



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 11 January 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**1<sup>st</sup> Meeting 2017, Session 5**

**CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**DEPUTY CONVENER**

\*Elaine Smith (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Ruth Maguire (Cunninghame South) (SNP)

\*Graham Simpson (Central Scotland) (Con)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Kay Blair (Scottish Housing Regulator)

Michael Cameron (Scottish Housing Regulator)

Niki Maclean (Scottish Public Services Ombudsman)

Jim Martin (Scottish Public Services Ombudsman)

John Stevenson (Scottish Public Services Ombudsman)

**CLERK TO THE COMMITTEE**

Clare Hawthorne

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Local Government and Communities Committee

Wednesday 11 January 2017

*[The Convener opened the meeting at 09:32]*

### Decision on Taking Business in Private

**The Convener (Bob Doris):** Good morning, everyone, and welcome to the first meeting of the Local Government and Communities Committee in 2017. I wish everyone a happy new year. I hope that you are refreshed from your festive break. As always, I remind everyone who is present to turn off their mobile phones. Members' papers are provided in digital format, so members may use tablets during the meeting. No apologies have been received.

Agenda item 1 is to make a decision on taking business in private. The committee is invited to agree to take in private agenda items 7 and 8, which are consideration of draft reports on draft budget 2017-18 scrutiny and on payments to returning officers. Are we agreed?

**Members** *indicated agreement.*

## "Scottish Housing Regulator Annual Report and Accounts 2015/16"

09:32

**The Convener:** We move to agenda item 2. The committee will take evidence from the Scottish Housing Regulator on its annual report and accounts for 2015-16. I welcome from the Scottish Housing Regulator Kay Blair, who is the chair, and Michael Cameron, who is the chief executive. I invite Kay Blair to make a brief opening statement.

**Kay Blair (Scottish Housing Regulator):** Good morning, everyone. Thank you for giving us this further opportunity to present our work to the committee. As I said previously to the Infrastructure and Capital Investment Committee, we welcome parliamentary scrutiny of our work. We are a listening organisation and we are keen to hear feedback. We are also keen, wherever possible, to act on that feedback and to reflect those views in how we regulate.

I am delighted to present our annual report and accounts, which we laid before Parliament in September. I am also here, along with Michael Cameron, to answer any questions that the committee may have on the work that is detailed in our annual report or, indeed, the work that we have done to date. Our annual report highlights our work to protect the interests of tenants, homeless people and other customers of social landlord services. Since we started, we have had continued focus on good governance, financial health and good service delivery. We see, when we come to look at organisations, that those issues are often intertwined, because we look not just at financial health issues but across the board. I am proud to say that we met all our objectives in 2015-16. We were within budget and we delivered, we believe, good outcomes for tenants and others. Another important role that we play is that we have given lenders confidence in the housing sector.

During 2015-16, we brought accessible new information on landlord performance to tenants and landlords, mostly through the charter, which members will have seen and—I hope—use. Last year, we published an individual performance report for every landlord, and our national report on the charter showed that landlords were performing well overall; there are some inconsistencies, but overall the sector is strong and healthy. Given the targets that have been set for new homes, it is really important that we have a sector that is strong and that has the confidence of the lenders.

As part of our digital transformation, we have provided tenants with even more performance information that helps them to compare their landlord. It is important that they look not just at their own landlord but at other similar landlords in the area to see how they are performing, what their tenants think of them and how they engage with their tenants.

I have been told to keep my opening statement short, so I will. You will be pleased to know that I am coming to the end of it.

We have had to use our statutory powers with a small number of landlords, which we have not had to do before. We used those powers proportionately but decisively to protect tenants' interests. We intervened only when we could not get the necessary assurance from the registered social landlords that they were able or willing to resolve their problems on their own. Poor governance was—again—at the root of the problems in each of the four cases. By “governance”, I am talking about good leadership, good management and good implementation of services. I am pleased to tell you that we have now ended our statutory intervention in two of the organisations, because they have successfully resolved the main problems that they faced.

Safeguarding and promoting the interests of tenants and other customers drives everything that we do, and we are very proud of our 500-strong national panel of tenants, homeless people and other customers of the services, from whom we receive feedback. We also have a tenant panel that we regularly engage with to get feedback, whose members tell us that rent affordability and value for money are at the top of their agenda. We will therefore keep a real focus on those areas.

That ends my opening statement. Michael and I will be delighted to answer any questions that you have. So—over to you.

**The Convener:** Thank you very much. That was very helpful.

**Graham Simpson (Central Scotland) (Con):** In your report, you refer to a 10 per cent cut in your budget, which has gone from £4.1 million to £3.7 million. Given what you have just said about the potential increase in work that you face, how is that cut in budget going to affect the service that you provide?

**Kay Blair:** That is a very pertinent question. We have been concerned about our budget. We face increased demand with reduced resources. We have gone down from about 79 people five years ago to just over 50 people and a budget of £3.7 million, and we have suffered 40 per cent cuts in costs over that time. However, that has made us work smarter and has given us an opportunity to reassess our priorities and our focus. This year,

we were fortunate in getting a small increase in our budget—I think that that was because of messages about the value that we add to the sector and the confidence that we give lenders, which is critical. We estimate that we save the sector about £40 million in borrowing costs through lower interest rates, and that is what the sector tells us.

Do you want to say anything about that, Michael?

**Michael Cameron (Scottish Housing Regulator):** No—other than that we are extremely grateful for the proposed increase to £3.8 million in our budget in the next financial year. That will certainly help us in our work to maintain effective regulation. It is still challenging in the context of the overall budget settlement for any public body to continue to deliver effectively and efficiently, but that is the objective that we will set out with.

**Graham Simpson:** Okay. That is interesting.

**The Convener:** Would you like to follow that up, Graham?

**Graham Simpson:** I have a question on a slightly different subject, which I can ask now or later.

**The Convener:** We will take it later, if that is okay.

**Graham Simpson:** Yes.

**Ruth Maguire (Cunninghame South) (SNP):** Good morning and thanks for being here. In your annual report, you state that

“The operating environment for social landlords is characterised by new demands, new and increasing risks, new uncertainties and new opportunities.”

Can you expand on what those are?

**Michael Cameron:** It is safe to say that the social housing sector faces a range of challenges and potential risks, and that it faces a very different operating environment to the one that it faced five, six or seven years ago. We see a range of challenges.

One of the most obvious challenges is in social landlords stepping up to the target that the Scottish Government has set to deliver about 35,000 new homes for social renting over the next few years. That brings a range of opportunities, challenges and risks. Many landlords are considering getting back into building houses, which brings financial challenges and risks. Directors routinely talk about the range of risks that landlords face from the wider economic environment. There is probably not a conversation that goes on in this building without some reference to Brexit: landlords face challenges around some of the implications of Brexit—both

finance and people risks. There is quite an array of challenges and risks for social landlords.

Every year we review the risks and seek to understand how each landlord is placed to handle them. We form our engagement with the landlords in accordance with that annual risk assessment.

**Ruth Maguire:** I am interested to hear what specific things you will be doing to help landlords to operate effectively. You talked about financial and people risks around Brexit. Can you speak more about that?

**Michael Cameron:** The people risks can take some time to play out. However, we are conscious that many social landlords rely on labour that is provided by European Union nationals, and that many landlords have EU nationals residing in their homes. There is a range of uncertainties around both the availability of labour to social landlords and the potential impact on social landlords of not being certain whether people will remain in those homes or of people not being able to avail themselves of the kind of support from the state that is currently available. There is a range of uncertainties.

