



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 3 February 2016

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
SUBORDINATE LEGISLATION.....	2
Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 [Draft].....	2
DRAFT BUDGET SCRUTINY 2016-17	5
SUBORDINATE LEGISLATION.....	21
Local Government Pension Scheme (Scotland) Amendment (No 2) Regulations 2015 (SSI 2015/448) ..	21
SCOTTISH PUBLIC SERVICES OMBUDSMAN	22

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
5th Meeting 2016, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Jayne Baxter (Mid Scotland and Fife) (Lab)

*Cameron Buchanan (Lothian) (Con)

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

Cara Hilton (Dunfermline) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Emma Gray (Scottish Public Services Ombudsman)

Niki Maclean (Scottish Public Services Ombudsman)

Jim Martin (Scottish Public Services Ombudsman)

Paul McFadden (Scottish Public Services Ombudsman)

John Swinney (Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 3 February 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee's fifth meeting in 2016. Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members will consult tablets as we provide meeting papers in digital format. Apologies have been received from John Wilson and Cara Hilton.

Agenda item 1 is consideration of whether to take in private item 7, which is a discussion about the evidence taken as part of our inquiry on the Scottish Public Services Ombudsman, and item 8, which is a discussion about the evidence taken as part of our scrutiny of the draft budget 2016-17. Do members agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 [Draft]

10:00

The Convener: Item 2 is consideration of an affirmative statutory instrument. I welcome John Swinney, the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy; Hazel Black, head of local authority accounting at the Scottish Government's local government finance and local taxation unit; and Colin Brown, a senior principal legal officer at the Scottish Government.

First, we will take evidence on the instrument and, under our next item, the cabinet secretary will move the motion to recommend that the instrument be approved. Mr Swinney, do you wish to make an opening statement?

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): Thank you, convener. I will make an opening statement on the regulations.

A local authority's capital expenditure plans, its borrowing plans and the investment of its surplus money are all interrelated activities. All form part of a local authority's integrated treasury management activities.

The Parliament passed the Local Government in Scotland Act 2003, which repealed the capital expenditure consent regime and replaced it with a duty for each local authority to determine and keep under review the maximum amount it can afford to allocate to capital expenditure. Provision was made for ministers to regulate in that respect.

The 2003 act provided for ministers, through regulation, to make revised statutory provision about how local authorities invest their money. Regulations, together with statutory guidance, enable local authorities to determine for themselves where surplus funds may be invested, but their governance arrangements are required to be set out in policy documents that each authority approves.

For both capital expenditure and the investment of money, the statutory provisions require local authorities to have regard to recognised codes—the Chartered Institute of Public Finance and Accountancy's prudential code and the treasury management code. CIPFA is the professional accountancy body for public services.

In 2014, as part of the city deal agreement, local authorities asked for a review of the legislative

provision for local authority borrowing and lending. They sought greater autonomy and responsibility for decisions on borrowing and on the repayment of that borrowing.

10:05

Meeting suspended.

The Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 are the result of work that has been undertaken with local authorities and other stakeholders. The regulations encompass borrowing for capital expenditure and borrowing as a function of a local authority's integrated treasury management activities.

The regulations adopt the same approach as is taken to regulating local authority capital expenditure and local authority investments. Under that approach, a local authority will determine for itself the source of its borrowing but, in taking those decisions, it must have regard to recognised codes. A local authority must also formally determine before each financial year how much external debt it can afford and consider what action would be taken if that limit was exceeded or was likely to be exceeded.

A local authority is also to determine the period over which borrowing, recognised by an advance from the loans fund, is to be repaid to the loans fund, and what the amount of each repayment should be. The loans fund is to be administered in accordance with the regulations, proper accounting practices and prudent financial management. Guidance that will be issued if Parliament approves the regulations will set out what is considered prudent in terms of repayments to the loans fund. Guidance will also formally identify both the CIPFA prudential code and the CIPFA treasury management code as the recognised codes.

In summary, the regulations have been asked for—and will be welcomed by—local authorities. Together with the guidance that we will issue, they will complement and complete the statutory governance arrangements for local authority capital expenditure, borrowing and investments, all of which are interrelated activities. I am happy to answer the committee's questions.

The Convener: As there are no questions on the regulations, we move to item 3, which is formal consideration of the motion. I invite the cabinet secretary to move motion S4M-15459.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 [draft] be approved.—[John Swinney.]

Motion agreed to.

10:06

On resuming—

Draft Budget Scrutiny 2016-17

The Convener: Item 4 is our scrutiny of the draft budget 2016-17. I welcome John Swinney, the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy, and from the Scottish Government's local government finance and local taxation unit, we have Graham Owenson, head, and Marianne Cook, policy manager. I invite the Deputy First Minister to make an opening statement.

John Swinney: I welcome the opportunity to meet the committee to discuss the 2016-17 draft budget, which I presented to Parliament in November. The United Kingdom Government's continued austerity programme has reduced Scotland's finances and put significant pressure on household finances. It is against that backdrop that the Scottish Government has taken its decisions for our budget in 2016-17.

Our funding package for local government is focused on delivery of our shared priorities to deliver sustainable economic growth, protect front-line services and support the most vulnerable in our society. The proposals deliver a strong but challenging financial settlement for local government. However, Scotland's councils are able to address those challenges from a healthy financial base. Local government funding has been protected in Scotland in recent years, with additional resources provided for new responsibilities. That is in stark contrast to the position in England, where local authorities have faced a real-terms cut in funding of 27.4 per cent over the four years from 2011 to 2015.

As part of the settlement that the Scottish Government has put forward, education is a priority. We remain committed to maintaining teacher numbers. We do not believe that cutting the numbers will benefit pupils' learning. Our commitment is that local authorities should collectively maintain the pupil teacher ratio at 13.7 and provide a place on the teacher induction scheme to every probationer who needs one. The Government will provide £88 million in the settlement to support the delivery of that commitment.

Successful health and social care integration will mean that fewer people need to go to hospital to receive care, that they spend less time in hospital and that they will return home quickly. We have therefore proposed that £250 million be provided from the health budget to integration authorities in 2016-17 for social care. Of that funding, £125 million is being provided to support additional spend on social care, in order to support the

objectives of integration, which includes making progress on charging thresholds and expanding capacity as a consequence of demographic change. The other £125 million is provided to help to meet a range of cost pressures that local authorities face in the delivery of effective and high-quality health and social care in the context of reducing budgets. That includes delivery of the living wage for social care workers.

As a percentage of estimated total revenue expenditure, next year's reduction in the local authority budgets in Scotland, when the £250 million that will be invested in health and social care is taken into account, is less than 1 per cent of total authority expenditure. Although I do not pretend that that is easy for any council, I note that some of the language that has been used to describe that change has been excessive.

The establishment of the commission on local tax reform followed the committee's recommendation from 2014 on flexibility and autonomy in local government. The resulting report is a comprehensive piece of work, and we very much embrace its conclusions, which align with the Scottish Government's overall approach to taxation. Before the end of the parliamentary session, we will produce a detailed plan for reform, which will embody the principles of the commission's report. I urge other parties to do likewise, so that the electorate is offered informed choices.

The Scottish Government considers that, in the interim, it is important to continue to protect household incomes in what has been a challenging period for them. The final element of the package of measures therefore requires local authorities to work with us to deliver a council tax freeze in 2016-17. We are providing £70 million to enable local authorities to do so.

Tough choices have been needed to fund our commitments, such as building innovation to fuel future economic growth. In the face of the austerity environment, the lack of full fiscal and economic levers and the declining rate of receipts mean that it is no longer possible for us to sustain all our business rate measures. I have announced a number of proposed changes, including changes to the business rate supplement that large businesses pay and to some other reliefs. The small business bonus scheme, which is by far the most generous relief for small businesses anywhere in the United Kingdom, will continue in 2016-17. Legislation to make changes will be introduced in Parliament later this month. I have also announced a review of the business rates system, and more details on that review will be available shortly.

I fully understand the pressures on budgets. Our funding proposal protects shared priorities and

delivers practical support to intensify the pace of reform. I look forward to creating a settlement that will deliver for communities across Scotland.

The Convener: Thank you. The draft budget describes the local government settlement as “strong but challenging”. Local authority leaders have used much stronger language in describing the budget and the local government settlement. They have previously stated that the settlement here has fared well compared with local government settlements south of the border. After this draft budget, how does local government in Scotland sit compared with local government south of the border when it comes to central Government allocation?

