

MEETING OF THE COMMISSION

Wednesday 17 September 2008

Session 3

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SCOTTISH COMMISSION FOR PUBLIC AUDIT

† 4th Meeting 2008, Session 3

CONVENER

*Angela Constance (Livingston) (SNP)

COMMISSION MEMBERS

*Robert Brown (Glasgow) (LD)

*Derek Brownlee (South of Scotland) (Con)

*George Foulkes (Lothians) (Lab)

*Hugh Henry (Paisley South) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Paul Grice (Scottish Parliament Clerk and Chief Executive)

Tom McCabe (Scottish Parliamentary Corporate Body)

SECRETARY TO THE COMMISSION

Mark Brough

LOCATION

Committee Room 3

† 3rd Meeting 2008, Session 3—held in private.

Scottish Parliament

Meeting of the Commission

Wednesday 17 September 2008

[THE CONVENER *opened the meeting at 11:00*]

Decision on Taking Business in Private

The Convener (Angela Constance): Good morning, colleagues. As it is just past 11 o'clock and, as ever, time is of the essence, we will proceed, if everyone is seated and comfortable. I have received no apologies, other than from Hugh Henry who, unfortunately, has been caught in traffic; we still expect him to attend, once he has fought his way through the traffic.

The first item on the agenda is to decide whether to take in private our discussion of and reflection on this morning's evidence on the corporate governance of Audit Scotland, and whether to discuss such matters in private at future meetings. Do members agree to do that?

Members *indicated agreement.*

Audit Scotland (Corporate Governance)

11:01

The Convener: It now falls on me to welcome our guests. Tom McCabe MSP is a member of the Scottish Parliamentary Corporate Body and Mr Paul Grice is the clerk and chief executive of the Scottish Parliament. Good morning and thank you for your time; it is much appreciated.

Over the past two or three months, the Scottish Commission for Public Audit has decided to undertake a review of public audit in Scotland. That decision was prompted largely by a helpful paper from Professor Baillie. Consequently, we have cast our eye over what is happening elsewhere in the United Kingdom, where we have examined the present arrangements and the changes that will be made in response to the Tiner review. As it is now eight years since the setting up of the new Parliament, it was felt that it would be appropriate to take stock and to reflect on how well the existing arrangements have worked and on whether there was scope for improvement.

The commission has entered into a dialogue with Mr John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, on the introduction of the public services reform bill at the beginning of next year. After we have taken evidence from all interested parties and stakeholders, we hope to be in a position to make some recommendations to him.

Without further ado, I ask Mr McCabe whether he would like to make an opening statement.

Tom McCabe (Scottish Parliamentary Corporate Body): Yes, I would. Thank you very much, and good morning, everyone.

I begin by stressing just how much the Scottish Parliamentary Corporate Body appreciates the opportunity to have an input into the commission's inquiry. As the convener said, the inquiry is particularly timeous, given that the commission's recommendations could be incorporated into the public services reform bill. Opportunities to consider the issues that the inquiry raises and, indeed, opportunities to consider office-holder issues do not come along very often.

As part of its inquiry, the SCPA has kindly agreed to consider some issues that are within the SPCB's remit. I am pleased to say that the SPCB has had a detailed discussion on a number of aspects of the commission's inquiry, and the views that I will express reflect the conclusions of that discussion.

One issue that the commission is considering is the length of the term of office of the Auditor General for Scotland. Members will be aware that under the legislation that established that office, the postholder could remain in office until he or she retired at the age of 65. However, with the advent of age discrimination legislation, that restriction has been removed, which, in effect, means that the postholder can remain in office indefinitely. The SPCB does not think that that is sustainable, but we are aware that the present situation is not of the current Auditor General's making.

We have seen the Tiner report on the governance arrangements for the Comptroller and Auditor General in England and are aware of the recommendation that there should be a single term of 10 years. The SPCB considers that period to be too long; we propose that in Scotland there should be a single term of office of around five or six years.

I will now deal with the possibility of a remuneration committee to consider the Auditor General's salary. Obviously, we do not disagree that it is part of good governance to have a mechanism for reviewing the salary. However, we are not convinced, in this instance, that a remuneration committee is necessarily the way forward. Parliament has conferred consideration of the terms of appointment for this post on the SPCB, and we do not agree that there is a need for another formal committee. We are fortunate that we have our own audit advisory board, which is made up of independent members from whom we can seek advice, should we require it.

Although those issues are directly related to the SPCB, I also understand that the commission is looking at the governance arrangements of Audit Scotland. It is fair to say that the SPCB does not consider the existing arrangements to be sustainable. Under the existing arrangements, the Auditor General sits on the board of Audit Scotland at the same time as being the accountable officer for Audit Scotland, while also having the ability to influence who the board members should be. Audit Scotland has responsibility for commenting on the governance arrangements of other public bodies, and we feel that it would be extremely unlikely that it would ever sanction the same arrangements for other bodies.

