



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 2 March 2016

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
8th 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:

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 2 March 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 eighth meeting in 2016 of the Local Government and Regeneration Committee.

Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Committee members may consult tablets during the meeting because we provide meeting papers in digital format. Apologies have been received from Cara Hilton.

The first item on the agenda is a decision on whether to take item 4 in private at this and future meetings. Item 4 is consideration of a draft of our legacy report. Are members agreed?

Members *indicated agreement.*

Commissioner for Ethical Standards in Public Life in Scotland

10:00

The Convener: Our first substantive item is evidence from the Commissioner for Ethical Standards in Public Life in Scotland, Bill Thomson, and from Brenda McKinney, investigations manager at the commissioner's office. I welcome you both. Mr Thomson, do you wish to make an opening statement?

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you, convener. I submitted a letter to the committee that was dated 11 February. For the moment, I have nothing to add to what was in that letter. I am happy to move straight to questions.

The Convener: Okay. That is fine.

We can see from your annual report that the number of complaints has dropped. Is that because there are fewer problems out there or is it because the public, many of whom have complained previously, feel that their complaints have not been acted upon?

Bill Thomson: I have no information to suggest that there are people who feel that their complaints have not been acted upon, although you may be about to provide me with some. Nor do I have any way of gauging whether the range or number of problems is greater or less than it has been in the past.

Although the number of complaints has dropped, in the year that is covered by the annual report, the figure for the number of complaints was distorted by a substantial number relating to one particular issue, which we dealt with as a single case. I projected the number of cases that we would have to investigate this year on the basis of the figures up to the end of December, which you have. Those figures suggested that the total for this year would be 121 complaints relating to councillors and members of public bodies. In fact, as of the end of February, which we have just passed, we already have 121 cases, so the volume of business that we are dealing with does not seem to be reducing significantly.

The Convener: How would you respond to a member of the public who said that reporting anything to you is a waste of time? It is a scenario that I have come across on a number of occasions of late.

Bill Thomson: I am not sure how I would respond to that. I would like to know why the member of the public thought that it was a waste

of time. I do not see how I could answer that question unless I had some indication of why that person thought that it was a waste of time.

The Convener: Do you think that, after an investigation and after you have come to a decision, you explain well enough in your communication to the complainant why you have reached your decision?

Bill Thomson: I always do my best to do so, but I accept that improvement is always possible.

I draw the committee's attention to the fact that approximately a fifth of the complaints that I receive are based on allegations of failure to comply with the key principles that are set out in the code but that are not rules that can be breached. In those circumstances, although I always write to people, asking whether there is anything else that they want to suggest has been a breach of the specific rules of the code, there are many instances in which people do not have anything else to put forward. The chances are that around a fifth of the people who submit complaints are dissatisfied, but that is not because of a failure on my part to explain things; it is because they think that they have a valid complaint but it is not a valid complaint under the code as drafted.

The Convener: Do you think that there need to be changes to the drafting of the code in order to satisfy members of the public in that regard?

Bill Thomson: There are different views on that. For what it is worth, I would prefer the key principles not to be included in the code. I am not suggesting for a moment that they are not important, but their inclusion misleads a lot of people—it has misled 48 people so far this year. It is not at all clear, other than to those who carefully read paragraph 2.1 of the code, that failure to observe the key principles is something other than a breach of the code. I think that that is confusing for a lot of people, and the work that it creates takes up a lot of time and energy but produces nothing at the end of the day. I appreciate that, in those circumstances, people feel frustrated and dissatisfied.

The Convener: Are you saying that, even though the key principles are written into the code and folk think that there has been a breach of the code with regard to those key principles, paragraph 2.1 blows all of that out of the water?

Bill Thomson: It does.

The Convener: What attempts have you made to get the code changed so that people are not led up the garden path in a way that leaves them thinking that they are being ignored and that the breach that they have reported has been ignored, with the result that they feel that complaining in the first place was a waste of time?

Bill Thomson: I am not sure why you are putting the question in that form, convener.