John Swinney: There is a substantial difference in the profile of central Government support for local authority expenditure. In my opening remarks, I cited the fact that local authority grant support in England had fallen by 27.4 per cent in real terms over the past four years. The Scottish Government has taken an approach whereby, in each financial year since 2011-12, there has been an increase in the resources that are available to local government, with the exception of the year when we removed police and fire expenditure from local authority budgets.

There will be a reduction in local authority expenditure in the forthcoming financial year but, as I explained to the committee, I have put in place mitigation measures to support the delivery of local authority services, given the challenging financial climate. The performance of funding support for Scottish local authorities has been significantly stronger than that for local authorities south of the border, given the long-standing commitment that the Scottish Government has made to supporting local authority public expenditure effectively.

The Convener: You have stated that the allocation to local authorities represents a 2 per cent reduction in councils’ overall income. However, councils such as Moray Council have suggested that they need to raise council tax by 18 per cent to deal with the allocation cut that they feel they have. Would you like to comment on that 2 per cent reduction in income and on the reaction that there has been from councils such as Moray Council?

10:15

John Swinney: I acknowledge that there is a £350 million reduction in local authority grant in aid as a consequence of the budget that I announced. As a proportion of the total expenditure of local authorities, which we estimate to be about £16 billion, that equates to a reduction of about 2 per

cent. When we take into account the £250 million that will be spent through the integration joint boards to support expenditure on services in which local authorities are key participants, and given the guidance that I have issued to local authorities on what they can expect that fund to support, the result is a net reduction in the local authority budget of about £100 million out of £16 billion, or less than 1 per cent.

Some of the talk that we have heard about the impact of the settlement on local government has, frankly, been over the top. I do not underestimate the on-going challenges in delivering public services in a constrained financial environment, but I have to take into account a range of factors in setting the budget. I have to take into account the pressure that there will be on household incomes, the extent of Government grant and the constant necessity for us to reform the way in which we deliver public services. In the financial support that is being offered to integrate health and social care, I have provided a substantial investment to assist the reform process, so that services will be delivered differently in the years to come from the way in which they are currently delivered.

In all, the settlement that has been offered to local government is credible. It certainly does not merit the description that it has been given by certain voices in local authorities, and it most definitely does not merit an 18 per cent increase in council tax.

The Convener: During this session of Parliament, the Government has talked of a decisive shift to prevention. Is the thinking behind creating that fund for health and social care integration that it should help with that decisive shift to prevention? There has been some commentary over the course of the weekend, from Aberdeen in particular, about supposed difficulties in dealing with some aspect of what you require for councils to access the £250 million. I understand that you have said that councils do not have to implement it on 1 April but that they have some leeway in that regard. Could you tell us your thinking about some of those things and perhaps comment on what has been said over the weekend?

John Swinney: The Government is pursuing, with our local authority partners and other public service providers, a long-term agenda to deliver that shift. Any analyst would recognise that a shift to prevention does not happen overnight and that it takes time for it to be managed and implemented. The Government is taking steps with our partners to advance that shift to prevention, and the investment of £250 million is designed to do that. As I explained, that investment is designed to better support individuals to remain in their own homes, where we know that individuals’

circumstances and their recovery, if properly supported, will be more effective and enduring than if they are in an inappropriate care setting, perhaps in a hospital that does not meet all their needs in the circumstances. We are investing to fuel the capacity and capability of social care to deliver that preventive agenda and to meet the needs and expectations of citizens.

One of the specific dimensions of the proposition that I have put to local government has been to put in place the measures and financial support that can ensure that social care workers are paid the living wage. My preference would have been for that to be implemented on 1 April, because we need to address the issue and the proposition has strong public, parliamentary and local authority support. I listened carefully to what local government had to say on the matter and I heard no lack of willingness on its part to pursue the issue. However, local government presented to me some important operational and practical issues, as well as those relating to negotiation, which would have to be taken forward to ensure that the living wage could be implemented reliably.

I accepted that argument and offered a proposition to local government, which said that on the previously available funding arrangements—there was no change to the funding arrangement—it could be implemented with effect from 1 October 2016. Care workers would be able to look forward to the living wage proposition coming into effect by that time. That is a reasonable compromise, which recognises the practical issues that face local government. It also gives every opportunity to tackle some of the points that have been raised in the weekend news coverage, which I found a little strange, given that many local authorities were planning to do it anyway and the Government has given some more support to enable that to happen. I would have thought that that approach would be welcomed in local government.

The Convener: Some of the perceived barriers will arise from *Dirk Ruffert v Land Niedersachsen* case, which has been discussed in the committee. Do you think that that timeframe would allow local government to deal with any issues in implementing the living wage for social care in respect of people who do not work directly for councils?

John Swinney: Yes, I think that that is adequate time.

George Adam (Paisley) (SNP): Good morning, Deputy First Minister. You mentioned some of the language that has been used by local authorities, but the integration of health and social care is not a surprise—rather it is a plan that they have been working towards for a number of years. The whole idea is that we can get to a place where we

consider the human element in the system, where social care and health are integrated in such a way that the individuals who experience it at the front line have the service that they need, rather than getting caught between two—in some cases, almost conflicting—institutions. Is it not the case that the local authorities knew it was going to happen, so it should be no big surprise?

John Swinney: We have been in very active partnership negotiation with local government around the implementation of health and social care integration. The debate has been going on as long as I have been a member of the Scottish Parliament, which is to say from its founding days. I am pleased that we have got to the point that we have legislated for health and social care integration at local level and the arrangements are in their shadow year, ready for implementation on 1 April.

I recognise that in bringing together those services, there will undoubtedly be opportunities for us to deliver services more effectively, addressing some of the questions of duplication and the significant management of case load that goes on as individuals make their journey through the care system.

Mr Adam was getting at the right point in his question. Members of the public and individuals' families want to see those individuals getting the support that they require; they are not particularly interested in who provides support so long as the service is provided and is of the recognised quality. Integrated health and social care enables us to address the needs of individuals more adequately and to remove the barriers and duplication that can often exist in the provision of services.

The new partnerships will be managing about £8 billion of health and social care resources between them. We have put in an extra £250 million to drive that process of reform yet further. I am absolutely certain that, within an £8 billion budget, there is an opportunity for us to deliver care services much more effectively and efficiently and in a way that can create more capacity and, most important, meet the needs and interests of individuals. The collaboration that has gone on with local government in the formulation of the legislation on health and social care integration and its implementation has been welcomed by the Government and has been beneficial for citizens.

George Adam: On shared services in local authorities in general, in my time as a councillor, I heard on numerous occasions that we were going to work more innovatively and that the council was going to share services to move things forward. As a member of the Education and Culture Committee, I have asked members of the Convention of Scottish Local Authorities and

various councils who have given evidence to that committee whether they have considered ways of using back-office services and innovation, and how local authorities can work together on education and other matters. How does the budget help local government in that context? How have local authorities worked towards shared services to try to ensure that they can not just make efficiencies but, as with health and social care integration, actually deliver services in an efficient and helpful way?

John Swinney: I will make two points on that. The first is about innovation. In my wider responsibilities in Government, I am encouraging the formulation of what has been described as a culture of perpetual innovation in Scotland. Currently, innovation is often viewed as the preserve of sophisticated technologies and higher education institutions, but it has to be the preserve of us all. Particularly in the public services, we have to find new and different ways in which we can exercise our responsibilities and find solutions that meet individuals' needs. I would therefore encourage local government to consider that. There are many good examples of local authorities taking effective measures in the field of prevention, which the convener questioned me about a moment ago.

My second point relates to the wider issue around shared services. I do not for a moment believe that we have exhausted all possible avenues for the delivery of shared services. Councils still habitually work independently without collaborating on particular issues and the provision of particular services. Therefore, there is an opportunity to achieve that. That is of course another device and technique that can be used to meet the budget challenges that local authorities face.

Jayne Baxter (Mid Scotland and Fife) (Lab): My question is on the £250 million transfer from the national health service to the integration joint boards. Is there a mechanism to ensure that that money continues to be additional and that councils cannot reduce their contribution as a result of the new money coming in?

