



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 6 February 2019

Session 5



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Pàrlamaid na h-Alba

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

5th Meeting 2019, Session 5

CONVENER

James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Alex Rowley (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)

*Kenneth Gibson (Cunninghame North) (SNP)

*Graham Simpson (Central Scotland) (Con)

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

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

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

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 6 February 2019

*[The Deputy Convener opened the meeting at
09:45]*

Decision on Taking Business in Private

The Deputy Convener (Alex Rowley): Good morning and welcome to the fifth meeting in 2019 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones, because they could interfere with the electronics. We have received apologies from the convener, James Dornan, so I will convene today's meeting.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 3 in private?

Members *indicated agreement.*

"Ethical Standards Commissioner Annual Report and Accounts 2017-18"

09:45

The Deputy Convener: Agenda item 2 is consideration of the annual report and accounts for 2017-18 from the Commissioner for Ethical Standards in Public Life in Scotland. I welcome Bill Thomson, the commissioner, who is accompanied by Ian Bruce, the public appointments manager. I invite the commissioner to make some brief opening remarks.

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you, deputy convener. I am grateful for the opportunity to speak to the committee as I approach the end of my five-year term of office next month. As you mentioned, I am accompanied by Ian Bruce, the public appointments manager, in case you wish to ask any detailed questions on the public appointments part of my work, although I appreciate that that is not within the committee's remit. I am here to answer any questions that you have on the annual report for the year to 31 March 2018.

With the committee's indulgence, I thought it might be helpful if I set out how my post came into being and provide a little more detail than is in the committee's briefing paper. That might take me a minute or so. In effect, the post was created by the Parliament in stages, as some of you will know from your period of office here. The first post to be created was the Chief Investigating Officer, which was created by the Ethical Standards in Public Life etc (Scotland) Act 2000, under which I still operate. The 2000 act established the Standards Commission for Scotland, to which I report when I am dealing with complaints against councillors or members of public bodies.

The second role to be created was the Scottish Parliamentary Standards Commissioner, which was created by the Scottish Parliamentary Standards Commissioner Act 2002. That is the act under which I investigate complaints about MSPs. The third role to be created was the Commissioner for Public Appointments in Scotland, which was created by the Public Appointments and Public Bodies etc (Scotland) Act 2003.

Those three strands have been brought together, but in two different stages. First, between 2009 and 2011, the roles of the Chief Investigating Officer and the standards commissioner were held by the same individual. In April 2011, the roles were merged by the Scottish Parliamentary Commissions and Commissioners etc Act 2010 to create the post of Public Standards Commissioner

for Scotland. The 2010 act created a new Commission for Ethical Standards in Public Life in Scotland, which had two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

That lasted for two years, until 2013, when an order that was made under the Public Services Reform (Scotland) Act 2010 abolished the commission and the two commissioner posts and created my current post. Additional responsibilities were added last year by the Lobbying (Scotland) Act 2016. Quite a few strands come together in the role, and the annual report covers all the functions of the role. As I said, I will deal with any questions on them.

I will restrict the remainder of my opening remarks to one aspect of my role: the investigation of complaints about councillors. In addition to the figures that are before you in the annual report for the year from April 2017 to March 2018, I now have figures for the period from April to December 2018. Those are interesting in some respects. First, the reduction in complaint numbers in the year to March 2018 has been reversed—quite significantly, actually. That looks to be a repeat of the pattern of reduced numbers of complaints in the year following an election. We have now rebounded, as it were, to something closer to the norm. In the nine months to December 2018, we received 150 complaints, which we dealt with as 100 cases. If complaints were to continue to be received at that rate throughout the full year to March 2019, the total number would exceed the numbers in all previous years except 2015-16.

As in previous years, there were four main categories of complaint in the reporting year and in the part-year to the end of December—failure to register or declare an interest; misconduct on individual applications, which involves a range of things that I can discuss with you if you are interested; lobbying, not under the Lobbying (Scotland) Act 2016 but in the sense of how councillors have dealt with, or not dealt with, issues that constituents have brought to them; and disrespect.

I once said to the committee that I thought that we had seen the final blossoming of disrespect complaints. That was in December 2017. I regret to say that I was wrong. Almost a third of the complaints—46 of the 150—that we received in the year to December 2019 alleged a failure to respect councillors or members of the public and employees. Social media featured in approximately 40 of the disrespect complaints that were received in the year to March 2018, and in the complaints in some of the other categories. An equal percentage related to conduct in public meetings, including council meetings. I was slightly surprised by that. The remainder involved

press comments or direct communications—that is, one-to-one engagement with the person who has complained.