The Convener: I am putting the question in that way because your answers lead me to some of the things that have been said to me by members of the public in recent times.

Bill Thomson: My statutory role is to investigate—it is a narrowly defined role. My view, which I have just expressed to the committee, is that the inclusion of the key principles leads to confusion and dissatisfaction. I am not convinced that it is necessarily part of my role to seek amendment of the code. However, if anyone were to ask me how I think it could be amended, that is one suggestion that I would make.

The Convener: You do not think that you should be making suggestions about changes to the code.

Bill Thomson: That is not what I said. I said that, if anyone were to ask me, that is something that I would suggest.

The Convener: I think that you said, just prior to that, that it is not up to you to ask for changes to the code.

Bill Thomson: I said that that is not part of my statutory remit.

The Convener: It might not be part of your statutory remit, but the fact that things are not part of people's statutory remits does not prevent folk from suggesting various things at various times.

Bill Thomson: Indeed, and I have done that in the committee this morning.

John Wilson (Central Scotland) (Ind): My questions follow on from the convener's comments. I have done some calculations regarding the number of breaches and the number of complaints that were made between 1 April 2015 and 31 December 2015. I have found that less than 4 per cent of the complaints that were made resulted in the identification of a breach. The other figures show that roughly 9 per cent of the total number of cases that were investigated were identified as breaches.

I would never speak for the convener, but my understanding of what he is saying—and of what you have told us today—is that, when members of the public or others make a complaint, they do so on the basis of what they think the code is, but they are then told that the key principles are not part of the code and, therefore, the issue that they are complaining about does not form a breach. If the exact areas in which the public and others could report a perceived breach were made more understandable, would that not be easier than having to deal with a large number of complaints? In the nine months that I cited, only 10 per cent of

the cases were investigated and we ended up with a very low figure for identified breaches, the rest being “Not pursued further”, “Outwith jurisdiction” or “Withdrawn”.

Further on in your report, you talk about the pressures that exist on the delivery of the service because of the financial constraints that there may be in the coming years. Would it not be easier to adapt the guidance that is issued to make the public aware of what they could report as a breach?

Bill Thomson: I agree entirely.

John Wilson: Would you want to make that recommendation in your position?

Bill Thomson: Yes. If the code could be simplified and made clearer, that would make everybody's lives better. It would certainly be better for councillors, who have to observe the code. Frankly, some of it is quite difficult to understand.

The convener may come back to me on this, but I have no role in issuing guidance. As members will be aware, under some of the statutes under which I operate, I am specifically disbarred from giving advice because I would have to investigate a complaint. However, the Standards Commission for Scotland, to which I report on these matters, issues guidance, and it is in the process of revising the guidance. However, although that may improve the guidance, the issue is the code itself. That takes us back to where the convener started. If the code is complicated or not clear, that cannot be remedied by guidance.

John Wilson: If the code is not fit for purpose, how can we make it fit for purpose?

Bill Thomson: I did not say that the code is not fit for purpose.

John Wilson: I take it from what you are saying that it is not fit for purpose. That is the term that I am using. How can you, as the Commissioner for Ethical Standards in Public Life in Scotland—the person who is responsible for enforcing the code—ensure that it is workable and does not result in a lot of your and your staff's time, effort and energy being taken up in dealing with cases that are not competent to be dealt with?

Bill Thomson: I am sorry to be hesitant, but I do not think that the answer to that question is simple. As members are well aware, the code is promulgated by ministers, so ministers would have to agree that there was a reason to review it. I suspect that that will be done at least for the narrow purpose of ensuring that the code is sufficient in relation to integration joint boards, which are now active.

You asked me quite a wide question, and I apologise for taking a little time to answer it.

Councillors or representatives of councillors would obviously need to have a say in any adjustment to the code, as it affects councillors' behaviour and conduct and how those might be complained about. Therefore, I would have thought that the major players in the process would be this committee—given that you represent the people who might complain and given your specific interest in local government—local government bodies, perhaps individual councils and the appropriate minister. I would certainly be happy to contribute. If you are asking me, I think that there are other areas that require attention.

