottish Government and in particular the sponsor team will seek to support the board closely in the coming weeks and months so that the learning from the first audit is fully taken into account and helps to ensure that the organisation has strong governance foundations.

Willie Coffey: Have the problems with the number of board members and the chair had any impact on the overall delivery and planned roll-out of the service? Earlier, you talked about a robust and effective system of community justice across Scotland based on local planning and delivery by

a wide range of partners. Surely there must have been some impact on your hopes for a clean roll-out of those objectives?

Paul Johnston: I note that Grant Thornton, the external auditors, in discussing the operation of the board, stated that, despite some challenges with the absence of a permanent chair,

“there did not appear to be a significant adverse impact on the Board decision making.”

The board has functioned, notwithstanding some of the challenges that it has experienced.

Even more important, at this 20-month point, we can point to some real successes of the organisation in seeking to deliver its core objectives, which I am sure is what members are particularly concerned about. The organisation has an important role in seeking to strengthen community justice across Scotland. When I have spoken to the chief executive and members of the board, I have been impressed by what I have learned about the details of what the organisation has been doing in its first 20 months of operation. I commend the staff and the board for their work in seeking to inform the public about community justice and the benefit of community alternatives. It is particularly striking that the second chances campaign has now been viewed almost 6 million times, which is impressive for an organisation that is in its first 20 months of operation.

The organisation has also trained more than 1,200 community justice practitioners and engaged with all 32 local authorities in seeking to strengthen the provision of community justice at local authority level.

Willie Coffey: That is helpful.

The Convener: I want to ask about the chairperson. There has been an interim chair and currently there is no chair. I understand that the advert for the chair went out yesterday. Might that have been prompted by today’s meeting? Can you explain the timescale, which seems rather odd?

Paul Johnston: I certainly can. There has been an acting chair for some time. My colleague Neil Rennick will be able to confirm when the acting chair was appointed. When it was recognised that the permanent chair was likely to be off for some time, the board agreed to put in place an acting chair, and she remains in place, so the board has a chair.

The permanent chair resigned in September 2018. Following that resignation, we have been working on the process for appointing a new permanent chair. As you will appreciate, it is important that that process is robust. We need to engage with the public appointments commissioner, assemble a panel and think carefully about the skills mix that we need. Work is

in train to appoint a permanent chair. Of course, I am keen that that is done as quickly as possible, and the advertisement has gone live in recent days.

The Convener: I understand that process, which is the normal run of things for Government. It just seems rather odd that the post was advertised yesterday, less than 24 hours before this meeting.

Paul Johnston: We took steps to ensure that the post was advertised as swiftly as possible. If the committee is happy to hear more, my colleague Donna MacKinnon can describe more about the process that we adopted and say how we have sought to accelerate it as much as possible.

The Convener: The process is of less concern to me. I have some sympathy with your problems with governance, because it is important to get the right people on the board. However, over the months that I have chaired the committee, it has identified that leadership is absolutely key in driving forward any organisation. We have also identified problems with the criminal justice and community justice systems in Scotland. It seems to me rather worrying that the chair’s post was left vacant for so long only for it to be advertised less than 24 hours before this committee meets.

Donna MacKinnon (Scottish Government): To be clear, the post was advertised not yesterday but at the beginning of last week. The guidelines on the timing have been completely in accordance with the code. We began the process for recruiting a new chair as soon as we heard about the resignation. We have taken steps to look at a skill set that attracts as much diversity among candidates as possible. We got an independent assessor and we had planning meetings prior to Christmas. There has been no delay whatsoever.

The public appointments team and, indeed, the independent assessor from the commissioner’s office have—as I have—prioritised the recruitment of this post.

The Convener: That is good to know. Thank you for that clarification, Ms MacKinnon.

Liam Kerr (North East Scotland) (Con): Good morning. The convener has just been talking about the importance of getting the right people on board and Donna MacKinnon was talking about skill sets.

In his opening statement, Mr Johnston mentioned that four new non-execs have been appointed. Now there is a move to build a skills matrix. Why has it been done that way round? Should a skills matrix not have been built and a skills review undertaken before you recruited the non-executive members?

Paul Johnston: To be clear, we have—at all points—been looking at the skills that are required for the board. At the outset, we prepared documentation on the skills that we needed for the board and we were very clear about the skills mix that we needed. At every recruitment point, we have set out the skills requirements quite clearly.

Neil Rennick may have more detail about that, if that would assist the committee.

Liam Kerr: I think that you are about to answer this question, Mr Rennick, but I want the matter to be absolutely clear for anyone who is watching. When you were looking to recruit the four new non-execs, did the Scottish Government do an analysis of the skills gaps that were already there?

Neil Rennick: Yes. Before the original recruitment of the initial board members, a skills matrix was prepared in dialogue with the previous chair. Ahead of the more recent recruitment round, and in the absence of the chair, there was a discussion with the whole board about the skills requirements for the recruitment process. That fed into the recruitment of the members.

Once a recruitment round has happened, it is good practice as part of succession planning and the planning of the board to undertake a further assessment of the skills on the board—once you have the people in place, you assess who you have, what their skills are and whether there are any gaps.

The analysis happened before and after the recruitment round, in line with good practice.

Liam Kerr: Will you give the committee some idea of the board's make-up in terms of its skills and diversity? The Auditor General's report highlights concerns about whether there was

"sufficient experience in relation to finance, governance and risk management".

What is the current situation? Are you comfortable that those three areas have been addressed?

Neil Rennick: Yes, we are comfortable that the board has a sufficient mix of skills, although we will go on to talk about some further activity that is being taken.

The original four board members who were identified included people with extensive experience of public body and third sector boards—one was the chair of an audit committee of another public body board—and experience of business and the criminal justice system.

When the skills analysis was undertaken after the previous recruitment round, the main gap that was identified was direct experience of delivery in the community justice system. The response to that was to place an adviser on the board—initially, the adviser was a senior female social

worker; more recently, the adviser is a senior former sheriff.

The four new board members include people with a mix of experience across the community justice system and across the justice system in other areas. One is a former prison governor and also chair of the Scottish Association for the Study of Offending. Others have experience in research, or in working with vulnerable young people or in the third sector. Therefore, they have a mix of experience in finance and audit and also direct experience of the community justice system.

09:30

As part of its arrangements now that the eight board members plus the adviser are in place, the board has been looking at its skills requirements. Along with internal and external audit, arrangements have been made to provide additional training—for example, on audit and risk. That process is on-going.