The implications of the United Kingdom leaving the EU are also affecting the finance markets. We are already seeing cost pressures emerge, in particular in relation to materials for construction of new houses, and we are seeing cost pressures build in the supply chain, which are principally consequences of the impact on the pound and the exchange rate.

**Ruth Maguire:** What is the regulator doing to support landlords through that?

**Michael Cameron:** It is not our role to support landlords. Our role is to ensure that landlords protect the interests of tenants and other customers.

09:45

Through a risk assessment, we identify and publish the range of risks that we think exists. We encourage landlords to consider those risks and to reflect on their business plans to ensure that they accommodate those risks. We also put out guidance around business planning for social landlords to ensure that they are best placed to respond to the risks and challenges that they face.

**Kay Blair:** I will add briefly to that. There are real risks growing in the sector. Capacity is an issue, both in the organisations themselves and in general with regard to new house building. The skills to which Michael Cameron alluded have diminished, which is an issue that must be faced.

Our approach is risk-based and proportionate. We identify where we think the most serious

harms might occur and where there are serious weaknesses, and we try as far as possible to work with organisations to get them to rectify the situation.

Rent affordability is a key risk in the sector. There are increasing costs for landlords, but tenants' income is not rising at the same rate. Tenants are very concerned about how they will afford to pay their rent.

**The Convener:** Do you want to add anything on that, Ruth?

**Ruth Maguire:** No—that is fine.

**The Convener:** Alexander Stewart wants to follow up on some of those points.

**Alexander Stewart (Mid Scotland and Fife) (Con):** Yes.

I thank the witnesses for their comments on the uncertainty and risk that they face. However, from uncertainty sometimes come opportunity and the potential to go forward and develop. What opportunity do you see coming forward in the turbulent times that we face? What role should the Scottish Government play? Is there an increased role for it in providing support to try to mitigate some of the risks and uncertainties that you face, or are there other organisations and individuals with whom you need to communicate and develop new relationships as you go through this uncertain time?

**Kay Blair:** It is absolutely key—as you mention—that the Scottish Government engages and understands the opportunities as well as the challenges. There are opportunities in shared services, for instance, and in looking at value for money. It is not all doom: there are a lot of good things on the horizon.

**Michael Cameron:** I think that it would be safe to say that, over the past 30 to 40 years, social landlords have been among the most innovative and responsive organisations in dealing with changing environments and challenges. That is a real strength of the sector. The place of those organisations as community anchors and hubs for services presents a real opportunity.

There are challenges, too. For example, the potential withdrawal of other services from the local environment and communities, with social landlords being viewed as the last organisation standing, can bring real challenges. However, there are opportunities in that respect too, and the sector has in the past risen to take such opportunities.

Supporting social landlords, as the Scottish Government currently proposes to do through increased funding to support new build, is hugely important. Picking up on the theme that Kay Blair

highlighted, a clear focus on effective cost control and value for money will be crucial.

**Alexander Stewart:** The whole idea of shared services gives us a great chance to see what can be done. Have you looked at what others have done—in other areas of the country, in parts of Europe or elsewhere—to take on board opportunities and manage them to benefit social landlords and organisations such as your own that are trying to provide support?

**Kay Blair:** In terms of support to the sector, there is a role for trade bodies to be proactive, give help and share best practice. That would be helpful. Already, quite a lot is taking place on sharing services and looking at how things can be done better, and trade bodies are taking note of what is going on elsewhere.

**The Convener:** In your answer to Ruth Maguire, you mentioned skills—I was not sure whether that was in relation to Brexit or to getting back in the game to rebuild social housing with a significant budget over the next five years. I was not sure whether you were talking about skills in the construction sector or the skills of senior managers of housing associations who perhaps have not managed projects for new-build developments for a little while. Can I tease out the skills challenges a bit more?

**Kay Blair:** I am talking about both. Governing bodies must ensure that they have the necessary skills to develop as they want to. Sometimes an organisation has got into difficulties because it has not understood what it is getting into. It is essential that bodies have the skills to understand complexity and to understand what they do not know, so that they can bring in expertise from elsewhere.

In various seminars and briefings that we have had, we have seen that there are skills capacities in the housing sector—in building skills and development skills. If someone is a development officer in housing and construction in Scotland, they are in strong demand. A good career opportunity probably beckons.

**The Convener:** If there was a small gap site in the area of a small or medium-sized social landlord with maybe 800 or 900 units, that body might think of speaking to the Government or the local authority about getting housing association grant money for 40 or 50 units. However, the body might think, “Och, it’s been 10 years since we built anything.” It would have to tie up the lending from the banks with 25-year projections and it would have to deal with construction companies and procurement processes. Those are the skills that I was thinking about, which have maybe not been used as actively as they were in the past.

Would the Housing Regulator have a role in the process of support? Would it have a role in signing off any business plans? Alternatively, would its role be to look back and see how the sector has performed? Where would it sit in that mix?

**Kay Blair:** We do not give advice. Every year, we look at organisations’ business plans and the complexity and scope of their plans, to assure us that they know what they are doing. People have sometimes got into trouble when they have not known enough about what they are doing and what they are expanding into.

We have found that the sector is very diverse. That is one of the sector’s attractions, but it has challenges. As you said, some small organisations have decided not to develop but just to manage their properties.

**The Convener:** Does Mr Cameron want to add anything?

**Michael Cameron:** Many associations already collaborate with other organisations that have the kinds of skills that you talked about. Even when an organisation is developing properties to own and let, it does not always undertake all the work itself. The sector’s approaches to sharing such services are quite well developed.

However, we have certainly identified a risk, given that there has been a reduction in delivery over time by a range of organisations that now want to get back into delivery. As Kay Blair said, they need to ensure that they have the right skills—skills for the process of developing new houses and the finance skills that are required to support that—at board and committee levels and within their staff. They also need to ensure that there are appropriate skills and capacity in the supply chain to be able to deliver effectively.

**The Convener:** What about the regulator’s role? Kay Blair mentioned that it is not the regulator’s position to look at business plans and that kind of thing. Would the regulator have a retrospective role—for example, of looking back at developments over the past five years and seeing what lessons could be learned from the social rented sector?

**Kay Blair:** We do look at business plans. That is part of our risk assessment.

**The Convener:** Are those plans for new developments? Do you look at business plans for any new developments in isolation or in the round as part of the overall package?

**Kay Blair:** In the round.

**Michael Cameron:** There are a number of ways in which we might become involved. As Kay Blair said, each year, we look at the organisation’s overall business plan, which includes its proposed



future developments and new-build projects. We look at that in the totality of the organisation's finances to understand the impact. We have a role when an organisation is seeking to borrow money to build houses and, as part of that, is looking to dispose of some assets by way of standard security, because the organisation would require our consent to do that. That is common when there is a new-build development; we would look at the whole proposal in that regard. However, our role is principally to look at the organisation's overall finances and ensure that none of its proposed business developments would adversely impact on tenants' interests over the longer term.

**The Convener:** That is helpful.

**Andy Wightman (Lothian) (Green):** I have a question about homelessness but, before that, I will pick up on the answers that were given to Ruth Maguire's earlier question. Do the risks, uncertainties and opportunities that you have talked about in terms of community-based housing associations apply equally to local government?

