



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Public Administration Committee

Tuesday 16 May 2023

Session 6



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FINANCE AND PUBLIC ADMINISTRATION COMMITTEE
14th Meeting 2023, Session 6

CONVENER

Kenneth Gibson (Cunninghame North) (SNP)

DEPUTY CONVENER

*Michael Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Ross Greer (West Scotland) (Green)

*Douglas Lumsden (North East Scotland) (Con)

*John Mason (Glasgow Shettleston) (SNP)

*Liz Smith (Mid Scotland and Fife) (Con)

*Michelle Thomson (Falkirk East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Clackmannanshire and Dunblane) (SNP) (Committee Substitute)

Lesley Fraser (Scottish Government)

John-Paul Marks (Scottish Government)

Jackie McAllister (Scottish Government)

Shona Robison (Deputy First Minister and Cabinet Secretary for Finance)

CLERK TO THE COMMITTEE

Joanne McNaughton

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Finance and Public Administration Committee

Tuesday 16 May 2023

[The Deputy Convener opened the meeting at 09:31]

Effective Scottish Government Decision Making

The Deputy Convener (Michael Marra): Good morning, and welcome to the 14th meeting in 2023 of the Finance and Public Administration Committee. We have received apologies from the convener, so I will convene the meeting in his place. We are joined by Keith Brown, who is attending the meeting as a substitute member in the convener's absence.

Our first agenda item is our final evidence session as part of our inquiry into effective Scottish Government decision making. We will hear from Shona Robison, the Deputy First Minister and Cabinet Secretary for Finance, and John-Paul Marks, permanent secretary, who are joined by Scottish Government officials Lesley Fraser, director general corporate, and Dominic Munro, director for strategy. I welcome you all to the meeting and look forward to your evidence.

I invite Ms Robison to make a short opening statement.

The Deputy First Minister and Cabinet Secretary for Finance (Shona Robison): Thank you, convener. It is a pleasure to be here to talk about effective decision making.

I am conscious that the subject area is very broad. The Scottish Government takes many decisions of different types on a daily basis. Consequently, my opening remarks will focus on the areas that I think might be most helpful.

The types of decisions that the Government makes range from decisions on public investment to decisions on taxation, service delivery and, of course, legislation. In recent times, key decisions have been made on urgent issues, such as receiving refugees from Ukraine and responding to the pandemic, and on long-term programmes, such as the roll-out of social security in Scotland. As those examples illustrate, Government decisions cover complex issues that are often of national importance and often involve a degree of political contention.

Understandably, there is no one-size-fits-all approach to such varied decisions, but there are

principles and governance that support effective decision making. In relation to principles, the policy prospectus that was published at the end of April sets out the Government's three defining missions—equality, opportunity and community—and the outcomes that we want to deliver over the next three years. As a Government, we have developed a distinctive Scottish approach to delivering policy and public services, which is based on four priorities—first, a shift towards prevention; secondly, improving performance; thirdly, working in partnership; and, fourthly, engaging and developing our people.

In relation to governance, the Scottish Cabinet sits at the top level of decision making. It is supported by Cabinet sub-committees on certain key areas, such as legislation, and by a range of official governance under the corporate board and executive team, which is reinforced by official guidance, including the Scottish public finance manual and the civil service code.

We recognise the importance of external advice, challenge and scrutiny, including, of course, by the Parliament. We integrate external views into our decision making in various ways, including through consultations and stakeholder engagement and through groups such as the National Advisory Council on Women and Girls and the delivery board for the national strategy for economic transformation.

We also recognise the importance of transparency. That is why we are delivering Scotland's third open government national action plan in partnership with civil society; it is why we will set out our financial and fiscal assumptions in our medium-term financial strategy later this month; and it is why we routinely publish impact assessments relating to policy decisions.

The quality of advice that supports decision making depends on the skills, capability and professionalism of civil servants. The Scottish Government is implementing its people strategy to support continuous improvement and the updating of skills and capability, and it has introduced measures to improve record keeping as part of its information governance programme. Effective decision making often requires evidence on what works, and the Scottish Government is supported in that regard by professional analysts, scientists and other specialists in the civil service and by expert advisory groups such as the Covid-19 advisory group, which played a significant role during the pandemic.

Given the varied nature and complexity of decision making, the Government does not claim to always get everything right, but our decisions are supported by professional advice and formal processes, and we have made many decisions that we can be proud of over the years—decisions

that have made Scotland a better place and have led to improved outcomes for people living here. However, we are always willing to learn lessons and to improve, which is why the work of this committee is so important. We look forward to considering its recommendations.

The Deputy Convener: Michelle Thomson will start the questions.

Michelle Thomson (Falkirk East) (SNP): I was expecting the tradition of the convener going first to be in operation, but okay. We will just go in with the heavy brogues, then.

My question might well be for the cabinet secretary. I am interested in exploring whether any third sector groups obtain more than 50 per cent of their funding from the Scottish Government.

Shona Robison: Well, third sector groups are varied in that we tend—

Michelle Thomson: I am sorry—I have not been clear. I should have said quangos or third sector groups.

Shona Robison: Okay. Let us take third sector groups first. We tend to give funding to them through what we call intermediaries, which then give the funding to third sector organisations—some of which are quite small—that apply to the intermediaries. That helps the Scottish Government, because, as you can imagine, with the plethora of small third sector organisations, it makes more sense to do it in that way. I do not have in front of me the breakdown of who gets what in terms of percentages, but I am certainly happy to furnish the committee with that information.

We encourage third sector organisations not to become wholly reliant on any single source of funding, because, for sustainability reasons, the wider a spread of funding sources, the more sustainable an organisation becomes. You will understand that, with the best will in the world, policy priorities can change within Government, which means that difficult decisions have to be taken that, sometimes, include the ceasing of funding. If an organisation is wholly dependent, that becomes difficult.

On quangos, we have 129 public bodies in Scotland, many of which—most of which, in fact—are reliant on Scottish Government funding. Some are able to raise commercial funding. For example, Forestry and Land Scotland has been quite successful in generating commercial money, which is good.

My final point is that we are reviewing and want to reform the landscape around those 129 bodies. Again, I am happy to furnish the committee with information about that piece of work as we take it forward.

Michelle Thomson: Thank you. The general question—which, in fairness, I do not expect you to be able to answer today—is whether there is a possibility that some of those types of bodies that receive Scottish Government funding get more than 50 per cent of their income stream that way. In fairness to you, I do not expect you to know that data for every single organisation.

Shona Robison: There will be some.

Michelle Thomson: Okay, so my next question is where that would be declared by the Scottish Government and/or the civil service as a risk in terms of your decision making. I fully accept that it is a risk for the organisations, because of exactly what you highlighted, but it also represents a risk to both the civil service and the Scottish Government, if a number of bodies are receiving more than 50 per cent of their funding from you. Perhaps the permanent secretary would like to come in and say where in the institutional memory, if you like, that would be declared, understood and assessed.

John-Paul Marks (Scottish Government): For each of the budget lines for grants, it is first understood by the sponsor body—the sponsor team that sits within the Scottish Government—and then declared in the annual report and accounts. There may be certain levels of grants that are not above the threshold that are visible through that process. We can take that away and, as the Deputy First Minister says, furnish the committee with a bit more detail. However, Social Security Scotland, for example, is a major organisation that is funded by the Scottish Government to deliver social security and that funding line is visible in our annual report and accounts. Therefore, we understand that liability, we plan for it and we make sure that it is funded at a level to deliver the service that we wish.

As the Deputy First Minister set out, in terms of public bodies more generally and the voluntary sector, where we can encourage revenue raising and that opportunity to create revenue, that can be positive. We have seen that in different sectors and we want to encourage that empowerment—

Michelle Thomson: I have got that point. You correctly say that you will understand from a funding line where that represents a liability, but I am trying to explore where that represents a risk to quality decision making. How do you examine and assess that risk up front and therefore, critically, guard against policy capture?

Shona Robison: I see where you are getting to. Clearly, we need to guard against that, but any organisation that we fund is funded in order to carry out particular tasks. It would have applied for funding on the basis of meeting Scottish Government objectives that were set out. Where

the Scottish Government is taking policy decisions and consulting, we would look at what organisations were saying in the round, alongside all the other organisations, whether we fund them or not. My expectation would be that there is no hierarchy of importance of an organisation's views on a subject that in any way correlates to whether it is being funded. It is important that we make that distinction. Organisations are, as I say, funded to carry out particular tasks, so that distinction is important.

Michelle Thomson: But do you agree that it could represent a risk to decision making? If an organisation is receiving its funding from the Scottish Government, there is a risk that it will tell the Government what it wants to hear because the organisation fears for its funding line. Indeed, we had confirmation a couple of weeks ago from the Scottish Council for Voluntary Organisations that that can happen.

Shona Robison: That is what we need to guard against, although there are many organisations—I am sure that we could give a number of examples if you would find that helpful—that do not hold back on criticising Government policy, even when they receive funding. That is how it should be. An organisation should not guard against criticising the Scottish Government just because it receives funding. It would be a problem if that were the case.

09:45

If you look back, you will see that there are many organisations that have been quite vociferous about aspects of Government policy or things that we have brought forward that they do not agree with, but which continue to receive Government funding. I hope that that gives you some reassurance.

Michelle Thomson: Permanent secretary, I will give you the opportunity to answer. During the decision-making process, how do you guard against the risk of policy capture?

John-Paul Marks: As the Deputy First Minister said, we deliberately set up external scrutiny from bodies such as the Scottish Fiscal Commission or Audit Scotland to provide that challenge. I was at the Promise oversight board meeting last week. It provides significant independent scrutiny, challenge and analysis of our care system and of how the Promise itself is being delivered. It is funded by the Scottish Government but is certainly still empowered to challenge it. That is deliberate. The challenge is not in-house and within the system; it is outwith the system, transparent, accountable and visible to everyone.

Your more general point is absolutely right. We must ensure that evidence, transparency and

healthy challenge are applied to public debate about the most contentious issues. We see that transparency every week in the Parliament, where there are complex debates about justice reform, the national care service, highly protected marine areas and the bottle deposit and return scheme. Those debates are supported by evidence and data and there is significant stakeholder engagement.

My teams try to capture that. They provide impartial, objective advice to ministers and ensure that we are listening and are getting all the input into the policy advisory process as best we can. We do that through consultations, published impact assessments and structured governance—including by non-executives and independent advisory boards—and we use that to give our ministers the best possible advice to inform their decisions. The Parliament then subjects those decisions to significant scrutiny.

You are right that we have to guard against the risk of policy capture, but I observe a healthy level of scrutiny and debate in Scotland about the difficult decisions that the country is trying to take.

Michelle Thomson: This is my final question. Concern was expressed about the Gender Recognition Reform (Scotland) Bill. I am mindful that that is a contentious policy and I am not trying to make a political point; I am merely using it as an example of what I am driving at. During the bill process, a point was made about the equality impact assessments that were carried out over a six-year period. No cognisance was given to the impact on women and girls who had been sexually assaulted or raped of having men with fully intact genitalia—setting to one side their right to be referred to in line with their chosen gender—in those women's safe places.

I asked Engender whether it had carried out any assessments. The reply was that it had not and that it would not have carried out the EQIA anyway.

There are ideas about avoiding policy capture, having critical friends and making robust decisions. So, how did we get to a position where nobody thought about that impact on women and girls for six years?

Shona Robison: As you point out, there was six years of scrutiny of and debate about that policy, which is a level of long-term debate and scrutiny that few other policies have been through. Was everything done perfectly? Probably not. There are always lessons to be learned around all that. What I would say is that the EQIA did look at the impact on women and girls generally, although I accept what you say about the specifics and we might need to reflect upon that. However, if we think in general terms about the level of

consultation, scrutiny and engagement, I personally engaged with a range of diametrically opposed organisations, many of which were in favour of the bill and many of which were against it.

If you are talking about organisations that receive Government funding and which side of the debate they were on during the process, I accept that a number of women's organisations that receive Scottish Government funding were in favour of the reform, but those same organisations have been very critical of the Scottish Government in other policy areas and they have not held back in saying so, including in the justice field.