John Swinney: I have said that local authorities, in their participation in integration joint boards, can essentially offset increases in the cost of their provision of health and social care services. Every year, social care costs will increase, just to continue the existing service that is provided. I have indicated to the local authorities that they can assume that £125 million of the £250 million can be used to assist them in meeting the additional costs that arise out of providing the existing service and that, within that, there are resources to pay the living wage to social care workers. I have also said that £125 million must be

allocated to provide additional support. Essentially, if a local authority requires to provide a new care package, it is in my view entirely legitimate for that to be paid for out of that £125 million of the new resources, because we all know that more care packages will be required from one year to the next.

There is provision for additionality and provision to meet the increased costs of providing the existing care service that local authorities provide, albeit that that will be in the environment of the integration joint boards.

Jayne Baxter: Thank you.

10:30

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, cabinet secretary. In your opening remarks, you put some figures on the table for us. Will you broadly outline for us what the funding settlement to Scotland has been over the spending review period and contrast that with local authority settlements during the same period? I want to get an idea of what is happening in local authority allocations in Scotland, England and Wales compared to the overall allocations that we get.

John Swinney: Over the period 2010 to 2020—the term of the previous Conservative-Liberal coalition, when the austerity programme started in 2010, through to the end of the current Conservative term in office—the discretionary budget available to the Scottish Government will have fallen by 12.5 per cent in real terms from the 2010-11 figure. That real-terms reduction is the equivalent of £1 in every £8 being lost from the Scottish Government's budget.

I do not have to hand a directly comparable Scottish local authority funding position for the entirety of that period but, between 2008-09 and 2015-16, local government funding in Scotland has reduced by 4.4 per cent in real terms. I cannot offer Mr Coffey directly comparable years' figures, but the figures show that the Scottish budget has been declining sharply and that we have worked to protect local authority expenditure during the period.

Willie Coffey: You mentioned a cut of something like 27.4 per cent in English local authority budgets between 2011 and 2015. I know that you do not have the figures to hand, but are you saying that the cut in Scotland is about 4 per cent compared to 27 per cent in England?

John Swinney: The figure is not directly comparable for those years, but the reduction in Scotland has been significantly lower than that in the rest of the United Kingdom.

Willie Coffey: You gave figures for England. As I understand it, the proposed cut to local government budgets in Wales is about 2 per cent, which the Welsh First Minister has said means that Welsh councils are relatively well protected. However, the narrative in Scotland has been hysterically the opposite of that, in that your cut of about 1 per cent has been described as a “disaster”. Will you comment on the contrasting narratives on what look like fairly similar levels of funding for local authorities in Scotland and Wales?

John Swinney: Let us look at the period since 2011-12. In 2012-13, the Government's support to local government increased by 0.43 per cent. In 2013-14, we removed the costs of the police and fire services, so there was a fall in that year, as would be expected because of that removal. In 2014-15, the local government budget in Scotland went up by 3.62 per cent and in 2015-16 it went up by 2.15 per cent.

Two points are relevant about the local government budget in Scotland in comparison to the situation that Mr Coffey outlined. One is that local government starts from a relatively high base. If I look back at the local government settlements that I have delivered over the years, I see that the local government base has been getting stronger and stronger year by year. Secondly, the scale of the reduction in the local government budget is much smaller than some of the changes that have been applied to other public bodies in Scotland. When we take into account all the relevant factors, including the injection of £250 million to the integration joint boards, the reduction for local government—in terms of overall expenditure, because local authority services are supported by not just Government grant but by council tax and other charges—is less than 1 per cent.

We have to see the situation in its proper context. Some of the language that has been used to describe the settlement and to explain what has happened has been absolutely inappropriate. I appreciate that there are challenges in the local government settlement, but there are challenges in every part of the budget. The health service budget is going up, but there are challenges in the health service because of rising demand. The proper context has to be understood.

Willie Coffey: Of course, John Swinney can dish out only the cake that John Swinney gets. It is not a case of nasty Mr Swinney deciding to impose cuts across the country; you are dealing with the financial settlement that you have been given by the UK Treasury.

John Swinney: I am—but obviously there are choices to be made around that, which I suspect will be the substance of our debate in Parliament

this afternoon at stage 1 of the budget process. I have powers to change the amount of income that we make, and I have taken difficult decisions, such as the decision to increase business rates, to ensure that we have more resources at our disposal to support non-domestic rates.

I made a choice to protect household incomes—particularly households on low incomes, which have been under severe pressure since 2008-09. I do not think that the evidence that I have in front of me indicates anything other than that there remain significant challenges for household incomes. I therefore decided not to increase the Scottish rate of income tax because that would have placed a burden on low-income households.

Willie Coffey: Some members of the public think that a council tax freeze means that the council's budget is frozen by the Government, but that is not the case. Some people think that there is a tightness that is being applied by the Government. You have outlined in your remarks that councils are funded to achieve the freeze year on year. Will you clarify that that has been the case?

John Swinney: The Government has built into each local authority settlement since 2008-09 £70 million to pay for the council tax freeze. That was set with an assumption of inflation at 3 per cent, and I have never changed the figure. The Scottish Parliament information centre produced an analysis some months ago which said that

“it could be said that the freeze, over the period 2008-09 to 2013-14 was ‘over-funded’. In total, over the six years, this has resulted in an estimated £164.9m extra going to local government as a result of the freeze.”

There were years in which inflation was lower than 3 per cent, but I maintained the £70 million that went into local government to pay for the council tax freeze. The SPICe report indicates that the freeze was adequately and effectively funded by the Government over that period.

Willie Coffey: Finally, you mentioned three key proposals to local councils, which are part of the settlement. Will you clarify what the arrangements are in relation to the proposals and say whether all councils have signed up to the Scottish Government's offer?

John Swinney: I set out to local authorities, in a final offer letter on 27 January to the president of the Convention of Scottish Local Authorities, which was copied to the leaders of all local authorities in Scotland, a proposition that set out the funding that was available authority by authority. I also invited local authorities to participate in accessing £408 million of resources that would fund three things. The first is investment of £250 million in integration of health and social care activities at local level. The second is maintenance of the

teaching population, through the mechanism of the pupil to teacher ratio, which is to be maintained at a value of 13.7 across all local authorities. I stress that local government made representations to me to the effect that it did not want an authority-by-authority arrangement such as we had in 2015-16. I have acceded to that and have moved to a national picture of maintaining the pupil-teacher ratio at 13.7. The final element is the council tax freeze, on which Mr Coffey has just questioned me.

I invited local authorities to indicate by 9 February whether they are prepared to participate in that £408 million package of funding. I have made it clear to local government that it is a requirement that they participate in all three elements and that it is not possible for authorities to pick one or two. I have said that if an authority does not perform effectively against each of those elements, I reserve my right to claw back some of the associated resources later in the year. For example, if a local authority signs up to protect teacher numbers but does not do so, I reserve my right to claw back a proportion of the £88 million in the settlement for teacher numbers.

I have subsequently had correspondence from the leader of Moray Council, asking me about the following scenario. If a local authority was to sign up to all three elements of the package but decided at budget-setting date—within the next few weeks—not to freeze the council tax, for example, would I penalise the authority just in relation to the council tax funding or would I withdraw its share of the £408 million—the total package of support that is available? I have taken the opportunity through that scenario to clarify to all local authorities that if an authority tells me on 9 February that it will sign up to all three elements but a couple of weeks later decides to increase the council tax, I would consider that to be an act of bad faith and would withdraw its whole share of the £408 million. I have communicated that to the leader of Moray Council and to all local authority leaders to avoid lack of clarity about my intention. I have now placed that on the parliamentary record, which will have some significance in the considerations of local authorities.

Willie Coffey: The point that you are making is that you are giving local councils funding to deliver on three elements, so it would be pretty strange if they were to accept it and then not carry out the policy.

John Swinney: That is the point that I made in my 27 January letter to Councillor O'Neill and in the subsequent letter that I sent to the leader of Moray Council, which was copied to leaders of all Scottish local authorities, on 29 January. If it would help, I am happy to make a copy of that letter

available to the committee for the benefit of its records.

The Convener: That would be extremely useful.

Willie Coffey: Thank you.

The Convener: The draft budget shows that non-domestic rates income is forecast to fall by 2.8 per cent in real terms in 2016-17. Can you outline the reasons for that predicted fall and give us an indication of how much the large business supplement and changes to reliefs are expected to rise?

