



OFFICIAL REPORT
AITHISG OIFIGEIL

Constitution, Europe, External Affairs and Culture Committee

Thursday 30 May 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
14th Meeting 2024, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Alexander Stewart (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*Neil Bibby (West Scotland) (Lab)

*Keith Brown (Clackmannanshire and Dunblane) (SNP)

*Meghan Gallacher (Central Scotland) (Con)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Iain Munro (Creative Scotland)

Kevin Stewart (Aberdeen Central) (SNP) (Committee Substitute)

Robert Wilson (Creative Scotland)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 30 May 2024

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Clare Adamson): Good morning, and a warm welcome to the 14th meeting in 2024 of the Constitution, Europe, External Affairs and Culture Committee. Mr Bibby joins us online. We are also joined by committee substitute Kevin Stewart MSP, whom I welcome.

Our first agenda item is a decision on taking business in private. Are members content to take item 3 in private?

Members indicated agreement.

Creative Scotland (Funding for Rein)

09:01

The Convener: Our next agenda item is to take evidence from Creative Scotland on its funding for Rein. I welcome to the meeting Iain Munro, chief executive, and Robert Wilson, chair of the board, Creative Scotland.

I invite Mr Wilson to make a brief opening statement.

Robert Wilson (Creative Scotland): Good morning, everyone. We welcome the opportunity to give evidence to the committee regarding our recent funding award to the Rein project, and our subsequent withdrawal of that funding. A lot has been written and said about the matter in the media, online and elsewhere. Some of it has been accurate and measured, and some of it has not. However, an alarming amount of it has been offensive and dangerous, constituting attacks on the artists involved, on marginalised parts of our society and, unfortunately, on our staff. I hope that the committee will agree that that is not acceptable, and will join us in condemning that type of discourse and behaviour.

Having made that point, I will start with a bit of context. Creative Scotland, including Screen Scotland, receives more than 4,000 applications each year. We make in the region of 2,000 individual funding awards, drawing on a budget totalling £90 million, with the support of the Scottish Government and the United Kingdom national lottery. With that funding, we support an inspirational range and breadth of fantastic artists, film makers, writers, performers, festivals and cultural organisations, who, together, make Scotland's vibrant and diverse culture the vital component of all our lives that it undoubtedly is, and that contributes so powerfully to our global reputation.

Of course, as the committee has heard previously many times, we would be able to support significantly many more artists, creative projects and organisations if more funds were available to us. That challenge will continue for as long as we remain on inadequate funding levels, irrespective of this significant controversy over one award. As we speak, we have funding available to support only around 30 per cent of the applications to our open funds. As the committee is aware, the multiyear funding programme is currently live, and it has at least twice as many applications as we have the funds to support.

Given that context, funding for culture will always be challenging and, at times, controversial,

because tough choices have to be made. Nevertheless, it is vital that Creative Scotland continues to provide our support to creative work that represents all of Scotland, across all art forms and areas of practice, representing and reaching all of our diverse communities. As well as being in keeping with our desire to support as broad a range of artistic and creative practice as possible, we also have a legal responsibility to promote equality, diversity and inclusion.

It is also not our role to act as censor or as arbiter of cultural taste; our role is to support cultural and artistic diversity as an expression of human rights. That is as important in Scotland as it is anywhere else in order, as expressed so clearly by the United Nations and the United Nations Educational, Scientific and Cultural Organization, to promote and protect artistic freedom for its contribution to progressive cultures worldwide.

It is within that overall context that we supported the Rein project through an initial research and development phase and subsequently, following an application and assessment to progress the project, through our open fund for individuals. The project was supported in the knowledge that it would be a challenging, creatively ambitious piece of work, with strong sexual themes at its heart, which would speak to a particular audience more than the mainstream. The project was also being produced by an artist and supporting team who have a strong and nationally recognised track record, with the support of respected sector partners and with potential international interest.

Although a project report at the end of the R and D phase made mention of non-simulated sex as part of the potential forward thinking, it is important to restate that any such reference did not feature in the subsequent separate application that we received. It is not unusual for projects to change between the R and D phase and any follow-up application. It is that subsequent substantive application that was assessed and recommended for funding; a recommendation that was ultimately awarded by the funding panel, which consisted of Creative Scotland employees and independent assessors.

All the specialist roles, safeguards and protections in the application that we received were expected industry standards for work of this kind which involves simulated sexual content. They were not an indication that real sex would be involved. However, after the award was made, it became evident in the call-out for participants, which was instigated by the awardee, that the intention to include non-simulated sex for some parts of the work was being pursued. Once that became clear to senior management at Creative Scotland, legal advice was taken, a breach of contract was confirmed and the funding was

reclaimed. That action was not contested by the applicant and the bulk of the funds have been returned. We have not misled anyone on those facts.

Before we open for discussion, I will make a few final points. We remain committed to artistic freedom and to supporting as broad a range of artists and as much creative work as possible. At times, that will include work that pushes the boundaries, polarises opinion and will inevitably, albeit occasionally, create controversy. People may sometimes disagree with, or dislike, some of the work that we support. That is the nature of funding the arts and, indeed, the arts themselves. However, there is always learning in situations such as this one. The senior leadership team at Creative Scotland, with the support of the board, have reviewed the application process for open funding and have introduced new safeguards, including an additional stage of review for all applications that are recommended for funding. The board has also agreed to take a more cautious approach to risk for our future funding of projects with sexual content, as well as projects that involve vulnerable people or children.

