



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 17 January 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 17 January 2019

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
SECTION 22 REPORT	2
"The 2017/18 audit of NHS Tayside"	2

PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
2nd Meeting 2019, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

- *Colin Beattie (Midlothian North and Musselburgh) (SNP)
- *Bill Bowman (North East Scotland) (Con)
- *Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- *Alex Neil (Airdrie and Shotts) (SNP)
- *Anas Sarwar (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- John Brown (NHS Tayside)
- Hazel Craik (NHS Scotland Central Legal Office)
- Alan Gray (NHS Tayside)
- Paul Gray (Scottish Government and NHS Scotland)
- Dr Annie Ingram (NHS Tayside)
- Shirley Rogers (Scottish Government)
- Liz Smith (Mid Scotland and Fife) (Con)
- Malcolm Wright (Former Chief Executive, NHS Tayside)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 17 January 2019

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Jenny Marra): Good morning and welcome to the second meeting in 2019 of the committee. I welcome Liz Smith MSP. I ask everyone in the gallery to please switch off their electronic devices or turn them to silent, so that they do not affect the committee's work.

Agenda item 1 is to make a decision on whether to take business in private. Do members agree to take item 3 in private?

Members indicated agreement.

Section 22 Report

"The 2017/18 audit of NHS Tayside"

09:01

The Convener: Item 2 is on the section 22 report "The 2017/18 audit of NHS Tayside". I welcome our witnesses: John Brown, who is the chair of NHS Tayside; Malcolm Wright, who is the former chief executive of NHS Tayside; Alan Gray, who is the director of finance at NHS Tayside; Dr Annie Ingram, who is the strategic director of workforce at NHS Tayside; and Hazel Craik, who is the head of employment at the central legal office. I invite John Brown to make a brief opening statement.

John Brown (NHS Tayside): I thank the committee for this opportunity to respond to the Auditor General for Scotland's report on the 2017-18 audit of NHS Tayside. I also thank the convener for agreeing that our finance director and workforce director could attend to assist the chief executive and me in assuring the committee about the progress that we are making to stabilise our financial position and develop the capability and capacity to deliver the service changes that are required in NHS Tayside to improve our performance and achieve financial sustainability in the longer term.

Hazel Craik from the central legal office has been the principal adviser to the board on the handling of the departure of Lesley McLay, the former chief executive. I realise that her departure has been a matter of concern for the committee, and my colleagues and I will do our utmost today to respond to those concerns as fully as possible.

I hope that the Auditor General's report, the report that the committee received from the assurance and advisory group and the written submission that NHS Tayside sent in last week will give the committee a good insight not only into the 2017-18 audit, but into the work of the interim leadership team since we took over in 2018.

I will summarise what we believe to be the situation in Tayside as we speak. Before I do that, it is right to record that the board fully accepts the audit report as an accurate description of the 2017-18 financial position and the performance that was delivered by NHS Tayside up to March 2018. I also say up front that, although we note that the Auditor General has acknowledged that the agreement that NHS Tayside reached with the former chief executive was reasonable, we accept that mistakes were made. I apologise for those errors. I confirm that the remuneration committee has met and endorsed the decision to change the former chief executive's notice period, and that the

overpayment of funds to the NHS Scotland pension scheme has been returned to NHS Tayside.

The biggest challenge that was faced by our interim leadership team was not handling the departure of the former chief executive, but bringing financial stability to NHS Tayside and developing the plans to deliver the service changes that are required to bring NHS Tayside into financial balance, while improving performance. I am sure that we will touch on all those issues as we go through the papers this morning.

The committee will note from the papers that we believe that NHS Tayside's financial position has stabilised and that the challenge that we now face is to deliver the changes that are required to improve that position. As well as improving access to our services, we need to improve our mental health services in particular, integrate health and social care at a bit more pace and develop the workforce that is required to support that. However, those are challenges that we share with all Scotland's boards.

As the Auditor General and the assurance and advisory group have acknowledged, so far, the interim leadership team has done a lot of work to understand the provision and costs of services in Tayside, and we are now turning that work into action plans for change. That is our priority. At its February meeting, the board will review the progress that the leadership team has made towards delivering our plans for not only next year but the next three years. The level of change that we are talking about will not happen overnight. There is a long history of problems at NHS Tayside—it goes back six years—so I think that three years is realistic when it comes to our ambition to be in financial balance and to improve our performance.

I put on record my appreciation for all the hard work and commitment that the interim chief executive, Malcolm Wright, and the rest of the interim leadership team have put into taking NHS Tayside forward. I particularly thank all the staff across NHS Tayside, who have worked so hard over the past nine months to turn things around. I make special mention of the clinicians, who have played a crucial role by getting involved in redesigning our services. It would be remiss of me not to mention our colleagues in NHS Grampian and NHS Greater Glasgow and Clyde, who have supported me, Malcolm Wright, Annie Ingram and Alan Gray as we have had responsibilities across two boards. Without their support, we could not have delivered on that.

The Convener: Thank you very much, Mr Brown. I will open the questioning by asking about the payment that was made to the former chief

executive. It would be useful to get some clarity on that. It is the committee's job to follow the public pound. On behalf of the public, we scrutinise public spending and the effective use of their taxes.

For a number of years—this predates my convenership—the committee has been clear in expressing its concern about golden handshakes and large severance payments in the public sector. During our scrutiny of the previous section 22 report on NHS Tayside and the one that is before us today, the committee has probably put on the record no fewer than six times that it did not want enhanced severance payments or golden handshakes to be offered to any members of management in NHS Tayside. However, the Auditor General's report makes it clear that that is exactly what happened. We have information from the Auditor General's report and other documents that gives us a bit of insight into the situation. It is our understanding—I think that it is yours, too—that a payment was made in lieu of notice. The notice period in the former chief executive's contract was three months, but it seems to have been increased to six months. How and why did that happen?

John Brown: The best person to talk us through how we came to the decision that it was appropriate for the notice period to be extended from three to six months is probably the accountable officer, who is sitting on my right.

Malcolm Wright (Former Chief Executive, NHS Tayside): I acknowledge—straight up—what the Auditor General has said in her report and in the evidence that she led at the committee meeting when the issue was discussed. The key question was about whether we should have sought to negotiate a settlement, and the Auditor General has agreed that seeking to negotiate a settlement was a reasonable decision to make. As accountable officer, I need to balance risk and achieve the best possible value for the public purse. The advice that I received, which I have examined carefully and which I believe to be correct, was that there were risks facing the board that would have ended up costing significantly more money than that eventually paid out, which was about £32,000.

I am happy to go into the detail on the background to that, but I think that negotiating a settlement was a reasonable decision to take. The Auditor General said:

“given the balance of risks facing the board, to have agreed a settlement period of six months would not have been unreasonable”.—[*Official Report, Public Audit and Post-legislative Scrutiny Committee*, 13 December 2018; c 6.]

On the order of the settlement that was made and the balance of risks that the board faced,

there was a real risk that the level of public expenditure on defending potential claims against the board would be significantly greater than what was actually settled for.

I also concur with the Auditor General that there was a fundamental misunderstanding in the board that six months was the standard notice period and that a notice period could be increased without going to the remuneration committee. That was a misunderstanding and an error. As the accountable officer, I apologise to the committee for that taking place.

The Convener: For clarification, are you telling the committee that you were aware that the contractual entitlement was three months and that you increased it to six months as part of the settlement agreement?

Malcolm Wright: That is correct. That was part of the negotiation with the solicitors for the former chief executive. Hazel Craik can add to that point about what the outcome would have otherwise been.

The Convener: Is it normal practice to change contractual entitlements when you are negotiating a settlement agreement?

Malcolm Wright: I ask Hazel Craik to comment on that. My point is that we were making a set of decisions on the basis of risk and seeking to minimise additional expenditure to the public purse. The eventual settlement of about £32,000 was significantly less than what we would have had to pay out in different ways if legal claims were to have been made.

The Convener: So, it was not a mistake; it was an intentional decision by the board to change the former chief executive's contractual entitlement from three to six months. Is that correct?

Malcolm Wright: That is correct, and—to be clear—there was a fundamental misunderstanding that six months was the standard notice period for chief executives. That goes back to a circular that was written in 2006 that laid out a standard notice period for chief executives. That circular was never actually issued. The final circular that was issued said that the period should be between three and six months and that anything over three months needed to be approved by the remuneration committee.

The Convener: You wanted to settle. You looked at the contract, saw that the notice period was three months and you thought, "Well, other chief executives in Scotland have six months in their contract, so we will increase it to six."

Malcolm Wright: No—it was not as straightforward as that. I will bring in Hazel Craik on the legal discussions that took place.

Hazel Craik (NHS Scotland Central Legal Office): I became involved in advising on the matter at around the time when the board was dealing with the process that might have led to termination of the contract. At that point, there was communication from the solicitors for the former chief executive. It was clear that there was not going to be co-operation with that process, and various potential legal challenges were mentioned as a possibility. There was a discussion about how that letter would be responded to, and one decision was that a telephone call would be made to those solicitors.

09:15

The Convener: Could you move to the point about the three and six months? I realise that there is probably a lot of background information, but we need to use the committee's time efficiently this morning.

Hazel Craik: As part of the conversation between solicitors, which obviously I am not at liberty to discuss, one issue that was raised was a six-month notice period and an understanding that that was the norm for chief executives. That was fed back to the board and, thereafter, decisions were taken to conclude a settlement agreement on that basis.

The Convener: I am not sure that I completely follow. As the legal adviser to NHS Tayside, you were aware that the contract stated three months as the notice period, but you advised that, because other chief executives in Scotland had six months in their contracts, it would be okay for that entitlement to be increased. Is that correct?