**Kay Blair:** We have a different way of scrutinising local authorities, in that we have a shared risk assessment, which means that we work with other regulators. We look at service delivery for local authorities but not at the financial or governance situation, and there is shared scrutiny.

**Andy Wightman:** Do you say anything in your annual report about shared scrutiny of local government?

**Kay Blair:** We do, but I do not remember on what page. In terms of our charter, we have found that local authorities are doing well on tenant satisfaction but are slightly below the satisfaction levels that RSLs achieve, although that is often to do with the context in which they operate. However, it is important that local authorities' tenant satisfaction level is improving. We can now benchmark that information, because we have enough information from the charter to see where the improvements are and to make comparisons. That has been a catalyst for improving standards.

**Andy Wightman:** That is excellent. To move on, you reported a 4 per cent drop in homelessness numbers, which is perhaps not statistically significant. Do you have a view on the state of homelessness and the contribution that the housing options approach is making to tackling it?

**Kay Blair:** We are very concerned about homelessness. I know that the numbers of homelessness applications are down, but we need only look at the streets and see people sleeping rough to know that there is a problem. The problem is complex, because it is not just about providing somebody with a house; for most

homeless people, it is about providing them with a package of health and wellbeing support that goes beyond providing just a house. However, we are concerned that too many people are homeless, so we will focus on that this year. We have looked at the housing options approach, which the Government produced guidance on, but we have to look at that in more depth this year as one of our tasks.

**Michael Cameron:** To echo what Kay Blair said, homelessness will remain a key focus for us over the next year and probably beyond. It is the single biggest issue on which we engage with local authorities. Kay Blair referred to the housing options report, which we published back in 2014 and which had a clear recommendation to the Scottish Government that guidance was needed for local authorities on the implementation of the approach. That guidance was put in place last year, so we will revisit the approach to ensure that the guidance is being appropriately adhered to and implemented.

10:00

**Andy Wightman:** That is very welcome.

I have another question. Your annual report highlights that there is room for improvement in the services that are provided to Gypsy Travellers. What do you intend to do about that in the year ahead?

**Kay Blair:** The situation is a concern for us. Our report shows clearly that Gypsy Travellers do not have the same satisfaction levels as other tenants in housing have. This is the first time that we have had full data. We are looking at the issue in more depth to find out what the sites that have the most problems are doing about that.

I am pleased to say that we have Gypsy Travellers on our national panel, which has helped to give us feedback on what is important to them. Rent and the quality of the site are key factors for them. The situation is a concern and we are again focusing on it this year.

**Michael Cameron:** The committee will be aware that, last year, the Scottish Government published minimum standards for Gypsy Traveller sites, which will be incorporated into the social housing charter from this April onwards. That will become an important focus for us in our plans for scrutiny of landlords' delivery of services to Gypsy Travellers. We will treat those standards as a benchmark for how landlords are performing.

**Andy Wightman:** I have a final, brief question. You said that you have just over 50 staff, but I think that I recall that the figure of 48 was given in your report as the average number of employees in 2014-15. Does that mean that your numbers

had gone down and are now above 50, or is that just a ballpark figure?

**Michael Cameron:** Our numbers went down as part of a change exercise, which we continue to go through to ensure that our resources are appropriately aligned with our priorities. We have turnover and we bring new people in. When the report was produced, the figure of 48 was accurate, but we currently have just over 50 people in post. As I said earlier, our proposed budget settlement for next year should enable us to maintain our level at around that figure.

**Kenneth Gibson (Cunninghame North) (SNP):** Registered social landlords must meet the energy efficiency standard for social housing by 2020. What progress is being made towards reaching that target?

**Michael Cameron:** As you said, 2020 is the target date for achieving the energy efficiency standard. We have been monitoring landlords' progress towards that. In the most recent year, landlords reported to us that just over 68 per cent of all houses that they let and which fall within the scope of the standard comply with those provisions.

The Scottish Government plans to include the energy efficiency standard in the new charter from April. That will put it on a more formal footing and give it a statutory status, and our monitoring and engagement with landlords will reflect that new status. We will look to focus on landlords' delivery of the standard up to the target deadline, and we will publish annual monitoring figures on that.

**Kenneth Gibson:** I saw the figure of 68.6 per cent, but that relates to the 160 registered social landlords. What variance is there between landlords? Are some at 30 per cent and some at 90 per cent? Are all the RSLs on track to meet the target by 2020, or are there difficulties that need to be addressed along the way? It is only three years until 2020, and quite a large number of tenants are still expecting the relevant measures to be taken.

**Michael Cameron:** You are right that there is a variation in compliance. That is an important factor that we will take into account in our annual risk assessment. We will do that in a similar way to the way in which we monitor and engage with landlords on their delivery of the Scottish housing quality standard and its energy efficiency element. We will engage with any landlord that has further to go than the average suggests is the overall picture to ensure that it has the appropriate plans and resources in place to achieve the standard by the target date.

**Kenneth Gibson:** Are you confident that all RSLs will achieve the standard? You have not said what the variance is. Are any falling behind? Do you have particular worries about any of them?

How does the RSL sector compare with the 32 local authorities on reaching the target?

**Michael Cameron:** We have figures about variance and the comparison between local authorities, which we can give you.

We will engage with landlords, particularly from April, when the energy efficiency standard will become a formal part of the charter, which will bring the matter clearly within our remit. We will engage with any landlord when we have a concern about the distance that it has to go and the capacity issues that it might have. We will require such landlords to provide us with a clear plan that takes them to the compliance level, and we will monitor and report on their delivery of those plans over the coming years.

**Kenneth Gibson:** That is positive; I am pleased to hear that. Will you say how RSLs compare with local authorities?

**Michael Cameron:** I have those figures with me. If you give me a second, I will get them.

**Kenneth Gibson:** There will be a variance between local authorities.

**Michael Cameron:** There absolutely is.

The overall average of 68.6 per cent of houses complying with the standard breaks down to 72.6 per cent for RSLs and 65.2 per cent for local authorities.

**Kenneth Gibson:** So local authorities need to do more to catch up.

**Michael Cameron:** They are marginally behind. That does not necessarily surprise me, given the age profile of the stock in the two areas of the sector.

**The Convener:** Graham Simpson wants to ask a follow-up question.

**Graham Simpson:** You said that you had to intervene in relation to three RSLs. Can you give us some details about why you had to do that?

**Kay Blair:** We had to do that because we felt that, particularly in one case, there was a danger of insolvency. The boards of those RSLs were not taking control of the situations that they faced and did not have the expertise to turn the situations around. Sometimes, our statutory intervention was welcomed by the organisation, but sometimes our experience was more difficult and challenging.

**Michael Cameron:** We have used our statutory intervention powers in relation to four organisations. As Kay Blair mentioned earlier, we are now able to end the statutory interventions in two cases because the organisations have made sufficient progress and improvements, with the support of the statutory appointees.

As you just heard, the key thread in all those cases involved weaknesses in the organisations' governance. That is what led us to have to intervene, particularly when it became clear to us, through our engagement with the organisations and the support that we provided for self-improvement, that the organisations either did not have the capacity or did not have the willingness to address the fundamental issues that they faced.

**Kay Blair:** You might be interested in looking at our website, where the first of the reports on those organisations is available. It is quite illuminating with regard to what the problems were. We will publish the second report soon. We are keen that the sector learns from the mistakes that were made and that people take on board the messages about recognising complexity and diversity and ensuring that the necessary skills and funding are available. Our concern, particularly with regard to one of the cases, was the threat of insolvency if no action was taken.