John Swinney: The issues that have affected the non-domestic rates pool have been twofold. First, we make long-term predictions about the level of non-domestic rates; when we were making our predictions, we made assumptions about the level of inflation. We generally use Office for Budget Responsibility inflation estimates. As we all know, inflation has been significantly lower than the OBR estimates, which has affected expectations about what we could achieve in the increase in non-domestic rates receipts.

The second issue is that the level of buoyancy that has been delivered has not been as high as was anticipated in the budget assessments. For example, in 2014-15 we assumed a buoyancy level of 1.55 per cent, but the actual buoyancy for 2014-15 was 0.82 per cent. Of course, some of those factors have had a cumulative impact on the receipts for non-domestic rates. I have had to take steps to strengthen the non-domestic rates pool, so I have made decisions on the different elements that we are discussing; for example, it is estimated that the large business supplement will raise £60 million as a consequence of the decisions that I have taken.

10:45

For the committee's benefit, I will put that change into context. I have decided to increase the large business supplement from 1.3p to 2.6p, which is added to the 48.4p as the core poundage for which all businesses are liable. The combination of the two factors increases business rates for companies that pay the large business supplement by 3.4 per cent for 2016-17. Looking back at recent years, in 2011-12 the comparable increase for companies that paid the large business supplement was 4.6 per cent, and in 2012-13 it was 5.8 per cent. Although the increase is slightly higher than it would be for ordinary companies that are not paying the large business supplement, it is clear that, in the context of the past three years, an increase of 3.4 per cent is not as high as the increases in 2011-12 and 2012-13.

The Convener: I will move on to small business. As I have gone out and about in my

constituency recently, I have found that the small business bonus scheme has been welcomed by almost every small business owner I have met. Many folks have said that it has allowed them to keep their head above water in tough times or to invest. However, in certain quarters there seems to be a call for the small business bonus scheme to be abandoned. What is the Government's position on that?

John Swinney: The Government's position is that the small business bonus scheme has been of enormous benefit in a very challenging financial climate for small businesses the length and breadth of the country. Indeed, we see from the latest statistics that just short of 100,000 properties have had their business rates either reduced or completely removed by the scheme. For the sake of accuracy, at the last statistical release the number was 99,559, which is an increase of 3,000 since last year.

In comparison with equivalent businesses south of the border, the scheme can save companies up to £3,200, so there is a real competitive advantage for small companies in Scotland. The Government has made clear our belief that the scheme is a fundamental element of the architecture of financial support for the business community in Scotland. If we are fortunate enough to be re-elected in May, we will maintain the scheme in the years to come.

Since its introduction, approximately £1 billion has been invested in small businesses through the scheme, so it has made a significant contribution. Given the challenges around the sustainability of town centres and the wider challenges for the business community—I am sure that all members are aware of such challenges in their constituencies—the scheme has provided very strong support, which members of the public and the business community have welcomed.

The Convener: So the Government believes that that is £1 billion well invested.

John Swinney: It does.

The Convener: On local authorities that plan to use the localised relief under the Community Empowerment (Scotland) Act 2015, are you aware of any authorities making moves on that front?

John Swinney: It is quite early for such plans to materialise. The act received royal assent just within the past six months. The powers came into effect on 1 October, so it is quite early for us to see what steps authorities might be taking.

I have tried to do three things on non-domestic rates for local authorities. The first is to give local authorities absolute certainty about the financial support that they can rely on from non-domestic rates. Secondly, the non-domestic rates that are

raised in every local authority area go directly to that local authority. For example, all the business rates that are raised in your city of Aberdeen, convener, flow directly to Aberdeen City Council, which is as it should be. Thirdly, I have given local authorities the opportunity, where they see fit, to use their resources to reduce business rates if they believe that that would be beneficial to the local economy. I would of course encourage local authorities to consider the use of those powers.

The powers came into effect in Scotland significantly earlier than they will come into effect south of the border. We do not expect them to come into effect in the rest of the United Kingdom until 2020, whereas they came into effect in Scotland in October 2015. In fact, it may have been on 31 October, not 1 October, in which case I will correct the record.

The Convener: The powers came into effect not that long ago, so we may see some changes in forthcoming local authority budgets.

John Swinney: The option should be available to local authorities to use the powers if they so wish.

The Convener: We will watch with interest.

As part of our budget scrutiny this year, the committee has focused on city deals and the use of local government pension funds to invest in infrastructure projects. Aberdeen City Council has now received its city deal information. Do you have anything to update us on in relation to city deal allocations or the use of local government pension funds to invest in infrastructure projects?

John Swinney: I welcome the fact that we have managed to reach agreement on the city deal with Aberdeen City Council and with the United Kingdom Government. The agreement was announced last week by the Prime Minister and was signed jointly by the Secretary of State for Scotland, Keith Brown and the leaders of Aberdeen City Council and Aberdeenshire Council, supported by Sir Ian Wood, who has made a huge contribution to the discussion—I am meeting him later today. The Aberdeen deal is therefore in place and we look forward to implementing it. It is of course supported by a wide range of Scottish Government expenditure in the north-east of Scotland, particularly in relation to the Aberdeen western peripheral route and the other examples of investment that the Scottish Government has set out: the improvement of journey times and capacity on key rail links between Aberdeen and the central belt; the improvement of the Laurencekirk junction; our planned expansion of digital connectivity services; and the expansion of housing services. It is a strong and emphatic deal for the north-east of Scotland.

Further discussions are being taken forward in relation to the city deal in Inverness, which I think is the next most advanced proposition, and other propositions. The Government will of course keep the committee and the Parliament updated on those matters.

We are seeing increased interest and energy being put into the whole concept of pension fund investment in infrastructure, and we are actively involved in discussions to enable different local authorities to take that forward.

The Convener: Thank you very much.

You cannot appear in front of this committee without my asking you about the formula for the allocation of funds to local authorities. Have there been any recent moves by COSLA to change the funding formula?

John Swinney: There has been nothing, other than the routine updating of indicators that will be undertaken jointly by the Government and COSLA through the settlement and distribution group, which looks at updated and changed factors. There will be no fundamental reform of the distribution formula arrangements.

The Convener: You have gone on record before as saying that you would be more than willing to review the funding formula if COSLA approached you and asked you to do so. Is that still the case?

John Swinney: That remains my position.

The Convener: Thank you. Has the Scottish Local Government Partnership approached you about changing the funding formula?

John Swinney: I saw a letter last night from the Scottish Local Government Partnership, but I have not had the opportunity to consider all its details. With the caveat that I am not familiar with all of that letter's contents—although it has just been put in front of me—

The Convener: Well done, Mr Owenson.

John Swinney: I do not think that the details of the letter relate to reviewing the funding formula, and I am unaware of having received representations that we should do so. I had better check all correspondence in that respect and reply to the committee in writing, but I am not aware of any call for a review of the distribution mechanism.

The Convener: I would be grateful to receive that in writing.

Willie Coffey: As I understand it, cabinet secretary, one of the main ingredients in the mysterious funding formula is population size in authorities. If we look at the data on the revenue allocations to authorities on a per head basis, we get a completely different picture. For example, on

a per head basis, Glasgow City Council's allocation is actually 113 per cent of the Scottish average. The allocation for my own authority, East Ayrshire Council, is slightly increased, too.

While authorities wait with bated breath for their allocations, if we look at the allocations on a per head basis, there is a different story to tell. Is COSLA thinking of paying, at some point in the future, closer regard to local authorities' population size when determining the settlements that they finally get?

John Swinney: The funding formula combines population factors, which certainly bear very heavily on it, and a range of other indicators that do not relate to population and which take into account some of the differences between local authority areas in relation to their nature and character and the special circumstances that we have to address.

Mr Coffey is absolutely right that there is a significant range in the per capita funding that local authorities receive. The Scottish average is £1,776, but the figure for Glasgow City Council, for example, is £2,222 and in Mr Coffey's area of East Ayrshire it is £1,872. The range reflects the intensity of population and the nature of and challenges in individual localities, which are affected by a range of different issues.

Willie Coffey: At the moment, is there any imperative within COSLA to change the formula?

John Swinney: No. One thing that I have heard clearly from local government is that there has not been much of an appetite to revise the funding formula. Indeed, at times I have been expressly asked not to revise it.

The Convener: I have a final point on the funding formula. I take it that the Government's position is to keep the funding floor in place.