10:15

John Wilson: Would it not be more appropriate for the Standards Commission to make recommendations to the Scottish Government? As you have said, it would be up to the Scottish Government either to reject or to accept the recommendations from the commission. As I mentioned, the process takes up the time and effort of you and your staff, and I know that, when a complaint is made against a councillor, a lot of council officer time is taken up in dealing with that complaint. That is why I am asking whether, if we were to simplify the code or make it more understandable, that could save a lot of effort and time.

Bill Thomson: Indeed. I agree with you entirely. The other factor is the private energy—if I can put it that way—that goes into such investigations. Public resources are required to deal with complaints—in my office, in councils and in the Standards Commission if I report a breach to it—but they also take the private energy and time of individuals. I appreciate that people do not complain lightly, as it is not an easy thing to do. If that effort could be channelled better, that would be a good thing in itself.

The Convener: During that exchange, you said that there are other issues that could be dealt with. What issues do you think need to be dealt with, and what needs to be changed to make all of that more effective?

Bill Thomson: In fairness, I cannot give you a comprehensive answer right now. However, at the top of my list is the way in which the code applies to statements that are made on social media.

The Convener: Do you mean statements whereby folk make an opinion known or throw an insult at somebody and then claim that that account is a personal account and they can do what they like? Is that the kind of statement that you are talking about?

Bill Thomson: That is a slightly extreme version of it but, yes, that is precisely the kind of thing. As you are well aware, the code applies to the actions of councillors only when they are acting as councillors. It does not apply—nor should it apply—to their private conduct, and the most problematic grey area is what is said on social media.

The Convener: You say that you cannot give us a full list of the issues today. What we require is a comprehensive list of the areas in which you think there are difficulties, which our successor committee can look at and bring to the attention of others if it deems that to be necessary. We are never going to resolve some of the difficulties unless we know exactly what they all are. We need to get them all on the table and look at them, so it would be good to have a comprehensive list from you. Our successor committee may not be grateful for it, but at least that would give it a starting point.

John Wilson: I want to ask Mr Thomson for his view on when an elected member is not an elected member.

Bill Thomson: There is no simple answer to that. I am tempted to respond humorously, but that would not be appropriate. It is actually quite a difficult issue. If an elected member of a council gives a quotation to a newspaper that is related to council business and it is then published, my position has been that that is covered by the code. That has featured in one or two hearings and it has certainly been the position that the Standards Commission has adopted or agreed with so far. If that elected member makes the same comment on Facebook or on their Twitter account, it is much less clear whether they are acting as a councillor and covered by the code.

John Wilson: I am quite surprised about that because, in case LA/NL/1862, an issue was raised at a full council meeting. You will know the local authority by the coding; I will not name the individuals or the local authority involved to save their embarrassment about how they deal with issues. A legal letter was submitted to a full council meeting, which stopped the discussion of a motion. The proposer of the motion understood that the issue could not be discussed at full council but, two weeks later, a councillor took the opportunity to comment in the press.

That was reported to your office and dealt with there. You indicated:

“it was a commentary on the motion and an expression of opinion as to the underlying motivation of the proposer and seconder.”

When does a comment like that in the public domain breach the code, if a full council agrees not to discuss something but to seek further legal

clarification and then elected members comment in the local media? Based on what you said, if the person had commented on social media, there would potentially not have been a breach. However, they commented in the local press. You said that a press comment may be subject to investigation but a social media comment would, at present, be outwith the scope of further investigation of the complaint.

Bill Thomson: There are some difficulties here. I have to make it clear that I did not say that comments that are made on social media could not be covered; I said that it is not clear that they are necessarily covered by the code.

I have some reservations about discussing the case that Mr Wilson raises. Obviously, my judgment is open to question by anybody. In that case, the complaint was made that the ruling of a convener in a committee meeting or a council meeting had been ignored. If the convener of this meeting were to make a ruling, would it necessarily apply to members of the committee who go out and speak to other people about it? I suggest that, unless it was a ruling that some business that the committee was discussing was confidential, and therefore must not be discussed, there would at least be a question as to whether the ruling would have any effect outside the committee meeting. That was the problem in the North Lanarkshire case that Mr Wilson mentions.