Finally, members of the board of Creative Scotland, including myself as chair, remain unanimously supportive of Iain Munro as our chief executive, the senior team and all our staff. Everyone at Creative Scotland continues to be dedicated to their diligent work in support of culture and creativity in Scotland. That has never been more apparent than over the past few years, when the Creative Scotland team has delivered huge volumes of vital support to the culture sector during the Covid pandemic and in the challenging period since. Their work continues to deliver so much benefit to Scotland and to our communities. Iain and I, our colleagues on the board and our staff, remain committed to playing our part in helping culture and creativity in Scotland to thrive.

I will stop on that point. Iain and I are happy to take questions and look forward to the discussion.

The Convener: Thank you, Mr Wilson. I am sure that I speak for all the committee when I say that abuse and threats of any kind to staff or artists are completely unacceptable.

From my point of view, this discussion is not about the content or nature of the production of Rein; it is about whether the process was robust, diligent and fair. Mr Munro, you explicitly said in your letter to us that

“the artist did not contest the reasons for withdrawal of the grant”.

However, in your chief executive's report to Creative Scotland on 21 March, you stated that the artist had “expressed a fundamental disagreement” with your “analysis and decision”

when you met her in person. There seems to be an inconsistency between those two positions.

Iain Munro (Creative Scotland): Good morning, everyone. The conversation with the artist moved very quickly into a legal process, and my point about not contesting relates to part of that legal process. The artist is clear that they do not agree with our decision, and they have said so publicly. However, they did not at any point seek to contest the legal process that we moved into.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning, gentlemen. This entire saga has cast a dark shadow over Creative Scotland. In your opening statement, Mr Wilson, you suggested that it had caused “significant controversy”. I would suggest that that was the least of the situation; significant controversy is where we are with the application. The application itself and the public statements that were subsequently made differ—and we have been privy to lots of information over the past few days. The explicit nature of the project in itself made it significantly controversial.

Has an assessment been made of the reputational damage that the matter has created for Creative Scotland and the sector? Can you tell us what that damage is?

Iain Munro: The matter is of course on-going, and it will now always be a reference point in the history of Creative Scotland. I would ask for the context to be borne in mind. As Robert Wilson said, the award that we are discussing is one significant and controversial award among the vast majority of awards that we make, which are straightforward and uncontroversial, and which deliver great value.

We at Creative Scotland are in no doubt as to the extent to which the project is reputationally damaging, but I am as concerned about the extent to which it is damaging for the sector as a whole, and about the risks of it undermining the case for investment that we have been so diligently speaking about—I, personally, have publicly done so in front of the committee on several occasions—and undermining the support for the cultural sector that is needed for it to continue to thrive.

I want to be clear, however, that one controversial award does not make a systemic problem with our processes, and I wish to reassure the committee and others more widely about the robustness of our processes. As Robert Wilson has said, there is always learning to be had from any examples where a decision has become a matter of public debate and interest—and understandably so.

In the bigger context, I refer you to the point that we are one of a number of similar bodies, not just

across the UK but around the world, that experience similar challenges with funding support for this kind of work, which can be picked up in a public way and presented back as unacceptable. There are two things that we need to be mindful of in this public discourse. One is about the fact that sex and sexuality have always been a feature of art, in its multiple forms, throughout the ages, and will continue to be so. That is separate and different from the assurances to which I think that you are referring, convener, with regard to the robustness of our processes.

I am happy to set out in more detail what we have done by way of immediate learning, making changes to our processes to strengthen the safeguards and checks and balances, should similar instances arise in the future, and looking to more permanent changes that we will put in place in the longer term.

09:15

Alexander Stewart: In your letter to the convener of 16 April, you stated:

“Rein was originally supported in the knowledge it would be a challenging, creatively ambitious piece of experimental performance art, with a clear storytelling narrative, strong sexual themes and simulated sexual performance”.

However, it was very much the case that the performance was not to be simulated. From looking at some of the information that we have seen from freedom of information requests, it is clear that, right from the start, genital contact and sexual performance was being indicated.

Why did you say that to us in your letter of 16 April, while knowing that the information was not correct?

Iain Munro: I do not agree with that. I said it because it is the truth.

Regarding the fact of genital contact in the nature of this work, I am sure that it is a revelation to see inside our processes, and the extent and nature of the material that we get. However, as Robert Wilson alluded to in his opening statement, the content that was included in the application was consistent in that it involved all the requisite specialist expertise, role safeguards and protections. All that was consistent with our understanding of it as a simulated performance piece of work. There was no mention in the application—this is fact—of real or non-simulated sex.

There is no connection between the end-of-project monitoring report, which came out of the first research and development award, and what was in the substantive application. We make decisions based only on what is in the application.