As members are aware, we live in a time when public confidence in public bodies is not always at its highest and when the demands of openness and transparency are ever increasing. We feel that a more transparent process would be for a committee of the Parliament to appoint the board of Audit Scotland using the procedures that are laid down in the standing orders, by way of a

selection panel that follows the public appointments procedures.

Although the Auditor General could possibly sit on the board, our preference would be for him to take on more of a chief executive/accountable officer role. Having the Auditor General as a member of a board to which he can give statutory direction and as an accountable officer for that body does not promote a healthy perception of that position.

Of course, I appreciate that the latter points are predominantly for the commission to take a view on. I am happy to answer any questions that members have.

The Convener: I invite Derek Brownlee to ask the first question.

Derek Brownlee (South of Scotland) (Con): On length of tenure, the report from the board of Audit Scotland endorsed the recommendation of the Public Accounts Commission in England that a single 10-year appointment was appropriate for the Comptroller and Auditor General there. Clearly, you are indicating that the SPCB believes that a five or six-year term is more appropriate. That is quite a significant difference. What led the SPCB to take such a different view?

Tom McCabe: We recognised that, south of the border, there is a maximum parliamentary session of five years, and that two sessions are 10 years. Obviously, the parliamentary session is four years in Scotland. A term of office that crosses over a parliamentary session leaves a period of time in which the office-holder can become aware of and involved in the requirements of the office and make an impact without—to be blunt—being around for longer than might be healthy. Our view was that there are some positions in the public sector in relation to which it is good for someone to have experience and to have been in that post for a reasonable length of time but, after a certain amount of time, it is healthy to have a fresh set of eyes. In the context of our situation in Scotland, where we have parliamentary sessions of four years, we thought that a five to six-year term was appropriate for the Auditor General.

Derek Brownlee: I understand that point, but the corollary is that it is necessary for someone who takes up a post of such authority to know their way around the public sector landscape. What consideration did you give to the length of time that it would take a new postholder to get up to speed with the requirements of the job?

Tom McCabe: That is an important point, but it is unlikely that someone would inherit the post if they did not have a grounded knowledge of the public sector. I do not want to pre-empt any selection processes that will take place, but I would expect that only extremely experienced

people would be selected for the post. It is inconceivable that it would be otherwise.

We can look at similar examples. After five years, the Scottish Information Commissioner has been able to make quite an impact and has, in many ways, changed the culture of the way in which we do business in the public sector, which demonstrates that an individual can make a significant impact in such a timescale. That example also indicates that there does not need to be an exceptionally long lead-in period before someone has enough of a feel for the job to start making a difference and ensuring that the things that they have been charged with doing are being done appropriately.

Derek Brownlee: As you said, the current position is that, in theory, an appointment could be of indefinite length. If we move to a situation in which the length of the term in office is four or five years and someone in their 40s is appointed—which is not inconceivable, as someone of that age could quite reasonably be expected to have gathered the necessary experience—that person will have a career after they leave the post. That raises issues around restrictions that might be placed on what a postholder would be able to do afterwards. Some fairly restrictive recommendations were made by the Public Accounts Commission in Westminster on what a former Comptroller and Auditor General could do. What consideration has the SPCB given to appropriate restrictions for an ex-Auditor General with regard to the roles that they could take on in the public or private sectors?

Tom McCabe: I do not want to be unduly critical of the conclusions of the Public Accounts Commission south of the border, as it has its own reasons for coming to its conclusions. That said, our view was that its recommendation on this matter was rather draconian.

There is always a price to pay for entering the public sector. Whether you do so as a professional or as a politician, there is always a consequence of that decision, and reintegrating into the main stream of employment after being involved in the public sector can have its difficulties.

We reflected on the experience of a Government minister, who has a two-year period after leaving office during which it is advisable that they refer to a particular committee in the Cabinet Office to ensure that any appointment that they take is appropriate. That two-year period seems not unreasonable, and if it is not unreasonable for a former minister of the Crown, it is logical that it would not be unreasonable for a former Auditor General.

Derek Brownlee: I entirely accept why you viewed the recommendation of the Public

Accounts Commission as being draconian, but I make the point that, although the situation with regard to a minister is clear, the situation that we are discussing is slightly different. What would be the appropriate scrutiny body to decide whether a post that was taken by a former Auditor General was one that might raise broader issues? Who would be responsible for making that judgment and, more important, setting the criteria on which such judgments would be based?