John Wilson: As I said, I did not want to name the local authority, but Mr Thomson has done so. The ruling was that the council was seeking further advice on the issue at hand. I would expect that, if the convener made such a ruling, members would at least respect it until further legal advice was given.

You rightly said that your interpretation may be open to question but, as I understand it, there is no right of appeal on your decision.

Can I move on, convener, in relation—

The Convener: We will let Mr Thomson talk about right of appeal before we move on.

Bill Thomson: There are obviously political issues at play here—not necessarily in this room, but in many of the complaints that I handle. Rulings by the chair or convener about the application of standing orders apply to council business; they do not necessarily apply more widely.

There is no right of appeal against a decision on my part that there has been no breach—I am sorry; I will try to put that in positive terms and avoid double negatives. If I decide, on the basis of a complaint, that there is no evidence of a breach, I make a decision and that is that. Someone could apply for judicial review, which would be a

resource-intensive process. That has not happened yet, but that is not to say that it will not happen. Other than people writing to me to say that I have not given proper attention to such and such an issue—as they frequently do—that is the only way of proceeding. We are now collecting statistics about the volume of what one might call post-decision correspondence, which is reasonably significant. Many people question decisions and I try to deal with the points that they make.

If I decide that there has been a breach, I report to the Standards Commission. The commission then makes a decision on whether to hold a public hearing—it decides to hold such hearings in more than 90 per cent of cases. At that point, the matter is, in effect, considered anew and the commission makes a decision on the basis of the evidence at the public hearing. That means that, at the end of the day, the percentage of cases in which it is considered that there has been a breach might be even lower than the figures quoted by Mr Wilson. There is a right of appeal against a decision by the Standards Commission at a public hearing.

John Wilson: You said that if someone was not happy with the outcome of your decision, it could go to judicial review. Would that judicial review process be via the Court of Session?

Bill Thomson: Yes, I think so, although that has not happened yet. The other thing that some people do is complain to the Scottish Public Services Ombudsman that my office has failed to administer their complaint correctly.

John Wilson: How many reports have been made to the SPSO?

Bill Thomson: Last year, there was one.

Cameron Buchanan (Lothian) (Con): My first point relates to your response to Mr Wilson's point. Are you monitoring social media? Secondly, when is an elected official no longer an elected official, particularly when he is acting privately on social media, such as Twitter? Is it not rather difficult to judge that?

Bill Thomson: Yes, it is.

Cameron Buchanan: Is it a matter of judgment?

Bill Thomson: Until the definition is clarified—if it can be—it is a matter of judgment. That is why I said that it is the issue that is most in need of attention.

My office does not monitor social media as such, but we receive a number of complaints that specify alleged breaches in the course of some sort of social media correspondence.

Cameron Buchanan: Do any of those complaints through social media come back as post-decision correspondence, as you called it?

Bill Thomson: I am sorry, but I was talking about a different thing. Post-decision correspondence is when, for example, I have said that there is no breach, and the complainer then comes back to us.

Cameron Buchanan: Is a lot of it concerned with social media or not?

Bill Thomson: I am sorry, but perhaps I do not understand you correctly, Mr Buchanan. Correspondence does not generally come to me through social media, but the issue may relate to social media.

The Convener: Mr Thomson will correct me if I am wrong, but he will deal with social media only if a complaint comes in from someone about a post that an elected member has made on that media. There is no monitoring or censoring.

Bill Thomson: Correct.

The Convener: Mr Thomson has to sit back and wait to see whether any complaints come in. He is probably crossing his fingers and hoping that they do not.

Do you have any other questions, Cameron?

Cameron Buchanan: No, thank you.