**Graham Simpson:** Which one was that?

**Michael Cameron:** That was Muirhouse Housing Association. We have concluded our statutory intervention in that case and published our review report of that intervention. That is now in the public domain.

**Graham Simpson:** What are the two organisations that you are still involved with?

**Michael Cameron:** We are still involved with two organisations, but the names have immediately gone out of my head.

**Kay Blair:** It is Ferguslie Park and Wellhouse.

**Michael Cameron:** No—we have now ended our engagement with Wellhouse.

**Kay Blair:** Oh, right.

**Michael Cameron:** It is Ferguslie Park and Antonine.

**Kay Blair:** Yes, but we have not published the report on Wellhouse yet. That will probably be done at the end of next month.

**Michael Cameron:** Hopefully.

**Graham Simpson:** You have created a digital comparison tool. What is the take-up of that? How many people are using it?

**Michael Cameron:** We do not have hard-and-fast figures on how many people use it. However, we get strong anecdotal feedback on the popularity of the tool. We might be able to provide the committee with webpage hit information, which will give you a sense of the level of usage of the tool. However, from the feedback that we get from tenants, our tenants panel and landlords, it seems

to be a popular addition to the range of tools that are available.

**The Convener:** We are coming towards the end of our evidence session, but I want to follow up on one thing with Kay Blair. Earlier, she mentioned challenges relating to tenants' income, which made me think about tenant arrears and how those are managed by registered social landlords. Do you have any general comments in relation to tenant arrears and some of the causes of those?

I have a constituency reason for asking my next question, but I will keep it fairly general. I am interested to know about the housing investment policies that some social landlords might have that mean that they may not invest in individual properties where tenants have housing arrears. Sometimes, people with quite small levels of housing arrears might miss out on stock investment.

I will leave that issue hanging there. My question is more about the level of tenant arrears and the issues for housing associations and local authorities. If people are in arrears, should there be any consequences for the level of investment in their property during an investment programme?

**Kay Blair:** We obviously keep a focus on arrears. We have issued publications about managing arrears and landlords being sympathetic to tenants' cases if they get into trouble and cannot pay their rent. We are concerned about the issue, but nothing is escalating at the moment. Obviously, we will keep an eye on it, because we are aware that costs are going up in the organisations but that tenants' income is not likely to go up in a proportionate way.

On your question about investing in current—

**The Convener:** Perhaps I should give some clarity on that. I apologise for conflating two questions. I have experience of a registered social landlord that had a policy of not doing investment programme work, such as fitting new kitchens or bathrooms, in some houses where the tenants were in rent arrears. I had significant issues with that. I corresponded with the organisation and, I think, I got a result for the constituent in question. I do not want to single out that registered social landlord and I have been careful not to name it. My question is more about how local authorities and registered social landlords seek to take action to focus minds on rent arrears and what the consequences are for what can sometimes be quite vulnerable tenants. That is one example where I thought that the approach was deeply unsatisfactory. Any reflections on that would be helpful.

**Michael Cameron:** When decisions are made on investment, we expect landlords not to take account of individual tenants' circumstances in the

way that you have described. We are aware that there are a number of incentive schemes that landlords can operate to encourage full payment of rent, but we would absolutely be interested in any landlord that takes an approach that seeks to penalise, in terms of investment, tenants who are in arrears.

**The Convener:** That is helpful. I have deliberately not named the organisation, but we will correspond separately in relation to that issue. I just wondered whether there was a general theme of that happening across the board or of other unintended consequences in relation to rent arrears.

**Kay Blair:** No.

**The Convener:** Thank you. Some of my colleagues want to get back in, but I am afraid that we have run out of time. However, there is always time at the end of an evidence session to allow the witnesses to make any final remarks or comments before we move on to the next agenda item.

**Kay Blair:** I would just like to thank the committee again for inviting us. We have had a good year as a regulator. We are concerned about the economic situation, the impact of Brexit, inflation, value for money and rent affordability. We have to maintain the confidence of lenders in the sector. There are exciting opportunities, but obviously there are big risks. We are keen that the sector identifies and mitigates those risks wherever it can.

**The Convener:** That concludes agenda item 2. I thank Mr Cameron and Ms Blair very much for their evidence.

I suspend the meeting briefly to allow us to prepare for agenda item 3.

10:16

*Meeting suspended.*

10:18

*On resuming—*

## **“Scottish Public Services Ombudsman Annual Report 2015-16”**

**The Convener:** Welcome back. Agenda item 3 is the “Scottish Public Services Ombudsman Annual Report 2015-16”. The committee will take evidence on the report from the Scottish Public Services Ombudsman, Jim Martin, whom I welcome to the meeting. He is accompanied by Niki Maclean, director, and John Stevenson, head of complaints standards.

No one has indicated that they will make an opening statement, so we will move straight to questions.

**Ruth Maguire:** I am interested in hearing more about the SPSO’s new responsibilities that relate to the Scottish welfare fund, which was touched on in the helpful briefing note that was sent to the committee. I understand that there will be a full report, but I would like to hear Mr Martin’s reflections on experience to date, particularly in relation to case load.

**Jim Martin (Scottish Public Services Ombudsman):** The transition to bringing the responsibilities for the welfare fund into the ombudsman’s office appears to have gone very smoothly, and we seem to have got the confidence of the local authority sector and the third sector as a result of the way that we have approached that and brought things in.

I will ask Niki Maclean to go over the details of the work that we have done so far, but I have a caveat. We are only six months into our first year of dealing with the welfare fund. There will always be issues around having a full year and how to look at the numbers. There are also wrinkles that have to be ironed out in the first year of any operation.

**Niki Maclean (Scottish Public Services Ombudsman):** On volumes and timescales, people will be aware that the crisis grants have to be dealt with within one day and that there are 21 days for community care grants. In our performance to date, we are achieving those timescales in pretty much every case. That compares quite favourably with the previous local authority second-tier stage performance. We are currently able to process that work within the statutory deadlines very comfortably.

A significant benefit of the system that we operate is that it is very easily accessible. We take those cases over the telephone, and that is

working very well for applicants. We have dealt with around 175 decisions so far.

It is very early days—I think that we are now in month nine or month 10—but one change that we have seen is that, compared with last year, the split between crisis grants and community care grants has altered. Currently, there is a split of around 50 per cent between the two types of grant. It is difficult to say whether that is an on-going trend, but previously there were a much higher number of community care grants and a much lower number of crisis grants.

**Ruth Maguire:** On your experience of working with the local authorities, particularly on the crisis grants, you said that you think that you have the confidence of the local authorities and that things are working well. Can you tell us a bit more about that?

**Niki Maclean:** I think that I referred to confidence in our ability to process the applications. Broadly speaking, we are working well with the local authorities. One of the perceived benefits of the system is that we are independent, and that is bearing fruit in the sense that we can offer advice, guidance and direction to local authorities, particularly on the level of information that they provide to applicants when they are reaching decisions. We are seeing a requirement for additional explanation and information for applicants when they are being awarded or denied those grants. That is where our expertise will really be of benefit.

**Jim Martin:** One of the early concerns that was expressed to us in the extensive consultation that we did was about whether we would be imposing a national standard on local authorities. We have always said that we want to achieve not a national standard but a consistent approach, so that everyone understands where they are and the rules apply consistently. We have not had any challenges yet to suggest that people have found any inconsistencies. In that regard, the intention of having a single Scottish port of call appears to be working. However, as Niki Maclean said, we are around month nine, so we have a long way to go.