My conclusion from all that is that we need to guard against any perception, real or not, of organisations that receive Government funding taking a particular stance on issues, because the evidence shows that organisations are robust in their criticism of the Government, even when they receive Government funding, and that is how it should be.

Michelle Thomson: Permanent Secretary, do you have any final comments on that? Were you surprised at my comment?

John-Paul Marks: No. I understand the level of contention around the bill and the debate in the country. I was just checking the data and saw that, in the first consultation in November 2017, 15,500 responses were received and that informed the development of the draft bill. There were detailed impact assessments, equality impact assessments and a children's rights and wellbeing impact assessment. A further consultation received 17,000 responses and we all observed the level of debate until the lights went out before Christmas.

Michelle Thomson: You have just commented on the volume of responses, rather than the quality. My point is that, in that significant volume, which I absolutely do not doubt, nobody at any point thought it that was appropriate to look at the impact on women who have been sexually assaulted—a huge percentage of women, as you will know—or raped, of having fully intact men in their safe spaces. That says to me that something was not right with the process, risk assessment and decision making. Do you accept that or am I missing something? Do you accept that, clearly, something was not quite right with the processes? It is not about volume of responses, it is about quality.

Shona Robison: The permanent secretary can come back in in a minute, but I want to be clear about two points. At the top level, the EQIA looked at the impact on women and girls. During the consultation and my discussions with a range of organisations, that issue was raised and was recorded as having been raised. The matter was

clearly raised during the debate that then ensued. The Parliament tried to navigate its way through all those difficult issues to come to a consensus and conclusion. None of that was easy and, when I met you, Michelle, we had long discussions and many issues were raised at that stage. Trying to bring all that together and marshal it to a point at which the Parliament could make a decision was quite difficult. I would say that the Parliament made the right decision. I know that you disagree with that, but ultimately, the Parliament had to make the decision based on all the evidence that was in front of it and that is where the Parliament landed.

Michelle Thomson: I feel as though I have taken a great deal of time on this topic, so I want to let other colleagues in. Thank you both.

The Deputy Convener: Deputy First Minister, you said that there are lessons to be learned in this area. Rather than speaking more about the specifics, will you say how you go about learning lessons? What have you changed or done differently, or what would you do differently, given the experience that you have just recounted in response to Michelle Thompson?

Shona Robison: One of my reflections is on whether there was a way of building more of a consensus around the issue. I felt very strongly that it was important to try to do that. Could we have done that at an earlier stage? Was it possible? The difficulty is that I do not know what trying to bring people together to coalesce around compromises would have looked like, because the debate had become so polarised, not least on social media—far more than it was initially, six years ago. For a minister in charge of a piece of legislation who can see the public discourse being so polarised, the room for compromise becomes quite difficult. However, I am the first to reflect on whether things could have been done more effectively.

The Deputy Convener: That is a useful recounting, but we regularly hear from Government ministers that lessons will be learned. For example, on the ferries scandal, Kate Forbes said on 29 March 2022:

“We recognise where things have gone wrong and we are learning lessons for the future.”—[*Official Report*, 29 March 2022; c 4.]

The First Minister at the time said:

“Lessons have been, are being, and will be learned.”—[*Official Report*, 31 March 2022; c 11.]

On the Audit Scotland report about the £5 billion lack of transparency in the Covid business arrangements, Kate Forbes said that any lessons that were highlighted by the report would be learned.

This is about decision making. We are told that lessons are being learned, but I am keen to understand what those lessons are.

Shona Robison: Let me come on to some of those. Obviously, the Covid inquiry will look at and scrutinise all aspects of how the Government responded. You should bear in mind that, when Governments respond to something that has never happened before, it is quite challenging. There is no blueprint that can be taken off a shelf to navigate through a global pandemic. Inevitably, therefore, things were done at speed in a way that, in hindsight, leaves us asking whether we would have done such things in normal times and whether we could have done them differently.

I absolutely accept that lessons need to be learned. If we have another global pandemic, we will have the experience of what worked and what, perhaps, did not work. The full public inquiry will come up with recommendations on some of that, which all Governments need to—

The Deputy Convener: Other examples include the ferries scandal, which I have mentioned and which has involved huge public expenditure, and the shambolic approach to the census. On 1 June 2022, Nicola Sturgeon said:

“Of course we will review the experience and ensure that any lessons that require to be learned are learned.”—*[Official Report, 1 June 2022; c 25.]*

What lessons have we learned about how those pretty poor decisions by the Government were made?

Shona Robison: Let me comment on the ferries, before we move on to the census. The section 22 report was hugely important and a number of changes flowed from it, not least to do with the governance arrangements at Ferguson Marine. There has been a huge difference. The permanent secretary can go into more detail if required, but there has been a complete overhaul of the governance arrangements, which flowed from that report. It was important that that happened at speed—as it did. It was not a case of saying that lessons would be learned at some point in the future. It was a very rapid response with improved governance arrangements in rapid time.

The Scottish Government made the decision to carry out the census in a different way, which led to some challenges around the participation rate. The work that was undertaken—at speed—to address some of that in order to get the figure up worked, and the figure became one that could then be relied on in terms of the census return.

It would be a strange situation if a Government did not learn lessons. Even when things go well and they are not on a list about which people say, “What about this and what about that?”—even

when delivery is good—there are always lessons to be learned about how things might be improved.

10:00

The Deputy Convener: So, for instance, will we not do what we did with the census again? Will we carry out the census at the same time as the rest of the United Kingdom? Has that lesson been learned?

Shona Robison: There were advantages and disadvantages. One of the advantages was around the content of the census and being able to carry it out according to when we felt was the best time. The disadvantage was the UK-wide publicity around the census. I will bring the permanent secretary in on some of the detail around that, but such judgments will be made by looking at the pros and cons and whether it is the best thing to do. Clearly, the most important thing with the census is to have a return at a level that is reliable. That is the top thing.

The Deputy Convener: There was a big failure in that regard. Permanent secretary, have you and your officials reflected on that? We are told that lessons have been learned. What is the central lesson that you learned?

John-Paul Marks: I will start with the census. The Deputy First Minister is right. We are confident that the census process will provide reliable data and output to serve our needs—we have worked with the Office for National Statistics on that. National Records of Scotland worked very hard to get that done in a difficult context—with the pandemic and still-high Covid infection rates—through the spring of last year.

There is clearly an opportunity for us to provide advice for ministers on what happens next time. Hopefully, we will not be trying to do the census in a period in which behaviour is still impacted by the pandemic. Significant learning has already been derived through the process of delivering the census in Scotland around how we use different data models to get to the right confidence interval for the outputs. If the committee would like us to set out precisely what the lessons are for next time around how we would take that on again, we will certainly take away that request.

Coming back to your more general question about how we learn and how we know that the learning is driving improvement, I note that one of the critical things that we want to continue to do is to publish the changes where we deliver improvements, for the sake of transparency.

For example, last time I was before the committee, which was last year, there was a challenge about whether we would publish the private investment framework. We have published

the framework, which is an important benchmark on the learning from Ferguson's and also from the Lochaber smelter, Prestwick airport and other private asset investments. That is the standard that we want to follow consistently for the future. It is about how we use independent expert commercial advisers, how we ensure that that informs decision making and, to go back to the original question, how we ensure that decisions are subject to scrutiny and diverse input and advice.

On your main point about whether we are learning and improving, we need to prove that we are, set it out openly and then make progress accordingly.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. Deputy First Minister, as you know, we took evidence from 15 former ministers and former civil servants. The former ministers represented three different political parties who have been in Government over recent times. They were unequivocal in their views that, at times, too much decision making is rushed, unclear and unstructured. Do you agree?

Shona Robison: That has not been my experience. It can sometimes feel that the opposite is the case and that it can take a frustratingly long time to make decisions. Sometimes, you get advice, go through it a number of times and have lots of discussion on the various options that are put in front of you, which can take time, even when there is an eagerness to get on and do what is in front of you.

In some situations, a very quick turnaround is required. For example, I mentioned in my opening remarks the responses to Ukraine and the Covid pandemic. Rapid decision making is required in out-of-the-ordinary situations, but that does not mean that it should not still be good decision making; it means that decisions have to be taken quickly and that the best evidence and advice that has been brought to you has to be relied on. You can rely on experience and on previous decisions and their outcomes, but sometimes the situation is new and there is nothing to draw on. That requires judgment. Sometimes, that will be the right judgment. With hindsight, some decision making is clearly not right, but the best judgment will be made on the best evidence at the time.

I have been a minister in Government, on and off, for more or less 15 years. When you gain confidence and experience as a minister, it enables you to make decisions more quickly and be able to challenge some of the advice that comes to you more readily than a minister who perhaps does not have that experience, who might, quite rightly, take longer to make a decision.

I do not recognise the comments that Liz Smith refers to. I can go only by my experience in Government over that time.

Liz Smith: Ironically, current civil servants made the case that, on issues such as Covid and Ukraine, decision making was actually quite good because those situations were so desperately urgent and serious that things worked out pretty well. The pre-Covid and pre-Ukraine former ministers and former civil servants argued very forcefully that far too many decisions were not good because they were so unstructured.

This morning, the gender recognition situation and issues around ferries, BiFab, Prestwick airport and the census have been flagged up. We can add to that the deposit return scheme, highly protected marine areas and the national care service—the list of concerns about effective decision making by the Scottish Government goes on. In all those cases, I am sure that the Scottish Government argues that it could have done things better. Our concern as a committee is that the Scottish Government is perhaps not listening carefully enough to stakeholders who are on the front line of delivering those policies.

As I say, the Scottish Government's record on a lot of those issues has not been very good. Do you accept that?

Shona Robison: I will comment on a few of those issues. I do not think that anyone could say that decision making around GRR was rushed. It was a prolonged policy process over a long period of time.

Liz Smith: It was unstructured.

Shona Robison: I do not accept that it was unstructured. We have to make a distinction between things that are politically contentious and that people disagree with and decision making on the best available evidence at the time. For example, when the DRS was first mooted and introduced, that predated the United Kingdom Internal Market Act 2020 coming into being. A process was set in place and then an external factor came into being that became fundamental to the scheme. However, nobody could have predicted that that was going to happen when the DRS started to be taken forward. Some things are within your influence and power, but sometimes things will happen that are not.

Your point about stakeholders is fair. The DRS is an interesting example in that respect. Larger businesses, perhaps because of their capacity, were able to get things in place quite rapidly, whereas it became apparent that small businesses were struggling with that, probably because they did not have capacity to put in place the arrangements that the larger ones had put in place.

To reflect on my decision making, the short-term licensing scheme was another politically contentious issue—some people disagreed with the principle and some agreed with it. However, with the implementation, we had the very same thing, in that businesses said that they needed more time for some of the practicalities. In that case, it was things such as getting tradespeople into properties to do assessments. As soon as I became aware of the extent of that, we decided to extend the deadline to October.

Was that a failure of decision making in the first place? I would say that it was not. I would say that it shows the ability to respond to something in a moving situation. Evidence came in front of us that it was right to delay. I would say that that is an example of listening to concerns and changing a scheme in response, rather than an example of weakness and poor decision making.

Liz Smith: I am not sure that I accept that, but let us try to keep the politics to one side.

Four committees of the Parliament have raised serious concerns about the proposals for a national care service, because they do not feel that the evidence has reflected the views of people on the front line. Certainly, this committee heard serious concerns about the lack of information in the financial memorandum, and we still have considerable concerns about that. Does that not flag up to you that serious issues have arisen for the Government because it has not consulted all stakeholders effectively? As I say, that has resulted in the very unusual situation—certainly in my time in the Parliament—in which four committees have serious concerns. We still do not have an accurate financial memorandum.

Shona Robison: The national care service is a hugely complex piece of reform and there are differing stakeholder views on the proposals. Some stakeholders, whom we might describe as those representing service user interests, are very much in favour of progress on the national care service at pace, because they feel that the current arrangements for delivering social care do not meet their needs. Those stakeholders are urging the Government to proceed; indeed, they have expressed disappointment about the delay and the fact that the Government is not getting on with the reforms. The other group of stakeholders, who are from local government in particular, have a different view, for reasons that we all understand. They believe that local decision making and local control are important.