George Adam (Paisley) (SNP): On that same point, I could give you a number of examples of councillors from my neck of the woods, who are not necessarily members of my party, who have rather poisonous blogs and can be aggressive and robust on social media, but nothing ever seems to be done about it. It goes back to the question that John Wilson asked: when is an elected member not an elected member? Although it sounds like a punchline, it is a serious point. In effect, we are elected members 24/7. People will read your blog and interact with you on social media because you are an elected member. Should councillors take on board some form of responsibility?

10:30

Bill Thomson: First, I accept that elected members are probably always elected members in the sense that you are available, as are councillors, all the time. The councillors' code does not—and, for that matter, the code of conduct for members of the Scottish Parliament should not—apply to everything that people do as elected members, but I entirely agree that there is a problem with social media.

The issue is not straightforward, for a number of reasons. One that I have not yet mentioned this morning is article 10 of the European convention

on human rights, which, as I understand it, as interpreted by courts, allows additional leeway, if you like, to those who are engaged in political dialogue in the things that they might say by way of freedom of expression. That is a difficult thing to take into account when making a judgment—not so much in relation to whether comments on social media are covered, but in relation to whether they then represent a breach of the code. There are two steps.

George Adam: I am talking about use of language that is just unacceptable in the modern political landscape. When people do not agree with someone, they are being called various unacceptable names, but every time there has been a complaint, the judgment has not found in favour of the individual, and it just carries on. It has got to the stage where no one complains any more because the behaviour just seems to continue.

The Convener: That goes across the country. Let me be honest: without going into them in depth, I could probably tell you about some of the cases that you have dealt with. It seems that certain folk think that they have the right to insult the people who elected them, using blogs, Twitter, Facebook and all the rest of it. In my mind and, I am sure, the minds of most others, that is unacceptable, yet under the code as it stands, it seems that nothing can be done to deal with that.

George Adam: The language that is used is unacceptable.

Bill Thomson: I have no disagreement with the points that you both make, but I am not convinced—this is why I mentioned it—that the code deals clearly with that situation at the moment.

The Convener: Again, if that can be highlighted in the correspondence, we will pass it on to our successor committee. Like Mr Adam—and, probably, many others round the table—I have certainly had that brought to my attention a number of times.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, Bill. I turn to page 4 of our paper, and the table headed “Outcome of complaints completed”. John Wilson led a discussion about that. I see in the table that something like 75 per cent of all the complaints that are raised are either “Not pursued further”, “Outwith jurisdiction” or “Withdrawn”. Are you doing an incredible amount of work in dealing with a large volume of complaints, a high percentage of which go no further? Is that an issue for your office or do you dismiss them at a fairly early stage in your assessment of them?

Bill Thomson: Some are dismissed at a fairly early stage. Despite the implication behind some

of the questions, I endeavour to give as much support as possible to people who wish to complain, and to make the position as plain as possible to them.

I quite often issue a letter that indicates to the person who has complained that I am not minded to pursue the complaint for a particular reason. That might be because it is simply about the key principles or because it appears to be entirely outside my jurisdiction. The letter invites people, if they wish, to come back and give me further information or to explain why I should take the complaint further.

I do not have the percentage here. Sometimes we take cases further and then discover that, even though we have looked into them, there is still nothing that could amount to a breach.

Obviously, it is important to be fair not only to the person who is complaining but also to the person about whom the complaint is being made. There is a balancing exercise to be done and, of course, it takes up a lot of time and effort.

Willie Coffey: According to the table, half the complaints are “Not pursued further”. Is that, in effect, the same as there having been no breach?

Bill Thomson: Yes, it is.

Willie Coffey: The table shows that only about a quarter of complaints result in a “No breach” determination but that half of them are “Not pursued further”. I would like to tease out what “Not pursued further” means.

Bill Thomson: I am sorry that that is not helpfully clear. Complaints are described as “No breach” when they have been investigated. As for those in the other category, no, there has been no breach, but in many cases that is because there could not have been a breach. For example, the circumstances may not involve a councillor. We sometimes get complaints about officials in local authorities or public bodies, who are not covered by the code, and we sometimes get complaints about things that are simply not covered by the code.