**Kenneth Gibson:** Good morning. Following on from Ruth Maguire's questions, I refer to page 7 of paper 4, which contains your submission. You say:

"Since 1 April 2016 SPSO has had the ability to make binding decisions in relation to Scottish Welfare Fund review cases."

That is very welcome, but in your paper you also express frustration that you are not able

"to make binding recommendations in specific, limited circumstances"

elsewhere. In the third paragraph of section 3.4 of your submission, you point out:

"An organisation that did not want to implement a recommendation could simply ignore it. This seems to me inherently unfair."

I realise that you have done this further down the page, but can you expand a wee bit more on what should be done about that?

**Jim Martin:** This must be an important issue, convener, because I saw it in *The Times* this morning.

Let me share my frustration. I have been ombudsman for eight years and this is the last time that I will come before a committee like this with an annual report. Consistently over the last seven or eight years, I have said that I have seen no reason for the ombudsman to have binding powers. The reason for that is that the recommendations made by the ombudsman have invariably been carried through—sometimes with a bit of persuasion. However, I would say that, in the last two years, there has been a sea change in the attitude of some public bodies towards our recommendations, and I think that whoever succeeds me as ombudsman is going to need some kind of extra power in their armoury to ensure that recommendations are carried forward.

The point that I was trying to make in my submission was that once we make a recommendation I have no power to ensure that that recommendation is carried out, other than persuasion and the threat of public exposure. On one recent occasion, the chairman of an organisation said to me, "So what, Jim? What are you going to do?" I said that I would take the matter to Parliament. He said, "That's great, Jim. You've been to Parliament and they don't even have a process for dealing with your special reports. You asked them to have one and they said no. So what's the big deal?"

In the case that you have referred to, which may well come to Parliament in the excitingly named "Other report" provision that I have—and which, I should add, has never been used since 2002—a particular local authority in Scotland agreed to a recommendation that recompense be given to someone who had been left out of pocket. However, 18 months to two years later, it is still not carrying out that recommendation, and it is finding lots of obstacles to put in the way. In my view, at that point—or at some point in that process—the ombudsman should have some kind of power in order to make things happen.

If I were a private individual—a citizen—coming to the ombudsman, my recourse would be judicial review. That would be a big, big step, because it is very expensive and very difficult to achieve. For a public body that does not want to comply with an ombudsman's recommendation, the route is to ignore it, and at the moment, very little can be done about that.

I am not arguing for binding recommendations in all ombudsman matters, because I believe that implementing the recommendations through partnership and a sense of doing the right thing is the way to go. It works for every other ombudsman in the United Kingdom, and I think that it is the right way. What I am saying is that, for those few cases in which my successor finds that authorities simply want to ignore the power or to say that the ombudsman really has no power, they need something in their armoury to back them up.

**Kenneth Gibson:** I share your concerns and frustrations, Jim, and I note with alarm that you end the second paragraph of section 3.4 of your submission by saying:

“More significantly, the organisation’s obstruction has delayed justice.”

That is clearly an issue that could be addressed.

You talked about a sea change in public bodies. Now that you are sitting at a parliamentary committee, why not name and shame the organisations that are just blanking you when a recommendation has been made? This is your last year as ombudsman—go out in a blaze of glory. Come on—let us name and shame some of these people. Why not, if, as you have said in your report, we are trying to get justice?

**Jim Martin:** Thank you for that invitation to rant.

**The Convener:** I am sure that you will not rant, Mr Martin.

**Jim Martin:** One of the problems that we have in the public sector in Scotland is that there seems to be a view abroad that naming and shaming leads to improvement—it does not. Naming and shaming leads to defensive cultures in public bodies, and it leads to officials being less keen to be transparent and defending to the nth degree decisions that have been taken and which are wrong.

I will give you one example from my dealings with chief executives over the last eight or nine years. The chief executive of a health board asked me not to lay a report before Parliament but to issue a decision letter, because if the decisions were reported to Parliament, there would be more publicity and more damage to the authority—that kind of thing. We have found that if we work alongside public bodies to generate a culture of improvement and of learning from things that have gone wrong, things change and improve. I therefore caution against the naming-and-shaming culture.

10:30

I have a second and anecdotal reason for making this point. In a conversation that I was having with some senior private sector business

colleagues last week or the week before, I was trying to encourage them to think about bringing their skills and talents into the public sector, and their most common comment was, “Why the hell would we put ourselves through that? All we see is you going before committees who want to name, shame and pillory.” We in Scotland need to get past that and embrace a culture that is designed to be transparent, certainly, but which is also designed to engender improvement.

Thank you for allowing me to rant, convener.

**The Convener:** Was that a rant?

**Kenneth Gibson:** I do not think so.

I had a case in which a financial ombudsman had awarded £186,000 to a constituent of mine and, after two years, the organisation had still refused to pay this retired individual a penny. I told the organisation that, if it did not pay up, I would name and shame it, and it wrote the cheque within a couple of weeks. Public bodies might think differently to private bodies but if an ombudsman is being blanked year in, year out, surely the person who has come to you will want the same kind of approach because they want justice. I know that you have made recommendations about decisions being binding in certain circumstances but what is an individual supposed to do if justice is being delayed, the organisation is continuing to say no and there is no naming and shaming or binding power? You can understand how the individual must feel in such circumstances.

**Jim Martin:** I do, and that is exactly why I am asking for this power to be given. The problem is not that you are unable to name and shame the organisation but that the organisation has no one to tell it that it must do something. What I am saying is that if we get to such a situation in the public sector, we must trust whoever is sitting in the ombudsman’s seat to use that power appropriately. They should be given the power to make sure that people who do not want to carry through judgments, decisions and recommendations actually carry them through.

**Kenneth Gibson:** Thank you.

**The Convener:** That was a really helpful question, Mr Gibson, and I want to tease it out a bit more. Mr Martin, you have said that you do not have many weapons, if any, in your armoury to make binding decisions and to enforce compliance; you have also said that you do not want to name and shame but that, in some circumstances, some decisions should perhaps be binding. Can you be a bit clearer about when decisions should be binding and about the additional powers that you would like?

**Jim Martin:** As I have set out in my paper, when a decision has been reached and an

organisation does not intend to challenge it in court but also shows no intention of carrying out the recommendations, the ombudsman should have the power to say that those recommendations are binding.

We must get past naming and shaming. You must remember that we were the first ombudsman office in the United Kingdom with the ability to publish our decisions—and Parliament was the first to understand the need for that. We publish those decisions in summary form to protect the anonymity of the people who have made the complaints and, sometimes, of the professionals at the centre of them. Every month, I publish 60 to 70 decisions and in 95 per cent of them, I will name the health board, the local authority, the housing association, the prison or whatever it is. That information is put in the public domain. While we are in the process of trying to get a recommendation carried out—and given that Parliament has told me that I need to do that in private, which is something that I support—it is not appropriate to name and shame. I should also point out that you have given the ombudsman the power to publish anonymised summaries at the end of the process.

I want to move us on a wee bit. The other part of what I am asking for is commonsense application of the information that the ombudsman has. Currently, if as a result of an investigation I have a piece of information that I believe highlights a health or safety risk, I can share that with people where I think appropriate. However, there are other organisations that are carrying out investigations and I might have a piece of information that, in and of itself, does not meet that high bar, but which I know would assist an investigation by, say, the General Medical Council or the General Dental Council. At the moment, I am precluded from sharing that information with them. Every year, I receive requests from such bodies—and from Healthcare Improvement Scotland—for information that I have and which I know would be useful to them, but I cannot share it with them. That does not seem to be terribly wise.