One of the key reasons for our taking a step back is that trying to take the work forward while those local government concerns exist would be challenging. As a former home care organiser, I am a big fan of the national care service, and I could speak for the rest of the meeting about why I

think that having national standards and a national framework in order to have the same quality in standards everywhere is really important, but I will leave that for the moment.

10:15

Agreeing a way forward with local government has become the primary consideration here, for all the reasons that we understand. Trying to move that big reform forward without trying to reach a consensus and compromise with local government would be really difficult, which is why the decision has been made to create that space over the summer. The financial memorandum will reflect what that decision making will look like in relation to how we take the work forward. There will inevitably need to be changes to the plan and to the way in which it will be delivered and rolled out.

I hope that that helps to explain that the reason for the delay is not a lack of intent or firm belief that a national care service can make things better for people, but that it is crucial that the implementation of the bill is done in the right way. Taking local government with us is important.

Liz Smith: Deputy First Minister, former ministers and former civil servants said that some financial rules that we have as standard practice for decision making have been found, on occasion, to be “optional”. It is a concern for the committee that proper practice for the financial management of policies is sometimes not adhered to. Is that a concern for the Scottish Government?

Shona Robison: I will bring the perm sec in shortly. Both the financial decision making and its transparency are crucial because, at the end of the day, it is about public money. In my experience, the decision making around financial matters is robust. Sometimes, you might take different financial options depending on the level of investment or the profiling of funding; judgments need to be applied around best outcomes and best value for money. Extensive work has been done to improve the issue.

The perm sec will, I think, be happy to give a bit of detail on that point.

John-Paul Marks: I am happy to write to the committee with a bit more detail on that point, because financial rules are not “optional”. If there was evidence that they were optional in the past and an example thereof could be shared, we would look into the matter for sure.

I personally sign off all expenditure above £1 million, and so does the Deputy First Minister at the moment because of the fiscal position. We call those papers our accountable officer templates. I check to be confident that all expenditure is proper, regular and lawful; that parliamentary

authority is in place; and that the commercial considerations have been properly taken account of. Those inputs then go into the templates and the chief financial officer and I provide assurance to the Deputy First Minister that spending is optimal and the right thing to do given the context that we are in.

We try to take that discipline through the organisation and through our finance business partner networks to ensure that we are clear in understanding where our expenditure is happening and that we are confident that it is optimal. Although it always matters, it particularly matters now, given the tight fiscal position that we have been in since inflation has been so high.

Liz Smith: Thank you for that. I urge you to reflect on what the Auditor General has said about public finance and the need for additional scrutiny and transparency, because, as you know, he has not been very comfortable about that.

The Deputy Convener: When Liz Smith raised this issue with you in the chamber, Deputy First Minister, you said:

“the advice that we commission and receive is the best advice available to ministers.”—[*Official Report*, 3 May 2023; c 14.]

That would include legal advice. When you are making a decision, in what circumstances would you decide to disregard legal advice that you had received?

Shona Robison: Legal advice is hugely important. I do not think that I have ever disregarded legal advice, because of its importance.

What I would say is that legal advice is often around options; it is not always black and white. Quite often, the legal advice being given will include a list of various possible scenarios. However, as a minister, I have never set aside legal advice.

The Deputy Convener: There was advice in relation to the case surrounding the former First Minister, Alex Salmond, which was discounted by the Scottish Government. The advice was to concede the case as the benefits from proceeding did not appear to come close to meeting the potential detriments from doing so.

At some point, the Cabinet made a decision to disregard that legal advice. I am concerned about that and I want to understand how you would have that conversation in the Cabinet and come to a decision to set aside that advice and do something else.

Shona Robison: I was not party to any discussion in the Cabinet.

The Deputy Convener: Permanent secretary?

Shona Robison: The permanent secretary would not have been in post—

The Deputy Convener: Was it before your time?

John-Paul Marks: It was before my time. However, let us stick with the principle of your question. We would never disregard legal advice. It is imperative that we understand whether something is proper, regular, and lawful. Lesley Fraser’s legal team do an incredible job and they are very integrated with the senior leadership of our executive team in all the work that we are doing.

As the Deputy First Minister says, it is not always binary—it is not always about saying that it is lawful to do this but not to do that. It is a judgment and a balance of risk. Ultimately, ministers are quite entitled to look at wider strategic considerations, whether that be about economic benefits, formal and informal reputational risks, or whatever.

However, to come back to the point about public expenditure in particular, it has to be proper and regular for me as an accountable officer to be confident about it and to authorise it. Otherwise, I cannot authorise it. That is what the public duty under the Public Finance and Accountability (Scotland) Act 2000 requires me to do.

The same would be true in terms of expenditure, for example, on a legal case. It would not be proper and regular to pursue that if there was no authority to do so or no source of public funds, for example.

John Mason (Glasgow Shettleston) (SNP): Continuing on the theme of the speed of decision making, we have, to be frank, had mixed views from different committee witnesses. For example, if we take Covid, some witnesses said that the speed was great—it was quick and decisive and so on—but others, especially from women’s groups, said that it was too fast and that there was not enough consultation. I have to say that I share your experience that, generally, decision making can be quite slow.

We also had evidence from businesses that they make a decision when they are 80 per cent certain about something, while their suggestion was that Government waits until it is 90 per cent, 95 per cent or 99 per cent certain before making a decision. Is it that there has to be a different speed for different decisions or are there principles to follow? How do you get the balance?

Shona Robison: It is a difficult balance and you are then looking at how much risk you will be carrying. You will have the best advice in front of you but nothing is ever 100 per cent certain; everything carries a risk. If you have three options

in front of you, the relative risks of each option will be set out and—not always but quite often—a recommendation will be made by civil servants, who will have drawn on their experience in order to present the relative risks of all those options to ministers. Ultimately, again, you have to apply some judgment to that.

On speed, you are right that you will hear quite differing views. Some are criticisms of things taking too long, and at other times there is an accusation of too-rapid decision making. The truth is that differing decisions require different time frames and time for analysis. Drawing again on my personal experience, if I look at something and I am not sure about the relative risks and it just is not clear to me, I will not make a decision on the basis of the submission in front of me. In such cases, I call all the officials into a meeting so that I can probe more fully what lies behind some of the assumptions and the risk analysis. In that way, I can get at what inevitably lies behind, for example, a six-page submission. That takes time, but it is better to take that time so that I make a decision with the full facts in front of me and an understanding of all that.

That is how I go about decision making. All the frameworks, standards and steps that were mentioned earlier are there to ensure the quality of the advice that comes out.

I have a final point. Nobody, including civil servants, can be an expert on everything. Inevitably, you have to draw on other stakeholders such as the business community, who have a level of knowledge and experience, and a view. You draw all of that in to try to make the best decision on the information that is in front of you.

John Mason: That is helpful, thank you. It is good that we have had evidence from such a wide range of witnesses. We particularly appreciated meeting civil servants at St Andrew's house, which was a slightly unusual experience for all of us but a very good one. They were very helpful.

On the issue of how transparent advice should be, you mentioned transparency in your opening remarks, and most of us would say that transparency is a great thing. However, some previous civil servants and ministers have said that there can be a bit too much of it. If all the advice is written down, for the sake of transparency, it is very difficult for a civil servant to give confidential advice or to give options in a more general sense. How do you feel that we can get the balance on that?

Shona Robison: The presumption is for transparency, in that anything that influences your decision should be part of the submission.

In my discussions with civil servants, they bring all the inherent risks alive by telling me what lies

behind the submission—for example, that one group of stakeholders is vehemently opposed to something because of X, Y and Z, or another group of stakeholders will be fully in favour of it because of A, B and C. Those are situations where judgments can be quite difficult to make, because you know that none of the options will please everybody and that a group of stakeholders will think that a certain decision is absolutely wrong.

In trying to come to a conclusion, you have to ask what the objective is. What are you trying to achieve? The submission is meant to give you advice on taking forward a particular policy, and you have to navigate through that. Ultimately, sometimes you make a decision in the full knowledge that it is not going to please a particular group of stakeholders.

John Mason: I understand that bit, but do you think that civil servants are sometimes reluctant to give frank advice because it will be written down and might come back to haunt them?

10:30

Shona Robison: I will bring in the permanent secretary in a minute. I would hope that they are not reluctant to do so, because critical advice that could sway a decision really ought to be in there. I guess that you are getting at the question of whether full, frank and free advice becomes compromised if civil servants think that they will be hauled in front of a committee and made to answer for it a couple of years down the line, because the advice did not work out as had been planned. I hope that that is not the case because, ultimately, ministers rely on an honest picture, warts and all, rather than something that is refined because the civil servants think that it will sit easier with ministers. My starting point is that I would prefer the warts-and-all advice.

John-Paul Marks: We hold dear the values of honesty, objectivity and impartiality. Our job is to provide ministers with the very best advice. We expect that to be robust and evidence led and it needs to have all the right inputs, whether they be financial, legal or commercial. We have talked about the importance of listening and, on the way down here, we were having a look at public consultations. At the moment, a dozen are live and we undertake around 80 to 90 public consultations a year.

With regard to transparency around the impact of decisions that are being made, we have done about 10 business regulatory impact assessments since January this year and, in April alone, we have done equality impact assessments around carers, procurement, justice reform, fair work and health and social care. Our job is to ensure that

the advice is as robust, objective and impartial as possible, to give ministers the options and understanding of the risks and benefits of the choices that are available to them. However, I also understand the point that you heard from colleagues in that private discussion. As you guys know better than anyone, politics is an intense business. Social media has added to all of that and, because of the level of public scrutiny on some of the issues that we have discussed today, whether that be gender recognition reform, the deposit return scheme or social care reform, they are all contentious.

Part of our job is to build a culture in which people feel safe and supported to have those honest conversations and do their jobs in a safe and secure way, and where we look after their wellbeing. If you are interested in that, Lesley Fraser can say a bit more about harassment reviews, the continuous improvement programme and the work that we are doing to build wellbeing and professionalism, so that colleagues feel absolutely supported to provide advice, even if it is not necessarily what people want to hear. As the DFM says, it is much better to hear that early, with full honesty—warts and all—than to pretend that we are all fine and then derail later. We are trying to encourage transparency within the organisation, including the early escalation of risk and that objective advice for ministers, so that they can make optimal choices.

John Mason: I will ask something else and then Ms Fraser can come in if she wants to. Does the relationship between the minister and the civil servants matter? Does it vary a lot? We get the impression that, in some cases, a minister can be quite overpowering, let us say, so they force the civil servants to do what they might not want to do. On the other hand, sometimes, the minister is quite weak and just follows what the civil servants want. Is that big variety of views something that we should worry about? I am sorry to put it all together—

John-Paul Marks: That is all right.

John Mason: Tied in with that is the issue of churn. Civil servants change quite often, so the minister does not know who they are speaking to, but so do ministers, so the civil servant does not know who they are speaking to.

Shona Robison: I will come in first while this thought is in my head. The relationship does matter. Human nature being human nature, ministers build up a particular relationship with key officials, whom we come to rely on and who are our go-to civil servants, because we have had good, clear, sound advice from them previously. In every ministerial job that I have had, that is how it has panned out.

There is something important in what you have said about ministers' behaviour. We cannot have a position where civil servants would be wary about putting difficult advice in front of a minister because of the reaction that they might get. That can lead to poor decision making. Therefore, with regard to ministerial behaviour, it is critical that ministers accept that, sometimes, they will get information about something that they have absolutely wanted to do that shows that it is just not doable, for all the good reasons that are set out in front of them. Sometimes, you just have to accept that, because it is the best advice that is being provided to you.

With regard to civil service support—particularly senior civil servants, who interact with ministers more often—it is important that there is absolutely that respect and a culture that respects the fact that the relationship is not always one of equals. Ministers have to recognise that in the way in which they respond to news that they are not so happy about—we have all experienced that—and recognise that, at the end of the day, civil servants are only providing the best advice that they possibly can.

The Deputy Convener: Before anyone else comes in, we have a few more members to get round, so I ask for brevity in the answers—I would like them to be just a little bit briefer. I understand that it is a broad subject, but please can we narrow it down a bit? My apologies for that.

