



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 29 January 2020**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Wednesday 29 January 2020**

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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**4<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*James Dornan (Glasgow Cathcart) (SNP)

**DEPUTY CONVENER**

\*Sarah Boyack (Lothian) (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:**

Rosemary Agnew (Scottish Public Services Ombudsman)

Niki Maclean (Scottish Public Services Ombudsman)

John Stevenson (Scottish Public Services Ombudsman)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament

### Local Government and Communities Committee

*Wednesday 29 January 2020*

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

### Decision on Taking Business in Private

**The Convener (James Dornan):** Good morning and welcome to the fourth meeting in 2020 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones.

Agenda item 1 is consideration of whether to take agenda item 4 in private. Item 4 is consideration of evidence heard today from the Scottish Public Services Ombudsman. Do we agree to take that item in private?

**Members indicated agreement.**

## Scottish Public Services Ombudsman Annual Report and Accounts 2018-19

09:45

**The Convener:** Under agenda item 2, the committee will take evidence on the Scottish Public Services Ombudsman's annual report and accounts 2018-19. I welcome from the SPSO Rosemary Agnew, who is the ombudsman; Niki Maclean, who is the director; and John Stevenson, who is the head of improvement, standards and engagement. I also welcome the postgraduate housing students from the University of Stirling who are in the gallery as part of a study visit to the Scottish Parliament.

I invite the ombudsman to make a brief opening statement.

**Rosemary Agnew (Scottish Public Services Ombudsman):** Good morning. It is nice to see you all again. I am not going to say a lot more than what is in our written briefing to you, but there are a couple of things in it that I will pull out.

We have moved on quite a long way from what is in the report, so talking about and commenting on it is a challenge. I hope that you will forgive me for the fact that the briefing that we gave you concerns current matters as well as some of the issues in the annual report.

On the whole, we had a very positive year: we managed to keep on top of our work well and we constantly improved our service. I must also acknowledge the excellent contribution of the whole of my team.

The most fundamental issues that affected last year and that are affecting the current year are resources and workloads. Those impact on us in two ways. One impact is on our physical ability to cope with the amount of work that is coming in; the other impact is on the decisions that my leadership team and I make in relation to how we allocate the scarce resources that we have, because we are clear that we do not want to compromise on quality.

Indeed, we work to improve quality. Last year, we made significant changes in that area. That was not about the quality of our decisions—our decisions have always been good; it was about being more transparent with our decision making and involving the parties concerned at an early stage, rather than doing that when they a decision crosses their desk.

In summary, I think that we did really well, and I welcome challenge and questions about that performance. I highlight that our situation—at the

time of the previous annual report and now—in relation to resources and workloads is deteriorating, because the challenge is getting greater, and I have serious concerns about sustainability over the next couple of years. With that in mind, I draw your attention to one of our strategic aims in the current draft strategic plan, which you were sent and is before Parliament, which is about developing with the Scottish Parliamentary Corporate Body a more sustainable funding model not just for me, but for the other office holders.

Thank you for the invitation, and I welcome questions for the three of us.

**The Convener:** I remind the witnesses that not everybody has to answer every question. You talked about the complexity of casework in your report and your written submission. Will you give us a bit more detail about that?

**Rosemary Agnew:** The casework is getting more complex year on year. We go through a number of steps when complaints come to us. Is the complaint for us? Is it in our jurisdiction? Can we look at it? The next question that we ask ourselves is: should we look at it? That question is focused on the complainer. If it is something that we can and should look at, we conduct an investigation.

Since model complaints handling procedures came in, public bodies must go through a two-stage process. They are now addressing complaints at the outset in such a way that the simpler or more straightforward ones are being resolved in the first instance. We have seen that particularly with local government, which has been subject to model complaints-handling procedures longer than the other public bodies. We have seen a year-on-year decrease in the number of complaints coming to us, and local authorities are also seeing a slight decrease in the number of complaints coming to them.

However, that means that the complaints that reach us are the most complex—they involve issues that have perhaps not been resolved at the second stage of the investigation as well as they should have been. In addition, we have, over the years, taken on other work—we now handle complaints about prisons, social work and, in particular, health, which, along with those about social care, tend to be the most complex.