Parliament might, while ensuring that the rights of individuals to have their data protected are maintained, want to give some consideration to enabling the ombudsman to help other regulators and bodies carry out investigations in the public interest. The whole thing sits together.

**The Convener:** You are soon to be the outgoing ombudsman and to move on to pastures new, Mr Martin. When someone is in post, they are independent and must administer the rules according to the structures and statutes that they have been given. However, as you leave the post, you have an opportunity to clarify how you would

like to see the post develop in the future, with stronger, more binding decisions—not with naming and shaming, but with real and powerful levers that the future ombudsman could use. Once you are no longer in post, will you be keen to continue to work with Parliament and Government to push some of that forward, given that you will be in a stronger position to do so?

**Jim Martin:** Is that a job offer, convener?

**The Convener:** I cannot even get a job myself.

**Kenneth Gibson:** It will mean that this will not be your last evidence session, Mr Martin.

**Jim Martin:** I have held a number of high profile posts in the past. At one time—most people will be too young to remember this—I was general secretary of the Educational Institute of Scotland. I have always taken the view that when you go, you go. Today, I am giving you a step for a hint that it is perhaps time to revisit what Parliament thought in 2002 and see whether it is relevant in 2016.

I could go on forever, but one thing that Parliament should be aware of is that the SPSO is probably perceived at a higher level internationally than it is in Scotland. The International Ombudsman Institute—the worldwide body—recently prepared a paper on behalf of the United Nations for countries that are thinking of setting up an ombudsman system, and it mentions only two countries as examples of innovation: South Korea and Scotland. Together, Parliament and the SPSO office have built an evolving and improving ombudsman service for Scotland, and everyone in the rest of the United Kingdom and Ireland is looking at it. I hope that Parliament will encourage my successor to continue with that.

One of the things that I have found frustrating over the period is that it has been difficult to engage with Parliament—and to some extent with Government—on the general powers and direction of the ombudsman. For example, meetings with the previous committee were sometimes quite adversarial. The approach has been—quite rightly—about scrutiny, but not about strategic thinking. If the committee wants to think about how it might enable my successor to come and think strategically with the committee and the Scottish Government, that sort of innovation could bear a lot of fruit.

**The Convener:** We will reflect on the evidence that we have heard this morning. We have more questions to ask today aside from those on reform, but I was trying to tease out whether your comments were a parting shot or on-going dialogue. Jobs are not in my gift, Mr Martin.

Mr Simpson will follow up on some of that before we move to another line of questioning.

**Graham Simpson:** Yes—thank you, convener. I think that this is quite outrageous. It is a matter not of naming and shaming, but of accountability. Councils are funded through the public purse. They are—or they should be—accountable to the people who pay for them, and that is taxpayers. There is no point in having an ombudsman if it does not have the power to do anything. If people are ignoring your recommendations, we have a right to know who they are. They should not be able to hide behind the cloak of anonymity. I think that this is absolutely outrageous.

**Jim Martin:** Just to be clear, I have yet to be in a position where a body has not carried out my recommendations. My issue is that it is now taking me quite a bit longer to get authorities to do that, and it is important for the ombudsman to have that extra power in their armoury. It is also important that the relationship between public bodies and the ombudsman is looked at carefully.

I was quite—what is the right word?—surprised by the submissions for our strategic plan this year from the Society of Local Authority Chief Executives and Senior Managers and the Society of Local Authority Lawyers and Administrators in Scotland. Because of the resourcing issues that the ombudsman's office faces, we might look at a different funding model, and I had floated the idea that there could some element of the polluter paying, so that, if we get more cases that relate to one local authority, it would pay a little more or whatever.

I expected debate about that, but I did not expect our chief executives and heads of legal services to respond by saying that the solution is to charge people for access to the ombudsman. I find that abhorrent in itself, but maybe it speaks to a cultural problem that we have. If our response to austerity—whether we believe that it is there or not—is that the punter should pay, I think that that is wholly wrong. If we start to put barriers between our most vulnerable people and the people who have power over their lives and their services, and if we go down the route of making it difficult to resolve their problems, that will not be the Scotland that I know. Maybe we have to tease out some of those things and make one or two of our fundamental principles very clear.

**The Convener:** I have you on my list to ask another question later, Mr Simpson. Andy Wightman has a question.

**Andy Wightman:** Thank you, convener. I welcome the witnesses. As a new MSP, I am quickly becoming familiar with constituents who have complaints about various public bodies, and with your role in that. I was particularly interested to read in your annual review about the complaints handling framework and the work that you do in advising public bodies to improve it.

I am not sure whether you agree, but in an ideal world we would not have an ombudsman because there would be no need for that level of complaint. In that sense, it is useful to track the kinds of complaints that you get and where they come from. Will you give a bit more detail on the public bodies that you have worked with during your time in office, the extent to which improvements have been made and how the processes that you have put in place, such as the complaints handling framework, will contribute to better service delivery for the public?

**Jim Martin:** As John Stevenson is the architect of much of that, perhaps it would be best if he answers the question.

**John Stevenson (Scottish Public Services Ombudsman):** Perhaps I should start by explaining that the model complaints handling procedures that we have developed and implemented include a requirement to report against performance and a set of key performance indicators, the purpose of which is twofold. First, it allows organisations to understand internally how they are performing end to end in managing complaints. Secondly, it allows those bodies to start to compare, contrast and benchmark their performance against similar organisations. That is the first tool that we have developed and are using to improve and to learn from complaints handling.

10:45

You will see in our annual report that we find that the percentage—the volume—of complaints that we uphold is still significantly high. Therefore, while we have model complaints procedures and the process for complaining is straightforward for our customers—the people who use public services—we find that, ultimately, the decisions that are made by public bodies are often erroneous, flawed or whatever, so when complaints come to the ombudsman's office, we uphold them.

We have looked at how we can further support public bodies' decision making. A tool that we have developed is the new complaints improvement framework, which looks at what an effective complaints handling service across organisations would look like. It identifies six areas of good practice and it allows organisations to self-assess their performance against each of those areas of good practice.

An area of good practice is quality—that is, the quality of the investigation process, the quality of the decision and the clarity of that decision when it is communicated to the customer. It focuses on conducting a thorough, robust investigation that responds to every part of the complaint that has been made, so that the body can be assured that



it has delivered its final and definitive response to complaints.

**Jim Martin:** You are the only parliamentary or assembly committee in Europe that has access to the information that comes through that process. You have that information, but it is not being used. For example, in local government, the Improvement Service manages the network of complaint handlers and gathers their information. There is valuable information there about the performance of local government.

We are about to put in place the social work and the health complaint handling processes. For the first time, the Scottish Parliament will be able to see across the whole of the public sector what is and is not working from a complaints perspective. I urge the committee to think about how to use that information not just to hold local authorities and others to account, but to spot areas where we can maybe collectively improve the services that we provide and encourage people to work together towards that improvement.

Wales and Northern Ireland will have that process in place next year or the year after; England has declined it, which is a bit sad, because I had hoped that we had persuaded Westminster to take that approach. However, you have this resource, and I encourage the committee to use it.