Liam Kerr: That might answer my next question. You have said that the recruitment has been done, the board is full and you are now preparing a skills matrix. What will happen if you identify specific gaps that lead you to say, "Wouldn't it be great if we had someone like this?" What will you do then?

Neil Rennick: We are content that people with the right mix of skills are on the board. However, as any board should do, it should constantly review the skills and experience that its members have and respond to that by undertaking additional training. That is happening on the board.

Liam Kerr: My final question has a slightly different focus. Community Justice Scotland is part of the Scottish Government's strategy to shift the balance from custodial sentencing towards community sentencing. Willie Coffey's earlier question described it as having had something of a shaky start. We also know that the Scottish Government has plans to bring in a presumption to push the community justice system towards community sentencing. Paul Johnston, are you confident that, if that happens, Community Justice Scotland will be ready for it? Will it have sufficient resource, capability and capacity if the Scottish Government forces that change?

Paul Johnston: We are absolutely clear that community sentences are often more effective than short prison sentences in reducing reoffending. As you say—

Liam Kerr: Surely we have to have a legitimate alternative.

Paul Johnston: I agree that Community Justice Scotland needs to be properly resourced to do its job. Of course, we continue to have regular

discussions with the organisation about its resourcing. However, let us be clear that it is not the main deliverer of community justice sentences, because alternatives to custody are delivered locally. Its role is largely as an improvement body. It works with local providers of community justice, with much of that work being financed through our partners in local government. It seeks to support improvement in services and the consistency of service delivery across Scotland. Therefore, it has a vital role, which it undertakes not alone but with partners in local government and a wide range of other areas, such as the Scottish Prison Service, Police Scotland, the Crown Office and Procurator Fiscal Service and many others, including third sector and voluntary organisations

Liam Kerr: So, in brief, you are comfortable that Community Justice Scotland is ready for this shift.

Paul Johnston: I think that Community Justice Scotland is already delivering on its agenda. However, its first annual report, which is currently out for consultation, shows that, when we look across Scotland, a lot of work remains to be done on improving the availability and consistency of community sentences. I would not wish to sound complacent in any way. In Scotland we have a big challenge ahead of us to ensure the widespread and more consistent availability of community alternatives, given what the evidence states about the effectiveness of such sentences.

Bill Bowman (North East Scotland) (Con): Good morning. In December 2018, the Auditor General told us that the accountable officer intended to appoint someone to strengthen the financial team. Have you appointed that person?

Paul Johnston: I think that that was a reference to Community Justice Scotland's work on strengthening its finances, which its chief executive has been progressing. Karyn McCluskey is the accountable officer of Community Justice Scotland. My colleagues who are here today have been in very regular contact with it to ensure that the financial capability that it needs is in place. My colleague Neil Rennick may be able to provide an update on the latest position with regard to that support.

Neil Rennick: I confirm that Community Justice Scotland has been receiving shared service support from our finance colleagues and, more informally, from our accountancy colleagues. There has been further dialogue about getting additional support, and we, as the sponsor directorate, have agreed extra resource to help with that. Initially, there is a consideration of bringing in someone external; beyond that, there is a possibility that there will be a secondment from the Scottish Government to help with the work. There is active progress on that work.

There is also dialogue with internal audit about undertaking a review of governance and finance, and the outcome will feed into further dialogue to identify skills gaps and how they can be strengthened.

Bill Bowman: Does that mean no?

Neil Rennick: It means yes; the necessary skills are in place, but we are looking to further strengthen them.

Bill Bowman: The conclusion from the evidence session was that you needed an accountant in the organisation.

Neil Rennick: Yes.

Bill Bowman: That should not be too hard to do.

Neil Rennick: No, and it is being put in place for the relevant timescale that is required.

Bill Bowman: We have spoken about it taking from September to January to put out an advert for a board member. How long does it take to appoint an accountant in an organisation?

Neil Rennick: We will make sure that that is in place for the current accounting period. We are working on the basis that the resource will be in place when it is required.

Bill Bowman: I do not understand. If an accountant is needed, one is appointed. What are you talking about?

Neil Rennick: We have made resource available, and the organisation is going through the process of having that person put in place.

Bill Bowman: Therefore, will that be an external appointment?

Neil Rennick: In the immediate term, the proposal is that someone will be brought in on a contract basis, then there will be a more permanent arrangement.

Bill Bowman: From what was said earlier, it seems to take an awful long time to appoint someone. This is not at director level; this is a working accountant who just needs to get on with doing the books.

Neil Rennick: The appointment is sitting with the chief executive, who is moving forward with it.

Daniel Johnson (Edinburgh Southern) (Lab): I thank colleagues on the committee for welcoming the cuckoo in the nest this morning.

I will follow on from the questions of Willie Coffey and Liam Kerr. Scotland has an incarceration rate of 140 per 100,000 population, which is a third higher than many comparable Organisation for Economic Co-operation and

Development countries and a third higher than it was 20 years ago.

I agree about the strategic importance of the work of Community Justice Scotland. However, is it fair to say that there will be a step change in what we ask it to do with the introduction of commissioning by Community Justice Scotland? Given the concerns here, is the board and, more importantly, Community Justice Scotland more widely, ready to take on that role?

Paul Johnston: I do not dispute what you have said about our incarceration rate and the need to make real progress and step up the availability of community alternatives. My colleague Donna MacKinnon might say a bit more about the priorities that Community Justice Scotland is pursuing. We can have confidence that the steps that have been taken to strengthen the organisation's governance, oversight and finance will stand it in good stead for the challenges that lie ahead. I agree that it is important that the organisation is in fine health to take on the challenges that we face.

Donna MacKinnon: As Paul Johnston has said, a key priority for Community Justice Scotland will be to adopt a strategic commissioning framework. It is doing that in conjunction with local areas and is doing a lot of consultation to maximise resources locally and to get people working in partnership for better outcomes.

Another priority will involve alternatives to prosecution, which we touched on earlier. A large part of the ground work has been done through Karyn McCluskey's championing of it up and down the country, to get people in line with policy directives such as the presumption against short sentences—PASS—and with the Management of Offenders (Scotland) Bill. Communications engagement up and down the country will help in the future with regard to commissioning and strengthening the evidence on alternatives to prosecution.

Daniel Johnson: Paul Johnston has set out some successes, which I do not dispute, but do you acknowledge that the commissioning role will be a major step change in what Community Justice Scotland is being asked to do?