Although the work was challenging in its content and had strong sexual themes, all of it was consistent with what we would expect to see by way of industry standards for simulated sexual activity. If the committee is interested in understanding that more, I can follow up with an example of how such activity is very carefully managed. Bectu, which is involved in supporting that kind of work, has produced supporting guidance on the shooting of intimacy, which includes genital contact.

The mere mention of genital contact does not mean real sex—genital contact can be simulated. I suggest that you need only switch on the television or go on to streaming platforms to see sexual activity of a simulated nature appearing frequently on our screens. It is not real—it is simulated, and there are ways of tackling it. I am very clear that the facts in my presentation to you remain so, and the mention of genital contact does not mean real sex. That was not, and never has been, our understanding.

Alexander Stewart: Finally, what lessons can be learned from this entire saga to try to rebuild confidence in the sector and deal with the reputational damage to which you have already alluded?

Iain Munro: Part of that has to be about the robustness of our processes and the evidence of that. As I have committed to doing, I will share more about the permanent changes that we will build into our processes, including additional checks and safeguards, given the more cautious risk appetite that Robert Wilson mentioned.

It has to be about that, and how that works in practice. We are, more than ever, paying very diligent attention at the more senior levels of the organisation to what we are funding and not funding. We have expertise among our staff that we should, and do, trust. People need to see the evidence as it continues to flow through from the decisions that we make.

However, some of it has to be about the context, and assurances around Creative Scotland. As you say, our reputation needs to be about not just the evidence of those processes, but our engagement with the wider sector in order to provide reassurance.

One of the downsides of what has happened is that people have misunderstood the fact that the project moved from simulated sex to real sex and we withdrew the award. That is not an indication that we are stepping away from our commitments to equalities, diversity and inclusion—far from it. We remain committed to our work in that area, and to speaking to all Scotland's communities and audiences.

Finally, although the language in the application will be a surprise to some people, it is language that is recognised by the queer community, and it does not provoke them in the way that it provokes a reaction among the wider public. All that is taken into account when we assess the applications.

It is important that we have time and space for people to come forward with ideas that they want to pursue as artists, but that does not necessarily mean that an idea will merit public funding. How that works is down to how well projects meet the criteria and the intended outcomes that we are seeking to achieve.

The Convener: I would like you to clarify one point. You said that the stuff that was in the original application was consistent with all industry standards. However, in the section of the application on risks, it states:

“Where necessary, COVID and STI tests will be done by performers ahead of rehearsals with risk assessments done with the results.”

Are tests for sexually transmitted infections an industry standard for productions?

Iain Munro: Some aspects, of which that will be one, go beyond industry standards into best practice. I am certainly no microbiologist or medical expert, but, with regard to projects of this nature that involve nakedness and contact and touching, I note that STIs do not exist only in genital areas. For us, that element would be an additional strengthening of the safeguards in the project that it would be appropriate to see.

The Convener: I bring in Neil Bibby, who joins us online.

Neil Bibby (West Scotland) (Lab): Good morning, panel members.

We have heard that Creative Scotland's letter to the committee and its wider statements to the media suggested that it believed that no non-simulated sexual activity was to take place as part of the project.

However, we just heard from Alexander Stewart about genital contact being mentioned in the application, and from the convener about STI checks being part of the application.

There is mention in the application of “a sex party” and two sexual acts beginning with the letter F, and it states that people who work on the project will have “experience ... in ... pornography”.

As you said earlier, it was suggested in the R and D phase that there would be non-simulated sex. Is that correct? Was that, and were all the things that we have just mentioned, in the application?

Iain Munro: All those references were in the application except non-simulated sex.

Neil Bibby: Given everything that was in the application, the suggestion in the R and D phase of non-simulated sex should surely have raised eyebrows at that point and provoked at least some further explanation from the assessor on the nature of the sexual activity involved.

Iain Munro: As I mentioned earlier, the conclusion of the first R and D phase, as is common with all these types of awards, gave us a report on what the outcome was. There were two references to non-simulated sex in the end-of-project monitoring form, neither of which made it into the actual application that we received. As I said, we make decisions based only on the content of the actual application that we receive.

This is a learning point in terms of understanding, given the nature of this type of application, that we need to consider how to strengthen the checks in an application to understand it a bit more.

Given the nature of our organisation, and the vast majority of the work that we engage with and fund, the starting point was always that it was an art installation that involved strong sexual content. That was how it was presented right from the off, in the original R and D application. There was more to it than just a film. It was certainly not a hardcore porn or hardcore sex film; it was an art installation that involved dance, theatre, video, sound, lighting, stage design and set build for the experience of audiences. There was much more to it than the sexual element. Our starting point has always been, and has continued to be, the evidence in the application. Although it was challenging, that evidence was not understood to be or presented as involving anything other than simulated sex.

Neil Bibby: Personally, I think that what was in the application should have set off alarm bells.

Earlier, Mr Wilson said that Creative Scotland has not misled anyone. From what you have said about the application, and the fact that it turned out to include live sex, do you believe that Creative Scotland was misled by the applicant about the nature of the project?