As in previous years, a roughly similar number of complaints concerned failure to register or declare interests and misconduct on individual applications. A quarter of those also involved allegations of disrespect or misrepresentation. Others involved allegations of bias, undue influence and conspiracy, or failure to withdraw after declaring an interest.

The committee and its predecessor have asked about the definition of “disrespect”, which is an important issue. It is still a difficult question to answer because of the importance of context and the relevance of article 10 of the European convention on human rights. If you wish, I am happy to go into that in more detail during the meeting.

Over the years in which I have come before the committee, questions have been posed about the scope for revision of the councillors’ code. I have given oral evidence on that and I wrote to the previous committee with my views. As you may be aware, some changes were made to the code last year, primarily to incorporate a specific statement to the effect that bullying and harassment are completely unacceptable and will be considered breaches of the code.

I understand that civil servants have made submissions to ministers seeking views on whether it is now time to conduct a full review of the councillors’ code and the model code for public bodies. I am not aware of any response from ministers, but it is possible that the issue may come before the committee in the reasonably near future. If reviews are undertaken, that might be an early opportunity for my successor to make a contribution. Caroline Anderson’s appointment was confirmed last month and will be effective from 1 April. I am sure that the committee will wish to engage with her in due course and will afford her the same courtesy.

I finish my introductory remarks by recording my appreciation of the efforts of the staff in my office. Commissioners come and go, as you can see, but those who support us just keep on doing so. They keep the show on the road and they do so accurately and with remarkable good humour. The quality of the advice and support that I have received, not least from the man sitting on my right, Ian Bruce, has been second to none. Thank you.

The Deputy Convener: Graham Simpson will ask the first question.

Graham Simpson (Central Scotland) (Con): Good morning. I feel that, in the previous two years, I have given you a bit of a hard time in my

opening questions, but I will go a bit easier on you today because you are retiring and I do not think that any of this is your fault. You have a job to do and you have done it. If any of us has complaints about the position, it is not personal. I wish you well in the future.

You raised a number of interesting points in your opening remarks. You said that there was a reduction in complaints following the election but that, since that, the number has gone back up. Why do you think that is? You mentioned various categories of complaints. What do you think is going on there?

Bill Thomson: This is pure speculation on my part, but it is probably useful for me to indicate why I think that has happened. Following an election, there is a settling-in period. You will all be more accustomed to that than I am. That applies not only to those who are elected but to the electorate, who are, as it were, waiting to see how the newly elected body performs. There is not a complete gap, but certain types of complaint will not have had time to arise. For example, with regard to misconduct in individual applications, newly elected councillors will not be involved in dealing with applications for several weeks, and people will certainly not be able to say that a new councillor has this or that predetermined position and has, therefore, behaved wrongly.

As we have discussed in previous evidence sessions, there is no doubt that some of the complaints are politically motivated. One of the reasons for the reduction in complaints during the settling-in period might be that people are sizing each other up and seeing what happens before they start down that road. There is also an issue that is an annoyance for many members, which is that, if a member of one party makes a politically motivated complaint about a member of another party, then, almost as sure as night follows day, there will be a reciprocal complaint at a later stage, and it might be that newly elected members are not keen to rush into that situation.

Graham Simpson: I think you are right. A number of complaints are politically motivated. Even if they are not from a councillor or an MSP, people can get somebody else to do the complaining. If the review that civil servants have asked for ever takes place, do you think we will be able to weed out politically motivated complaints?

10:00

Bill Thomson: I have thought quite a lot about this. I came to the previous committee with a list of grounds on which I might prioritise complaints. That was in 2015-16, when the number was increasing almost exponentially and I thought that we would just not be able to handle them all. I

thought about including in that list complaints that were obviously politically motivated. In the past, the committee has questioned me about vexatious complaints, which are a similar issue. I appreciate that the question was not specifically about that, but the difficulty with a vexatious complaint is that it requires two things. First, it is designed to annoy—that is its primary purpose. Secondly, it has no proper substance or foundation. The same applies to politically motivated complaints. If there is no foundation to a complaint, it should not proceed and resources should not be wasted on it.