Paul Johnston: It is an important aspect of its role, but it is important to emphasise that Community Justice Scotland will not be the direct provider of community justice sentences. That is not the intention. Rather, Community Justice Scotland will support local partnerships with the commissioning of those services. I would see it as an evolution of its role and part of ensuring the better, more effective and more consistent availability of community sentences across Scotland. It is important that we do not think that

the organisation has changed from its current size and is about to become a massive provider of community justice disposals across Scotland. That is not the case. It will simply seek to support the local providers.

Daniel Johnson: Will you clarify that point? It is either commissioning services or it is not—commissioning does not imply provision, but it does imply looking at providers and what would be delivered and deciding whether to give the money. That is substantially different from the work that Community Justice Scotland is currently carrying out.

Paul Johnston: My understanding is that Community Justice Scotland is working on a framework for commissioning, to enable local commissioning to take place. Donna MacKinnon may have more to say on that subject.

Donna MacKinnon: There is a long lead-in time for what the organisation is now tasked with, and we are helping with the transition from the Scottish Government to Community Justice Scotland. A crucial part of that transition, as Paul Johnston has indicated, is the creation of a commissioning framework—in essence, a good practice guide. That is an important first step. After that, we have given Community Justice Scotland extra resources to enable it to undertake commissioning. However, there is a long lead-in time—we have not just given commissioning to it in its first year of operation.

Daniel Johnson: My final question relates to the board's success and its strategic priorities. I am a member of the Justice Committee, which heard both from third sector organisations and from sentencers themselves that there is a great deal of confusion about what is available in community sentencing. As long as that remains the case, and as long as sentencers are not confident that they know what is available to them, there will be a significant problem in getting the sea change in sentencing to take place.

Do you agree that that is a key strategic priority? Do you believe that Community Justice Scotland is equipped for and is making progress towards increasing sentencers' awareness and understanding?

Paul Johnston: I agree that it is a key priority for Community Justice Scotland to support the more effective and consistent availability of community sentences. Through the first report, which is now out for consultation, it has already given us a clearer picture than we had previously of what the country looks like in terms of the local availability of community sentences. That is a first step towards identifying priorities for improvement, and that is at the heart of its role.

The Convener: If members have no further questions, I will ask a final one. Mr Johnston, you will have seen that the Parliament believes strongly in having a gender balance on its committees and bodies. What is the current gender balance on the board?

Paul Johnston: At present, the board has six men and two women and is therefore clearly not yet meeting the aspirations that we have for gender balance. It is a Government priority to achieve a gender balance in all our public bodies, and it is a matter that I wish to raise with the new chair—immediately on their appointment—to ensure that there is a focus on developing a gender balance and greater diversity generally as the board takes its work forward.

There will be at least two further opportunities for people to join the board of Community Justice Scotland in advance of the date when the Gender Representation on Public Boards (Scotland) Act 2018 comes into force. There are opportunities, but the issue needs to be a real focus of attention, because we know that diverse boards are likely to be much more effective boards.

The Convener: Thank you, Mr Johnston. I thank the witnesses for their evidence this morning.

Before I suspend the meeting, I welcome to the public gallery the Honourable Maxovonno Thomas and colleagues from the Public Accounts Committee of the House of Assembly of the Turks and Caicos Islands.

09:44

Meeting suspended.

09:48

On resuming—

Major Capital Projects (Progress Update)

The Convener: Item 3 is on major capital projects. I welcome our witnesses to the meeting. I have just counted—there are seven of you and seven of us, so that is a good match. From the Scottish Government, we have Alyson Stafford, who is the director general of the Scottish exchequer; Rachel Gwyon who is the deputy director of infrastructure and investment; and Alan Morrison, who is the capital accounting and policy manager in health, finance and infrastructure. From Transport Scotland, we have Bill Reeve, who is the director of rail, and Michelle Rennie, who is the director of major transport infrastructure projects. From the Scottish Futures Trust, we have Peter Reekie, who is the chief executive, and Kerry Alexander, who is the investment programmes director.

I understand that Alyson Stafford will make a brief opening statement.

Alyson Stafford (Scottish Government): Yes—thank you very much, convener. Good morning, and thank you for inviting me to attend to assist the committee's scrutiny of the latest report on the Scottish Government's major capital projects, which we submitted to the committee on 2 November 2018 and published on our website.

As the convener said when she introduced us, I am joined by a number of colleagues. Michelle Rennie and Bill Reeve will be able to respond to questions on rail and to transport questions more broadly. Peter Reekie and Kerry Alexander are here to support the committee's inquiries on the non-profit distribution hub and the schools programme. Alan Morrison is here to help with the committee's health inquiries. Those are the three areas that the committee flagged up as being of particular interest.

The committee might be interested to hear that the current format of our reports was the product of a tripartite consideration involving the then Public Audit Committee, Audit Scotland and the Scottish Government. The format of the reports has stood us in good stead over many years and has evolved to include further information on infrastructure investment, including major infrastructure programmes as well as projects.

The autumn report, which came out in November, gives a six-monthly update on major projects that cost more than £20 million, including the local economic benefit that is attracted and generated by each project.

The spring reports—one came out in 2018—regularly provide information from the annual infrastructure investment plan progress report, and last year's report, in addition, included an overview report in response to the interest that the committee had shown in infrastructure investment more broadly. We are responding to the committee's inquiries and are providing information that will help with its review.

The overview report contained details of capital spend beyond what was invested by the Scottish Government; details of private sector investment that was leveraged into our infrastructure investment programmes; an overview of financial transactions; and a breakdown of the total investment in our project pipeline by year, sector and funding. It also included the revenue commitment position on our 5 per cent affordability cap and the profile of revenue spend for the non-profit distributing model and hub projects, including the associated net present values. There is a wealth of information in the report.

To put the reports in context, they are a collection of projects and programmes that will make a step-change difference to our inclusive economic growth. The projects and programmes are led by organisations across the breadth of the public sector. The responsibility for the delivery of individual capital projects and programmes remains with the relevant accountable officers.

Given the span of infrastructure projects, if the committee has a detailed inquiry from a sector that is not represented this morning, I will endeavour to write with additional information, where that is deemed necessary.

That is a brief introduction. Before handing back to the convener, I will pass over to a couple of colleagues who need to declare non-financial interests with regard to the committee's business this morning.

Peter Reekie (Scottish Futures Trust): I am the chief executive of the Scottish Futures Trust. I need to declare a non-financial interest as a director of Aberdeen Roads Ltd, the NPD company that was established to deliver the Aberdeen western peripheral route project.

