



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 29 March 2018

Session 5



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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
8th Meeting 2018, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

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

*Bill Bowman (North East Scotland) (Con)

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

*Iain Gray (East Lothian) (Lab)

Alex Neil (Airdrie and Shotts) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor John Connell (NHS Tayside)

Alan Gray (NHS Grampian)

Paul Gray (Scottish Government and NHS Scotland)

Caroline Lamb (NHS Education for Scotland and Transformation Support Team, NHS Tayside)

Lesley McLay (NHS Tayside)

Professor Sir Lewis Ritchie (NHS Tayside Assurance and Advisory Group)

CLERK TO THE COMMITTEE

Alison Wilson

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 29 March 2018

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Jenny Marra): Good morning, and welcome to the eighth meeting of the Public Audit and Post-legislative Scrutiny Committee in 2018. I ask everyone in the gallery to switch off or to silent their electronic devices, please, so that they do not affect the committee's work this morning. We have received apologies from Alex Neil.

Item 1 is to decide whether to take business in private. Can we agree to take items 3 and 4 in private this morning, please?

Members *indicated agreement.*

Section 22 Report

“The 2016/17 audit of NHS Tayside: Financial sustainability”

09:00

The Convener: Item 2 is on the 2016-17 audit of NHS Tayside. I welcome our first panel of witnesses today. Professor Sir Lewis Ritchie is chair of the NHS Tayside assurance and advisory group, Caroline Lamb is the chief executive of NHS Education for Scotland and chair of the NHS Tayside transformation support team, and Alan Gray is the director of finance at NHS Grampian, who has, I understand, served on the assurance and advisory group and on the transformation support team.

I will open with the first question. We have invited you today to explore the detail of the second report of the assurance and advisory group. Sir Lewis's covering letter states:

“The rating assigned by TST to the current financial position has moved from red to amber, reflecting the progress that has been made in reducing the actual and projected level of NHS Tayside's financial shortfall.”

It goes on:

“At senior executive team level, we are encouraged by indications of improved organisational grip of the financial situation.”

Since then, there have been revelations that £5.3 million of e-health funds have been misrecorded in NHS Tayside accounts, and that the 2017-18 financial outturn is likely to deteriorate further. Can you please tell the committee why we should have confidence in the rest of your report, under those circumstances?

Professor Sir Lewis Ritchie (NHS Tayside Assurance and Advisory Group): I thank you, on behalf my colleagues and myself, for inviting us to attend today.

We were not made aware of that financial misreporting, or of the position, during the organisation and conducting of our review, or in the subsequent assessment of progress. The matter came to light only when the committee was informed about it. As far as I am concerned, that was the first time that I heard about it. Our assessment of progress was based on what had been reported to the board up until the end of January, and on what we saw.

In our report we talk about improved grip, about evidence of better team working and about leadership. That is detailed in the transformation support team report—the second report—which Caroline Lamb led on. That is why we felt that the

tide was turning, although there was much further to go on the matter.

The Convener: You have said that you were not made aware of the position; I think that there were also other people in that situation as regards the funds. Are you confident that you were made aware of enough of what was going on to complete your report?

Professor Ritchie: My view is that it is a work in progress. Transformation takes quite some time. When I decided to accept the commission, I felt that although it was important to address immediate financial concerns around grip, and the gap between budgeting control and operational performance, it was also important to take a root-and-branch look at how services were being delivered in NHS Tayside.

Transformation takes time, ownership and leadership. Correction of the financial position of NHS Tayside, which has been in progress for some years, will require massive transformation. To set that process in place, it was important for us to know what was happening with service delivery and what was being done under the transformation programme.

Our report pointed out that there was insufficient grip and insufficient clarity on the details of the transformation programme as it stood, and that further external assistance was required—both through financial support, which has been provided by Mr Alan Gray and others, and regarding the gap in strategic planning. In other words, unless those deficits were corrected, any financial movement in the short term would be about transactional change rather than transformational change. That is what is required, and will be required on an on-going basis, to deliver sustainable budgetary and financial control in NHS Tayside.

The Convener: What was your scope, and how far into the organisation of NHS Tayside did you go? Transformational change in any organisation requires team leaders on the ground to buy into the transformation programme and to deliver it in their areas. How far did your team go into the organisation to speak to lead clinicians about their specific projects and about how transformation was happening?

Professor Ritchie: You will see the number of visits that I made set out in the annex to my first staging report. I set aside all my other work for the three-month period when we conducted the initial work for the staging report. I and my colleagues undertook many site visits, we met many groups and we met many individuals at the coalface. We met committees and the board, both collectively and individually. I, myself, met each executive

team member of NHS Tayside as part of our initial fact-finding exercise.

The Convener: We can come to the management later. On the ground, what was the sense among the doctors, nurses and health professionals to whom you were speaking of how transformational change could happen, whether it was happening, whether they were being enabled to make it happen, whether it was worth while and whether it was going to yield results? How was morale among them?

Professor Ritchie: As we stated in our report, my feeling was that there was lack of buy-in to the transformation programme, in particular on the part of front-line staff. The transformation programme board, which we visited and whose work we witnessed, had clearly held much of its business in camera at the outset, so there was a feeling that engagement was not as early or thorough as it should have been.

Along with my colleagues, I spent many hours discussing the need for transformation, in particular with clinical colleagues, because clinical leadership, with support staff behind the clinicians, is essential for transformation. Transformation is a common endeavour. It is not something that you do once; you have to keep on doing it, and that requires a high degree of ownership across the system.

The Convener: You got a sense from some front-line staff that there was not complete buy-in. Did you get any sense of why that was?

Professor Ritchie: There is a misperception that transformation is something that can be done in a short space of time, and that what is planned in a boardroom is made clear and shared at ground level. There is also the question of when engagement should occur. We said that it did not occur early enough, and that that had to change.

The Convener: Is that changing now?

Professor Ritchie: I understand from my observations and from those of others that the tide is turning.

The Convener: I read your report before the revelation about the £5.3 million came to light.

Professor Ritchie: Indeed.

The Convener: How does something like that affect team leaders, with it being such a glaring omission or mistake at management level? How does that affect the confidence of the people who have to deliver the transformational change?

Professor Ritchie: My feeling on the day when I and the committee heard about the matter was disappointment, and not only about the financial hole that had opened up. I support your point—that will affect morale. Having a workforce with

high morale is key to effective transformation. My reaction, when I heard about that was, quite simply, disappointment.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, everyone. I wish to continue to tease out the issues that the convener has introduced. Why has this taken so long? You said yourself that the issue with the overall financial position has existed for some years in NHS Tayside. Why has it taken so long for it to dawn on the organisation that transformational change may be required?

Professor Ritchie: That is a good question. My answer is that, when the tide is coming in as regards development resources, as happened in the national health service for many years, it is easier to carry on with incremental change—in other words, to move a service here, and do a little bit there. When the tide of resource begins to go out, however, people will begin to say that such change is not sufficient. It is not possible to improve the financial position just by improving the financial processes; service redesign needs to be considered. The tide has not been so generous—development moneys have not been flowing in so much, which means that the financial position and the service are more exposed.

You will know that NHS Tayside has more sites and more personnel in most categories, and has greater energy expenditure. That has been the case for some time and was the subject of a previous task force and Audit Scotland review in 2001. Clearly, insufficient attention was paid in the intervening years to what was needed to redesign services in NHS Tayside to make them sustainable, and in order for them to continue to be high quality and safe. Such characteristics are absolutely essential.

Willie Coffey: Would you say that those kinds of questions have never really been considered or posed within the organisation to date?

Professor Ritchie: I fully believe—as we found out during the fact-finding stage between April and June last year—that the board is now fully sighted on the need for transformation. Recommendations were made last time on the moment and on the year, but as business went back to usual, sight of the issues was lost. There is now a concerted effort: I do not believe that NHS Tayside and its partners—which are important for effective transformation—are anything other than sighted on and committed to making that change.

However, transformation will be neither quick nor easy; difficult decisions lie ahead. It requires taking not just the public of Tayside with the board and its partners, but political representatives in Tayside. Leadership of a very high order will be needed for that, and it will need to be concerted

and continuous for some time. This is not the work of a year, let alone six months, which is what we were given to report progress to you at this point.

As regards my view and the view of my colleagues on the assurance and advisory group, we have recommended that external scrutiny by the Government of the activities of NHS Tayside should continue accordingly at a high level, and that progress further out from the recommendations that were published in the first place should be reassessed. There should no let-up on the matter.

Willie Coffey: There is a reason for my dwelling on this point. We hear such messages fairly regularly at this committee, and have done over the years. Is the situation pointing at capacity and skills issues, at governance issues or at guidance and regulation? What suite of skills should be introduced to, or brought to bear on, the organisation in order to prevent something similar happening a year or so down the line?

Professor Ritchie: I will make several points on that. I might want to bring in Caroline Lamb in relation to her assessment and support, and on the workings of the transformation support team.

I preface what I will say by mentioning that all the aspects and items that Willie Coffey has mentioned will be important. The nub of the matter is that transformation depends on many things coming together. It is not just one thing. In the past, there would be a focus on this, that and the other. That is not peculiar to NHS Tayside. Transformation depends on a global perspective, however, and on many people doing things together that they might not have been doing before. It requires mutual understanding, effective leadership and adequate support.

09:15

As you are aware, we made 14 recommendations—10 for NHS Tayside and four for the Government. We recognised almost from the get-go of our assessment that external support would be required, and that NHS Tayside could not go it alone. That is the difference between our assessment and previous assessments, where financial adjustments were made and some local leadership was changed. We needed external support—with Mr Gray on my left and Ms Lamb on my right. Colleagues have tried to provide that since the staging report was published.

I invite Caroline Lamb to comment.

Caroline Lamb (NHS Education for Scotland and Transformation Support Team, NHS Tayside): The assurance and advisory group, which was referred to by Sir Lewis, issued 10 recommendations for NHS Tayside and four for

the Scottish Government. The role of the TST has been very much to provide support and constructive challenge to NHS Tayside in implementing the recommendations. It has not been a matter of our going in and doing the work for the board; it has involved supporting the team in situ to deliver on the recommendations.

The recommendations cover the various elements that need to be in place for transformation. The most immediate recommendation—recommendation 1—is about the need to get an urgent grip on the in-year financial position and the ability to manage that.

There is a longer-term recommendation about the importance and absolute centrality of the integrated clinical strategy and the work that is being done on that to deliver medium-term and longer-term financial sustainability and quality services across Tayside. Linked to that are the recommendations that address key areas of financial pressure—as were identified by the assurance and advisory group—around workforce, prescribing costs and improved business planning.

You might categorise the second half of the recommendations—on delegation, engagement, corporate structures, scrutiny and, in particular, leadership development—as being fundamental to creating the conditions that are required to support transformation. That is not an overnight activity, and it is not something that we might set off to do today for it to be done by the end of the week or the end of the month. It is a long-term activity that requires the building of relationships, confidence and trust. It takes some time.

Willie Coffey: Thank you for that. It still worries me, however, that we have waited six years or so to begin the journey towards real transformational change in NHS Tayside. I am not quite sure that I can take any comfort from what you are saying, but I am certainly assured that we are now thinking along those lines, and that it is now our intention and purpose to bring that to bear within the organisation.

Can you give us a brief glimpse—a practical example—of the transformational change that is required of NHS Tayside and that you see, so that people who are watching the meeting can understand? We have been speaking in general terms.

Caroline Lamb: It is important to recognise that progress has been made. It is important to recognise that, although—

The Convener: Can you give us a specific example?