Things become more difficult where there is some foundation or basis for the complaint. There may be substance to it. My attitude has been—the committee may disagree with this—that the motivation of the complainer is irrelevant in that context. If there has been, or it appears that there might have been, a breach of whatever the code is, is it right to ignore the complaint just because it is politically motivated? I have also tried to take that issue forward.

It has been put to me in the past that everybody round whatever table it was may have engaged in a particular thing that gave rise to a complaint, so why should people complain about each other? However, if we follow that through, it leads to the awkward conclusion that some types of breaches of the code, or potential breaches of it, are not important, whereas others are. It is quite difficult for somebody in my position to make a judgment on that and decide not to pursue a matter.

I am sorry—that was a long-winded way of coming back to the question. If politically motivated complaints are to be eliminated, that would have to be done in the “Code of Conduct for Councillors” by you as the body that sets that up. I do not think that anybody in my position could make that judgment.

Graham Simpson: But you can have a view on it.

Bill Thomson: My view is that, if there is a basis for a complaint—in other words, if it appears that there has been a breach of the code—the matter ought to be investigated even if the motivation for making the complaint was purely political.

Graham Simpson: Okay. Fair enough.

We have talked previously about complaints of disrespect and how hard disrespect is to establish. Whether a person thinks that they have been disrespected sometimes depends on how thick a skin they have. Such complaints must take up an enormous amount of your time and resources. Should we look at that area?

Bill Thomson: You are right: they do take up a lot of time and resources and, in my shoes, I have

certainly found some of the judgments and decisions quite difficult to make.

I have gone through the disrespect complaints that have been referred to the Standards Commission for Scotland, which might help. Those in which a breach has been found have almost always involved certain sets of words. The things that the Standards Commission for Scotland, to which I report, treats as serious enough disrespect to involve a breach of the code are personal attacks that affect the rights and reputation of the individual, statements or comments that are intended to impugn and demean, and comments that are gratuitous, offensive or abusive. The final word that the commission uses is “egregious”. I was at a school that had a Latin motto and the word “egregious” was part of that, so I know what it means.

Those things are in the context of article 10 of the European convention on human rights, which I mentioned. That, of course, grants everybody the right of freedom of speech. As members will be well aware, politicians and those who engage in commentary on politics have an enhanced right of freedom of speech so, when disrespect by a councillor or an MSP is alleged, that has to be assessed against that higher standard. I have examples that I can give to members if they want me to, but they do not take us anywhere, because they are simply based on particular circumstances.

Graham Simpson: I was once lied about in a local newspaper and I thought about complaining, which is not something that I ever do, but I spoke to a lawyer about it and he told me that there was no point in complaining because it was not possible to besmirch the reputation of a politician. He said that I just had to take it on the chin. I thought, “Well, okay.” Do you think that politicians need to toughen up a bit?

Bill Thomson: That is a general statement that I am not in a position to make.

Some of the stuff that I have quoted is based on the jurisprudence of the European Court of Human Rights, which has said that, along with the enhanced protection for what is called political expression, there is an expectation that those who put themselves forward for election and engage in politics should have thicker skins and be open to levels of abuse that the general public should not expect to have to deal with. An interesting distinction is drawn in the court cases between statements of fact and value judgments, and some accusations of lying might be based on what was clearly an attempted statement of fact. In those circumstances, the protection under the code is available only if there was some reasonable basis for the alleged statement of fact. There is much greater leniency if the accusation is made by way of a value judgment. In such cases, there only has

to be some flimsy—the word “flimsy” is not used—basis for making the allegation. That is another complication.

Graham Simpson: I have just one more question, because I know that other members want to come in. Over the course of your tenure, have you noticed an improvement in behaviour?

Bill Thomson: I will duck that, because I do not observe behaviour as such; I deal only with complaints about allegedly poor behaviour. Therefore, I am sorry, but I cannot answer that question.

The Deputy Convener: I have two questions about resources. What support and training are provided for councillors? Quite a number of new councillors were elected at the most recent council elections. Councils are facing tough times. Increasingly, council officials will say, “Sorry—no can do,” so councillors are having to go back to constituents and say, “We can’t do that.” Does that lead to greater tension not just between constituents and councillors, but between councillors and council officials, which could be interpreted as councillors being disrespectful in fighting their corner?

What support and training are provided for councillors? Do the pressures that are on councils lead to difficulties?

