

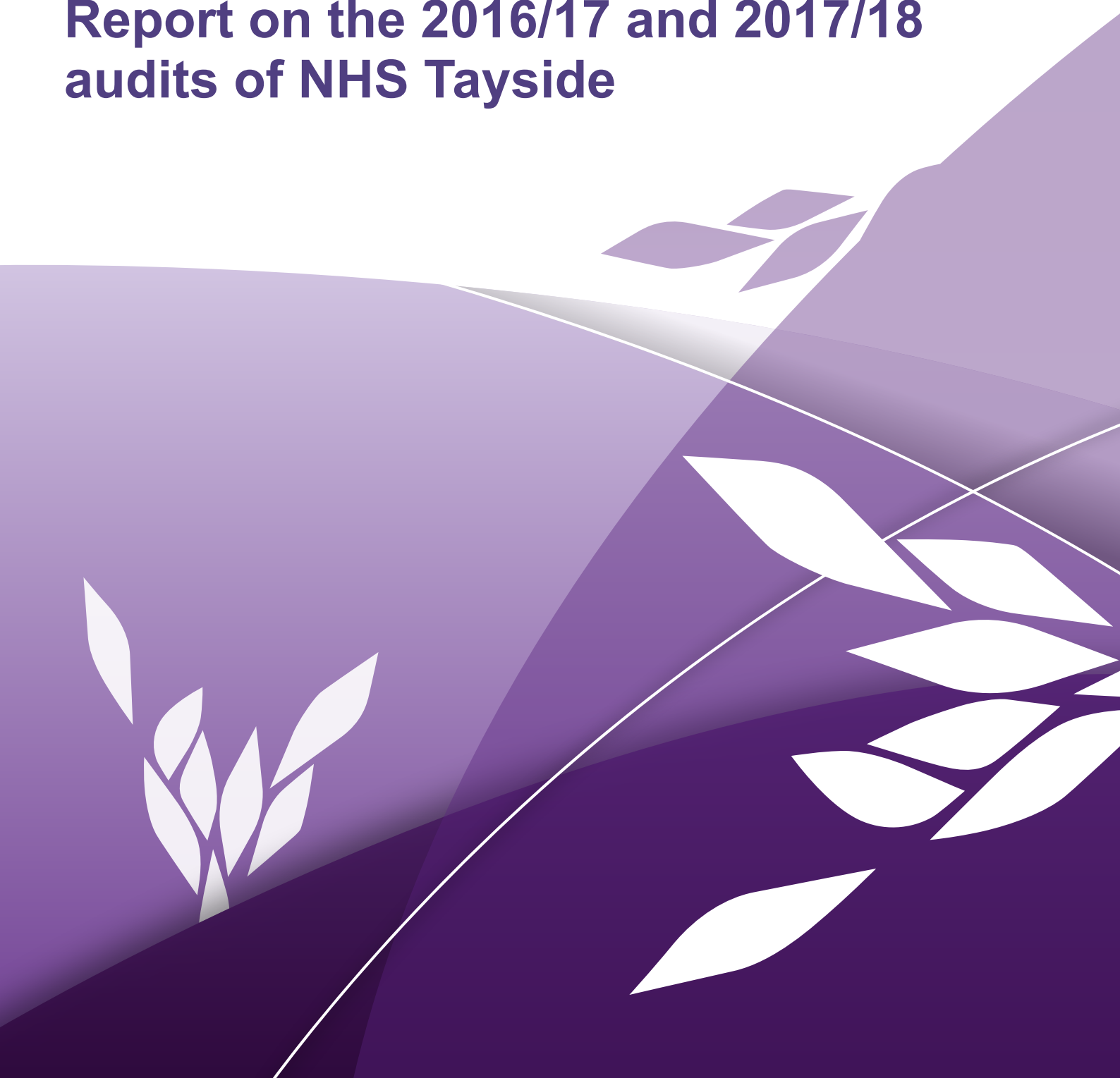


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## **Public Audit and Post-legislative Scrutiny Committee Comataidh Sgrùdadh Poblach agus Iar-reachdail**

# **Report on the 2016/17 and 2017/18 audits of NHS Tayside**



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# Public Audit and Post-legislative Scrutiny Committee

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- (a) any accounts laid before the Parliament;
- (b) any report laid before or made to the Parliament by the Auditor General for Scotland; and
- (c) any other document laid before the Parliament, or referred to it by the Parliamentary Bureau or by the Auditor General for Scotland, concerning financial control, accounting and auditing in relation to public expenditure.
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Scottish National Party



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**Anas Sarwar**  
Scottish Labour

# Membership changes

Membership changes of the Public Audit and Post-legislative Scrutiny Committee during the reporting period are:

- Jackie Baillie MSP (Acting Convener)(until 22 December 2017)
- Iain Gray MSP (from 10 January 2018 until 1 November 2018)
- Anas Sarwar MSP (replaced Iain Gray MSP from 15 November 2018)

# Introduction

1. At its meeting on 16 November 2017, the Public Audit and Post-legislative Scrutiny Committee ("the Committee") took evidence from the Auditor General for Scotland ("the Auditor General") on her report on the 2016/17 audit of NHS Tayside ("the 2016/17 section 22 report"). This was the third occasion on which the Auditor General had reported to Parliament on NHS Tayside.
2. Following the evidence session, the Committee agreed to await the publication of the second progress report by the Assurance and Advisory Group (AAG) before deciding whether to take any further action on the audit report. The AAG had been established by the Scottish Government to provide independent scrutiny and challenge on the deliverability of NHS Tayside's operational plans in 2017/18 and its five-year transformation programme.
3. Before the Committee had the opportunity to take further evidence, however, two matters came to light which altered the focus of the Committee's scrutiny of the 2016/17 audit of NHS Tayside. The first of these concerned the discovery that NHS Tayside had been holding money intended to fund eHealth in other NHS boards and the second, that NHS Tayside endowment funds had been retrospectively applied to address the board's deficit. These two issues were subsequently considered in the Auditor General's section 22 report on the 2017/18 audit of NHS Tayside ("the 2017/18 section 22 report").
4. The Committee undertook a significant amount of scrutiny of the financial and governance issues at NHS Tayside over a period of one and half years. A series of inquiries and reviews were initiated and reported on at various points over this time period. The final key document was a report prepared by the Office of the Scottish Charity Regulator (OSCR) published in January 2019 ("the OSCR report"). Given the serious nature of the events at NHS Tayside, the Committee considered that it was important to prepare a report which consolidated the conclusions and findings of the two reports prepared by the Auditor General, as well as those of the different inquiries and reviews, with a view to providing a comprehensive record of events. It is clear to the Committee that there are lessons to be learned by NHS Tayside, by the Scottish Government and by the broader NHS in Scotland and, as such, the Committee has made a series of findings, conclusions and recommendations
5. This report draws on the section 22 reports, the oral and written evidence that the Committee received during its scrutiny of these reports, and the reviews and inquiries that were initiated; in particular, the two reports prepared by Grant Thornton LLP and the OSCR report. Full details of the Committee's scrutiny can be found on its [website](#).

## Structure of this report

6. The report follows the structure of the 2017/18 section 22 report and is divided into three parts. **Part 1** considers the financial challenges faced by NHS Tayside as described in the 2016/17 and 2017/18 audit reports and, in particular, provides some context for the developments described in the second part of the report. **Part 2** considers three significant governance issues that either emerged or occurred in 2018; these are the use of eHealth monies and endowment funds to shore-up the

board's finances and the payments made to the former chief executive on her departure from NHS Tayside. **Part 3** of the report explores the impact of the board's finances on its performance and sets out the steps that NHS Tayside is taking to address its financial and governance challenges, placing these in the context of the broader challenges that are being faced by the whole of the NHS in Scotland.

# Key findings and recommendations

7. The Committee recognises that the NHS in Scotland is under significant pressure as a consequence of a tight financial environment, increasing demand for services, difficulties in recruiting staff and rising public expectations.
8. The Committee notes that, since 2013/14, NHS Tayside's financial position has been unsustainable, predominantly due to its high cost base. It has needed brokerage from the Scottish Government to achieve in-year financial balance in each of the last six financial years and has received £50.2 million in brokerage since 2012/13, which has now been written off as part of a wider Government strategy.
9. The Auditor General has reported to Parliament on NHS Tayside in each of the last four years. The section 22 reports have highlighted a series of significant concerns, covering financial, performance and governance issues and have been scrutinised by this Committee and its predecessor Committee. It is of concern to the Committee that, despite a series of reports from the Auditor General, NHS Tayside and the Scottish Government have not taken the necessary steps to address the board's serious financial position.
10. It is disappointing to the Committee that it has apparently taken the two high profile and damaging events that emerged in 2018 at NHS Tayside concerning the use of eHealth monies and endowment funds to trigger the kind of material action by NHS Tayside and by the Scottish Government that should have been taken in the preceding years.
11. The events that came to light in 2018 revealed a systemic failure of governance at NHS Tayside. The Committee notes that it is critical that NHS Tayside has in place strengthened governance arrangements in order that there is regular and robust scrutiny and challenge of the board's finances.
12. The Committee's principal concern is that the performance of NHS Tayside (along with that of all boards) is significantly improved in order that the Parliament and the public can be reassured that patients are receiving the care that they need. Therefore, it is essential that the steps that the board is taking to address its financial sustainability have a commensurate effect on performance and that there are measures in place to assess this impact.
13. NHS Tayside still has much work to do to restore the public's trust in its ability to manage its finances so that patients can feel confident that they will receive the level of care that they need.
14. The Committee considers that it is essential that the new board has the requisite skills and diversity and that board members themselves consider that they are suitably equipped to challenge and scrutinise the senior management team.

15. **The Committee notes that strong and consistent leadership will be crucial in NHS Tayside if the board is to build on the positive action that has been taken over the past year to address the serious governance concerns and to stabilise the board's financial position.**
16. **The Committee considers that there is an opportunity for the leadership team and the board to set out the culture that they expect to be in place and demonstrated across NHS Tayside, including promoting an ethos of openness and transparency.**
17. **Both the challenges facing NHS Tayside and the associated level of risk remain significant and will continue to require a high level of support from the Scottish Government.**
18. **The Scottish Government and all boards need to learn from the experience at NHS Tayside and reflect on what changes are required across the NHS in Scotland to ensure that these kinds of governance failings do not arise again.**

# Part 1 : Financial challenges faced by NHS Tayside

## The 2016/17 audit of NHS Tayside

19. The Scottish Government can agree to provide an NHS board with additional funding to help it manage unexpected changes to planned expenditure. This is a form of loan funding known as brokerage. It is arranged on the basis of assurance from the board that it can repay the brokerage over an agreed period. At the point at which the 2016/17 section 22 report was published in October 2017, NHS Tayside had needed brokerage from the Scottish Government to help it achieve financial balance in each of the last five financial years.<sup>1</sup>
20. The 2016/17 section 22 report indicated that NHS Tayside was projecting a funding gap of £49.8 million in 2017/18. The board planned to achieve efficiency savings of £45.8 million, with the balance of £4 million funded through additional brokerage. The section 22 report noted that the 2017/18 savings included £5 million which had yet to be identified or were high risk. Despite this, the report further noted that the board planned to achieve financial balance in 2018/19.<sup>1</sup>
21. The 2016/17 section 22 report stated that the board recognised that its cost base remained too high and that further significant savings were needed in future years. The report noted that, to be sustainable in the long term, NHS Tayside needed to make savings of £205.8 million over the next five years. The board had been reliant on non-recurring savings in recent years, but recognised that this situation was not sustainable. In 2016/17, the board had started to shift the balance towards recurring savings.<sup>1</sup>
22. Finally, the section 22 report indicated that the board had a total of £33.2 million of outstanding brokerage to repay. The Scottish Government had recently agreed to suspend repayment of this debt to “avoid the prospect of adverse impacts on patient safety, quality and delivery.”<sup>1</sup>
23. The AGS concluded her section 22 report as follows—

” Given the factors outlined above, there is a high risk that NHS Tayside will not achieve its financial plans for 2017/18 and will require more than the anticipated £4 million brokerage from the Scottish Government. It is important that the NHS board puts in place a realistic action plan accompanied by the capacity and resources required to deliver it, in order to address the challenges that it faces, while also recognising that some of the changes will take time to fully implement.”<sup>1</sup>
24. The financial position of NHS Tayside in comparison with that of other boards was articulated in the Auditor General’s report on the NHS in Scotland in 2017, which stated that—

” NHS Tayside was the only board to require brokerage from the Scottish Government in 2016/17, receiving £13.2 million....Three NHS boards – NHS Highland, Orkney, and Western Isles – repaid all their outstanding brokerage ranging from £0.5 million to £1.1 million, and NHS 24 repaid £1.1 million from an existing balance of £20.4 million. NHS 24 is scheduled to repay the remaining loan over the next four years. <sup>2</sup>

25. The particular financial pressures facing NHS Tayside had been noted by the Committee in its scrutiny of previous section 22 reports on the board. For example, in his evidence to the Committee on 15 December 2016, Professor John Connell, then chairman of the board, indicated that the reasons why the board's costs were so high in comparison with those in the rest of Scotland were complex. He told the Committee that—

” It involves a number of factors, including the fact that Tayside does things better in some areas, such as identifying patients with complex chronic illnesses who require prescriptions.

Source: Public Audit and Post-legislative Scrutiny Committee 15 December 2016, Professor Connell, contrib. 155<sup>3</sup>

26. Lesley McLay, the then chief executive of the board, indicated in her evidence that the board was also having "to invest money in our ageing estate—we have a large number of hospital sites that are more than 30 years old and are very costly." <sup>4</sup>
27. Professor Connell further noted that the financial situation at NHS Tayside had arisen "as a result of a substantial number of years of operational models that did not recognise the true financial situation that NHS Tayside was in." He continued—

” In earlier years, perhaps running up to 2012, the health board balanced its books on the back of asset sales and other manoeuvres, which meant that it appeared to be in financial balance when, in fact, it was living outwith its means.

Source: Public Audit and Post-legislative Scrutiny Committee 15 December 2016, Professor Connell, contrib. 134<sup>5</sup>

## Assurance and Advisory Group

28. NHS Tayside has put in place a five-year transformation programme which aims "to improve the sustainability of services and enhance the quality of care." The programme is focused around six work streams.
29. As noted above, in April 2017, the Scottish Government appointed the AAG to provide independent scrutiny and challenge on the deliverability of the board's operational plans and transformation programme. In June 2017, the AAG published a staging report which highlighted that—

” given the current pace of progress of the transformation programme, it is not confident that the board can return to financial balance within a five-year timescale. <sup>6</sup>

30. The AAG also reported that the £4 million estimated brokerage required to break even in 2017/18 was likely to be an underestimate.<sup>6</sup>
31. In January 2018, the AAG produced its second progress report. The report concluded that while some progress had been made, “transformational change still needed to be achieved and the board continues to face significant challenges.”<sup>7</sup>

## Subsequent developments

32. In March 2018, it emerged that an arrangement had been in place since 2012/13 to route eHealth money from the Scottish Government through NHS National Services Scotland (NSS) and then onto NHS boards. Since that time, underspent funds on the eHealth programme for the benefit of all boards were passed to NHS Tayside, which it had used to fund its annual expenditure. The funds were then returned to the Scottish Government as funding allocation credits the following year.
33. A further issue was raised in early April 2018 regarding allegations of the misuse of Tayside Endowment Fund monies by NHS Tayside, including the temporary suspension of the Fund's policy and procedures to facilitate this. This allegation related to the financial year 2013/14. These events were subsequently reported in the Auditor General's section 22 report on the 2017/18 audit of NHS Tayside.