Lesley Fraser (Scottish Government): Yes, sure. Thank you, convener. I will pick up that point about the wider culture and values. These are lessons that the organisation has very much learned. Our vision and values, "In the service of Scotland", which we introduced as an organisation in 2021 recognises that, for our diverse colleagues in the organisation to be able to bring their whole selves to work, we need to create that safe environment. Therefore, as well as our civil service values, that vision builds on collaboration, innovation, inclusion and kindness.

That is now taken through into the way that we train civil servants in the skills, expertise and behaviours that we are looking for in our senior civil servants. I am happy to provide more information on that, if that would be useful.

The Deputy Convener: On that point, we have talked about a warts and all policy. Too often, I hear about conversations, particularly on the most controversial decisions that are made, where meeting minutes have not been taken. We heard that in relation to both the Ferguson Marine scandal and, on several occasions, in relation to the former First Minister, with minutes not being taken of meetings between Scottish Government officials and lawyers and others. What action is the

permanent secretary taking to ensure that that never happens again?

John-Paul Marks: We have set out quite a lot of actions that we need to take. Lesley Fraser might be able to provide a bit more on the detail. As you say, those historical examples are regrettable. We have said that before, and we want to ensure that there is absolutely a safe space for that challenge and level of honest debate but also a clear record of the decision. Lesley has been leading a lot of significant work on record keeping. We have revised our guidance for our private office and our ministers around the level of decisions and changed our systems on document retrieval, and we are sharing all that for transparency.

Lesley Fraser: We have put in place an information governance programme in response to the issues that were identified and the improvements that we wanted to make. Of course, we are not alone as an organisation in wrestling with enormous amounts of data and information at the moment, so it is critical that we get that right.

The information management board, which I now chair, has been meeting for the past 18 months. We have trained lots of our colleagues—almost 2,500—across the organisation and increased their skills. We have put in place new systems in Government so that we can more quickly and accurately locate information when we need to find it. We ensure that colleagues are properly trained on how that should be securely put in place. The culture, systems and practice are absolutely essential here. That approach links back with everyone's core civil service craft—it is the very essence of being a good public servant.

The Deputy Convener: Deputy First Minister, does the Cabinet recognise that culture and accept that it has to be adopted? In May 2017, there was a meeting between Nicola Sturgeon and Jim McColl to discuss issues at Ferguson Marine. Those were significant issues involving huge public expenditure and waste, but no minute was taken of the meeting. Given what has just been said, do you and your colleagues recognise that it is completely unacceptable that no records were taken?

Shona Robison: Of course, ministers have supported all the improvements that have been made and that you have just heard the detail of. In my inbox, I regularly have minutes that have come through rapidly, not just of meetings with external organisations but of meetings with officials around decision making, all of which have been recorded. Everything is minuted, which is how it should be. If you are asking me whether that has always been the case, the answer is no. You have just heard why the improvements were put in place—it was because of concerns such as the one that you

have just highlighted. Apart from anything else, it is extremely helpful for ministers to have those minutes, because it enables them to refer back.

The Deputy Convener: So you think that your Cabinet colleagues will not undertake such practices again.

Shona Robison: The processes are the processes, and the minutes are now part of—

The Deputy Convener: To be fair, there were processes in place before that, and there was—

Shona Robison: They were not in place to the extent that they are now. We have heard about the changes that have been made. Minutes are now required and are taken in every single one of those circumstances. As I say, the minutes of every meeting that I have had pop up in my inbox—

The Deputy Convener: You seem reluctant to say that that is your expectation of Cabinet colleagues.

Shona Robison: Of course it is our expectation of every minister and every cabinet secretary—absolutely.

The Deputy Convener: Excellent. I am glad to hear it.

Ross Greer (West Scotland) (Green): The Auditor General's recent reports on the gap between policy ambition and delivery will, I think, resonate with us all. Those reports also relate to the issue of fiscal sustainability that the committee has been wrestling with, as has the Government.

The issue is relevant to this inquiry, because it relates to the issue of churn in the civil service. Part of that is about civil servants being spread increasingly thinly and being moved from one team to another because new initiatives and policies are adopted. That creates not just a lack of capacity but a lack of expertise and, potentially, in some cases, a lack of the robust advice that ministers might want.

I will round all that up into one question. Is the Scottish Government overcommitted? Are we trying to do too much with the resources that we have, which is resulting in the gap between ambition and what is being delivered?

Shona Robison: A number of factors are pressing on our public finances. One is that we have a huge number of programmes, all of which need to be supported, and the financial position has come under increasing pressure. For example, the level of inflation has squeezed the budget and resulted in a significant reduction in the value and purchasing power of every £1 in the Scottish public finances.

Added to that are pay deals. Nobody would deny any public servant a reasonable pay deal, but we have, by and large, had to fund those through the resources that are available to us, which has meant difficult decisions. We saw that with teachers' pay and the decision that had to be made on the £46 million for universities and colleges. We said at the time that the money had to come from somewhere. Those are real decisions and real issues that have to be navigated.

10:45

The medium-term financial strategy that I will soon bring to Parliament will set out the horizon scan of what the public finances are looking like and some of the difficult decisions that will require to be made. Ultimately, one of the reasons that the First Minister set out the missions was that we need to look at everything that we do and spend money on through that lens and ask ourselves some perhaps quite difficult questions around whether each thing delivers those key missions. That will have to guide us through some of the quite difficult decisions that will inevitably have to be made in order to balance the budget. The Scottish Government has to balance the budget. It is a legal requirement; we have no option. My job is therefore to make sure that my colleagues are doing what they can to address all those issues, including the programming.

It is difficult for civil servants that one minute they are working on this and the next they are working on that. However, based on what I have seen and experienced, the skill of the civil service is that they are very quick to adapt; they are agile and able to get to grips with new policy areas.

There is a recognition that we have to keep a close eye on head count. We cannot have exponential growth. That means that it has to be an agile organisation and that civil servants will have to pivot, such as they did on Ukraine, for example. Nobody knew how to set up a Ukraine resettlement programme and its being set up was an amazing insight into how the civil service is agile, experienced and able to deal with things that nobody could have predicted in a very efficient and professional manner that delivered a good scheme.

Ross Greer: I will drill down on that a little bit. I will try to be brief. Would the outcomes be better if the Scottish Government was doing less, but doing each of those initiatives with more resources available to it? At the moment, there is a huge number of priorities spread across a range of initiatives, and we know that there is a gap between ambition and outcome. Would the outcomes across the board, particularly in relation

to child poverty and net zero, be better if there were fewer but better resourced programmes?

The Deputy Convener: I reiterate my plea for brevity.

Shona Robison: That is an absolutely critical piece of work. We are taking that forward.

Ross Greer: The resource spending review last year was supposed to get us towards a point of fiscal sustainability. Obviously, that happened during a period where inflation continued to rise. Nonetheless, reflecting on the fact that we had the RSR in the summer and then an emergency budget review and a second round of additional savings in the autumn, it appears that quite a lot of what was in the EBR probably could have been in the resource spending review. Has there been any lessons learned exercise around why the RSR did not generate some of the savings in the EBR that, certainly when I was looking at them, felt very obvious? Some of what was in the EBR was painful and difficult, but not all of it was.

Shona Robison: There is maybe a fair point there, but the pay deals came at us due to the rise in inflation. Those pay demands and therefore the pay deals to try—quite rightly—to avoid industrial action were perhaps beyond what had been envisaged in the RSR. That put additional pressure on the budget and the money had to come from somewhere. Part of the EBR process was to help with that.

The former DFM laid out that one of the driving forces was the pay deals, driven by inflation. That would have been quite hard to predict, to be honest. We absolutely want to avoid being in EBR territory again this year, which is why I am undertaking the work that I am with cabinet colleagues to manage those in-year pressures.

Ross Greer: My point is more that it appears that some of the decisions that were made in the EBR to withdraw and cut services have not had a negative impact on outcomes, which begs the question as to whether those services were the right thing to be spending money on in the first place. The RSR was the kind of exercise that should have identified that and that should have been asking those value-for-money questions. In relation to quite a lot of the services that were on the EBR list, that had not been done in the RSR, or it had been done and the decision had been taken that each service was value for money. Then, through the EBR, we decided that the services were not value for money or that they did not have enough value for money to justify continuing them. Does that not indicate that the RSR exercise did not achieve all its objectives?

Shona Robison: You might have a fair point. The exercise that we are going through at the moment is very much looking at value for money,

impact and whether something delivers on outcomes. We are really trying to land that in the right place for short-term fiscal balance. On the longer-term position, you spoke about what is critical, highlighting that there are things that maybe do not deliver on the intended outcomes that we need to take a hard look at. That work is under way at the moment.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I am a new member of the committee, so I am not included in what Liz Smith said about the concerns of the committee. I disassociate myself from those remarks.

I am a bit surprised that we have gone down the route of gender recognition reform, but let us stick with that for a second. That policy is in not just the Scottish Government's manifesto but everybody's manifesto. Two consultations were undertaken, and the proposals have been subject to more parliamentary scrutiny than any other measure that I can remember in my time in this Parliament. Despite that, at the end of that process we are in a situation in which another Government has said that it will nullify the bill. That is the biggest development that we have seen in public administration or in decision making in the Parliament, certainly since my time here and I think since its inception.

If another Government just steps in, without saying what it thinks is wrong with the bill and says that it will strike it down—incredibly, some members in this Parliament support the UK Government doing that to this Parliament—what is the effect on the civil service and ministers when considering further policy initiatives? That threat has been raised again in relation to a couple of other measures, such as the deposit return scheme. What is the effect on policy making in the Scottish Government of that interference with the Scottish Parliament?

Shona Robison: You raise an important point. Obviously, I will not stray into commenting on live legal proceedings. However, one of the reasons why we felt it important to challenge the section 35 order was the issue of precedence and the potential chilling effect on other policies.

A section 35 order is a wide-ranging power—essentially, it could be brought to bear on any policy decision making by the Scottish Government that the UK Government does not like or agree with. That approach very much goes against the memorandum of understanding that was in place, in which a section 35 order was to be seen as a last resort and only to be used if everything else had failed. That did not happen in the case of GRR. The UK Government used the order as a go-to first salvo. That action completely blows the memorandum of understanding out of the water.

Where does that leave us? We must be guarded against that chilling effect of not wanting to take forward policies that the UK Government might disagree with. There will continue to be policies that we want to progress with which the UK Government might fundamentally disagree. If we believe that it is in the interests of the people of Scotland to act on an issue, and we have set out a commitment to do so, we should take the matter forward.

Say that we were putting through legislation on minimum unit pricing for alcohol. That is a good example of a policy that the UK Government did not agree with. You can now see how it could use either a section 35 order or the United Kingdom Internal Market Act 2020 to say that that policy would be a disrupter to the drinks industry and that it would therefore not allow it.

We are in new territory. The situation is of huge concern. We need to get a different relationship. Getting into the territory of the memorandum of understanding would be very helpful. We will continue to pursue that with the UK Government, to get away from the threats of not granting an exemption under the internal market act or of using a section 35 order. That is not a good place to be in—and it gets in the way of the good day-to-day working relationships that civil servants have with their UK counterparts and, indeed, that we in Government have with some ministers.

I finish on this point: I have a good relationship with many of the departmental ministers in the UK Government. Much of the problem emanates from the Scotland Office. I will just leave that there.

Keith Brown: This question might be for the permanent secretary. It may be, from what the committee has heard so far in the inquiry, that these issues, which in my view have by far the biggest impact on decision making in the Scottish Parliament, have been covered already.

Aside from a capricious Government deciding, for political reasons, to try to gratuitously supersede a decision of this Parliament, there are now various instances of legislative consent motions, or the Sewel convention, being ignored, which was not the case not too long ago.

In the early stages of policy development in the civil service in particular, does that have a chilling effect? Do you have to take into account, in addition to all the other factors, the likelihood that some minister in the Westminster Government is going to do something that completely ignores the interests of this Parliament, or is going to increase the likelihood of legal conflict between the two Administrations? Is that part of your thinking, or do you—as the DFM just said—try to zone that out of your thinking at the start?