Caroline Lamb: Absolutely. The board now has improved information and data on its workforce and where it is deployed. There is improved

partnership working with the vacancy management group, which means that the staff side and management are sitting down and talking about how to manage the staffing establishment. That has started to show evidence of reductions in spend on nursing agency staff in particular, which we know is not just expensive but is not the best way of providing services to patients. It has clearly been difficult to sustain that during the winter period, but the foundations have been laid for that to continue.

Willie Coffey: Thank you for that.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Clearly, a key element of this whole transformation is the bottom line. It is all about bringing NHS Tayside back into some sort of balance. To what extent are you satisfied that the information that is coming from the finance area, particularly given the revelation that we have discussed, is accurate?

Professor Ritchie: We have looked at what we have been given. With the support of EY initially, we decided to take a—

The Convener: Just for the public's information, that is Ernst & Young.

Professor Ritchie: It used to be known as Ernst & Young; it is now called EY. In order to do the work initially, we had to approach it in a parallel way. EY—formerly Ernst & Young—was commissioned to do a deep dive on the financial situation in Tayside in relation to the board's budgets and so on. When we came to our review in June, we had the benefit not only of our own views but of an audit that was undertaken by EY on our behalf.

Colin Beattie: Did you commission that?

Professor Ritchie: The Scottish Government commissioned it at the outset.

Colin Beattie: How much did that cost?

Professor Ritchie: I am not aware of that—I was not informed of that. I did not commission that audit; it was commissioned at the outset by the Scottish Government.

Alan Gray (NHS Grampian): That is correct. It was commissioned by the Scottish Government, and we relied on it for part of our findings for the first report in June. We did not commission it.

The Convener: We can check the cost of it with Paul Gray.

Alan Gray: Yes, we can do that, and you can ask that question.

Professor Ritchie: I am always sceptical about what people tell me about finances. I have served on boards for a number of years, and it is always

good to be sceptical in relation to any response, in particular in relation to money. Therefore, it was important that NHS Tayside received external financial support rapidly. That support has come largely in the form of input from Alan Gray and from other colleagues. Alan is of course lead financial director for the north of Scotland, and has been helping NHS Tayside directly. Alan may wish to comment.

Alan Gray: I recognise the point about the clarity of the financial information that was presented to the board and to other users within the organisation for managing the budget. Some revisions have been made so that the financial reporting is clearer on the underlying financial position and on how the overall financial position has been managed. Some steps have been taken to change the quality of the financial reporting that is going to the board.

My colleagues from NHS Tayside who will be on your second panel might wish to talk about what they have done in recent weeks to improve clarity. We presented the revised format to the board on Monday of this week, and we received positive feedback.

Part of the aim is to ensure that the users of the information understand the financial position. Some of the information could have been presented in a different way previously so as to make it easier for a non-financial person to understand the financial position and be able to ask questions.

Part of the role of non-executives is to scrutinise and challenge. If they are not provided with information in a format that allows them to do that, it makes their job that bit more difficult. The current format of reporting should make it much easier for non-executive members with no financial background to ask questions about and challenge the financial position of the board.

Professor Ritchie: When I said “sceptical” I was referring to the important scrutiny and challenge role, not to an unhealthy scepticism about what people are telling me. We need to look very carefully at the evidence, listen carefully to what people say and challenge them accordingly. That is a process.

Colin Beattie: You are clearly very reliant on the reliability of the information coming to you. From the review that was done, it seems that there was a lack of control over part of the process. Given that EY did a deep audit or took a deep look at the financial situation, how it was being managed and so on, are you surprised that the revelation came to light only now, rather than as part of that audit process?

Professor Ritchie: No, I am not, because a forensic analysis of the financial systems within

NHS Tayside was not part of our remit. EY was there to consider how NHS Tayside was financing its transformation programme, and it reported accordingly. In other words, it did what it was asked to do.

Colin Beattie: So, EY was not reporting on systems, approvals and all the rest of it.

Alan Gray: No. That would be the role of the external auditors. Audit Scotland, in its role as external auditor, would be considering the systems and processes through which the financial information was produced. Ernst & Young’s remit was to examine the overall financial position, the underlying deficit and the factors contributing to that. It was not a financial audit.

Colin Beattie: I think that the term that was used was “in-depth”.

Alan Gray: It would be in depth. It was in depth in analysing the drivers for why the financial position was as it was and the factors contributing to that. That was EY’s role. The external auditor’s role would be to examine the systems of control, process and governance within the organisation and to report back on that to the board.

Colin Beattie: Coming back to the core element of this, how satisfied are you now that the reporting that you are receiving and the information that you are relying on is accurate? A few weeks ago, it was not.

Alan Gray: Some further work is still going on to clarify the financial position. A series of questions have been asked about review and challenge to ensure that we understand all aspects of the financial position and what has contributed towards it. We have now re-forecast the year-end position for NHS Tayside to reflect some of that review. That work will take a few more weeks to conclude.

Colin Beattie: I want to be sure that I am not misinterpreting what you are saying. You are saying that, at this moment, we do not actually know what the financial position will be. There are still elements being worked out, and there are still uncertainties.

Alan Gray: What we have done—

The Convener: Could I just ask: was the revised projected deficit to be reported to the board meeting on Monday? Is that correct?

Alan Gray: Yes, indeed. That is correct.

The Convener: The minutes of that meeting are not yet public. Can you tell us what that figure was?

Alan Gray: The deficit position at month 11 was just over £11 million. On the re-forecast position, based on information that we know to date, we are

forecasting an outturn of £12.1 million for the end of the year.

The Convener: That was reported to the board on Monday, was it?

Alan Gray: Indeed it was. It was also reported as part of the return to the Scottish Government. That was part of our financial reporting. We are asked to do an in-year, end-of-month position, but also an end-of-year position. Clearly, we are getting close to the end of the year, so we should be able to clarify that position in the coming weeks.

Colin Beattie: Has the issue that has arisen created any doubt in your minds about the accuracy of the information that you are getting? I am a little bit worried about this situation. We have had problems continuously for some years. We think that we have got our hands round it, but suddenly a revelation pops up. That of course creates doubt as to whether there is something else there.

Alan Gray: I guess that that is why we are asking lots of questions—on every line and all areas of the financial position—to ensure that we understand all the component parts of that position. We will see where we get to in confirming things over the next few weeks. I can only know what I know just now. The finance team and I, along with other colleagues, are asking as many questions as we can. We have an external audit coming up in the next few weeks, and I am hoping that that will also contribute to improving the understanding of the financial position.

Colin Beattie: What about the role of internal audit? Are you making use of that?

Alan Gray: Internal audit has been very helpful in identifying control weaknesses and improvement. We are working with that team to understand how many control actions have been taken forward and implemented. There are ongoing discussions with internal audit about the role that it can play.

Colin Beattie: Internal audit did not pick this matter up.

Alan Gray: Internal audit flagged the use of the deferred expenditure as a means of managing the financial position. To be fair to those conducting the internal audit, they highlighted that there was an area of weakness within the financial controls of the organisation.

The Convener: Who did they flag that to?

Alan Gray: Our assurance and advisory committee highlights a number of instances where the internal auditors have highlighted the use of deferred expenditure to the audit committee and the board. We also referenced that in our report.

The Convener: Are you telling us that the internal audit team had flagged that use of e-health funds to the board previously?

Alan Gray: No, no. I will clarify that. Within the category of funds that we call deferred expenditure, of which e-health money was one component part, they did not identify that. It would have been difficult for them to flag that up.

The Convener: So, what had the internal auditors identified?

Alan Gray: I will explain how the board's financial position is managed. We are asked to work within a single revenue resource limit in any financial year. That comprises the core board allocation under the NHS Scotland resource allocation committee—NRAC—formula and the money for general medical services, as well as covering what is called earmarked funding. Earmarked funding is allocated to boards all the way through the year. The earmarked funding will often require to be spent over more than one financial year.

As for what had been happening in Tayside, the earmarked funding that had been allocated to the board had not been spent as quickly as it should have been. It was building up within the financial position. At the end of last year, £23 million of earmarked funding had not been committed in year, and would be carried forward into future years. Within that £23 million of allocations was the £5.3 million of e-health allocations.

It would not have been easy for the internal auditors to pick out what the allocations were. I suspect that, given the way that the information was reported, it would be difficult for them specifically to pick out the nature and the source of the funds.

The Convener: It would have been difficult for internal audit to pick that out.

Alan Gray: Yes.

09:30

Colin Beattie: I am curious about why that would be difficult for internal audit. The internal auditors have the right to look into anything that they have a concern about. It is not a small sum. You may say that it is a small sum in relation to the overall budget of the board, but it is still £5 million-odd. To me, that buys an awful lot of goods for the hospital.

I am thinking about what the board actually received. Is there anything there? If something had been highlighted by internal audit, do you think that the board would have been concerned about it? Would it have investigated?

Alan Gray: The board was concerned. The board had taken steps to reduce its dependence on that level of deferred expenditure. Last year it was £23 million, and the board was taking steps to reduce that. The board was taking all the steps that it felt were right to improve the position and to reduce reliance on that type of money, ensuring that earmarked funding was getting used much more quickly to support the professional services. The board had taken on board the findings from internal audit and was taking them forward in implementing actions.

Colin Beattie: Coming back to the money, from your perspective, do you have a timescale within which you believe that you will have satisfied yourself that the finance side is 100 per cent in order and that we can rely on the figures coming out?

Alan Gray: Yes.

Colin Beattie: Coming back to the particular issue that has arisen, that creates a doubt, does it not?

Alan Gray: I would agree that there is an aspect of building trust and confidence again regarding the financial information and the quality of the information that we present to the board—there is no doubt about that.

It will take a bit of time to do that. We have reassigned responsibility in the finance function, and a number of reviews are on-going to identify what further action needs to be taken. We will get internal audit in to help us.

The board is minded also to commission an independent review, as was highlighted in a letter to Paul Gray.

All those factors should help us to come up with a clear action plan to improve the controls within the finance function and the quality of the financial reporting. I cannot give you a final timeline for that, but my aim would be to get as much of that done as possible by the end of June so that you can have confidence going into the next financial year that the information that is being produced is reliable and so that the board can make decisions on the basis of that information.

Professor Ritchie: That is another reason why we continue to recommend regular scrutiny by the Government of the financial affairs of NHS Tayside, as well as the undertaking of a further review in the next financial year at a suitable point. The answer is that the situation requires continued scrutiny, and it is a work in progress.

Colin Beattie: Have you taken any steps to hold discussions with internal audit in particular about the scope of its audit, and about whether it needs to be beefed up or is adequate as it is, at

least for the interim period and until you are satisfied?

Alan Gray: Yes. I am due to have a meeting next week with the chief internal auditor to understand what is in the programme of work for the remainder of this year and next year and to see what we can do to reprioritise the work in order to address some of the issues that have been highlighted in the Grant Thornton report and that were widely internally audited in previous years.

Liam Kerr (North East Scotland) (Con): Good morning. We have heard quite a bit about clarifying the financial position, reforecasting requirements and scrutiny of NHS Tayside's financial affairs. In late February, the director of finance decided to retire after some 35 years. That was confirmed—I think there was a letter from Lesley McLay to Paul Gray in which that was referenced in one line. Are you able to tell us why the director of finance suddenly disappeared, and in what circumstances?

Professor Ritchie: The answer to that is no. I only became aware of the findings of financial misreporting at the same time as your committee. I have certainly had no part whatever to play in the circumstances, or indeed in any corrective actions following our report, which was submitted a month ahead of this particular item coming to the attention of the Government and NHS Tayside.

Liam Kerr: Does that not rather concern you?