Iain Munro: I can see no evidence that the artist misled us. As Robert Wilson said, it is not our job to act as censors or arbiters of taste. That is not to say that every application that we receive should be awarded public funding. We have robust processes in place to enable us to tackle the challenging content that you have seen in the application. I would not disagree that we aim to do more to understand how we could have escalation points for any future similar projects that might emerge. It is very rare for us to ever receive an

application for such a project. I concede that it provides us with learning points.

We do not censor work. If a similar project were to emerge with a broad set of artistic objectives but with explicit sexual content at its core, would it be eligible? Probably. Would it be fundable? Possibly—if it met the criteria. Would it be funded? Not necessarily, because we do not make decisions on applications in isolation. Applications are assessed individually, but they go forward to a panel alongside a basket of other applications that are in competition for funds at the same time. The panel makes a decision on all those applications in the round, with the strongest being the ones that address the criteria and the outcomes that we seek from the fund. That is how the process operates.

To answer your question, I do not believe that we were misled. I can see no evidence of that. Clearly, though, there is a point of understanding at which we diverged after the award was made, when the call-out revealed that non-simulated sex was a part of the project's intended outcomes. That was when we intervened very quickly, withdrew the funding and subsequently have had it repaid in bulk.

Neil Bibby: We have already discussed the public discourse and the reaction to the funding grant. The committee wrote to Creative Scotland on 25 March, asking for the application to be published because we felt that doing so was in the interests of public confidence and transparency. Creative Scotland responded on 16 April, stating that, although there was an intention to publish the application, that could not be done until

“a thorough review of ... materials”

was undertaken

“to remove any personal information, any business confidential information, or any information that, if publicly disclosed, could pose a threat to an individual”.

You will note that the application and the materials were released under FOI on Tuesday 21 May. The first I heard of the application process was through the media. However, the committee was not sent the full application until 22 May. As the committee asked for the application to be published on 25 March, why did it have to learn about it through the media a day after it was released?

09:30

Iain Munro: A number of factors are in play here, as I have already talked about and shared with the committee in my previous correspondence.

Within days of it becoming a media story and a matter of public concern, we had met the applicant and moved immediately from identifying a breach

of contract to a legal process. We had to manage that carefully—with legal input, support and advice—to avoid doing anything to disrupt the withdrawal of the grant and the repayment of the funding. That was a factor in how we had to operate, as was what we were able to say in the public domain while that process was on-going, which was factual and minimal. The process concluded in April, which was the point at which I was able to set out more by way of a response to the committee in my letter of 16 April.

While all that was going on, we received 23 FOI requests that related to the matter—it is the largest FOI interest that we have ever had. After going through those FOI requests and compiling the material, we had 12,000 different files associated with them, which we had to go through very carefully, with legal support, to ensure that we were releasing the maximum amount of information and complying with the FOI legislation, while also being mindful of the toxic environment in which that information would be released. It was only when we got to that point in May that we were in a position to release the FOI responses.

I did write to the committee. I appreciate the sequencing point that you are making, but it was not the intention to do anything other than what I had committed to, which was to release the material appropriately under FOI legislation and to share that information with the committee, as I subsequently did.

Neil Bibby: The FOI responses were published on 21 May and the committee got the application on 22 May. It is regrettable that we were not given the application when we asked for it, or at least when the responses were published.

On the issue of transparency—I go back to previous points about the alarm bells that should have been ringing—you will be aware that internal emails, as reported in *The Times* newspaper in September 2022, just a month after the project was awarded funding, suggested that the project could cause concern if picked up by the press. Were either of you personally aware of those concerns? If so, did you speak with the individual who had raised them, and did you feel assured that those concerns were misplaced?

Iain Munro: Neither of us were aware of those concerns, but they were certainly in the organisation. The direct answer to your question is that I was not aware of them at the time.

Neil Bibby: Mr Wilson?

Robert Wilson: Likewise.

Neil Bibby: Thank you for your answers. I have one final question. Substantial funds of more than £100,000 were awarded to the project's R and D phase and application. We have heard this

morning that the bulk of the funds have been repaid. How much was awarded and how much has been repaid?

Iain Munro: I have set that out in my letter to the committee, but, to recap, the original R and D award, which was awarded in August 2022, was £23,219. The subsequent application, which was initially successful but then withdrawn, totalled £84,555. All that has been reclaimed, with the exception of £8,359, which was legitimate expenditure that was accrued from the point of the award of the contract to the point that the award was withdrawn. Therefore, that is in relation to the figure of £84,555. There was no reason to revisit the figure of £23,219 for the original award. It had delivered the outcomes and objectives that the award had been approved for.

Neil Bibby: So £31,578 has not been repaid.

Iain Munro: No, it has not been reclaimed by us.

Neil Bibby: Thank you. That is all, convener.

Iain Munro: The final figure for the amount of the actual delivery award that has been returned to us is £76,100.

Meghan Gallacher (Central Scotland) (Con): Good morning, gentlemen. I do not think that anyone doubts the work of Creative Scotland or the artists that it supports. We fully understand the budget constraints that you are working within and I sincerely sympathise with you in that regard. I understand how tough that must be, particularly given the number of artists that you want to support and the fact that you receive so many applications. However, we have this application issue in front of us and serious questions need to be asked about the handling of the application and how best to move forward with Creative Scotland.