Kerry Alexander (Scottish Futures Trust): I, too, have a non-financial interest to declare in relation to Galliford Try Equitix Inverness Ltd, which is the special purpose vehicle that runs the Inverness College NPD project.

The Convener: Thank you. I ask Colin Beattie to open the questioning for the committee.

Colin Beattie: Obviously, the main objective of such projects is to maximise the value of our infrastructure to the economy. Can the panel

comment on the overall affordability of privately financed public sector infrastructure?

Alyson Stafford: On affordability, the infrastructure investment plan sets the context for all investment that takes place following the decisions that are made, ultimately, by Scottish ministers in their budget proposals each year. As the committee knows, our budget is made up of a range of ways of financing infrastructure investment.

Colin Beattie asks specifically about privately financed projects, which the Government pays towards on a revenue finance basis over a number of years, as he recognises. The method that the Scottish Government has adopted to ensure that it maintains an affordable level of investment in revenue finance is to voluntarily put in place a cap on the revenue finance elements, year on year, which is set at 5 per cent. The committee will know, from the budget that was introduced to Parliament in December, that the basis for the cap has been revised so that we keep it absolutely in step with affordability and with the changing nature of what is captured by the cap.

One big trigger for the revision was the different treatment, due to classification changes, of the regulated asset base for the rail network. That required us to look at the basis of the cap. We keep those policies under review.

The 5 per cent cap is the method that we have used for testing and ensuring affordability. The trajectory is set out in our budget document, which we have published for a number of years, so that there is transparency around that.

Colin Beattie: It is important to maintain a certain level of infrastructure investment. What will be the impact of the NPD model being—I presume—discontinued?

Alyson Stafford: You are right. Again because of classification changes, the NPD model no longer gives us additionality. It was extremely useful, particularly in response to the crash of 2008-09. The programme that followed the crash was essential for maintaining and contributing to economic growth at a really tricky time for Scotland. However, the NPD model is now discontinued.

As you will see from the published documents, our investment budget for next year is more than £5 billion. We continue to use a range of other financial tools. We have at our disposal not just traditional capital grants, but a range of other financial instruments that underpin the commitments that we set out in the budget for next year. There is also some work that is looking at what other models are suitable. That is essential as part of the ambition for the national

infrastructure mission that the First Minister set out in the programme for government in September.

If you want to know the details, Peter Reekie will be able to say a little bit more about the models that we are looking at.

Colin Beattie: It would be interesting to hear what we are looking at.

Peter Reekie: As Alyson Stafford said, the forms of private financing of infrastructure—or any sort of financing of infrastructure that we can use to deliver additionality—require a private classification under the Eurostat rules. We have talked about those rules before. The latest version of the rule book, which is 150 pages long, was published jointly by Eurostat and the European Investment Bank in 2016, and it sets out a relatively narrow track of structures that can be put in place.

The Welsh Government was going to adopt the Scottish non-profit distributing model to deliver the same sort of additionality, and it was planning a programme. However, the rules changed and it had to evolve its model to be a profit-sharing model, which it calls the mutual investment model. That model has been assessed by the Office for National Statistics and Eurostat under the latest rule book and has been given a private classification.

We are exploring opportunities to use a similar model, to see whether there can be a version that works in Scotland. It is likely to be very similar to the mutual investment model that the Welsh Government has adopted. It is important that the model is able to gain private classification; that it is suitable to deliver the projects that we want to use it for; that the industry responds positively to it, tenders for it and is able to offer good value to us; and that it is able to deliver sustainable business for the construction industry.

We are undertaking a little bit of engagement with the marketplace at the moment, to understand the acceptability of those arrangements to the market. We are engaging mainly the construction market, but we are also engaging financiers. We are looking in detail at the structure of the Welsh mutual investment model.

Colin Beattie: I will come at the issue from a slightly different angle. I have been looking at the weighted average cost to capital and the internal rate of return, and I wonder why you use the internal rate of return as opposed to the modified internal rate of return. It seems to me that the modified internal rate might be more accurate.

Peter Reekie: There are quite a lot of different ways of measuring the cost of capital on individual projects, and we have used the weighted average cost of capital and an internal rate of return. A

modified internal rate of return is not widely used in the sector; it is not something that the financial models that the consortia put together and the financial advisers on individual projects look to.

Colin Beattie: But is it not more accurate?

10:00

Peter Reekie: I am not able to run a discussion with you just now about a modified internal rate of return versus an internal rate of return. The factors that we have used are weighted average costs of capital and internal rates of return, both of which have been published. The phasing of the different sorts of finance in projects—the junior debt and the senior debt—and the difference in the weighting can affect the differences between those two variables, but I am not in a position to comment on whether a modified internal rate of return would be a more accurate measure than an internal rate of return.

Alex Neil: On that last point, there is the debate being led on one side by the Cuthberts and on the other by the SFT is about how one measures the effectiveness of NPD. We cannot go into the detail of that today, but an important point is that we need to be sure that we end up with a proper reflection of the best way of funding any successor programmes.

I want to go back to the change in rules, the impact of which is pretty fundamental. You have said that the rules come from Eurostat. As a matter of interest, will we still have to abide by those rules if and when we get Brexit?

Alyson Stafford: Eurostat produces the “Manual on Government Debt and Deficit”, which sets out the rules that create our context. However, it does not invent the context for its rules; those rules are set at a much higher level and actually originate from the United Nations. If we respect the UN principles with regard to national statistics, which the UN sets out as guiding principles for any nation on the globe that is part of its thinking, they need to be considered. They set the parameters for how Governments are seen to be competent and how they do business in this space.

The Office for National Statistics, which is the United Kingdom-wide body—we come under the ONS, because there is no specific statistics body in Scotland—will fulfil a role. As far as we can see, it will take and interpret what comes from the UN and see how it applies to classification issues for anything that is managed under public finances for the UK.

The short answer is that I cannot say, “With one bound, we are free.” Peter Reekie might have

something to add, because he works closely with those organisations.

Peter Reekie: What Alyson Stafford has said is exactly right. We need to have a set of rules and, as Ms Stafford has outlined, those rules have an international hierarchy. I cannot see any very quick change happening with regard to the detail of the rules that we have to apply.

Alex Neil: Alyson Stafford has explained the issue to the committee before and I was aware of the situation that she has described, but I just want to check whether the specific changes fall into the UN category or whether they relate purely to Eurostat. Some things are purely Eurostat and others are informed by UN rules. Is this particular change informed by the UN changes?