John-Paul Marks: It is complex, so I cannot pretend that we are zoning out from it. The reality in which we are operating is that section 35 is being used for the first time and we are navigating an exemption from the internal market act to implement the deposit return scheme—that is our top-priority conversation with the UK Government.

Going back to the policy development process, we will always endeavour to ensure that we give ministers the very best, frank advice that we can. Five years ago, that would not have included the risk of a section 35 order being used or an exemption not being granted under the internal market act. Those are two new things that have occurred recently.

There is quite a premium on me and my team managing those relationships in order to ensure that we have the best possible understanding between both Governments. As the Deputy First Minister said, the four-nations dialogue that she has had with the chief secretary, for example, and with Michael Gove and others, is very helpful. We collaborate on many things, such as green freeports, Ukraine, Covid and energy reform. However, there are points of contention and we need to navigate them with care, in particular given that both those bits of legislation—GRR and the DRS—were considered within the competence of this Parliament and that that was not disputed by anybody.

Douglas Lumsden (North East Scotland) (Con): I want to go over a few things again. The first concerns a point that the convener raised about lessons learned. As a committee, how can we get assurance that the lessons learned process is in place? Is it visible so that people can see what those lessons were, and so that we can go back and check whether that has been done, rather than just having a tick-box exercise?

Shona Robison: Lessons learned will be visible in different ways, depending on what the issue was. With regard to some of the governance arrangements around Ferguson's, for example, lessons are visible in that there is now a completely different governance structure for how decisions are made there. We talked earlier about minutes, which mean that everything is recorded in a proper, punctual and accurate way, and is there for the record. That is how lessons learned are visible.

Policy decisions will always end up involving judgments. We would hope that, most of the time, that would be the right judgment, but occasionally it will not.

Douglas Lumsden: Is a document produced after a project or piece of work has taken place to say, "These are the lessons we learned"? I understand that you are saying that changes were

made, but is there a list that captures the things that went wrong and the lessons to be learned?

Shona Robison: Some of that will be done on a more formal basis than it might be in other areas. For example, there is a big, high-profile and in-depth public inquiry around Covid.

There has also been a commitment to a further inquiry on Ferguson's—on top of what has already been done in Audit Scotland's section 22 report—once 801 and 802 are delivered. Work still needs to be done there that will generate further information and lessons learned in depth.

In other areas, a more rapid, shorter and sharper analysis will take place around whether things have worked. The perm sec can say a bit more about that.

On Ukraine, an in-depth analysis will take place of what has gone well, what the lessons learned are and how the civil service and ministers responded—all that will be captured.

11:00

John-Paul Marks: I think that the DFM has covered it. We will take on either recommendations or inputs around learning, evaluate them and publish our response. If the committee recommends that we go further in a particular, tangible area, we are happy to do so.

We also have a significant programme of structured evaluation of policy. We mentioned minimum unit pricing: a recent evaluation and independent analysis confirmed the policy's good impact in relation to saving lives.

We will keep trying to ensure that we are transparent about what we are doing and how we are trying to improve it, whether that be record keeping, private investments or our approach on freedom of information with the Information Commissioner.

Douglas Lumsden: I understand that, when an official inquiry takes place, an external body publishes the lessons, but where are the lessons about the census, for example? Where can I go to see the lessons that we have learned and the actions that we have put in place to try to ensure that the same thing does not happen again?

John-Paul Marks: We covered that point a bit, earlier. I am happy to take away that point and consider the process of where we have got to with the on-going lessons-learned exercise—we have not yet concluded all the data analysis—and the timetable for when we can publish it. Like you, I want that to be open and transparent for scrutiny from the Parliament and its committees, and on the record for the future.

Douglas Lumsden: Is the process already in place for that scrutiny to happen, or will it be put in place?

John-Paul Marks: Yes. I have seen various iterations of census-related lessons learned documents already; the thing that I do not have is the timetable for when it will be published. However, we can provide that information to the committee.

Douglas Lumsden: I go on to critical challenge. I understand that the funding for organisations such as the SFC or Audit Scotland is safe; however, as Michelle Thomson mentioned earlier, we had the SCVO in, which said that its members felt that there was a risk that their funding might stop if they were critical of the Government. That is an issue. What can we do to change that situation?

Shona Robison: I am concerned to hear that. We might have work to do to reassure organisations that that is not the case. I ask organisations such as SCVO or any others to look at the evidence: many examples exist of organisations that are funded by the Scottish Government and are critical of policy decisions or legislative options—there is no shortage of them. I would have thought that that might have given some confidence to organisations that there are no questions about looking at funding arrangements if they disagree with the Scottish Government, whether or not they articulate that. We might have a job of work to do to make that more explicit.

I meet SCVO regularly. It does a hugely important job in representing third sector interests and I would want it to say if it were concerned. It is very forthcoming in arguing for more investment in third sector organisations—certainly in the meetings that I have had with it.

Douglas Lumsden: I do not know whether it is a fear of funding being removed or a fear that that disagreement will be taken into consideration if they apply for extra funding.

Shona Robison: If that is so, we have some work to do because that should not be the case.

Douglas Lumsden: I want to move on to lines of communication between ministers and civil servants. Ms Fraser, are there clear instructions on how a minister and civil servants should be communicating?

Lesley Fraser: Yes, that is clearly set out in the ministerial code and indeed in the civil service code. We expect to work together professionally, offering dignity and respect in the workplace, and that is very clear.

We have made our expectations on both sides much clearer in this area. If civil servants feel the

need to raise a complaint about the behaviours of a minister, there is a new procedure. Also, equally, there is a new grievance procedure within the Scottish Government, which makes it really clear where colleagues can go if they have any concerns—for example, about senior colleagues and the way in which we behave. It is about making that as clear and transparent as possible and creating that safe environment where people know and understand that it is safe to challenge.

Douglas Lumsden: The reason why I ask is that a witness at a previous meeting explained that the more transparency you have, the greater the risk of “government by WhatsApp”. Is that recognised by the Scottish Government? Can we get an assurance that that is not happening and that we do not have ministers and civil servants communicating by WhatsApp to avoid freedom of information requests or anything else?

Shona Robison: That is certainly not my experience and it is not the practice that I see in place at all.

You have heard some of the detail around why it is important to record decisions and improvements are being made in the recording of decisions and how they have been reached. I hope that what you have heard here today gives you some reassurance around that.

Douglas Lumsden: Are there WhatsApp messages between civil servants and ministers? Does that happen?

Shona Robison: I have a WhatsApp on-call group with my private office so that if I put something in the system at 8 o'clock at night, somebody in my private office picks it up quickly and responds to it. It is a convenient tool because someone will see that I have asked, “First thing in the morning, can I get blah blah?” rather than my having to send an email that may or may not be picked up. However, that is not about avoiding scrutiny; it is just about quick communication to a range of people, one of whom will pick it up. That is the example that I would give.

Douglas Lumsden: You mentioned prevention right at the start and the committee has been talking about the subject for quite a while. We often hear it mentioned, but we also often hear that it is quite difficult to find the funding for prevention because all the money is going into dealing with immediate effects. How will you change that?

Shona Robison: That goes back to the Christie commission and the point that early intervention and prevention are always better than going back and trying to fix issues that appear further down the track. Of course, we all agree with that. However, as you pointed out, it is quite difficult to achieve.

I will draw on my time as health secretary and use an example from the health service. In order to reduce pressure on acute care, you need to try and avoid people having to go into hospital by improving their health through public health measures and trying to create a healthier population. However, you still need to fund the acute sector, so you have to try and do both.

The child poverty plan is a good example of work that we are undertaking now. We are trying to understand the drivers of child poverty and to really get underneath them and look at ways of addressing child poverty. The up-front Scottish child payment money in people's pockets helps to alleviate problems in the here and now, but it is also about work around parental employment and improving the life chances of children from an early age in relation to good-quality early years education and childcare, to begin to move it further upstream.

The permanent secretary was telling me earlier about some of the statistics around reduced teenage pregnancy and better attainment. Those are the results that you would expect to see later in life from good early years intervention. Do we need to get better at it? Yes, we do. There is a lot within the Christie report for us to draw upon and some of the work that we are undertaking is really about trying to home in on what makes a difference.

The Deputy Convener: Is there a specific point that you want to establish, Douglas?

Douglas Lumsden: No, I just wanted to make sure that the Government is focused on prevention, because I do not see it, to be honest.

The Deputy Convener: Thank you to the Deputy First Minister, the permanent secretary and officials for coming today. This was the last evidence session of our inquiry into effective Scottish Government decision making. We will consider our next steps at our meeting next Tuesday.

We will take a short break before the next item on our agenda, which is an evidence session with the permanent secretary.

11:10

Meeting suspended.

11:16

On resuming—

Public Administration in the Scottish Government

The Deputy Convener: The next item on our agenda is an evidence session with John-Paul Marks, the permanent secretary to the Scottish Government, on issues relating to public administration in Government. Mr Marks is joined by Lesley Fraser; director general corporate, Louise Macdonald; director general communities and Jackie McAllister the chief financial officer, all from the Scottish Government. I welcome you all to the meeting. Thank you for taking the time to come and see us.

John-Paul Marks: Thanks, deputy convener.

I will start with three areas of focus. First is our policy advice, and particularly the revised policy prospectus that we have recently published for the new First Minister and the new Cabinet. Secondly, I will touch briefly on financial control—given inflation and the fiscal position—and thirdly I will touch on leadership of the civil service and how we are trying to build new capabilities for the long term.

First of all, through February and March there have been a new First Minister, a new Deputy First Minister, a new Cabinet and a new policy prospectus. Credit is due to the team—a lot of hard work was done to get that prospectus published and to manage a significant reshuffle in Government. As we have heard this morning, the prospectus includes three missions that respond to the context that we are in and which also set out concrete deliverables for each cabinet secretary to make progress on according to the national performance framework. They are equality, to tackle poverty; opportunity, to transform our economy and realise net zero; and community, to recover from the pandemic and secure sustainable public services.

The key drivers during the past 12 to 18 months, since I have taken up post, are the tragic events in Ukraine and what that did to inflation, and the cost of living crisis that followed. Those compounded the impacts and risks that the pandemic created. Last year, ministers quite rightly prioritised fair and affordable pay awards in order to manage the risk of industrial action, and we also delivered a warm Scots welcome and the supersponsor programme, which we have heard about this morning.

There are a few things to mention that were top of the priorities list. They include balancing the budget and protecting the things that make the biggest difference to our top-priority outcomes—an example being the expansion of eligibility for the

Scottish child payment, which has enabled child poverty rates in Scotland being lower than the UK average.

There was also a revised budget tax package and an emergency budget review to balance the budget, and we have established new capabilities in our workforce to respond to new challenges. Examples of such challenges are the war in Ukraine and social care improvement. There is also a new ScotWind directorate, so that we reap the benefits of renewables.

There is a lot of focus on partnership and system leadership. In the justice system, we have seen a good reduction in our courts' backlogs. We have kept crime rates low and the prison population is 8 per cent lower than it was pre-pandemic. There is also more criminal justice reform legislation going through Parliament now.

We are in the process, we hope, of finalising a new deal with local government and with business, as we try to establish the ecosystem for improving start-ups and scale-ups in Scotland's economy with Techscaler, CodeBase and CivTech, and we are pushing on with our national strategy for economic transformation.

That collaborative approach shone out for me in relation to operation Unicorn, when the country came together and provided a fitting tribute to Her late Majesty the Queen.

As principal accountable officer, the key points that I would highlight are the balancing of the budget—the 2021-22 consolidated accounts—and, again, in 2022-23 the provisional outturn, which the committee will see shortly. I also highlight the need to effect in-year adjustments of more than £1 billion to achieve that in 2022-23.

We have been focusing on some core capabilities to improve value for money in the Scottish Government around governance; investment scrutiny and financial control; multiyear workforce planning and estates rightsizing; improving public body sponsorship; record keeping; and freedom of information and correspondence management.

We have embedded a private investment framework that is now published, and we are applying it every day. We are improving the data and later in May we will set out our medium-term fiscal strategy, so that is all transparent.

My final point is that, from my perspective, this is always about building the team. There is a lot of focus on professions and on going deeper on the human resources, finance, legal, risk and project management core competences, but there is also, across Scotland, a focus on public service reform and digital transformation.