**John Stevenson:** The resource to which Jim refers tells us that, for the past three years in Scotland, local authorities have received about 60,000 complaints a year. On average, they close more than 80 per cent of complaints at stage 1, which is within five working days. By any standard, that is a good performance. The issue is about those 15 to 20 per cent of complaints that are not resolved at stage 1, and for the ones that escalate and eventually find their way to the ombudsman's office, it is about the clarity of the decision and how it stands up to scrutiny.

Lots of valuable information about performance is coming out of the local authority sector. A lot of good work is going on with the local government network group to benchmark and to compare and contrast performance for improvement. We are encouraged by that. The one area where we see room for improvement is learning from complaints. That is one of the indicators, and it is far more difficult for the local government sector to demonstrate.

The information is all there; it is all available to you, as Jim says. It adds value across the sector.

**Andy Wightman:** You note in the complaints framework part of the report:

"Notable differences between the two years were a reduction in requests from the local government sector and an increase in requests from the NHS".

Local government is formally accountable to local electors through elected members. The national health service is not—it is a national service. The services that it provides can lead to very serious complaints. Why has there been an increase in requests for advice and support from the national health service? Is it just because the NHS is feeling increasing pressure?

**John Stevenson:** There are possibly two issues to mention. First, we expect the requests for advice, guidance and support from the local government sector to decrease over a period of time, because there are now three or four years' experience of operating the model complaints procedure. We have the network, which is a great source of identifying and sharing good practice. It seems reasonable to assume that the need to come to the ombudsman's office for advice and guidance in relation to complaints handling will diminish over time.

Secondly, until recently, the NHS complaints procedure was different from the other models that apply around Scotland. We have done a lot of work recently and led on the development of a new NHS complaints procedure that will bring the NHS into line with the wider public sector in Scotland. That new complaints procedure will be introduced from 1 April 2017. In part, that explains the increase in inquiries from NHS complaints handlers regarding what good practice in complaints handling looks like, what the new complaints procedure will be and when it will be implemented.

**The Convener:** We have been talking about all the new data that we will have and we will be able to analyse the nature of complaints across all public bodies. Is that where the learning and improvement unit comes in? Could Parliament use some of that information? Could you say a bit more about that?

You seem to be saying that we have huge swathes of data from which themes are emerging about the types of complaints that are received, and that local authorities—and health boards and other public organisations—should analyse that data and improve how they handle certain services and functions so that complaints diminish in the future. Is it the learning and improvement unit's job to foster that work? Where would this committee sit as part of that process? I know that the learning and improvement unit received funding for one year only but, in the future, could this committee scrutinise it and look at the work that it is doing to drive the changes? What would that mean in practice? Data is wonderful, but sometimes it just sits and gathers dust on a shelf, or it sits in a table in an email.

**Niki Maclean:** As John Stevenson highlighted, one of the performance indicators that councils

have to report against is demonstrating what they have learned. Now that we have a standardised process and statistics are available on the volume of complaints, we can see that the one element of the framework with which organisations still struggle is how they can learn from complaints and demonstrate that learning. The purpose of the learning and improvement unit is to focus on encouraging public bodies to learn from complaints and we do that in a number of ways. We secured funding for one year and we have built funding into future budgeting to continue the work of that unit.

I will give you two illustrations of the work that that small unit of three people will undertake. We have never had the resources to produce thematic reports. Although only a small number of complaints come to the SPSO relative to the number of complaints received by the whole public sector, it is still possible for us to identify themes and opportunities for learning, so the unit does that identification and publishes thematic reports. The first thematic report—to be produced in March 2017—is on patients and obtaining consent, which is a theme with a number of issues. We feel that we can add some value to the health sector by providing advice and guidance. That is one illustration of the unit's work and we want to continue to produce thematic reports.

The second area that we are focussing on is our work with a small number of public bodies that generate high volumes of complaints or that have high rates of complaints upheld. High uphold rates are a result of not carrying out in-depth, thorough investigations at the late stage of complaints when they have become complex and intractable. We believe that we can provide support, guidance and further tools and techniques for public bodies that are in that position.

**The Convener:** That is helpful. At some point in the future when the learning and improvement unit has had time to bed in, this committee might be interested in hearing from staff directly. Set evidence sessions such as this do not give the time to go into detail on some issues, but that would be very interesting.

**Alexander Stewart:** It is very apparent that there has been progress because of the role that you play. It has had an impact on some of the local authorities and bodies that are being challenged by individuals who feel that they have a grievance, and it has got to the stage where 80 per cent of complaints are being managed at local authority level. My question is about training in those organisations—for complaints officers, for the heads of legal departments, for chief executives—and managing that to ensure that it is being transmitted across the organisations so that they can effectively manage complaints. There is a

role for you to play and for them to play in managing that. However, at the end of the day, if a complainant who has a problem progresses to second stage and then comes as far as you, there has been a breakdown in some of the communication and the training that should have taken place so that it did not get to that stage. If you then uphold the complaint at your end, there has been a failure right across the board.

**Jim Martin:** There is a lot in that, and I agree with almost all of it. One of things that Niki Maclean did was establish a training unit in our office. It has produced a set of e-learning materials that is currently being used across the national health service in Scotland through NHS Education for Scotland. It is being used by local authorities to train first-line complaint handlers and by some housing associations and some further education colleges. It is also being used in higher education in Ireland and local authorities in New Zealand, and it has been exported to and used by, I believe without credit—to us, anyway—the national health service in England.

That training unit is 0.5 of one person. You can do an awful lot with very little. Generally in the public sector in Scotland, we can improve our game if public bodies accept that it does not require a lot of resource to make great improvements.

I add, as an aside, that I argued until I was blue in the face that Parliament should have given me the right to license that material so that we could make an income from it outside Scotland, which would have helped to offset the impact of the 15 per cent reduction in my budget over three years. However, that is another issue.

The whole training element is something that is very close to our heart and we are working on it. Niki Maclean will add to that.

**Niki Maclean:** I will give a little more detail about the types of training that the unit delivers. As Alexander Stewart rightly says, the people at the front line of public services have to have the knowledge and skills to be able to deal with complaints. However, it is also about the culture and the ability to apologise very early on. We know that, if staff have the confidence and the training to do that, we get early resolutions. If they do not, the issues escalate.

We also provide training at the investigation skills stage, which I referred to earlier, and it is quite clear that there is more work to do at that stage. However, I cannot overemphasise the importance of the culture within the organisation. If the culture is such that staff are not confident, you can train for ever and a day and it will make no difference.

**Alexander Stewart:** You are right—you can train till you are blue in the face, but if there is a nervousness about the culture in the organisation—if there is a blame culture or the potential that someone might be scapegoated in the process and end up losing their role or responsibility because of a situation—that has to be taken into the equation.

However, that has to be managed. It should be at the forefront to say, “If we got it wrong, we need to get it right for the future.” It is interesting to see that there has been an increase in the number of health complaints, because I think that people in the health service are still very resistant when there is a complaint. They become quite defensive. Any time I have dealt with them in local government and since I came to the Parliament, I have found them to be very defensive when I tried to unravel a situation for a constituent who has had a complex complaint. The constituent becomes frustrated that, once again, they are not being listened to. They do not believe that the way they are treated reflects the customer service environment that they expect.

**The Convener:** It might be good to roll comments on health together. I know that Mr Simpson wanted to follow up on some aspects of health, so it might be helpful to hear from him before we hear comments and reflections on Mr Stewart’s contribution.