Professor Ritchie: It does, but it is not within my remit. You ask whether it concerns me. Yes, it does. Is it within our remit, and was it within our remit? The answer to that is no. I suspect that you may wish to tease that out further with the next panel.

Liam Kerr: Forgive me—I have been a bit blindsided here. You are in there to look after the transformation. The director of finance, who has apparently presided over a situation that we have explored in some detail, has just disappeared. If I am hearing you right, you are not asking questions about that. Is that correct?

Professor Ritchie: My role has been completed with the presentation of a second report. However, I have since been asked to go in to do a further assessment of progress in September, with Caroline Lamb.

That may change in the light of circumstances that I am not fully aware of.

Liam Kerr: Mr Gray, do you have any view on that?

Alan Gray: No—I cannot comment on it. All I can say is that I have been asked to provide some interim financial support to the board, and I am

doing that to my current capacity, but I was not involved in any discussions about the retirement of the previous director of finance. All that I can confirm to the committee is that I have been tasked with giving some support to the finance team and to the board at this particular point in time. That remains my focus for the next few weeks, until I am happy that we can move forward.

There is a paper coming to the board today regarding the appointment of an interim or permanent director of finance to take on that responsibility for the foreseeable future.

Liam Kerr: On that note, is any cost being incurred for your own services as a result of the resignation? I understand that there has been a realignment among the finance team.

Alan Gray: I can confirm that there is no payment for my time. I am part of a regional structure now, for the north of Scotland region. I have agreed with my board that I can be released from part of my current duties to support the Tayside board. I have been doing that for some weeks now, with the blessing of my board. There is no cost incurred by Tayside.

We are not bringing any additional capacity into the finance team at this point in time. I am looking at the capacity and capability in the finance team and, if we determine that there is a need to improve the capacity in that team, I would take that to the board as a recommendation. However, at this stage, there is no additional investment of resource in the finance team or cost being incurred by NHS Tayside as a result of the retiral of the director of finance.

Liam Kerr: Is appropriate financial leadership in place at NHS Tayside? Perhaps more importantly, has there been appropriate financial leadership in the past, and will there be in the future?

Professor Ritchie: During my initial review, I met all of the executive team, as I mentioned earlier. I asked, "Are you confident that you have the necessary skills and leadership in all the areas that are required for effective transformation going forward?" Primarily, it is for the board to satisfy itself that that is the case. However, as you are aware, we immediately suggested to the Government that additional external support was required, particularly in relation to finance and strategic planning, to make it more granular and to see what detail was required. The transformation support team was established to do that.

Liam Kerr: I will stop there.

Bill Bowman (North East Scotland) (Con): In the papers that we are looking at today, there is reference to a report by KPMG. I remind members that my entry in the register of members' interests

says that I was a partner in KPMG, but of course I had no part to play in any of this work.

I have a question, Professor Ritchie. You have spoken a lot about the importance of leadership at the head of NHS Tayside for its future transformation. Who is the leader on whose shoulders that burden now falls?

Professor Ritchie: Leadership is required at all levels in NHS Tayside, not just at board level. Transformation has to be led primarily by the board, but not only by the board. The clinical leadership will be very important in relation to transformation, which will not happen without buy-in or without the clinical leaders in Tayside continuing to rise to the occasion.

Bill Bowman: You are saying that there is a group of leaders. Who is the leader of that group of leaders?

Professor Ritchie: The chairman of the board leads the activities of the board, supported by the accountable officer, who is the chief executive. That is where it starts, basically. However, leadership has to be evident among non-executives, and it needs to be evident throughout the organisation.

The Convener: Mr Gray, when Colin Beattie asked you about internal audit, you said that the board was aware of the deferred expenditure, including the £5.3 million.

Alan Gray: No. To clarify, the board was aware of deferred expenditure generally. The board was not aware of the £5.3 million, nor was internal audit. None of us was aware of that situation, which has been known about only in the last few weeks.

The Convener: But that deferred expenditure included the £5.3 million.

Alan Gray: It did indeed—that is correct.

The Convener: You have said that the board was aware of the deferred expenditure. In what way was it aware of it? Was it reported at a board meeting? Can you clarify that for us?

Alan Gray: It would be reported at audit committee meetings. Internal audit reports would go to the audit committee. I cannot clarify whether that information went to a board meeting, but it certainly went—

The Convener: Sorry—could you speak a little bit more slowly?

Alan Gray: I beg your pardon. The internal audit reports would go to a number of audit committee meetings, in which references were made to the use of deferred expenditure as part of the financial position. I cannot comment on whether that information was reported at a board meeting, but it

certainly went to an audit committee meeting and the matter was considered there. It was also referenced in our assurance and advisory report, which went to a board meeting. We make references to the use of deferred expenditure in that report, which came out in June 2017.

Iain Gray (East Lothian) (Lab): This is quite puzzling. There was a sum of deferred expenditure—

Alan Gray: It was £23 million.

Iain Gray: The audit committee and the board were aware of that. I think that Sir Lewis said that they had expressed a view, or the view had been expressed, that some grip had to be taken of that situation. In other words, the failure to spend money in time, and therefore the need to defer it, had to be improved. Is that right?

Alan Gray: Indeed.

Iain Gray: Surely, in that process, the audit committee and/or the board must have asked, “What is this deferred expenditure? What is the activity for which we have allocated funds that are not being spent in-year?” If the committee or the board did that, how can it possibly be that they were not told that £5.3 million, almost a quarter of that sum, was the e-health money? I do not see how that is possible.

Alan Gray: I cannot comment on what the audit committee may or may not have asked. I was not at any of the audit committee meetings. It is a fair question.

Iain Gray: I take it that it is a reasonable question.

Alan Gray: It is a reasonable question to ask, yes. I have no doubt about that.

The Convener: Thank you, Mr Gray.

Sir Lewis, I would like to drill down into one of the specific areas that I am particularly concerned about, and which the Auditor General for Scotland has been particularly concerned about—prescribing in NHS Tayside. It has been identified for years now as one of the key things that the board needs to get a grip of. I spend all my time in Dundee and in the locality of NHS Tayside, and I continually hear stories about people’s repeat prescriptions not being checked for years and years, the stockpiling of medicines and so on.

I have read the parts of your report on prescribing. When is that issue actually going to be solved? Are general practitioners in control of it? There is also secondary prescribing in hospitals. Is sufficient progress being made?

Professor Ritchie: That issue was identified in recommendation 5. We said that efforts “should continue unabated”, as we recognised that there

were discrepancies in prescribing across the piece in Tayside. Caroline Lamb can comment on that specifically.

Caroline Lamb: Indeed, that was clearly identified as a recommendation. We recognised that we did not have any particular expertise in prescribing within our core membership as a support team, and we therefore engaged with the effective prescribing division at the Scottish Government. Alpana Mair and Simon Hurding provided us with advice on that. They engaged closely with the Tayside team.

In our second report, we identified that some improvements had been made. That was down to putting in place processes to enable improved prescribing practice. One of the areas where progress has been made is the number of polypharmacy reviews that have been undertaken—reviewing what medications are being prescribed to people. That process is ongoing.

In September we had a red rating on that. We moved that to an amber rating, based on the advice, as we could start to see some developments. It will still be some time before that progress starts to show in the financial savings.

09:45

The Convener: Are the developments that allowed you to move the rating from red to amber the polypharmacy reviews?

Caroline Lamb: There were improvements in polypharmacy reviews, improved clinical—

The Convener: For the layman, can you explain exactly what those reviews involve?

Caroline Lamb: I will try—I am not an expert in this area.

The Convener: I am sorry, but that concerns me as well. The Auditor General has identified prescribing as having been a problem in NHS Tayside for years now, but there was nobody on the review group with specific expertise in that area, and you had to refer back to the Scottish Government on it. Is that right?

Caroline Lamb: That is exactly what we recognised early on, from the first week: that we needed expertise in that area. We were able to access that within the Scottish Government so, in effect—

The Convener: Sir Lewis, should you not have had somebody on your team who was able to drill down into that?

Caroline Lamb: In effect, Alpana Mair and Simon Hurding became members of the team, and they were part of the review.

Professor Ritchie: Prescribing has been a long-standing interest of mine in relation to my clinical practice. You will see in the first staging report that we extracted a bit of a board minute in relation to prescribing.

During the subsequent period, between September and December, I attended a prescribing management board meeting to look at and witness the progress myself. Am I satisfied with the progress? The answer to that is no.

The Convener: But the rating has moved to amber in your staging report.

Professor Ritchie: It has moved to amber on account of processes that have been put in place, in particular that of reviewing repeat prescribing. Prescribing happens in two ways—

The Convener: Is there any evidence that prescribing has reduced?

Professor Ritchie: The rate of increase in prescribing in Tayside has been less over the past year than the rate for Scotland.

The Convener: The rate of increase has been less, but there is no evidence that it has reduced.

Caroline Lamb: I think that what Sir Lewis is explaining is that, in general, prescribing has increased over the whole of Scotland over the past years. The fact that the rate for Tayside has increased by less indicates that the board has made some progress in reducing it.

The Convener: I understand that.

Professor Ritchie: Could I clarify that?

The Convener: Yes, please.

Professor Ritchie: There was a 0.7 per cent year-on-year reduction in medicines volume last year, versus a 0.3 per cent increase for Scotland. Those figures were provided to us by NHS Tayside.

The Convener: The evidence for moving the rating from red to amber is not all that convincing. There have been more polypharmacy reviews. I think that Caroline Lamb is about to explain exactly what that means.

Caroline Lamb: Polypharmacy reviews consist of reviews of patients who are on medication, to check that they are being prescribed the right things. There is a process of rolling through or working through the delivery of those.

The Convener: Did you speak to any GPs about prescribing during your review process?

Caroline Lamb: There was engagement through the prescribing management group. Alpana Mair and Simon Hurdling were engaged

with that group, which involves both pharmacists and clinicians, including general practitioners.

The Convener: It seems to me that there is not much evidence to support the movement from red to amber. The rate of increase of prescribing in Tayside might be slightly less than the rate for the rest of Scotland, but there is not a real weight of evidence that big improvements are being made. Would you agree with that?

Caroline Lamb: That is why we would not go any further than amber. When we gave the amber rating we recognised that processes had been put in place, but they were yet to deliver an impact.

Professor Ritchie: We particularly tested that. When the AAG met the TST, that was the particular rating in relation to which I had concerns that we were perhaps being overgenerous. I understand where you are coming from in this matter.

The Convener: So you were more inclined to keep the rating at red.

Professor Ritchie: We accepted the rating and the rationale for it. However, tangible progress and substantive change on the ground have yet to emerge. That is why I would support your view.

The Convener: So, referring to the people who are telling me that their prescriptions have not yet been reviewed, in your view it is probably the case that that has not yet happened.

Professor Ritchie: I cannot comment on that, but I know that there is a great deal of commitment among those at NHS Tayside to get things right. They recognise that they have much more to do. From my perspective and from the perspective of the AAG and the transformation support team, I want them to continue in that regard.

The Convener: Let me ask you about transformational change on this level. I believe that public services must constantly be reformed and refreshed to meet the demands of our population and our citizens. Have you seen transformational change on the scale that is required by NHS Tayside? Have you seen it happen anywhere else before? I do not just mean in Scotland, but anywhere.

Professor Ritchie: I have not been a world traveller in observing transformational change, but transformational change can happen and does happen in other health systems.

The Convener: In Scotland or elsewhere?

Professor Ritchie: Worldwide—referring to the literature. I became particularly interested in transformational change in Scotland in relation to the out-of-hours review that I led three years ago. I quickly recognised that to achieve it would require

a whole-system approach, which had never been attempted before.