Sometimes complaints are about the key principles. I should probably say—I will say this in the letter that the convener has required of me—that I do not think that it would be good for anybody in my role, whether me or any successor, to have to make judgments on whether people have complied with the key principles. The key principles are so wide that that would put me in an invidious position. If those principles became part of the code and could be breached, the complaints would have to be determined by a broader tribunal of some sort—the Standards Commission or whatever. Frankly, if the possible breaches were

extended to the key principles, the whole system would balloon.

Willie Coffey: Okay, but in most, if not all, cases you respond. Even if half the cases are not pursued further, an explanatory letter will go back to the complainer, explaining the circumstances.

Bill Thomson: Absolutely—yes.

Willie Coffey: Do those cases, which make up half the complaints that you deal with, sometimes also require a rigorous and thorough assessment that takes quite a bit of time, or are they closed fairly early in your examination?

Bill Thomson: It is a mixture. I am sorry, but I do not have to hand—or somewhere in my head—the percentage of complaints that we go into in more detail. I am very reluctant to dismiss things out of hand, as it were, because that would not be fair to the person who has complained.

The Convener: What if they are a vexatious complainer?

Bill Thomson: In my letter, I have suggested that we might not pursue a complaint in that category, but it is difficult to determine at an early stage whether a complaint is vexatious.

The Convener: If somebody complains about the same thing again and again, surely that would be deemed to be vexatious and you would not spend too much time on those complaints.

Bill Thomson: I would endeavour not to, convener.

Willie Coffey: On page 5 of the paper, we are told that, in some cases, suspension is the sanction that has been imposed. For example, one councillor was suspended from planning meetings and another was suspended from all council and committee meetings. Was their pay suspended for that period as well?

Bill Thomson: I do not believe that their pay was suspended. I do not think that the Standards Commission has the powers that the Parliament has to suspend payment. An individual's involvement in meetings can be suspended—

Willie Coffey: But not their pay.

Bill Thomson: The commission has the option to disqualify, and, in those circumstances, pay stops.

The Convener: Mr Thomson, we have concentrated on you, as the commissioner, today. Do you think that the Standards Commission itself is fit for purpose?

Bill Thomson: I do not think that that is a fair question, convener.

The Convener: Why is that not a fair question, Mr Thomson?

Bill Thomson: Because the commission is an independent part of the process. I report to it and it then makes a decision. It is not for me to determine whether it is doing that appropriately.

The Convener: The fact that you will not say whether it is doing that appropriately would lead me to think that it may not be doing certain things appropriately.

Bill Thomson: I suggest that that is drawing an inference that you are not in a position to draw, convener.

The Convener: In your letter, you say that there has been

“a gradual, but steady, rise in the percentage of complaints which lead to a report to”

and then a hearing before the Standards Commission. When there has been a hearing, how often has the Standards Commission gone against the findings in your report?

Bill Thomson: In my period of office, which has now been almost two years, that has happened only once.

The Convener: How many hearings have there been in that time?

Bill Thomson: Thirteen have been concluded and one is under way.

The Convener: I realise that you are not going to tell me today whether you think that the Standards Commission is fit for purpose.

In the letter that you will write to the committee about improvements to the code of conduct, are you also willing to also state what could be done to help to improve your own office and that of the Standards Commission?

Bill Thomson: I am happy to comment on my own office. I do not think that it is appropriate for me to comment on the Standards Commission.

The Convener: In that case, do you think that it would be wise for us to question members of the Standards Commission on an annual basis as well as to question you?

Bill Thomson: I suspect that that is open to you.

The Convener: I do not think that the Parliament has ever done that before but, from what you are saying, our successor committee may wish to consider it.

Would you comment on your strategic plan, your prioritisation of what to investigate and how you propose to use your discretion in that regard?

Bill Thomson: Yes. As you will have appreciated from the letter that I sent the committee, I am conscious that I need to find some way of preventing a continual expansion of the workload. The resources that are available to cope with it will not simply expand in parallel.