We are finding that an individual complaint requires more investigation, more action and our getting expert opinion on a greater number of things. Those complaints tend to be more complex to investigate and to decide. Occasionally, it might look as though our case load has not increased, but the reality is that we have an increased

investigation case load and we have to do more work on each case.

**The Convener:** You are suggesting that a lot of the work is being done at an earlier stage, before a case gets to you. That sort of frees up some of your time. Are you suggesting that, previously, some of the complex cases would have been left in abeyance and that the easier ones would have got done? I am not really sure what point you were making in the first part of your remarks.

**Rosemary Agnew:** No, we are not saying that. Some of the more straightforward cases are a lot quicker to do. They do not take as much activity, so we can physically get through more cases, but because each case requires—

**The Convener:** But you would still have had the complex ones.

**Rosemary Agnew:** We have had complex cases and we still do, but the mixed case load means that the resources that could have dealt with that previously are not able to deal with the same number of cases. It is not all one way, though, because we have worked hard to constantly review our own procedures to see where we can do things more efficiently. However, we have reached a tipping point, and if the number of cases that require our investigation continues to rise, we will struggle even more than we are struggling now.

**John Stevenson (Scottish Public Services Ombudsman):** One reason why we see more complex cases is the abolition of the social work complaints review committee. Previously, when complaints about social work came to us, we would have simply looked at the administrative process; now, we look at the merits of a professional decision that has been made in relation to social work cases. That is still a relatively new area of jurisdiction for the ombudsman and it is fair to say that the majority of those cases are particularly complex. That new work coming to us increases the overall complexity of the cases that we look at.

**The Convener:** It is your new roles and responsibilities that have made some cases complex.

**John Stevenson:** The cases are complex anyway. However, we now have the jurisdiction to look at things that we did not have previously, which presents new complex cases to the organisation.

**The Convener:** Okay. I have a question about a matter that my colleague Andy Wightman will come to in more detail later. Last year, you said that the answer is not throwing resources at things. Is that still your opinion?

**Rosemary Agnew:** Yes. It comes back to my point about it being irresponsible for us to ask for more resources if we have not ensured that we have tried to use our existing resources as efficiently as we can. Over the current year, we have made changes to our processes and procedures so that we are using our resources as efficiently as we can.

However, we must ensure that we ask for the right resources for the right reasons. It is not as simple as saying that we need more because we have had a 7 per cent increase in the number of complaints in the current year. We need to dig deeper than that and look at the type of complaints in order to understand what the resource requirement is.

We accept that it goes both ways, but I assure the committee that we are doing as much as we can to ensure that we are more efficient.

John Stevenson's team looks at complaints handling by public bodies. At the same time, we are gathering information from our work and from other areas to ensure that we provide some support to public bodies, to get them to improve their complaints handling. That has highlighted to us that we need to support them in the second stage of the complaints process.

In the current year, we have directly intervened a lot more on some public bodies to try to improve what they do. We hope that, over time, we can manage some of the case load that is coming in at that level. Ultimately, it is not about the volume of cases or who does what; it is about ensuring that those who use services get a good service at the outset, and the sooner that complaints are resolved—preferably by the public body—the better. That end is always in our sights as well.

**The Convener:** Thank you. My colleagues will come back to that topic, but I will move on to another. You said in your opening remarks that your first step is to ask whether you can and should look at a complaint. You will be aware of recent media reports questioning the processes and decisions of the Scottish Housing Regulator in some cases. Can you clarify whether registered social landlords or individuals associated with them can make a complaint to the SPSO if they were unhappy with the SHR's conduct towards the RSL? Is it in your powers to take on such complaints?