Peter Reekie: The UN—or something at that level—sets a series of principles that are worked through in detail by the different statistical authorities. You are right to say that the detailed guidebook that we referred to is published by Eurostat, but it only embodies the principles that have been set. We have no information to suggest that the ONS would seek to embody those principles in a different way through any changes.

Alex Neil: Okay. I do not want to dwell on this too much.

Alyson Stafford: As a final point, it is fair to say that the system relies on experts in the various statistical authorities, whether at European or UK level, taking what comes from the UN and interpreting it. As we have seen, how those interpretations are captured in the “Manual on Government Debt and Deficit” and other such publications, and even how those are interpreted, is a skill and a science—perhaps even an art form—all of its own. The only fair answer that I can give is that we will have to wait and see.

Alex Neil: Moving to a wider subject, I am obviously interested in how we achieve the national infrastructure mission, and you have provided an answer to that in general terms. However, I would like to clarify where we stand with regard to the national investment bank. When can we expect it to start raising money for infrastructure projects, and what will be the relationship between the Scottish Futures Trust and the bank—and, indeed, Scottish Enterprise? I would have thought that there was an element of overlap across the board, particularly in relation to lending to or investing in businesses.

Alyson Stafford: I will start, and I will bring in Rachel Gwyon and Peter Reekie as necessary.

Early this year, a bill will be introduced to establish and set the financial arrangements for the Scottish national investment bank so that, from 2020, the bank will be investing in our businesses

and communities. As for the relationship with the Scottish Futures Trust, the headline is that each body will operate with a different clientele. In terms of its establishment, the Scottish investment bank will use financial transactions, and the requirement for that particular use of our budget is that it has to be applied to organisations that are outside the public sector boundary—that is, private sector bodies.

The Scottish Futures Trust supports a tremendous amount of our infrastructure delivery through public sector areas of activity. In terms of the current landscape of other activities, discussions are taking place on the areas that would fit more readily within the scope of the Scottish national investment bank, and I know that Scottish Enterprise is having constructive conversations with those establishing the bank to work through that issue.

My colleagues might have something specific to add. Peter Reekie can talk about the relationship between the Scottish national investment bank and the Scottish Futures Trust, and the space of activities between the two.

Peter Reekie: To build on Alyson Stafford's comments, I point out that the Scottish Futures Trust does not operate as a provider of finance. Instead, it operates with public sector bodies across Scotland and interfaces with the private sector to innovate and deliver structures that are capable of being financed and to manage programmes of activity through the delivery of infrastructure. The Scottish national investment bank will be a provider of finance, and, as Alyson Stafford has said, it can work across a range of areas in which finance is provided to private sector entities.

Our work involves coming up with ways and means of financing projects. It might be that some of those ways will be suitable for the SNIB to provide finance to, and we would work closely with it in those cases. However, with a lot of the work that we do with public bodies, it will not be possible for the SNIB to provide that finance.

Alyson Stafford: There is definitely no overlap, but there are great synergies with regard to how the areas will complement each other.

Rachel Gwyon (Scottish Government): The thrust of your question was about where the arrangements fit within the national infrastructure mission and how that is financed. The legislation that will set up the powers of the national investment bank will go through Parliament this year, and that will help you see the context and the types of products and finance that it will look to provide. However, I would point out that the consultation, which has already begun, has made it clear that the bank will be more independent in

relation to its ability to choose the products that it provides. The budget sets out the money that is being made available. For example, £340 million—I think—is being made available before the end of this session of Parliament, and the £2 billion capitalisation is allowed for in the plans.

Alyson Stafford and Peter Reekie have already given you a pile of information, but people need to be alive to the fact that, with this use of financial transactions, the national investment bank will need to invest in the private sector in a way that does not affect the classification of any projects that are invested in and does not, as a result, bring them back onto the balance sheet. I raise that simply because, as you and I are aware, Common Weal and others have put out papers suggesting what might or might not happen, and those papers have perhaps not been able to draw out that flavour. The infrastructure commission has a role in looking at future delivery in this landscape.

Alex Neil: Last year, our leading industrialist, Jim McColl, told the Economy, Energy and Fair Work Committee that he is very supportive of the national investment bank, particularly in relation to export finance and the like, as well as investment. However, other investment banks in Europe—for example, the German national investment bank—are not constrained by state-aid rules to any great extent, and Jim McColl's concern is that state aids might limit the ambitions and potential of Scotland's national investment bank. Have you considered talking to Jim McColl about his concerns? Given his track record as the most successful industrialist in Scotland, we should be listening to what he is saying.

Alyson Stafford: The best thing for me to do is to reflect those points back to the programme board. The Scottish national investment bank has a programme for its delivery, and I know that the board is very much alive to the issues of state aid. I have not spoken to Mr McColl about that, although I have done so on other matters, but I am very happy to ensure that those points are reflected back to the programme board.

Alex Neil: Great. Thank you.

Willie Coffey: We are quite lucky in this committee in that we have been able to look right across the public sector landscape over the years, and from time to time, we have picked up common issues and threads in capital project delivery. I am particularly interested in how we can learn any good practice lessons. Colleagues will no doubt highlight examples of where attention needs to be paid to the delivery of some projects, but there are a number of successes that we can highlight, too. How can we gather and share such examples of good practice? For a number of years now, the committee has said that one of its wishes was to see evidence of the sharing of good practice, but

how do we do that in practice? We are talking about quite a broad range of projects, most of which are, I suppose, to do with roads, rail and schools. How do we gather that kind of intelligence, and how do we quality assure across the board to improve the delivery of projects like this for Scotland?

Alyson Stafford: You are absolutely right to say that this is a very broad span of projects. I have had the benefit of working in this space for a number of years, for example, in establishing the infrastructure investment board for the Scottish Government in 2010. Part of the early work of that board was to respond to areas that the predecessor of this committee flagged up, as well as reports from Audit Scotland, with the key aim of building capacity and capability and getting a sustained programme of delivery. As you have said, not everything works perfectly in this world, but if you look at the most recent report that we brought out, you will see that the majority of projects come in on time and on budget. An important part of that journey has been to learn lessons.