Hazel Craik: No, not entirely. I was aware that the contract stated three months and that various challenges were being made by the solicitors for the former chief executive. There was a discussion, and one of the proposed solutions to go to the negotiation was to offer a six-month notice period. I took back that matter to the board. There was discussion and, having weighed up the risks, a decision was made that it was reasonable to conclude a settlement agreement on the basis of a six-month notice period.

The Convener: NHS Tayside took the position that the contractual entitlement was to three months, but it was decided to increase that to six months, as part of the settlement agreement. You took advice from lawyers and that was the decision that you came to.

There are another couple of points of confusion. John Brown has been involved with NHS boards for many years and chairs the NHS Tayside remuneration committee. How did you not know that a variation in contract such as that had to be passed by the remuneration committee?

John Brown: The circular that made that requirement was issued in 2006. I have been a chairman of boards in the national health service for the past three years, so it predated me. I have never been in a situation in which a chief executive has left a board in such circumstances, so I was unaware that that requirement existed.

The Convener: You did not know about the rule that such a change had to go through the remuneration committee.

John Brown: No. Had I known that the rule existed, I would have taken the variation in contract to the remuneration committee, which would have considered it. When I was advised by Audit Scotland of the existence of the circular that required that matter to go to the remuneration committee, I took it to the committee, which considered it and agreed that the decision to enter the negotiation was the right step to take, and that it was reasonable to extend the entitlement period.

The Convener: You wrote to me on 7 August 2018. The letter, which was copied to other North East Scotland members of Parliament, stated:

“All payments are legal and contractual entitlements and no additional payments have or will be made by NHS Tayside.”

As of 7 August last year, that statement was not correct, was it?

John Brown: It was correct.

The Convener: How could it be correct when you did not get approval from the remuneration committee to vary the contract until November?

John Brown: That is because the contract settlement agreement, which you have had sight of, supersedes any previous contracts. That was agreed and became legal and contractual on 28 June, which was prior to the former chief executive's resignation on 31 July. That is the legal advice that we have had and was the basis of the letter. The background to the letter was that there was a great deal of concern following media reports that the former chief executive had received £300,000 as a severance payment.

Because of the requirement to protect personal information, we were not in a position to put the actual amount of the settlement into the public domain. However, because of the concerns of the public and Tayside staff, I decided that we would give them some comfort by writing to the committee given that the media coverage said that the committee would want to be involved.

The intention of the letter and the intention behind copying it to other relevant MSPs was to give the public and Tayside staff the confidence that, whatever payments were going to the former chief executive, they would be subject to scrutiny.

The Convener: Yes. There was a great deal of concern because there was a lack of transparency around the former chief executive's exit. The committee had been clear, and I do not think that the public in Tayside were looking for a golden handshake for a former chief executive who had presided over severe financial mismanagement on the part of the board.

I have a final question on this. You made a submission to the committee for this morning's meeting, which was helpful. However, I was slightly concerned by some of its content. At paragraphs 2.10 and 2.11, you seem to suggest that the error was in not putting the change to the remuneration committee rather than the error being the change from three to six months. Do you stand by that?

John Brown: Yes. I believe that the accountable officer made a reasonable decision to enter into a negotiation, given the risks of the additional financial burden for the board if the situation lasted much longer. It was reasonable to bring the notice period for the former chief executive of Tayside in line with the norm for other territorial boards.

The Convener: Do you think that that is reasonable, Mr Brown? As I just said, the former chief executive presided over a board that was in financial chaos, that now owes the Scottish Government £60 million and that is way behind on all governance performance targets. I do not think that the public in Dundee and the wider region of Tayside think that that is reasonable. The increase that you put on this golden handshake is equivalent to the annual salary of a teacher in a Dundee primary school. How is that a reasonable decision?

John Brown: You have to balance the cost of going down that route against the cost of the alternative route. The accountable officer and the board have a responsibility to the public purse to ensure that public funds are spent in the best possible manner.

The Convener: On that point about risk, my colleague Liam Kerr has some questions.

Liam Kerr (North East Scotland) (Con): I want to go back to Mr Wright on this. You have said at some length that a whole load of risk has been mitigated as a result of these decisions. As far as you are concerned, Mr Wright, when this decision was made, what was the nature of those risks? What claim did you feel NHS Tayside would face? What was the value of that claim, in your mind?

Malcolm Wright: Some of that is outlined in the business case that went to the Scottish Government. I know that there has been criticism that there could have been more information in that business case, and I apologise for that.

I will outline some of the risks that we were aware of. First, there had already been a delay in the process because the former chief executive had had a period of medically certified sickness absence. That had delayed the start of formal proceedings. Secondly, solicitors acting for the former chief executive had formally declined a request for the former chief executive to come to a meeting with the board to discuss future employment—

Liam Kerr: Forgive me for interrupting, but what was the employment tribunal claim that you believed that NHS Tayside would face? What was the value of that claim when the board took the decision to sign off on the payment?

Malcolm Wright: I will ask Hazel Craik to come in on the details of the claim, but the value of the claim and the costs of defending it were in the region of £90,000 to £110,000.

Without making any comment on the merits of whatever legal case might be brought, I point out that, if it had gone to an employment tribunal, the caps would have been lifted on the value of the settlement that the tribunal could give for claims based on age or sex discrimination.

Liam Kerr: That is my point, Mr Wright. Were you facing a claim for age or sex discrimination, or was it for unfair and/or constructive dismissal, which would be capped at significantly less than £90,000 to £110,000?

Malcolm Wright: We were facing the prospect of claims. I will ask Hazel Craik to talk the committee through that.

Hazel Craik: The board started down the route of planning to invite the chief executive in to explore the fact that accountable officer status had been removed, which rendered her job impossible to perform. That meant that the board was not in a normal process—a disciplinary process, for example—but it still needed a fair process for the dismissal of an employee. The board was hoping to progress down that route when it received correspondence from the solicitors for the former chief executive, which said that she would not attend meetings about the matter, suggested that she felt that she had been mistreated due to her sex and age, and raised other matters.

Liam Kerr: Did she ever offer to resign?

Hazel Craik: Not while I was dealing with the matter.

Liam Kerr: Mr Wright?

Malcolm Wright: I am not aware of her offering to resign.

Liam Kerr: Dr Ingram, did you have any involvement in the matter?

Dr Annie Ingram (NHS Tayside): Yes, I did. She offered to resign at the beginning, on 9 April. I was asked to contact her solicitors, and at that time she offered to resign. We then had communication through the CLO that her solicitors felt that she was unwell and unable to make an informed decision; that was when she went on a period of sick leave. After we received the letter that Ms Craik referred to, there was a conversation between the solicitors and representatives from the CLO, from which the request came that she would resign if the board would agree to payment in lieu of six months' notice.

Liam Kerr: That is interesting. I might come back to that, but I want to reflect on what you have just said.

Alex Neil (Airdrie and Shotts) (SNP): I want to follow up on this because, although there is nothing that we can do about turning back the clock in this case, it seems to me that there are some systemic issues to be addressed. The fact that the chair of the remuneration committee was not advised by the full-time officers about the circular in 2006 is an example of an unacceptable failure to support the chair, in my view. Full-time officers in the legal office and the finance and audit departments are there to advise non-executive directors about circulars that went around long before they took up position. That is one small example of systemic failure.

I want to probe the matter a bit with Dr Graham. You say that the chief executive offered to resign at the beginning of April. Can you give us a timeline of what happened thereafter? Did anybody accept her resignation? Was it discussed by the board or with the minister? When did you receive the subsequent letter that appears to have withdrawn the resignation unless she got the six months' pay? What was the timeline and sequence of all that?

Dr Ingram: Did you mean to say Dr Ingram? You said Dr Graham; did you mean me?

Alex Neil: Yes—I am sorry.

Dr Ingram: The timeline was that accountable officer status was removed on 6 April—

Alex Neil: By the cabinet secretary?

Dr Ingram: By Paul Gray.

Alex Neil: Okay.

Dr Ingram: That is a matter for Scottish Government colleagues. I was asked by my lead in the Scottish Government to make contact with the solicitors with a view to seeing whether we could come to a settlement—whether she would resign, because that was where we thought it was going.

As I have just said, I contacted the solicitors, and initially there was an offer that she would resign. She was then unwell, and her solicitors gave advice to our solicitors that it would not be appropriate for her to make a decision because her solicitors believed that she was not well enough; there was a medical certificate to confirm that.

09:30

Alex Neil: What was the time gap between the offer to resign and—

Dr Ingram: Two days.

Alex Neil: Right.

Dr Ingram: She was then off sick for a long time, and following that there were discussions about whether we could find alternative employment for her. That was not possible.

Alex Neil: Within the national health service or within NHS Tayside?

Dr Ingram: Within the national health service, but mainly within NHS Tayside because, as you know, we are independent employers.

Thereafter the chair, as has been mentioned, invited Ms McLay to come to a meeting on 14 June. That meeting was to consider whether we would terminate her employment. A board meeting was set for 28 June, at which point we had a paper ready to go to the board requesting that we would terminate her employment.

On 8 June, we got the letter from the legal advisers indicating that she was not going to come to the meeting, as Ms Craik has said, and thereafter there was a conversation with her lawyers. At that point, Ms McLay offered to resign if the board would consider the six months' pay.

Alex Neil: There is loads in there. A lot of this is absolutely new to the committee, which is, to be frank, totally unacceptable.

I will ask two questions given what has been said. First, how many porters in the NHS who are sacked because of their lack of performance then get offered another job in the health service? This is something that has always angered me about the health service. There are jobs for the boys at the top but the people at the bottom are not treated in anything like the same way. Why was somebody being offered alternative employment given the circumstances surrounding the case and the history of what would appear to be financial mismanagement?