**Rosemary Agnew:** That is a good question. The answer is that it depends.

**The Convener:** I am just trying to add to your complexity.

**Rosemary Agnew:** We would not necessarily look at things that are a relationship in the regulatory sense. However, if an individual person

brought a complaint to us that related to the SHR's service, we could look at that. What we could do would therefore very much depend on the nature of the complaint brought to us. What we would not do—I do not think that we can do this—is look at that regulatory relationship, because we do not hold the SHR to account; we are responsible for looking at the service that it provides, which is a slightly different thing. An analogy is the case of Audit Scotland, as we can look at its administrative service but it is held to account in a different way for anything that it does as a regulator.

**The Convener:** An individual could come to you with a complaint about how they were dealt with but an RSL could not. Is that the case?

**Rosemary Agnew:** Possibly. If they were in doubt, they should come to us and we would signpost them elsewhere or look at the circumstances of their case. However, we certainly could not do anything if RSLs came to us together and wanted to talk about the SHR, as that would be well outwith our remit.

**Niki Maclean (Scottish Public Services Ombudsman):** Anyone bringing a complaint to us has to demonstrate that there is a personal injustice or hardship, so it would be tricky for that to happen in that example.

**The Convener:** Okay. That is great; thank you for that.

**Andy Wightman (Lothian) (Green):** I thank the witnesses for coming along this morning. I want to ask you about resources, because you said quite a bit about that in your introduction when talking about your key risks. I note from your accounts that, as a public office holder, your costs are fixed for staff, accommodation and running costs. However, you said that you are now at a tipping point. That suggests that the problem has been growing for a few years and certainly since you have been in post. Is that fair?

**Rosemary Agnew:** The problem has been growing prior to my being in post. It is about a combination of things. Even if we do not have an increase in resources—I will come back to that in a moment—but the work requires more resources, that has the effect of cutting them. I sat before the committee a couple of years ago talking about how we managed to clear a backlog of cases. That was a very positive message. However, we now have a backlog of cases again. At that previous session, I highlighted how we managed to clear that backlog: serendipity meant that, because of staffing changes, we had additional money that we could put into a different area of staffing.

10:00

The reality is that, if we consider the base budget over a number of years and take away the things for which we have been given a bit of extra money—because we have taken on new functions, that sometimes masks this—we have not really had an increase; we have probably had a decrease overall. Niki Maclean may wish to add to that.

There comes a point at which either we compromise over quality to get the volume through or we need another way of coping with that, or we need more money. We have tried the coping mechanisms, and we are doing the efficiency one. We are as productive as we have ever been—the team are really productive. As for how we are coping, I make no secret of the fact that we now have a pool of cases that are unallocated and are unlikely to get allocated for a good number of weeks. We keep people informed and we tell them, but we can see the knock-on effect, which is an increase in complaints about our service.

I ask Niki Maclean to speak about the budget, as she has all the numbers in front of her.

**Niki Maclean:** We have had a fairly static investigative resource over the past 10 years, with the exception of when we took on social work complaints. We have funding for an additional two complaints reviewers out of a team of 27. Although that was obviously welcomed, it is proportionately not that significant to the total investigative resource.

We are user-driven service, and we are at the mercy of what is brought to us. Over a number of years, the percentage increases and decreases in complaints have fluctuated. At the moment, we are operating with an increase in complaints of about 8 to 10 per cent. There was a rise in complaints last year, whereas, the number was relatively static the previous year. It is very difficult to predict what will happen. However, our investigative resource has been relatively static over 10 years, which demonstrates that we are good at working with the resource that we have in order to manage the fluctuations.

As Rosemary Agnew has said, the issue of complexity is significant. I have been doing casework for 10 years. There are no longer any straightforward cases. A large percentage of our investigation cases are health related—last year, they accounted for about 65 to 67 per cent of cases. There are many cases involving people who are receiving healthcare and who have comorbidities, which require multiple advice requests, as Rosemary mentioned.

For those reasons—having a static resource and having to manage cases and fluctuations in

the number of cases—things are difficult to predict and to manage on an operational level.

**Andy Wightman:** Noting that the number of cases is difficult to predict and to manage, could you say a little bit more about the comments that you make in your draft strategic plan? Thank you for sharing the draft plan, which is very useful. At page 9, you talk about

“Inadequate, inflexible and unsustainable funding levels ... exacerbated by the annularity of funding allocations”.