Something that is now systematically in place is gateway reviews for our major projects, and there are also specific reviews through the work of SFT. Those reviews happen in real time, as programmes and projects take place, and they are carried out to ensure that those who are responsible can get some third-party input on testing and reviewing. As a result of that work, there is a centre of excellence in the Scottish Government that captures not only the findings of the gateway reviews on major projects as they take place but the conclusions that emerge after the last gateway review. There are ways in which that information is shared, and there are written documents that capture all that, but we find that there is nothing more powerful than getting the people who are leading these projects together. At particular times, we match people who have done projects before with people who might be doing them for the first time.

Those are some of the key systematic ways in which we are addressing the issue. However, specific things will happen in specific sectors, so Kerry Alexander will say a bit about what has happened with the schools programme. I will also ask Michelle Rennie to comment, given that transport is our biggest area of capital investment spend. Michelle will be able to talk about the learning that we do there and how we ensure that we get the benefits that we expect from the investments that are made.

10:15

Kerry Alexander: In relation to the Scottish schools for the future programme, there are two

elements to highlight: first, real-time assurance as you go along and secondly, learning lessons from what has already happened. As far as real-time assurance is concerned, it is a case of engaging regularly with local authorities on what they are doing in their projects, passing that information on and discussing it with the various project teams that you work with on those projects. That should be done in each of the assurance reviews, with those recommendations being fed back when our team and the Scottish Government work with other local authorities.

There is a reflective element to that. Once they are in facilities, local authorities carry out post-project reviews and post-occupancy evaluations, which involve thinking back to what happened and looking at how the project went and what could be done differently in the future. With regard to the schools programme, an interim report has been published on what has gone well so far and what we can build on for the future, which the team, on the back of the additional investment in schools that was announced just before Christmas, will use to determine what lessons can be learned and how those can be applied in the future.

Michelle Rennie (Transport Scotland): With roads projects, Transport Scotland has, as well as undertaking the assurance reviews, instigated a more formal process in which, at the end of each phase of a project development, we stop and reflect, speak to our supply chain and our various stakeholders and try to record any lessons at that point in time. That means that we do not have to wait until the project has been completed to build those lessons into our project pipeline.

As I have said, we do that in consultation with our supply chain and with stakeholders. We have meetings on at least a biannual basis with organisations such as the Civil Engineering Contractors Association, and we also pick up a lot of lessons from the regular engagement that we have on our road schemes with communities up and down the country. We have a lessons-learned register and we offer support with informal learning for our project managers and project directors throughout the project delivery phases.

Willie Coffey: Thank you for that feedback. I have a brief follow-up question.

As the convener will remember, the committee used to be told fairly regularly that sufficient time was not put into the planning phase of projects, which had serious consequences. That was true regardless of the type of project. In addition, there was a lack of attention at the end of a project—I am talking about post-project evaluation and review and so on. The committee always cried out for evidence of that taking place, because some of us felt that that was the key to future successful delivery. Would you say that that has been the

main change? Are you seeing more attention being paid in the public sector to the post-project delivery phase so that lessons can be fed back in? Are we giving the project managers of these wonderful projects the time to design them in such a way that there is a better chance of successful delivery?

Alyson Stafford: Some good examples have already been given of the post-project reflections that have taken place. With regard to the committee's observation about investing enough time in planning, it is the case that those projects that perform well have had that investment. The trajectory has been improving when it comes to putting more time into that. There might still be areas where it can be better, but there has been some improvement.

There are still things that come along that impact on projects. Sadly, where there are delays, that can be to do with factors that are outwith the normal pattern of things, whether that is bad weather, contractors who are no longer able to supply what we expect or discoveries that are made on routes. Actually, some of it is just responding to local communities. One thing in the planning phase that is likely to result in some variability is when local authorities rightly consult their communities about, for example, the location of a school. Different sites are discussed and debated. However, overall, we are seeing improvements in those areas in the way that you have highlighted.

Liam Kerr: I take on board Willie Coffey's points about the learning outcomes. In that regard, I want to ask about some specific issues in the north-east. The first is the AWPR, so I am addressing these comments to Peter Reekie or Michelle Rennie. The AWPR has been significantly delayed. In December, two basic reasons seemed to be floating around for that. One was a contractual issue: the contractual nexus between the various parties had not been sufficiently bottomed out to allow the handover to take place and the road to be opened. Will you explain to me and, perhaps more importantly, to those watching what the contractual issue was? How did it arise and how do we ensure that it does not happen with future infrastructure projects?

Michelle Rennie: The contractor has said that the delays on the AWPR are primarily related to weather, the programming of certain utility works and, more recently, defects that have been identified on the Don crossing.

Liam Kerr: I do not disagree with what you say, but there were contractual issues. Specifically on that issue, what went wrong, why did it go wrong, at whose door should we lay it and how do we ensure that it does not happen again?

Michelle Rennie: I wanted to set out the basis of the delays in the first instance.

The contract did not envisage that we would have defects on the Don crossing. That reflects most contracts, which are not necessarily structured to facilitate defects, although there is a mechanism in the contract for dealing with defects. The contractual mechanism to which I think you are referring was discussed at the Rural Economy and Connectivity Committee and was to allow the phase between Stonehaven and Charleston to open. That phase was identified as a variation to the contract because, originally, the whole section, including the Don crossing, was to open up as one phase. The mechanism was used to split out that 31.5km section as a sub-phase, if you like. That had to be agreed between us and the contractor and between the contractor and its lenders as a variation to the original contract.

Liam Kerr: How do we ensure that the issue does not happen again? To me, as a lawyer who has dealt with such contracts, that sort of thing can be planned in. People watching are struggling to understand why it was not planned in. How do we ensure that such issues are planned in for future infrastructure projects?

Michelle Rennie: It is not possible to plan in every possible scenario on a 58km scheme. The scheme was planned to be opened in phases so that the benefits of each phase could be delivered once it was complete. For instance, the Balmedie to Tippetty phase was opened in August. That is a normal part of the planning for such jobs.

Liam Kerr: And of the contracts for them.

Michelle Rennie: Indeed.

Had the work on the Don crossing not suffered quality issues, the whole phase would have opened up as one without any difficulty. The fact that the contract had a mechanism to create a change to allow the Stonehaven to Charleston section to open shows that it had the flexibility that it needed. We can never control the speed at which each organisation manages that process through its governance.

Liam Kerr: But you can control some things. I want to look at the issue with the Don crossing, which is apparently delaying the entire section. I have no particular knowledge of bridge construction. However, constituents have made representations to me and I understand that, in the case of this particular bridge, basically, you turn up, you pour it, you put it in place and you move on. [*Laughter.*] I accept that it is an enormous—and very good—project but, fundamentally, it is about putting a bridge in place. How come it has gone wrong? At whose door does that lie? How do we ensure that it does not happen again?