I think that my second question is for Ms Craik. It goes back to Liam Kerr's point. A clear calculation was made that, if the case was allowed to go to an employment tribunal, you would lose.

You are shaking your head and saying no. In that case, why did you cave in? Why did you settle so quickly? It was public money that you were dealing with.

Hazel Craik: Thank you for the opportunity to respond to that. A process was on-going but there was definitely a lack of engagement. I know from my experience of dealing with a lot of disputes involving not chief executives but health service employees that it often takes some time—weeks or months—for matters to move on. At the end of the day, we need a fair process to terminate somebody's employment, so it can take time. That was one consideration.

An option can arrive whereby it is possible to conclude matters at a particular date—at a particular time. If we do not do that, we still need to pursue the process, and it may be that that will take some time. I think that it would have taken some time to do that. There is a risk that the process will take some time, and that costs money.

The second risk was that the solicitors for the former chief executive said that they had challenges in relation to sex discrimination and age discrimination as well as the process that we were proposing to adopt for termination. It is correct to say that we do not know the detail of what those claims would have been. I see that Mr Kerr is looking at me in relation to that—

Liam Kerr: Well, quite. If I may, I will come in here. I presume that you signed off the business case. I think that Mr Wright had a figure in his mind that was presented to him, but you had not assessed what the claim might be.

I am hearing that there was a possibility of a resignation, so I am thinking, "Okay—constructive dismissal, with a cap at 80-odd grand." However, then I hear that the business case came forward and people talked about discrimination, so the cap was removed, but you did not assess whether there was a discrimination claim. Am I correct, Ms Craik?

Hazel Craik: From the statement that was made by Lesley McLay's solicitors, we know that she had concerns and thought that she was unfairly treated due to her sex and age. She questioned the process that we were adopting to terminate her employment. In my mind, that raised the risk of three different types of claim being raised: one for sex discrimination, one for age discrimination and one for unfair dismissal.

Liam Kerr: With respect, I think that Mr Neil's point is that it is the CLO's job to assess the strength of such claims. A claimant's solicitor will, of course, say that the claimant has the strongest claim in the world and therefore they will win all this money. Is it not the job of the CLO to assess

the claim and say, “Actually, Mr Wright, this isn’t the strongest claim ever—I don’t think you’re in the hole for north of £100,000. We could proceed in a much more sensible way”?

Hazel Craik: You are right that the job of the CLO is to weigh up the risks. The risk that I perceived there to be was of a claim, or claims, being raised. Whatever the merit of those claims, they would be defended, so time would be taken in defending them and costs would be incurred in doing so.

Alex Neil: Does that not send out completely the wrong message? The message that you are sending out is that anybody who is vexatious in the health service—there are very few of those people because the vast bulk of people in the health service are dedicated servants who would not behave in such a way—should just cry foul and say, “I was sacked because of my gender”, “I was sacked because I was late for work” or “I was sacked unfairly, so the CLO will settle and double my contract in order to prevent a scandal.” That is absurd. Surely you must demonstrate to people that, if anybody makes a false claim, you will go to the tribunal and fight the claim. If you lose it, you lose it, but you should not be a soft touch. You are using public money.

Hazel Craik: Every year, the CLO fights at tribunal a number of claims that are thought to be without merit and for which there is thought to be a good reason to fight them. The CLO does not settle all claims—

Alex Neil: However, those cases tend to involve people who are below chief executive level. In this case, everybody was breaking their backs to settle. Was there a cover-up? From what you have seen, would there be any justification to a claim? I know that that will be subjective, in some ways, but have you seen any evidence that Ms McLay lost her accountable officer status and was, in effect, fired when the time came because of any reason other than alleged incompetence and financial mismanagement of NHS Tayside?

Hazel Craik: I do not have the detail around that.

Alex Neil: You do not have the detail, yet you made the decision not to pursue the matter. Surely you should have asked whether there was any evidence of sex or age discrimination. Surely you must have asked those questions before you made the decision not to continue to fight such claims.

Hazel Craik: First, it is not my decision whether to continue or not continue—

The Convener: Did you ask those questions, Ms Craik?

Hazel Craik: I did not go back and ask for the details—

Alex Neil: Why not?

The Convener: So how could you assess the claim?

Hazel Craik: I was not assessing the claim; I was assessing the risk of a claim being raised.

Alex Neil: How could you assess the risk if you had not even checked whether there was a prima facie case of sex or age discrimination?

Hazel Craik: From time to time, cases are raised that have no merit. Cases having no merit does not stop such cases being raised, and it does not stop money and time being spent on defending them.

My view was that, for the additional money that was being sought, it was a way of bringing certainty and conclusion to matters and that it was good value, given the money that would be spent, either getting to a termination of employment or defending claims that would be raised. I think that that has been agreed by the auditor.

Alex Neil: I do not see why, before reaching that decision, you did not check some basic facts, such as whether there was any merit in the claim. If there was no merit in the claim, surely you should have given much more weight to the possibility of taking the case to an employment tribunal and proving to people that the NHS will not be a soft touch. Every penny in the NHS is very valuable indeed. You should not send out the message that people just need to cry foul and you will not even check whether they have a case against you but will just pay out and change the rules retrospectively to make sure that it does not appear as an ex gratia payment that the person is not entitled to. That is what it was all about—it was covering up.

Hazel Craik: Not from my perspective.

Liam Kerr: Mr Neil makes a valid point. Am I right in thinking that you signed off the business case, Ms Craik?

Hazel Craik: No.

Liam Kerr: Does the CLO not sign off the business case?

Hazel Craik: The business case is always signed off by one of the board members. The CLO is asked to put in figures at section 5 of the business case.

Liam Kerr: So the figures that were inserted in section 5 of the business case that Dr Ingram put to the board, which signed it off, were inserted by the CLO.

Hazel Craik: The CLO is asked to put in a figure for the percentage risk of a claim being raised, and it puts in 50 per cent—

Liam Kerr: Forgive me, but did you just say that it automatically defaults to 50 per cent?

Hazel Craik: No—I said that that was the figure that was inserted. The business case says that, if you do not know for sure whether a claim is going to be raised, you should put in 50 per cent. That is Scottish Government guidance.

Liam Kerr: Again, that is new information to me. When the board saw the business case, it saw a 50 per cent chance of losing or winning—

Hazel Craik: No. It saw a 50 per cent chance of a claim being raised.

Liam Kerr: But you had inserted that not on the basis of any information on the chances of a claim being made but simply because the Scottish Government says that, in the guidance that you give to the board members, you should stick in 50 per cent and they will be good with that.

Hazel Craik: No. When there is a suggestion that a claim might be raised but a claim has not at that point been raised, the guidance is that 50 per cent should be put in as the likely chance of a claim being raised.

Liam Kerr: Am I right that there is a section that gives the CLO's estimate of the chance of winning whatever case you have decided the person has? If so, what figure do you put in there as standard?

Hazel Craik: I would not say that there is a standard figure. In this case, the figure that was put in was 50 per cent.

Liam Kerr: So you had assessed whatever claims had been raised—I think that you said that they were on sex discrimination, age discrimination and some form of unfair dismissal—and despite the fact that, as you have just told Mr Neil, they had not been sufficiently investigated, you assessed her chances of success at 50 per cent.

Hazel Craik: The figure was put in as 50 per cent.

Liam Kerr: Interesting.

I will move on, although it is on the same point. The submission, which I think Dr Ingram prepared, says at paragraph 2.10 that the business case did not refer to the notice period change. How did that omission come about? Dr Ingram said that there was a deal on the table, there was an offer to resign and then perhaps later an offer to resign with some kind of payment. Should not the board have been fully aware of that notice period change?

Dr Ingram: Everyone was fully aware of that, including the Scottish Government. We had discussed the change to the notice period with the accountable officer, the chairman and colleagues in the Scottish Government, and it was explicitly agreed—

Liam Kerr: But it was not in the business case.

Dr Ingram: Can I finish? I must apologise to the committee for not making that explicit in the business case. I have certainly learned and will make sure that I do not do it again but, by the time that the business case was submitted, that was the contractual position, because we had a legally binding agreement.

Liam Kerr: Just help me to understand how that omission could take place. That notice period change is the most material aspect of the case, yet, at the point of sign-off, the people who signed off the business case were not aware of it.

09:45

Dr Ingram: I am sorry—they were aware of it. There had been full discussions—

Liam Kerr: But it was not in the business case.

Dr Ingram: I have apologised for not including it in the business case—

Liam Kerr: The business case is the document that mandates the payment. Is that correct?

Dr Ingram: I have answered your question.

Liam Kerr: I have a final question on the pension reclaim. I will provide a bit of context. An overpayment of the pension was made, in accordance with the agreement that was concluded, but it was later found that that payment should not have been made. The money from that payment has now been brought back.

Ms Craik, I believe that legal advice was provided that said that it would breach the agreement to do that, but NHS Tayside has done it anyway, in breach—it would appear—of your advice. Do you maintain the position that the reclaiming of that overpayment of pension is a breach of the agreement that was concluded?

Hazel Craik: The settlement agreement specified the sum that was to be paid over to the Scottish Public Pensions Agency. That was not qualified in any way, so it was my advice that that payment should be made. That payment was made. When the error was identified and it was asked whether the money should immediately be recouped or clawed back, I advised that, because the agreement was unqualified, to claw it back would not be in accordance with that agreement. I understand that, since then, as part of the reconciliation that happens periodically—I think

that it is done on an annual basis, but I am not terribly sure—it has been identified as an overpayment made by the board and it has come back through that route.