Without getting into numbers and all the rest of it, do you have a proposition as to how the architecture of the funding model might be changed, to make it easier to absorb some of the pressures that you are under?

**Rosemary Agnew:** We have thought very carefully about that. The reason why that is referred to as a specific strategic aim is that I want to open up a conversation with the Parliament. There are a number of things that we, as office holders, need to accept and factor in.

I am not going completely off-piste here, so bear with me. Last year, we moved accommodation and now share space with the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland. We see the benefits of a shared service. We also share—with the support of the SPCB—a data protection officer. One of the things that should be looked at in the overall model is the opportunity for shared services at a parliamentary or SPCB level.

The other thing that I hope that we can do is change the conversation away from always focusing on volume. Volume is really important, but the underlying issue, which needs more exploration, is a focus on what is a legislative duty and what is a legislative power. It would be helpful to those who make decisions about the budgets that they give us to know what the distinction is. A duty is something that we have to do and a power is something that we can use. That suggests that, in making funding decisions as a leadership team, we have to balance those things that we absolutely have to do with those things that we can do that we know add value to us, society, public bodies and complainers.

One of the things that I want to talk to the SPCB about is whether we can focus how the budget is put together in the first place, so that we look at a more functional basis, rather than saying, “We need this much for staffing”. The other thing is to look much more closely at what assurances we can give Parliament and Parliament can give us to enable us to plan for longer than just a year. We would like something that is more sustainable. We want to explore whether there can be assurances from the SPCB in helping to deal with fluctuations. Backlogs often occur because there is a spike,



and we do not have the resource to cope with that volume at that time, which has a knock-on effect.

It is a combination of those things: how the budget is made up; a conversation about duties versus powers; and how the office holders are treated by the SPCB when it comes to budgets. It is only fair that, within that, we give an assurance about what happens if volumes go down, complaints change or there is a change in patterns over time. Right now, the number of complaints is going up. However, if we can invest in the areas that are adding value through improving complaints handling, we would hope that, over time, some of that volume of complaints would go down.

I do not have a model to show you that does that, but those are the elements that I would want to explore.

**Andy Wightman:** That is very helpful. Thank you.

**Kenneth Gibson (Cunninghame North) (SNP):** I am happy to come in at this point. I am looking at the figures that you have mentioned. I notice that your total complaints case load is 4,793. Does that figure include the 813 that were signposted?

**Rosemary Agnew:** No, those are in addition.

**Kenneth Gibson:** Niki Maclean said that there are no longer any straightforward cases and that it is difficult to predict and manage. How many staff do you have working on cases?

**Niki Maclean:** On the complaints side, there are about 26 investigators; there are about 30 staff in total on that side of the business.

**Rosemary Agnew:** We are not being vague when we say “about 30”—we have a lot of different working patterns and when we add them up it amounts to about 30 full-time-equivalent staff.

**Kenneth Gibson:** Does each person average 150 cases a year?

**Rosemary Agnew:** Possibly.

**Niki Maclean:** On average, it would be slightly lower than that. We try to triage. Different people have different types of case load. Some people will be doing early triage, so the case load is not split evenly across the resource.

**Kenneth Gibson:** I ask because, as MSPs, we all get cases to deal with. I have three surgeries this Saturday, and I do not know how many people are going to walk through the door. At my last three surgeries a week past Saturday, I had 11 people with completely different and highly complex cases. I agree that cases are getting complex, certainly from my perspective, having first been elected in 1992 as a councillor. The

staffing resource that we have is either two or three people, who run our offices and help us with cases and all the other things that we do.

I realise that you have different work but, given your budget, which is around £4.7 million, and the number of cases that you have, I am struggling to understand why there seems to be so much pressure in your system. I am looking at the number of cases that I have to deal with, and it is dozens every week. Every day, I wake up in the morning and turn on my email and there are cases to be dealt with. Today, I had one about suicide, one about the child abuse inquiry and others about housing and health. We get those emails every day and we are expected to deal with them with a fraction of your budget. I am therefore wondering why there seems to be so much pressure on your budget. Is the way in which you deal with things too elaborate or bureaucratic? Why does it take so much time to deal with the cases that you have? The number of cases that your average worker deals with in a year, we deal with in two or three weeks, as well as all the other things that we have to do.