Michelle Rennie: I am interested in your representation of the simplicity of the construction of the bridge—

Liam Kerr: I did not use the word “simplicity”. However, how do we ensure that it does not happen again?

Michelle Rennie: The contractor would not see it like that. The fact that the defects have been picked up is a function of the robust quality management process that is in place on the bridge. They were picked up prior to the opening of the bridge and during construction, and they will be remedied at no cost to the taxpayer.

The remainder of the road that can be opened has been opened, which has delivered significant benefits. In the feedback that we have had on the section that is already open, one road user said that it is the closest thing to time travel that he has experienced, because of the journey time savings that he is making on a daily basis. Therefore, we have shown that we are able to deliver significant benefits at the earliest possible opportunity, that the contracts that we have in place make facility for dealing with any defects—at no cost to the taxpayer—and that the quality management system that we have in place is robust and picks up defects on time, before the road is open.

Liam Kerr: I want to press you on the costs to the taxpayer. Yesterday, my colleague Jamie Greene asked about the costs of the project, which I think are now projected to be—give or take—£750 million or £745 million.

Michelle Rennie: It is £745 million.

Liam Kerr: Jamie Greene asked the Cabinet Secretary for Transport, Infrastructure and Connectivity about the costs and I was not convinced by his answer, which was not particularly clear. I wonder, therefore, if I might press you on that issue. The cabinet secretary said that there will be no cost overrun. However, he also said that that was because the contractor has not yet provided evidence of why an extra amount would be needed—I am paraphrasing, but that is what I heard. If it is right that there being no cost overrun is subject to no such evidence being provided, is it not possible that there could be a cost overrun on the project?

Michelle Rennie: Each of the contracts makes provision for the contractor to make claims in limited circumstances. There is a mechanism for the contractor to make a claim and the contractor needs to provide details to substantiate that claim. That is not particular to this form of contract; it is a normal risk-sharing device and this contract is no different.

The contractor has submitted substantial claims, as has been discussed at the Rural Economy and

Connectivity Committee. We are discussing those claims with the contractor and examining the detail. However, we have not yet been provided with sufficient substantiation to allow us to take those claims forward. That is why the estimate is currently at £745 million.

Liam Kerr: Thank you.

I have two further questions, which move from road to rail. I suspect that Mr Reeve will answer them. I will be as brief as I can, because time is running short.

I believe that there are plans to upgrade four stations in Scotland. Those stations might include Inverness, and I see from the report that work on Aberdeen station has already started. There is a desperate need to upgrade Montrose station, up in the north-east, which has nothing like the facilities that the above stations already have. In fact, Montrose lags the rest of the stations on that section of the east coast main line. Will Transport Scotland be upgrading Montrose station any time soon?

Bill Reeve (Transport Scotland): I am pleased to say that there are plans to improve the facilities at Montrose station. ScotRail is currently developing those plans and I can write to the committee subsequently with more details, if that is of interest. The increase in service level on that railway line is in no small measure the reason for the upgrade. That increase is a very good thing, but it creates more interchange between passengers who are getting off the stopping services and on to the fast services. It is becoming a more important interchange and I appreciate and share the view of stakeholders that an improvement in the facilities at Montrose is appropriate.

10:30

Liam Kerr: Fantastic. When you write to tell the committee what is going to happen, will you be able to give some concrete timescales? That is what people need.

Bill Reeve: I am certainly content to give you the timescales that we have.

Liam Kerr: I would be very grateful for that. Thank you.

My other question is also for Mr Reeve. The update talks about the £200 million to improve the north-east main line. In 2016, there was a promise that that £200 million would shave 20 minutes off the journey time down to the central belt, and it would be used in the north-east between Aberdeen and Dundee. Since the update has been sent to the committee, the Arup report has been published. I think that it says that there are various options; that if you invest £200 million, you

will shave two minutes off that journey time; and that six of the projects will happen south of Dundee.

Prior to the 2016 announcement, what planning was done with Transport Scotland such that when the cabinet secretary said that the £200 million will save 20 minutes and be spent in the north-east, there was a robust basis for that? Given that, according to the documents that we have, the remit of the projects is to deliver economic growth and encourage people to use things such as rail, how will the £200 million improve journey times sufficiently and improve the customer experience enough to be considered value for money?

Bill Reeve: There is quite a lot going on there, so I will take it a step at a time.

The £200 million is additional to the other extensive investments already being made in the north-east of Scotland. For example, a £330 million project to upgrade capacity to the west of Aberdeen is being delivered as we speak; it is going very well, I am pleased to say.

The purpose of the £200 million is to improve journey times and the capacity for frequency on the railway between Aberdeen and the central belt. The Aberdeen-central belt reference group, which has representation from Tayside, Aberdeen and across the rail industry, is working to establish the best way of using that £200 million to improve journey times. It is not the only investment that is contributing to that improvement. There is a separate improvement to the signalling capacity just south of Aberdeen, where there is a long distance between signals, which means long times between trains. We have also started to introduce new high-speed trains on the Aberdeen to central belt services. Given their superior performance, they are also contributing to the improvement in journey times.

I do not recognise that the £200 million is specifically for a 20-minute improvement in isolation. We have been given the task of finding the best possible investment and the best return for passengers and freight customers that we can get from that £200 million, treating the railway as a system that includes the infrastructure, the track, the signalling that is controlling the trains, the capability of the trains themselves, and the timetable. The iteration of those things leads to the right outcome.

The report to which you referred was commissioned by the reference group and is part of the process of development. It focused on the potential that could be achieved just through upgrading the track—line speed improvements and specific things such as redoubling some bridges. We were not entirely surprised that that

report concluded that that would not give a particularly good-value return.

Separately, in parallel with that report, work is going on with colleagues to look at issues such as signalling capacity. At this stage, without that work having been completed, my judgment is that that is likely to be a more fruitful area for investment because we have a quite old-fashioned signalling system between Dundee and Aberdeen.

Turning to your final point about where the works will be located, the railway is a system and the objective is improvement of journey times, capacity and freight capacity between Aberdeen and the central belt. It is sometimes the case that the best way of improving the train to Aberdeen is to invest in one of the key junctions further south. For example, we have some single-track sections between Dundee and Perth that we are looking at. However, I expect that most of that money will be spent towards the north end of the line because we have some other projects under development. Mr Coffey made an observation about the importance of studying something carefully before one commits the funds; that is exactly what we are doing.