Tom McCabe: It might be slightly beyond our remit to suggest who should be responsible. I have given the example of a former minister, who has to refer to a committee in the Cabinet Office—I cannot recall its exact name. I suppose that, in Scotland, reference might be made to the permanent secretary, but there could be other permutations.

In our discussion, we saw some merit in the criteria that have been set down south. For example, if the appointment was to a body that the former Auditor General had audited, you can see why there might be a conflict of interest. Setting criteria around such a guideline might be the most appropriate step.

Derek Brownlee: Did you consider whether a renewable appointment would be appropriate for the role?

11:15

Tom McCabe: The reappointment process has worked for a number of other posts, but I would be going too far if I said that we thought that it had a great deal of merit. This might be slightly unfair, but there is a feeling that, quite often, we go through the motions, rather than making a serious, rigorous, reappointment. We live in an extremely litigious society and I think that people always have one eye on what the consequences would be if we did not reappoint. Our experience to date is that, in the reappointment process, we are, to a significant degree, going through the motions.

Derek Brownlee: Another issue that relates to the perceived independence of the Auditor General is the circumstances in which they can be removed from post during their term of office, however long that might be. Did the corporate body consider whether a change to the current rules would be appropriate?

Paul Grice (Scottish Parliament Clerk and Chief Executive): No. I am going by past discussions as opposed to discussions that relate to this specific instance, but, previously, the corporate body has had no concerns about the role of Parliament. The current rules are a pretty tough hurdle and removal from office is something that only the Parliament could do. I am slightly deferential in Robert Brown's company, given that

he is a former member of the corporate body, but when we looked at reappointments in the past it was always felt that it was right and appropriate that the final power to remove the Auditor General should rest with Parliament as a whole, and that it should not rest anywhere else. However, that specific issue was not discussed ahead of this evidence session.

Derek Brownlee: Where there is no fixed-term appointment, or where there is a very long fixed-term appointment, it is much more obvious why there should be a specific power of removal. In a term of four to five years, its place is perhaps less obvious—although I am not saying that it should not be there. I hope that I am not putting words in your mouth, but it sounds as if you are saying that, from the corporate body's perspective, there is no perceived need to change the current two thirds rule that is set out in statute.

Paul Grice: Again, I am going by previous discussions. In the past, the corporate body has recognised that it is enormously important to have that backstop. George Foulkes has a better knowledge of Westminster than I have, but as far as I am aware it is a very rare occurrence, across the whole Commonwealth, for a Parliament to remove someone from office. It is precedented—it has happened on a couple of occasions, as far as I know—but the power is little used. However, it is one of those backstop powers that a Parliament should always retain—perhaps I am speaking more as the clerk now. It is perhaps less to do with length of tenure; it is really just there as a backstop in case an individual, in unusual circumstances, loses their way significantly. It is less to do with the time that someone is in office and more to do with Parliament retaining ultimate authority in the situations such as the one that I described. I am pretty confident that the corporate body would not recommend any change to the current provisions.

Derek Brownlee: I want to be careful about how I phrase this question, because I do not want to ask you an inappropriate question about the current Auditor General. Would it be your intention, or would it be best practice, to apply any changes that were made to future appointments, rather than to the current appointment? I do not want to tread on any individual issues, so I appreciate that it might be difficult to answer that.

Tom McCabe: I suppose that we could best answer that by saying that we are taking an objective view. The opinions that we have expressed here are as objective as possible and are not focused on the current incumbent.

Derek Brownlee: You talked about the consideration that you have given to establishing a remuneration committee, which I am sure that we will discuss later. Another fundamental issue is

how the right person is selected. This role is quite different from any other role that falls within the SPCB's remit. What role-specific consideration has been given to what an appropriate recruitment process would look like?

Tom McCabe: I have to say that we did not go into such detail in our discussions.

Paul Grice: The appointment process has obviously happened only once. Although the corporate body is responsible for the terms and conditions of the post, that appointment process involved an appointment panel, chaired by the Presiding Officer, with the convener of the Audit Committee and a number of other members also sitting on the panel. I was effectively secretary to that selection panel. I thought that it was a satisfactory appointment. For the reasons that Derek Brownlee outlined, I continue to believe that that is an appropriate method for recruiting to such a unique post. The process is done at almost the highest level in the Parliament, given that the Presiding Officer and senior members of Parliament form the selection panel.

Obviously, the appointment was made a few years ago but from memory the post attracted an extremely high-calibre and large field of candidates from whom the panel could choose. I do not think that the corporate body has ever expressed a view that the process was unsatisfactory and I imagine that it would be content for the recruitment process to continue to be conducted under the Parliament's appointment procedures.

Derek Brownlee: An issue is whether that should be formalised as the procedure that is to be followed or whether there is a presumption that, if the situation arises, the Parliament will follow the same procedure. Is there a feeling that, because that process worked, it should be formalised in any new arrangements that are put in place?