I am doing several things. One is attempting to improve the efficiency of our operation, which I would hope all public bodies seek to do. That has to be done within a context of thoroughness and fairness and—as you were inviting me to indicate, convener—trying to improve on the clarity with which things are explained to those who complain and, for that matter, those against whom complaints are made.

I am also wondering—and I am proposing to set out my stall—about circumstances in which I might not investigate complaints as thoroughly as people might like me to do. That is why I have set out in the letter a list of bullet points with circumstances in which I might decline to pursue an investigation as far as I am invited to do.

Declining to investigate is quite difficult, frankly. Not only would I be exercising judgement on whether there has been a breach, I would be exercising judgment on whether a complaint is worth investigating. That is patently quite controversial, given that the person who has complained thinks that it is worth investigating.

At the top of the list, that judgment would be easy. If the complaint is outside my jurisdiction—if it simply relates to key principles and therefore cannot be a breach of the code—it is straightforward to decide that public resources should not be applied to investigating it further. As you go down the list, you get to things about which judgments are much more difficult to make.

To go back to a point that has been come up several times this morning, the thing that would most ease the administrative burden on my office would be removing the key principles from the code. As I have already mentioned, complaints relating to key principles account for about one fifth of the complaints that come to me.

By the way, I know that that is a controversial suggestion. If you interrogate the Standards Commission, I do not expect it to agree with me.

10:45

The Convener: We might just do that. I do not know whether many members of the public would agree with that either. They will then begin to think: if you are not dealing with the principles of the code, what is the point of the entire thing?

Bill Thomson: I am not suggesting that the principles should be abandoned; I just think it is unhelpful having them in a code where there is a

set of specific rules. People are then given to believe that, because someone has not been selfless, as they would see it, there has therefore been a breach of the code. An alternative would be to incorporate the principles in the undertaking that elected members sign on appointment to office.

The Convener: It is the norm for me to play devil's advocate, as you well know. Some folk already think that the entire situation has bred a toothless tiger. If we say that we are taking the key principles out, what do you think their reaction will be then?

Bill Thomson: I can see the difficulty there, and I presume that that is why others would disagree with that. However, if the key principles are not enforceable, what is the point of them being in the code? That is my answer. If there are specific rules that can be breached, they should be comprehensive enough to cover the situations that are problematic.

The Convener: Let us move off that topic and on to investigation itself. Do you always get full co-operation from other public bodies when you are carrying out investigations?

Bill Thomson: Not always as quickly as I would like, but yes is the answer.

The Convener: Can you give us any examples of where you feel that other public bodies have impeded your investigation or have not reacted quickly enough to deal with the seriousness of a matter?

Bill Thomson: I have no memory or information about any public body impeding an investigation, if we are talking about organisations—some individuals may operate differently. On occasions when we are looking for background information, pressures of work can mean that it does not always come to our office as quickly as we would like, but we have to appreciate that everybody is busy.

The Convener: Yes, but some people perhaps prioritise the wrong things. Would you agree with that?

Bill Thomson: That is a very wide statement. They may not agree with my priorities, but that does not mean that they are the wrong things.

The Convener: You are being very diplomatic, Mr Thomson.

John Wilson: In your letter of 11 February, Mr Thomson, you give a list of things that you suggest be included. Under one bullet point, you refer to situations

"Where the complaint relates to circumstances occurring more than 12 months previously, and the person making the complaint could reasonably have been aware of them".

Do you think that 12 months is a suitable period? Should it be reduced to six months, for instance? I am aware of the circumstances in some local authority chambers, especially when there is a heated debate and certain comments are made. A number of authorities do not have any audio or video record of comments that lead to circumstances where someone may have an outburst or—you will know the case that I am referring to—make certain gestures to other members of the committee. Because there is no official record of that or of the debate leading up to the outburst, we potentially end up with hearsay evidence in relation to the complaints that are then lodged.