There is not yet a massive amount of evidence of transformational change in Scotland, but there is a clear recognition that it needs to happen.

The Convener: Does the NHS Tayside management have the requisite skills or experience to deliver that transformational change on the scale that is required?

Professor Ritchie: At our staging report assessment from March to June, we took the view that NHS Tayside required urgent and additional skills to help it expedite that journey.

The Convener: When is your next report due?

Professor Ritchie: Along with Caroline Lamb, I have been commissioned by Paul Gray to examine the situation again in September this year. In the light of the recent circumstances that we have been discussing today, that may change in terms of tempo and intensity. That is something that I am sure will be discussed following this committee meeting. I am personally open, as are my colleagues, to continuing to support NHS Tayside through its journey.

The Convener: So we should expect the next report in September at the latest. Is that correct?

Professor Ritchie: Paul Gray will need to agree the timing of that with you. That is an indicative timing at the moment. As I have said, in the light of recent events, I would need to consider very carefully how that work might be conducted as regards change methodology and so on.

Liam Kerr: I wish to follow up on something that the convener has just said. Recommendation 11 says:

“The Scottish Government should ensure that necessary skills, expertise and support are ... made available”.

Professor Ritchie: Yes.

Liam Kerr: At the point when that recommendation was made, did you have—or do you now have—a clear idea of what skills were missing and from which positions, either from the people who got into this situation or from those who were lacking in their ability to get out of the situation?

Professor Ritchie: Two particular areas were identified: first, financial skills, which is the reason Alan Gray became involved; and secondly, a gap or omission in strategic planning. That has been made good in the form of an interim director of strategic planning. As we say in the note on the report we submitted at the end of December, we believe that that needs to be looked at in permanence. In other words, there should be a substantive director of strategic planning in

Tayside. That was a notable and early finding in relation to our staging report work.

The Convener: Thank you all very much indeed for your evidence this morning.

09:54

Meeting suspended.

09:58

On resuming—

The Convener: I welcome our second panel of witnesses: Paul Gray, who is director general for health and social care at the Scottish Government and chief executive of the NHS in Scotland; Gordon Wales, who is chief financial officer at the Scottish Government; and, from NHS Tayside, Professor John Connell, who is chair of the board, and Lesley McLay, who is chief executive.

I will open the questioning. Ms McLay, how often do you go through the accounts of NHS Tayside?

Lesley McLay (NHS Tayside): I will take part in a number of activities as a core member of the board. I am a member of the finance and resources committee, which meets monthly to undertake a detailed review of our financial plans, and I am involved in the financial planning process in leading the director team.

The Convener: How often would you sit down and go through the board’s accounts?

Lesley McLay: It is less about going through the board’s accounts. Part of the role involves building the financial plans and reviewing progress against those plans. That is a regular feature of my role on the board, from a governance point of view, and in the review process at our monthly finance and resources committee.

10:00

The Convener: So you would say that you are very familiar with NHS Tayside’s accounts.

Lesley McLay: I think that I am very clear on the progress of the budgets and the make-up of the budget overall. However, as chief executive, I have a director of finance, just as I have a medical director and a nursing director, and that accountability and professional role is delegated to and undertaken by them.

The Convener: How often do you sit down with the director of finance and ask him about what is in the accounts?

Lesley McLay: In my board, as would be the case in any board, I have weekly director meetings, in which we look at a range of aspects

of the board's performance and governance. Financial reviews are certainly a feature of that, but the formal review happens at our finance and resources committee, which is a sub-committee of our board, and a finance report goes to the board at every single board meeting.

The Convener: We heard from Alan Gray that the board knew about the deferred expenditure, and we know from the Grant Thornton report that your director of finance, who has since retired, knew about the e-health funds. Did you know?

Lesley McLay: In terms of the issue that we are discussing today? No—I was not aware.

The Convener: You were not aware.

Lesley McLay: I was not.

The Convener: If the board and your director of finance were aware, why were you not aware?

Lesley McLay: The Grant Thornton independent review indicated that the board, the director and the executive team were not aware of the e-health allocations that had come in. I believe that Alan Gray, in discussing the board's knowledge and my knowledge, was referring to the size of our deferred expenditure budget. He referred to the fact that the budget was bigger than we would have liked it to be. I was aware of the size of the budget, and I was part of the board meeting in which we instructed that we wanted a reduction in the size of the deferred budget and we agreed, through our audit committee into the board, that we would have a five-year plan to reduce the size of the budget.

The Convener: So you were aware of the size of the deferred expenditure—the £23 million.

Lesley McLay: Yes, I was.

The Convener: Did you ask what that was made up of? I refer you to Iain Gray's question to Alan Gray.

Lesley McLay: The finance director produces reports, which he provides to the financial executive team, the finance and resources committee and the board. The deferred expenditure total was in there, but it was in groupings. The size of the budget was £22.3 million, but there was not line-by-line detail on every single item.

The Convener: Did you ask for that detail?

Lesley McLay: No, I did not ask for that.

The Convener: Why not?

Lesley McLay: Given the size and scale of the reports that the finance director produces, it would not be appropriate for me to ask for a single line. The budget for our board is approximately £800

million; I do not have a line-by-line account, and I would not expect to have one.

The Convener: But you are the chief accountable officer for NHS Tayside. You sign off the accounts.

Lesley McLay: Yes, I do.

The Convener: Why would you not ask what that sizeable sum included?

Lesley McLay: As the accountable officer, I have a director of finance whom I rely on to provide the financial information that comes through me and into the board.

The Convener: So you simply trust your legal, financial and clinical advice, and you do not ask further questions.

Lesley McLay: No, of course not. Of course there is a level of governance and scrutiny in the board, which I conduct as chief executive, but there is also a level of accountability on those individuals to bring forward the relevant information, and to identify the risks and raise them, through me, with the committees and the board.

The Convener: Ms McLay, I think that most people would expect that level of accountability to rest with you. It strikes me that, if you did not ask what the deferred expenditure included, you were not asking the right questions.

Lesley McLay: As I said, you will see from the Grant Thornton report that they were small sums of money, and a review was undertaken—

The Convener: Sorry—what were small sums of money?

Lesley McLay: The allocations, as they came into NHS Tayside, did not come in as one figure of £2.53 million or £2.63 million. They did not come in like that. On reading the review, it was clear that the e-health allocations to NHS Tayside came in as small amounts.

The Convener: But that process has been on-going for six years.

Lesley McLay: Yes. The first time that I was made aware of it was on reading the review. Obviously I was made aware of it, but I and the board were first made aware of the detail on receiving the Grant Thornton independent review, which said clearly that the practice had been followed since 2012.

The Convener: What questions do you ask? If you do not ask your director of finance what the deferred expenditure includes—if that is not a question that you ask of him—what questions do you ask?

Lesley McLay: I think that your question was whether I ask for detail line by line. I do not ask for a line-by-line—

The Convener: I did not use the phrase “line by line”—you used that phrase. My contention is that you are the accountable officer for NHS Tayside, and £5.3 million has been misaccounted for. There was clear knowledge. According to the Grant Thornton report, your director of finance knew about that, and we now discover that the board knew about it, but you are telling us today that you did not know about it, nor did you see fit to ask about it.

Lesley McLay: My understanding is that the independent review includes the statement that the board was not aware, and neither were the executive team or the leadership team. What we were aware of was the size of our deferred expenditure budget, which the board was taking steps to reduce.

The Convener: Ms McLay, it is your job to ask those questions, is it not?

Lesley McLay: I have described our review process, but it does not include that single level of detail.

The Convener: So it is not your job to ask what the deferred expenditure includes. It is not your job to be across the accounts at that level. Is that what you are saying?

Lesley McLay: The director of finance produced a level of detail in what was included in the deferred expenditure. There were groups with titles such as “Earmarked reserves”, and each had a figure. What was not provided was a single level of detail. However, Alan Gray has already indicated that, since I became aware of the situation, I have taken immediate action. We have changed the level of reporting that comes to the finance and resources committee and to the board, with immediate effect.

The Convener: The picture that you are giving me is that the director of finance presents you with the information that he wants you to see, and you blithely accept that. I might be wrong about this—Paul Gray might be able to clarify—but I think that chief executives of organisations are expected to have sufficient training to enable them to ask the requisite questions of the people who present them with information. That is your job, and it is the job of the NHS Tayside board. Why were you not asking those questions of the director of finance?

Lesley McLay: A number of questions would be raised, and reviews would be done, around financial performance. That is also the remit of the finance and resources committee, of which I am a member. Every four weeks, that committee

undertakes a review of performance in Tayside. As this committee has already discussed, we also rely on findings and information coming through our audit committee from both internal and external auditors. I will certainly reinforce the level of review that the finance and resources committee undertakes. In addition, detailed finance reports always go to every single board meeting—

The Convener: So why did you not pick up the issue?

Lesley McLay: The Grant Thornton report clearly indicates that it was unlikely that it would be picked up, and Alan Gray reinforced that point in his evidence today.

The Convener: I am sorry, but I am confused. The director of finance knew about the £5.3 million—that is clear from the Grant Thornton report. Do you agree?

Lesley McLay: Yes—that is what the report says.

The Convener: Alan Gray told us that the board knew as well.

Lesley McLay: No—Alan Gray said that the board knew about the size of the deferred expenditure. The independent report—

The Convener: Why did the board not ask what the deferred expenditure included? Would you not expect that level of scrutiny from your board?

Lesley McLay: Clearly, given the information that we have now, I would agree with that, but the level of reporting and how the deferred expenditure was made up did not give sufficient detail to enable those questions to be asked.

The Convener: Why did you not ask?

Lesley McLay: Because there was never any risk identified to me or to the board. There was a risk in terms of the size of the amount, but not in terms of how it was made up. We rely on internal audit to review our allocations, and there was never any risk identified that there were inappropriate allocations coming into our board. That was never a risk that was identified.

Iain Gray: Here is the thing that we cannot understand. The board knew of the £23 million of deferred expenditure, and I think you said that it had agreed measures to reduce that.

Lesley McLay: Yes.

Iain Gray: How could the board agree measures to reduce the deferred expenditure without knowing what activity had led to that position? You heard me put that question to Alan Gray. I cannot understand it. How could the board have satisfied itself that measures were being

taken to reduce the level of deferred expenditure without knowing what the activity was that had led to that deferred expenditure? Neither I nor the convener can see how that was possible. In order to know what needed to be done differently, you would have to know what the activity was that had not taken place in the year that led to the deferred expenditure. You would therefore need to have a breakdown—line by line or whatever—of that deferred expenditure.

Lesley McLay: I agree with you, given the level of information that we now have. All that I can say is that there was never any risk identified in relation to what those allocations were. The size was known—

Iain Gray: A risk was identified in relation to the size of the deferred expenditure.

Lesley McLay: Yes.

Iain Gray: And action was agreed.

Lesley McLay: Yes.

Iain Gray: Except that the board did not know what that action actually was. It could not have known.

Lesley McLay: The internal audit's recommendation was to reduce the size. The board then instructed, through the director of finance, that NHS Tayside should start to reduce the level of reliance on deferred expenditure.

Iain Gray: So the internal auditor had recommended a reduction, and the board agreed to that, but it had no idea how that reduction would be achieved. The reduction could have been achieved by taking the money out in notes and setting fire to it, and that would have been fine—it would have met the terms of what the board had agreed. Is that right?

Lesley McLay: No—that would clearly not have been acceptable.

Iain Gray: But the board would not have known—that is the point. If it did not look at what was in the deferred expenditure, it could not have known what the measures would be. If it knew what the measures would be, it must have known that the e-health money was in there somewhere.