John Swinney: Yes, it is.

The Convener: Deputy First Minister, thank you for your evidence to the committee today. I understand that you are now off to the Finance Committee.

10:59

Meeting suspended.

11:02

On resuming—

Subordinate Legislation

Local Government Pension Scheme (Scotland) Amendment (No 2) Regulations 2015 (SSI 2015/448)

The Convener: Agenda item 5 is consideration of a negative Scottish statutory instrument. Members will see from the clerk's note that the instrument makes a number of updates to existing regulations, enabling payment of survivor benefits to survivors of same-sex marriages—I prefer the term equal marriage myself—and making provision for new shared parental leave. The Delegated Powers and Law Reform Committee has drawn the Parliament's attention to a technical issue concerning a definition, which the Scottish Government has undertaken to resolve.

As members have no comments, is the committee content to agree that it has no recommendations to make to Parliament in relation to the instrument?

Members *indicated agreement.*

Scottish Public Services Ombudsman

11:03

The Convener: Under agenda item 6 we will take evidence from the Scottish Public Services Ombudsman as part of our annual inquiry. I welcome Jim Martin, the Scottish Public Services Ombudsman, and his officials: Niki Maclean, director; Paul McFadden, head of complaints standards; and Emma Gray, head of policy and communications. Would Mr Martin like to make an opening statement?

Jim Martin (Scottish Public Services Ombudsman): No, convener. You have a busy enough agenda without me going on as well. I will be perfectly happy to expand on any of the materials that we have sent to you and to take any questions that the committee may have.

The Convener: Thank you very much. I had the pleasure of speaking to Mr McFadden and Ms Maclean at yesterday's meeting of the Welfare Reform Committee.

First of all, Mr Martin, can you give us an indication of how the added responsibilities that you are about to undertake in relation to the appeals process for the Scottish welfare fund that starts on 1 April will affect the service that you provide?

Jim Martin: I am happy to, convener. The Scottish welfare fund provision is being funded by the Scottish Government, and I am happy with the funding and resourcing. I ask Paul McFadden to tell the committee a bit about the practicalities of implementation from 1 April.

Paul McFadden (Scottish Public Services Ombudsman): As the committee is aware, the new responsibilities bring a slightly different role for the ombudsman, in that we will have a role in directing local authorities about decisions that are made on the welfare fund. Therefore, many of our preparations have related to how we will adapt our process to take account of that different role.

The preparations have also related to timescales. Clearly, the circumstances in which people who apply for the fund find themselves mean that quick and robust decisions are crucial. Therefore, we have to design a process to cater for that and ensure that we get responses out quickly—within one day or, in the case of community care grants, 21 days.

From the early stages of the proposal that we should take on those responsibilities, uncertainty about what the review numbers would be has been a concern for us and a hindrance to our

planning. In the first years of the current welfare fund scheme, the review numbers were particularly low compared with those under the previous scheme: the independent review service for the social fund had up to 6,000 cases for Scotland. However, we are looking at a significant increase in tier 2 reviews at local authority level over the past few years—we estimate that there will be in the region of 1,000 or maybe 1,200 such reviews, but it is a big unknown and we have to plan on that basis. We have recruited a team who will start shortly and we are preparing a detailed training programme for them.

Most important throughout the process has been our engagement with third sector advocacy and support agencies and with local authorities. We have set up two sounding boards for those groups, which have been a great help and support as we have prepared ourselves for taking on the role from 1 April.

The Convener: I take it that you have done everything possible to simplify the design and operation of the complaints-handling system. Obviously, the cases will have to be dealt with quickly because folk are in crisis.

Paul McFadden: Absolutely. Simplicity of access and the speed of our decisions are at the forefront of everything that we are doing. Clearly, people who are applying in crisis situations will always be prioritised over anyone else who comes into our office. On crisis grants, we will look to request information from local authorities within 24 hours and, once we have received all information, make our decision within one day.

Cameron Buchanan (Lothian) (Con): Good morning. Last year, you gave evidence about the integration of complaints handling in health and social care. How much progress has been made towards that? It is a key issue about which you expressed some reservations last year.

Jim Martin: There has been significant progress on that. I am very grateful to the committee for putting its shoulder behind the arrangements because I felt like a voice crying in the wilderness for a very long time and, once the committee began to get involved and take a serious interest in the matter, things started to move quickly.

We are now on course to have an integrated approach between social care and health. We are currently bringing the national health service complaints process on to the same footing—the same complaints-handling procedures—as we have for other parts of the public sector. That will enable complaints to be dealt with through the same simple process. Paul McFadden has been leading on that work through the complaints standards authority.

Paul, do you want to add anything to that?

Paul McFadden: I put on record our thanks to the committee, which considered the matter in some detail. There was progress quite quickly after that.

There is clearly quite a bit to go to put in place the path for the legislative changes relating to a simple, standard process across all areas within integrated health and social care services. The NHS, social care and the integration joint boards will be operating from the same process by April 2017, so a lot of work is taking place with the boards and the other bodies that are involved in the process to ensure that it is well prepared for.

The Convener: Thank you for your comments about the committee. We will probably put something about that in our legacy paper.

Cameron Buchanan: With such complaints, particularly the health ones, speed is of the essence. Are you satisfied that the process is being handled reasonably speedily, Mr Martin?

Jim Martin: I think that we are getting there. I am very impressed by the progress that has been made, particularly in the national health service, in moving towards a single complaints-handling process, given the existing processes. At the moment, I am reasonably content with that.

The Convener: In what specific ways do you consider that you have demonstrated that you have provided value for money and added value in the work that you have carried out over the period?

Jim Martin: It depends what the period is.

The Convener: Let us deal with a year.

Jim Martin: Okay. Let us deal with this year. I will set aside the fact that, in implementing the Sinclair recommendation for a single complaints body in Scotland and absorbing prisons complaints and water complaints within the SPSO, we are saving the public purse £1.5 million year on year.

Over the year, the progress that has been made in bringing together improved complaints-handling procedures across the public service in Scotland is, frankly, worth its weight in gold. You will see from our strategic plan and the update that we gave on progress in the first nine months of the year that for the first time we are able to compare year-on-year numbers for complaints in local government. It is now possible to say that, at the first stage of local authority complaints, there has been an increase in the number of complaints upheld from 50 per cent to 70 per cent. That should enable local authorities in Scotland, and the committee, to ask whether that is because we are getting better at dealing with the complaints that

people bring or whether there is a problem with the services that are being provided. In that way, we add some value.

In the past year, we have made more than 1,000 recommendations for improvements in public services—health, local government, prisons and water. Each of those recommendations has either brought comfort to people who have had things go wrong, such as by getting an apology for poor treatment in the national health service, or has been accepted as a way of improving processes and the way that people are dealt with in the public sector.

I am pretty confident that, for the £3 million that is spent on the SPSO, far more value comes back every year.

The Convener: How do we ensure that those 1,000 recommendations are acted on? How do we make certain that they are known by other public bodies, which might also need to improve?

Jim Martin: I know that the committee took the time to look at some of our recommendations in detail. I welcome that and I am happy to discuss that process with you.

We never sign off a recommendation as having been completed until we have looked carefully at the evidence brought to us by the public body to which we made the recommendation. We do not give anybody carte blanche.

In our strategic plan, you will see that we are intent on creating a learning and improvement unit, part of the role of which will be to follow through on recommendations. I will ask Niki Maclean to talk a bit more about that in a second.

I have about a year to go as ombudsman, so I am starting to put down markers. The committee has quite rightly asked about impact. One of the most frustrating things for me is not being able to follow through when I see a number of individual complaints about the same issue. The Scottish Public Services Ombudsman Act 2002, which set up the SPSO and which was revised in 2010 after a review, tells me that I can look only at individual complaints that are brought to me. That is a waste of a public resource. Where there are systemic issues, the ombudsman should be encouraged to raise and investigate them.

I know that this is a long answer, convener, but let me give you just one example. Over a relatively short period of time, we received five different complaints about cancer diagnoses being missed in the radiography department of a particular hospital. Technically speaking, I could look at those complaints only in isolation and come to a decision on the merits of each. However, once you see four or five of these things, you begin to think that there is a systemic issue.