Bill Thomson: I will start with your second question. Although I do not have evidence for this, most of us would expect that increased pressure will lead to tension. Human behaviour is such that the more difficult the situation is, the more likely it is that tensions will arise. However, I think that the complaints that come to me are more down to individuals rather than being to do with the overall picture.

To address your first question, there is an obligation under the code for councils to support councillors. I know that training is made available, particularly for new councillors. In some council areas, follow-up training is provided; the position varies across the country. Those councillors who receive the most severe sanction at public hearings are those who have not bothered to attend the training or—this happened in one case—who have deliberately ignored the code. Generally, the most extreme examples that I have seen have been, in part, down to the personalities involved.

A growing tendency that has been evident is less obvious party discipline. I worked in local government in the 1970s. If there was an issue with Councillor X’s performance, one would have gone to Councillor X’s group leader, had a discussion and the matter would have been dealt with, except in the case of the odd renegade. It was as simple as that.

Such discipline applies to fewer councillors now, in terms of the overall percentage. There are minority councillors—independent councillors or councillors from small groups—who feel very strongly about a particular issue and who might be prepared to flout the rules in order to make their point. In some ways, I have sympathy with them, but the difficulty is that the rules are there. If they breach them and a complaint is made, I must investigate and report.

I do not know whether that answers your question; it is my best attempt.

The Deputy Convener: I think that it does. However, when witnesses from the Scottish Public Services Ombudsman gave evidence, they told us about the amount of work that they are doing with councils on the complaints procedure, because the more effective the complaints procedure is, the less likely it is that complaints will reach the ombudsman. Should there be a stronger relationship between you and the officer leadership in councils with a view to ensuring that decent information and training are provided for councillors on this whole area, given the pressures that are on councillors?

Bill Thomson: You make a fair point. There is contact. I am not allowed to give advice, so I try not to, but the Standards Commission for Scotland does. The Standards Commission, to which I report, does two things. First, it organises training. Generally, it does so on a regional basis, although council-specific training is sometimes provided. Secondly, once or twice a year, it arranges meetings for monitoring officers, who tend to be the key people when it comes to advising on the code. I get involved in those meetings—I tend just to listen to what is said and to engage with people. A fair amount of support is provided in that way.

I do not disagree with what the Scottish Public Services Ombudsman said but, in life, it is not the managed things that go wrong; things go wrong in particular circumstances, for one reason or another—it might be to do with somebody's personality or it might be to do with a sequence of events on a particular day. Occasionally, something is done deliberately but, more often than not, it probably just happens in the heat of the moment.

Alexander Stewart (Mid Scotland and Fife) (Con): Recently, there has been a lot of publicity about and many campaigns on harassment, and there have been a number of campaigns specifically on sexual harassment. Has there been a change in the number of complaints about sexual harassment so far this year?

Bill Thomson: As yet, I have not received any complaint specifically about sexual harassment. A year or so ago, I dealt with a complaint that

involved a male councillor and a relatively junior female member of staff, who felt harassed by the attention that the councillor was paying to her. There was no allegation of any sexual motive.

More recently, I dealt with a case—it went to a hearing—in which there was inappropriate physical contact between a male councillor and four women, two of whom were councillors and two of whom were members of staff. Again, there was no allegation that the behaviour was sexual. In my opinion, it was sexist, but there was no allegation of sexual harassment.

If the case is serious enough, it is more likely to be reported to the police than it is to come to me.

10:15

Alexander Stewart: Is the code of conduct clear enough on that or should new guidelines or views be put into it, given the current climate?

Bill Thomson: The code of conduct is crystal clear, and I am not sure how much more you could do to improve it. As soon as you start to give examples, you may leave some things out or end up with a ridiculously long list that is not particularly helpful. I do not mean to be flippant, but just being alive should allow people to understand what is acceptable and not acceptable. I do not mean to be facetious—we can all learn. It is true that it appears that there are some councillors whose social attitudes are different from the current general approach, but I do not think that the code will make much difference to that.

By the way, to come back to something that the deputy convener asked about, at the last meeting with monitoring officers that I attended, it was clear from those who spoke that they find the code helpful in guiding members who come to them for advice.

Alexander Stewart: That is the case—the code is there to support individuals in that situation.

In your opening remarks, you said that 40 per cent of complaints were social media-related in some way. Given the private and professional sides of social media, does there need to be consideration of what the content should be? Is that figure of 40 per cent, which is quite high, created by the private and professional merging or by the boundaries between them becoming unclear?