Liam Kerr: Has that breached the agreement?

Hazel Craik: The money was paid in and it has come back as part of a broader reconciliation.

Liam Kerr: You advised that it would breach the agreement to do that. Has the agreement been breached?

Hazel Craik: I advised that to pay the money in and to immediately claw it back would be a breach.

Liam Kerr: So there has been no breach of the agreement, against your advice.

Hazel Craik: If the money has come back as part of a broader reconciliation, that is not the case.

The Convener: I am sorry, but we need to move on. I think that we are agreed that this situation is an utter guddle. It is astonishing to the committee that even though we have—at high cost to the public purse—human resources expertise and legal expertise, we still ended up in a position in which a chief executive who was leaving the NHS has been overpaid to such an extent. I feel that the people of the NHS Tayside area, whom we serve, have been let down.

Anas Sarwar (Glasgow) (Lab): I turn to performance. All that patients care about is getting their treatment on time and getting adequate treatment and support. Do you recognise that the performance on treatment waiting times is simply not good enough? I know that there is a slight disparity between Audit Scotland's figures and the latest figures that NHS Tayside has provided but, broadly, the two sets of figures indicate the same issues. On the treatment time guarantee, the target is 100 per cent, but delivery is at 71 per cent. The standard on the 12-week wait for a first out-patient appointment is 95 per cent, but delivery is at 58 per cent. The standard on cancer treatment is 95 per cent, but delivery is at 79 per cent. Most shocking of all, on child and adolescent mental health services, where patients are meant to be seen within 18 weeks, the standard is 90 per cent, whereas delivery is at 39 per cent, which means that six out of 10 children are not getting mental health treatment in time. That is not good enough, is it?

John Brown: I agree with you entirely—it is not good enough. The health board's performance is the major concern of the board and of everyone who works at NHS Tayside. That is why we have taken such a fundamental look at what the underlying problems are. By analysing how the organisation is structured, funded and resourced,

we have sought to develop a programme of change that will deliver the services in a different way so that we can improve access. On top of that, in recent weeks, £2.74 million of additional funding has come in from the Scottish Government to improve waiting times performance in particular, including on CAMHS.

I will hand over to the chief executive, who can give you more detail about the work that we have done on waiting times, specifically on cancer and CAMHS waiting times. However, I can say that I agree that the performance of NHS Tayside needs to be improved.

Anas Sarwar: Before you do that, I would like to emphasise the figures. We are not talking about a handful of individuals; we are talking about thousands of people in Tayside. For example, according to NHS Tayside's figures, at the end of September 2018, 10,414 people were waiting longer than the 12-week waiting time target, and, with regard to the 84-day treatment time guarantee, almost 3,000 people were waiting too long. Again, that is simply not good enough. Thousands of people in Tayside are owed an apology.

John Brown: I would like to apologise to the people of Tayside who have not received their treatment within the period of the treatment time guarantee. I would also like to reassure them that the health board has recovery plans in place and that we have additional funding coming in to resource those recovery plans so that we can improve the service. I want to reassure the public in Tayside that the board is closely monitoring the situation through its performance and resources committee, and through the main board. We have a recovery plan and we have a trajectory that has been set for the recovery. That is being monitored. We have governance in place in the executive team, which takes a hands-on approach, on a weekly basis, to considering the figures and trying to improve them. Nobody could suggest that we are accepting the situation and are not doing our utmost to change it.

I will hand over to Mr Wright.

Malcolm Wright: I very much agree that a number of aspects of the performance of NHS Tayside are not good enough. In some aspects of the service, performance is good, particularly in our emergency medicine department, which continues to perform well. However, as you rightly say, the waiting times figures for CAMHS are among the worst in Scotland, and that is simply not good enough. The board has taken proactive action to call in help on the redesign of CAMHS. We are working closely with Dame Denise Coia and her review of CAMHS, and the neurodevelopmental pathway has been actively redesigned so that space can be freed up for

children who are in need of more acute CAMHS intervention. Across a range of performance areas, we have sought external help and are looking to improve.

The latest figures that I have seen, which are from the end of November, show that we are starting to see some improvements. The money that we have been able to get from the Scottish Government under the waiting times improvement programme will also help with that. However, you are absolutely right to say that we have a lot of work to do on performance.

I would like to add a couple more points, but I will perhaps do that when I answer your next question.

Anas Sarwar: With regard to the responsibility for the failure to deliver the treatment standards as expected, what is the balance between a failure of leadership and governance, a failure in terms of adequate resourcing—you mentioned the money that is coming through—and failures around workforce issues? Surely some issues are bigger than others.

Malcolm Wright: A number of those issues are connected. Over the past nine months, the chairman and I have been trying to tackle some of the underlying systemic issues that face the NHS in Tayside. One of the major things that we have put in place is a clinically led system of management and leadership. For example, in the acute sector, a new clinical leadership structure is now in place that is led by a senior clinician who is supported by a senior nurse and by management. The mantra is, “clinically led, managerially enabled”. The report of Sir Lewis Ritchie points to issues around the clinical care groups, the devolution of budgets and the need to put clinicians in the driving seat, supported by management. We are starting to see a number of improvements as a result of having a clinically led organisation.

The issues of finance, best use of workforce and getting the best outcomes for the population of Tayside are all linked, and a number of those indicators are starting to move in a positive direction.

Anas Sarwar: People will be interested to know what makes Tayside particularly challenging in relation to certain issues—CAMHS is a perfect example. I accept that leadership, finance and resources and workforce are challenges. For Tayside, which of those three is the greatest challenge? Can you put them in order?

Malcolm Wright: Some of the workforce issues are challenging, but most important is clinical leadership, involving staff and patients, particularly in regard to CAMHS, which is one of the highest priority services for the board right now.

The chairman and I have sought to introduce systemic changes. Among the committee's papers is our paper on the governance changes with regard to the board, the committees of the board and levels of scrutiny, and on the changes that I have made to the senior management system. We are now appointing a head of performance management for the whole system—that post was not in place before—and a head of planning and transformation to do the transforming Tayside work. We are getting in senior HR advice and there is also Alan Gray's role in stabilising the finances. All those things are interconnected. With the fundamentals in place, we are starting to see some changes.

Anas Sarwar: I accept all that, but a lot of it will mean nothing to patients in Tayside. For them, it will still feel as though they are not getting the standard of service to which they are entitled.

Tayside's mental health services have had a huge amount of attention from within and outwith Parliament and, in particular, in Dundee. Given how high profile the issues are, the campaign work that has been done by the lost souls of Dundee group, for example, and the fact that there is now an inquiry into mental health services in Tayside, it is unfathomable that we have a situation in which—despite all the attention, hard work and reassurance that we have given to families—only 39 per cent of CAMHS referrals are seen in time. I cannot understand it.

Malcolm Wright: Those numbers are starting to improve, but you are absolutely right that the 39 per cent figure is not acceptable and it must continue to improve. We have the systems and processes in place with the right clinical leadership, managerial support and improvement support, which we got in from outside, and, with the redesign of the services, we are now starting to see some of the benefits coming through.

With regard to the performance of the board and the impact on the population of NHS Tayside, my proposition is that the key to getting improvements is getting the fundamentals and the systemic changes in place, which they now are.

Anas Sarwar: Do you know how many people have lost their lives while waiting for mental health service referrals to treatment?

Malcolm Wright: Off the top of my head, I do not know that number. I know that there is significant morbidity and distress in the community with regard to the ability to access mental health services.

Anas Sarwar: Can you accumulate that figure and provide it to the committee?

Malcolm Wright: We can try to get a figure for you—I am happy to do that. The setting up of the

independent inquiry under David Strang's leadership was a sign from the board that we take mental health services extremely seriously.

Anas Sarwar: Will that inquiry consider the number of people who have lost their lives while waiting for referral to treatment?

Malcolm Wright: The inquiry is considering, and has taken, a wide range of evidence from all community and user groups, including staff groups. We have engaged the Health and Social Care Alliance Scotland, which has acted as an interface with the public. A huge amount of evidence has been gathered and David Strang and his colleagues are working on it. The board is absolutely committed to implementing the outcomes of the review.

In parallel, we have put in place new clinical leadership for mental health services in Tayside. We brought in Professor Keith Matthews, who commands a good degree of clinical respect and confidence, as well as a senior manager and an experienced senior nurse to support him. The work is in place for that triumvirate to lead the redesign of mental health services, as is the notion that we will really develop mental health services across Tayside. That has been a step forward and we are looking forward to the results of the review.

Anas Sarwar: I have a final question, which I know is relevant to Tayside families. What is the current status of the review? What engagement have you had with local families, and what is the timetable for publishing the review and implementing its recommendations?

Malcolm Wright: David Strang came to the board in December to present an update on the review. We have had a report from the Health and Social Care Alliance Scotland, which the chairman might want to say a bit more about.

10:00

John Brown: It is an independent review. David Strang has set out his plans for gathering and reviewing the evidence. In the update that he gave us in December, he said that he had the first lot of evidence from service users and their families, through the work that the alliance had done. He is now capturing evidence from the staff, and that review is being led by the trade unions. The themes that are starting to emerge are not surprising—they are about access and waiting times. Once David Strang has reviewed the evidence, he will come to us with proposals. I do not have a date for when that will be, because he is still considering the evidence, but he will come back to us within the next month or so with a clearer timescale for when he will report.

The Convener: I have a small supplementary question on that. Malcolm Wright talked about having clinical leadership in place for mental health. I think that, when I visited CAMHS in the summer last year, of seven consultant posts, four or four and a half were full. Clearly, the nuts and bolts that you have talked about involve having doctors in place to see patients. Has that figure improved?