Lesley McLay: Yes—I will not disagree with your statement there. What I will say is that the description of what was in the deferred expenditure was at a grouping level. There was not a level of single detail for every allocation that had come in and had been used in the deferred expenditure. That level of detail was not there. All that I can say is that, from now on, that level of detail will be reported to the board.

The Convener: Ms McLay, you have just clarified that the board did not ask those

questions. You are leading a transformational change, so you must have knowledge across all the change that is happening in NHS Tayside. If the board agreed that change should happen under those groupings, you must have known what that change was.

Lesley McLay: You are absolutely correct that, as chief executive, my responsibility is to lead and oversee the transformational change in NHS Tayside. I have a group of executive directors to whom I delegate a level of accountability, and I have in place governance and assurance processes to ensure that that is done. That is my role, and that is what I am endeavouring to do through the delivery of the transformation programme. I think that the assurance and advisory group recognises the progress that the board has made over the past 12 months.

The Convener: With hindsight, do you think that you delegated too much on the level of detail in the accounts?

Lesley McLay: Do you mean in the finance space?

The Convener: Yes.

Lesley McLay: No one is more disappointed than I am to be in front of the committee on this issue. There is a level of accountability on me as the chief accountable officer, but I also delegate. There is a level at which I have to trust people. If there is nothing coming through the assurance process with regard to risk, I have to trust that accountability is being delegated effectively, and I rely on individuals and their professional accountability.

The Convener: With hindsight, do you feel that you asked the appropriate questions of the director of finance?

10:15

Lesley McLay: We have taken further action, but I go back to the Grant Thornton report, which said that there were clear failings on governance across three parties. The important thing is that the independent review said that it believed that there was no awareness in the board or in the executive team, and that it was unlikely, due to the nature of the transactions, that we would have been aware.

The Convener: Do you feel that there is sufficient experience on the board? You were not asking those questions, and neither was the board. Is there sufficient financial experience on the NHS Tayside board to take forward the transformational programme?

Lesley McLay: Yes, I believe that there is. We clearly have to undertake more detailed reporting,

but board members have the necessary skill and capability.

The Convener: Are there any accountants on the board?

Lesley McLay: Yes.

Professor John Connell (NHS Tayside): Perhaps I can contribute here, Ms Marra. First, as Lesley McLay has done, I convey my extreme disappointment, along with a feeling that, as a result of the occurrence that was highlighted in the Grant Thornton findings, we have been let down and we have let down the committee.

The board has financial expertise. The chair of our finance and resources committee, which is now the performance and resources committee, is Mr Douglas Cross, who is a qualified accountant with a long-term and distinguished career as an accountant with Police Scotland. As chair of our audit committee, we have Mr Stephen Hay, who is an investment banker. Between the two of them, they have a significant input into our financial management and audit. I believe that the board has that level of expertise.

The Convener: Thank you.

Professor Connell: If I may, I want to clarify one point to which you alluded. As Ms McLay said, the board was not aware of the £5.3 million within the deferred expenditure. However, as Alan Gray told you, the board was aware that the level of deferred expenditure was higher than it should have been. All NHS boards have a level of deferred expenditure—that is the nature of the way in which NHS finances work year on year. Deferred expenditure in itself is not unusual or necessarily inappropriate. What was unusual was NHS Tayside's reliance on deferred expenditure in its accounting system.

Within the detail of the deferred expenditure, the e-health moneys, which were totally and appropriately in the NHS accounting system, were broken down into smaller items. They were not bundled up as a £5.3 million chunk; they were in smaller bundles that were probably all below £1 million, which is the level at which one would normally expect a board to be told about transactions. I cannot speculate on whether that was done deliberately, but the Grant Thornton report makes it clear that the £5.3 million was not visible within the deferred expenditure. I point out, as Alan Gray did in the previous session, that NHS Tayside has been subject to external audit by Audit Scotland and previously by Grant Thornton or KPMG—

Lesley McLay: It was PricewaterhouseCoopers.

Professor Connell: It was PWC—I am sorry; there are so many initials. There were internal and

external audits by the assurance and advisory group and by PWC and Ernst & Young. All of them went over our accounts, and none picked up the fact that there was an inappropriate level of money within our deferred expenditure. That level of scrutiny gives me some concern, as none of it picked up the issue. I suspect that that means that it would have been impossible for it to be picked up without someone owning up to the fact that it was there.

The Convener: Scrutiny involves the use of independent eyes to check that public money is being spent properly. You also sign off the accounts of NHS Tayside, and I—along with the rest of the committee, I am sure—would expect that, given the programme of transformational change, you would be aware of that level of detail, especially in deferred expenditure, and especially given that the board had agreed to reduce the level of such expenditure. However, it seems that those questions were not asked. You chair the board. Did the board think to ask about how those savings were going to be made? Did you ask?

Professor Connell: Yes, indeed. However, as Lesley McLay said, the deferred expenditure covers a wide range of activities. It is money that comes in throughout the year to cover a number of Scottish Government-determined priorities for NHS spending, including various activities; e-health is just one small part of that. When we asked the director of finance to reduce the level of deferred expenditure, we were asking him to ensure that money that came in was spent in-year and was not carried forward into following years.

Say, for the sake of argument, that we had an allocation of money for an information technology system. In that situation, we would want to be assured that the money would be spent within the financial year. Sometimes, moneys are allocated during the final quarter of the financial year. It is often physically difficult for NHS boards to spend that money in time, which is why it becomes deferred expenditure, and the item is carried forward into the following year.

We asked the director of finance to carry forward as few activities as possible, but we did not ask to be given a line-by-line itemisation of the items on which he would or would not be spending money. In hindsight, we might have asked him to give us headline notification of the larger items so that we would be aware of which activities we were spending money on and which we were not. It is easy to say that in hindsight. As I said, the fact that all the external scrutiny processes did not note the issue does not give me comfort. I rely on that scrutiny when I sign off the accounts, to assure me that the accounts have been audited and are acceptable.

Colin Beattie: The previous panel referred to a deep audit by the strangely named EY. Who commissioned that audit?

Paul Gray (Scottish Government and NHS Scotland): EY is Ernst & Young—that is what the panel was referring to. The audit was commissioned by us as part of the run-in to the assurance and advisory group work.

Colin Beattie: How much did it cost?

Paul Gray: As far as I am aware—I am happy to provide the committee with more detail—the sum involved was £211,000.

Colin Beattie: Really? It cost £211,000? Do you think that you got value for money?

Paul Gray: Yes.

Colin Beattie: Really? Why is that?

Paul Gray: Because the Ernst & Young report provided the basis on which Sir Lewis Ritchie and others could take forward their work. Had Ernst & Young not done the work, somebody else would have had to do it.

Colin Beattie: My mind boggles a bit at that figure of £211,000—it seems to be an awful lot of money.

Paul Gray: It is the going rate. We did not pay over the odds for that kind of advice from that sector.

Colin Beattie: You believe that you got a good result from it, but it did not pick up the issue that we are discussing. If it was a deep audit, it would surely look at all the processes and at every element. For £211,000, I would expect it to be forensic.

Paul Gray: A forensic audit is a different process. We did not commission a forensic audit.

I do not wish to present the committee with an analysis that says that this is a good situation, because it is not. To call it disappointing would be putting it mildly. The Grant Thornton report said that the process by which the money was being transferred

“has been embedded into the Board’s financial planning and financial reporting processes for a number of years and therefore has masked the underlying operating position of the Board.”

It went on to refer to the lack of challenge by the board, which we have discussed. On that subject, it said:

“This we think is due to a lack of reporting of the transactions, as the knowledge of these transactions seems to be contained to the NHS Tayside Director of Finance, NSS eHealth and the eHealth Leads group. They have been in effect ‘off budget reporting’ transactions.”

As colleagues have said, we have to rely on the assurances that we receive, otherwise there is no point in having them. Those assurances have come via a range of routes that have already been described. In my view, the transactions were carried out in a way that was intended to obscure them from the NHS Tayside board, and that is what happened.

Colin Beattie: The Grant Thornton report also states:

“There is a lack of controls in place at NHS Tayside around”

those transactions.

Paul Gray: That is accepted, and the board has changed the controls. Equally, the controls on e-health in NHS National Services Scotland ought to have been different. In response, I have removed responsibility for making such transactions from the e-health leads.

Colin Beattie: In my experience, auditors focus a great deal on all the different forms of suspense accounts, deferred payment accounts and so on, because that is where people hide things. We have been told that PWC, Ernst & Young and goodness knows who else were involved in the process at whatever cost, and yet they did not pick up that basic element.

Paul Gray: All of us, in our jobs, rely to an extent on the fact that people are transparent and tell us the truth, otherwise it would be impossible for any of us to proceed. This committee rightly relies on me to tell you the truth and to be transparent and, as you know, I do so. Checks and balances will deal with matters up to a point, but we rely on honesty and integrity.

Colin Beattie: Are you saying that honesty and integrity were not there?

Paul Gray: I referred to what the Grant Thornton report said. The knowledge was contained in a particular way and was not passed on.

Colin Beattie: So, in effect, the board was misled.

Paul Gray: I would say so.

Colin Beattie: Lesley McLay stated that she relied on internal audit. Should internal audit have picked up the matter?

Lesley McLay: Paul Gray has already spoken about that. As I said, we rely on our internal audit and our governance processes but, given the detail that we now have, I can understand why the issue was not picked up.

Colin Beattie: With regard to the overall figure for the deferred payments, you said that internal audit had recommended reduction.

Lesley McLay: It had recommended reduction in the amount. Its focus was on the fact that we were relying too heavily on deferred expenditure.

Colin Beattie: Would internal audit have known the content and the make-up of the deferred expenditure?

Lesley McLay: I am probably not in a position to answer that question today.

Colin Beattie: The committee previously raised issues around internal audit in connection with NHS Tayside when the problems first surfaced. We could not understand why the situation developed as it did without that being properly reported.

Again, in this context, I have doubts about what internal audit is doing if it does not pick up that sort of thing. It is a classic scenario in which a business or operation puts funds through the books over the year end, or the end of the reporting period, in order to make the situation look better. I would hope that that sort of thing would be picked up.

The Convener: Sorry, Mr Beattie, but I will interrupt you for one moment to bring in Iain Gray on the general point about internal audit.

Iain Gray: I want to follow up on Paul Gray's comment that, in his view, the Grant Thornton report indicates that the sum was accounted for in such a way as to hide what was happening from the board. The report states:

"The email trail appears to indicate that the Director of Finance at NHS Tayside was planning on using the eHealth money as part of their overall income that year, and that the Director of Finance at NSS was aware of this intention."

Was the director of finance at NSS also party to the knowledge that was hidden?

Paul Gray: That is possible, and NSS is conducting an internal investigation.

Colin Beattie: Again, that raises a question about NSS internal audit. Did NSS fail to pick up the issue at its end?

10:30

Paul Gray: We are straying into areas that are at the very limits of my technical competence, but I will try to answer your question as best I can. Gordon Wales may be able to assist me. The distinction that I make between NSS and NHS Tayside is this. NHS Tayside's end-year accounts—forgive me if I do not use exactly the right technical words—would have represented it as having £5.3 million available to spend. In fact, it did not have that money, because it was going to have to give it back. In other words, the position looked—or would have looked, if we had not

intervened—£5.3 million better than it should have done.