There are two ways of dealing with that: you can raise the matter with the appropriate bodies informally through back channels, which is what we do, or you can use one of the complaints to make a recommendation that highlights the systemic issue. Scotland would be better served if the ombudsman were able to flag up that a number of issues relating to the same area had been spotted and that we intended to conduct a systemic investigation of the issues.

I might say more about that next year at my last appearance before the committee, but perhaps Niki Maclean can say something about the learning and improvement unit, which the committee might be interested in hearing about.

11:15

The Convener: Thank you for that, Mr Martin, but I have to say that there is absolutely nothing to prevent you from raising systemic issues with this or other parliamentary committees. Indeed, in your previous answer, you pointed out that the committee had been helpful to you in dealing with the complaints system for integrated health and social care. Do you sometimes feel reticent about coming to Parliament to raise some of these issues? If you raised them, we might be able to undertake an investigation or inquiry into any real difficulties that might have arisen in a particular area of public service.

Jim Martin: There is no reticence, convener, but I am always conscious of the legislation under which I have to operate, which sets out quite clearly what I may and may not do. Bringing issues to the committees of the Parliament is a good and valuable way of getting things done; we need only look at this committee's involvement in the health and social care complaints system to see how that can work.

What I am thinking of is the ability to move quickly and directly on issues such as the one that emerged in the radiography department of a certain hospital and enabling the very good people who work with me to bring their expertise to bear on looking at whether there are any systemic issues. I do not see the two things as being in competition—I think that they can run in parallel.

The Convener: Sticking with the example that you have given, who at the health board would your recommendations about the separate cases go to? Who would be in receipt of your findings?

Jim Martin: That is one of the improvements that we have made in the past couple of years, particularly in health. In the Robert Francis inquiry into what happened at Mid Staffordshire down south, it became perfectly clear that some of the deaths that happened could have been prevented had the trust, and in particular its chief executive

and chair, taken the complaints process seriously. The NHS in Scotland's governance arrangements for dealing with complaints have, over the past couple of years, become a lot better than they were three or four years ago, and the process is now being taken very seriously indeed. To that extent, I am happy that there is visibility of the individual cases that are being brought to boards.

However, things that happen in an individual board or between different boards are sometimes missed because they are seen only when they are presented. From where we sit, though, we can see and identify these things in a far simpler way. In some cases, if we say to a board or a local authority, "We think you've got a systemic issue", they will grasp the matter with both hands; in other cases, people will point out to me the limits of my legislation and what I am permitted and not permitted to do.

The Convener: So basically they will tell you, "You're limited in what you can do here. Dinna you interfere." Is that what you are saying?

Jim Martin: I am not going to name names, but that has been said to me—and not often as politely as you have put it. Basically, they will say, "Your powers are limited to this, this and this, and you are straying beyond them." If Scotland is still to be at the forefront of developing the ombudsman service—which, having been created by the Parliament, is internationally recognised—you are going to have to free up the next ombudsman to be able to look at these issues.

The Convener: It would be very interesting for the committee to have sight of documentation in relation to where people think that you have overstepped your powers. It could then look at the situations that those people found themselves in before they reached the point of saying that to you.

I do not think that we should drift away from the issue of systemic failure. If I was an individual member of a health board, and the same kind of complaint was cropping up again and again, surely it would be my duty to delve further into that. Surely I should be grateful to the ombudsman for pointing such things out. Do folk not feel that way?

Niki Maclean (Scottish Public Services Ombudsman): This year, one of the things that we introduced—which I think will help individual boards to join up the dots—is a learning and improvement statement in our annual letters to all the health boards. We have asked all bodies under our jurisdiction in the largest sectors to sign up and say that they have carried out that analysis, so that they do not look at individual cases on a piecemeal basis, but try to identify systemic issues, which they will confirm with us.

That is part of the process that we introduced this year.

The Convener: Mr Martin, you look like you wanted to come back in.

Jim Martin: No. I think that Niki summed it up very well.

Willie Coffey: I will continue this wee discussion about systemic issues. I used to be a member of the Public Audit Committee and, in a previous life, I spent some time as a quality manager. I am interested in the kind of holy grail of performance improvement. Audit Scotland regularly identifies systemic issues, too—it points to them and makes recommendations and so forth. Audit Scotland points to certain patterns in the public sector, but that is where it ends.

I want to get your thoughts on this. When you produce your reports and make recommendations—I would even invite you to make recommendations for systemic improvement—how on earth do we get the systemic improvement into the system? It has come across that you get something like 5,000 complaints a year and that 76 per cent of those complaints are dealt with in the agreed period and everybody is happy with that. Do the same complaints keep happening year on year? Will the 5,000 complaints that are received next year be about the same stuff? How do we get improvement into the system so that we really bring down the complaints tally and see improvement across the public sector?

Jim Martin: You are absolutely right—that is one of the great frustrations that we see. In a minute, Niki Maclean will talk about our learning and improvement unit.

Remember that I see only complaints about things that go wrong. We try hard, with the limited information that we receive, to enable each part of the public service to work out how it can tackle the issues. I have said to the committee before that it is the only committee in Europe that can see the local government complaints numbers for the whole country and base decisions on that information. In the whole of Europe, nobody else has that information—only you.

We are encouraging the Improvement Service and others to get beyond the top-level numbers and look at the areas in which complaints are generated. Is that in housing or social work? Are there common factors across the areas? The committee is doing excellent work to push benchmarking, and this is an area where benchmarking could work.

We are a small organisation. For us to help the whole public service in Scotland, we have a proposition that is going through the Scottish

Parliamentary Corporate Body. That proposition is to staff a learning and improvement unit of two or three people in our office. Niki Maclean will explain that more.

Niki Maclean: To give a bit more context, I think that there are two issues to consider. Jim Martin has talked about the first issue, which is how we get benchmarking information from each sector. Paul McFadden and other colleagues have done an amazing job in working with local authorities, and we now know that there were 66,000 complaints across local authorities last year. As Jim Martin said, because you have that data, you can start to drill down and understand the problems.

A very small percentage of those cases flow through to our office. Despite the low volumes, there are still opportunities to identify potentially systemic issues, although that is hard to do because of the low volumes.

The proposition is that we establish some form of learning and improvement unit. As the committee will have seen from the four cases that it has looked into further, we make a range of recommendations of different types and in different subject areas. The recommendations can be split into two parts. The first part addresses the personal injustice and hardship that have happened to the individual. It is important to remember that that is fundamentally what an ombudsman's service is for.

The second part is about improvement and learning. The quality of the recommendations that we make on that is important. Through the learning and improvement unit, we want to make sure that, as far as possible, we are consistent and challenging in our recommendations to drive improvement in the organisations that we are working with.

The Convener: We get the gist of that. You talk about a new learning and improvement unit, and the Improvement Service has been mentioned. Are we talking about duplication? Is the unit required, or should information just be passed to the Improvement Service to deal with? I will play devil's advocate: do we need an improvement service if you are going to carry out such functions?

Niki Maclean: We have the two separate areas of work that I referred to. We are obliged to make recommendations that arise from our casework, and we alone have the statutory powers to do that. We have to make sure that those recommendations are smart, challenging and consistent and that we follow through with organisations.

We do that at the moment, but we would like to have a distinct part of the organisation that takes

on the responsibility. We now make 140 per cent more recommendations than in 2010, so the figure is significantly up. Significant work is involved in following those up and we could do it in a smarter way.

Jim Martin: The Improvement Service operates only in local government. The whole public service in Scotland does not have an improvement service as local government does.

The Convener: I will not fall into that can of worms. I could say something about that, but we will go back to Mr Coffey.

Willie Coffey: I hope to get a little closer to an answer to systemic issues. When you come back next year, I guarantee, on the basis of the figures that you produce year on year, that another 5,000 complaints will have been made. Will the new improvement service really look at some of the systemic issues and share best or good practice in the public sector to get that figure down?

Niki Maclean: The answer is yes. We share all our findings and recommendations already. We hope that we can continue to drill down and to support organisations to learn from the information that they gather from complaints.

Willie Coffey: It is quite hard to prove that something did not happen as a result of a particular recommendation, but the volume of complaints would begin to drop, and the SPSO would hope to attribute that to some of its interventions.

Can I ask another question, convener?

The Convener: Is it on the same topic?

Willie Coffey: It is about the complaints process.

The Convener: Could we stick to improvement first? I will bring you back in. I do not want to move away from the improvement scenario.