The commitment was that this money should be spent over the 10-year period of the Aberdeen city region deal, and we are a couple of years into that. I think that we are making good progress towards meeting that commitment in a prudent development process, but I would also point you to all the other investment in that route at the moment.

Bill Bowman: I am not quite sure which one of you deals with items that are not in the report. You say that the Forth replacement crossing—which I take to mean the Queensferry crossing—is no longer included in the report because, as at April 2018, the project was completed.

I have raised this before as a regular user of the road—when you are bumping across at night on the hard shoulder at 30 miles an hour, it does not seem completed. I think that the cabinet secretary said that work would go on until the end of this year. Can you please explain why the crossing is listed as a completed project?

Michelle Rennie: The Queensferry crossing is completed in the sense that it is operational. Finishing and snagging works are still under way. Most of those that require traffic management take place at times during the night and when traffic volumes are minimised.

Bill Bowman: You have probably seen the queues because of works in the evening shown on social media—it is not overnight.

Michelle Rennie: I appreciate that there is still traffic, but we are trying to do the work at times of

the day when there is less traffic; we are not doing it at peak times.

Bill Bowman: My point is that in the real world, “completed” means finished—not signed off on a contract or some such thing. Can you give us an update on that and perhaps put the project back in the “live” category so we know what is happening and when it will happen?

Michelle Rennie: As I said, some finishing and snagging works remain. The contractor has suffered delays as a result of the failure of the subcontractors—

Bill Bowman: I do not ask you to be an apologist for the contractors.

Michelle Rennie: —and an inability to identify specialist resources in time. The current estimate is that the works will be complete by October this year.

Bill Bowman: Can you put the crossing back into the report so that we can monitor it?

Alyson Stafford: By all means, we can add something that covers this issue to the covering material that we give you.

Bill Bowman: It just does not seem completed to me.

Michelle Rennie: We are happy to provide you with regular updates if you wish.

Daniel Johnson: I would like to raise the issue of the new Edinburgh children’s hospital. It is a £150 million hospital, which is badly needed, as anyone who has used the old sick kids hospital, which is in my constituency, will attest to.

If you Google the Edinburgh children’s hospital and you go to the NHS Lothian website that deals with the details, it says that the hospital will be open in 2017; if you go to the project page, it says that it will be open by 2018. I think that we can agree that this is not a project that is on time.

On the budget, back in July 2018, according to NHS Lothian board papers, the health board made provision of an £11.6 million loan for working capital to Integrated Health Solutions Lothian, which is the contractor leading the project. That amount against a project worth £150 million seems like a very large working capital loan, and it begs the question whether the project is delivering value for money.

On top of that loan, the board also agreed to pay a rental fee to IHSL so that it could get early access to install equipment in a hospital which, as I alluded to earlier, should already have been open.

Is the project delivering value for money? Frankly, given the litany of errors, such as the

failures of contractors, the clear issues with the finance, the fact that the external verifier refused to sign off the building in the autumn and, indeed, the video clips that did the rounds, showing floods of hot water in the building itself, it is not going right at all, is it?

The Convener: I will direct that question to Alan Morrison, who is in charge of health. Is value for money being delivered?

Alan Morrison (Scottish Government): The figures that Daniel Johnson referenced relate to a settlement agreement, which NHS Lothian is discussing with the special purpose vehicle, about how to resolve the issues that he mentioned. The purpose of the negotiations, which have not concluded and are subject to commercial terms being agreed, is to resolve the issues that have been identified before the hospital can be completed and opened. We feel that the important point is ensuring that the facility is ready and fit for purpose before patients are transferred to it.

It is obviously disappointing that completion of the hospital is behind schedule, but we receive good feedback that the clinical services that are being delivered on the existing site are high quality and provide good patient care. In the meantime, NHS Lothian continues to work with the SPV and the contractor on the issues that need to be resolved before completion of the hospital.

Daniel Johnson: A delay of more than two years is more than disappointing. Is it common practice for a loan of the size of £11.6 million to be necessary? If NPD deals are about risk transfer, it seems odd that the public sector is bailing out failures by the private contractor.

Alan Morrison: As far as I am aware, it is the only health project that has involved the arrangements that I have mentioned. I do not know whether anyone else wants to comment on the wider point about NPD programmes.

The loan was given principally because there was a dispute in a number of areas and it was seen as the best way forward to get the hospital open as soon as possible. The SPV and NHS Lothian had different interpretations of whether the problem in the design or in the construction of some parts of the hospital. Rather than have a court case, which would add further delay and risk, depending on the outcome, it was agreed that the loan was a sensible way forward.

The agreement is still being negotiated, and NHS Lothian needs to confirm that what the money will be used for is legitimate and reasonable. The fact that there has not been agreement yet shows NHS Lothian's diligence in ensuring that the money will be used appropriately in delivering what it is intended for.

Daniel Johnson: Can I confirm that the £11.6 million will be loaned on a commercial basis, at a commercial rate of interest?

Alan Morrison: That has not been confirmed, because it is part of the negotiations. Within the parameters of the agreement, £11.6 million is available, but NHS Lothian needs to be content that what it will get for that sum delivers value for money.

Daniel Johnson: Given that there has been a failure with the contractors, that there have been major disputes regarding what has been agreed to, as you have said, and that almost 10 per cent over and above the contract value has been required to be spent, it strikes me that there must have been significant failures in the way in which the project was scoped, the contractors were selected and the contract was designed. Is that assessment correct? What are the failures that have led to this situation?

Alan Morrison: That is still to be determined. We will need to review the circumstances and see whether any lessons can be learned.

Daniel Johnson: Surely, one would hope, there are lessons to be learned.

Alan Morrison: Such projects are complex and we recognise that there will be occasions when things will not go according to plan. We need to understand where the problem lies—whether it is in the design of the hospital or in the interaction with the contractor and the SPV—and whether lessons can be applied more generally across the health sector.

Daniel Johnson: My final question is a simple one: do we have any idea when the hospital will open?

Alan Morrison: We do not have a definite time at the moment.

Daniel Johnson: That is not very good, is it?

The Convener: Do you have any further questions, Mr Johnson?

Daniel Johnson: No.

The Convener: Alyson Stafford looks like she wants to add something.

Alyson Stafford: No—the matter has been well explored.

The Convener: As members do not have any further questions, I thank all the witnesses very much indeed for their evidence.

10:45

Meeting continued in private until 11:10.

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