It has already been mentioned this morning that the funding application stated that, in the second phase of research and development, the applicant would be working on

"a sex scene with genital contact".

We have also heard this morning that the budget and risk assessment included STI tests, but also lubricant. You have spoken about the STI tests with regard to safeguarding, but surely you would assume that the use of lubricant would mean that the scene would go much further than simulated sex and that it would move into non-simulated sex. Why were questions not asked about that part?

Iain Munro: I can appreciate that you are reading it that way. That was not our reading of it in the assessment, because the starting point had been that it was performed simulated sex, so that was our understanding. However, I appreciate that, as a specific point, that should escalate the

application for more attention in the process were that kind of application to come forward again, and that is what we are committed to doing were that to happen.

Meghan Gallacher: That appears to have been a serious overlooked element in this case, because I do not understand how that particular item could be placed in a budget and risk assessment if it was not going to be used for a particular purpose.

Iain Munro: Again, it was our expectation, given that it was a simulated performed piece of work, that all those protections would be in place. The mere mention of lubrication being involved—a bit like genital contact or STIs—does not necessarily mean real sex. I can appreciate that reading of it and I have acknowledged that such mentions could be better picked up through the assessment process. I do not think that there has been a failing in the process in the way that you can read it now, given the context at the time, but I absolutely concede that that should be one of those flags for us that mean that we need to understand an application in a bit more detail to ensure—and to assure everyone in the process and more widely, were it to be successful—that real sex is not involved.

Meghan Gallacher: Okay, but it was mentioned in phase 2 of the research and development.

Iain Munro: Yes.

Meghan Gallacher: You also mentioned the genital contact aspect. As part of the many articles that have been written about the application in recent times, several interviews have been conducted, including with intimacy co-ordinators. One intimacy co-ordinator says that all genital contact falls within the definition of non-simulated sex. Sex with genital contact was mentioned in phase 2 of the research and development aspect of the application. Do you agree with that statement from the intimacy co-ordinator who was interviewed? If not, what evidence do you have for the contrary position?

Iain Munro: I do not agree with it. I know the reference that you are making; it was an anonymous source. I do not doubt the source, but I mentioned earlier—I am happy to follow this up with the committee—an example of industry guidance that supports the shooting of intimacy in simulated sex, and within that are references to genital contact and how safeguards are in place in simulated sex to manage genital contact. The mere mention of genital contact alone does not mean real sex; you will see that in the guidance that I will send to the committee. With co-ordination from intimacy co-ordinators and other specialist expertise, and with protections and physical barriers, genital contact is part of

simulated sex, as you will see in the guidance, and that is as we understood it when we were assessing the application.

Meghan Gallacher: That brings me to the guidance and the strategic framework that applications are measured against before they are approved. Who signs off the strategic framework for applications to be approved? Who creates the guidance and the strategic framework?

Iain Munro: Our overall corporate strategic framework is developed by me with the staff body and it is approved by the board and by Scottish ministers. It sets our key priorities, outcomes and key performance indicators. All of that is as published, and it frames and translates into the criteria that we use in the funding programmes that we run.

We have four key areas of priority. One is equality, diversity and inclusion; one is fair work; one is sustainable development; and one is international. You will find that, increasingly, as we revise funding—given that we signed off the framework relatively recently, a couple of years ago—those are all translating in some way, shape or form into the funds that we operate.

The guidance is reviewed annually, and the framework to which we operate is published publicly through that guidance and updated as necessary. Some of the updates to the open fund for individuals, which was the source for this award, have already incorporated some of the additional strengthening and due diligence that we have put into the process as a result of this controversial award. In the deeper review that we are doing, we will make further revisions and changes that will be built into the guidance for the future.

The approvals for all of that are undertaken through the senior leadership team and, where relevant, with the board, but it is consistent with the corporate framework that I mentioned.

Meghan Gallacher: Up to this point, throughout the history of applications being processed and approved, have any concerns ever been raised about that framework or the guidance?

Iain Munro: No. There have been no concerns about the guidance.

Meghan Gallacher: No.

Iain Munro: I would be interested, if you are trying to identify concerns, in what regard—

Meghan Gallacher: No, I am just—

Iain Munro: Not everybody agrees with the priorities that we have set, the criteria that we use or the decisions that we make, clearly, but it is all clearly set out with a strategic rationale in mind

that underpins it. No concerns have been raised in the way that you have asked about.

Meghan Gallacher: Given what has happened, are there now intentions between Creative Scotland and the Scottish Government to re-look at this? I know that you said that you are strengthening the guidance and the framework, but is there an overall strategy that will need to be re-looked at in order to restore public confidence, given what has happened?

Iain Munro: No. The operational detail of how these funds work is entirely at arm's length from Government. That rests with the board and me and the staff of Creative Scotland. We operate to the strategic framework and set of priorities that I talked about, but we then translate that into how we operate our processes.

As I mentioned earlier, this was one very high-profile and significant controversial award. It has enabled us to identify that we can learn and do more to strengthen our processes around this kind of work, were it to come forward again, but it does not indicate a systemic failure at the heart of our processes, which continue to operate and are largely uncontentious, setting aside the controversy over our never having enough funding to make the awards that we would like to make.