Malcolm Wright: I do not have the most up-to-date figure in front of me, but I know that one of the challenges that the board has faced has been in the ability to recruit consultant psychiatrists. Part of that is to do with the reputation of the service and how well the board supports it. It is about making it an attractive service that people want to work in. With the clinical leadership that is in place, we are seeking to create an attractive environment for people to come to.

I do not know whether any of my colleagues can comment on that.

The Convener: Will you get back to the committee in writing on the number of vacancies in CAMHS?

Malcolm Wright: Yes.

The Convener: I want to comment on that issue. You said that the board and leadership team are taking the issue seriously now. One of the reasons why we are so upset about payments to the former chief executive is that various issues, especially to do with mental health services, were raised time and again by many politicians but were never taken particularly seriously. The issues have to be seen together.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to ask about the internal audit function in the health board, which has featured in the committee's discussions on several occasions. First, what is the situation with the internal audit process in NHS Tayside?

John Brown: The internal audit in NHS Tayside is currently delivered by an organisation called FTF, which delivers internal audit services to a number of health boards and is hosted by NHS Fife. As you will have seen from the governance paper, as part of my review of governance I wanted an independent review of the effectiveness of our internal audit, so I commissioned the Chartered Institute of Internal Auditors to carry out a review. It has a standard review that it carries out across the public sector and, with some tweaks, the private sector, although the approach is the same. The institute's report confirmed that our internal audit processes are fit for purpose and that our internal auditors have the right skills and experience, but it said that the problem in the past with internal audit has been with the organisation's response to audit findings.

To resolve that issue, the board's audit committee commissioned a piece of work on the process for handling recommendations from internal audit, to ensure that the executive team delivers audit recommendations within a reasonable timescale, and on how we can be assured that that work has the outcome that we are looking for. That process has been approved by the audit committee and is now in place. As the chair, my view is that we have an effective internal audit function and that it now has the right impact on the organisation.

Willie Coffey: The view that the internal audit function should have picked up on a number of issues that members have raised over a period of time has previously been expressed at the committee. Is that your view, too? If so, have you looked at the scope and the role of the internal audit function in order to address that?

John Brown: The evidence shows that the internal audit function has picked up a number of issues relating to NHS Tayside's financial management and accounting that have caused concern. However, its actions and recommendations were not properly implemented. In some cases, they were not implemented at all.

Willie Coffey: Why was that the case?

John Brown: I am not in a position to answer that. You would need to ask the previous leadership team that question.

Willie Coffey: While the discussion has been taking place, I have had a look at the minutes from the board's meeting in December, which consist of 240-odd pages of material. I am surprised that anybody gets any work done if the minutes are so substantial. The chief internal auditor was not even at that board meeting, but the minutes say that the previous role of internal audit was purely about assessing risk and that the audit committee's role is being extended to include assurance. This is 2019. Why on earth is it only now that the board thinks that the audit function should include an assurance role?

John Brown: I think that the minutes refer to the function of the audit committee rather than the internal auditors. As part of the governance review that was done when the new leadership first came in, we looked at all the terms and conditions, the standing instructions and the terms of reference for all the committees, including the audit committee. The audit committee was not an audit and risk committee, so we have changed that. The governance of risk has been managed across NHS Tayside by the sub-committees, but the governance had not been brought together under the audit committee. That is the change that we have introduced. As Willie Coffey said, that is the modern way of ensuring that there is governance

around the internal audit function. I cannot say why that was not the case previously.

Willie Coffey: NHS Tayside spends roughly £900 million a year. What is the size of the internal audit function? You have talked about skills, but are there sufficient skills across the whole range of responsibilities for the board to have assurance that any issues that crop up will be spotted and acted on in the future?

John Brown: The review by the Chartered Institute of Internal Auditors looked at whether the internal audit team has the right skills and the right resources available to carry out its function. The institute has assured us that the audit team does.

Willie Coffey: How many auditors are there?

John Brown: I will refer that question to Alan Gray, who might have a figure for the number of auditors in that team.

Alan Gray (NHS Tayside): Including the chief internal auditor, there are five staff members who work as part of that team.

Willie Coffey: I have tried my best to find mention of any audit discussion, material, recommendations or actions—I am only at page 70 of the 240 pages of minutes. There does not seem to be a primary focus on audit material, recommendations, actions and so on within the barrage of text in the minutes. Do you plan to change that so that greater priority and focus is given to the audit function?

John Brown: As I said, we have changed the terms of reference for the audit committee so that it now covers audit and risk. In addition, the chief executive has introduced a senior role that will look at how effectively the risk management system across NHS Tayside has been managed by the executives and how effective the governance by the sub-committees, the audit committee and the main board has been. We have increased our focus on that and increased the resource that we are putting in to do that work.

Mr Neil raised the question of governance earlier. There has been a systematic failure of governance, and one of the challenges that the new leadership team had was fixing that problem. It could be argued that one of the reasons why I, as the chair, was not given advice on what was in the 2006 circular was that the board did not have a discrete board secretary function—there was not one individual who, for a living, looked after the board and the governance, and provided a centre of excellence, expertise and advice. As the committee will have seen from the governance review, we now have the system in place to counter that systemic problem.

Willie Coffey: How will we and the Tayside public know and be assured that audit

recommendations that may emerge from now on are given priority, are visible in the board minutes and are acted on? You said that recommendations that were made in the past were not seen or acted on. Can you assure us that that will no longer be the case and that recommendations will be taken seriously?

John Brown: The evidence of that will be seen in two places: in the audit and risk committee's minutes on the action plan, when it reviews the outstanding audit recommendations and the progress towards them, and in the updates that the chair of the audit and risk committee gives to the main board in the bimonthly board meetings.

Willie Coffey: But that was always the case. That reporting mechanism was always there.

John Brown: It was not, actually.

Willie Coffey: Where did things go, then?

John Brown: The process was not complete. Not all the outstanding audit recommendations were followed up by the audit committee. Mr Wright and I discovered an approach when we went to the first audit committee meeting. The committee considered what were described as the "priority outstanding actions" but not the totality. There was an acceptance that there was a lack of capability and capacity in the organisation to deliver all the recommendations, so it had become acceptable that recommendations were carried forward from one year to the next.

Willie Coffey: It is not clear—

The Convener: You should be very brief, and the answer should also be very brief, please.

Willie Coffey: If issues—serious or otherwise—arose that the audit committee, the internal audit team or whoever wished to make the board aware of, would that happen now?

John Brown: Yes.

Willie Coffey: Do you get sight of internal audit recommendations?

John Brown: Yes.

Willie Coffey: Is there evidence that they are acted on? They were not in the past.

John Brown: Yes.

The Convener: We have that assurance. Good stuff.

Bill Bowman (North East Scotland) (Con): The "Corporate Governance in NHS Tayside" report talks about skills, experience and diversity as being enablers of the governance system. Do you now have the audit committee that you want? Does it have the right skills, experience and

diversity? What are the right skills, the right experience and the right diversity?

John Brown: We have an audit committee that has the right range of skills as far as the business of NHS Tayside is concerned. What we lack in its membership at the moment is financial experience. That is limited because of resignations. Two of the members who resigned were experienced financial professionals. We are recruiting, and the specification in the recruitment process is for board members who have financial experience. We are not waiting to get that because, obviously, the board and the audit and risk committee need to be assured of the effectiveness of the audit, so we have co-opted as advisers to the committee two experienced audit chairs, both of whom are chartered accountants and experienced finance directors in the public sector. The audit chairs from Greater Glasgow and Clyde NHS Board and the Golden Jubilee national hospital will act as advisers, attending the audit committee meetings and reviewing the papers. They have committed to supporting NHS Tayside's audit function for two days a month. We recognised that, with the resignations, we had lost that particular experience.

The Convener: Time is running on, so it would be helpful if the answers were kept as concise as possible.

Bill Bowman: You said that you are recruiting. Are you having any difficulty in that?

John Brown: The recruitment process has not reached the point of the adverts going on, so I do not know whether we will get a great or a limited response.

Bill Bowman: Do you not think that the circumstances of the history of recruiting consultants, as you mentioned, will put people off?

John Brown: It might.

Bill Bowman: Do you have an action plan for that, as well as for recruiting consultants?

10:15

John Brown: In our recruitment, we have specified the skills that we want, but the board does not have responsibility for recruiting board members; that is done by the public appointments group in Scotland. We do not really have control over the process, which applies to all public bodies.

Malcolm Wright: One issue is the attractiveness of the board for people coming to be a non-executive. The message that we are trying to get out is that this is a board that is on the road to recovery. Over the past nine months, we have tackled some fundamental issues in the

running of the board and its governance and management. The run rate on the overspend is now coming down and we are getting that to a better place, and I can report to the committee that we have repaid the £3.6 million of endowments. We have got to the bottom of some long-standing issues and there are good prospects ahead for the board, which makes it attractive to serve on as a non-executive.

Bill Bowman: On one of Willie Coffey's points, if there are financial secondees or temporary appointments, it would be helpful to see some of their comments coming through in the board papers, which we do not see just yet.

John Brown: Yes.

Bill Bowman: Will you take that away to consider?

John Brown: Yes, I will take that away, but the minutes reflect what happened at the meeting.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will continue on the governance issue. How many vacancies are there on the board at the moment?

John Brown: We do not have any. The board has 20 members, but in the discussions that I had with the cabinet secretary when I was asked to come into NHS Tayside, I said that I wanted to address the question of capacity. In addition to having responsibility for the board and the board's sub-committees, I am responsible for providing health board members to the three integration joint boards in Tayside. The cabinet secretary agreed to increase the size of the board by another two members, and it is those two posts that we are currently recruiting.