Mr Martin, you talk about possibly requiring more powers. We are talking about a learning and improvement unit. How do you drive improvements at the moment with the powers and resources that you have at your disposal?

11:30

Jim Martin: I am glad that you referred to powers and resources. We must not lose sight of the fact that, in my organisation, I have just under 50 people, around 30 of whom are working directly on individual complaints that have been made. Our current complaints standards authority involves two people. My training unit involves 0.6 of a person, yet we are producing front-end training materials—for e-learning and face-to-face training—that are being used in the whole national

health service in Scotland and across all local authorities. I understand that they are even being used in universities in Ireland and local authorities in New Zealand.

The Convener: Which universities in Ireland and which local authorities in New Zealand?

Jim Martin: Just as I was when you said that you did not want me to go into improvement, I am glad that you asked that question. For about three years, I have been banging on about the fact that we are producing training materials that are not licensed and are free to be used by anyone else in other parts of the United Kingdom and abroad. That is a missed opportunity by the Parliament to generate income that could subsidise my office's activities. I have made that point on numerous occasions in numerous places —

The Convener: Not here.

Jim Martin: I am glad that you have given me the opportunity to raise it here as well, convener. Thank you.

The Convener: We may look into that. Will you expand on how you are driving improvement with the current powers that you have?

Jim Martin: I am charged with doing three things: first, looking at complaints that have been brought in by individuals seeking remedy, who feel that they have suffered an injustice; secondly, through that work, doing what I can to raise issues that will help to improve the provision of public services; and thirdly, under the Public Services Reform (Scotland) Act 2010, monitoring the handling of complaints and setting forth a standardised process for complaints handling across the public service. The second of those activities is very dependent on the other two activities, as the improvements that we suggest come out of complaints that are brought to us. That takes us back to the systemic issue.

As far as we can, we push for people to take our recommendations seriously. We were the first ombudsman's office in the public sector in the United Kingdom to publish our decisions. Every month, we publish between 60 and 70 decisions, and we lay reports on more serious matters—perhaps three or four individual reports—directly before Parliament. We make them accessible, and we know that they are accessed by bodies across the public service.

I do not want us to become the improvement unit for the public service in Scotland, but I want to use the experiences of the people who come to us when things have gone wrong to help public bodies to think about the provisions that they are making. With the limited resources that we have, we do our best to do that.

The Convener: We may come back to that.

Willie Coffey: I will pick up on your point about the NHS complaints process being brought more into line with those for the rest of the public sector. Are the complaints processes that people have to deal with still, by and large, pretty different? For example, do local authorities, the NHS, the police, the fire service and everything else have different systems for people to interact with? Are we trying to get a consistent, consolidated experience for the public, so that they have to complain in the same way no matter whom they want to complain about?

Jim Martin: The 2010 act, which we work under, charged me with putting in place a standardised complaints process across all the bodies for which I am responsible as the ombudsman, and we are, by and large, there. The last part of that work involves the NHS and I will ask Paul McFadden to describe where we are going with that. I am an ex-Police Complaints Commissioner for Scotland, but the police service does not fall within my responsibilities, and nor should it. I am happy to discuss that any time.

By and large, the aim is to get as many public service organisations as possible operating a simple standardised process to ensure that the ordinary person in the street knows how to access things and that they are resolved as quickly as possible. I am glad that the NHS, too, has decided to go down that route; we are making substantial progress there.

Paul McFadden: In the NHS, a lot of good work was undertaken on complaints on the back of the Patient Rights (Scotland) Act 2011 and the supporting legislation and work around that. I see some differences between the handling of complaints in that sector and the process in other sectors; one of the crucial differences is that the emphasis on early local resolution close to the front line and at the point of service delivery has not really worked in the NHS. That is one of the key things that we are working with the NHS to implement.

For example, more than 80 per cent of complaints in local authorities are resolved at or close to the front line on a tight timescale of five or 10 days, and we want to get the NHS to the same point. The work that we are continuing with NHS stakeholders—and which we are progressing well with them on—is all about bringing the NHS into line with the standard process that is used in our other sectors, with regard to not just timescales and stages but the governance mechanisms, what is reported, how it is reported and so on.

Willie Coffey: Do you routinely consider material from Audit Scotland to get the big or global picture of the issues? You have said that you are restricted in your ability to investigate systemic matters, but surely you can consider

messages in, for example, various Audit Scotland reports. Do you do that as part of your work?

Jim Martin: We often speak to Audit Scotland, the Accounts Commission, Healthcare Improvement Scotland and the chief inspector of prisons. Across various sectors, we speak to people, including the water regulator, about what we and they are finding and we feed that information in. For example, when Healthcare Improvement Scotland investigated Aberdeen royal infirmary, we worked with it on a tool that allowed it to work out how efficiently NHS Grampian and the infirmary were handling complaints. That helped to inform Healthcare Improvement Scotland's decisions as a result of its investigation and inquiry. We work with other agencies as much as we can.

The Convener: What consideration, if any, is given to determining from the outset what wider public benefit might arise from an investigation?

Jim Martin: You have to remember that a complaint will come to us from an individual who, in their view, has had a poor experience with a public body. In that investigation, many things might arise. It might be a simple matter of someone saying that their council tax has been miscalculated, which we can resolve quickly, but sometimes the issue can be more complex.

It rarely happens, but some matters might have broader implications, and that would be flagged up to me as the investigation was going on. As a workaday example, I am immediately informed of every case that comes into the SPSO's office that involves a death or a vulnerable person, and that enables us to say, "Having looked at the circumstances of the case, we want it looked at in a bit more depth," or, "We want this to be fast tracked." I saw a case yesterday that pertains to the treatment of a child in an infirmary, and we want it to be fast tracked.

On general public policy improvement, the judgment as to whether an issue goes broader than the individual complaint or has wider implications is for me to make after we have been through the investigation. However, I am restricted to looking at the individual complaint; I am not supposed to look at the other complaints that come through, but the way of the world is that that is what is done.

The Convener: Okay. What do you consider to be the added value of investigating cases solely to recognise the validity of the person's complaint? What consideration is given to the implications for the people who are being investigated?

Niki Maclean: When we consider a case, we consider the proportionality of its investigation. For example, we consider whether we can achieve a practical outcome for someone over and above

what they have already had. If we felt that a body had already carried out a thorough investigation, made comprehensive recommendations and implemented them and that it was not possible or practical for us to go beyond that, we would not progress the case any further. We are mindful of the impact that our investigations have on the bodies that we investigate.

The Convener: So, if you felt that the body had done everything possible, you would not take the case any further.

Niki Maclean: No.

The Convener: Would you communicate with the complainer as soon as possible to give the reasons why you were not taking it any further?

Niki Maclean: Yes.

The Convener: Mr McFadden, you look like you want to come in.

Paul McFadden: No.

The Convener: I am misreading body language today.

On many occasions when you have been in front of the committee, we have talked about your communication with complainers. Are you better at communicating with them about your reasoning for not pursuing complaints and the recommendations that you make, which they might not think are the right ones?

Niki Maclean: We do a lot of work with our staff to support good communication skills. We have clear service standards to which we operate. As far as we can, we give decisions over the telephone. We try to give people assurance that the body did everything that it could and should have done but, ultimately, people often feel that the case should have been investigated. In those circumstances, all that we can do is give a clear explanation and assurance as far as we possibly can.

Jim Martin: There is a flipside to the matter, convener. Perhaps this is to reform your question but, often, public bodies tell me that they have already upheld a complaint and ask me why we are investigating it. There are a number of reasons why we might do that. One is that the complainant is not happy with the outcome, which is common. Others are that what was upheld is not the entirety of what the person complained about, or that we are just not convinced that a full investigation has taken place.

I will give you an example. I am sorry that I am using health cases, because this is the Local Government and Regeneration Committee—

The Convener: Feel free to use whatever cases you think are best, Mr Martin.

Jim Martin: I will use a health case. We had a case in which someone made a complaint about the death of someone during an operation. They complained to the health board about how the operation was conducted. The board investigated it and said that it was satisfied that the surgeon involved had acted appropriately. I think that the procurator fiscal also considered the case.

The complainant wanted to know not whether the surgeon had performed his duties appropriately but whether the operation had been carried out appropriately. When we investigated that, we found errors by an anaesthetist and that the relationship in the operating theatre at the time that the operation was conducted could be described as dysfunctional at best. Neither the board nor the fiscal had considered those issues, so although the board had said that one or two things might have gone wrong and upheld part of the complaint, we felt that we should consider the rest of what happened. We examined it, found learning points for the board, found learning points for the anaesthetist and were able to give the complainant some comfort.