Paul Grice: I am afraid that the corporate body has not touched on that specifically, from which I take it that it would be content for that procedure to be followed. It leaves the Presiding Officer with a little bit of discretion to pull together a suitable appointment panel. That seems appropriate, given the importance of the post.

Derek Brownlee: Other than corporate body members, who was consulted? The corporate body has had to form a view on a wide range of matters. Was the discussion internal to the corporate body, or was there external input?

Tom McCabe: There have been exchanges in the past with our audit advisory board about Audit Scotland in general. On occasion, the advisory board has expressed a view about Audit Scotland's remit and whether it is staying within that remit. An on-going—and, at times, fairly frank—advisory capacity is there for us.

Paul Grice: The independent members of the audit advisory board are all past presidents of the Institute of Chartered Accountants of Scotland. They are people of enormous experience and calibre and they have been influential in encouraging the corporate body to think through these issues.

I will correct or update a point that I made. One of my colleagues has advised me that in fact the appointment procedure for the Auditor General is provided for specifically in the standing orders. That is why the convener of the Audit Committee is required to be on the panel. From memory, the standing orders set out one or two people who must be on the panel and then there is a range of other members. We could probably let the secretary have a note giving you a specific reference, if you would find that helpful.

The Convener: Before I turn to Robert Brown, I will update Hugh Henry, who has just arrived. Mr McCabe has made an opening statement and up until now questions have focused on the appointment of the Auditor General for Scotland. The corporate body is of the view that the length of tenure of the Auditor General should be five to six years and that the appointment should not be renewable. If I am summarising the evidence correctly, the corporate body seems content with the current appointment process, which has been used only once in the lifetime of the Parliament. I hope that that gives Mr Henry a flavour of the conversation so far.

Robert Brown (Glasgow) (LD): I want to pursue the issue of the length of appointment. I agree with a great deal of what Tom McCabe said about the general structure but, instinctively, a period of four to five years does not seem quite right. I want to ask about the connections that the corporate body has made with the length of the parliamentary session. To me, a real connection with the length of the parliamentary session is not obvious. The Auditor General and the associated structures around him are charged with certain duties. As we have discussed, it takes a while to get into the role, to gain standing and to get a feel for reports. Not too far into the job, the person would be forced to move on without having anything further to go to. Did you consider a period of eight years, which would go across two parliamentary sessions? That might give the Auditor General greater standing and enable them—as it has enabled the present Auditor General—to gain a certain reputation.

Tom McCabe: We suggested a term of five or six years, which is a bit longer than you indicated. The discussion focused on the fact that such a term would cover one and a half parliamentary sessions. At the end of the day, Parliament would make the appointment. The chief executive has

referred to the backstop power that Parliament has to remove an appointee. We hope that that would never be brought into play, but if it were, the decision would be made by experienced parliamentarians, well into a parliamentary session. The people who would consider the issue would be well versed in parliamentary processes, as they would have at least two years of parliamentary experience. If we set a term of eight years, there might be some difficulty in implementing the procedure—unless it could be organised to fall mid-session—because the Parliament would have less experience of such appointments. I accept that to some degree the suggestion of five to six years is subjective, but the initial proposal of 10 years seemed excessive.

Robert Brown: I accept that. You seemed to focus on the appointment process, which is important at certain points along the line, but the main issue is the man or woman who does the job. Setting a statutory fixed term of two parliamentary sessions would give the post more permanence. A term of five or six years—I accept the correction that you offered—seems a bit short for the position of Auditor General, although perhaps not for commissioner posts.

Tom McCabe: We accept that your view has legitimacy. I re-emphasise that it seems inconceivable to me that any person who was appointed to the post would not have extensive knowledge of all aspects of the public sector; that is what would qualify them for the post in the first place. Given the breadth of experience that they would need in order to take on the post in the first place, the time that it would take them to get up to speed would be minimal or non-existent. The incumbent is a former local authority chief executive. That is the kind of experience that people bring to the post.

George Foulkes (Lothians) (Lab): I want briefly to explore the same area. Is your recommendation of a term of five to six years based on the SPCB's experience of appointing commissioners?

Tom McCabe: We need to be careful when answering that question, because if we do so in the wrong way we may give the impression that there is a degree of unhappiness with existing commissioners. Paul Grice will deal with the issue, as it requires a diplomatic approach.

Paul Grice: I will try. I reiterate a point that Mr McCabe made earlier. Robert Brown is right to say that the important issue is a person's ability to do the job, but that needs to be balanced against the need for a degree of planned turnover. The corporate body accepts fully that it is for the commission to make a judgment call on the issue, after it has listened to all the evidence. When the Scottish Information Commissioner was appointed, he had to start from scratch and to

build an organisation. The Auditor General's successor will inherit what the SCPA knows to be a well-functioning, well-established organisation, as the current Auditor General has done the hard work of building it.