Colin Beattie: Comments have already been made about the question of financial experience on the board, which you are trying to address, but there are wider issues about the diversity of skills on the board. Are you satisfied that the members you have now have a sufficient mix of skills to be able to adequately carry out their functions?

John Brown: Yes, I am. Of the three recent recruits to the board—two in December and one in January—one has a detailed background in the NHS, another has a lot of experience in transformational change and managing organisations through change and the third new member has a long track record of leadership through change. That adds to the experience that we currently have on the board, which is a good mix of people from the NHS, other parts of the public sector and the private sector and from different aspects of organisations.

Colin Beattie: Given that you now have 20 members and that there will probably be 22, having the right structures in place is important.

How do you ensure that the board functions efficiently? Will there be an on-going form of assessment or appraisal of members? How will you do that?

John Brown: NHS Scotland boards have always done self-assessment, which we will continue with. We have revised that model and there is a new self-assessment process coming into play next month across NHS Scotland. Tayside will obviously be one of the boards involved.

We are also introducing an external assessment of boards to ensure that self-assessment picks up on all the issues.

We have developed a clear blueprint for what good governance looks like and there is now a lot of clarity not only on what the board's functions are and what resources it needs but on the flows of information, the audit requirement and the admin requirement. That blueprint is being rolled out at present. I co-chair the NHS Scotland steering group for corporate governance with Christine McLaughlin, the Scottish Government health finance director.

Colin Beattie: I presume that you have an induction process for new members. Are you satisfied that it is sufficiently robust that members fully understand what their responsibilities are, so that the self-appraisals and external appraisals can be useful?

John Brown: Yes. The induction process is on two levels. There is a general induction that everyone receives, which is based on who we are, what we do and what is expected of us, and there is a customised induction for individuals depending on their background. We also have four development sessions each year at which we bring to the board any new areas in the legislation and any issues that we feel it needs to be updated on.

Obviously, there is training. All board members receive the on-board training that all public sector board members in Scotland receive. In addition, the audit committee members are provided with specific training on their responsibilities that builds on what is in the on-board training, so they all go through that process as well.

Liz Smith (Mid Scotland and Fife) (Con): Mr Brown, would you accept that, given the considerable difficulties that NHS Tayside has faced over recent months and some of the quite extraordinary revelations that have appeared this morning, the public might find it difficult to have confidence in the decision-making process in NHS Tayside about clinical matters? I represent Mid Scotland and Fife, so a lot of my constituents are NHS Tayside patients. Do you accept that they may feel uncomfortable about the decision-making

process for their treatments? Are you making any changes to improve the transparency for patients about who makes decisions about which services are delivered in local communities?

John Brown: The change programme that is looking at what services we deliver, how we deliver them and where we deliver them is clinically led. It is the clinicians, who understand patients' needs and the services that we deliver, who are working to develop the first-cut proposals and options, and those will then go through the engagement process. We are developing a process for engaging with local communities to give the service users and patients a voice on which services they want, which services they expect and where they expect them to be provided. We have started that process by having a number of events with some of the groups that represent groups of patients. We have taken them around Tayside and had public events on that. As the work of the clinical alliance progresses—it comprises the clinicians who are leading on the design—we will ratchet up that work and do even more of it.

At a development session on 31 January and 1 February, the board will review the progress to date on the redesign work and the work on developing the capability and capacity to deliver the new design. For one of the sessions, the board has asked for updates on the engagement strategy and the plan.

That engagement will also include engagement with elected representatives and, as you know, we meet the MSPs and MPs about every six weeks.

Liz Smith: I understand that those decisions and the investigations that you are making at the local level are clear to you, although personally I doubt that they are clear. The NHS Tayside patients and others who come to our surgeries are concerned about the decisions that are being made. In particular, when services are transferred or cut, they do not understand the reasoning behind that. As somebody who represents those people, I am interested in how that can be made clear to those people who are using NHS Tayside.

Malcolm Wright: The process of engagement with the public and being transparent about the challenges that we face is very important. The information that we communicate to the public and the openness and transparency of our board and our committee system are very important. There is the work of transforming Tayside and the public events that we have had—I know that you led a public event that I spoke at, convener. All these things are very helpful in engaging with the population about the choices that NHS Tayside faces.

The Auditor General has made the point about an expensive service model. The board and the Government will need to make a series of strategic choices about the future of that model. We have given strong commitments about the future of Stracathro hospital, Perth royal infirmary and Ninewells hospital. That transforming Tayside process, with the integrated clinical strategy and with public involvement in what we do where and the potential capital investment on the back of that, is important.

Public engagement and involvement are essential and that is what we have been seeking to do.

Liz Smith: After your time overseeing NHS Tayside, are you comfortable with the IJB structure in NHS Tayside, given that there are concerns about the transparency of decision making between social care and healthcare? It is not clear to members of the public how that IJB structure works. Are you comfortable with it, having seen it in operation?

Malcolm Wright: We need to make improvements in how the IJBs are working—

Liz Smith: Could you say what those improvements would be?

Malcolm Wright: —and how they are working with partners. One thing that I have set about doing—I know that the chairman has set about doing this as well—is to build the strategic relationships between the board and the three local authorities.

Certainly, during my time in Tayside, I have put considerable time and effort into working with the local authority chief executives. The local authority chief exec, the health board chief exec and the integration board chief officer have been working together. Towards the end of my tenure in Tayside, the chairman and I hosted an event that brought together conveners from the council, locally elected representatives, IJB representatives and health board representatives to look at how we are going to work together.

From a Government perspective, there is a commitment by the cabinet secretary to increase the pace of integration. That is very much dependent on the relationships and the joint working at the top of these organisations. It is not necessarily about the structure of the IJBs; it is about how IJBs work with the health board, local authorities, local communities and voluntary bodies.

That picture varies around the country, from what I have been able to see. There are opportunities for improvement. I must say that in my time in Tayside, I was warmly welcomed by the local authority chief executives on visits to local

authorities and I think that local authorities have been asking for a much improved strategic relationship.

It is a job for the board to make sure that we have those strategic relationships in place and that we have strong partnership working so the signing of the new agreement with the University of Dundee has been really good and very important. I also want to pay tribute to the staff side in NHS Tayside and the leadership that they have given in all the changes that we have gone through.

My conclusion, at the end of my nine months in Tayside, is that we have done a lot to address some of the fundamental, underlying systemic challenges facing the board and put things in place to try to get some of those issues right, and I think that the board is on the road to recovery.

The Convener: Thank you very much.

Witnesses will be aware that included in the Auditor General's report was the issue of the charity fund transfer. The committee has not pursued questioning on that issue today because, as you will be aware, the Office of the Scottish Charity Regulator is preparing a statutory report on the matter. This came to light in April 2018 and it is now January 2019; we still do not have that report, all these months later. I am hoping to get it very soon. We will then review that report and decide how we scrutinise that issue.

I thank witnesses very much indeed for their evidence. I suspend the meeting to allow a changeover of witnesses.

10:30

Meeting suspended.

10:34

On resuming—

The Convener: I welcome to the meeting our second panel of witnesses: Paul Gray, the director general for health and social care at the Scottish Government and the chief executive of NHS Scotland, and Shirley Rogers, the director of health workforce, leadership and service transformation at the Scottish Government.

I want to pick up a number of points that we have just heard from NHS Tayside. I do not know whether you both managed to watch that evidence, but we spent quite a while scrutinising the enhanced payment—let us call it—to the former chief executive. Did you see that evidence, Mr Gray? Can you give us your thoughts on the matter?

Paul Gray (Scottish Government and NHS Scotland): I did not see that evidence, convener,

because, instead of risking a delay, we came here early and were waiting outside the committee room. I have not heard the detail of that evidence, but I am happy to respond to any points that the committee wishes to raise.

The Convener: Okay. I will base my questions on the Auditor General's report and what we have learned.

As you will know, the committee has made very clear its view of golden handshakes and enhanced severance payments in the public sector and, in scrutinising the situation at NHS Tayside, has said many times that we did not expect and do not want that sort of thing to happen again. However, we have seen a contractual variation from three months' pay in lieu of notice to six months' pay. Do you think that that was the right decision for the board to take?

Paul Gray: I think that the board acted on the basis of the advice that it had. It is probably right for me to put on record that I think that the payment—the sum of money—that has eventually been made is reasonable. The committee has rightly scrutinised the issue of how that payment was arrived at, but, with regard to the sum of money that was paid out—minus the pension enhancement, which I am not going to describe as anything other than wrong; however, it has now been recovered—had such a payment come forward to us at that level, we would, on the basis of the advice and the risks, have thought it reasonable.

The Convener: From the evidence that we have received this morning, I am not sure that the advice from the central legal office was as strong or as clear as a health board might have expected. Do you have confidence in the advice that your central legal office is providing to boards?

Paul Gray: I do. I am reluctant to base any opinion about the central legal office on one issue. Moreover, its advice was to NHS Tayside, not to the Scottish Government, and the committee will understand the basis on which advice is given to a client—which, in this case, was NHS Tayside. Our task in this is to satisfy ourselves that legal advice has been given and that the proposals put to us are consistent with that advice.

The Convener: I find it interesting that you describe the relationship between NHS Tayside and the central legal office as that between a lawyer and their client. It is my understanding that the central legal office is a function of Government and therefore has a responsibility not just to its client but to the public purse for ensuring the efficient spending of taxpayers' money. Should that consideration not always be in the mind of the central legal office when it gives advice? If not,

you might as well advise boards to get private lawyers.

Paul Gray: I believe that the advice was consistent with the delivery of value for money to the public purse. As it was presented to us in the business case, the advice led NHS Tayside to conclude that not settling—in other words, going down some other route—would likely incur higher costs. That is the point that I was trying to make about the sum of money being reasonable.