11:00

**Graham Simpson:** Convener, I will be very brief, because I know that we are up against the clock. Could Jim Martin give us more detail about the increase in the number of health complaints? Was there a particular reason for that, or were any themes emerging?

**Jim Martin:** The number of health cases coming in is high compared with when I began as ombudsman. There has been a phenomenal increase in the number of health complaints coming to the ombudsman. Those cases are also—by and large—more complex now than they were before. Health cases almost always require us to get clinical advice and they are very complex. A number of factors are at play. People are now more willing to challenge the professions. They are prepared to say to doctors and nurses, “I am not sure that that is right. What happened to my family member? Can we have an explanation?”

On Mr Stewart’s point about defensiveness, I think that that is beginning to recede in health. One of the areas in which health needs to do more work—and you will probably know this, convener, from your previous committee work—is that there is still a consultant-led culture in a lot of our larger

hospitals, where consultants still think of themselves as the reigning monarchs of their fields. That is beginning to break down a bit, and people are coming to us.

The kinds of areas that we are seeing people bringing us complaints about are roughly the same, although the volume is different.

I have to commend NES and the health boards for the approach that they took after the Francis inquiry into Mid Staffordshire hospitals in England. They set about working out how not to have a paragraph like the one in the Francis report that says that, had the chief executive and the chair of that trust listened to the complaints that were coming in and sought to analyse them, many of the deaths there might have been avoided. They set up working groups and courses on governance for their non-executive and executive directors and so on, to try to grapple with that. The Scottish health council, moving towards getting a more professionally based health complaints system, which John Stevenson has helped it to introduce, will take that a step further.

The most worrying thing for me is the percentage of complaints in health that I am upholding. I am upholding 50-odd—55, 56 and 51—per cent of complaints year on year. Those are all cases that have been “investigated” by health boards, yet we are upholding half of the complaints. One of the things that I hope will come from the new complaints process is that the health service will rethink how it approaches those complaints in the first instance, and that fewer of them will come to my successor and we will see a reduction in the uphold rate.

**The Convener:** Do you want to follow up on any of that, Mr Simpson?

**Graham Simpson:** I know that we are up against the time.

**The Convener:** I appreciate that. I know that Elaine Smith wants to touch on health and then has a final question. I will take that now.

**Elaine Smith (Central Scotland) (Lab):** Thank you, convener, and thank you all for coming along this morning. My question on health is perhaps for Niki Maclean. You mentioned your first thematic report on the issue of obtaining informed consent, and I am just looking for a bit more detail on that. Do you hope that that will encourage improvements? The thing that springs to mind for me is something that has been in the news recently, which is mesh implants for women. We are now hearing that mesh can still be used, as long as the woman gives her informed consent for it still to be used. I wonder whether the thematic report looks specifically at whether complaints have been made about whether consent was

actually informed and whether it was sought. That is quite a specific question about your report.

**Niki Maclean:** We can obviously only report on the complaints that people bring us. On the types of issues that have been brought and will be included, I think that there is a case study of about eight or nine cases. The types of issues that we see involve minor risks as a result of surgery that may not have been explained in detail; cases in which we feel that the amount of time between when information was provided and when medical treatment took place was not sufficient; and instances in which family members were not involved in the consent process as they should have been. That is quite a wide range of issues, but it is based on real case studies that have come to us.

The purpose of our thematic report was not simply to do what other ombudsman schemes have done, which is to put out reports about a particular issue; we wanted to be able to offer some guidance around that. We have developed guidance for cases that come to the ombudsman on the type of questions that we would ask health boards around the consent process and the type of things that we would expect boards to have done.

From memory, I do not think that we have had any complaints about mesh surgery. I can certainly double-check that, but it is not an issue that we have seen arising.

**Elaine Smith:** I want to go back briefly to the special reports that we discussed earlier. This question is for Mr Martin in particular. If I understand the situation correctly, you have proposed changes, which I am sure the committee will consider, with regard to special reports. Are you saying, as it seems to me that you are, that if an authority—I assume that it would be an authority—has not made a payment to an individual, as my colleague Kenneth Gibson explained earlier, you have the authority to bring a special report to Parliament and yet to date no special report has been issued? Why has no special report ever been issued to Parliament? You went on to say that an organisation that did not want to implement a recommendation could simply ignore it. Could the organisation still ignore it after a special report to Parliament? What would happen if you had issued a special report to Parliament? What would be the outcome in that case?

**Jim Martin:** The cheeky answer is that it is a question for you. For the past three or four years—or maybe five years now—I have been asking Parliament to come up with a process and procedure for how it would receive a special report. Basically, the answer that I have got is,

“Don’t worry about it, Jim—it’ll be all right on the night and we’ll deal with it when it happens”.

**Elaine Smith:** Can you clarify that point? Are you saying that you would not have issued a special report because you do not know what the processes are for dealing with such a report?

**Jim Martin:** No. In the past 18 months, we have at times been within a day of issuing a report. With one organisation, we were within a day of going to the Court of Session to require it to give us information that it had withheld, as I have Court of Session powers to do that. A public body was saying, “No, ombudsman—we are not going to give you the evidence that you require for your investigation,” so I had to go to the point of saying, “See you tomorrow in the Court of Session,” in order to get the evidence. I have had to tell other organisations that we were at the point of issuing a special report, and it has gone right down to the wire. The case that we were talking about earlier, for which the recommendation is taking a long time, involves the same authority to which I have just referred.

What is happening is that the legal departments of some of our public bodies are looking at my legislation and saying, “Right—how long can we postpone this for? How far can we push this ombudsman to see what he is or is not going to do?” My predecessor, Alice Brown, never had to issue a report between 2002 and 2009, but we have always gone to the brink. As I said at the beginning, I have seen a change in culture over the past two years in which people are playing the system. That is why I think that you, as a Parliament, need to understand what you are going to do when my successor brings a special report to you. Where is it going to go, and who is going to deal with it? You have to give the ombudsman that bit of power that will make public bodies sit up and take notice.

**Elaine Smith:** You are requesting that we look at extra powers. I suppose that I am just trying to clarify whether you are not using the powers that you already have. Thank you for your answers.

**The Convener:** It is clear that all the committee members have listened very carefully to your appeal for additional powers and enhanced processes, for example, in relation to special reports. I have no doubt that we will analyse that appeal carefully when we consider the evidence that we have heard this morning.

It is only fitting, given that this is likely to be your last appearance in front of the Local Government and Communities Committee, that we put on record our thanks to you and your wider team for all your work over the years. We should give the last word to you before we move into private

session. Is there anything that you would like to add?

**Kenneth Gibson:** Speech!

**Jim Martin:** I was once introduced to speak at a meeting in Glasgow by a person who was not politically on my side. They said, "We have been very fortunate over the years to have had a number of very good speakers. Unfortunately, today's speaker is Jim Martin." If I were you, I would not call for a speech from me too often.

The one thing that I ask the committee to do is to give my successor a year or so to take a look at the organisation and assess the climate in Scottish public services, and to listen to organisations when they come back with their views and say, "This is how I think things could be improved." One element that we do not have, apart from annual scrutiny of reports, is an area in which elected members and the ombudsman can think and talk strategically off the record about where to take the service. That is the only advice that I will give the committee. Thank you very much for hearing me today.

**The Convener:** Thank you very much, Mr Martin. I thank Mr Stevenson and Ms Maclean too. As previously agreed, we now move into private session.

11:10

*Meeting continued in private until 13:01.*



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