**Rosemary Agnew:** It is a good point and I understand it well. I think that the difference is what the outcome has to be and what looking at a case involves. In a legislative framework, I accept cases for investigation, I have to give reasons, I have to make decisions and those decisions can be judicially reviewed. We probably have to do more in greater detail because we have to reach a point at which we can make a robust decision about the issues. Niki Maclean mentioned that a large proportion of our investigation work is health cases, which require expert advice, because we can overturn and challenge clinical judgments. It is not that the process is more bureaucratic; it is probably just that we need to go into a lot more detail so that we give clear, robust reasons.

Another point is that we have to look both ways. It is not only about looking at something from a complainer perspective; we are independent and impartial, so we have to explore every avenue to the point at which we can make the robust decision. It is a different type of case handling, but it is of some comfort to know that you are experiencing the increase in complexity that we are experiencing.

**Niki Maclean:** It is important to note that we have other statutory functions as well, so not all the budget is attached to the complaints work. We have the Scottish welfare fund statutory function and the complaints standards authority functions to deliver on.

**Kenneth Gibson:** Yes, I appreciate that you have other statutory functions. We basically have to do the best that we can for our constituents—we are duty bound to do so. I realise that there are

differences in the work, but I have difficulty understanding the differential in the budget. The budget that we have for dealing with constituency cases is about 2 per cent of what you have to work with. I am not saying that I have as many or as complex cases as you do, but I would not be surprised if I have to deal with 2,000 or 3,000 cases a year and I am pretty sure that it is much the same for my colleagues.

**Niki Maclean:** I am obviously conscious of your workload, but if the committee is interested in coming to our office and having a look at the process that we follow and the issues that we have to handle, we would be very happy to walk you through them. I think that doing so would give you a good understanding of the level of detail involved and the complexity of the processes that we follow.

**Kenneth Gibson:** Convener, that might be a good idea. Otherwise, the same issues will come up every year when the SPSO comes to give evidence.

**Rosemary Agnew:** It would perhaps be useful if we could explain to you how we got to the level of detail that is in one of our public reports. You are more than welcome to come to our office.

**Kenneth Gibson:** Thank you.

10:15

**The Convener:** I think that Kenny was campaigning for a rise. That was very useful.

**Graham Simpson (Central Scotland) (Con):** I was going to come in on budgets, but that subject has been covered. Reading your written submission, I could not help thinking that I had read it before. You seem to make the same points year in, year out. For example, you ask for public value investigation powers. You have asked that before, and we have discussed it before. You say that Scotland no longer leads the way—I am pretty sure that you have said that before. You have called for the ability to take complaints in any format—you have asked for that before. There seems to have been no progress on any of those.

**Rosemary Agnew:** We only have an hour. *[Laughter.]*

I will start with issue of taking complaints in any format. You are right that this is a long-playing record. When I came into office, there was already discussion with the Scottish Government about changes or extensions to our powers or changes to our act—the Scottish Public Services Ombudsman Act 2002. Some were technical, to make the act more usable, but some were about changes to what we could do under those powers. They divided into those that could be done through a public service reform order and those that

required primary legislation. Allowing complaints to be made in any format could be done by an order. Even 18 months ago, from the assurances that I was given by the Government, my belief was, “It is doable, so let’s look at how we do it,” and something came to the committee about it. That change is driven not by a desire to extend our powers but by a wish to make our services completely accessible. Late last year, we were informed that the Government was no longer going to pursue it. What we thought was going to happen—

**Graham Simpson:** Before you move on, could you remind us of the format in which you can take complaints? Where did that come from—the Government?