## The 2017/18 audit of NHS Tayside

34. On 6 December 2018, the Auditor General published her section 22 report on the 2017/18 audit of NHS Tayside. The report stated—
  - ” NHS Tayside's financial position is unsustainable. The board has needed brokerage from the Scottish Government to help it achieve in-year balance in each of the last six financial years.<sup>8</sup>
35. The report went on to indicate that, while the auditor's opinion was unqualified, the auditor had highlighted that—
  - ” financial management has been weak and the board failed to achieve its 2017/18 financial plan. Financial reports to the board on the budget and projection of its financial outturn were overly optimistic. The board's Local Delivery Plan for 2017/18 identified a potential deficit of £4.0 million for 2017/18. This deficit increased to £12.5 million by March 2018.<sup>8</sup>
36. The report further noted that of the £50.2 million of brokerage that the board had received from the Scottish Government since 2012/13, only £4.3 million had been repaid. The report noted that the main overspends in 2017/18 were in relation to workforce costs (by £6.2 million) and prescribing costs (by £6.7 million).<sup>8</sup>
37. In her evidence to the Committee at its meeting on 13 December 2018, the Auditor General stated that —

” By June 2018, there was still limited evidence of sustainable service redesign and transformation. The board achieved efficiency savings of £46.8 million in 2017-18, but only 36 per cent of those were recurring savings, and its net expenditure increased from previous years.<sup>9</sup>

38. The section 22 report did, however, set out the steps that were being taken by NHS Tayside and the Scottish Government in an attempt to address the board's long term financial sustainability. This action is considered in the third part of this report.

**The Committee notes that, since 2013/14, NHS Tayside's financial position has been unsustainable, predominantly due to its high cost base. It has needed brokerage from the Scottish Government to achieve in-year financial balance in each of the last six financial years and has received £50.2 million in brokerage since 2012/13.**

**The Auditor General has reported to Parliament on NHS Tayside on four consecutive years. The reports have highlighted a series of significant concerns, covering financial, performance and governance issues and have been scrutinised by this Committee and its predecessor Committee. It is of concern to the Committee that, despite a series of reports from the Auditor General, NHS Tayside and the Scottish Government have not taken the necessary steps to address the board's serious financial position.**

**It is disappointing to the Committee that it has apparently taken the two high profile and damaging events that emerged in 2018 at NHS Tayside to trigger the kind of material action by NHS Tayside and by the Scottish Government that should have been taken in the preceding years.**

## Part 2: Significant governance issues emerging in 2018

39. This part of the report considers the following—
- the use of eHealth funds by NHS Tayside;
  - the retrospective application of endowment funds;
  - the overarching themes arising in respect of these two events;
  - the payments made to the former chief executive.
40. The financial challenges facing NHS Tayside since 2012 provide some context to the significant governance issues that came to light in 2018.
41. Although the financial reliance by NHS Tayside on eHealth monies and endowment funds arose as a result of two distinct arrangements, the evidence received by the Committee points to similarities in the circumstances which allowed these arrangements to be put in place and to remain either undetected or unchallenged until 2018.
42. Firstly, both arrangements relate to a similar time period. Secondly, the evidence received by the Committee suggests that weaknesses and a lack of transparency in the decision making process, including the quality of financial reporting, were contributing factors to allowing these transactions to take place and remain unchallenged. Both arrangements raised questions about the control and oversight mechanisms at NHS Tayside, including the role of the board and internal audit. Finally, in both cases, the evidence received by the Committee suggests that the role of former finance directors in enabling these arrangements was pivotal.
43. This part of the report initially considers the circumstances surrounding each arrangement separately and then highlights certain overarching themes. It then considers the apparent motivation for these actions. Finally, it considers the governance issues which arose in relation to the payments made to the former chief executive on her departure from NHS Tayside.

### Use of eHealth funds by NHS Tayside

44. On 7 March 2018, the Committee received a letter from Paul Gray, the then Director-General for Health and Social Care at the Scottish Government (“DGHSC”) advising that NHS Tayside had been holding money intended to fund eHealth in other NHS boards. His letter advised that, as a result, the Scottish Government had commissioned an independent review by Grant Thornton LLP to determine the circumstances which had given rise to this arrangement.<sup>10</sup>

### Background

45. The Grant Thornton report of that review (“the GT1 report”) subsequently set out further details about the arrangement.<sup>11</sup>

46. EHealth is a national programme designed to deliver the Scottish Government and NHS Scotland's eHealth strategy. The eHealth programme is administrated by NHS NSS on behalf of the Scottish Government and eHealth leads. The report continues—

” In 2012, the eHealth leads group recognised the requirement for a reinvestment fund to be established to support future investment in IT infrastructure. The fund was generated through surplus eHealth monies generated annually through unspent budget allocations achieved through planned efficiencies and unplanned slippages. This, along with subsequent allocations for specific multi-year programmes has resulted in eHealth having balances at the end of each financial year 2012-17 that they wished to carry forward to be used in future years. <sup>11</sup>

47. The GT1 report indicated that, in 2012, the former Deputy Director of eHealth agreed that the forecast reinvestment fund balance at March 2013 of £0.870 million would be “carried forward” by NHS Tayside “on the basis that NHS Tayside had the ability to do so”. <sup>11</sup>

48. This was transacted through Scottish Government Revenue Resource Limit (RRL) allocations, as directed by NSS, with NHS Tayside receiving an in year increase in its allocation and NSS receiving an equal and opposite reduction. The report goes on to provide that—

” In 2012/13, NHS Tayside recognised this allocation as part of its core RRL in the annual financial statements. The transaction was reversed the following year, with the funding allocation returned to NSS. <sup>11</sup>

49. From 2012 up to 2015 the money held by NHS Tayside was returned the following year, through RRL transactions. The GT1 report describes the arrangement as—

” effectively an informal form of brokerage with NHS Tayside receiving additional resource allocations, which were effectively being used against operational spending pressures and then returned back to NSS via the Scottish Government through reductions in future years allocation. <sup>11</sup>

50. The GT1 report indicated that, from 2016/17 the money being held became a larger sum (£2.582 million) and that it was understood that NHS Tayside was informed that it did not need to pay back the 2016/17 monies during 2017/18 due to overall eHealth slippage. The report indicates that—

” In 2016/17 NHS Tayside effectively used the money they were holding (circa £2 million) to offset general expenditure in year, which supported them in showing a more favourable financial position. As a result, this misrepresented NHS Tayside's financial position. <sup>11</sup>

51. In 2017/18, NHS Tayside requested a further sum of £2.7 million, in addition to the sum that it was still “holding”. This would have resulted in NHS Tayside holding £5.3 million, which was required in order for NHS Tayside to achieve the forecasted £5 million deficit in year, which was being reported to the Scottish Government. <sup>11</sup> It is understood that, at this point, the matter was escalated to senior finance officials in

the Scottish Government Health and Social Care Directorate (SGHSCD), which ultimately led to the matter being formally notified to the Committee.

52. The GT1 report concludes that—

” No one during the course of our review was able to articulate why NHS Tayside were holding monies but it coincides with when NHS Tayside started to receive financial support through brokerage. In addition, it also aligns with slippage in the eHealth programme and more recently reductions in eHealth funding. <sup>11</sup>

53. During its subsequent evidence sessions, the Committee sought to explore the circumstances that enabled this arrangement to be put in place and continue for a period of five years, apparently undetected by the board, by senior officials in the Scottish Government and by both internal and external audit.

54. The evidence suggested that a series of factors contributed to this situation, including the financial inexperience of eHealth leads, the quality of the financial reporting and information provided to the board, the content of the Scottish Government allocation letters, a lack of challenge on the part of the board, NSS and Scottish Government officials and the actions of the finance directors in position during this period. <sup>12</sup>

55. Each of these factors is examined in turn below.

## **Lack of financial experience and failure to escalate**

56. The eHealth leads are an IT operational group including representatives from across territorial health boards, national boards and the Scottish Government. The GT1 report concludes that a contributing factor to the arrangement being put in place was “a lack of scrutiny and challenge from eHealth leads to consider the nature of the arrangements in place that allowed NHS Tayside to “hold” the funds.” <sup>11</sup>

57. The GT1 report indicates that the group was focused on “delivering the programmes planned within the health budget and to minimise slippage” and although the group approved the carry forward of eHealth funds where slippage occurred from 2012, the GT1 report suggests that—

” we believe that this was in the context of looking to ensure eHealth programmes were still delivered and they were not aware of the financial consequence, in particular how NHS Tayside would account for this money. <sup>11</sup>

58. In particular, the GT1 report notes that eHealth leads were “IT/Operational leads from the respective NHS Boards and therefore not necessarily of a financial accounting background.” <sup>11</sup>

59. Even so, there is some suggestion from information contained within the GT1 report that, while eHealth leads were not financially aware, they had some insight that the arrangement might be unorthodox. For example, the minute of the eHealth finance subgroup meeting on 2 February 2015, quotes the NSS Head of Finance stating—

- ” there is a new Finance Director in NHS Tayside and the current arrangements may be an issue; IT to investigate this further however it was recognised that there is a Plan B in place if this is no longer appropriate.<sup>11</sup>

60. The GT1 report indicates that it was understood that Plan B was to return the funds to the Scottish Government.<sup>11</sup>

**The Committee notes that in 2012 eHealth leads agreed to establish a reinvestment fund which would comprise unspent eHealth monies. The Committee considers that it is unfortunate that this financial development did not trigger a recognition on the part of eHealth leads that a higher level of financial experience was required to understand and manage the process.**

**The Committee recognises, however, that given the involvement of NSS Finance and the Scottish Government eHealth team in arranging the transfer of funds between NSS and NHS Tayside, eHealth leads might reasonably have concluded that any concerns about the arrangement and governance issues would be highlighted to them by those parties.**

**The Committee further acknowledges that the Grant Thornton report suggests that eHealth leads were unaware of how NHS Tayside would account for the monies.**

**As discussed further below, while there were clearly governance failings on the part of NSS and the Scottish Government in respect of the transfer and reporting of the eHealth monies, responsibility for the way in which information about the monies was reported to the board lies with NHS Tayside.**

## **Quality of financial reporting and information**

61. The GT1 report concludes that: “Since 2012, the Board’s reported financial performance has been misrepresented.”<sup>11</sup>
62. During its evidence sessions, the Committee sought to explore why the board had failed to identify that eHealth funds were being “held” by NHS Tayside on behalf of the other boards. The GT1 report noted a lack of challenge on the part of the board, but it suggested that this was due to the quality of the financial information being provided to it. It comments that—

” There does not appear to have been any challenge by the Board around the accounting treatment of eHealth monies as well as other monies recognised in year but for which expenditure was deferred in future years. This we think is due to a lack of reporting of the transactions, as the knowledge of these transactions seems to be contained to the NHS Tayside Director of Finance, NSS eHealth and the eHealth Leads group.<sup>11</sup>

63. In particular, the GT1 report comments on the visibility of the eHealth funds in the financial monitoring reports presented to the Directors Group and Finance Committee and the NHS Tayside Board. The report comments that—

” Given the significance of the transaction values (£2.582 million in 2016/17) on the Board’s reported outturn position, and that they would need to be repaid in future years through reductions in resource allocations, we would have expected this to be identified in monitoring reports.<sup>11</sup>

64. Similarly, a subsequent report prepared by Grant Thornton on NHS Tayside (“the GT2 report”) acknowledges that there are references to deferred expenditure in the Finance and Resource Committee papers, but then notes that—

” .....what is not in the papers is what this balance is made up of and therefore the ability to scrutinise or consider whether this is genuine deferred expenditure due to a legitimate timing difference or that the balance is being used to manage the delivery of the financial targets in-year.<sup>13</sup>

65. In her evidence to the Committee, Fiona Mitchell-Knight from Audit Scotland provided further clarification about the descriptions of eHealth monies. She said that—

” I think that e-health was in the description, but there was no indication that it was not e-health funding that was due to Tayside. There was no indication that it was due to other boards or that it was due to be repaid. The descriptions were not clear.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Fiona Mitchell-Knight, contrib. 106<sup>14</sup>

66. However, criticism of the quality of financial information was not limited to that generated at NHS Tayside. Fiona Mitchell-Knight also pointed to the contents of the Scottish Government allocation letters as a further reason why the accounting treatment of eHealth monies by NHS Tayside had gone undetected. In her evidence to the Committee, she said—

- ” The accounting rules on income for boards say that the income that is included in the boards’ accounts should agree with what is seen in the Scottish Government funding allocation letters, so those letters are our prime source of evidence for looking at what income should be included in the accounts.

For the 2016-17 audit, we checked those letters and found that they do not say anything about any of the funds not belonging to Tayside, and nor do they mention any requirement for the funds to be repaid. There was no way that we could identify from those specific letters that that was the case, and nor could we expect the members of the board or management team to identify that.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Fiona Mitchell-Knight, contrib. 52<sup>15</sup>

67. Fiona Mitchell-Knight went on to explain how the individual transactions were reflected in the board accounts. She said—

- ” The allocation letters for 2016-17 were split into four transactions, and then that money as a whole was included in the total income that was disclosed in the board’s accounts. It was not actual money in its hands; it was an allocation against which the financial outturn is assessed in order to measure whether the targets have been achieved.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Fiona Mitchell-Knight, contrib. 108<sup>16</sup>

68. The Auditor General summed up the position as follows. She said—

- ” I would expect two things that seem not to have happened here. The first is for the allocation letters that go from the Scottish Government to the health board to be clear about the purpose of the funds that are being transferred and any conditions that are attached to them, including whether they are intended for the benefit of boards other than simply NHS Tayside and whether they are due to be repaid in the following financial year.

Secondly, I would expect the director of finance, who holds a significant and responsible position within the corporate governance of the board, to make that clear to the management team and the board as part of the financial reporting. On the basis of the report that Grant Thornton has produced, neither of those things seems to have happened.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 49<sup>17</sup>

**The Committee recognises that the main reason why the precise status of the eHealth funds in NHS Tayside accounts remained undetected until 2018 was due to the financial information contained within the Scottish Government’s allocation letters and in the financial reports provided by the NHS Tayside finance team to the board.**

## Role of the financial directors

69. As noted by the Auditor General above, it appears from the evidence that the Committee received, that the relevant directors of finance in position during the time period for which the eHealth funds were “held” by NHS Tayside were aware of the arrangement and, in the case of NHS Tayside, pivotal in enabling this arrangement to be put in place and then to continue.