Meghan Gallacher: I will ask one final question, if I may, convener.

I understand what you have said this morning. However, the problem is that we have here two different assessments as to what has happened. We have the assessment from Creative Scotland and we have the assessment from the project itself, and there are contradictions throughout regarding the application process and whether the decision and the outcome of removing the funding from the application was disputed. I therefore need to ask a direct question. Those assessments cannot both be correct, so which one is correct?

09:45

Iain Munro: My assessment is correct. I say that because I take my role as chief executive and accountable officer extremely seriously. Anyone who knows me knows that I operate in the utmost professional way, with integrity, bearing in mind the Nolan principles. I do not operate in a way that seeks to do anything other than be open and transparent. I want you to be assured by my evidence. The artists can speak only for themselves. They disagree with our assessment, as I have said, but the fact is that it was not contested in the event that a breach was identified, and we moved through a legal process to withdraw the funding, which has subsequently been repaid.

Mark Ruskell (Mid Scotland and Fife) (Green): Mr Munro, you spoke earlier about the toxic environment that has been created around discussion of this individual project. Mr Wilson, you mentioned in your opening comments the impact on the creatives, artists, participants and others, including the negative impact on social media and in the wider media. Will you explain what that impact has been?

Iain Munro: Some of it is personal. We have spoken clearly about the extent to which we have concerns about that going beyond reasonable check and challenge in the public discourse into a polarised debate—in this instance, a very toxic debate involving culture wars. We will always try to remain above that and not feed it, but we are mindful of what it means for the artist and the artist's team who are involved, who have, I believe, operated with integrity in their own way. We just have a disagreement about the line that was crossed. Ultimately, public funding being used to pay people to have real sex is the line that was crossed, and that is not acceptable, whatever the challenges of the original assessment.

I think that it is worth saying—as well as noting the broader context of this being one controversial award, as occasionally happens not just for us but across the UK and around the world—that there are others, who are not visibly speaking publicly, who have confidence in Creative Scotland and who see, understand, value and trust the work that we do. Nevertheless, I absolutely understand that we need to work hard to ensure that everybody, as far as they reasonably can, and while they may not agree with decisions that we make, has trust and confidence in the processes that we run and operate. Some of that is what has been damaged.

I am setting out today that we acknowledge, as we will continue to do, that there is learning in this situation. We need to ensure that we are confident about the processes that we run, addressing the majority of the work that we do, but that, where there are instances such as this that are likely to risk controversy or push boundaries in such a radical and explicit way, we have additional checks and balances that can deal with that.

It is really important that artists know and understand that they can come to us with boundary-pushing, challenging ideas. As Robert Wilson said, that is a core tenet of artistic freedom that is set out clearly by the UN and UNESCO and, whether people agree with the decisions or not, it is an important part of a progressive, democratic society. We are trying to get the balance right in all of this, in order to create the conditions for that while ensuring that it is managed appropriately and accounts in a transparent way for the public funding for which we are a channel.

As I mentioned earlier, artists are free to bring forward ideas that they want to pursue, but that does not necessarily mean that they will always be supported by public funding to pursue them.

Mark Ruskell: You mentioned that themes around sex and sexuality have always been part of art and culture. Given the controversy surrounding this individual project, do you see the potential for there to be a chilling effect? Might artists and creators be more reluctant to bring forward challenging and controversial projects as a result of the kind of furore and public discourse that we have seen in relation to this?

Iain Munro: For some that may be the case, but for others there will be a determination to ensure that artistic freedom continues. We will see both.

The danger is that this is a significant matter of public concern. I understand and would not disagree with that, but it is overshadowing all the other excellent work that is being supported and that the artistic and creative community across Scotland continues to deliver. Further, the chilling effect is not only about what comes through to us. I know from my international networks that this has also caught the attention of people around the world in a way that is not helpful to Scotland, given the strength of our culture and cultural renown globally. There is a disbelief that one such significant controversial award could risk undermining our strong cultural reputation abroad, as well as in domestic culture.

As I said, we are trying to get the balance right in all of this to make sure that we can move forward confidently. However, there are some people in certain quarters who do not want to speak up because they feel that they would be caught up in the culture wars debate that has become the toxic element that sits there as a result of this one award becoming so public.

Mark Ruskell: Obviously, it is difficult for you to manage that public discourse. If it turns into a culture war, it is very difficult for you to get through that. Nonetheless, do you see that there were perhaps key points, such as when the *Times* letter came out, when there was a need for clarity? Were there key points when Creative Scotland could or should have provided more information, or do you think that you did that but it was perhaps not heard because of an overwhelming culture war on social media around the topic?

Iain Munro: I am not clear about the exact *Times* letter that Mr Ruskell refers to. Nonetheless, in relation to the principle of what is being asked about, we were very quickly into a breach of contract and a legal process to withdraw the award and recover the funds. We had to operate with legal advice in a very particular way to manage that. That had a bearing on what we

were able to say publicly while we went through that legal process. It did conclude, however, and we then moved into the detail of the FOI release. As I said, we had to review and prepare for release 12,000 files, which took time. We have one trained specialist in the organisation who deals with FOI. That was the largest effort that we have had to deal with by way of volume, so it simply took a bit longer—necessarily—than we would have hoped.