Our values are genuine: we are embedding a values-based approach to our workplace culture all the time, and we have learned good lessons from the harassment reviews. Lesley Fraser has led a tonne of work on embedding new procedures and controls around propriety and ethics.

I will share a few statistics. The proportion of disabled people working in the Scottish Government has doubled from 6.4 per cent in 2013 to just under 15 per cent today. We also have a very healthy gender balance across the Scottish Government at all levels and grades, which is encouraging. Our people survey for 2022 had record numbers of staff identifying as disabled, female, ethnic minority and LGBT, and our bullying and harassment levels remain at historic lows. We are always vigilant about the culture and are improving it, but we are also proud of the diverse and inclusive culture that we are leading.

Finally, I am building my senior team. Louise Macdonald has joined the team; this is her first committee appearance, so I know that everyone will be kind. Louise has been with us for more than a year, after having worked in the voluntary and private sectors. My new director general for economy has recently come in from the private sector, and leading our work on net zero we have another DG who has significant and deep major-project expertise.

We have talked about churn this morning. Although we want to manage against that risk, we also want to bring in fresh talents, to diversify the capabilities at the top and throughout the organisation, and to ensure that the organisation reflects the country that we serve.

We are working hard on our relationships with the UK Government. We have good dialogue every week with UK civil servants and we will keep working hard on that. There are lots of strengths to build on and there is important work ahead.

We look forward to your questions.

The Deputy Convener: Thank you. I will start with Lord Maude's review of governance and accountability, which the UK Government established to recommend ways to make the Government more efficient. It is looking at the efficiency and effectiveness of the UK civil service. How will you give input to that review, given that you will be charged in part with delivering its outcomes in Scotland?

John-Paul Marks: We have a number of regular touch points. For example, I attend Simon Case's leadership team meeting every Wednesday morning and Lesley Fraser is a member of the UK civil service chief operating officers group. Those are two touch points in which we regularly talk about efficiency,

governance and transparency. Only last month, there was a four-nations team meeting to discuss our learning and experience on propriety and ethics, given the experience that colleagues in Whitehall are also stepping through in applying best practice to their procedures. We are sharing all the time.

I am also a member of the civil service board, which is the most senior leadership group and is chaired by the chief executive of the civil service. It is all about workforce, estate, digital transformation and so on—everything that relates to ensuring that we are building and developing a world-class civil service that can deliver the best outcomes and advice for ministers.

The Deputy Convener: On the resource spending review, the previous Cabinet Secretary for Finance and the Economy said that she wanted a return to pre-Covid levels in the public sector head count and in the size of the civil service. What is the status of that work and the policy commitment to reduce head count?

John-Paul Marks: We established workforce control for the civil service last year, after the resource spending review. We have done that for the first year. We have also started to try to set out multiyear plans by DG portfolio area and directorate, so that we can understand what the trajectory looks like and the choices that can be made.

In the first year—we are still waiting for final reconciliation of the data—we have made a quite significant reduction overall in our contracted resourcing. We have also managed our permanent resourcing to a small increase. The net effect is that we are marginally smaller after the first year, but we need the final data to flow through on that and then we need to keep developing multiyear workforce plans to the end of the current session of Parliament.

Some things will naturally unwind. The Ukraine supersponsor programme will, one hopes, come to an end at some point. We also have a sizeable social security programme that will move towards “business as usual” as we conclude this session of Parliament. As Mr Greer suggested earlier, there are also some significant major programmes that we want to gear up that are to do with heat in buildings, renewables, ScotWind and other things.

We have therefore made progress in the first year, but I cannot pretend that getting back to pre-pandemic levels does not require a level of challenge and stretch. We will have to work carefully on that in the years ahead.

The Deputy Convener: Given the scale of the ambition that Cabinet Secretary Forbes set out and what you are saying about additional work

that has to be taken on, it does not sound as though you are on course to meet those levels.

John-Paul Marks: I genuinely think that it is still doable. In terms of natural attrition, we will have around 600 to 700 leavers a year. It is therefore feasible that we could return to pre-pandemic levels by the end of the session of Parliament. However, as I said, a careful balance needs to be struck. Obviously, we have a new First Minister, a new Deputy First Minister and a new Cabinet. Through this year, I want to make sure that we agree the programme, the budget and the necessary capacity so that they are aligned and so that it is a fair challenge to deliver the programme.

The Deputy Convener: For the sake of clarity, that remains the policy of the Government; it has not changed with the new Administration. You are taking the same approach that was set out in the resource spending review and the First Minister has asked you to do that. Is that correct?

John-Paul Marks: I do not think that that has been publicly stated by the new Government.

The Deputy Convener: But you are continuing on that basis. There has been no change of the policy that you are working to, by the sounds of things.

John-Paul Marks: Do you mean in terms of workforce strategy and workforce management?

The Deputy Convener: Yes.

John-Paul Marks: It is deliverable, if that is what ministers still want us to achieve by the end of the session of Parliament.

The Deputy Convener: But they have not given you any clarity.

John-Paul Marks: We have lots of clarity for the prospectus and for 2023-24. We have not yet agreed workforce plans for 2025-26 with the new set of ministers. We still have choices for ministers to make around that.

The Deputy Convener: That is interesting.

I will move on to a different issue. On 5 May, the Secretary of State for Scotland, Alister Jack, questioned the appropriateness of UK civil servants working for the new Minister for Independence. You have talked about the new regime and the new ministers. I think that the Secretary of State wrote to Simon Case at that point and that, in essence, it was bumped to you. As I understand it, it is a matter for the Scottish Government permanent secretary in the first instance. What is your response to that, please?

John-Paul Marks: I have responded to a number of pieces of correspondence regarding that matter. It is for the First Minister to appoint his ministerial team, given his priorities. That

ministerial team is then voted on by Parliament. It is then for the civil service to serve that ministerial team impartially.

11:30

We serve the Government of the day. That includes with regard to constitutional reform. It has been well understood under devolution for many years that the civil service in the Scottish Government serves the Scottish Government and its priorities; we provide policy advice, including the development of the prospectus-paper series for the Government to set out its constitutional objectives. As we alluded to earlier, that is not just a theoretical debate or a strategic long-term debate; it is a here-and-now reality, whether that be regarding the use of section 35, the interaction with the United Kingdom Internal Market Act 2020 or the fiscal framework review.

From my perspective, there are clear, proper and regular grounds for the First Minister to appoint his ministerial team. It is necessary for the civil service to serve that ministerial team with impartiality and there is a clear set of constitutional priorities here and now on which advice is needed and which need to be tackled, because if we are going to deliver the Government's programme—whether it be on ScotWind, the deposit return scheme or a number of energy reforms and equality reforms—we need to continue to influence and engage with the UK Government with regard to the devolution settlement and the constitution.

Ciaran Martin, who is a professor at the University of Oxford, talks a lot about the history of devolution. It is a history of change, not a history of stagnation. Therefore, to an extent, it is important that I have capability such that the civil service in Scotland is equipped to serve ministers in this Government now, while recognising that things could change in the future. We will continue to seek a section 30 order so that a referendum would be on lawful grounds, as per the last referendum in Scotland, while recognising that there will be a UK general election in 2024-25 and that in the future the constitution of the UK could clearly change again. We need to be capable and ready to respond.

The Deputy Convener: Okay, thank you. You mentioned in your opening statement the harassment reviews, which this committee has previously taken an interest in. Can we have an update on changes that have been made?

Lesley Fraser: I am very happy to do that. As the committee is aware, we have introduced a new complaints procedure should a member of staff have a concern about the behaviour of ministers. It has been updated in the course of this year to ensure that we can now report transparently on

the number of complaints that we receive. We confirmed in our first update in December that no complaints are currently being considered and that we will publish the name and the outcome in the event that there is a complaint.

As I mentioned in the previous evidence session, we have also updated our grievance procedure so that it, similarly, is very up to date and draws on industry-wide best practice to give our staff confidence about how complaints would be addressed.

That sits within a much wider set of activity that is under way to address culture and behaviour and how people feel about being civil servants in the organisation. That is rooted in our civil service code and in our new vision for the Scottish Government, "In the service of Scotland". That vision includes the values of inclusivity, integrity and kindness. That manifests itself in a number of different ways, including the new propriety and ethics function. Colleagues are regularly made aware that if they have concerns—whether that is a formal concern or they have an anxiety and are not quite sure what to do about it—they can get advice there and that their concern will be treated confidentially and they will be well supported through the process.

We are ensuring, too, in relation to training of our senior civil servants and all our staff, that colleagues are absolutely aware of our expectations of them and that they understand what to do and how they should respond if a concern is raised.

We are also considering how we can prevent such issues in the future. We are actively looking at, and having structured conversations on, areas where we consider that a greater level of risk might exist.

We are actively looking at our people's survey results. If a cohort of our staff have said that they feel less safe or less able to report, we will have structured conversations with them in a safe space to find out how we can take action to improve that situation. We are drawing all that work together to form our on-going activities.

The Deputy Convener: Thank you for that work.

In May of 2022, the then First Minister said that the Government was unable to release details about an investigation of bullying of civil servants by a minister. However, just days ago, the current First Minister said that he would be "happy" to check whether he could reveal details. It is a matter of public record—it was reported widely in the press, as you will be aware. There was some consternation around that comment, because the former minister had made a critical speech about the Government the previous day and there is a

worry, more generally, that threatening behaviour might be taking place through the use of information that the Government had previously refused to disclose. I am looking for the permanent secretary's reaction to that in relation to what is proper and what he believes the current process is in relation to that case.

John-Paul Marks: As is routine, the new First Minister will be given the opportunity to set out any changes that he wishes to make to the ministerial code and we will provide advice accordingly. As Lesley Fraser said, we have already published a revised procedure with regard to complaints that are brought against ministers. However, that is not retrospective: the revised procedure does not change historical cases for which a clear understanding of confidentiality and the procedure that was in place already existed. We have provided advice to the previous First Minister on the matter and we will do so again for the new one.

The Deputy Convener: Given that the First Minister said on 3 May that he was "happy" to check, will that advice be consistent with the previous advice? Will the First Minister find the same advice if he checks?

John-Paul Marks: If he checks, he will indeed find the same advice.

The Deputy Convener: Has the First Minister requested revision of the ministerial code?

John-Paul Marks: We were already in the process of updating the ministerial code before Ms Sturgeon's resignation. There was a series of changes, some of which related to the procedure, which we wanted to ensure was up to date, and some of which related to ministerial business abroad. Those changes have been completed, will be shared with the new First Minister and can be published in due course, subject to any amendments that he wishes to make.

The Deputy Convener: So, the First Minister has not requested any specific amendments in those areas that might permit him to reveal, or have further disclosure of, issues.

Lesley Fraser: Not that I am aware of.

Keith Brown: On the point that was raised previously in relation to the ministerial code and the interference in the Scottish civil service by the Secretary of State, I recently received a letter from a guy called Lord Pickles, telling me various things that I could and could not do and referring continuously to the ministerial code of conduct and the Government's position. I think that he was referring to the UK Government—he seemed very ignorant of the situation in Scotland. That confusion is surely a matter of concern when it comes to situations where the Secretary of State

for Scotland is trying to instruct or countermand some of the things that the Scottish Government is trying to do.

Given that point, given that this Parliament would not settle for its staff being told what to do by the Government or somebody else and given that no local authority would accept that its officials should be directed by somebody else, is it not a better idea just to have a Scottish civil service?

John-Paul Marks: Well, that is quite a question. There is a lot of complexity in it. Our relationships with UK civil servants—for example, colleagues in the Department for Environment, Food and Rural Affairs—are very good. Tamara Finkelstein is the permanent secretary in DEFRA, and she and I talk regularly about deposit return schemes and ScotWind. She and her senior team came to Scotland to meet me and my senior team, because DEFRA colleagues understand that for them to achieve their net zero targets Scotland has to plant a lot of trees, restore a lot of peatland and deliver a lot of renewables transformation, to name but a few of the things that we discussed when we met.

It is similar with colleagues in the Department for Work and Pensions. Peter Schofield, the permanent secretary there, came to Glasgow for the day with his senior team to sit down and talk about the devolution of social security. We have a joint programme to ensure that we safely and securely transfer cases.