Bill Thomson: Just to be clear, what I meant to say was that 40 per cent of the disrespect cases involved social media, although some of the other cases involved it as well.

Technically, if a councillor says something disrespectful on a personal social media account,

that is not a breach of the code, but if they are identifiable as a councillor or they do it in circumstances in which they appear to be holding themselves up as a councillor—for example, by commenting on something that happened at a council meeting that they attended—they cannot avoid the obligations under the code.

The general attitude among people involved in regulating these things is that it is becoming difficult to draw a distinction between what you as MSPs do in your private lives and what you do in your professional lives, and the same applies to councillors, which many of you have been. In England, the Committee on Standards in Public Life published—on 21 January, I think—a report on ethical standards in local government, in which that committee comes out and says that there should be no distinction between what councillors do on social media in their private lives and what they do in their public persona. That is a matter for you and other politicians to determine, but that is the way that things are moving.

The Deputy Convener: We will come on to social media issues in a minute, but I have a question on sexual harassment before we leave that line of questioning. In the Scottish Parliament, diversity training has been set up for all MSPs and members of staff. Would that be equally useful in local government? The issue is not just about what is appropriate and inappropriate when it comes to sexual harassment; it is about what is generally appropriate and inappropriate in the way that we treat one another. Could councillors gain from such training?

Bill Thomson: Yes—maybe not all of them, but I am sure that councillors generally could gain from that. Despite what I may have said earlier, I do not disagree with the suggestion that people, including councillors, would benefit from training.

Annabelle Ewing (Cowdenbeath) (SNP): At some point, we anticipate a new piece of planning legislation to be enacted. Obviously, this committee did a lot of work on the bill for that, and we wait to see what the ultimate product will look like, as significant amendments have been made to it. I presume that you have been watching that to an extent. Do you have any expectations about the potential impact of that legislation on the number of complaints about planning issues? From the figures that we have, the number of such complaints is already quite high, and that seems to continue to be the case from the update that you helpfully gave us in your opening statement.

Bill Thomson: I am not sure that changes to the law will make much difference to planning still being the biggest single source of complaints. I have been asked in the past about spurious complaints. Planning is probably the area in which to test that, because quite a lot of the complaints

that relate to failures to declare interests—in fact, almost all of them—relate to planning cases. In some cases, the failure to register an interest may be relevant.

Some of the cases to do with disrespect have arisen from what councillors have said in planning meetings, and most of the allegations of conspiracy and bias probably relate to planning decisions. That is because those decisions matter to people. We have even had cases involving councillors seeking to influence decisions on their own planning applications. Therefore, such cases generate quite a lot of business.

I hope that this is not seen as a way of avoiding the question, but I think that changing the law will not remove the tensions and frustrations that people feel, which lead them to examine carefully what has been said and done and to see whether, if they cannot appeal under the planning system, they can find another way of trying to undermine a decision. Some of them probably expect that they can undermine the decision by complaining to me. They cannot, but they might well undermine the people who made the decision.

Annabelle Ewing: Obviously, at this stage it is very difficult to determine whether there will be any positive impacts. You mentioned failures to declare and register interests. I want to pick up on the point that the deputy convener made. I presume that such failures do not occur in the heat of the moment at public meetings in which passions are running high about particular planning applications. There are cold, in-the-light-of-the-day requirements. Given that this is a perennial problem, what actions are councils taking to try to encourage councillors to abide by the requirements that are set down? Our experience in the Parliament is that the requirements are very clear and that there is no hesitation on the part of the parliamentary bodies in reminding people of what those requirements are. What happens at the local authority level?

Bill Thomson: I do not have a comprehensive picture of what happens. Advice is given and, in some cases, we end up with disputes between the councillor and the advisers about what was said. Obviously, those cases are quite difficult.

There is a distinction between registration and declaration. I agree with what is behind Annabelle Ewing's question. Registration should be pretty straightforward. I have been involved in that issue in the Parliament, as well. There are difficult cases, but things are generally relatively straightforward. I do not think that I have come across any cases in which, even after a hearing, it has been clear that the member's not registering was done deliberately. There tends to be inadvertence. For example, the person may have shares in, or have been appointed a director of, a

dormant company. Various people have fallen into that trap.