NSS was not going to spend the money in the year in which it was allocated. It returned the money, which was, at that point, the right thing to do, so its books do not misrepresent the situation. However, NSS returned the money through a budget exchange mechanism that had—to go back to 2011-12—been designed originally as a strategic reinvestment fund. It was a legitimate process that had, over time, been changed into a process that was, in effect, recycling money. The mechanism started as a process to make available for reinvestment all the expenditure that the organisation had intended to spend but which had not been spent, which is entirely legitimate. Where it strayed from legitimacy was when the process began to be used as a recycling mechanism. That should not have happened, and we have put a stop to it.

Colin Beattie: There are still questions around both NHS Tayside and NSS. In connection with NSS, the Grant Thornton report mentions "inconsistencies and quality issues" and things that were "out with the norm" that "should have been challenged". There are a lot of questions in relation to NSS—it is not just about NHS Tayside. There are two sides to the situation.

Paul Gray: Indeed, Mr Beattie. That is why I have ensured that NSS carries out a proper investigation through its governance processes. When the investigation reports, which I expect to happen in the calendar month of April, a decision will have to be made on what further action is required. You will appreciate that I do not want to pre-empt the outcome.

Colin Beattie: I have one last question. Lesley McLay, you said that you rely on internal audit. Are you satisfied that the scope of internal audit as it stands gives you the reassurance that you require on NHS Tayside's financial situation?

Lesley McLay: In light of the information and evidence that we now have, we are—as Alan Gray said—revisiting the situation to ensure that, if there is any risk, it will be covered in our 2018-19 audit plan. That has been part of the immediate action that I have taken.

The Convener: Mr Gray, would you expect board members to ask questions around deferred expenditure?

Paul Gray: In general, yes.

The Convener: Why has that not happened at NHS Tayside?

Paul Gray: I think that it has, but the detail was obscured from the board. I think that the board has acted reasonably since the detail became available to it.

The Convener: You say that you think that it has, but we have heard this morning that the board was not asking those questions. It was presented with information, but in quite general terms, and questions were not asked. Would you not expect your health boards around Scotland to be asking those questions?

Paul Gray: I expect health boards to act reasonably. What I mean by that—your question is a fair one—is that they have to scrutinise what they have before them in a way that probes the detail. However, if some of the detail is obscured, we would be asking a lot of people if we required them to notice something that they cannot see.

The Convener: Is it a reasonable expectation that the chief executive would ask for that level of detail?

Paul Gray: I am running the situation through the lens of what I would do. I find it genuinely difficult to know what I would have done differently if I had been presented with a packet of deferred expenditure of £23 million in which the components appeared to be reasonable and the money had been allocated through a specific process. It is entirely possible to speculate about what one might have done with different knowledge, but I think that what NHS Tayside did—I am speaking about the board—with the knowledge that it had was reasonable. On whether the internal controls were strong enough, it has already been accepted that the internal audit process will have to be reviewed.

The Convener: How could you agree to take action to reduce deferred expenditure when you did not know what it was? That is, in effect, what we have been told that the chief executive, the chair and the board did.

Paul Gray: Yes—you can take action, and the action can be reasonable and proportionate. If the components look reasonable, the action that you take will look reasonable.

The Convener: So you are satisfied that, in one of your health boards in Scotland, the management team and the board are not asking those questions, to the extent that £5.3 million has been misaccounted for. You are happy with that situation.

Paul Gray: No—I did not say that I was happy. We have all said that we are very unhappy. What I am saying—

The Convener: But you are satisfied that the situation can be allowed to continue.

Paul Gray: No—we have stopped it.

The Convener: It has been going on for six years.

Paul Gray: It has been going on through a process that was—as I explained to Colin Beattie—originally designed for something else and which was changed over time. That should not have happened, and we have taken away the authority from the e-health leads so that it cannot happen again. I find it genuinely difficult to see what a person can do when they are presented with information that is designed to give them one impression when the facts are different.

The Convener: We are not talking about politicians or the man in the street, but about chief executives who are highly trained and effective strategic leaders with forensic abilities, and yet you would not expect the board members or the management to ask those questions.

Paul Gray: I would expect them to seek the relevant assurances. That is how any chief executive works. They have to work on the basis of the assurances that they are given, and they have to ensure that those assurances are sound. This case shows—

The Convener: But that did not happen.

Paul Gray: Exactly. That did not happen in this case, because there was deliberate obscuring of the information.

Liam Kerr: On that note, I see that the director of finance, who worked for NHS Tayside for around 35 years one way or t'other, and who was deliberately obscuring information, walked in and retired, without any notice or forewarning. Is that really the situation?

Lesley McLay: That was not exactly how it happened. If I may, I will briefly describe the process. When I was alerted to the fact that there was a situation regarding our year end—that is how it was presented to me—my immediate assessment for action was that I needed to undertake an internal review and investigation into the governance. I wanted to understand quickly what that would mean for the board's 2017-18 position and, looking forward, for its 2018-19 position. I took the view that, in order to carry out an open and transparent investigation, I would take management action with the director of finance, and that is what I did.

Liam Kerr: At what point did that management action—I assume that that is management speak for disciplinary action—

Lesley McLay: No, it is not. I took action to suspend the director of finance, which was available to me in such circumstances. That was undertaken as a neutral act to allow me to ensure that I held an open and transparent investigation, and to protect the board and the individual. You can go into a disciplinary situation only once you have evidence and facts that there have been

some misdoings or wrongs, and you would take action thereafter. I took immediate action to investigate the issue, and I suspended the individual.

Liam Kerr: At that point, the individual turned round and said, “Actually—

Lesley McLay: No, he did not.

Liam Kerr: So how did his suspension turn into a retirement?

Lesley McLay: Anyone who is part of the NHS pension scheme can make the decision to retire before the age of 60. That is open to individuals. The suspension was enacted on the individual. It is probably important to say that I took senior human resources advice on the situation that had been presented to me. I made that decision, and then I started the internal investigation.

Liam Kerr: And then the director of finance retired.

Lesley McLay: That occurred on Monday 26 February. Through a trade union representative, an indication was made to the HR person who was leading that part of the investigation for me that the director of finance wanted to retire.

Liam Kerr: And that was accepted—or rather, you did not have to accept it; he simply retired. He said, “I am eligible to retire.”

Lesley McLay: I do not have a remit to approve those decisions. If somebody makes the decision to retire with immediate effect, I cannot prevent that from happening.

Liam Kerr: I understand. What payments would have been made at the point of retirement?

Lesley McLay: The payment to that individual, as with any individual who took that decision, would simply be their entitlement, which relates to their notice period and any annual leave that they are due. As committee members will be aware, anyone who takes early retirement has their pension and their lump sum reduced through adjustment.

Liam Kerr: To be clear, a lump sum was paid. Was there a payment in lieu of notice?

Lesley McLay: No—what I am saying is that the individual whom we are talking about was provided with the normal entitlement that applies to any individual in the NHS.

Liam Kerr: I appreciate that. Just to be clear, there would have been a payment in lieu of notice, which, after 35 years, would be three months.

Lesley McLay: Three months—yes.

Liam Kerr: Was the director of finance professionally qualified or regulated by any body?

Lesley McLay: Yes, he was. I apologise—I have forgotten the name of the body.

Professor Connell: I can tell you. It is the Chartered Institute of Management Accountants.

Liam Kerr: We have heard from Paul Gray that honesty and integrity were not present, and we have heard about misreporting. Paul Gray said—I may be paraphrasing here—that information was wilfully excluded from the board. Has a notification been made to the regulatory body, Mr Gray?

Paul Gray: The answer to that question is no. We contacted the regulatory body to establish whether it was already in possession of the facts, and it was. Reporting the matter twice would have served no purpose.

Liam Kerr: I understand, but, to the best of your knowledge, something is being done by the regulatory body.

Paul Gray: That is correct.

Liam Kerr: Lesley McLay spoke earlier about a level of accountability.

Lesley McLay: Yes.

Liam Kerr: In what way, as far as you are aware, is the former director of finance being held accountable? Are you aware that he is being held accountable in any way?

Lesley McLay: I am certainly in discussion with Scottish Government colleagues. I was aware that there was engagement with his professional body.

Liam Kerr: I will move away from that area slightly. Mr Gray, was the Scottish Government wise to entrust millions of pounds a year to a group that Grant Thornton concluded “were not financially aware”?

Paul Gray: You are referring to the e-health leads.

Liam Kerr: Yes.

Paul Gray: In retrospect, no.

Liam Kerr: What will the Government do with that knowledge, going forward?

Paul Gray: We have removed delegated authority to commit expenditure.

Liam Kerr: Why did the transfer request by NSS not raise any concerns within the Scottish Government’s health and social care directorate?

Paul Gray: Because it was seen to be part of a process that had existed since 2011, and there was a failure to detect the fact that the purpose of that process was changing.

Liam Kerr: That leads me on to my next point. The Cabinet Secretary for Health and Sport leads the health directorate, which is in turn responsible

for the e-health strategy board, and yet no one, from the cabinet secretary downwards, at any point said, "This looks amiss" or raised a red flag. Does that concern you at all?

Paul Gray: I have thought quite hard about that, Mr Kerr. The situation is this. We have a group of e-health leads whose responsibility relates to digital and to project and programme management. There is a process for strategic reinvestment, and they are using it in a way that appears to them to be reasonable. At the bookends of that process, if you like, are two finance directors, one in Tayside and one in NSS. To answer your question, I would be speculating on whether someone should have picked that up. If I was given clinical advice by two doctors, I would generally be inclined to accept it.

10:45

Liam Kerr: That is a fair point, because the e-health leads are not finance people. I think that that is your point: they are IT and operational people.

Paul Gray: Yes.

Liam Kerr: I have a final question. From the Grant Thornton report, it appears that a significant number of people in e-health, in NHS Tayside and in NSS, knew what was going on. Who is going to take responsibility? Who will be punished for this, Mr Gray?

Paul Gray: You may think—well, I will not tell you what you may think; I will tell you what I think. The finance director of NHS Tayside has left work earlier—some years earlier—than he meant to. He has, as Ms McLay made clear, therefore had an actuarial reduction in what he would otherwise have received by way of a pension and a lump sum, and his professional body is considering his position. That seems to me to be a fairly significant weight on a person. I have reviewed the situation in relation to the e-health leads, and I have removed delegated financial authority from them. I regard that not as a punishment, but as an appropriate action nonetheless. I will await the report from NSS before I make any decisions on what to do about that aspect.

Liam Kerr: Thank you.

The Convener: Professor Connell, on one of the previous occasions that you came to the committee, we talked about the bonus payments that management in NHS Tayside had received. Can you tell us when the last round of those payments was considered?

Professor Connell: First, I suspect that, for the sake of accuracy, it would be best not to call them "bonus payments". As Paul Gray clarified in an appearance before the committee, they are pay

increments for senior staff in NHS Tayside, and the word "bonus" is misleading in that circumstance.

The Convener: But they are judged on criteria of satisfactory performance.

Professor Connell: They are judged on performance criteria—you are quite right.

The Convener: Okay.

Professor Connell: The annual cycle runs a year behind, so the payments to recognise performance for the financial year 2016-17 would be enacted during 2018-19.

Lesley McLay: Yes.

The Convener: So the last time that they were considered was for the previous year, which was 2016-17.

Professor Connell: If you are getting to the point of asking about the payment that was made to the finance director in 2016-17, it would have been based on his performance in 2015-16. His pay in 2016-17 was determined by the assessment of his performance in 2015-16.

The Convener: In the last round of those performance awards, was he awarded an increment?

Professor Connell: To my understanding, he was.

The Convener: That would indicate that, in order to receive that increment—that bonus payment—his performance would have been judged as satisfactory. Is that correct?

Professor Connell: The triggering of an increment is based on a performance that is deemed to be either satisfactory or higher than that. Without having the facts in front of me, my recollection is that he was deemed satisfactory in 2015-16.