On social security, we get a lot of benefit from the collaboration that we undertake on the use of data, fraud and error management and building our capability. Similarly, we get a lot of value from the exchange of ideas and capabilities with DEFRA with regard to our mission on net zero. I find the dialogue at official level productive, and I get a lot of insight from being a member of the civil service board and being able to draw on that network of colleagues and the capabilities that it offers.

Keith Brown: I completely understand your point and the value of those good relationships, but if that is the case it is very different from the experience of ministerial collaboration. For example, this Parliament is placed in various cul-de-sacs, such as the refusal of a section 30 order—the Parliament has voted for a referendum and it is just ignored out of hand—and the application of section 35 of the Scotland Act 1998.

Compare the situation now with that 10 years ago, when we had the respect agenda, which led to an improvement in relations between different Governments and ministers within them. Nowadays, I have arranged meetings with the UK Government and it has refused to give me entry to the Ministry of Defence to hold the meeting or it

has continually refused to answer correspondence.

If the relationship between the civil servants is generally productive but that between the Administrations is not, would that not tend to argue for an independent civil service? I go back to a point that was made in the previous discussion. People can accuse organisations of policy capture when they are funded by the Scottish Government, although, interestingly, the Parliament is funded by the Scottish Government and nobody argues that it has been subject to policy capture. As much as anything else, is the perception not important and would it not be important to say that, as with councils and the Parliament, the civil servants who serve the Scottish Government and the public are independent and answer to them?

John-Paul Marks: That is the point that I was trying to make with my first answer in relation to constitutional reform. I am the permanent secretary of the civil service in the Scottish Government and answerable to the First Minister, the Cabinet of the Scottish Government and this Parliament. I am not answerable to the Cabinet at Westminster or the Parliament at Westminster in the way that the permanent secretary working in a Whitehall department is.

My responsibility is, first, to ensure that I serve the First Minister and his Cabinet well with regard to delivering strategic policy advice and building the team with the capability to do it; then, to discharge the duties of being a principal accountable officer in the right way—I am dealing with public money and have to follow the Scottish public finance manual and the Public Finance and Accountability (Scotland) Act 2000—to deliver optimal outcomes in Scotland; and, finally, to lead the civil service in Scotland in a way that is right for this country.

We are doing our best with that all the time. I do not feel that UK Government ministers or civil servants in Whitehall are telling me what to do with regard to that at any stage. The collaboration and partnership add significant benefits that we are able to draw on to be at our best.

11:45

However, I recognise the political context that you are referencing, Mr Brown, and the level of contention, which is clearly more acute and more complex today than it was two, three or five years ago. There is risk in that, in terms of the UK's constitution in the long term. As I said, we will see what the future brings with regard to how that might settle down.

Keith Brown: None of this is to do with you personally, of course, permanent secretary,

although I note that the permanent secretary to the Scottish Government is appointed jointly by the principal adviser to the UK Government—the cabinet secretary—and the First Minister. It is a question of perception, and it is probably less of a question when relationships are productive and constructive. As you say, it probably comes more into view for people because of the constitutional situation and the stand-off.

John Mason: When I was reading the committee papers for the meeting, there was a number of terms that I was not familiar with. I hope that you can explain some of them to us. There is the “civil service commission”, the “civil service board” and a “civil service shadow board”. Could you explain what they all do?

John-Paul Marks: Was that the civil service commission, the civil service board and the civil service shadow board?

John Mason: They were the ones I picked up. I am sure that there are more, but we are time constrained.

John-Paul Marks: The civil service commission is to do with civil service appointments. We have a civil service commissioner in Scotland—I am looking at Lesley Fraser to keep nodding or to tell me if I have it wrong—and that is Neil Gray.

Lesley Fraser: It is Paul Gray.

John-Paul Marks: Sorry—it is Paul Gray; Neil Gray is the minister for the economy. Paul Gray will sit on the panel for the appointment of directors general, for example, and he is part of the civil service commission. The civil service board is a UK entity that leads the civil service overall. I am a member of it, as are the chief executives and civil service chairs. I think that it has a shadow board, and that occasionally members of the shadow board attend the civil service board.

John Mason: I could pursue that, but I will not, as I think I would get out of my depth quite quickly.

Some of this touches on decision-making issues that we discussed earlier this morning, so forgive me if it overlaps a bit with that. One issue that came up was with bill teams in the civil service. As I understand it, they are generally kept together through the progress of a bill, but might be disbanded afterwards, which can impact on the putting into practice of the new policies or legislation. Can you explain how that works?

John-Paul Marks: Yes, and I will bring in Lesley Fraser as well, if I may, because this is all about building deep professional capability in the organisation. Ultimately, once a bill concludes, the team that is providing briefing on amendments, committee stage, impact assessments and the like might find that the work is concluded. We do not

want them to have nothing to do, so it is right that they are given the next opportunity that they want to take on.

On your point about the end-to-end implementation of change, clearly there is a lot of advantage in having people who understand the detail of a piece of legislation going through into the major change programme or even into the delivery of that change over time. Social security is an example. Some of the senior leaders who are in that area have tracked right through from the legislation and development of the devolution of social security, through the pathfinding to the setting up of the agency and then the delivery. That continuity of capability clearly has a lot of advantages.

Lesley Fraser might have something to add to that.

Lesley Fraser: It is a really good point. It is important for us to strike the right balance. Very often, bill teams are made up of experts who thrive on the cut and thrust of the legislative process, together with subject matter experts. Those subject matter experts will often stay as part of the implementation.

We recognise the value of building up expertise in legislation and in understanding how to work with stakeholders and the Parliament on that process. We also recognise the value of subject matter expertise and knowledge, and a deeply embedded understanding of the policy area's impact on people. Taking all of that through the process is absolutely vital, as well, because when that is well built in, that is when the system works at its best.

John Mason: Is that related to the suggestion that the HR system is now going to categorise all civil servants into professions?

Lesley Fraser: It is. Part of our people strategy and the development of a workforce plan is to introduce a new system that will give us much augmented capabilities and give everybody job families. That means understanding whether someone is a policy expert, a legislative expert or a lawyer, and so on. We have 21 different professional groupings in the civil service in Scotland already. Some of those are quite mature—the data and digital professions and the legal profession, for example—while the change management profession is a growing area for the Scottish Government.

We are seeking to augment professions by taking a holistic look at the way in which we manage professions across the organisation and in a number of our public bodies, which is where a great deal of our professional expertise sits. The new system will help us with that. It will also help with sharing expertise for career development and

with how we look after people and offer them attractive career pathways through the Scottish Government. Public service in Scotland is an area that will offer very rich potential for the future.

John Mason: Thank you.

I am a little unclear about what we can cover today. Are the consolidated accounts something that I can raise?

The Deputy Convener: Yes.

John-Paul Marks: The chief finance officer is ready.

John Mason: I saw that she had not said anything so far.

My first question is quite general. Why are some bodies included in the consolidated accounts, while others are not included?

Jackie McAllister (Scottish Government): That is determined by the classification of the body and the accounting boundaries. Ministerial bodies, for example, will be within the consolidated accounts. Each body will have its own classification, and that will determine whether it sits within or outwith the consolidated accounting boundary.

John Mason: Is that fixed for ever or does it change over time?

Jackie McAllister: It is based on the classification of the public body, and that can be reviewed at any time by the ONS. It routinely reviews that, but there would need to be a trigger for a change of classification.

John Mason: So, the ONS decides that classification, which means that it is very consistent throughout the UK.

Jackie McAllister: Absolutely.

John Mason: That makes sense. I think that some people expected to see the reserve balance in the consolidated accounts, in which there is a limit of £700 million, but I do not think that that figure actually appears. Is that correct?

Jackie McAllister: Yes and no. The Scotland reserve is linked to our HM Treasury budget, which is driven by the fiscal framework. You are absolutely right that we have a limit of £700 million there, but that is not the same thing as the consolidated accounts.

As you pointed out, the consolidated accounts are our statutory accounts for the bodies within the consolidated accounting boundary. We report against the budget that is set by the Scottish Parliament in the parliamentary budget, which is then adjusted at the spring budget revision. They are not exactly the same things, but at the front of

the accounts, on pages 9 to 11, is an explanation of why they are different.

In the accounts, we also have the provisional outturn. You will see on pages 9 to 11 that, for 2021-22, we have the provisional outturn of £650 million against the headroom of £700 million. In April this year, we wrote to the committee with the final outturn information, which we were able to do only after the final accounts—which are linked to the HMT budget, so that goes beyond the consolidated accounts—were complete. We were waiting for the Scottish Public Pensions Agency accounts to be completed.

John Mason: Okay. This is quite a complex area. We might need a meeting on that alone, but I will ask one other thing. If I am reading it correctly, there is resource borrowing of £319 million, but there is also an underspend. Why do we need to borrow if there is an underspend?

Jackie McAllister: We set out our borrowing plans in the medium-term financial strategy and we set them out in our budget. We then review those as we move through the year. There are different reasons why we can borrow, particularly on resource, which are around reconciliations and reconciliation movements in-year.

For 2021-22, which is what you are talking about, we would have built our borrowing plans on the basis of our funding and our spending plans. You will recall that we were still well within the pandemic at the time. In 2021-22, we got very late notification from the Treasury of some very significant consequentials, which subsequently changed our carry-forward assumptions and our funding for that year.

John Mason: I will leave it at that.

The Deputy Convener: Ross Greer has a question on that point.

Ross Greer: On the point about the underspend, I am interested in whether the Government thinks that there is a presentation issue, because the single biggest chunk of the underspend related to variation in the student loan market—not a pot of cash that went unspent. We regularly have stakeholders engage with us who are frustrated that their priority did not get the spending that they believe that it deserves, and they see reports that £2 billion was not spent. Is there a basic presentational issue with regard to the terminology when we talk about underspend?

Jackie McAllister: That is a really good point. We will continue to look at that and at how we can improve the transparency around it. I hope that you noted from the final outturn report that we have tried to make the connection between the reserve and the outturn, and cash and non-cash, a little bit more than we have done in the past.

However, you are absolutely right: almost half of the underspend for 2021-22 was non-cash.

To go back to the point about Treasury budgets, there is about £500 million of adjustments that we would have made to the Scottish budget through the spring budget revision had the HMT supplementary estimate process been concluded. There were late adjustments because of the timing of that. Therefore, we had a significantly larger underspend than we otherwise would have had in any other year. As you have said, some of that was to do with valuations that were index linked and, of course, there was significant movement in the retail prices index. I think that some of those went from plus 13 to minus 4, so you can imagine what that did to the calculation on those valuations. We thought that that was quite unprecedented. However, we will certainly look at how we present that information, and we will look to improve the transparency of that going forward.

The Deputy Convener: Audit Scotland has made a range of observations, criticisms and constructive suggestions about transparency for this set of accounts and others, which the permanent secretary will be well aware of. The committee would appreciate a response to the issues that were raised. That might help to deal with some of the issues that Mr Mason and Mr Greer are raising. We have concerns about those on-going transparency issues, so if you could set that out for us in a letter from the permanent secretary, that would be appreciated.

Douglas Lumsden is next.

Douglas Lumsden: First, I have a quick question on the underspend. Obviously, it is down as being £2 billion but, as Ross Greer pointed out, that is not the figure, because it includes student loans that you cannot really take out. How much money—if any—was handed back to the UK Government at the end of the year?

Jackie McAllister: There was no loss of spending power to the Scottish Government. The final outturn, which you received in April, showed that we came in just below the £700 million cap for the Scotland reserve, so there was no loss of spending power.

Douglas Lumsden: I guess that that goes back to the reporting issue. It looks as though there is £2 billion but, when you dig a bit deeper, you see that it is not as bad as it seems.

Jackie McAllister: The consolidated accounts and the budgets that we spend within are not just about our day-to-day spending. They are about our valuations of our assets, our liabilities and our provisions, and we need budget for all those movements. The £2 billion underspend is the variance against all those budgets. We will always have underspends—we are simply not allowed to

overspend against any of our budget categories—and a lot of the non-cash budgets can be quite volatile and are linked, as I mentioned earlier, to inflation, which is completely outwith our control. For those types of budgets, particularly the non-cash, we will always ensure that we have enough budget to avoid any unforeseen movements that would lead us to a breach of the budget and a qualification of our accounts.