Bill Thomson: The 12-month period was chosen prior to my coming into post by analogy, I think, with the code of conduct for members of the Scottish Parliament. It is a rule, or certainly a criterion relevant to relevancy, under that code. From my point of view, if the period were shorter, that would potentially reduce the number of complaints that come in. However, I do not think that it is part of my role to reduce the number of complaints that can be made. The important thing is to deal with them reasonably. It is a judgment call. I do not have a particular view as to whether 12 months is the right period.

In some cases, people have tried to go through alternative complaint processes. Some of those take quite a long time. People can then, quite reasonably, come to me afterwards. They might say that they have been told, after waiting for whatever period it is, that they should actually have put their complaint to me in the first place. I would be reluctant to reject that sort of complaint.

As for what I think was the point of Mr Wilson's question, I agree that, at that stage, it can be more difficult to obtain reliable evidence. The passage of time makes it more difficult.

John Wilson: What about the comment about how council meetings are recorded and evidence is provided? I am aware that, on a number of occasions, you have had to go to other elected members or council officials for comments or for their recollection of the events leading up to the incident that has been reported as a breach.

Bill Thomson: I am obviously aware of the situation that you are describing. It might be helpful for the committee to know that, even in cases where there is a recording of some sort—it may be a transcript, rather than a video recording—we quite often go to other people who have been involved. Apart from anything else, the context in which something happens is clearly important in interpreting the nature of it. How people perceive things is important. I doubt whether we will ever get away from having to rely

on witness evidence that, as you say, could be described as hearsay.

On occasions, we have used YouTube videos of people doing things in hearings. Social media does have some advantages.

John Wilson: For clarification, do you mean YouTube videos of council proceedings? I am aware that certain local authorities prohibit the audio or video recording of meetings, which includes restrictions preventing people in the public gallery from recording proceedings of the council.

Bill Thomson: The short answer to the question is no. They have been used in the context of other public meetings that were not council meetings as such.

The Convener: You said earlier that there would have to be a revisit of some of these issues by ministers regarding the changes that there are going to be with integration joint boards. Do you think that that also provides an opportunity to consider ALEOs, a matter that we discussed when you were before us last year?

Bill Thomson: I am not ducking the question, but I think that it is really a matter for ministers. It is a question of whether they are prepared to widen the consideration to include ALEOs.

The Convener: Would it be much easier for you if ministers were to revisit ALEOs at the same time as integration joint boards?

Bill Thomson: They are certainly another area where problems can occur, yes.

The Convener: Thank you for your attendance today.

10:53

Meeting suspended.

10:54

On resuming—

Subordinate Legislation

**Building (Scotland) Amendment
Regulations 2016 (SSI 2016/70)**

**Building (Energy Performance of
Buildings) (Scotland) Amendment
Regulations 2016 (SSI 2016/71)**

**Disabled Persons (Badges for Motor
Vehicles) (Scotland) Amendment
Regulations 2016 (SSI 2016/72)**

**Local Government Pension Scheme
(Management and Investment of Funds)
(Scotland) Amendment Regulations 2016
(SSI 2016/74)**

**Charities Accounts (Scotland) Amendment
Regulations 2016 (SSI 2016/76)**

The Convener: Our next item is consideration of five negative statutory instruments. I invite comments from members.

Willie Coffey: The heading on page 5 of our briefing note is about the disabled persons' badges instrument, but the section is actually about the pensions instrument.

Page 6 of the note says that the provision is not a change in policy. However, is not increasing the proportion of a pension fund that can be invested in partnerships from 15 to 30 per cent a significant change of policy? And what do we mean by "partnerships"? Where did the driver for that come from? What is the justification for going from 15 to 30 per cent? That seems like a huge amount of the pension fund that can now be invested in a partnership.

The Convener: My understanding is that these are probably regulations that are amended every year. We can write to the Scottish Government to ask for further information for you, but we do not have the ability to amend the instrument.

Is the committee content to agree that it has no recommendations to make to Parliament in relation to the instruments?

Members *indicated agreement.*

The Convener: As agreed earlier, we now move into private session.

10:58

Meeting continued in private until 11:29.

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