The information commissioner and the Scottish Public Services Ombudsman have managed to establish organisations, get up to speed and have an impact during a term of five or six years. That reassured the corporate body that such a term was possible. I accept fully that there is a judgment call to be made, but the corporate body genuinely thought that five or six years was enough time to allow a person of the sort that Mr McCabe has described, inheriting an established organisation, to make a significant impact.

George Foulkes: Can you remind me what the term is for the commissioners?

11:30

Paul Grice: The terms vary, I am afraid, and you should bear it in mind that all the commissioners have a reappointment process. The period is usually about four years, with the ability to reappoint to a maximum of that again. There are slightly different provisions for each commissioner—which is a separate issue—but that is broadly the situation.

George Foulkes: Has that coloured your thinking in making your recommendations? The Auditor General's job is much bigger than those of the commissioners—with no disrespect to the commissioners. He is in charge of a much bigger organisation, and he has much a more detailed and complicated job in auditing many public bodies as well as the Government itself. Have you thought about the problem of recruiting the right person for the job? For example, would you get someone for a five-year term?

Tom McCabe: The consensus was that we would. The feeling is that there would be no shortage of applicants for the job. As in any situation, we would obviously have to decide whether the applicants were worthy of the post, but it seemed to us that there would be quite a strong expression of interest.

I return to a point that I made earlier. This may sound blunt, but there is a feeling that the reappointment process is, in large measure, a question of going through the motions. To be blunt, it sometimes is difficult not to reappoint. As much as professional processes are applied, the reality is that it would be rare for reappointment not to occur, which dilutes people's confidence in a process that necessarily involves a reappointment. The preference is therefore for a set term.

George Foulkes: The Auditor General's reports sometimes infuriate ministers and senior civil servants because, rightly, he and his staff investigate things, find mistakes that have been made and bring them to the attention of the Audit Committee. That can cause trouble, as Hugh Henry knows only too well—as convener of the Audit Committee, I mean, not as a minister. [*Laughter.*] Oh dear, I hope that nobody is in trouble.

The Auditor General needs to be strong and secure in his position and not intimidated by ministers and senior civil servants. That is why I wonder whether a longer fixed-term, non-renewable appointment of perhaps eight years would be better. In other words, he or she would know that they were in the job for a fixed period and could do their job. They would know that there was no question of reappointment, so they would be above suspicion and could not be intimidated by ministers or senior civil servants.

Tom McCabe: I have already accepted that there is legitimacy in the proposal for an eight-year appointment, just as much as there is legitimacy in our view that the appointment should last for five to six years. To a degree, those are subjective matters. Whatever the length of the term, however, we would prefer the appointment to last for a set period rather than the postholder being eligible for reappointment.

The Convener: There is currently no retirement age for the Auditor General for Scotland—the previous provision was removed. Did the SPCB give any consideration to the need for a retirement age if there is going to be a fixed term of office?

Tom McCabe: I simply do not think that we have the powers to circumvent age discrimination legislation. We would not enter that territory.

The Convener: I am aware from your contribution that you have discussed matters with your colleagues in the corporate body and that you have reflected on what happens elsewhere in the UK and in other organisations. Have you undertaken any consultation or specific research to help form your views? What evidence has led you to your conclusions?

Tom McCabe: My view has been formed not only through my experience of the SPCB's dealings with other office-holders, commissioners and—as I said earlier—the re-appointment process, but as a result of some of the opinions that have been expressed by our audit advisory board, which has felt that Audit Scotland has, in some cases, moved slightly outside its remit. Such matters can cloud one's thinking.

The Convener: George Foulkes has some questions on the Auditor General's salary and conditions of service.

George Foulkes: Are changes necessary to the process of deciding the Auditor General's salary and conditions of service, particularly with regard to potential conflicts of interest or areas of corporate governance?

Tom McCabe: We do not see a strong case for making any major changes to the Auditor General's links with senior civil service. As I said earlier, we feel that establishing a remuneration committee would be a somewhat heavy-handed approach. Although there is often a good case in governance terms for establishing such committees, the SPCB is a bit unique in having an audit advisory board that has real depth of experience. Because the board is such a good source of advice, we feel no need to establish yet another committee.

Paul Grice: In 2004, the SPCB commissioned the Review Body on Senior Salaries to review commissioners' salaries, including the salary of the Auditor General. At that time, the SSRB recommended no change. The corporate body has periodically taken external expert advice and, as Mr McCabe has said, has since then broadly increased the salary in line with senior civil service pay scales. Of course, that is not as easy as it once was, given that in recent years the civil service has moved much more to a system of performance-related pay. However, the fact is that we have in the past taken external advice, and salaries since then have stuck to an indexation increase. As Mr McCabe has pointed out, the corporate body believed the system to be appropriate and felt that there was no compelling reason to change it.