70. The Auditor General described the position as follows—

” In this particular case, we know from the Grant Thornton report that it suited both NHS National Services Scotland and NHS Tayside for allocations to be moving in that way. The directors of finance of both bodies appear to have been aware of that, because it removed a surplus from NSS and helped to reduce NHS Tayside’s deficit. However, because of shortcomings in the way that the allocations were managed, that was not apparent to anybody else, except the directors of finance in those organisations and potentially a small number of more junior team members.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 54<sup>18</sup>

71. A report by KPMG LLP (the KPMG report) into the actions of NSS observes, in particular, the role of the then Director of Finance at NHS Tayside. It stated that—

” It is apparent from our work that throughout the period of 2012/13 to 2016/17 the Head of Finance (IT) communicated directly with the Finance Director of NHS Tayside and regularly took instructions from him in respect of the transfers of unspent budgets.<sup>19</sup>

72. While Paul Gray, then DGHSC, told the Committee that—

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

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Paul Gray, contrib. 262<sup>20</sup>

73. And in response to a direct question from the Committee as to whether the board had, in effect, been misled, Paul Gray responded:

” I would say so.

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Paul Gray, contrib. 270<sup>21</sup>

74. In her evidence to the Committee, the Auditor General appeared to support this view. She said—

” it would be very difficult for any board to [pick this up] if it was being misled by its director of finance. Directors of finance hold a significant responsibility.... if they are not making that information available to board or management team members, it is difficult to see how the board can be expected to overcome that.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 56<sup>22</sup>

**The evidence received by the Committee indicates that the former directors of finance at NHS Tayside in position during the relevant time period put in place and then maintained the arrangements whereby eHealth monies were “held” by NHS Tayside between 2013 to 2018 and by which the monies were subsequently reported to the board.**

**The Committee understands that neither finance director was interviewed as part of the Grant Thornton review and the finance director in post from 2015 retired shortly after he informed the chief executive about the treatment of the eHealth funds. As such, the Committee has no information about the motivation for the actions of the finance directors or their interpretation of events.**

## Challenge by the board

75. The GT1 report indicates that NHS Tayside financial plans include amounts defined as “deferred expenditure” relating to funding received from the Scottish Government but for which the costs will not be incurred for future years.
76. The Committee acknowledges the evidence indicating that inadequate financial information and reporting were key factors in allowing this arrangement to be put in place and continue undetected. Nevertheless, the Committee also noted that the eHealth monies were included within the board’s deferred expenditure which, at that point, was not an insignificant figure and one that the board was seeking to decrease.
77. As such, in its evidence session on the 29 March 2018 with Lesley McLay, the then chief executive and Professor Connell, then chairman of the board, the Committee sought to explore why questions had not been asked about the composition of the deferred expenditure; a line of questioning which might have begun to flush out the status of the eHealth funds within the board’s accounts.
78. In her evidence to the Committee, Lesley McLay acknowledged that she was “aware of the size of the budget, and I was part of the board meeting in which we instructed that we wanted a reduction in the size of the deferred budget.”<sup>20</sup>
79. However, she indicated that she had not asked for “line-by-line” details as that would not have been “appropriate”.<sup>23</sup>

80. Ms McLay advised that, as accountable officer, she had "a director of finance whom I rely on to provide the financial information that comes through me and into the board". As a consequence, she had not asked about the detail of the deferred expenditure—

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

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Lesley McLay, contrib. 217<sup>23</sup>

81. Professor Connell expanded on this point. He told the Committee—

” In hindsight, we might have asked [the financial director] to give us headline notification of the larger items so that we would be aware of which activities we were spending money on and which we were not. It is easy to say that in hindsight. As I said, the fact that all the external scrutiny processes did not note the issue does not give me comfort. I rely on that scrutiny when I sign off the accounts, to assure me that the accounts have been audited.

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Professor Connell, contrib. 250<sup>24</sup>

82. In response to questioning from the Committee about the components of the deferred expenditure, Alan Gray, Director of Finance at NHS Grampian, who was supporting NHS Tayside, indicated that—

” The board was concerned. The board had taken steps to reduce its dependence on that level of deferred expenditure. Last year it was £23 million, and the board was taking steps to reduce that. The board was taking all the steps that it felt were right to improve the position and to reduce reliance on that type of money, ensuring that earmarked funding was getting used much more quickly to support the professional services.

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Alan Gray, contrib. 75<sup>25</sup>

83. However, when pressed on why the audit committee had apparently not asked more questions about the activities in respect of which the allocated funds were not being spent each year, Alan Gray responded—

” I cannot comment on what the audit committee may or may not have asked.

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Alan Gray, contrib. 113<sup>26</sup>

84. But he agreed that "it is a reasonable question to ask". <sup>27</sup>

85. The Auditor General told the Committee—

” Any chief executive and any board should be asking those questions, particularly in a context in which we know that a lot of boards rely on deferred income and other short-term measures to hit their targets. Having said that, it comes back to the point that the director of finance holds a very personally responsible position and has professional and ethical responsibilities, and if the director of finance is not providing straightforward information about those questions it is difficult to know how the chief executive or the board could get beyond that, in the absence of evidence that there is a particular problem.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 130<sup>28</sup>

86. However, she agreed that—

” It is incumbent on any board member—chief executives and others—to ask the difficult and challenging questions. That is what they are there for.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 132<sup>29</sup>

**The Committee acknowledges that the evidence from both the Auditor General and the Grant Thornton report suggests that, in the absence of adequate financial reporting, it would have been difficult for the board to ascertain the real nature of the eHealth monies within the deferred expenditure.**

**However, the Committee is concerned that there was little evidence from the former chief executive and the former chair that the board had asked questions about the components of the deferred expenditure despite it being a significant amount. Instead, it appears that the board relied on the director of finance and internal audit to raise any concerns. The Committee considers that the board should have been asking such questions, which might have begun to flush out the status of the eHealth funds within the board’s accounts.**

## Role of National Services Scotland

87. The evidence contained within the GT1 report indicates that the arrangements in respect of the eHealth funds were put in place with the knowledge and co-operation of officials within the NSS and the Scottish Government. <sup>11</sup>
88. In respect of NSS, an independent investigation into the activities, transactions and decisions taken within NSS was commissioned and conducted by KPMG LLP, the NSS internal auditors. Its conclusions were subsequently reflected in the GT1 report.
89. The GT1 report indicates that, during the period 2012 to 2017, NSS eHealth directed the Scottish Government eHealth team to make the respective RRL allocation adjustments, setting out the rationale. <sup>11</sup>

90. The Committee understands that for 2016-17, a figure of £2.582 million was agreed and reflected in the allocation schedule received by NSS from Scottish Government Finance as a single negative allocation sum. Subsequently, the Director of Finance at NHS Tayside requested by email to the NSS Head of Finance (IT) to break down the single sum into smaller sums and to amend the descriptions of the allocations. The KPMG report states that “this was done” and goes on to state that—

” We have found no evidence to indicate that anyone within NSS flagged this as being unusual or that it was escalated within the organisation. <sup>19</sup>

91. The GT1 report further notes that “significant eHealth funds were returned to the Scottish Government and then (we understand) transferred onward to NHS Tayside, without the visibility of the senior finance team within NSS.” <sup>11</sup>

92. However, there was a suggestion that even when the NSS Director of Finance became aware of the eHealth allocations to NHS Tayside through the SGHSCD resource allocations in 2016, no action was taken. The GT1 report indicates—

” The email trail appears to indicate that the Director of Finance at NHS Tayside was planning on using the eHealth money as part of their overall income that year, and that the Director of Finance at NSS was aware of this intention. <sup>11</sup>

93. Part of this absence of challenge apparently stemmed from the fact that there was a lack of clarity over whether NSS eHealth monies fell under wider NSS governance arrangements or those of the Scottish Government eHealth team. The GT1 report indicates that it was understood from the KPMG report that the Director of Finance had concluded that the eHealth monies were deemed as SGHSCD’s own budget which NSS only administered. <sup>11</sup>

94. The GT1 report concludes that—

” As a result it appears that the eHealth arrangements fell outside of both respective governance arrangements. <sup>11</sup>

## Role of the Scottish Government

95. The KPMG report states that—

” Our investigation has identified that, as far as NSS employees involved in these eHealth allocation transfer arrangements are concerned, the arrangements were sanctioned by Scottish Government with full transparency. The correspondence and minutes support this. <sup>19</sup>

96. As noted above, during the period 2012 to 2017, NSS eHealth directed the Scottish Government eHealth team to make the respective RRL allocation adjustments. The eHealth team processed these adjustments as requested. The report comments that—

” We would have expected additional controls to be in place to scrutinise and challenge the legitimacy of the requests and subsequent transfers. <sup>19</sup>

97. The GT1 report further notes that the narrative to support revenue resource transfers is limited on the relevant revenue transfer form. As such, it would have expected great scrutiny of the supporting email trail to enable the finance team to understand the rationale for the transfer and sense check that it was appropriate. It states—

” The email trail would have highlighted the purpose of the funds transfer. In our opinion this should have resulted in concerns being escalated sooner around the appropriateness of the arrangement. Furthermore, for the authorisation of Out of Hours and CHI balances in 2016 and 2017, senior officers within the Scottish Government, including the Head of Primary Care, were included in email trails that noted that NHS Tayside were retaining funds.<sup>11</sup>

**The Committee is concerned that a lack of clarity about governance arrangements in respect of the eHealth programme apparently allowed transfers of eHealth monies to occur between the Scottish Government, NSS and NHS Tayside without being challenged or escalated by NSS officials.**

**The Grant Thornton report suggests that even where certain senior officials with NSS and the Scottish Government were made aware that NHS Tayside was “holding” the eHealth funds, no action was taken.**

**While responsibility for the way in which the eHealth monies were subsequently reported to the board clearly lies with NHS Tayside, the Committee notes that the Scottish Government’s allocation letters were another reason why the true status of the monies was not identified by the board (or by internal audit).**

**The Committee has obtained little clarity as to why Scottish Government officials did not include information within the allocation letters about the status of the eHealth funds; that is, that they were for the benefit of all boards and were required to be repaid. Nor is it clear to the Committee why the transactions were not escalated to senior finance officials.**

## **Role of internal audit**

98. During the subsequent evidence sessions, the Committee also sought to explore the role of internal audit and whether it had identified and scrutinised the transactions. Internal audit plays a central function in a board’s governance processes, acting as a further oversight control to that of the board.
99. In his evidence to the Committee on 29 March 2018, Alan Gray advised that while internal audit had flagged up concerns about the use of deferred expenditure as a means of managing NHS Tayside’s financial position, it had not identified the eHealth funds within that deferred expenditure. He explained that—

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

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Alan Gray, contrib. 71<sup>30</sup>

100. The Auditor General agreed. She told the Committee—

- ” The Grant Thornton report makes it clear that the former director of finance was aware of the issue, as was the director of finance of NHS National Services Scotland, which arranged for the allocation changes to go through, but that the conditions on the allocation for e-health moneys were not clear on the allocation letters, which would be the basis on which internal and external audit would look at the matter to make sure that the revenue recognition was accurate in the annual audit of the financial statements.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 6<sup>31</sup>

101. A second report by Grant Thornton LLP made a series of recommendations in respect of internal audit and these are considered further below.

## Conclusions

102. The GT1 report concludes that—

- ” Overall, there was a lack of openness, governance and wider transparency over these transactions between 2012 and 2017, in particular between the two Health Boards and the Scottish Government. <sup>11</sup>

103. The GT1 report sets out a number of findings and conclusions, which were directed at NHS Tayside, the Scottish Government and NSS.

104. In his letter to the Committee of 23 March 2018, Paul Gray, the then DGHSC, indicated that the financial governance of national eHealth funds would now reside solely within Scottish Government. <sup>32</sup>

105. The KPMG report makes a series of recommendations to address the governance weaknesses that had been identified within NSS. In particular, the report comments that—

- ” The lines of responsibility within NSS do not appear to have been followed. Central finance should have been included on the emails, and the Head of Finance (IT) should have escalated requests from SG eHealth/Finance Director of NHS Tayside to his line manager; not just to senior IT SBU colleagues. <sup>19</sup>

106. As such, the KPMG report recommends that all finance team members within NSS should be reminded of lines of responsibility and reporting. <sup>19</sup>

107. In his letter of 23 March 2018, Paul Gray advised the Committee that additional internal control measures had also been put in place to validate requests for funding transfers between NHS boards.<sup>33</sup>
108. Scottish Government internal audit had also been invited to review these additional measures “to ensure the veracity of controls around health funding allocations” and that processes are in place to “exert scrutiny and challenge over new and existing allocations and that the documented controls to be used by staff are clear and understood, that there is a clear description on the purpose of the allocation, that funding is not made in advance of need, underspend/overspends can be readily identified and reported on etc...”<sup>34</sup>
109. The Director of Internal Audit subsequently reported in June 2018, confirming that the “new controls proposed are appropriately designed and if implemented effectively should address the issues raised.”<sup>35</sup>

**It is clear from the evidence received and the Grant Thornton report that the system of Scottish Government allocations needs to be reviewed to ensure that this kind of incident does not reoccur.**

**The Committee notes the action that has been taken both by the Scottish Government and NSS following the Grant Thornton report and that strengthened governance arrangements have now been put in place in respect of the eHealth programme.**

**In addition, the Committee notes that further controls have been put in place in NSS to ensure that there are processes for escalating issues to senior finance staff.**

**The Committee considers that any variation in the Scottish Government RRL allocation to an NHS board should be approved by the Scottish Ministers. It seeks a response to this point from the Scottish Government.**

## **The retrospective application of endowment funds**

110. A second incident in relation to NHS Tayside came to light shortly after information about the eHealth funds was reported to the Committee. This concerned the retrospective application of Tayside Endowment Fund monies by NHS Tayside, including the temporary suspension of the Fund's Policy and Procedures to facilitate this.
111. NHS Endowment Funds are registered charities set up in each health board area under the National Health Service (Scotland) Act 1978 and are supported by

patients, families and users of health services who make donations to enhance the services the NHS provides.