The Convener: So he received his increment in that year.

Professor Connell: In that year, yes.

The Convener: How about the rest of management?

Professor Connell: Again, without having the details in front of me, I am working from memory. My recollection is that no members of the senior team were deemed less than satisfactory in that year.

The Convener: So, in the last round of bonus payments, every member of the senior management team received one.

Professor Connell: Again, I point out, for the sake of accuracy, that they are not bonus

payments—they are pay increments that are determined by the Scottish Government. It is important to note that, for the sake of accuracy.

The Convener: I will call them incremental payments.

Professor Connell: Yes.

The Convener: In the last round of incremental payments, every member of the management team received one.

Professor Connell: I would need to confirm that, but I think that it is correct.

The Convener: Is that correct, Ms McLay?

Lesley McLay: Yes, it is correct.

The Convener: Thank you.

Willie Coffey: I turn to the transformation agenda. Perhaps the bigger issue for NHS Tayside, and for other NHS boards in Scotland, is to embrace the change agenda. Why has it taken Professor Ritchie to come along at this stage and make us aware, or at least make us think, that a transformational change is required in NHS Tayside? Why have you not done that of your own volition? I ask that question of both Paul Gray and Lesley McLay.

Professor Connell: Can I pick it up first?

Willie Coffey: Of course.

Professor Connell: It is a fair point, although I contest the view that it was only when Professor Lewis Ritchie was appointed to the assurance and advisory group that NHS Tayside understood the need to transform its business. I became chair of NHS Tayside about two and a half years ago, and at that time it was clear that the board's operational expenditure was greater than its incoming revenue, and that there was a need to transform its activity. In the first period after that, significant effort was made to carry out a fair amount of transactional activity to halt the rate of overexpenditure, but there was a clear recognition that transformation of our operations was going to be required.

It was clear, as Professor Sir Lewis Ritchie pointed out, that transformation would take significant time, but the board embarked on transforming its activities in 2015-16 and 2016-17. It was at that stage, when it was clear that the pace of transformation was insufficiently rapid and that we were still having difficulties in matching our operational spend with the available revenues, that Sir Lewis Ritchie was brought in to assist. Transformation has been on the cards for more than two years, but the pace has been picked up in the past year.

You asked Caroline Lamb for evidence of transformational change. There are some genuine transformations happening. Perhaps the easiest one to cite is a major change to the way in which NHS Tayside will deliver its surgical services in future. As part of the shaping surgical services programme, acute unscheduled surgery will in future be delivered only out of one site; in the past, it has been delivered out of two sites. Transforming the way in which we deliver surgical care will be not only better for patients but more sustainable in terms of workforce and finance. That process began before Sir Lewis Ritchie was in post, and it will continue in the future. Other major transformations to the way in which we operate are on-going.

Willie Coffey: Professor Sir Lewis Ritchie certainly gave me the impression—I do not know what the rest of the committee members feel—that the transformational change to which he referred had not been evident in NHS Tayside; we perhaps disagree in our interpretation of what he said. Are you confident—I ask the same question of Paul Gray and Lesley McLay—that NHS Tayside has the skills, the capacity and so on to carry forward the transformational agenda? Otherwise, we may be sitting here next year having a conversation like this one.

Lesley McLay: I will pick that up first. There is no doubt that, in NHS Tayside and probably in other boards, there is a challenge around capacity. That is simply because we rely on individuals to do their day job of managing patient care while at the same time being part of the redesign and transition process—in other words, new services are coming in while people are still managing the existing services. As a board, we were clear that there were gaps in our capacity to do that, and there were probably specific skill gaps as well.

The AAG review and the transformation support team have provided the board with some additional capacity and expertise. For example, programme management skills are not an inherent part of capacity in a number of boards, but, once we have worked with clinicians and front-line staff to agree a new model for how we deliver surgical services, as Professor Connell mentioned, we need really good programme managers. The existing model is still in place, and we need people with the skills to manage a detailed programme and all the risks that go with it. We have been fortunate in getting support through the transformation support team. Some of those individuals are still working with us, and I foresee that their support will be required over a significant period of time. The skills gaps will change, and we are trying to develop certain skills among our own staff. For example, the people with specific expertise whom we bring in from other organisations are carrying out training and

development with individuals so that, when they leave, we retain those additional skills. There is no doubt that an organisation such as ours, given the scale of the transformational change that we have to deliver, will require on-going additional support and capacity beyond our current workforce.

Willie Coffey: I ask the same question of Paul Gray. Are we seeing in other NHS boards in Scotland the same transformational change agenda that NHS Tayside has been asked to embrace? Will the same issues crop up in other boards, and might external support be required for a period of time to bring the required skill set into those organisations? Can you give us a flavour of what the landscape looks like across the boards?

Paul Gray: Most boards—most organisations—benefit from some external support to assist with transformational change. I would be quite concerned if we got ourselves into the position of thinking that any external support was a bad thing—that it was always evidence of some kind of failure or defect. It is hugely important that we have in place people who have change management and organisational development capabilities, qualifications and experience in order to drive forward change. The effect and benefit of a fresh pair of eyes should not be underestimated. Sometimes, when organisations have got to a point at which they think that they have exhausted all the possibilities, a fresh look at the situation can open up new avenues for consideration or enable people to revisit an option that they had perhaps discarded. I would not only expect but welcome the further use of change management and transformational change capability in NHS Scotland, because it would be entirely beneficial.

Willie Coffey: Are you satisfied that what has been put in place with, and for, NHS Tayside is sufficient and adequate to get it through the period of transformational change that is required?

Paul Gray: I have asked NHS Tayside to submit its final plans for 2018-19 not by the end of this month—which would, in effect, be today—but by the end of May. Based on what we now know, and given all the things that have come to light, I want NHS Tayside to reassure itself that the plans are sufficiently robust and that it has the capability and capacity in place to deliver them. I have also asked Sir Lewis Ritchie to maintain his oversight as part of the assurance and advisory group so that I can be provided with assurance that the plans are being developed robustly. We are providing additional support to NHS Tayside, and we stand ready to support it in seeking more support and assistance if that proves to be required.

Willie Coffey: Thank you.

Liam Kerr: I will follow up briefly on that line of questioning. A degree of brokerage has been given to NHS Tayside. For anyone who is listening, I should explain that brokerage is a kind of interest-free loan. Is that a fair description?

Paul Gray: I will accept your definition.

Liam Kerr: Brokerage of £33 million has been given, and it is clear that, given the issues that we have been looking at today, a little more brokerage might be needed. That being the case, you have deferred repayment for three years. That raises several questions. How confident are you that that level of brokerage will be repaid to the public purse? It is necessarily a fixed sum, and the sum that you will get back in three, four or five years will therefore be worth significantly less to the public purse than it is worth today. Is there any implication for the rest of the NHS budget as a result of putting that amount of brokerage into NHS Tayside?

11:00

Paul Gray: I will try to answer your questions in order. I had already indicated to the committee my intention to provide at least £4 million of brokerage relating to the current financial year, in addition to what has already been provided. The sad fact about the £5.3 million, on which most of the questioning has concentrated, is that it was, in effect, additional brokerage, which, had we been asked for it, we would have given. That is the unfortunate fact about all this. If we add £4 million and £5.3 million, we get £9.3 million—the arithmetic is not difficult. I have asked NHS Tayside to assure itself that, in its estimates for expenditure, it has removed, as far as it possibly can, an optimism bias. My expectation is that, as we close off the end of this financial year, which we are now approaching, I will provide brokerage to NHS Tayside in the range of £9 million to £12 million. The board will be able to tell me more about the situation after its meeting this afternoon, and after some final work on which Alan Gray is leading. That will take the overall brokerage into the realm of £40-odd million. That is the answer to your first question.

Am I confident that we will get the money back? I have a strong expectation that we will get it back, and my confidence will increase over time. Has the provision of brokerage been detrimental to the rest of the NHS? The answer is no, because the money that has gone to NHS Tayside has not disappeared down a hole; it was spent for legitimate purposes on patient care and other things. There has been a benefit from that expenditure. Will I be glad if I get, say, £45 million back in three years' time, which I can then recycle into other things? Yes, I will.

Liam Kerr: To be clear, when I ask whether there is any detriment to the NHS, I know that the money has gone to NHS Tayside and will have been used, but it has come from somewhere. From which budget has it come? Is it from somebody else's budget? Has NHS Grampian not received £33 million as a result?

Paul Gray: No. In a budget of £13 billion, there are always end-year adjustments.

Liam Kerr: And the opportunity cost?

Paul Gray: Yes—

Liam Kerr: Is what? And to whom?

Paul Gray: It is difficult to speculate. I am not disagreeing with your question—it is fair and appropriate. What could we have spent £33 million on that we did not? The answer is that I do not know, because we had not planned to spend that money. It is not the case that we had some plans that we then cancelled, and said, "No, we'll not do that." We did not devote £33 million to some other board or functional purpose—it was devoted to NHS Tayside.

Bill Bowman: Good morning, Mr Gray. I am sorry, but I am going to continue on the £5.3 million and the Grant Thornton report. I have read the report—it is quite clear, and it is a good report, but to my mind it is somewhat limited. Grant Thornton was given specific instructions to look at certain controls and at the accounting of transactions.

The report states—as it repeats at several points—that its work

"does not constitute an audit or a forensic examination and therefore does not provide the same level of assurance".

It goes on to state:

"Our conclusions are based on documentation provided to us by the"

various bodies concerned. That worries me slightly. You say that, to some extent, you have to take what people tell you on trust, but I am not clear, from looking at the report, about exactly who knew what and when. It does not mention—I do not think—the finance director's retirement or anything that he may have said. A link has been made to suggest that that person left because of something that had been done in the past; you referred, for example, to detail being "obscured". Do you plan to undertake a forensic examination so that we can get down to the detail of what happened?

Paul Gray: I have not planned to do so, because a forensic examination would imply that there was some information somewhere that we did not have. As I understand it, a forensic audit would normally look for information that we do not have, or information that we think might exist but

we are not sure where it is. I think that we have pretty much all the information that exists.

What I would say—as I would always say to this committee—is that, if the committee wished to make a recommendation that further work should be done, I would take that very seriously. However, I think that we are taking the matter pretty seriously already. We commissioned a report as quickly as we could. We have had the results back pretty fast, and we have taken a number of actions as a result.

Alan Gray, who is certainly one of the best finance directors whom I know, is currently going through the NHS Tayside budgets in detail; he is now able to do that because he has access to all the information. He is taking a fairly thorough look. I cannot speak for Audit Scotland, but I cannot imagine that it will not, having heard all that it has heard, take a fairly close look at issues connected with the current financial year and perhaps review previous financial years as well. We have gone into a pretty substantial level of detail, but—as I said—if the committee made a recommendation, I would pay close attention to it.

Bill Bowman: We will come to that later. I do not think that there is any doubt that we have the figures; we have seen the schedule of reversing entries, which is a bit of an audit trail in itself. However, I am still not convinced that we are clear about exactly when people knew or did not know things, or exactly what they knew. When one reads reports that refer to people only by their job titles, it is sometimes hard to follow exactly who is who. We are not clear about what discussions may have taken place about year-end balances; perhaps the presentation could be improved. As I understand it, the board is saying, "We didn't really know about this." Did the finance director actually hold up his hands and say, "I did all this"?

Professor Connell: I will pick that up. I appreciate the points that you are making, Mr Bowman. I should start by saying that the NHS Tayside audit committee remains very concerned, not about the what, because those details are quite clear, but about the how, and the governance aspects. The audit committee is currently putting together a remit for a further review, which will be externally led, of the detail that you are asking about: who knew what, and whether opportunities to pick up the issues were missed. While I have given this committee assurances today that I do not believe that anything has been missed, our audit committee has asked for some further assurance on why the issue was missed for so long.