The issue of declaration is more difficult and more nuanced because, if the person has registered their interests, the question is whether those interests are properly relevant and are so significant that the person ought to have declared them. Views on that can vary quite significantly.

I do not think that changing the law will make any difference in that context, because there will still be room for differences of opinion.

Annabelle Ewing: In cases in which breach of that requirement is established, what is the censure? I would have thought that censure might encourage others to reflect a bit harder on the issue.

Bill Thomson: Before I come to that, it occurs to me that I should mention that, in the report that I referred to earlier, the Committee on Standards at Westminster suggested that the English codes—each authority would draft its own—should adopt the objective test that is set out in the Scottish “Code of Conduct for Councillors”. It sees that as a step forward from where things are at the moment.

On Annabelle Ewing’s question, trying to influence one’s own planning application would tend to result in suspension. I do not recollect, in respect of breaches of the code—such as failure to register, or having forgotten about something that is dormant and failing to declare it—any member having been dealt with more severely than being censured.

I do not impose the sanctions, however; they are imposed by the Standards Commission for Scotland. If the breach were blatant, the position would be different. I am clear that the Standards Commission regards failure to register or to declare interests as serious breaches of the code, because transparency about interests is vital.

I am racking my rather cumbersome brain for an example of a councillor being suspended for failure to declare, but I cannot remember one at the moment. I might be wrong; I am sorry if I am.

Annabelle Ewing: That is fine. Supplementary information on that could be provided to the committee.

Perhaps it is a question of watching the trend in such breaches, which might suggest that further action should be carried out to guide councillors as to the safest and most prudent way forward.

I turn to the general data protection regulation. Have you seen an impact as a result of its being in place? If you have not yet, do you expect that it might lead to more complaints?

Bill Thomson: I get complaints that make reference to GDPR issues. I refer those aspects of

the complaints to the Information Commissioner’s Office, because they are not within my remit.

The GDPR has had an effect on how we do things in the office. For example, I no longer publish names with decisions because that is no longer appropriate. The GDPR will not affect my successor’s workload because it is outside the office’s remit, but more complaints are coming in that refer to GDPR issues.

Annabelle Ewing: With regard to your process, I note that you now anonymise decision summaries on your website. I am sorry that I have not had a chance to look at that. What does that mean? Is the name of the councillor not part of the published information?

Bill Thomson: The councillor’s name is not disclosed. I will be perfectly honest with you and say that I am not wholly sure quite how far I have to go in anonymising information. My current thinking is that naming the council area is not in itself sufficient to allow a councillor to be identified, but it might, depending on the circumstances, be sufficient. I will have to be careful about that: we might get to the point at which the amount of information that we can give is so little that it is not particularly helpful.

That said, and going back to the previous question that you asked about censure, word gets around, as you know. Sometimes, when I end up back in an area where I have been fairly recently, people say to me, “We know what happened to so-and-so.”

Annabelle Ewing: Yes, but that is localised to those who are in the know or in the same milieu. It seems to be a bit strange that a piece of legislation is making things less transparent when I would have thought that the public interest would merit more transparency. I understand why names of other people who are involved in the particular circumstances are not included, but I find it strange that the name of the councillor against whom an inquiry has proceeded and, if a breach is established, who has been censured, is not in the public domain.

10:30

Bill Thomson: I will try not to make this complicated. The decision summaries that I used to put up related to cases in which there had been a breach, and to some cases in which there had been no breach. Councillors who have been found not to be in breach understandably object to their names coming up on Google in connection with a case.

Annabelle Ewing: I understand that; I was asking about cases in which a breach—

Bill Thomson: What happens now is that I do not put up decisions of that nature. If there is a public hearing, the Standards Commission, which has the specific statutory right to do so, publishes the decision. As things stand, it names the councillor or councillors who are involved. Also—this is relatively recent—it issues press releases in advance of the public hearing taking place, and it issues a press release about the outcome. Publicity is given by the Standards Commission to cases that go to a public hearing and result in a finding.

Graham Simpson: For clarity, are you saying that any councillor who is found to be in breach of the code would have to go to a public hearing?

Bill Thomson: Section 16 of the 2000 act gives the Standards Commission three options. One is to send the report back to me for further investigation. Thankfully, that has not yet happened. The second is to hold a public hearing, which is what happens in more than 90 per cent of cases, and the third option is to do nothing, which has happened only once in my term of office.

Graham Simpson: So, in essence, it is the case that everyone who is found by you to be in breach of the code will be named somewhere.