George Foulkes: Did either you or the SSRB carry out any research or consult on whether the salary level was appropriate or, indeed, whether it was appropriate to benchmark the salary with civil service pay scales?

Paul Grice: It happened four years ago, so I am afraid that my memory is not that sharp on all the details. My recollection is that benchmarking was carried out.

George Foulkes: I simply wonder whether the civil service pay structure was the right one with which to link the salaries. Would a commercial pay structure have been more appropriate?

Paul Grice: The link to the civil service is more to do with indexation than with structure. That is obviously quite a different issue.

George Foulkes: Yes.

Paul Grice: As I said, the corporate body rested on the advice of the SSRB, which has a pretty strong track record in recommending public sector salaries. At the time, the corporate body—of which, as I recall, Mr Brown might have been a

member—felt that that approach was reasonable. There was no reason to gainsay the SSRB's advice. However, that was four years ago and there might be a case for the corporate body to review the salary again at some point. As Mr McCabe said, with our independent experts on the audit advisory board, the SPCB now has substantial experience—brought, I should add, mostly from the commercial sector—that was not so well established in 2004. Although those experts, who have worked or still work predominantly in the private sector, have not been asked to carry out this work, I am sure that they could provide an independent perspective on the issue, if the SPCB so wished.

Tom McCabe: Some people might prefer to benchmark the Auditor General's salary against the pay of chief executives in the public sector bodies that the Auditor General is responsible for overseeing—although it is safe to say that that would mean an increase. I do not think that, when the councils were reorganised, the salaries of local authority chief executives were established with reference to the SSRB. Indeed, I think it might have been more a case of sticking a pin in a bit of paper. The point is that those salaries are not low. There are different ways of looking at this issue—some people might feel that the Auditor General's salary should reflect more the salaries of people who head up a range of the public bodies that Audit Scotland oversees. As I said, however, we might have our differences over such an approach.

George Foulkes: The only time the SSRB's recommendations get ignored seems to be when they concern MPs and MSPs.

Tom McCabe: Perhaps I should not comment on that.

The Convener: No.

George Foulkes: Thank you, chairman—sorry, chairperson.

The Convener: I do not mind.

I invite Robert Brown to ask some questions in relation to Audit Scotland's board. That seems to be the logical direction in which to pursue our questioning just now.

Robert Brown: Mr McCabe, in your opening statement, you touched on the general issue of governance. Some of us share the view that the current structure of the two bodies is rather odd, to say the least. This may go beyond your remit, but have you had any thoughts about the slightly curious way in which Audit Scotland and the Accounts Commission are set up in Scotland? In Wales, the functions are carried out by a single body that is accountable to the Welsh Assembly. Do you have any thoughts about that, or does that go beyond your remit?

Tom McCabe: The audit advisory board has made some positive comments in the past about that separation of responsibilities, although comment has also been made about the governance arrangements. As I said earlier, the perception that they create is perhaps not as healthy as it could be. The benchmark is whether the Audit Scotland board would recommend similar governance arrangements for the bodies that it oversees. As I said, I think it is unlikely.

The two bodies were set up when the Parliament was new. The great thing about this inquiry—which I hope will be repeated in the future—is that it gives us a chance to reflect in the light of experience on decisions that were made at the beginning of the Parliament, to see whether their outcomes are still fit for purpose. The light of experience would probably lead us in a slightly different direction with regard to the board of Audit Scotland.

Robert Brown: Would I be putting words in your mouth if I said that standards of good governance, in terms of the separation of the executive offices from the accountability arrangements, and clarity concerning the way in which the structure is set up, might be reasonable principles to adopt?

Tom McCabe: Yes—that would absolutely be the approach that we would take. There are many things about public administration that are difficult for the public to understand. However, the separate roles of Audit Scotland and the Accounts Commission are, frankly, a bit of a minefield for people.

Robert Brown: I am trying to get at whether there needs to be such a separation. I hear what you say about the advice that you have received from your advisers about that. However, from the outside, it appears that Audit Scotland and the Accounts Commission are performing similar functions for similar bodies, but with a structure that is divided in a way that is not terribly helpful.

Tom McCabe: I take your point. At first view, the arrangements do not necessarily explain themselves to people. The chief executive might want to comment on that.

Paul Grice: I am casting my mind back to something called the financial issues advisory group, which recommended the separation. It had its reasons at the time, and the corporate body would probably regard it as being well outside its remit to make a firm recommendation on the matter. Nevertheless, I reiterate what Tom McCabe has said: although there were good reasons for setting the structure up as it was set up—I remember the discussions well—10 years on, the question must be asked whether there is a case for it going forward.