112. In the case of NHS Tayside, media reports in April 2018 suggested that endowment fund monies had been retrospectively applied to fund “back office computer system”.<sup>36</sup> The then chair of the board subsequently described the projects for which the funds had been used as “new, patient-facing approaches”, which included “teleHealth video technology for patients” and electronic booking systems.<sup>36</sup>
113. The use of endowment funds by the board in this way, which had taken place in 2014, similarly raised concerns about governance and decision making processes at the board. The position was complicated by the fact that the members of NHS Tayside board are the same individuals as the Members of the Endowment Fund Board of Trustees. As a consequence, DGHSC asked Grant Thornton LLP to extend the remit of a further review that it was undertaking in respect of NHS Tayside to include consideration of the circumstances surrounding its use of endowment funds. The report of that review (“the GT2 report”) was published on 22 May 2018.<sup>13</sup>
114. In addition, the Office of the Scottish Charity Regulator (OSCR) advised that it would be undertaking its own inquiry to determine whether there had been any misconduct in the management and control of the charity in making the retrospective payments in 2014. The report of that inquiry was subsequently published on 30 January 2019 (“the OSCR report”).<sup>37</sup>

## Background

115. The GT2 report, the 2017/18 section 22 report and the OSCR report set out the circumstances by which the Board of Trustees of NHS Tayside Endowment Fund (“the Board of Trustees”) agreed to the retrospective application of funds to support the board’s finances.<sup>13 37</sup>
116. On 17 January 2014, NHS Tayside received its final outturn figures for December 2013 showing that the forecast deficit at 21 March 2014 had risen to £6.6 million (an increase of £4 million). The chair, chief executive and director of finance met to consider options for meeting the deficit, including the retrospective use of endowment funds for non-core projects already funded by exchequer.<sup>37</sup>
117. Following a meeting between NHS Tayside finance directors and the Scottish Government on 21 January 2014, a paper was circulated to the NHS Tayside board late on 22 January which advised that “only minimal central support” was available. As a consequence, Standing Committee Chairs were being asked to recommend to the Board of Trustees a temporary variation in the Tayside NHS Board Endowment Fund Policy and Procedures (“the Policy and Procedures”) to allow retrospective applications to be considered.<sup>37</sup>
118. The GT2 report indicates that at a Board Development Event on 23 January 2014 (described by the OSCR report as a “pre-meeting”), Members of the Finance and Resources Committee and the Standing Committee Chairs were briefed by the then Director of Finance on the financial position of the board and advised that there was a gap of £6 million in the board’s finances.<sup>13</sup>

119. The OSCR report indicates that—

” This “pre-meeting” was the first time that any Non-Executive board members were made aware of the increased forecast deficit.<sup>37</sup>

120. The Standing Committee Chairs agreed the recommendation to the charity to temporarily vary the charity’s Policy and Procedures to allow retrospective applications to be considered.<sup>37</sup>

121. On the following day, at an extraordinary meeting of the Board of Trustees, the Trustees agreed to the temporary variation to the Policy and Procedures to allow retrospective applications for funding to be considered.<sup>37</sup>

122. Around two weeks later, the GT2 report indicates that Tayside NHS Board Endowment Trust Advisory Group agreed to recommend to the Board of Trustees funding allocation to NHS Tayside for the application of £3.6 million of funds. On 20 February, the Board of Trustees approved a number of submissions for funding.<sup>13</sup>

123. The annual accounts of the endowment fund for 2013/14 recorded that during that year—

” Tayside NHS board was faced with a funding deficit, and the trustees were asked to retrospectively fund projects already approved by the board and for which expenditure had been incurred.<sup>38</sup>

124. The accounts noted that “various projects were identified where trustees could have provided funding” and “£2.71 ultimately being reimbursed to the health board that year.”<sup>38</sup>

125. Both the decision to temporarily suspend the Policy and Procedures to allow retrospective application of endowment funds and the subsequent use of those monies to fund services at NHS Tayside came under significant scrutiny when details of this arrangement emerged in 2018.

## Decision to vary the Policy and Procedures

126. The OSCR report indicates that section 16 of the Policy and Procedures in place between September 2013 and October 2014 at Tayside included the statement that—

” Neither Endowment Advisory Group nor Board of Trustees will consider retrospective applications.<sup>37</sup>

127. The Policy and Procedures appear to accord with the national guidance on this aspect as described by the then Cabinet Secretary for Health and Sport in her evidence to the Committee. She said—

” The guidance that has been referred to was revised in 2013. There is obviously wide scope in terms of the benefit to health, but it is clear that the retrospective use of endowment funds in NHS Tayside was totally inappropriate.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 152<sup>39</sup>

128. The Cabinet Secretary’s evidence on the issue of retrospective application of funds was, however, contradicted by Ian McDonald and David Carson, the Director of Finance and Assistant Director of Finance, respectively, in position at the time at NHS Tayside. In a joint response to the GT2 report which was provided to the Committee, they contended that in 2013/14—

” it was found that the endowment fund policy of not funding projects retrospectively was found to be inconsistent with other NHS endowment funds and furthermore was not required by the new National Guidance which was endorsed by OSCR. <sup>40</sup>

129. The Committee was unable to obtain clarity on this point. The OSCR inquiry concluded that, in any event, the Board of Trustees had the power to amend the Policy and Procedures on a temporary basis. It noted that the document was an internal document, which the Trustees had amended on a number of occasions previously. <sup>37</sup>

130. Nevertheless, the Cabinet Secretary’s concern as to whether it *should* have been amended to allow for retrospective applications was shared by other witnesses. In particular, the Auditor General told the Committee that one of the concerns that she had was that the application of funding had been retrospective, rather than being part of a planned programme of expenditure of endowment fund moneys. <sup>41</sup>

**The Committee notes the conclusion in the OSCR report that, as it was an internal document, the Board of Trustees could amend the Policy and Procedures to allow retrospective applications to be considered.**

**Nonetheless, the Committee recognises that considerable concern was expressed about the retrospective application of endowment funds. As such, it considers that national guidance should be unambiguous on this and set out clear guidelines on the circumstances, if any, where the retrospective application of funds may be permitted. It considers that local policies and procedures should be required to follow national guidance on this issue.**

**The Committee also seeks clarification from the Scottish Government on the processes that are in place to alert the Scottish Government where policies and procedures in respect of NHS endowment funds are varied, in order that it can reassure itself that any variations are consistent with national guidance.**

## Assessing charitable objectives

131. Having agreed to vary the Policy and Procedures to allow funds to be applied retrospectively, the Board of Trustees was then required to consider a number of applications to which the funding could be applied. The Committee's scrutiny focused on whether the endowment funds could be used to fund new information technology systems, as described by the chair of the board.
132. The subsequent reports of the reviews carried out and the evidence that the Committee received demonstrated the difficulty in determining whether an activity or project fulfilled the charitable objectives of endowment funds as distinct from the broader objectives of the National Health Service as set in section 1 of the National Health Services (Scotland) Act 1978 ("the 1978 Act").
133. In her evidence to the Committee, the Auditor General commented on a potential misunderstanding as to how the endowment funds could be used. She said—

” Endowment funds are not only for the extras or patient comforts or the sorts of things that people might assume that they are for. For example, it is common for people to make a donation for a specific piece of medical equipment such as a magnetic resonance imaging scanner.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 42<sup>42</sup>

134. The Auditor General expanded on this point. She told the Committee—

” If we step back and look at the purposes and charitable objectives of all the endowment funds, they are quite broadly drawn. They are about providing support for health services and they are very close to the objectives of the NHS in the same legislation—the National Health Service (Scotland) Act 1978.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 36<sup>41</sup>

135. In its inquiry, OSCR similarly considered the assessment of whether an activity or project fulfilled a charitable purpose. However, OSCR was more categorical on the similarities between the charitable purpose of endowment funds and the objectives of the NHS. It pointed out that the purposes of endowments are defined in the 1978 Act, which vests endowment funds on trust to the Health Board for the general purpose set out in section 1 of the Act. As such, OSCR concluded that—

” This means that Health Boards and endowment funds have the same purposes. <sup>37</sup>

136. In respect of the uses to which the NHS Tayside endowment funds were applied, OSCR therefore concludes that it was—

” satisfied that charitable assets were only used for charitable purposes, and the projects to which grants were awarded were advancing the health of people and therefore in pursuit of the charity's purposes. <sup>37</sup>

137. The Committee understands, however, that even if the relevant legislation does not distinguish between the objectives of the NHS and the purposes for which

endowment funds could be used, guidance at both national and local level had made further provision regarding the use of endowment funds.

138. For example, in her evidence to the Committee, the Auditor General pointed to the national guidance on the use of endowments funds. She said—

” The guidance that was produced in 2013 by the Scottish Government added a proviso that said that trustees should be careful that they are not substituting for core health services, and that clearly comes into play in what we currently know about the retrospective expenditure on information technology systems.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 36<sup>41</sup>

139. Similarly, NHS Tayside Policy and Procedures in effect between September 2013 and October 2014 stated that—

” Trustees have determined that—

Endowment Funds should not be used as a means of funding mainstream services. <sup>37</sup>

140. The OSCR report therefore went on to consider whether the charity had acted in contravention of the Policy and Procedures in respect of this element. The report notes, in this regard, that the projects considered by the Board of Trustees were ones which the Health Board had previously agreed to pay for under its core funding from the Scottish Government. The OSCR report concludes that—

” The argument that this in itself made them “mainstream” provision has some weight. On the other hand, the charity took the view that the projects clearly fell within the charity’s purposes. <sup>37</sup>

141. The OSCR report notes, however, that the distinction between mainstream and non-mainstream or core and non-core expenditure is “not generally a particularly clear one, or easy to make in individual cases”. As a result, it recommends that—

” Given the public interest in whether payments made by the charity are core or non-core activities, it may be helpful for the NHS to issue further guidance about this. <sup>37</sup>

**NHS Endowment funds rely on donations from patients, their families and other members of the public. It is critical, therefore, that the public has confidence that such funds are being spent appropriately. The events at NHS Tayside, and the concerns about how such funds were used, means that NHS Tayside and the Scottish Government must take steps to restore public trust in the management of endowment funds.**

**The Committee notes the conclusion of the OSCR report that it was satisfied that charitable assets were only used for charitable purposes.**

**Nonetheless, the Committee considers that guidance on the distinction between core or non-core activities requires refreshing in order that the trustees of NHS endowment funds and, importantly, members of the public are clear in respect of the activities and projects to which such funds can and cannot be applied.**

**The Committee therefore supports OSCR's call for the Scottish Government to issue further guidance on core and non-core activities.**

## Decision making processes

142. Given the relative complexity of the decisions that the Board of Trustees were being asked to make and the subsequent controversy surrounding those decisions, a key issue explored in evidence and in the GT2 report was the process by which decisions had been made, including the nature and extent of the guidance and advice provided to the Board of Trustees.
143. Similarly, the OSCR inquiry focused on whether the charity had acted in the interests of the charity and had exercised the appropriate level of care and diligence. In particular, the OSCR report explored whether the charity had taken appropriate advice in respect of the decisions to amend the Policy and Procedures on a temporary basis and, thereafter, on funding the retrospective applications.
144. The minute of meeting on 24 January 2014, at which the Board of Trustees were asked to approve a temporary variation to the Policy and Procedures to allow for the retrospective application of endowment funds, makes reference to the advice that had been sought. It states that—
- ” The Director of Finance advised the Trustees that the Assistant Director of Finance and the Endowment Team had conducted work around OSCR, Central Legal Office (CLO) and National Guidelines and that there were “no conflicts”.  
37
145. Both the GT2 report and the Committee's evidence sessions and the subsequent OSCR report examined in some detail this extract and the nature of the advice that had been sought and obtained from the Central Legal Office (CLO) and OSCR.

## Advice from Central Legal Office

146. A key issue highlighted in both reports was the comparative speed with which the advice was sought and obtained from the CLO. The GT2 report noted, for example, that the request to the CLO was made “one hour before the meeting of the Endowment Board of Trustees (who were being asked to approve the decision at the meeting).”<sup>13</sup> The report further comments that—

” there is evidence in this email that pressure was in effect put on the CLO for a quick turnaround and a response was needed that day. <sup>13</sup>

147. In their written submission to the Committee, David Carson and Ian McDonald challenged this interpretation of events, however, indicating that “there were ongoing discussions with the CLO from the outset as the situation was explored and considered.” <sup>40</sup>

148. They subsequently acknowledged that the process was “rushed” but indicated that—

” this was necessary, as the lack of brokerage was advised late in the year and there was limited time to find projects and perform the governance processes required by the Policy and Procedures to obtain trustee approval. <sup>40</sup>

149. What became critical, however, was the extent to which the advice from the CLO was then shared with the Board of Trustees. On this point, the GT2 report states—

” We do not consider that the legal advice received from the CLO was fully disclosed to the Trustees. <sup>13</sup>

150. And in her evidence to the Committee on 24 May, the Cabinet Secretary confirmed that this was her understanding of events. She said—

” I think that the trustees were only given part of the advice—again, OSCR is looking into that in more detail, and we have not had its report yet. Had the trustees been given the full advice, they might have taken a different view. The CLO provided what it thought was rounded advice, but it did not know that only part of that advice was then given to the trustees.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. <sup>743</sup>

151. The subsequent inquiry report from OSCR provided further detail regarding the provision of advice. Its report indicates that, prior to the meeting on 24 January 2014, a Standing Committee Chair approached the Chairman and Director of Finance about the proposal to temporarily vary the Policy and Procedures to allow retrospective applications to be considered and was told that somebody in the organisation was contacting OSCR and the CLO. The report notes that another Chair, who was unable to attend, also suggested that it would be useful “to get guidance on any legal/regulator risks and guidance...” <sup>37</sup>

152. The report goes on to state that—

” During the morning of 24 January 2014, a member of the Endowment Funds team requested urgent legal advice from CLO on the proposed temporary variation and retrospective projects. CLO provided the advice less than two hours before the extraordinary meeting of the charity. Board members were not shown a copy of this advice. <sup>37</sup>

153. While both the GT2 report and the OSCR report indicate that further legal advice was sought from the CLO, both confirm that the first written advice that the Trustees received was on 1 April 2014. <sup>13</sup>

154. For example, the GT2 report indicates that, from its review of the relevant documentation, the Finance Manager wrote again to the CLO on 19 February asking about OSCR's powers in relation to the endowment fund on the hypothetical scenario that the Trustees were to approve expenditure which OSCR subsequently found to be inappropriate. The CLO advice provided in response highlighted the potential actions and sanctions that OSCR could pursue in the event that the Trustees were found to be acting inappropriately or the charity no longer met the charitable test.<sup>13</sup>
155. The GT2 report concludes that the subsequent correspondence with the CLO "was not formally communicated to the Trustees".<sup>13</sup>
156. The OSCR report notes, similarly, that while advice was also sought on 19 February 2014, "the minute of the meeting of 20 February 2014 makes no reference to this legal advice". The report concludes that no written advice was provided to board members until 1 April 2014.<sup>37</sup>
157. The OSCR report concludes that—
- ” In considering making a major amendment at short notice, it would have been good practice for the charity trustee's board members to be provided with a copy of legal advice to assist decision making.<sup>37</sup>

## Perspective of legal advice

158. Both the OSCR report and the GT2 report also comment on the perspective from which the CLO would have provided such advice. The GT2 report indicates, for example, that—
- ” the CLO advice requested was from the perspective of the NHS Board.<sup>13</sup>
159. While in her evidence to the Committee, Christine McLaughlin, Finance Director, SGHSCD confirmed—
- ” The CLO would have given advice on the legality of the proposal in relation to the National Health Service (Scotland) Act 1978 rather than in relation to the charities acts...
- Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Christine McLaughlin (Scottish Government), contrib. 16<sup>44</sup>
160. As a consequence, the OSCR report concludes that—
- ” It would have been good practice for the charity to have obtained independent legal advice to ensure it was acting, and seen to be acting, independently.<sup>37</sup>

## Advice from OSCR

161. The circumstances surrounding the reference to contact with OSCR was equally confused. The OSCR report indicates that—
- ” Many board members were under the impression from the discussion at the meeting that OSCR had been contacted and had raised no objections to the proposal.<sup>37</sup>
162. The GT2 report stated, however, that—
- ” we understand that there was no correspondence with the Scottish Government or OSCR, and we did not locate any evidence of correspondence during our review.<sup>13</sup>
163. In their written response to the GT2 report, Ian McDonald and David Carson contend that the GT2 report implies that OSCR would have provided such advice. They indicate that, in their experience, OSCR has always stated that it was not empowered to give advice. However, they note that OSCR does publish guidance and this guidance had been observed.
164. The OSCR report states as follows—
- ” It is unclear from the minute what work in respect of OSCR was actually carried out and the recollections of the Endowment Fund team members whom we interviewed conflicted. OSCR has no record of any contact from the charity during this period. However, it does not routinely record or make file notes of general telephone queries concerning charity administration. We are therefore unable to confirm whether or not the charity contacted OSCR.<sup>37</sup>
165. The OSCR report notes that, in general, there appeared to be some confusion among board members on OSCR’s role in regulating the charity. It suggests that—
- ” this confusion appears to stem from information provided at board members’ inductions and internal Tayside Health Board events.<sup>37</sup>

## General quality of decision making overall

166. The GT2 report states that—
- ” the decision making process related to the retrospective £3.6 million use of the endowment funds was not subject to fully open and transparent governance processes.<sup>13</sup>
167. Similarly, the OSCR report concludes that—

- ” we found that the decision making process was rushed and reflects poor practice. The charity trustee made a major variation to the charity’s Policy and Procedures at very short notice in the knowledge that the reason for doing so was to assist Tayside Health Board’s financial position. In doing so, the charity trustee failed to act with the care and diligence that is reasonable to expect of a person who is managing the affairs of another person.<sup>37</sup>

168. The report goes on to add that—

- ” The reputational damage to the charity that ensued when these issues were published in 2018 was foreseen and recorded in the minute of the extraordinary meeting (and in the advice from the CLO). This recognition should have triggered a full consideration of the risks by the charity trustee with board members having a full understanding of the position and of the advice provided.<sup>37</sup>

**The OSCR report and the Grant Thornton report, along with the evidence that the Committee has received, indicate that the decision making and governance processes relating to the retrospective use of endowment funds at NHS Tayside were flawed and lacked transparency.**

**The Committee considers that, while individual Trustees did express concern about the proposed temporary variation of the Policy and Procedures to allow the retrospective applications to be considered, overall the Board of Trustees should have exercised a greater challenge function and, at the very least, insisted on further advice and guidance before proceeding.**

**The events at NHS Tayside clearly demonstrate the need for trustees of endowment funds to have a clear knowledge of their roles and responsibilities in relation to such funds.**

**The events also demonstrate the need for effective secretariat support to NHS boards and endowment fund trustees to ensure that board members are provided with the independent and impartial advice around their statutory obligations and governance requirements.**

**The Committee notes the conclusion in the OSCR report that it would have been good practice for the charity to have obtained independent legal advice to ensure that it was acting, and seen to be acting, independently.**

## Conflict of interests

169. The decision making process was further complicated by the apparent conflict of interests whereby the NHS Tayside board members were also the trustees of the endowment fund. In her evidence to the Committee, the Auditor General commented on this issue. She said—

” For me, the issue that is raised is whether there is an inherent conflict of interests in the fact that the trustees of the endowment fund are the same people as the members of the NHS board. The Scottish Government considered that back in 2013 when it produced its guidance for endowment funds and concluded that there was no inherent conflict of interests.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 26<sup>45</sup>

170. The GT2 report further noted that—

” As the Trustees were all NHS Board Members we did note that the differing responsibilities became blurred over the period of time. There is no discussion of the retrospective approval of endowments within the NHS Board, and no wider discussions or linkage with this to the overall financial sustainability of NHS Tayside. There is no evidence in the formal minute that the NHS Board approved the use of endowment money to support the achievement of NHS Tayside’s financial performance. <sup>13</sup>

171. The OSCR report refers to guidance it produced in 2011, which discussed the dual role that charity trustees might face in respect of NHS endowment funds. The report quotes the guidance, which emphasised that “endowment funds charities should be able to demonstrate that, in a situation of conflict such as this one, the charity is making decisions on the use of its funds on the basis of the charity’s own interests and not the needs of the other body (the Health Board).” <sup>37</sup>

172. In the case of the decision making process undertaken by the Board of Trustees at Tayside, the OSCR report concludes that—

” In agreeing to consider the retrospective applications, the charity trustee was effectively acting to meet a deficit incurred by Tayside Health Board in its provision of NHS services: the charity trustee did not sufficiently recognise its duty to consider separately and distinctly the interests of the charity. <sup>37</sup>

173. During the Committee’s oral evidence sessions, there was discussion about whether a change in guidance or law was required to ensure that the same individuals were not on both the board and the board of trustees. The Auditor General indicated—

- ” That is a matter for OSCR and for the Government, but my view is that this case shows the risks of having a set of individuals working in two separate capacities at the same time. It is easy to agree in theory with the conclusion that was reached in the Government’s 2013 guidance that, with proper processes, there need be no conflict, but when we are in a situation where all boards are under significant financial pressure, it is difficult to maintain that separation in practice.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 40<sup>46</sup>

174. The then Cabinet Secretary for Health and Sport told the Committee that—

- ” The issue flags up the fact that there was a fundamental conflict of interest in the trustees’ making decisions on the use of those endowment funds while, at the same time, being put under pressure around the board’s finances.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 22<sup>47</sup>

175. Paul Gray appeared to acknowledge that a change might be required, although he appeared to stop short of recommending an entirely distinct group of individuals. He pointed out that—

- ” What we do not want to do is to create some enormous additional bureaucracy around all of this... Clearly, people who are employed by the board and some of the non-executive members of the board may still be required to attend the meetings of the endowment committee. I would not propose to take them all away, as they are support for that committee. However, I think that having that visible independence is important.

Source: Public Audit and Post-legislative Scrutiny Committee 10 May 2018, Paul Gray, contrib. 195<sup>48</sup>

176. The OSCR report notes that the case at NHS Tayside raises broader concerns that require to be addressed. It stated that—

- ” Fundamentally we do consider that the current governance structure of NHS endowment charities in Scotland where the Health Board is the corporate trustee of the charity constitutes a risk to the ability of the charity trustees to act in the charity’s interest where these conflict with those of the Health Board, and where there is significant financial pressure on the Health Board.....We are also writing to Scottish Ministers to suggest that the provisions of the 1978 Act are reviewed with a view to ensuring that at least a majority of those in management and control of the Endowment Funds are independent of the relevant Health Board, thereby resolving our concerns about governance. <sup>37</sup>

**The Committee agrees that there is a conflict of interest where the trustees of the endowment funds are the same individuals as the members of the NHS board.**

**The Committee therefore supports the proposal from OSCR for the National Health Service (Scotland) Act 1978 to be reviewed by the Scottish Government**

**with a view to ensuring that at least a majority of those in management and control of the endowment funds are independent of the relevant NHS board.**

**The Committee welcomes the subsequent announcement by the Cabinet Secretary for Health and Sport that a Project Group has been set up to review how to ensure that those responsible for the management and control of NHS endowment funds are able to demonstrate at all times that they are acting in the interests of the charity.**

177. Overall, the OSCR report concludes that the actions of the trustees had constituted mismanagement. It states that—

” Overall, we found that there was mismanagement in how the decision to suspend part of its Policies and Procedures was made. The failure of the charity trustee to act with the care and diligence that is reasonable to expect of a person who is managing the affairs of another person and to identify and deal appropriately with the conflict of interest was in our view mismanagement, and therefore misconduct in the administration of the charity, resulting in reputational damage to the charity.<sup>37</sup>

## Role of internal audit

178. Evidence presented to the Committee about the role of internal audit in relation to the retrospective application of endowment funds raised serious concerns. In her evidence to the Committee on 19 April 2018, the Auditor General indicated that concerns about the decision making process in relation to the retrospective application of endowment funds had been raised by internal audit. She told the Committee that—

” I know that internal audit raised some concerns and that, in the case of the endowment fund transaction, those concerns were not listened to.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib.  
30<sup>49</sup>

179. When the GT2 report was published on 22 May 2018, it appeared to confirm the Auditor General’s evidence. From the review of the relevant documents, the GT2 report indicated that between March and May 2014 there had been various meetings between the Chief Internal Auditor (CIA) at NHS Tayside and the Director of Finance. The GT2 report indicates that at some point during that time period—

” We understand that it was agreed that as external audit were reviewing the transactions, they would be excluded from the internal audit review.<sup>13</sup>

180. However, the report goes on to state that—

” There is no clarity as to which external auditors, internal audit were referring – the Endowment Fund External Auditors or the NHS Tayside External Auditors.  
13

181. The GT2 report provides further information about the discussions that took place between internal audit and the Director of Finance. It indicates that on 5 May 2014, the CIA met with the Director of Finance to discuss the cover paper for the “Internal Audit Annual Report to the Endowment Advisory Group”. The GT2 report indicates that the cover paper contained references to significant concerns around the advice provided to Trustees and the assurance provided in respect of the endowment funds. In particular, the draft cover paper stated as follows—

” Our concern is that the level of assurance that could be drawn from the CLO e-mail received in response was undoubtedly insufficient to be able to ensure that there was no such conflicts and furthermore, the CLO advice clearly indicated that there were, potentially, areas of conflict with national guidance. 13

182. The GT2 report notes, however, that the CIA agreed to remove these references given that internal audit had agreed to remove the retrospective application of endowment funds from the scope of the internal audit review. 13

183. The GT2 report goes on to state as follows—

” The CIA informed us that the Director of Finance and the Assistant Director of Finance put pressure on him to amend the covering paper. At a meeting on 5 May 2014, to discuss the Internal Audit annual audit report, there were alleged threats made including those of the potential removal of FTF [Fife, Tayside and Forth Valley Audit Services] as internal auditors or the removal of him as CIA.

We are unable to substantiate the allegations, but note there were changes between to the draft and final versions of the Internal Audit Endowment Annual Report covering paper (as shown above). These changes impact on the emphasis and we believe the concerns initially raised. 13

184. In their response to the GT2 report, Ian McDonald and David Carson denied these allegations and went on to state that—

” We are concerned that these allegations have been raised some 4 years after the event and in a public document and without the right of response at the appropriate time, i.e before publication. 40

185. In his evidence to the Committee, Paul Gray indicated that the allegations would be explored by OSCR. He told the Committee—

” If the work that we are doing with OSCR shows that inappropriate pressure was put on internal auditors, that issue will be dealt with. It is not acceptable. The only way that these things can function is if people are able to do their professional duties without fear of censure or losing their jobs.

Source: Public Audit and Post-legislative Scrutiny Committee 10 May 2018, Paul Gray, contrib. 59<sup>50</sup>

186. The Auditor General emphasised the key role played by internal audit. She told the Committee—

” Internal audit is there to provide assurance to those who are charged with governance. It is intended to have a degree of independence to report directly to the audit committee, not simply through the chief executive. Although there is always a discussion about the factual accuracy of an issue, at the end of the day it is for the auditor, internal or external, to make their judgment and to report it without fear or favour.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib.  
34<sup>51</sup>

**The Committee notes with concern the suggestion in the Grant Thornton report that internal audit was put under pressure to amend concerns that it had expressed about the process relating to the retrospective application of endowment funds. However, the Committee further notes that the Grant Thornton report was unable to substantiate these allegations.**

**Nevertheless, the Committee considers that internal audit has a duty to make a judgment and report where it has concerns about the financial management of a public body, irrespective of the pressures that might be placed on it by the audited body. Internal audit should also be informing Audit Scotland in such cases.**

## Role of the Scottish Government

187. The Committee also sought to explore the role of the Scottish Government and the extent to which it had been aware of the use of endowment funds by the board. The GT2 report indicated that there was no evidence to suggest that the Scottish Government had been consulted on the decision to vary the Fund’s Policy and Procedures to allow the retrospective application of funds. It states that—

” we understand that there was no correspondence with the Scottish Government or OSCR, and we did not locate any evidence of correspondence during our review.<sup>13</sup>

188. The Committee noted that factual information about the retrospective application of endowment funds at NHS Tayside was in the public domain. In particular, the Committee noted that the 2013/14 annual audit report of NHS Tayside included the following statement—

” In February 2014 the board of trustees of the Tayside NHS Board endowment fund approved a number of submissions for funding totalling £3.64 million, of which £2.7 million was retrospective spend. In total the board has received £7.6 million of endowment funds to fund projects outside of the core activities within its 2014 financial plan.<sup>52</sup>

189. In her evidence to the Committee, Christine McLaughlin acknowledged that the retrospective application of the endowment funds was “included in the accounts as a transaction.” However, she told the Committee—

” That does not suggest that it was an inappropriate transaction. Later on, the statement says that there was not anything inappropriate in the accounts. The board, as part of its annual assurance process, writes to the Scottish Government, and that is the point at which the audit committee of any board should flag anything that it feels needs to be raised from the accounts. The letter from the board said that there was nothing to make the Scottish Government aware of.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Christine McLaughlin, contrib. 80<sup>53</sup>

190. Similarly, in her evidence to the Committee, the Cabinet Secretary confirmed that there had been factual comment about the retrospective application of endowment funds in both the internal and external audit reports. However, she stated that—

” A factual statement is not the same as a matter being escalated. A matter coming to ministers would have to be escalated to ministers.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 90<sup>54</sup>

191. The Cabinet Secretary pointed to the GT2 report which stated that the authors had been “unable to identify any evidence that demonstrates the use of endowments was raised and discussed with the Scottish Government.”<sup>13</sup>

192. However, this statement was subsequently challenged by Ian McDonald and David Carson who state in their submission that—

” “the NHS Tayside Director of Finance met with the SGHSCD Director of Finance and advised him of the deficit problem and the proposed use of endowment funds and SGHSCD confirmed they were satisfied with the approach subject to CLO guidance.”<sup>40</sup>

193. The Cabinet Secretary confirmed in her evidence to the Committee that she would have expected something like that to be escalated and reported to the Scottish Government. She said—

” As a minister, I would rely on that being the case; otherwise, we would be left in the situation of having to go through every set of accounts and read between the lines, which is not how internal and external auditing processes should work.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 27<sup>55</sup>

## External audit

194. In her evidence to the Committee, the Auditor General explained the audit process in relation to endowment funds and the respective roles of external audit. She indicated that since 2014, the accounts of the endowment fund had been consolidated within those of the board. To carry out that consolidation, the auditor of

the health board issues a questionnaire and instructions to the auditor of the fund, which asks the latter for a number of pieces of information about the board minutes, the significant transactions that were made and any unusual transactions.

195. As a result of the questionnaire, the Auditor General confirmed that the auditor of the health board included in its annual report for 2014 a clear statement about the retrospective transaction and the extent to which the board had relied on transfers from the endowment fund during 2014 “to balance its books”. She went on to state that—

” However, because the auditor of the health board is not the auditor of the endowment fund, it is not their responsibility—and, indeed, they have no locus—to examine the advice that the endowment fund took before approving that transaction. That is a matter for the auditors of the endowment fund and, indeed, the fund’s trustees, who have specific responsibilities under the charities regulations for acting in the fund’s best interests.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib. 22<sup>56</sup>

196. The Committee noted that the GT2 report refers to a meeting of the NHS Tayside Audit Committee on 17 June 2014, at which the financial statements of the fund and the external audit report of the fund’s auditor, MMG Archbold CA, were presented to the Audit Committee. The draft financial statements included the following paragraph—

” In February 2014 the Board of Trustees of the Tayside NHS Board Endowment Fund approved a number of submissions for funding totalling £3.4 million, of which £2.7 million was retrospective spend. The content of all the bids were agreed by Trustees to be within the normal criteria for funding and in line with the charitable purpose of the Fund. <sup>13</sup>

197. The Audit Findings Report from the external auditor of the Endowment Fund recommended, however, that—

” The Trustees must be mindful of the distinction between their duties and responsibilities towards the trust and NHS Board. <sup>13</sup>

**The Committee notes that there is conflicting evidence on the extent to which the use of endowment funds by NHS Tayside was discussed with Scottish Government officials.**

**The Committee notes that, in any event, information about the use of endowment funds by NHS Tayside was in the public domain. Both the annual audit reports of NHS Tayside and of the Tayside Endowment Fund, made reference to the fact that the Board of Trustees had approved the retrospective application of funds.**

**The Committee seeks clarification from the Scottish Government on the process that is followed internally on receipt of annual audit reports from NHS boards and the steps that are taken to ensure that any issues highlighted in such reports that might raise concerns are appropriately escalated.**

## Overarching governance issues

### Quality of financial information and reporting

198. As noted above, while the accounting of eHealth monies and use of endowment funds by the board were distinct arrangements, they share some common themes and raise broader concerns about the governance and practices at NHS Tayside during this time period.
199. In particular, it is clear that the quality of financial information and reporting at NHS Tayside in general was a key factor which allowed both arrangements to remain unchallenged until 2018. For example, the GT2 report notes that—
- ” Reports presented to the Finance and Resource Committee were either verbal or difficult to follow and understand, and maintained in our view an overly positive outlook. From looking at the Finance and Resources Committee papers after the decision was taken on endowments it is difficult to see reference to the £3.6 million and how it contributed to the overall year-end position.”<sup>13</sup>
200. The GT2 report further suggests that, even where concerns were minuted, the resulting action was not well-documented. It states that—
- ” concerns were raised and on a number of occasions recurring concerns. Whilst recorded in the minutes, they were not tracked in matters arising for formal update and closure at future meetings and many went unaddressed or further verbal assurances were provided by Management.”<sup>13</sup>
201. In terms of the overall transparency of financial reporting at NHS Tayside, the GT2 report concludes—
- ” “The overall quality of the finance papers presented to the Finance and Resource Committee up until 2015/16 were poor. Often updates appeared to be verbal and from reading the papers that were presented we note: they were lengthy, confusing and hard to follow, particularly if you were of a non-finance background; they throughout the year presented a positive position even when certain aspects of the Board’s activities were overspending...”<sup>13</sup>
202. The GT2 report further notes that—
- ” In 2013/14, the financial information being reported to the Board was typically three months out of date, although more updated finance information was available as it was submitted to the Scottish Government.”<sup>13</sup>

203. The conclusions of the GT2 report were challenged by David Carson and Ian McDonald in their submission to the Committee. They said that “great care was taken to be fully transparent as evidenced by the fully detailed papers and minutes and the detailed supporting work that was undertaken. In addition, the audit management letters and reports issued by the internal and external auditors do not evidence any failures in governance.”<sup>40</sup>
204. In his evidence to the Committee on 29 March 2018, Alan Gray appeared to acknowledge the criticisms levelled at the quality of the financial information at NHS Tayside and agreed that improvements needed to be made. He told the Committee—

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

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Alan Gray, contrib. 42<sup>27</sup>

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

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Alan Gray, contrib. 42<sup>27</sup>

205. Nonetheless, the Committee notes that the meeting papers for the board’s meeting on 6 December 2018 comprised 240 pages of material.

**The Committee notes the criticisms that have made by the Grant Thornton report about the quality of the financial information and financial reporting to the board and its committees, including that papers were lengthy, confusing and hard to follow, particularly for individuals of a non-finance background.**

**The Committee further notes the criticism that papers to the Finance and Resource Committee presented an overly optimistic outlook even where there were clear signs of overspending.**

**The Committee considers that a review of the volume of papers for the board’s attention is necessary as this factor could adversely impact on transparency.**

**The Committee recognises that the quality and accessibility of financial reporting and financial information being provided to the board links directly to the finance team and, ultimately, to the finance director.**

**The events that emerged in 2018 at NHS Tayside demonstrate that it is critical that NHS boards have a strong finance function. However, the events also demonstrate the need for the board to exercise a robust scrutiny and challenge function and possess the ability and skills to question and interrogate the financial information that is provided to the board. These points are addressed further in Part 3 of this report.**

## Oversight and control mechanisms

206. In both cases too, there were issues to be addressed with regard to the role of internal audit.
207. Christine McLaughlin considered that, in general, there should be ongoing dialogue between internal and external audit in order to avoid this kind of scenario. She said—

” the internal auditor should be able to talk to and report to the chair of the audit committee on any board.... but good practice should also involve routine private sessions throughout the year during which external and internal audit teams can talk in a private space to the non-executives as part of the scrutiny. There was not sufficient evidence of that kind of thing.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Christine McLaughlin, contrib. 156<sup>57</sup>

208. The GT2 report comments more generally on the role of internal audit at NHS Tayside, suggesting that part of the problem lay in the follow up to its findings and recommendations. In particular, the GT2 report indicates that, over the period 2012/13 to 2017/18, internal audit undertook a number of internal audit reviews related to NHS Tayside's financial management arrangements and, in consequence, identified to management and the Audit Committee areas of risk and recommendations.<sup>13</sup>
209. However, GT2 report notes that—
- there was a lack of a robust mechanism for following up on management's implementation of agreed internal audit recommendations;
  - the quality of management response to internal audit recommendations was variable and often just stated “agreed”. It was therefore difficult to determine what action management were taking;
  - typically, internal audit reports were lengthy, although the report notes that there “have been improvements over the time period we reviewed”.<sup>13</sup>

**Internal audit plays a central function in a board's governance processes, acting as one of the key oversight controls of the board. The evidence to the Committee raised concerns about the role of internal audit in relation to both the use of eHealth monies and the endowment funds.**

**The Committee considers that internal audit should be in regular dialogue with non-executive members of the board in order that the latter can raise any governance concerns and obtain any support that they require in exercising their challenge function.**

**The Committee notes that a key concern that arose in respect of NHS Tayside was a failure by the board and senior management team to respond adequately to reports and recommendations from internal audit. The Committee considers that it is critical that boards respond to recommendations from internal audit and that such action is clearly documented.**

## Why these events at NHS Tayside took place

210. Finally, this section of the report seeks to explore what motivated those responsible at NHS Tayside to act in the way that they had. The Committee noted, in particular, that there was no evidence of personal gain. As noted above, the GT1 report comments—

” No one during the course of our review was able to articulate why NHS Tayside were holding monies but it coincides with when NHS Tayside started to receive financial support through brokerage. In addition, it also aligns with slippage in the eHealth programme and more recently, reductions in eHealth funding.<sup>58</sup>

211. The Auditor General agreed that, in her view, the financial position in which NHS Tayside found itself was a key motivating factor. She said—

” in my opinion, the fact that NHS boards take very seriously the need to balance their budget almost to the penny at the end of March each year gets in the way of more strategic and important longer-term financial planning that would help to address the underlying causes of some of those pressures. I think that that climate, rather than any sense of personal gain, may help to explain the actions of the director of finance. It is about the premium or focus that is placed by the Scottish Government, and more generally in the public debate about health boards, on health boards balancing their books rather than having a sustainable financial strategy for the longer term.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib.  
<sup>58</sup><sup>59</sup>

212. The then Cabinet Secretary for Health and Sport appeared to acknowledge that a desire “to balance the books” could be the motivation for the events at NHS Tayside, particularly the use of endowment funds. She told the Committee—

” I think there was a culture of lack of openness and transparency, with verbal reports instead of written reports. I think that at the time there was a desire, particularly on the part of the chair, to produce a break-even position. If you read what flowed from that, with regard to the pressure that seems to have been applied to trustees, you see that it talks about the consequences for patient care of not making those retrospective payments.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 68<sup>60</sup>

213. This view appears to accord, in part, with the written evidence from Ian McDonald and David Carson who claim that there was pressure to find a financial solution at NHS Tayside when the final quarter of forecast in 2013/14 identified “unanticipated additional costs of £6.6m”. In their submission to the Committee, they indicate that—

” consideration of the unrestricted funds in the Tayside Endowment Fund was explored as a potential source along with other cost reductions. <sup>40</sup>

214. In their evidence to the Committee, both the then Cabinet Secretary and Scottish Government officials emphasised that further brokerage would have been available to NHS Tayside if it had been requested. The Cabinet Secretary said that,

” at that point, a brokerage arrangement would have been open to the board, if it was necessary,

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 68<sup>60</sup>

215. Paul Gray emphasised that it was for NHS Tayside to raise their concerns with the Scottish Government if it was not deliverable. He said—

” if an accountable officer is asked to do something that is impossible, the first thing that they will want to do is say so. That is true in the health service and in any other service.

Source: Public Audit and Post-legislative Scrutiny Committee 10 May 2018, Paul Gray, contrib. 88<sup>61</sup>

216. However, the submission from Ian McDonald and David Carson suggests that seeking further brokerage from the Scottish Government was not an option. They submit that, at that point, “discussions with SGHSCD limited the brokerage available to £2.85m, leaving the remainder of the £6.6m to be found by NHS Tayside.” <sup>40</sup>

217. The view that further brokerage was not an option appeared to be reflected in their discussions with the Board of Trustees.

218. Ian McDonald and David Carson point out that, in any event, brokerage would have had to be repaid the following year, thereby only deferring the financial difficulties facing NHS Tayside. They state that—

” The remaining option was to make substantial cuts to patient services in the final quarter, which was wholly unacceptable. <sup>62</sup>

219. Nonetheless, both OSCR and the Scottish Government challenged the assumption that, in the absence of brokerage, the only source of financial support available to

the board was the retrospective application of endowment funds. The OSCR report comments—

” A number of board members have put forward the view that, in authorising retrospective consideration of funding for projects already met by Tayside Health Board, they were acting to protect the people of Tayside from the consequences of a deficit that would result in harmful cuts to health services, and therefore acting in furtherance of the charity’s purposes. However, while it would be reasonable to assume some level of cuts in such a scenario, we have not found evidence that the consequences of such a course of action were presented or considered in any detail by the charity trustee. <sup>37</sup>

220. The then Cabinet Secretary also considered that NHS Tayside could have pursued other routes. She told the Committee—

” There were other options open to NHS Tayside that it was well aware of. Discussions could have taken place with the Scottish Government financial officials to get to those options. That is what other boards have done and will continue to do to help themselves get to a financial balance.

Source: Public Audit and Post-legislative Scrutiny Committee 24 May 2018, Shona Robison, contrib. 76<sup>63</sup>

221. While Paul Gray said—

” Other boards are not in the situation of having information concealed from the board by the finance director. Other boards are not in the situation of applying retrospectively funding from endowments. ...There are substantive differences of material fact in the case of NHS Tayside that make the situation somewhat different.

Source: Public Audit and Post-legislative Scrutiny Committee 10 May 2018, Paul Gray, contrib. 90<sup>64</sup>

**The various reports of the events at NHS Tayside and the evidence that the Committee received indicate that a key motivating factor for the action by those involved was a desire to tackle the board’s financial deficit.**

**This, combined with a lack of transparency and weak governance, allowed arrangements to be put in place, and decision making processes to be rushed and ill-considered, with limited or no challenge.**

**It has been suggested by certain witnesses that the only alternative to the retrospective application of endowment funds were cuts to patient services. The Committee would have expected the board of trustees to have requested detailed evidence of such cuts before agreeing to any temporary variation in the fund’s policy and procedures to allow endowments funds to be used.**

**In any event, the Committee notes that, given that the trustees were also members of the board of NHS Tayside, they should have been in a position to know the state of the board's finances.**

## Payments made to the former chief executive

222. Both the GT1 and the GT2 report made a series of recommendations for improving governance at NHS Tayside, which were being taken forward by the interim chief executive and interim chairman of the board (and which are discussed in Part 3 of this report). The Committee was therefore disappointed that the 2017/18 section 22 report identified further concerns about governance in relation to the payments made to the former chief executive.

## Background

223. The former director of finance was suspended from NHS Tayside on 26 February 2018, immediately after he informed the former chief executive about the treatment of the eHealth funding, pending an internal investigation. The following day he requested that his retirement be progressed.<sup>65</sup>
224. The former chief executive was removed from her accountable officer status in April 2018 following the reports concerning the retrospective application of endowment funds. She left NHS Tayside on 31 July 2018 with a negotiated settlement.<sup>65</sup>
225. During its evidence session on 19 April 2018, the Committee sought reassurance from the Auditor General that she would be scrutinising any payments made to the former finance director in consequence of his departure from NHS Tayside. The Auditor General told the Committee—

” As the appointed auditor, Fiona Mitchell-Knight will be looking in the course of her audit work at any severance payments that come up as a result of that. We know that the former director of finance has departed, and Fiona will be looking closely at the decision making and any financial transactions around that. That will also be the case if Ms McLay leaves the board.

Source: Public Audit and Post-legislative Scrutiny Committee 19 April 2018, Caroline Gardner, contrib.  
90<sup>66</sup>

## 2017/18 section 22 report

226. The 2017/18 section 22 report subsequently indicated that the departure of the former director of finance had been managed appropriately by NHS Tayside. He had been paid three months' salary in lieu of notice, which was in accordance with his contract of employment.<sup>8</sup>
227. By contrast, the section 22 report concluded that, while the approach taken by the board to negotiate a settlement with the former chief executive was reasonable,

“there were several weaknesses in the settlement process and a lack of good governance.”<sup>8</sup>

228. In particular, the section 22 report identified a number of errors in this process—

- the notice period of the former chief executive was increased to six months on the mistaken belief that this would bring parity with other health boards. The section 22 report notes that this was incorrect and that a number of health boards have contractual notice periods of three months;
- the business case submitted to the Scottish Government by NHS Tayside on 25 June records the contractual period as six months, although three months was the contractual period until the settlement was agreed on 26 July. The Scottish Government was aware of the change of notice period before the settlement was approved;
- the extension of the chief executive’s notice period to six months should have been explicitly approved by the board’s remuneration committee. The board was unaware that such approval was required until the auditors brought it to the board’s attention. This was approved by the remuneration committee, retrospectively on 15 November 2018.<sup>65</sup>

229. The section 22 report also reported that the termination payment included £19,135 in employer pension contributions to cover the former chief executive’s notice period. The board identified late in the negotiation process that payment in lieu of notice does not represent pensionable service and therefore pension contributions should not be made.<sup>65</sup>

230. The section 22 report indicated that the interim chief executive and chair of the board had been fully engaged in the negotiation process and supported the steps that had been taken by the Assistant Chief Executive, who had been responsible for managing the departure of the former chief executive. NHS Tayside had also received support from the CLO and the Scottish Government.<sup>65</sup>

231. During the subsequent evidence session with representatives from the board, the Committee found that there was real confusion around the events that resulted in the settlement that was negotiated with the former chief executive. In particular, it became apparent that the decision to increase the notice period to six months was a deliberate decision as part of the negotiation process, albeit based on a misunderstanding.

## Change to contractual notice period

232. The Committee sought to explore the steps that had led to the settlement with the former chief executive.

233. The Committee learned that the former chief executive had initially offered to resign. However, Dr Annie Ingram, Strategic Director of Workforce, told the Committee that, two days later—

- ” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Dr Annie Ingram (NHS Tayside), contrib. 45<sup>67</sup>

234. Hazel Craik from the CLO set out the next steps. She said—

- ” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Hazel Craik, contrib. 39<sup>68</sup>

235. Dr Ingram explained that, following a receipt of that letter from the former chief executive's solicitors,

- ” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Dr Annie Ingram (NHS Tayside), contrib. 45<sup>67</sup>

236. Hazel Craik from the CLO confirmed that "the six month notice period was raised during that conversation and an understanding that that was the norm for chief executives". <sup>69</sup>

237. Hazel Craik explained that—

- ” That was fed back to the board and, thereafter, decisions were taken to conclude a settlement agreement on that basis.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Hazel Craik, contrib. 17<sup>69</sup>

238. In his evidence to the Committee, Malcolm Wright, the interim chief executive, confirmed that it had been an intentional decision of the board to change the contractual entitlement from three to six months. However, he acknowledged that "there was a fundamental misunderstanding that six months was the standard notice period for chief executives". <sup>70</sup>

239. The interim chief executive explained to the Committee how this error had come about. He said—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Malcolm Wright, contrib. 12<sup>70</sup>

240. Members expressed surprise that the former chief executive's terms of departure had been agreed to and sought to clarify the process that had then followed. Hazel Craik indicated that, as part of the negotiation, an assessment had to be made in relation to claims that the former chief executive was making in weighing up whether to agree to her terms of departure. She told the Committee that—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Hazel Craik, contrib. 64<sup>71</sup>

241. The Committee queried whether any assessment had been made of the likely success of the claims. In response, Hazel Craik advised—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Hazel Craik, contrib. 66<sup>72</sup>

242. She went on to state that Scottish Government guidance states that where a claim might be raised, but at that point has not been raised, the likelihood of a claim being raised should be put at 50%.

243. Given the errors that had been made reaching a settlement with the former chief executive, the Committee also sought to explore the role of the Scottish Government in this process. In her evidence to the Committee, Dr Ingram confirmed that, although it had not been included in the business case, all parties were aware that the notice period had been changed from three to six months. She said—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Dr Ingram, contrib. 99<sup>73</sup>

244. The Scottish Public Finance Manual guidance sets out the process to be followed for such settlements and who is responsible. The guidance indicates that responsibility for the final agreement rests with the accountable officer of the body, that is, the chief executive of the board. The Scottish Government's role is to approve the business case submitted to the board.

245. In his evidence to the Committee, Paul Gray described the role that the Scottish Government had played in this case. He confirmed that the Scottish Government was required to satisfy itself that the employer had taken legal advice and that the business case was based on that. The Scottish Government was also required to satisfy itself about value for money. However, he went on to add that it was very rare for a board to be at stage 5 on the ladder of escalation. He indicated 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Paul Gray, contrib. 217<sup>74</sup>

## Pension contribution

246. In its written submission to the Committee in advance of the evidence session, NHS Tayside provided an update on the inaccurate pension contribution that had been made. It advised that the overpayment had since been recovered as part of the normal reconciliation of over and under payments of pension contributions made by the NHS.<sup>75</sup>

247. In her evidence to the Committee, Hazel Craik explained her original advice that the payment to the SPPA could not clawed back. She said—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Hazel Craik, contrib. 109<sup>76</sup>

248. Hazel Craik advised that if the money had come back as part of a broader reconciliation, there would have been no breach of the agreement.

**The Committee is disappointed, given recent events at NHS Tayside, that the payments to the former chief executive on her departure from NHS Tayside and the process that was followed raised concerns about governance and decision making.**

**In particular, the process by which a settlement was reached with the former chief executive raised a series of concerns, including; awareness of NHS guidance on notice periods; the support provided by the CLO; the way in which the Scottish**

**Government, NHS boards and the CLO assess the likelihood of claims and likely success of claims; and the support provided by the Scottish Government.**

**After having taken evidence from representatives at NHS Tayside and the Scottish Government on this matter, the Committee considers that there is still a lack of clarity about why mistakes were made and where responsibility for these lies.**

**The Committee understands that the Scottish Government knew that the contractual notice period had been increased to six months, even though this information was not included in the business case. However, it is not clear to the Committee whether the Scottish Government was aware of the basis for the change in the notice period and the misunderstanding with regard to the status of the draft circular. Nor is it clear why the board or the Scottish Government did not advise Audit Scotland timeously of these developments, which might have avoided these issues arising.**

**The Committee notes that, in line with the guidance contained in the Scottish Public Finance Manual, responsibility for the final settlement in such cases rests with the chief executive of the board.**

**Nonetheless, the Scottish Government knew that any payments made to the former chief executive would be subject to a high level of public and parliamentary scrutiny. It is therefore perplexing to the Committee as to why it did not take more direct control over the settlement arrangement, which might have enabled it to detect and correct the misunderstandings by NHS Tayside which led to errors and, ultimately, overpayments, being made.**

**The Committee therefore seeks clarification on the additional processes that the Scottish Government has now put in place to reflect the lessons that have been learned from this case and ensure that it provides effect oversight and support.**

**The Committee understands that the board governance function at NHS Tayside has been restructured to strengthen corporate governance support and expertise and that the Board secretary is now a discrete, dedicated role.**

## Part 3: Steps being taken to address the financial challenges

249. This final section of the report considers the steps that NHS Tayside is taking to address the serious governance failings that came to light in 2018 and its plans to make the board financially sustainable. The report considers this action in the context of the broader challenges that all NHS boards are currently facing due to increasing demand and pressures on services.

### Are the financial pressures facing NHS Tayside having an impact on service delivery?

250. The 2017/18 section 22 report indicates that NHS Scotland has a series of national targets, known as the Local Delivery Plan (LDP) standards, which contribute towards delivery of the Scottish Government's Purpose and National Outcomes and NHS Scotland's Quality Ambitions. There are 18 non-financial standards (with two of these having a sub-indicator each). The report states—

” NHS Tayside's performance against these standards is deteriorating. Of the 20 standards, seven (35 per cent) were being met or exceeded (compared to nine in 2016/17) and 13 were not being met as at March 2018.<sup>8</sup>

251. In her evidence to the Committee on 13 December 2018, the Auditor General said—

” We all know that the quality of care that is provided by the NHS is the most important thing here. Although the national standards do not cover the whole health and care system and, therefore, run the risk of only giving us a partial view of what is going on, there is no doubt that they cover issues that are important to patients, such as waiting times in accident and emergency departments and the time from referral to treatment. Those are things that matter to people and which matter to all of us and our families.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 93<sup>77</sup>

252. The Committee explored the impact on performance in its evidence session with the board on 17 January 2019. In his evidence to the Committee, John Brown, interim chairman of the board, acknowledged the poor performance of the board. He told the Committee—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, John Brown, contrib. 118<sup>78</sup>

253. The interim chairman went on to add that—

” I would also like to reassure them [the people of Tayside] 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, John Brown, contrib. 120<sup>79</sup>

254. Members expressed particular concern that the figures for Child and adolescent mental health services (CAMHS) for November 2018 showed that only 39 per cent of people were being seen on time.

255. In response, Malcolm Wright indicated that CAMHS was one of the highest priority services for the board right now. He told the Committee that—

” 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...

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Malcolm Wright, contrib. 127<sup>80</sup>

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Malcolm Wright, contrib. 127<sup>80</sup>

256. Malcolm Wright noted, however, that there were workforce challenges that needed to be addressed in this regard. He said—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Malcolm Wright, contrib. 138<sup>81</sup>

257. While the Committee noted the action that the interim chief executive and interim chairman had taken to seek to “introduce systemic changes”, it also noted the evidence from the Auditor General who said—

” my report says that there is little evidence yet of an impact on performance figures. We all hope that an impact will become evident in future. That depends on more detail in the underpinning plans and on effective and stable leadership to bring them about over a long period of time.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 95<sup>82</sup>

258. She pointed out, nevertheless, that in general, NHS Tayside was “probably still slightly above the average for health boards across Scotland”.<sup>83</sup>

259. Leigh Johnston from Audit Scotland expanded on this point in her evidence to the Committee. She said—

” although some of NHS Tayside’s standards have declined, in nine areas it does better than the Scottish average. Some of those are key areas, such as accident and emergency waiting times, antenatal care and hospital-associated infections.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Leigh Johnston (Audit Scotland), contrib. 104<sup>84</sup>

**The Committee’s principal concern is that the performance of NHS Tayside (along with that of all boards) is significantly improved in order that the Parliament and the public can be reassured that patients are receiving the care that they need. Therefore, it is essential that the steps that the board is taking to address its financial sustainability have a commensurate effect on performance and that there are measures in place to assess this impact.**

## Action taken by NHS Tayside – governance issues

260. Attaining financial sustainability will be dependent on NHS Tayside having in place strengthened governance arrangements in order that there is regular and robust challenge of its financial management.

261. The 2017/18 section 22 report noted that as a result of the eHealth funding incident, the GT1 report had identified five areas where action should be taken by NHS Tayside. The GT2 report also made a number of recommendations in respect of budgeting and financial reporting, including recommending that—

- Management should ensure that internal audit plays a pivotal role in supporting cultural change and that its input and recommendations are valued and actioned by management;
- Finance reports, which should be clear and easy to understand for a non-finance person, should be presented on a timely basis;
- The leadership team and the board should set out the culture they expect to be in place and demonstrated across NHS Tayside. <sup>65</sup>

262. The submission made by NHS Tayside in advance of the evidence session on 17 January 2019, set out a range of steps that it was taking to address the governance concerns that had been raised in the past. In particular, it advised that, immediately on taking up post, the new Chair had commissioned an independent review of the Board’s governance arrangements ("NHS Tayside Corporate Governance report"). The Chair had also been undertaking development work with the Non-Executive Directors of the Board, with a focus on clarifying roles and responsibilities. As a result, a number of changes had already been made to Board committees, agenda and papers. <sup>75</sup>

263. In his subsequent evidence to the Committee, John Brown, the interim chairman of the board acknowledged that—

” There has been a systematic failure of governance, and one of the challenges that the new leadership team had was fixing that problem.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, John Brown, contrib. 156<sup>85</sup>

264. While Malcolm Wright, the interim chief executive said—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Malcolm Wright, contrib. 125<sup>86</sup>

265. The 2017/18 section 22 report indicates that—

” “The board feel that there is now a more accurate and consistent approach to preparing month-on-month information so that the board members can take confidence in the forecasting.” <sup>8</sup>

266. In terms of internal audit, John Brown advised the Committee that he had commissioned an independent review of the effectiveness of NHS Tayside’s internal audit from the Chartered Institute of Internal Auditors. He told the Committee that—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, John Brown, contrib. 143<sup>87</sup>

267. Since 1 April 2018, 14 Members of the board have left and 11 new Members have joined the Board. The NHS Tayside Corporate Governance report acknowledges that more has to be done to address the diversity of the board. Three further appointments were due to be made in November and January, which, it was reported, would help to address the lack of diversity on the board. <sup>75</sup>

268. The Cabinet Secretary had also agreed to increase the Board membership by two. The NHS Tayside Corporate Governance report indicated that the recruitment exercise would include financial management experience as one of the desired competences.

269. During the evidence session on 17 January 2019, Members expressed some concern that the board might not be able to attract new board members because of the widely publicised concerns about NHS Tayside. In response, Malcolm Wright told the Committee—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Malcolm Wright, contrib. 181<sup>88</sup>

270. However, John Brown clarified that, while they had specified the skills that they want, the board does not have responsibility for recruiting board members as that was done through the public appointments process.

271. In this regard, Paul Gray told the Committee that—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, Paul Gray, contrib. 239<sup>89</sup>

**The events that came to light in 2018 revealed a systemic failure of governance at NHS Tayside. The Committee notes that it is critical that NHS Tayside has in place strengthened governance arrangements in order that there is regular and robust scrutiny and challenge of the board's finances.**

**The Committee notes the steps that the interim chief executive and interim chairman are taking to seek to address the issues concerning financial information and reporting, the role of internal audit and the capacity and diversity of the board.**

**The Committee considers that it is essential that the new board has the requisite skills and diversity and that board members themselves consider that they are suitably equipped to challenge and scrutinise the senior management team.**

**The Committee considers that there is an opportunity for the leadership team and the board to set out the culture that they expect to be in place and demonstrated across NHS Tayside, including promoting an ethos of openness and transparency.**

## Action being taken by NHS Tayside to address the financial challenges

272. At the Committee's evidence session on 13 December 2018, the Auditor General provided an update on NHS Tayside's financial position. She said—

” The financial plan for 2018-19, which was agreed in June by the interim leadership team, forecast a potential deficit of £18.7 million this year. To that should be added the £3.6 million that is required to repay the endowment funds money going back to 2014-15. The board's latest financial projection, which was reported last Thursday, suggests that it is £3.8 million behind the £18.7 million. Taking all that together, the current forecast is a deficit of just over £26 million for 2018-19.

We understand that the board will require brokerage from the Scottish Government to cover that.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 106<sup>9</sup>

273. A further progress update report provided by the AAG ("AAG Third Progress Report") and circulated to the Committee on 12 December 2018 was positive about the steps that had been taken by the interim chief executive and chair. In his covering letter to Paul Gray, Professor Sir Lewis Ritchie, Chair of the AAG, stated that—

” “Overall, we are content that the new leadership have discharged their primary remit to stabilise the Board and have made significant improvements to the running of NHS Tayside since taking up post in April this year. Notably, they have stabilised the Board's financial position and improved financial planning, strengthened corporate governance arrangements, put in place more robust performance management procedures, and established a Clinical Alliance to help ensure a clinically-led, managerially-supported approach to service improvement and reform.” <sup>7</sup>

274. The AAG Third Progress Report noted that—

” The financial plan for 2018/19 very significantly reduces the Board's reliance on deferred income (by £9m) and has strengthened financial governance, including robust oversight of the recommendations arising from the two reports by Grant Thornton earlier this year.

The progress made over the last nine months can be seen as a stabilisation of the Board's financial position, removing the over-reliance on deferred income and presenting a realistic and credible picture of the likely out-turn for the financial year.” <sup>7</sup>

275. A further update was provided to the Scottish Government by the AAG in February 2019 ("AAG update 2019"). It suggested that the NHS Tayside was on track to deliver on the overspend position of £18.7 million, originally set at the beginning of the year and was forecasting efficiency savings of £32.2 million in 2018/19. <sup>90</sup>

276. As noted above, NHS Tayside established a five-year transformation programme in 2015. This covered the period 2017/18 to 2021/22 and aimed “to improve the sustainability of services and enhance the quality of care.” The 2017/18 section 22 report noted that—
- ” The transformation programme has delivered substantial cost savings through efficiency and productivity measures but has not yet delivered the recurring savings necessary through service redesign and transformation.<sup>65</sup>
277. The 2017/18 section 22 report noted, however, that the new senior management team had reviewed NHS Tayside’s approach to transformation and had developed plans to deliver change through a combination of a long-term strategy, *Transforming Tayside*, (the Integrated Clinical Strategy); a three-year Quality Improvement Programme and actions to deliver immediate financial efficiencies.<sup>65</sup>
278. In particular, the 2017/18 section 22 report noted that NHS Tayside had said that the Integrated Clinical Strategy would require a radical departure from the current model of care and for it to be achievable there are several critical changes that need to be made, centering on—
- A focus on prevention,
  - Joined up pathways,
  - Enhanced community provision
  - Preventing hospital admissions or keeping them as short as possible
  - Safe, effective high quality and person-centred care
  - Making sure that NHS Tayside has the necessary infrastructure, workforce and organisational culture.<sup>65</sup>
279. In his evidence to the Committee on 17 January 2019, Malcolm Wright advised that NHS Tayside had recently appointed a Head of Planning and Transformation to take forward the board’s transformation work.<sup>86</sup>
280. The AAG Third Progress Report concluded that—
- ” The improvements underway in relation to financial management and control; the mobilisation of a series of quality improvement programmes and the more efficient systems and process which have been put in place will clearly help move the Board towards achieving financial balance. However, it is becoming increasingly clear that these specific aspects of the “*Transforming Tayside*” programme, while absolutely necessary, are unlikely to prove sufficient to close the whole financial gap.
- Ultimately a sustainable future for NHS Tayside will rest on its ability to make real inroads into delivering the types of service reform that are set in the Health and Social Care Delivery Plan.<sup>7</sup>
281. In the AAG update 2019, Professor Ritchie confirmed that transformational change “has proved the most challenging and elusive to date.” He said—

” Much more needs to be done: encouraging incremental change has happened but transformational change still beckons and is imperative.<sup>90</sup>

282. In his evidence to the Committee on 29 March 2018, Professor Ritchie admitted that transformation of NHS Tayside would not happen overnight. He told the Committee—

” There is a misperception that transformation is something that can be done in a short space of time, and that what is planned in a boardroom is made clear and shared at ground level.

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Professor Ritchie, contrib. 11<sup>91</sup>

283. In his evidence to the Committee, John Brown acknowledged the challenge. He said—

” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, John Brown (NHS Tayside), contrib. 3<sup>92</sup>

**The Committee notes the most recent progress report and update from the AAG which highlights a number of positive developments in respect of the financial management and control at NHS Tayside. The Committee further notes the long term action that NHS Tayside is planning with the objective of making the board financially sustainable through transformational change.**

**However, the Committee notes that, in common with all NHS boards, transformation of NHS Tayside will be a significant challenge requiring, amongst other things, robust challenge and scrutiny by the board, a strengthened finance function and effective support from the Scottish Government.**

## Moving forward

284. The Committee recognises that the challenges facing NHS Tayside moving forward are being experienced by all NHS boards in Scotland. In her report, NHS in Scotland 2018, the Auditor General warned that—

” The NHS in Scotland is not in a financially sustainable position. NHS Boards are struggling to break even, relying increasingly on Scottish Government loans and one-off savings.<sup>93</sup>

285. The report highlighted the growing pressures on the NHS—

” These include a tight financial environment, increasing demand for services, difficulties in recruiting staff, and rising public and political expectations. In the face of these pressures, a committed work force has continued to work to deliver high quality care. However, the demands of a growing and ageing population on top of these pressures mean the current healthcare delivery model is not sustainable.<sup>93</sup>

286. The report further notes that boards are struggling to break even each financial year and highlights a range of short-term measures that boards have used, including late allocations from the Scottish Government (NHS Greater Glasgow and Clyde); reallocating capital funding to revenue funding to cover operating costs (NHS Borders, Forth Valley, Greater Glasgow and Clyde and Tayside); postponing new investments and using slippage on funding (NHS Borders, NHS Grampian and NHS NSS); and one-off gains (NHS Greater Glasgow and Clyde and NHS Lanarkshire).<sup>93</sup>

## Effective leadership

287. A critical factor in moving forward will be effective leadership. In his evidence to the Committee on 29 March 2018, Professor Ritchie emphasised the importance of strong leadership. He said that—

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

Source: Public Audit and Post-legislative Scrutiny Committee 29 March 2018, Professor Ritchie, contrib.  
21<sup>94</sup>

288. In its Third Progress Report, the AAG commented that—

” With the impending departure of the current Chief Executive at the end of December, followed by the Chair at the end of March 2019, continuity of leadership continues to constitute a key risk for the organisation and an immediate challenge for the substantive replacements will be to build on this progress and maintain the confidence of staff and public.<sup>7</sup>

289. And in her evidence to the Committee, the Auditor General pointed to the challenges that were being faced by all boards in terms of recruiting leaders. She said—

” We need to have enough people of sufficient experience and calibre to do the jobs that we require. It is already difficult to recruit and retain enough of those people around Scotland, and we make it more difficult by adding additional bodies at different levels without considering the shape of the system as a whole.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 89<sup>95</sup>

290. As a consequence, the NHS in Scotland in 2018 report recommends that—

- ” The Scottish Government, in partnership with NHS boards, should identify why NHS leadership posts are difficult to fill and develop ways to address this.<sup>96</sup>

**The Committee notes that strong and consistent leadership will be crucial in NHS Tayside if the board is to build on the positive action that has been taken over the past year to address the serious governance concerns and to stabilise the board's financial position.**

**The Committee further agrees with Professor Sir Lewis Ritchie that the transformation of NHS Tayside will require leadership of a very high order.**

**More generally, the Committee recognises the challenges faced by all NHS boards in recruiting leaders of the required calibre. It therefore endorses the recommendation in the NHS in Scotland in 2018 report that the Scottish Government, in partnership with NHS boards, should identify why NHS leadership posts are difficult to fill and develop ways to address this. The Committee seeks clarification from the Scottish Government on its plans for taking this work forward.**

## Financial strength

291. The Committee notes that the NHS Tayside will also require effective and consistent financial leadership. The AAG Third Progress Report noted, in that regard, that the appointment of Alan Gray as Director of Finance, had “provided strong leadership to the Finance Team to improve financial reporting and governance.”<sup>7</sup>
292. While this development is to be welcomed, Alan Gray is also NHS Grampian's Director of Finance. In her evidence to the Committee, the Auditor General pointed out that—

- ” The job of transforming NHS Tayside and making it clinically and financially sustainable for the future is a big job and, when the committee asked me questions about NHS Tayside at a session earlier this year, I expressed a concern that asking people—the chief executive, finance director and workforce director—to cover both NHS Tayside and NHS Grampian at that point was a big ask.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 89<sup>95</sup>

293. Conversely, it is also important that the board has the requisite finance skills in order that it can challenge senior management. On this aspect, John Brown told the Committee that—

- ” 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.

Source: Public Audit and Post-legislative Scrutiny Committee 17 January 2019, John Brown, contrib. 173<sup>97</sup>

**The recent events at NHS Tayside reinforce the need for strong financial leadership, including a commitment to openness and transparency in reporting to the board and a respect for governance requirements.**

**Conversely, the Committee notes that, in order to provide effective challenge, the board also requires non-executive members who have, inter alia, the requisite finance skills and experience.**

**The Committee sees a clear responsibility on the Scottish Government during this transitional period to monitor the finance function at NHS Tayside to ensure that the current finance director has capacity to carry out these roles across two boards effectively.**

## Board governance

294. The AAG Third Progress Report noted that strong challenge from the board would also be important moving forward. It said—

” We note that while getting the right structures and processes in place is critical, ultimately the real impact of this work will rest on how these are used in practice to hold individuals and teams to account for discharging their responsibilities.<sup>7</sup>

295. In this regard, the NHS in Scotland 2018 report indicated that a survey of board members found that one in five reported that their board “only sometimes or hardly ever sufficiently holds the chief executive and senior management team to account for the operational management of the organisation and the delivery of agreed plans to time and budget.”<sup>93</sup>

296. The NHS in Scotland 2018 report recommends that—

” The Scottish Government, in partnership with NHS boards, should strengthen board-level governance arrangements, including developing an improved national approach to induction, training, and assessment for non-executive directors.<sup>93</sup>

**The Committee notes the steps that the interim chief executive and interim chair have undertaken to review governance at NHS Tayside and to introduce improvements to the induction of and support for board members.**

**However, as the AAG Third Progress Report notes, the real impact of this work will rest on how it is implemented in practice and the extent to which Members hold senior management to account.**

**More generally, the Committee endorses the recommendation in the NHS in Scotland in 2018 report, that the Scottish Government, in partnership with NHS boards, should strengthen board-level governance arrangements, including developing an improved national approach to induction, training, and assessment for non-executive directors. The Committee seeks clarification from the Scottish Government on its plans for taking forward this work.**

## Scottish Government steps

297. In October 2018, the Cabinet Secretary for Health and Sport announced that NHS boards will no longer be required to break even at the end of each financial year. Instead they will be required to break even every three years. NHS Tayside indicated that it was planning to issue a draft three-year plan to be formally considered for approval by the board in February 2019.
298. The Cabinet Secretary also indicated that all outstanding brokerage as at 31 March 2019 would be written off.
299. Both the 2017/18 section 22 report and the AAG Third Progress Report commented on this development. In particular, the AAG report stated that—
- ” While NHS Tayside was already benefitting from a suspension of brokerage repayments, this more definitive step will allow the Board to begin 2019/20 with a clean slate and focus on addressing the organisation’s underlying financial deficit over the next three years.<sup>7</sup>
300. The Auditor General emphasised, however, that further detail was required about the Scottish Government’s commitment. She told the Committee—
- ” We do not yet know, in any detail, how the commitment about breaking even over a three-year period will work in practice or, indeed, whether it will apply to all health boards. We are waiting for more detail on that. It will obviously have an impact on NHS Tayside’s financial position after the current financial year, which is another of the uncertainties that made me decide to bring the report to the committee today.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 106<sup>9</sup>

**The Committee notes the impact on NHS Tayside of the Cabinet Secretary's announcement that all outstanding brokerage will be written off. This will enable the board to focus on reducing its outstanding deficit.**

**The Committee also notes the announcement by the Scottish Government that NHS boards will no longer be required to break even each financial year. Instead they will require to break even every three years.**

**However, it is clear that further detail is required on how this latter development will work in practice and what this will mean for the annual accounting and audit process. The Committee therefore seeks this detail from the Scottish Government.**

## **Tailored Government support**

301. In addition to the above steps that the Scottish Government is taking in respect of all boards, both the AAG and the Auditor General emphasised the importance of specific Scottish Government support for NHS Tayside. The AAG Third Progress report said—

” While recognising the extensive programme of work that has been undertaken and the strong foundations put in place over the last nine months, both the challenges facing the board and the associated level of risk remain significant and a high level of Scottish Government support and scrutiny will continue to be required during the transitional period.<sup>7</sup>

302. While the Auditor General emphasised that it was the nature, not level, of support from the Scottish Government that was important. She said—

” My concern is less about the volume of support and more about ensuring that it is focused on the right things and that it is joined up and consistent so that it will help people to tackle genuinely difficult circumstances on this board and others across Scotland.

Source: Public Audit and Post-legislative Scrutiny Committee 13 December 2018, Caroline Gardner, contrib. 47<sup>98</sup>

**The Committee seeks assurances from the Scottish Government that, given the recent and serious events at NHS Tayside, it will continue to provide a high level of tailored support to the board during this transitional period.**

## Learning from events at NHS Tayside

303. The AAG Third Progress report emphasised that—

” The final recommendation for the Scottish Government related to the assimilation of learning opportunities from the experience of NHS Tayside for the wider benefit of NHS Scotland. The continuing financial challenge for the whole of NHS Scotland outlined in the recently published Medium term Financial Framework merely serves to underline the importance of this principle.<sup>7</sup>

# Conclusion

304. The Committee recognises that the NHS in Scotland is under significant pressure as a consequence of a tight financial environment, increasing demand for services, difficulties in recruiting staff and rising public expectations.
305. NHS Tayside has been experiencing financial difficulties since 2012 for a range of reasons, including as a result of its ageing estate and prescribing practices.
306. NHS Tayside still has much work to do to restore the public's trust in its ability to manage its finances so that patients can feel confident that they will receive the level of care that they need.
307. The new board will need to demonstrate that they are equipped and able to challenge robustly the senior management team.
308. Both the challenges facing NHS Tayside and the associated level of risk remain significant and will continue to require a high level of support from the Scottish Government.
309. The Scottish Government and all boards need to learn from the experience at NHS Tayside and reflect on what changes are required across the NHS in Scotland to ensure that these kinds of governance failings do not arise again.
310. This report makes a series of conclusions and recommendations, a number of which are specifically addressed to the Scottish Government. The Committee seeks details from the Scottish Government on the lessons that have been learned and the action that it is taking to ensure that the learning from events at NHS Tayside are disseminated and acted on across the NHS in Scotland. In particular, the Committee seeks the following details—
- the steps it has taken to review the Scottish Government allocations process to ensure that any variation in allocation to NHS boards is approved by the Scottish Ministers (see in particular page 23);
  - the steps that is taking to restore public confidence in the use of NHS endowments funds (see in particular pages 26, 28, 29, 33 and 35);
  - the steps it is taking to ensure that any issues of concern raised in annual audit reports from NHS boards are escalated appropriately (see in particular page 40);
  - the steps it is taking to support boards to ensure that the finance function is effective and that boards include Members with financial and accounting experience and skills;

**-the action that is being taken to support boards to improve the accessibility of the financial information provided to boards;**

**-information about the additional processes that the Scottish Government is putting in place to provide effective oversight of the settlement process (see in particular page 52);**

**-the action that the Scottish Government is taking to support NHS boards to bring about transformational change in order that the NHS can become financially sustainable (see in particular page 60);**

**-the action that the Scottish Government is taking to address the leadership challenges that are being faced by the NHS throughout Scotland (see in particular page 62);**

**-the action that the Scottish Government is taking to strengthen board-level governance arrangements (see in particular page 63);**

**-details about the new arrangements whereby NHS boards will require to break even on a three-yearly basis and how the Scottish Government will monitor the extent to which boards are managing their finances appropriately during this three-year period (see in particular page 65).**

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