Bill Thomson: Yes, they will. There are two options available to the Standards Commission at a public hearing. One is to agree with me that there has been a breach, and the other is to disagree with me and say that there has been no breach. The outcome is not by any means a foregone conclusion.

Andy Wightman (Lothian) (Green): I have a few follow-up questions. I will return to sexual harassment complaints. Am I right in my understanding that there have been no such complaints?

Bill Thomson: That is correct.

Andy Wightman: Does not that surprise you, given that there has been quite extensive concern expressed in the media by councillors including Julie McKenzie in Argyll and Bute Council and Rosa Zambonini in North Lanarkshire Council, who have documented extensive complaints in that regard and describe a toxic culture in parts of local government?

Bill Thomson: There are a number of factors involved. One is the simple question of conduct. Another is the impact of the conduct. I do not underestimate the amount of courage that it takes to come forward with a complaint, so in that sense I am not wholly surprised. They are outwith the remit of this committee, but I have had to investigate such allegations. It is not easy for the people who are involved.

Andy Wightman: I understand that. There are also issues around the complaints procedures within councils for issues of that nature. However, given the evidence that we have, do you agree that it would be somewhat surprising if there were not some complaints made to the Commissioner for Ethical Standards in Public Life about the behaviour of councillors, where they are involved?

Bill Thomson: You are asking me a slightly awkward question. I am not minded to suggest that councillors are engaging in sexual harassment. I have no evidence of that, so I have no basis for making such a suggestion. That leads me to the question whether I am surprised or not. I have no evidence. That is all that I can answer on.

Andy Wightman: That is fair enough. Do you have any information or evidence about how satisfied complainers are with your investigations? Obviously, when they go to the Standards Commission, there is a sanction, and people will take a view on whether they feel that that is appropriate. Do people ever complain that you have not investigated a complaint properly?

Bill Thomson: Yes, they do. If they complain that something has not been investigated properly, I offer to pass their complaint on to the Scottish Public Services Ombudsman. Over the years, that has happened once or twice a year. Up until now—this could change tomorrow—the ombudsman has not found that there has been a failure to investigate properly.

I record the amount of what we call post-decision correspondence. Nobody has yet written to me and said, "What a wonderful job you did." It tends to be the opposite. When I looked, I found that previously 20-odd per cent of cases had led to post-decision correspondence. The figure is now down to about 11 per cent, although I appreciate that that could change. That suggests to me that we are, at the very least, doing a better job now of explaining the reasons for decisions.

I accept that there will always be a percentage of people who are dissatisfied because the outcome of their complaint is that there has been no breach. Others are dissatisfied simply because the matter is outside my remit and are annoyed when I explain that. I understand that, but there is nothing I can do about the remit—not in the short term, anyway.

In my strategic plan, I set out that we would assess satisfaction levels, but I have held off from doing that until we have a properly functioning website that allow us to do it. We have been revamping the website; the new one will go live on 18 February, at which point we will be able to do that assessment in a more satisfactory way. There is a gap at the moment, in that we have not tried to find out why people are dissatisfied. In some

cases it is obvious—because we made the wrong decision, from their point of view, for example—but if there are things that we can do to improve how we handle complaints, we need to know that, in order to improve.

Andy Wightman: Okay—that is very helpful. I declare an interest as a member of the Scottish Parliamentary Corporate Body, which provides your resources. I also sat on the panel that interviewed your successor, Caroline Anderson, who was appointed by Parliament last week. Would you like to put on public record any advice for Caroline about the role that you are responsible for and how you discharge your responsibilities?

Bill Thomson: I would prefer to decline that opportunity, convener. I have already met Caroline Anderson and I expect to meet her reasonably frequently between now and when I leave and she takes up the post. I am doing my best to make sure that she is well informed and has been introduced to as many people with whom she will be engaging as possible.

Andy Wightman: I will put it another way: what do you feel are the key challenges facing your successor?

Bill Thomson: In respect of complaints against councillors, the challenge is always to strike the right balance between investigating thoroughly and doing so as quickly as possible. There is an inevitable tension there. Obviously, anybody in my shoes would like to make the right decision about whether there has been a breach of the code. That is a challenge at times. The complexities of some issues also create their own challenges.