Moreover, there were other risks that the central legal office and NHS Tayside would have wanted to take into account, such as the risk of not being able to employ a substantive chief executive if the process in question had turned out to be long and drawn out. I would therefore expect the central legal office to factor in value for money to the public purse; indeed, that is what Ms Rogers and others would be expected to do—and did—in agreeing to sign off the settlement minus the pension payment, as I have said.

In the interest of transparency, I note that I did not know that, when a settlement is made, a pension enhancement should or could not also be made. That information, which came out through the audit, was new to me. I said to Audit Scotland—and I repeat it here for the record—that, despite the difficulties, I am grateful to it for unearthing some of those points, as we can now put them right and ensure that the public purse is not disadvantaged.

Liam Kerr: I will stick to that point. I understand what you are saying about the board acting on the advice that it received and about your considering its actions to be reasonable on that basis.

I have you at a slight disadvantage, because I was in the previous evidence session this morning. I appreciate that you did not see it, so I will paraphrase some of the evidence that we heard. We explored the business case that was ultimately signed off, and we heard from the central legal office that it would appear that there was no in-depth scrutiny of the potential claims that could have been raised by the departing chief executive. It appears that there might have been the insertion of standard figures on the possibility of success and the possibility of bringing those claims in the first place, which the CLO might use as a process, and that there was perhaps less-than-robust advice on the issue of pensions to isolate two or three.

Given that the board, you and Dr Ingram went with the advice that was received, are you concerned about the response from the CLO this morning, which I just outlined to you, and what will you do as a result?

Paul Gray: The first thing that I will do is read the *Official Report*. When I have done that, I will

consider what to do next. If you are indicating to me that the committee has concerns, I will take that very seriously.

The Convener: Mr Gray, that is a little bit concerning. You saw the agenda for the committee's meeting, and we took evidence on the issue at length from 9 o'clock to 9.45, which was broadcast. We are not getting sufficient answers from you, yet that information was available to you to watch on the broadcast or in the committee room.

Paul Gray: I apologise for that, convener. That was my judgment. We were here early and we waited outside. We thought that we would be taken at 10 o'clock, so we waited in the waiting area from quarter to 10. I can only apologise.

The Convener: You know that you are welcome to join us in the public gallery at any point.

Liam Kerr: I will take it up a stage. It seems that the business case was perhaps less than ideal when it was signed off, which suggests a failure at the CLO or HR level. What support does the Scottish Government give in the process? As the convener pointed out, the Scottish Government is inherently bound up in what goes on in one of those terminations and settlements, so where were you and Shirley Rogers?

Paul Gray: I will bring in Ms Rogers in a moment.

We are required to scrutinise the business case in order to satisfy ourselves that the employer—in this case, NHS Tayside—has taken legal advice and that the business case is based on that. We satisfied ourselves about that. We are also required to satisfy ourselves about value for money and, as I said to the convener, reasonableness, which we also did. Ms Rogers and I have discussed that at some length, as you would expect.

It is very rare for a board to be at stage 5 on the ladder of escalation. That happened in relation to NHS Argyll and Clyde, when that board was dissolved a considerable number of years ago, and in relation to NHS Western Isles, also a considerable number of years ago. This is the first time in my tenure as the chief executive that it has happened.

To answer your question straightforwardly, Ms Rogers and I have concluded that, were such an eventuality to happen again, I would advise my successors given that the circumstances would be unique, complex, subject to public scrutiny and quite testing—to take more direct control over any settlement arrangement in addition to the assurances that a board seeks and obtains and the materials that it provides in the business case. If the question is whether we think that we should

have done more in this case, the answer is, inevitably, yes. We did all that we believed we should do, but we have learned from the case and will do things differently in the future.

10:45

Liam Kerr: Shirley Rogers, your name has been mentioned. Do you want to respond to that question?

Shirley Rogers (Scottish Government): I support the comments that Mr Gray has made. The Scottish Government's role is to provide a model contract that we expect employers to use. Clearly, that model contract has allowed for a degree of dubiety with respect to the notice period. We are busy reviewing the model contract so that boards will be able to decide which elements of the contract they want to select on a less arbitrary basis. From the evidence that has been produced, the committee will be aware that the model contract gives the board leeway in determining what leeway is given, between three and six months. Having that leeway might be a mistake; perhaps we should direct the length of notice that is required.

From a systems perspective, we give guidance to boards about the kind of contract that we expect them to have in place, we scrutinise the business case and the assurance that legal advice has been taken, as Mr Gray outlined, and we provide guidance on how a settlement is to be processed. In process terms, there are a considerable number of hoops, if you like.

Liam Kerr: You take it as read that the legal advice will be sufficiently robust.

Shirley Rogers: Inevitably.

Liam Kerr: If I am hearing you right, the case might raise questions about that assumption. Is that a fair conclusion to draw?

Paul Gray: You have raised questions about the case, and I take it that the committee is concerned about those issues, so I will follow them up.

Liam Kerr: I am grateful. Thank you.

Alex Neil: A message that is coming out from this morning's evidence is that a number of systemic issues need to be addressed. There is nothing that we can do to change what happened at NHS Tayside—it is water under the bridge—but we can learn the lessons from the case, as Paul Gray rightly says.

One lesson relates to the apparent different treatment of senior managers and people who are further down the rungs. I have never heard of anyone further down the rungs having their contract changed retrospectively, for example. A

second lesson relates to what the CLO said about sex and age discrimination allegations, and a third relates to the advice and support that are provided to non-executive chairs. In this case, Mr Brown was not advised of a 2006 circular that related to the contract. Those are only three of the issues that have been raised.

There seems to be a need for a fundamental review of the systemic lessons that need to be learned from this case. Paul Gray has mentioned one such lesson, which is that NHS Scotland should become more involved and take more control earlier in the process, but there are many more. Will you carry out or commission a review of the systemic lessons that need to be learned from the case?

Paul Gray: The answer is, of course, yes. Whatever faults I might have, I think I can safely say that not paying attention to parliamentary committees when they look at an issue and raise concerns is not one of them. I accept the legitimacy of the concerns that Mr Kerr, the convener and Mr Neil have raised, and it is only right that we follow them up properly. If time permits, I could say something about what we will do to deal with the concern about the apparently different treatment of people at different levels. I will be guided by the convener on the time that is available.

The Convener: If you could try to keep it brief, Mr Gray, that would be good.

Paul Gray: Ms Rogers could give two or three examples—no more than that.

Shirley Rogers: As part of the overall processes and policies that apply to the whole of the NHS when a termination of employment on the ground of capability or anything else is being considered, consideration is always given to whether there are alternative roles that might be fit. That applies not only to certain senior people but across the piece. A termination of employment most regularly happens on the ground of capability, particularly if there is a health dynamic and an individual is no longer able to fulfil a particular role. Rather than lose those skills in their entirety, we would consider whether there was an alternative role that could be filled.

I would not want the committee to think that, in considering alternatives, the board was doing anything exceptional in that space. That is part of the process, and I think the board came to the right conclusion in deciding that no alternative would be appropriate in the particular circumstances. I would not want Mr Neil or the committee to take the view that the approach was exceptional to the individual.

Alex Neil: It is absolutely right that that could be decided in that particular case. The question is

whether anybody is monitoring to ensure that there is consistency.

That is the issue not just when a level 5 issue arises; more regular monitoring by the Scottish Government might be required, without its necessarily interfering, to ensure that there is fair treatment of workers at all grades in the national health service. I have never before heard of a contract in any public organisation being changed retrospectively. I do not want to go back into that, as we have been through it many times, but there is a need for proper guidance to be given to all public organisations as well as support for non-executive directors—particularly chairs of boards and remuneration committees. They are surrounded by professional people but, in this case, nobody advised them about the 2006 circular.

According to the evidence that we heard this morning, NHS Tayside has set up a board secretariat. Probably the main reason why that information was not provided was that it did not have a secretariat. Does every board have a secretariat? I assumed that every board has one, but it is clear that NHS Tayside did not. Such lessons need to be learned. They are fairly quick and sharp lessons that can be learned to prevent what has happened from happening again.

The Convener: Do you want the witnesses to respond to that?

Alex Neil: Yes.

Paul Gray: I will respond briefly—although I can respond at length if the committee wishes me to do so. We will review all the concerns that the committee raises when it reports, and we will respond to them.

Colin Beattie: Mr Gray, the previous witnesses advised that the current authorised size of the board is 20, but you have authorised an additional two members. What was the rationale for that?

Paul Gray: One of the things that we asked the current chair, John Brown, to do when he went in was ensure that the board had the right skills mix and the right people on it. One of his responses to that was that he thought that an additional two board members with particular skills would be of assistance. Given that we had asked him to do that and that he had evidence to support what he said, we agreed to his proposals. It is ultimately a matter for ministers, but that was a reasonable request.

Colin Beattie: The board of BP consists of 14 people, the board of BT consists of 12 people, and the board of NHS Tayside consists of 22 people. Does that seem a wee bit disproportionate? What are all those people doing?

Paul Gray: For example, some members of all the territorial health boards will have duties relating to the integration joint boards, so they will have more than one function. I am certain that you know, Mr Beattie, that there are sub-committees that deal with finance and performance. Those sub-committees might have slightly different names in different boards. There are a number of things that board members are required to do. I would also observe that the board of a public body and the board of a public limited company are rather different in style and function. I am not making any comment about what I think is right or wrong—that is not my point.

Colin Beattie: As we have heard, we are struggling a little bit to get board members or the right mix of board members but, if we multiply the figures across Scotland, we are talking about an awful lot of board members in all the different boards and huge expense. Are we getting value for money? Are we getting the right people with the right skills, and the right numbers of them? After all, 22 is a lot of people for one NHS board.