You mentioned that the report refers to a number of people by their titles. The current arrangements date back to 2012, when the directors of finance for NSS and for NHS Tayside

were different people from those who are currently in post. The arrangements were set up by a different set of people, but the difficulty is that those arrangements have continued over time and have almost become part of—

The Convener: Excuse me, Professor Connell—I think that Mr Bowman asked a direct question. Did the director of finance hold up his hands? I think that Ms McLay was going to deal with that question—

Professor Connell: Ms McLay will deal with that.

Lesley McLay: I first became aware of the issue when the director of finance advised me of it.

Bill Bowman: Advising you of the issue is different from saying, “I was the person who perpetrated it.”

Lesley McLay: He advised me of the issue. On further questioning, I became aware that he clearly had knowledge, which was when I made the decision to carry out an internal investigation.

Bill Bowman: It would be interesting to know what you are actually proposing before I push any further—whether it is a forensic examination or the external review that Professor Connell mentioned. Will you have some oversight of that?

Lesley McLay: Yes—we will share the oversight.

Professor Connell: Yes—we will discuss it.

Paul Gray: Absolutely—my finance director, Christine McLaughlin, will expect to see that, too. Would it be helpful, convener, if we wrote to the committee with the terms of reference for the external review?

The Convener: Yes, please.

Bill Bowman: I have one more question. You said that “detail was obscured”. From my auditing days, I know that if something is hidden, one would expect there to be checks and balances that would find it. If there is collusion, it becomes much harder to find because more than one person is involved. How sure are you that there was no actual collusion? We are focusing on NHS Tayside today. Was there collusion in other parts of the NHS to misrepresent the Tayside accounts?

Paul Gray: I have already made it clear that NSS is doing an internal investigation; we shall see what that brings. I think—well, I am not going to say what I think, because, to be frank, that is the road to ruin. I expect—

The Convener: We expect you to be honest with the committee, Mr Gray.

Paul Gray: Indeed.

The Convener: Great.

Paul Gray: I am sorry, convener. All I meant was that I am not going to speculate. That would not lead to an honest response to the committee; it would just be speculation on my part.

The Convener: Okay.

Paul Gray: I think—or I expect, I should more fairly say—that the external review that NHS Tayside is commissioning, which we have spoken about, will bring further clarity on the detail of the question that Bill Bowman asked, about who within NHS Tayside knew what about what, and when. I have here a timeline—I can give it to the committee, and I am happy to read it out, if you want—of what we knew when, but that may not be the line of questioning that Mr Bowman is pursuing.

Bill Bowman: It would be helpful if we could get the proposed terms of reference for the external review. I have one final question. Do you intend to withdraw, correct and reissue the NHS Tayside accounts that cover the years concerned?

Paul Gray: That will be a matter for discussion with Audit Scotland—

Bill Bowman: It is a matter for you, is it not? You own the accounts, in a sense.

Paul Gray: Yes, but I would wish to discuss with Audit Scotland how we might go about that.

Bill Bowman: The matter is on your agenda.

Paul Gray: Yes. Bearing in mind that we are saying that, for a number of years, the position has been misrepresented, I will need proper advice on how we might rectify the situation, and at which points the changes became material—

Bill Bowman: They probably are material, in the sense that we are discussing them at great length here. It is not just money—

Paul Gray: I am sorry. All I mean is that it may be that there were some years in which the differences were not material and others in which they were. I simply do not know, but I am happy to respond to your question by saying that that is something that I am considering.

Bill Bowman: Thank you.

The Convener: Mr Gray, did you hear the evidence from the first panel of witnesses this morning?

Paul Gray: I am afraid that I was not able to do so.

The Convener: I asked Sir Lewis Ritchie about a couple of points in his report, which was published before the issue of the £5.3 million came up. I am particularly interested, as I have

been previously, in prescribing in NHS Tayside and the detail that his report contains on it. I cannot remember his exact words—the *Official Report* will tell us later—but he indicated that he is perhaps a little wary of the move from a red warning to an amber warning on prescribing. I was wondering whether you had heard his evidence, and how you felt about what he indicated in that regard.

Paul Gray: No, I did not hear his evidence. In response to your earlier injunction about being honest with the committee, which I trust I always am—

The Convener: Yes.

Paul Gray: I am aware, in any case, of Sir Lewis Ritchie’s concern about prescribing: he and I had a brief conversation earlier this week. You may recall that I previously engaged Gregor Smith, the deputy chief medical officer for Scotland, to look at issues around prescribing. I intend to ask the deputy chief medical officer to come back and provide some further assurance and support on that issue. If I may say so, prescribing is one of the areas from which I am very keen that “optimism bias”—as I described it earlier—be weeded out.

I think that what NHS Tayside is proposing to do on prescribing is spot on. However, I still wonder whether the ambition that it has expressed exceeds the likely rate at which progress can be made, given that prescribing is a relatively complex issue that requires a lot of persuading of a lot of people. I think that NHS Tayside is doing the right thing on prescribing—I just want to be sure that what it suggests will happen as fast as NHS Tayside thinks it will happen.

The Convener: What would drive the rate of progress that you say is necessary?

11:15

Paul Gray: Engagement, above all, would do that. In English, that translates as “speaking to people”. The process is not complicated or technical, but decisions about prescribing are multifaceted, and there are on-going historical practices. I am not suggesting that those practices are bad or wrong, but we may need to ask people who have been doing something in a particular way for many years to do it a bit differently. We need engagement and persuasion, and we need to ensure that clinicians and the public understand what we are aiming for, which is better prescribing. Those are the things that matter.

The Convener: The change that people on the ground are being asked to make is not easy, or it would have been made before. How do you think the issue of £5.3 million being misaccounted for

will affect the confidence of those people in respect of seeing through the change that they are being asked to make? They may look at the newspapers, the Scottish Parliament and the board, and think, “Well, they’re not asking basic questions about where that money is, so why should we make this change?” Will it affect their confidence in any way?

Paul Gray: I genuinely hope that it will not. There are three points to make. First, I never operate on the basis that when someone else has done something wrong, I will not do something right by way of a response. I do not expect that colleagues in NHS Tayside would, either. Secondly, the £5.3 million has, as you rightly said, convener, been “misaccounted for”; it has not been misspent or used for something for which it should not have been used. As I said in response to earlier questioning, it is a great shame that the money was not asked for as brokerage, because it would have been given. The situation would have been exactly the same as it is now, except that the money would have been properly represented.

Thirdly, what we are seeking to do on prescribing in Tayside is consistent with best practice and with the principles of realistic medicine. I think that all clinicians will subscribe to that, and it is important to engage with them respectfully—as I know NHS Tayside is doing—and to ensure that the change is carried through.

The Convener: You are, in effect, the mortgage broker for any health board that is running a deficit.

Paul Gray: That is right.

The Convener: In effect, NHS Tayside reported a false account to you when it came to you for brokerage. Are you in a position to grant brokerage to NHS Tayside when its accounts are inaccurate to the extent that they are?

Paul Gray: There was a misrepresentation of £5.3 million, which has been uncovered and fixed. My confidence in what has been done so far, in particular the work that Alan Gray has led, is strong, and I am therefore confident in giving brokerage to NHS Tayside.

The Convener: The Grant Thornton report specifically states that there was

“a lack of controls in ... NHS Tayside”

that led to the current situation. How do you feel about senior management accepting an uplift in pay based on performance, given that controls did not exist, which has led to the situation that we are discussing?

Paul Gray: I am not party to discussions on performance in health boards, so it is difficult for me to answer your question.

The Convener: You are in charge of all the health boards in Scotland, and are, in effect, in charge of all the senior management. There is an arrangement in place throughout Scotland by which people can award each other performance payments, but NHS Tayside has been running a deficit and has had a mistake in its accounts for the past six years.

Paul Gray: As far as I understand it, increments are a contractual entitlement. If I am wrong about that, I will correct what I have said, but that is my understanding. There is a process to decide whether those increments should be paid. I am happy to place on record that I expect NHS Tayside to think very hard about this year's round of payments.

The Convener: Thank you.

Ms McLay, are the internal and external audit teams being changed or replaced, or will they continue as they are?

Lesley McLay: There has been no discussion of that. My understanding is that the external audit team is allocated to the board—

The Convener: Is it allocated by Audit Scotland?

Lesley McLay: Yes, that is my understanding.

The Convener: We will pick that up with Audit Scotland. How about the internal audit team: do you have the confidence to continue with its services?

Lesley McLay: As Alan Gray said earlier, he is sitting down with the internal audit team to discuss what our programme for 2018-19 looks like. There has certainly been no discussion on our part of whether a change is required, at this stage.

Paul Gray: When the external review that we have spoken about is concluded, that will be an appropriate moment at which to consider the points about internal controls and internal audit, and to decide on what the report tells us.

The Convener: We know that everyone who has looked at the situation has missed the key issue. It would seem to be worth while to consider whether strengths should be added to the internal audit team to ensure that the same does not happen in the future. Are you comfortable that the director of finance has carried the can for what happened?

Lesley McLay: The independent report clearly recognises that there were failings in our governance procedures. We have rectified those and we have enhanced other procedures. As Paul Gray indicated, the detriment to the individual concerned is significant.

The Convener: There has been significant detriment to that individual, but to nobody else. He was suspended and then took early retirement so, in effect, he has carried the can for the mistake. Is that right?

Lesley McLay: He has certainly been personally impacted by the situation.

The Convener: Do you think that that is fair? Was it entirely his responsibility?

Lesley McLay: The Grant Thornton report clearly states that there were failings across three parties; what happened was not down to one individual. The job for us all is to ensure that we rectify the situation and take action immediately to put in place safeguards to prevent such a situation from ever happening again. I see that as being my responsibility.

The Convener: You do not feel that you made mistakes in respect of questions that you did not ask the director of finance about the situation.

Lesley McLay: I take on board our conversation and the challenge that you have given us today. We have already taken actions to include further detail in our reporting. I have also instructed a change in our standing financial instructions, which will mean that I, along with the director of finance, will review, consider and formally sign off every single allocation that comes into NHS Tayside before it goes through the financial management process. As other people have indicated, we are commissioning an independent review, and we will look at its findings and take further action, as the review recommends.

The Convener: You are happy that the situation was the responsibility of the director of finance, and that your performance continues to be satisfactory and deserves an uplift in pay?

Lesley McLay: As I said, it is clear that, as the Grant Thornton report determined, the director of finance had responsibility. With regard to my performance, that decision will be made by the chairman and by the board. It is not for me to make any statement on that.

The Convener: We have spoken about the overall transformational change that needs to be made. I asked Paul Gray about the people on the ground who are delivering it. Do you feel that, given the revelations, you still carry their confidence to make that change?

Lesley McLay: As we have discussed, the impact of what has happened has been felt by every single person across the organisation. However, we have the assurance and advisory group's report, which was published and assessed as recently as January this year. It documents clearly that, through our front-line clinical teams and our managers, and through our engagement

with the public and with our staff, progress is being made in our organisation. We are clear that we have a significant journey ahead of us—nobody underestimates it. However, it is important that, while we rebuild confidence among the staff in our organisation and among the public in relation to concerns around the financial position, we also commend and publicise our staff for the huge amount of work that they have undertaken over the past 12 months.

The Convener: Thank you very much. I thank all members of the panel for your evidence this morning. We now move into private session.

11:24

Meeting continued in private until 11:30.

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