MSP cases' profile is—not always but generally—a bit higher, which puts more pressure on the timescale. I am conscious that the Standards, Procedures and Public Appointments Committee will be considering the joint working party report on sexual harassment at the Parliament. That might lead to changes to the "Code of Conduct for Members of the Scottish Parliament" and to procedures. There is a possibility that that will have implications for other aspects of the role, which are not governed by the same code. It strikes me as being reasonably obvious that if the procedure changes in one area, there will be implications for other areas, which will need to be handled carefully.

On the public appointments side, there are two challenges. The most obvious challenge—which goes back to the convener's question about local government—is simply the pressure on resources. More and more public appointments are being made, but there are no more resources to deal with them. We have identified ways of improving the process and we have discussed and agreed it

with the people in the Government who are involved in that. However, getting and protecting the resources to do that is challenging.

The other challenge is to try to avoid growth in what we call dual scrutiny; that is, when the minister who is making an appointment has to put their preferred candidate to a parliamentary committee for approval. There are risks involved in that. It is not within the remit of this committee, but it is a potential challenge.

Alexander Stewart: I will go back to the discussion about social media. It has become such a large part of everyday life in relation to politicians and the question of how we can engage with and support individuals. Do you think that the code is adequate to manage that for us? Is there a need for a revision?

On social media, everything happens instantly. Someone can react to something or put something up and there is the potential for it to be taken the wrong way or misconstrued. As you have identified, that is a challenge.

Bill Thomson: I do not think that the code is adequate; the code was drafted before social media were current. The Standards Commission has issued guidance, which is helpful. However, Alexander Stewart is right about the immediacy of social media.

Another factor—I have mentioned it before—is context. A councillor might do something on social media that appears to be pretty rude, but it might be in response to a torrent of abuse from another source. It is not necessarily right, but the context is relevant to how it is assessed. That is a challenge and I do not think that the current code properly deals with it.

Alexander Stewart: Some individuals have been targeted because of what they have said at a committee meeting or comments in a press release. They can then have a torrent of information coming at them, which can be positive or negative, depending on the stance that they have taken. That must be difficult to manage in deciding whether someone has breached the code or whether there is a complaints process in relation to it?

Bill Thomson: I agree. Thankfully, my judgement on such things is not the final word. Such cases go to an independent panel that has three people on it, who will make a judgement. The full circumstances will be outlined there. However, it is difficult.

Graham Simpson: The ombudsman has appeared before the committee a couple of times and the point has been made that the ombudsman wants the ability to launch its own investigations

and to take its own initiative, rather than having to wait for complaints.

When you get a complaint, you have to deal with it in a very narrow sense. For example, if we are talking about planning and somebody says that a councillor knows the applicant but did not declare it, you cannot investigate the extent of the relationship between the two. There might be financial links, for instance. It seems to me that you are quite restricted, in that sense. Do you think that you should have the ability to go off in different directions in an investigation?

10:45

Bill Thomson: I would like to answer that in two ways. First, the example that Mr Simpson has given is a live one, and not for the first time. I endeavour to investigate the extent of relationships, contacts or whatever, and my decisions are based on my assessment of those. That is one of the things that could come out differently at a public hearing, because in those circumstances the councillor might put more effort into explaining the situation, or somebody else might give evidence that I would not expect about the level of the contact. That happens. We do our best: it is an important issue.

The one report that I made to the Standards Commission that did not go to a hearing involved my uncovering, in the course of investigating one thing, a failure to register an interest. I reported on that; the Standards Commission decided not to investigate it for various reasons, one of which was that the matter was not in the original complaint. Another was that the impact had been, in effect, zero—in the commission's view, the failure to register the interest had not really changed anything.

I have said this before. It is too late for me anyway, but if I was continuing in post, I would not wish to have a remit to go looking for things beyond the scope of the complaint.

Graham Simpson: I am not suggesting for a moment that you should do witch hunts. That would be crazy. However, if, in the course of dealing with a complaint, other things crop up—

Bill Thomson: I will mention them. As I said, in one case, I reported such a breach.

Graham Simpson: Thank you.

The Deputy Convener: That brings us to the end of our questions. I thank both the commissioner and Ian Bruce for attending today's meeting. As a number of members have said, this is Bill Thomson's final session with the committee. On behalf of the committee, I wish him the very best for the future, and thank him very much for his service.

Bill Thomson: I appreciate that. Thank you.

The Deputy Convener: That concludes the public part of today's meeting.

10:47

Meeting continued in private until 10:54.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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