Paul Gray: Again, I am happy to reflect on that point with ministers, but I think that we are making significant efforts on the issue. I might have given evidence about it to the committee previously, so I do not want to repeat myself at too much length, but we are certainly making significant efforts to improve the way that we recruit not just board chairs but board members and ensure that we do not simply use generic job descriptions and specifications, as might have been the case in the distant past. When we want someone with finance or workforce skills, we make it clear that that is what we are recruiting for, and our specifications are a good deal more tailored.

The Commissioner for Ethical Standards in Public Life in Scotland has commented on whether the type of role and the remuneration for it attract a sufficiently wide cohort of people. I can say more about that, but I do not want to get too far away from Tayside at this stage.

Colin Beattie: Continuing with Tayside, when I queried the previous panel about on-going assessment and appraisal, I was assured that that process was in place. Is the situation the same across the board, or has that been brought in only for NHS Tayside?

Paul Gray: We have made it clear that we expect all board chairs to assess and appraise their board members regularly, and there is a process for that. When I assess and appraise the board chairs whom I see, I make sure that they are doing that. We expect it to happen everywhere.

Colin Beattie: NHS Tayside has said that, as well as self-assessment, it is going to have

external assessment. How would that work? For example, who would do it?

Paul Gray: Do you mean external assessment of board performance?

Colin Beattie: Yes—board members' performance.

Paul Gray: I do not know the precise details of Mr Brown's proposal, but I know that a number of organisations specialise and have expertise in governance and can provide that kind of support.

Bill Bowman: On the departure of the former chief executive and the negotiations around that, given the propensity for public interest and concern about such issues, why did nobody bother to ask Audit Scotland for its views on the matter?

Paul Gray: Are you talking about before the settlement was made?

Bill Bowman: Yes.

Paul Gray: I do not know that that is something that we would routinely do—

Bill Bowman: But it was not routine.

Paul Gray: No, it was not. I would agree with you. I am not going to speak for the Auditor General, who is here and can speak for herself, but it is my understanding that Audit Scotland generally wishes to review something once it has happened rather than prospectively. However, I am more than willing to discuss with Audit Scotland whether, in those exceptional circumstances, we could have taken a different approach. As I have said, I am willing to learn lessons from the issue.

Bill Bowman: In that case, we might well ask that question later.

When I asked the previous panel about the skills and experience of NHS Tayside's audit committee, we were told that it has two temporary members with financial skills but that it is looking to recruit in that respect. However, the witnesses then talked about that being a process that was governed centrally, saying, "We don't know exactly where we are with that issue. It is being dealt with by the central agency." You have told us about the more directed and specific approach that you are taking to finding people for boards, but can you tell us a little more about how that would work in Tayside? I am concerned that people might be put off by the history and what has happened at Tayside—the various scandals and so on—and might not feel inclined to join the board.

11:00

Paul Gray: I am conscious of the convener's signals to me, but the answer to your question is

probably quite long. Would it be better if I wrote to you? I am happy to give you a brief response now.

The Convener: If you could give us a brief response now and then follow it up in writing, that would be helpful.

Paul Gray: Sure. The shortest answer that I can give you is this: the appointments process for board chairs and members—the non-executive roles—is properly overseen by the Commissioner for Ethical Standards in Public Life in Scotland, so one does not tap people on the shoulder and say, "If you do this, everything will be fine." Nevertheless, the commissioner expects us to draw these roles to the attention of people who might be suitable—they then have to go through the full process, which is overseen by the commissioner—and to ensure that any individuals who might be suitable have the opportunity to explore with the chair or other board members as appropriate what the role might involve. The head of my office, Colin Brown, will also provide guidance to people about how to go about applying. Of course, we will not write their applications for them—that is up to them—but we do all we can to facilitate that sort of thing. I should also say that, in my time here, I have cut the number of essential criteria to those that are actually essential.

I can say more about that in writing, convener.

The Convener: If you have more on that matter, Mr Gray, it would be helpful to receive it in writing.

Anas Sarwar: I asked the previous panel a series of questions about performance standards; instead of repeating them, I will focus on a single question about mental health services. The performance in Tayside is clearly still not good enough, with the most recent CAMHS figures, which are for November 2018, showing that only 39 per cent of people were being seen on time. At a previous meeting, Mr Gray, you committed to looking at the numbers of people who had lost their lives while awaiting treatment. Has that work been done and, if so, are you able to share those figures with the committee?

Paul Gray: I thought that I had written to you on that, Mr Sarwar, but if not, I apologise and I will do so. That is the simplest answer that I can give.

Anas Sarwar: I am sorry, Mr Gray, but I have had no communication on that from you. If you could write to us on that, that would be helpful.

Paul Gray: Okay.

The Convener: I am seeking clarification on that letter, but for now I will bring in Willie Coffey.

Willie Coffey: In the previous session, I asked about the internal audit process and function, the audit committee and the internal audit programme

in NHS Tayside, and I want to ask you similar questions. Is the Scottish Government content that the internal audit function and the skills, membership and scope of the audit committee are sufficient for it to carry out its duties and provide assurances to the NHS Tayside board?

Paul Gray: Just to be clear, Mr Coffey, I point out that there are centrally provided audit functions and then there is the audit committee, which is made up of non-executive members. Are you asking about both?

Willie Coffey: Aye, both.

Paul Gray: As the committee knows, Ms McLaughlin is unfortunately unwell and unable to be here today, but I know that she is looking with some care at the centrally provided functions. I am happy to write to the committee about that.

What Mr Brown has done with regard to the temporary membership of the audit committee is well judged and sensible, because he has brought in people who have directly attributable experience in the area. The steps that he has taken so far with the committee have been good and commendable. As for the centralised audit functions, I know that they are being looked at, and I am happy to provide further detail to the committee.

Willie Coffey: I have been looking at NHS Tayside minutes, which clearly say that the previous function of the audit committee was purely to focus on risk management issues. For an organisation such as NHS Tayside, looking only at the risk management process is a wee bit narrow in scope. The audit committee might want to look at financial matters, materials, procurement or performance. Is it a common picture in health boards for the internal audit function to look only at risk management, or does it have a broader scope?

Paul Gray: Given that Mr Brown is also chair of NHS Greater Glasgow and Clyde, you can take it that he brings experience from other areas. Mr Brown and his colleague Susan Walsh, who was a non-executive director in Healthcare Improvement Scotland, did a governance review in NHS Highland that produced a blueprint. The cabinet secretary has made it clear that she expects that governance blueprint to be implemented in all health boards by the start of the new financial year. There has been progress on that issue.

Willie Coffey: Mr Brown said earlier that previous audit recommendations were not acted on. This committee has heard that story before from other areas of the public sector. How on earth do we improve that? It is a common message that the internal audit function of an organisation—the audit team or committee—makes recommendations to the board, but they

are not acted on. How can we assure the public that that will no longer be the case?

Paul Gray: Boards have to have a clear expectation that recommendations that are made to them, whether by the audit committee or through any other system or process—such as Healthcare Improvement Scotland, to pick another example—are followed up and acted on. Part of what the committee has said to me today prompts me to think about how we might in future pursue annual reviews with the health boards in a way that would give the cabinet secretary and the accountable officer assurance that that follow-up is being pursued.

The Convener: Mr Gray, I have had clarification that you wrote to us on the issue of mental health and that the committee received the letter last Friday. Members have not had sight of that letter yet, which might explain the confusion. Mr Sarwar, in particular, is interested in pursuing a line of questioning on that, as mental health is an important issue. I will allow him to do so in terms of what he has just seen.

However, as not all members have had a chance to review the letter, it might be that, when we come back to look at the scrutiny of OSCR—which we cannot do yet as we have not received OSCR's report—we will reserve some time for this important issue, as members should all be apprised of the information that you have provided. For the time being, I will let Anas Sarwar pursue what he wants to pursue.

Anas Sarwar: Just to clarify, what I have just briefly read looks like an audit of the rejected referrals. There are no statistics given on the number of people who lost their lives, even in the category of rejected referrals, so it does not answer the question about the number of people who lost their lives while waiting for treatment, either through a rejected referral or the length of time that they waited. It would be greatly appreciated if you would look into that and come back to us on that question.

Paul Gray: Certainly.

The Convener: Members have no further questions for Paul Gray or Shirley Rogers, but I have another one.

In Mr Coffey's questioning of our first panel of witnesses this morning, he raised the issue of the length of board papers. That issue concerns this committee and, in particular, my staff, who have to wade through pages and pages of papers. For example, 240 pages of papers went to NHS Tayside board members in December. That is not unusual for health boards, but you gave us an assurance last time that boards would do something to make their papers more concise and transparent. What has been done?

Paul Gray: I can give the committee an assurance that the cabinet secretary raised that very point with the board chairs at a recent meeting. She made clear her expectation that board papers would be clear, concise and accessible. That has been escalated and raised directly with board chairs.

Willie Coffey: Looking at the minutes of NHS Tayside's December meeting, I read that 38 people were there, which is roughly the same number of folk who are in this committee room. That is a ridiculous number of people to attend a board meeting. Nine doctors, three professors, three councillors and a myriad of other people were there. Who wisnae there? Was the chief internal auditor there? Come on—let us get it sorted and get it right.

The Convener: We have had assurances from John Brown and Malcolm Wright this morning about changes to governance. However, all the Auditor General's reports on health come to this committee and we will be keeping a close eye on leadership and governance in that regard.

I thank our witnesses very much for their evidence.

11:10

Meeting continued in private until 11:27.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba