



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND SKILLS COMMITTEE

Gerard Hart
Chief Executive
Disclosure Scotland

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4th May 2020

Dear Mr Hart

I am writing to highlight concerns from the Education and Skills Committee and the Public Audit and Post-Legislative Scrutiny Committee on the practical implementation of the Disclosure (Scotland) Bill.

Progress of the Bill

As you know the intention of the Bill, and the proposed approach taken in its provisions, received cross party support in the Education and Skills Committee in its Stage 1 scrutiny. It then received cross party support from Parliament as a whole at Stage 1. At Stage 2 the Bill has been improved in our view by amendments from the Scottish Government and from Committee members being passed that should improve how the Bill operates in practice. These amendments were informed by insight and expertise from the stakeholder evidence the Committee received at Stage 1.

The Scottish Government Bill team includes employees from Disclosure Scotland and this should ensure that their expertise informs the Scottish Government's work on the Bill. Presumably this would also enable continuity following the passage of Bill into the implementation of its provisions by Disclosure Scotland.

The Education and Skills Committee took evidence from the Bill team on two occasions on their own they also attended to give evidence alongside the Minister in November. The Bill team also provided information in writing to inform scrutiny. The evidence sessions in particular included questions that explored the detail of how the digital system would work in practice, including the specifics of the operation of the application process for the PVG scheme.

Auditor General for Scotland's report

The Committee agreed the terms of its Stage 1 report in early December. As you are aware, later in December the Auditor General for Scotland published a report entitled [The 2018/19 Audit of Disclosure Scotland](#). The Committee considered the report including the following findings:

11. In November 2019, Disclosure Scotland estimated that the total cost of the PASS system would be £78.5 million over the period 2016/17 to 2022/23. This is £22.2 million over the last full business case estimate. This additional expenditure consists of:

- £10.4 million for additional capital costs, to cover system development costs
- £5.8 million additional costs to extend the BT contract. Disclosure Scotland negotiated an agreement which reduced the additional BT costs after 30 September 2018 by approximately £2.8 million.
- £6.0 million for manual workaround for processes not covered by the current functionality of the system.

12. On 25 September 2019, Disclosure Scotland successfully completed the transfer of all its activities to the new PASS system.

The current functionality of the PASS system is less than the original ambitions for it

13. The current PASS system is described as a Minimum Viable Service (MVS) (Exhibit 2). It requires manual workarounds delivered by temporary staff, at an additional cost, estimated at £2.70 million in 2019/20 and reducing to £2.14 million in 2020/21. The pace at which further development happens is dependent on future funding from the Scottish Government. Disclosure Scotland's budget for 2019/20 identified a funding shortfall of £16.1 million (£6.6 million revenue and £9.5 million capital). It anticipates that this will be resolved as part of the Scottish Government's spring budget revision."

In light of this report, I wrote to the Bill team on behalf of this Committee seeking a response in advance of the Stage 1 vote by Parliament on 16 January 2020. I specifically asked "whether the reduced functionality of the PASS system has any implications for the measures contained within the Bill and whether issues with the PASS ICT project have changed any assumptions made within the Financial Memorandum."

The response received on 14 January 2020 ends by stating:

"We will work with our stakeholders to ensure that the timetable for digital delivery reflects user needs and aspirations... We do not consider that the contents of the s22 report changes the position set out in the Bill's financial memorandum. However, governance will be improved further by reflection on the conclusions and recommendations made to us by Audit Scotland."

The Public Audit and Post-legislative Committee (PAPLS) then took evidence from Disclosure Scotland on the s22 report on 12 March. I received the attached letter from the Committee on [14 April](#). As you will see the letter sets out that Committee's perspective on the evidence received and highlighted some key quotes from witnesses. For ease, extracts are below:

"As you are aware, the focus of the Auditor General's report is on the development of a cloud-based system called PASS, which was intended to replace the existing BT system. While the PASS was delivered by the end of September 2019, the report noted that the IT system "was late, over budget, and with less functionality than originally intended".¹ In particular, the final cost of the PASS system was £78.5 million, twice the amount estimated in the revised outline business case (approved by the Scottish Government).²

Given this recent history, the Committee was concerned by evidence it received during the session on 12 March on the implementation of digital elements of the Disclosure (Scotland) Bill."

Lorna Gibbs [former Chief Executive] advised that Disclosure Scotland was "starting the very early stages" of scoping out the additional work that would be required in order to implement the provisions of the Bill. When asked how long it would take, she indicated that:

“Until we start the research, we do not know. We need to do the user research; once we have done that, we will have a small business case for a discrete piece of work, which we will need to get approval for. If we get approval for it, once we know what we are going to do, we will be able to say how long it will take. At the moment, I cannot say how long it will take, because we do not know what we are trying to do.”

In scrutinising legislation, a lead Committee is not only assessing whether the Parliament should support the provisions of a bill, it is assessing whether those provisions are deliverable in practice in such a way that demonstrates an efficient use of public money. The Education and Skills Committee is therefore concerned at the contents of the letter from the PAPLS Committee including the details from the contribution from Lorna Gibbs.

This Committee is concerned that the impact of the limited functionality of the PASS system, the delay in its implementation and associated costs were not highlighted to this Committee at any point during Stage 1 scrutiny. Disclosure Scotland’s past performance and the functionality of the existing system is relevant to whether Disclosure Scotland is capable of implementing the requirements of the Disclosure (Scotland) Bill.

Furthermore, given Ms Gibbs’ suggestion that the work to implement the Bill is at such an early stage, including estimating its costs, this Committee is unsure how the Bill team can be confident in its assertion to this Committee that *“We do not consider that the contents of the s22 report changes the position set out in the Bill’s financial memorandum”*. Indeed it is difficult to be assured that the estimates in the Financial Memorandum have firm basis given the early stage of thinking described by Ms Gibbs on how to implement the provisions of the Bill.

It is also difficult to be assured that the timescales for the digital delivery for this important and widely supported bill are based upon user needs and aspirations as suggested by the Bill team. It seems likely that timescales for delivery will be defined by the progress made by Disclosure Scotland to deliver it as opposed to by the needs of service users.

As a result of the issues highlighted by the PAPLS Committee can I request, on behalf of the Education and Skills Committee, that the following be provided:

- A summary of the work that has been undertaken so far to ensure the organisation can be agile to implement the provisions of the Bill assuming it is passed;
- A detailed timeline of how long each of the phases of the implementation of the provisions of the Bill will take and what each phase will involve, including the estimated overall deadline for the full delivery of the provisions of the Bill; and
- The latest detailed breakdown of the estimated costs of the implementation of the Bill, including staffing costs and capital investment costs including IT systems, and details of any additional cost resulting from the need to improve the functionality of the PASS system beyond its current Minimal Viable Status.

As it is over 10 months since the publication of the Bill and the accompanying documents, including the Financial Memorandum, the Committee expects that Disclosure Scotland should be in a position to provide much more accurate estimated costs and details of plans for implementation of the Bill.

I am copying this letter to the Minister for Children and Young People and also to the PAPLS Committee.

I look forward to hearing from you as soon as is practicable,

Yours sincerely

CLARE ADAMSON MSP
CONVENER

Annexe A



The Scottish Parliament
Pàrlamaid na h-Alba

Clare Adamson MSP
Convener
Education and Skills Committee

By e-mail only

**Public Audit and Post-legislative
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14 April 2020

Dear Clare,

Disclosure (Scotland) Bill

At its [meeting on 12 March](#), the Public Audit and Post-legislative Scrutiny Committee took evidence from representatives of Disclosure Scotland and the Scottish Government in connection with the Committee's scrutiny of the Auditor General's report, [The 2018/19 audit of Disclosure Scotland](#).

As you are aware, the focus of the Auditor General's report is on the development of a cloud-based system called PASS, which was intended to replace the existing BT system. While the PASS was delivered by the end of September 2019, the report noted that the IT system "was late, over budget, and with less functionality than originally intended".¹ In particular, the final cost of the PASS system was £78.5 million, twice the amount estimated in the revised outline business case (approved by the Scottish Government).²

Given this recent history, the Committee was concerned by evidence it received during the session on 12 March on the implementation of digital elements of the Disclosure (Scotland) Bill. The Committee is aware that the Education and Skills Committee is the lead Committee for this Bill. The Committee considered that it might be helpful to draw your Committee's attention to the discussion that took place at the meeting on 12 March in advance of Stage 3 which, it understands, is due to take place on 29 April. A link to the Official Report is provided [here](#).

¹ https://www.audit-scotland.gov.uk/uploads/docs/report/2019/s22_191219_disclosure_scotland.pdf

² https://www.audit-scotland.gov.uk/uploads/docs/report/2019/s22_191219_disclosure_scotland.pdf

You will see from the Official Report that Disclosure Scotland is still at the very early stages of considering how it will implement certain provisions in the Bill. Committee Members raised concerns both about the timescale for implementation and the extent to which the costs of implementation would accord with those estimated in the Bill's [Financial Memorandum](#).

The Committee took evidence from Lorna Gibbs, the former chief executive of Disclosure Scotland (up to February 2020) who indicated that, while she was now back working in the core Scottish Government, she was “still very close”. Lorna Gibbs advised that Disclosure Scotland was “starting the very early stages” of scoping out the additional work that would be required in order to implement the provisions of the Bill. When asked how long it would take, she indicated that:

“Until we start the research, we do not know. We need to do the user research; once we have done that, we will have a small business case for a discrete piece of work, which we will need to get approval for. If we get approval for it, once we know what we are going to do, we will be able to say how long it will take. At the moment, I cannot say how long it will take, because we do not know what we are trying to do.”³

Gerard Hart, interim chief executive of Disclosure Scotland, sought to reassure the Committee that the “agile principles that will underpin the development of the bill work to the idea that you build out to what your budget permits you to build out to. There is no blank cheque.”⁴ He added that: “We need to make sure that, in our research and engagement on what we build, we build to the available budget and we deliver the functionality that is needed within that envelope. The financial memorandum is based on a reasonable estimate of the cost of implementing.”⁵

However, given Disclosure Scotland’s recent experience of handling the development of the PASS IT project, the Committee agreed to raise its concerns about the potential implementation costs and timescale of the Disclosure (Scotland) Bill to the Education and Skills Committee to take forward as it considers appropriate.

Yours sincerely,

Anas Sarwar
Acting Convener

³ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12582&mode=pdf>

⁴ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12582&mode=pdf>

⁵ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12582&mode=pdf>