The same applies to the board of Audit Scotland, which was set up in good faith for good

reasons and has worked reasonably well. However, the corporate body feels more confident and that it is closer to its remit for it to recommend to the SCPA that there is a better way of constituting the board, which Mr McCabe has referred to in terms of appointments being made through Parliament. Our comment on the structure of the organisations is probably more an observation for the SCPA to reflect on. However, the corporate body felt more strongly and was looking to persuade the SCPA that there is perhaps a clearer and more obvious way of constituting the board of Audit Scotland, to which Mr McCabe has referred.

Robert Brown: I suspect that you are knocking on an open door in that regard. I would like to know your thoughts on the size and composition of the board and on the question whether board members should have specified roles. Have you given any consideration to that sort of detail?

Tom McCabe: With regard to the size of the board, about five or six members would be appropriate. Paul Grice might want to comment on the remit of the board.

Robert Brown: Five or six are obviously the magic numbers for the corporate body.

Paul Grice: I can assure you that the number is arrived at each time after a separate process of consideration.

The corporate body limited itself to the key point, which was the separation of executive and non-executive functions. It felt quite strongly about that. The issue that it felt most strongly about was the method of appointment. Beyond that, it did not discuss the individual roles within the board.

11:45

Robert Brown: The SCPA is part of the governance structure. Does the corporate body have any views about its role and, in particular, about its role in the selection or approval of the non-executive members of the board of Audit Scotland?

Tom McCabe: We did not go into great detail on that—

Paul Grice:—aside from noting what a good job the SCPA has done over the years. The corporate body, in recommending that it should be parliamentarians, properly constituted, who make the appointment, was not ruling out the SCPA taking on that role, but it did not want to be prescriptive on that front. The SCPA may have a view. However, it is entirely possible that an ad hoc committee of members could be established for the purpose. My reading of the corporate body is that it would be content with either approach, subject to the SCPA's views on the matter.

George Foulkes: Would it not be simpler for a committee of Parliament, such as the Audit Committee, to have that responsibility? The Audit Committee is responsible directly to Parliament and deals with public audit, and the Auditor General reports to that committee.

Tom McCabe: That is a point of view. As I said earlier, there is legitimacy in the suggestion, but we would be in danger of stepping outside the SPCB's remit to suggest that Parliament take on that role. That is a decision for Parliament.

Robert Brown: We have discussed the appointment of the Auditor General in some detail. Would you agree that it would give a degree of independence for the appointment to be made through the corporate body arrangements that you have described, rather than through, for example, a committee of the Parliament, which would then be dealing directly with the Auditor General?

Tom McCabe: Yes—that is possible.

Robert Brown: I have a broader question. You touched earlier on the different ways in which the various commissioners and ombudspersons had been set up and the fact that they have individual founding statutes. The corporate body has discussed that issue over the years, including when I was a member. If, in going forward with the public services reform bill, we deal with the issue of the Auditor General, should we also consider the linkages, similarities and differences in respect of the other commissioners, and try to put in place a more standardised arrangement for such matters, or is that an issue that we should come back to later?

Tom McCabe: The corporate body is strongly of the view that there would be great benefit in a more standardised approach. Experience tells us that, too—for example, the experience of the Scottish Commission for Human Rights. In the bill to establish that commission, certain powers were given on office accommodation, staff and so on. That was very useful. Anything that rationalises the terms of appointment and introduces an obligation to consider sharing services and minimising cost would be greatly beneficial. The existing arrangements are a product of one-off considerations of each issue. They were also a product of a young Parliament, which was anxious to achieve things. However, the Parliament is now very healthy and is taking the opportunity to reflect not only on what it has to do in the future but on what it has done in the past, and how it could have done it better. That will add credit to what we do.

Robert Brown: Is the corporate body doing any live work on that matter that is relevant to our considerations in the relatively short timescale that we have to feed into the public services reform bill,

or will that, however desirable, have to wait for another opportunity further down the line?

Tom McCabe: Perhaps not. Discussions have taken place, although they are not public yet. The Government is considering the public services reform bill and the corporate body is considering opportunities for a different approach.

Given that matters are delicate and that the current arrangements—whether good or bad—reflect Parliament's will, no one wants to be seen to be unduly stepping over a line and interfering with the system. It is fair to say that the approach will have to emerge from much more consensual consideration by the whole Parliament, rather than by one part of it.

Paul Grice: The issue is live and parallel developments will occur. The issue is as active as it was when Robert Brown was a member of the corporate body.

Robert Brown: It sounds as if, in practice, we should put to one side consideration of the merits and demerits of such a proposal, because of the timescales for the public services reform bill.