I recognise that people may have wanted more information sooner, but the reality is that we were not in a position to be able to say anything, particularly because we were going through that legal process and our legal advice was very clear around our ability to say very much at that point.

Kevin Stewart (Aberdeen Central) (SNP): Good morning. You have said that the decisions that you take are at arm's length from Government and politicians. That is probably a very wise thing considering what we have seen in certain places in the past with politicians trying to be the censors, including in the United States at various points, particularly the likes of Jesse Helms.

You will now be under a huge amount more scrutiny after what is seen by many as a controversial application garnered public money. Mr Munro, you said that one controversial award does not mean that there is a systemic problem, but you might have a little bit of risk aversity now with regard to applications. How will you get over that? Maybe you can give us an indication of when last an application garnered as much controversy as this one.

Iain Munro: I cannot recall an instance of this, certainly in recent history. I have observed it elsewhere, beyond Scotland, but, for us, there has not been an instance of what we have been experiencing.

The business of risk that you have raised is very interesting. As we have noted, we are trying to get the balance right between supporting artistic freedoms that enable people to come forward with what are often boundary-pushing ideas and finding a channel that enables us to engage with that and decide whether it is something that we are prepared to fund. We have, in broad terms, an open risk appetite to creative and artistic risk, but what this situation has revealed is that, as Robert Wilson noted in his opening statement, where there are applications that have strong, explicit sexual content of the nature that we have just been talking about, or which involve vulnerable groups or children, we will have a more cautious risk appetite.

However, we are still prepared to fund what might be challenging, boundary-pushing pieces of work that might risk controversy. What we will be

doing is providing additional scrutiny in the process of assessment and approval. If an application is approved—we have already put in additional assurances—we will look to strengthen, through conditions, reporting or monitoring, the safeguards that will enable us to still potentially support controversial work but in a more managed way.

There is a risk that the process could spill over into being risk averse, but it is fundamentally important that, although we will be a bit more cautious, we will continue to have an appetite for these kinds of works—work that will challenge us and push the boundaries. It is a vital part of the health of a dynamic culture that we support many aspects of.

Kevin Stewart: Therefore, this is the first time that there has been this level of controversy because of a Creative Scotland award.

Iain Munro: Yes, it is the first time I can think of that we have had this kind of example.

Kevin Stewart: Mr Wilson, with regard to ensuring that artistic freedom continues to flourish but also recognising that public money is involved and that people have differing views about what money should be spent on, what does the board do in looking at the overall actions of the day-to-day work of Creative Scotland employees?

Robert Wilson: First of all, I appreciate the fact that a number of you understand the risk balance and the need to ensure that creativity is given as much of an opportunity to flourish as possible. However, as soon as the Rein situation became clear to us, which was in March—we had a board meeting in March—the decision was taken that the board needed to consider its risk appetite.

As I said in my opening statement, it was very clear that anything that had sexual content needed to raise a red flag at board level—not just that, but anything that involved vulnerable people or children. Therefore, if any proposal that comes forward to any level of the organisation includes anything in any of those three categories, a red flag must be raised and the matter must come straight up to board level. That has been implemented from March.

As I mentioned—Iain Munro also referred to this—every award now has a senior leadership team member assessing it at the final stages of the process. Therefore, double gateways have been brought in to increase scrutiny, following this situation.

10:00

Kevin Stewart: Mr Munro, you mentioned fair work as one of the principles that Creative Scotland follows. I know that I am going off on a

bit of a tangent here, convener. However, I have been trawling through the vast bulk of information that the committee has received, including all the FOIs, and there is an email about the advertisement, which says that it is being looked at by a member of the team in terms of meeting the minimum wage and being funded by CS. The minimum wage is not fair work in my book. Are we making sure that all the applications that you receive and fund are meeting the real living wage and fair work principles rather than the minimum wage, as that email indicates?

Iain Munro: That might be a language issue. I am not familiar with the detail of that, but we have an absolute commitment to fair work, our principles are comprehensively laid out on our website and that is translated into our applications. Therefore, I suspect that that is a language issue rather than any concern about the detail of the real living wage.

Kevin Stewart: Has it been clarified for the committee that applications that receive funding need to meet fair work principles?

Iain Munro: Yes, and we are reporting on that through the Scottish Government structures, so we can absolutely follow that up with you.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I want to say at the start that Dean Ronaldson retires today after more than two decades of working here as a security guard, and I think that it is important that we put in the *Official Report* our thanks to him for his service over the past couple of decades.

Members: Hear, hear.

Keith Brown: We rely very much on security staff in the Parliament, so I wanted to mention that.

We have heard talk of a toxic environment and culture wars. We have even heard quite a chilling assertion that the Scottish Government should be involved in setting up the guidance, which I am sure would make a chill run down the spine of many in the artistic community. On the point about there being a toxic environment and what has led to that, there is a bit of misinformation. A member of this committee has referred to you as an SNP quango. I know that this sounds a bit absurd, but can you just confirm that the SNP has no control over, contact with or reporting lines to Creative Scotland? That would be useful for the public record.