We do not automatically assume that we should not investigate a complaint because a public body says to us that it has upheld it. We have a good look at what the complainant says to us and determine whether there is still something to be investigated.

11:45

The Convener: We have had a look at four complaints about the efficiency and effectiveness of your organisation. One, from the University of Glasgow, comments on the potential effects that the time taken to investigate could have had on the complainer. How can you improve your efficiency in dealing with complaints timeously?

Niki Maclean: We have submitted evidence to the committee previously, and again this year, about the increasing efficiency in our case closure rate. We have a history of improving our efficiency within the resources that we have available. The gains that we can now make are in supporting and encouraging the bodies that we work with to improve their own efficiency in the handling of cases so that, when complainants come to us, we receive clear, well-documented complaints investigations that make it easier for us to reach decisions more quickly.

The Convener: If I were unhappy at the length of time that you were taking to investigate my case, what would be my redress?

Jim Martin: You would approach me, convener, and I would look into it. I am not happy about the time that we take to look into some of our cases; no one would be. In our defence—if we need to

defend ourselves—we are probably the most efficient public services ombudsman body operating in the UK. For example, we measure the amount of time for which we have cases in our building from the minute that they arrive, whereas, to my knowledge, all our comparable offices start the clock only once they have received all the paperwork and information that they need to begin an investigation. We take the view that the time that is important is the time that the individual spends with us, not the time that we take to deal with the case.

Every year that I come here, I have said to the committee that the increasing complexity of the cases, particularly in health, is putting a real strain on our organisation. This year, for the first time since 2002, we have had a reasonably significant drop in the number of complaints coming through our door in the first nine months of the year—the figure is down 4.5 per cent or something. However, even allowing for that, we have had a 41 per cent increase on 2009-10 in the number of cases coming to our office, yet our staffing is virtually the same.

We try to use the resources that we have as efficiently as we can. When matters require a great deal of investigation, we are sometimes in the hands of the public body and we sometimes need to get advice from people, but at all times we try to ensure that we put the interests of the person who has brought the complaint to us first. Inevitably, given the volume of complaints that we receive and the number of staff that we have, some complaints take a long time to investigate.

The Convener: Are there many areas in which you receive not repeated complaints from individuals but repeat complaints on the same subject?

Jim Martin: There are a number.

The Convener: Which areas are those, Mr Martin?

Jim Martin: I will come to that in a second. One of the reasons why we want the learning and improvement unit to be in operation is so that we can flag up those areas and have the bodies concerned deal with them. Similar cases will arise in planning, and waits for repairs will be an issue in housing associations. In some housing associations, the quality of repairs will be an issue. When I first took up my office, the thing that struck me most was the number of cases in health boards that involved bed sores and pressure ulcers. In each of the sectors, you will find areas that are complained about repeatedly. In prisons, the issues tend to be about progression or training courses. We try to engage with the public bodies and say, "This is what we are seeing. These

complaints are coming to us. You need to try to get hold of these issues.”

The Convener: The fact that these things are occurring in the same areas does not show that you are being effective in getting across the message that public bodies need to improve in those areas, does it?

Jim Martin: That is why we are looking at the learning and improvement unit and at engaging with bodies in all sectors, up and down the country.

I can sense the frustration behind your question, convener, and it is nothing compared to mine. It is absolutely nothing compared to mine.

The Convener: Earlier, in the course of the budgetary examination, I talked about the decisive shift to prevention, which the Government has been looking for in almost every area. When I say “prevention”, I do not mean it just in terms of health.

From what you described, not very many lessons seem to have been learned, in certain areas, from your previous findings. If those lessons were learned, that would lead to the decisive shift to prevention and fewer complaints coming into your office.

Jim Martin: You must remember that we are looking at the tip of the complaints iceberg. We are flagging things up and engaging. We are trying to find ways of working in partnership with organisations.

I will give you an example. We reckoned that something like 40 to 45 per cent of all the cases coming to our office were coming from around only 10 or 12 different organisations out of the whole of the public sector. We began to engage with those organisations individually. We said to them that there were a number of things that put them into that group: that the number of premature complaints—that is, people coming to the ombudsman when they should be going to the organisation itself—was too high; that the number of upholds was too high, compared with the rest of their sector; and that the volumes were not what we expected to see. We engaged with those organisations. For example, we sat down with people from Lothian Health Board and told them that their volumes were too high, their upholds were too high, their prematures were too high, and that we were not convinced that they were investigating complaints properly. That allowed them to revise how they do things.

You have to remember that we sit here as an ombudsman office. The very fact that we are an ombudsman office means that we flag things up and that we can try to push things. However, we do not have a big stick to make people do things.

The Convener: Can I stop you there? I am a bit of an anorak when it comes to your reports. I cannot say that I read them all—that is not the case—but I read a fair bit of them. You are talking about a number of organisations that seem perpetually to present you with difficulties. Within the annual report, where is that information available to me and members of the public? If that is available in the annual report, why is it so difficult to find?

Emma Gray (Scottish Public Services Ombudsman): That is not something that we put into the annual report, but all the figures about—

The Convener: Why not?

Emma Gray: It relates to something that we spoke about previously at this committee, which is that we do not wish to name and shame organisations.

The Convener: I am sorry, but I will stop you there. Earlier, we talked about the interventions that this committee has taken to try and resolve difficulties. It would be impossible for any one of us to track all the cases that are sent to us. Therefore, it would be very useful for us if you highlighted the organisations that are causing difficulties. I would say that the annual report is the place to do that. Either this committee or other committees of the Parliament could then make interventions.

We have already touched upon effectiveness and the decisive shift to prevention. We need to have information about those organisations simplified and in one place, so that we can move forward and try to create better services for the general public. Can we have that in the annual report? As for your not wanting to name and shame, we will never improve things unless we know which organisations are causing you the most difficulty.

Emma Gray: Perhaps I can provide a little context. As I think the committee knows—indeed, we put it into our briefing—we provide on an annual basis statistics about every organisation about which we have received complaints, the subject of the complaint, whether we upheld it and so on. In addition, we provide, again on an annual basis, a letter containing detailed statistics on premature and upheld rates, the subjects involved and so on for each organisation and comparisons between those statistics and statistics for other organisations. It is therefore possible for anyone to look at all the information that is in the public domain and to carry out an analysis to ascertain what they wish to find out.

The Convener: Ms Gray, it is very difficult to find the time to deal with every aspect of this life, and I do not think that anyone around this table

will have the time to complete the analysis that you are talking about.

Beyond that, the numbers in the tables in the annual report and other material that you produce tell me and other members very little about what the complaints are; they could be the most simple things under the sun or the most severe issues. The statistics could show a smattering of complaints about an organisation that might be one-off cases with no connection whatever or which could be complaints about the same thing. We just cannot analyse that. What we require is something that helps us get to the point where we can say, "Ah—here we go. An intervention is required here to improve the situation for the public." As it stands, we are unable to do that with the information that we are getting.

Jim Martin: Can I take that away and think about it, convener?

The Convener: If you could, Mr Martin.

Jim Martin: The reason why I am asking to take your suggestion away and not saying, "Yes, we'll do that" or "No, we'll not do that" comes back to everything that you have just said and which I was about to say. There is a difference between raw data and raw league tables and qualitative matters. Of the 10, 11 or whatever it is—12, perhaps—organisations involved, there are one or two that you would expect to be there. For example, you would expect NHS Greater Glasgow and Clyde to be there, because of the huge volumes that it deals with. I am more worried about the outliers. If, for example, a smaller health board finds itself in our top 10, I have to ask myself why that is the case.

It might be more useful if I take your comments away and think about the qualitative information that the committee might find useful instead of bombarding you with raw statistics. I am happy to liaise with the clerk on what you think might be useful.

The Convener: That would be extremely useful. I really think that there must be a simple way of dealing with the issue in the annual report to allow not only this committee but other interested parties to pick up on it.

As members have no more questions, I thank the witnesses for their evidence. I think that the clerks will be in touch, and we hope to hear from you on some of the matters that we have raised.

We now move into private session.

11:58

Meeting continued in private until 12:18.

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