12:00

Douglas Lumsden: That is good to hear.

I will move on to record keeping. We faced issues to do with vessels 801 and 802—it was difficult to find out who had approved the spend on them. Permanent secretary, will you explain what has changed in that regard? Can we as a committee feel comfortable that proper processes are in place so that that does not happen again?

John-Paul Marks: I will bring in Lesley Fraser, as she will be able to take you through the detail of the approach.

As I said earlier, those incidents, which are in the past, are regrettable. We want to make sure that we have learned from them and that we get the fundamentals right so that they cannot happen again.

Obviously, a raft of engagement goes on with the Scottish Government all the time. We are working very hard to get the consistency right. I cannot provide a cast-iron guarantee that we will never trip up in the future, but we are determined to ensure that all ministerial decisions are documented for the record, and certainly for things such as commercial procurement decisions, which you have referenced.

As I alluded to, last year, we published our private investment framework, which sets out clearly the due diligence that you would expect to see from us with regard to those investments or future investments. That needs to be consistently applied.

Lesley, will you talk us through the progress on record keeping?

Lesley Fraser: Yes. That is a fundamental point for the civil service. We must be able to account for and track decisions that are made and the way in which those decisions are made.

We have made changes to culture, systems and practices. I am leading a new information governance programme, which has been running for the past 18 months. I chair a board on a quarterly basis. We are looking at all the changes across staff training, our systems and the procedures that we have put in place so that we can increase the consistency of best practice

being carried out in the organisation. That includes training for colleagues. It also includes changes to some practices, such as how we record decisions that come out of ministerial offices, track those and check that they have been acted on, for example. We have also changed some of the system storage arrangements. That enables us to be much more up to date, and it is much easier for us to track and retrieve information in a logical way.

We underpin, through our “In the service of Scotland” work, that that is fundamental to good civil service craft. It is how we expect people to work. We tell colleagues, “It’s not a boring bit of what you do; it’s absolutely essential, and you must do it well.”

All those elements are coming together, and the work is overseen by a senior group in the organisation on a regular basis.

Douglas Lumsden: Were the past failures relating to vessels 801 and 802 because of a failure in the process? Was no process in place, or were people not following the process that they were meant to follow?

John-Paul Marks: Let us stand back for a moment. I cannot remember the total quantum of documents that we have published on vessels 801 and 802, but it is about 200. There have also been two inquiries, which have set out recommendations that you have accepted. We have put in place a whole new programme on information record keeping; we have set out a whole new approach to private investment due diligence and the framework that we will apply; and we are building new capabilities in the organisation, including using external commercial forensic capabilities where we need to, to inform advice.

The Deputy Convener: Mr Lumsden is being quite specific. He is asking about what happened at the time and whether there is a reason for that. He is not asking about what will happen in the future.

John-Paul Marks: I guess that you are asking me to describe what happened in 2015, but I arrived in 2022. That was seven years before I was appointed. The honest truth is that all I can do is read the inquiry reports, the recommendations and the response, and get the response right. I am not able to provide further insight into what occurred seven years ago beyond what those inquiries have already offered.

The Deputy Convener: We have talked about lessons learned. Surely, on reflection, lessons must have been learned about that and why the situation arose.

John-Paul Marks: I have derived the learning from the inquiries, the recommendations that they offered, and the processes and capabilities that we have put in place to respond to them. I think that you are asking me specifically about why a particular decision regarding the procurement of the vessels was not recorded seven years ago. I cannot offer a great deal of insight beyond what the inquiries have already concluded.

Douglas Lumsden: I am trying to work out whether a process was missing or was not followed, or whether there was a culture—that has been mentioned a good few times during this meeting—in the organisation of not giving two hoots about the process that was meant to have been followed.

John-Paul Marks: I do not know what more I can say. I joined the organisation in 2022, and you are asking me about events seven years preceding my arrival. There have been two inquiries about the ferries, a lot of deep learning has been done, and a lot of change has been implemented. I cannot provide an accurate, evidenced-based description of what went on in 2015 with the procurement of vessels 801 and 802. I can understand why you might be keen to draw me in to offer an opinion on that, but my opinion is derived from the recommendations from the inquiries. I do not have any other insight.

The Deputy Convener: I mentioned the meeting that took place between Nicola Sturgeon and Jim McColl in May 2017. No civil servant was present at that meeting; a special adviser attended. They talked about the significant issue of expenditure. Would that have been an allowed practice at the time, or was that a decision that was taken by a minister?

Lesley Fraser: I do not think that there is anything further that I can add in relation to that specific meeting or on that specific point. I am sorry that I cannot help.

The Deputy Convener: Okay. I do not think that we are getting any further on that.

Douglas Lumsden: No. I will change the subject.

We have heard that three harassment reviews took place in session 5. The First Minister asked whether one of those could be looked at again. What about the other two? Was it just that one in particular? Whom did he ask?

Lesley Fraser: I think that the First Minister was specifically asking for advice about whether the legal considerations around complaints that had been made against former ministers could be revisited. We have been able to provide that advice to the First Minister.

Douglas Lumsden: My question is whether the First Minister was asking for advice about all three harassment reviews or just one in particular.

Lesley Fraser: The three harassment reports that the committee has been monitoring the results of are the report to the Parliament by the Committee on the Scottish Government Handling of Harassment Complaints, a report that was undertaken by Laura Dunlop on behalf of the then permanent secretary, Leslie Evans, and the report by James Hamilton on Ms Sturgeon's self-referral under the ministerial code. Those were the three reports, which all produced recommendations that we and the former Deputy First Minister have reported on to the committee during the past 18 months.

Douglas Lumsden: Okay. When the First Minister said that he was happy to check that he could legally reveal findings of a previous investigation, was he referring to only one of those investigations or all three? Whom did he ask?

Lesley Fraser: That was a different, specific matter relating to a complaint against a former minister. It did not relate directly to those three reports, as I understand it.

Douglas Lumsden: Whom did he ask?

Lesley Fraser: He asked civil servants in my area for advice.

Michelle Thomson: I have just a couple of quick questions, because I know that we are coming to the end of the session.

Permanent secretary, you have been in post since 2022, as you have pointed out, and you have been able to make a pretty fair assessment of what you noticed at the start. What now keeps you awake at night, and why?

John-Paul Marks: That is a good question. As I reflected in my opening remarks, the context of the past year has been really tough for the country and for partners in the voluntary sector and business. One minute we were responding to operation unicorn, and the next minute we were standing up a supersponsor programme, which—credit to the team—was a remarkable effort but was obviously not what we planned for when we did the resource spending review.

It has also been really hard for everybody, including councils, public bodies and the Scottish Government, to manage the impact of inflation on fixed budgets. The overall impact on the wellbeing of not just our teams but partners and the systems that we serve gives me a lot of concern. A lot of resilience has been drained, first by the pandemic and then by the cost of living crisis and everything that is associated with it.

For me, success will be when I am before this committee at the end of this parliamentary session—if I am still here—having got the long-term capabilities and resilience that I referenced right. That will mean that the backlog in our courts will have come down, that we will be delivering a timely experience in our justice system, and that crime and our prison population will have been kept low. It will mean that we will have made progress on the long-term missions of which Scotland can rightly be very proud, because, unlike others, we have statutory targets to tackle child poverty and accelerate progress to net zero.

We understand what we need to do, but those challenges are clearly made harder by double-digit inflation and the need to spend significant additional amounts in areas that we were not planning to. It is about the resilience of the system to deliver reform and about our capability to, I hope, create a more stable operating environment so that people can focus on the day job and on delivering better outcomes.

Clearly, there is a lot of change ahead. The UK election will talk to the experience of devolution one way or another, and I am sure that a lot of my engagement with the UK Government next year will relate to whatever transition takes place and how we respond well to whatever the future brings.

Michelle Thomson: I have a couple of quick questions off the back of what you have said. You talked about the speed of change, which everyone recognises is accelerating. How well equipped is the civil service, since you joined it, to deal with that speed of change, which ain't going to stop any time soon, as we all know?

John-Paul Marks: Everyone keeps stepping up and getting the job done. Delivering a new policy prospectus in 10 days, which involved creating a version a day for 10 days in what was going to be a recess period, was a remarkable effort.

The way in which the team handled the reshuffle was exceptional. I have been through a lot of reshuffles in my life—including those down south at the end of the new Labour Government and during the Conservative-Liberal Democrat coalition—but the First Minister and the Deputy First Minister leaving at the same time, with all the experience of Nicola Sturgeon and John Swinney, represented a significant change, and the team stepped up and did an incredible job.

My responsibility is to keep refreshing the team and to bring in and build new capabilities relating to ScotWind, hydrogen, heat in buildings and deposit return schemes so that we have the programme capabilities to execute reform. However, we are doing that in a very tight fiscal environment in which every pound matters. Things

are also contested, because everybody, quite reasonably, wants to do more, so prioritisation is essential.

I have good confidence in the capability of the civil service here. Its values are excellent and there are deep capabilities, but we have to look after wellbeing.

12:15

Michelle Thomson: You mentioned earlier, and I read in the stats, that more than 55 per cent of your employees are female, which is great. You also said that there is a very healthy gender balance at all levels. Do you have, or could you supply the committee with, a breakdown at all levels? I am particularly interested in the most senior levels.

I will make one last wee point. A wellbeing economy, which has a gendered lens as a focus, is, of course, a priority of the Scottish Government. I am aware of the time. You may want to give us some more flavour of how you are able to apply that, because it is obviously about so much more than simply the percentage of the gender split. We could start to look at procurement and so on. It depends on time, convener.

The Deputy Convener: We do not have time for that topic, but could we have that information in writing?

John-Paul Marks: Of course.

Michelle Thomson: Yes—to get some flavour of that.

Liz Smith: Permanent secretary, I want to take you back to the start of your short statement. You said that the third aspect is leadership of the civil service. It was put to us by former members of the civil service that one of the problems with the current civil service is that there are too few people who have ability in relation to commercial expertise. Do you agree with that?

John-Paul Marks: All feedback matters, so if that was the view of a colleague or former colleague, we need to reflect on that.

We have a fabulous director of our commercial team, who works for Lesley Fraser. We are doing a lot of work on building that profession and on a commercial value-for-money programme. That is one of the core capabilities that we are building. I hope that that will respond to the experience from that individual and mean that all teams can access commercial experts when they need them—they do not always need them to make a procurement, to issue a grant or whatever. That is a shared capability and service in our corporate team that we are developing.

Lesley, do you want to add anything to that?

Lesley Fraser: That covers things very well. It is a small team, but it is very good at building that capability and capacity, and at offering that not only within the Scottish Government but across public bodies. The frameworks and support that it provides already generate savings of in excess of £100 million per annum. We are always looking at different ways in which we can extend and expand that. I am sure that we would be happy to—

Liz Smith: It was put to us in the context that, when it came to various procurement issues—whether in relation to Burntisland Fabrications, Prestwick airport or various other things—it would have helped if there had been more civil servants who had experience of the necessary decision making.

John-Paul Marks: In responding to the learnings of the past, one change has been that we have pulled together a strategic assets unit, which manages all of those strategic capabilities. If there was an interest in undertaking such a future investment, we would apply what is now a published framework for undertaking due diligence, procurement and investment.

We have absolutely sought to establish that capability. Louise Macdonald worked with me on that last year, and it is being further taken forward this year. Part of that is about using external advisers where we want to get additional due diligence or capability in-sourced to undertake a value-for-money assessment or help to develop a business case. That is work in progress on improving, but we always want to remain vigilant on that.

Liz Smith: Okay. So you do not disagree that there has been an issue there.

John-Paul Marks: One of the lessons from the Ferguson's experience is the need to establish expert commercial private asset management capabilities in the Scottish Government that draw on independent advisers. That is what we have now done, and I think that that will stand us in good stead for the future.

The Deputy Convener: I thank all of you for your evidence and for answering all our questions.

That concludes the public part of today's meeting.

12:19

Meeting continued in private until 12:29.

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