Tom McCabe: Perhaps. Whether the idea should be set aside or whether other possibilities exist might become clearer in the next few weeks.

Robert Brown: Does the corporate body have a view on the justification or otherwise for the differences not so much between commissioners, which are not our immediate concern, as between the conditions of appointment, remuneration arrangements and office set-up for commissioners in general and those for the Auditor General?

Tom McCabe: In general, we do not think that such differences exist. The consensus on the corporate body is that there is a strong case for a consistent and rationalised approach.

The Convener: In undertaking its review, the commission wants not just to consider other bodies, but—in all fairness—to invite views on its role. Do you have overarching views on the strengths and weaknesses of the split responsibilities between the corporate body and the SCPA on Audit Scotland and the Auditor General? Does that arrangement work well or could it be improved?

Tom McCabe: The corporate body has not discussed that in a tremendous amount of detail, other than to say that the SCPA does a great job. The chief executive might wish to add comments from his experience of previous corporate bodies or his general experience.

Paul Grice: The SCPA's processes have evolved recently. The corporate body's observation is that the arrangement has always worked well. Good links exist; for instance, Parliament staff support both the SCPA and the corporate body.

The corporate body has not discussed the subject recently but, over the years, it has never jealously guarded its duties—it has been given several duties and has always sought to discharge them to the best of its ability. In my experience, the corporate body has never sought additional responsibilities. If the SCPA wanted to take on roles that the corporate body performs, I do not know that the corporate body would resist that.

The corporate body was established to support members and the institution of Parliament. Over the years, it has accepted responsibility for half a dozen commissioners, because Parliament took the view—understandably—that no other body could take that responsibility. However, the corporate body has never been acquisitive of roles. It has not discussed the audit arrangements explicitly, but it has never wanted to extend its influence beyond what Parliament wanted.

If the commission or a committee of the Parliament was to suggest a realignment of roles, I am sure that the corporate body would be open to suggestions—save if it was being sought to realign roles in the direction of the corporate body, which it might take issue with.

I understand your point exactly, convener. The corporate body would be open to discussing further rationalisation and a grouping of roles together in one body—although it has not taken a formal position on the matter.

The Convener: The corporate body currently nominates four members to sit on the SCPA. You might not have discussed this, but has any consideration been given to whether the arrangements need to be more formalised in standing orders? For example, it might be specified that a member of the Audit Committee and a member of the Finance Committee should sit on the commission.

Tom McCabe: I do not think that that was discussed.

Paul Grice: That did not come up. I return to my recollection of the previous time the body was constituted. I defer to Robert Brown, who might recall this: the corporate body favoured a flexible approach to allow for normal discussions to take place in Parliament, and to get a combination of people who were both qualified and willing to do the job. If it was asked now, I think the corporate body would suggest that such flexibility is appropriate. I wonder about tying in membership of the commission too formally.

Hugh Henry's presence on the SCPA is testament to this. The corporate body begins by thinking about which members hold relevant offices. I think that the corporate body would judge that the flexible approach has worked well in the past, allowing the convener of the Audit Committee to take part in the commission, for

instance, although there is no formal requirement for certain members. For a relatively small group such as the SCPA, such flexibility is important. As a matter of course, there has always been a strong Audit Committee presence on the SCPA, which I think is appropriate. The system has worked quite well. I suspect that the corporate body would not favour having too much prescription.

The Convener: My question was prompted by the accountability inquiry that was carried out by the Finance Committee in 2006.

George Foulkes: The Audit Committee convener is the one ex officio member of this commission.

Paul Grice: That might well be the case—yes, I stand corrected.

George Foulkes: That reinforces what you said, effectively.

The Convener: You might not have considered this matter already, but does the corporate body have any views as to whether the Scottish Commission for Public Audit should have the powers to modify Audit Scotland's proposed budget?

Tom McCabe: We did not discuss that. I do not know whether the chief executive has discussed it at any time in the past: it sounds like controversial territory.

Paul Grice: I think that I will stick to the view that Mr McCabe has expressed. The matter was not discussed, and I would regard it as being entirely a matter for the SCPA.

The Convener: There is another matter that you may well not have considered. In its proceedings, the commission is not covered by parliamentary privilege and the rules on defamation. Do you have any views as to whether that should be rectified?

Tom McCabe: Again, we did not discuss the matter specifically, but we certainly have views about the level of protection that should be afforded to people who do the job. The general view is that the level of protection should be as high as possible.

The Convener: There are no further questions for today. I thank Mr Grice and Mr McCabe for their time. The children in the crèche next door have been very lively; I am glad to say that my son is not one of them this morning. We have done very well to ignore all the crying. Your attendance has been much appreciated.

11:59

Meeting continued in private until 12:16.

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