Iain Munro: That is correct. We are an apolitical organisation—a non-departmental public body that is at arm's length from Government. We are not an SNP body. We do, however, report to the Scottish Government and Scottish ministers—but your point is correct.

Keith Brown: You have said that the stoking of this controversy has led to—I forget your exact words—international awareness of the issue, which you said is not helpful to Scotland and its reputation throughout the world. I suggest that those who are responsible for the culture wars could not care less whether that is the case. There is a point to what they do in that regard; they are trying to undermine institutions such as yours.

However, you are partially funded by National Lottery funding. Just as the Scottish Government was not involved in this situation, I take it that the National Lottery was not involved, has not expressed concerns and is not in any way involved in this. Is that right?

Iain Munro: That is correct.

Keith Brown: In the detail that you sent to the committee, I noticed that there was to be a performance in Camden in London, as part of the proposal. Has any of the correspondence that you have received or the concerns that have been expressed to you come from outwith Scotland—from London, for example, or elsewhere?

Iain Munro: Yes. Particularly in the online environment, the public discourse goes beyond domestic borders, as it were. There is commentary and critique that goes beyond Scotland, yes.

Keith Brown: Those are all the questions that I have, convener.

The Convener: Are there any further questions?

Mark Ruskell: Are there lessons for politicians and the media about how issues such as this award are discussed? I am thinking of the facts behind such controversies and the impact that such situations have, particularly on artists and marginalised communities, in a febrile, judgmental environment.

Iain Munro: That is a helpful question. Facts and evidence always need to be at the heart of public discourse.

As I am sure is now more evident, we have found that controversial awards occasionally happen. We have talked about trying to find the balance in artistic freedom versus processes that enable appropriate support using public funds. However, when such situations blow up in an urgent way, we keep a cool, calm head with appropriate legal and other specialist expertise to manage them on behalf of the business of Creative Scotland.

We can only put out so much of our own messaging. It does not necessarily mean that that has any impact on reporting or the public discourse to the extent that we would want it to. The only thing that we can control is our own

voice. To an extent, many people have jumped on the controversy surrounding the award in relation to the nature of the project's content as well as the processes and probity of Creative Scotland.

I counsel any politician or political party who thinks that they can or should seek to control and censor the work of artists and the arts community that, as recognised by the UN and UNESCO, it is a vital component of progressive, dynamic, democratic cultures. Therefore, always coming back to facts and evidence, I am trying to assure the committee and use this as a vehicle to speak to the wider interested parties on the matter.

I am not saying that anybody else anywhere, including the recipient artist, has misled anyone. I do not believe that to be the case, as I have been asked. However, it is important that the facts come out, which they always need to do. Unfortunately, they often get overwhelmed by speculation, supposition and inference. Opportunities such as this are important for us to set the public record straight and for all of us to learn what it means when controversial awards happen. They will occasionally happen—not willingly, but you can never tell what people will land on.

You raise an important question. The public discourse needs to be more intelligently informed by facts and evidence. We need to work hard to ensure that, in the work that we do, we can feed that as urgently, quickly and appropriately as we can. Transparency and accountability are a big part of what we do.

The Convener: I have a final question for Mr Munro—I am sorry, Mr Wilson.

Mr Munro, you mentioned earlier the high standard of Leonie Rae Gasson's credentials as an artist. You used the term "contested"—you said that the legal action was not contested. I ask you to clarify whether your understanding is that there is a fundamental disagreement between the artist and you about how the initial application was interpreted. Although it is not legally contested, the artist remains concerned about the interpretation and has a fundamental disagreement with you on it. Is that correct?

Iain Munro: Yes.

The Convener: At the start, I asked whether the processes had been robust, fair and diligent. You explained how you have changed the processes. Has that been fair on the artist? Do you appreciate that there has also been reputational damage as a result of the controversy around the application and the way in which it has been handled?

Iain Munro: As a public discourse, it has been very concerning for the artist. That is why we have always sought to operate with sensitivity and care around the artist and the artist team, who have

been the subject of unfair, vitriolic attacks online and even door-stepping. That is not acceptable, and we are all agreed on that, as you said.

We have not wanted to act in any way that was undermining of the artist, but there is no question that withdrawing the award has a bearing on the artist. We are disappointed that this is the situation in which we find ourselves, but, as a public body handling public funding, we need to be mindful of how that is accounted for. In this context, there was a breach of contract, and we have acted accordingly.

However, all the way through the matter, behind the scenes, we have sought to continue our contact with the artist and ensure that we do not operate in the public domain in a way that would do anything to add to the challenges that the artist and her individual team members are experiencing. We will continue to do that, and we will see how the situation moves on. She is a quality artist and the project team behind her is of quality too. I am sure that they will have ambitions and ideas that they will want to pursue. As and when that happens, we will continue to engage with them appropriately to understand how we might or might not be able to support that ambition.

The Convener: That concludes questions from the committee. I thank Mr Munro and Mr Wilson for attending.

We now move into private.

10:11

Meeting continued in private until 10:43.

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

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