**Rosemary Agnew:** The format was specified in the original act, which says that we can take complaints in writing unless the ombudsman thinks that there are special circumstances that mean that that should not be the format. In theory, that would enable us to take complaints in any format, but the problem is that it requires the complainer to demonstrate special circumstances. It does not enable us to say openly in a blanket way, “These are the circumstances in which we will take complaints over the phone.” We try to get round it by taking a complaint over the phone, writing it down and sending it to the person but, ultimately, it still has to be done in writing. That is what we are trying to get round. We believed that that change was going to happen, and it was an extreme disappointment and frustration to learn that it was not going to be pursued.

The other power that we sought was the ability to conduct what would in effect be complaints investigations at our own initiative, but we qualified it by calling them public value investigations. They are the issues where we do not have a complaint but it is in the public interest and of value to the public to follow them up. That requires a primary legislative change.

Across the rest of the United Kingdom, legislation in Wales and Northern Ireland has caught up with and overtaken ours. The ombudsman services there have three lots of powers: complaints handling; investigations at their own initiative; and complaints standards authority functions. Taken together, the powers enable them to look at a range of issues within their powers and jurisdiction in different ways. England has a different position because it is currently looking at whether to combine local government and social care with parliamentary and health, so it is a completely different set-up, but even there the area of own initiative investigations is being considered.

We have tried pursuing—we thought, properly—the public service reform order. However, scrutiny

of the Scottish Public Services Ombudsman Act 2002 is one of the things that now needs to happen, because it was written for a time when we did not have iPhones, when there was not a huge amount of social media, when we related to public services in a different way, and when public services were organised and delivered in a different way. Elements of our act need to be updated so that we have an ombudsman that not only serves Scotland's needs but is recognised, in a wider context, as doing what a public service ombudsman in the modern world tends to do.

We looked at the UK and further afield, and I think that we shared with the committee the Venice principles, which were adopted by the Council of Europe and set out what an ombudsman service should be looking at. Although we tick many of the boxes, we do not have the powers for some of the crucial, value-adding ones. Just as an aside, the International Ombudsman Association is confident that those principles will be adopted by the United Nations as well. The principles are an international standard that we do not currently meet.

Standards are fine but, fundamentally and at heart, I think that we could do better for complainers and better for public services with an adjustment to our powers. One of the things that I will bring to the Parliament over the next 18 months is a paper on why I think we need a scrutiny of our legislation.

**Graham Simpson:** Which, again, you have said before.

**Rosemary Agnew:** Yes. I had put off doing it because of the assurances that I was given by the Government.

**Graham Simpson:** Who in the Government gave you that assurance?

**Rosemary Agnew:** I think that it would have been the justice department, but I would have to come back on specifically which department it was. I am afraid that, with the whistleblowing, I have been doing a lot of negotiating with different departments. However, I will confirm that.

**Graham Simpson:** It would be useful to know what the assurance was and who it was from, and then who said no.

**Rosemary Agnew:** I remember that, the last time I appeared before the committee, the frustration was that we had been told that it was happening, but that there had then been a change of staff, and then a change of staff, and then another change of staff—and then the answer came back as no.

**Graham Simpson:** I recall that, and it never sounded like much of an excuse to me.

**Rosemary Agnew:** It is not for want of pushing, believe me.

**John Stevenson:** I think that the committee—or the convener, perhaps—was copied into the letter from the Government in which it said no.

**Graham Simpson:** We can have a look for that.

**Rosemary Agnew:** That letter came out of the blue. At that point, we were fully expecting something. We had had a meeting with the Government very shortly before at which it said that it was fine, and that it just wanted to look at the wording and what have you. The letter came out of the blue.

**Graham Simpson:** You think that we need primary legislation, but that can obviously take a long time. Is there any way in which we could improve things through secondary legislation?

**Rosemary Agnew:** Yes. We can improve things through secondary legislation through a public service reform order to simplify and clarify some of the things in our act about information sharing, and to change the way in which we can take complaints. It will not make it perfect, but it will make it better.

**Andy Wightman:** I think that we had the letter from Humza Yousaf. On the technical issue to do with written complaints, how complex do you envisage that a piece of secondary legislation would be? Are we talking about two to three lines?

**Rosemary Agnew:** To put it in context, the powers that we are taking on for an independent national whistleblowing officer are two sides of A4 with explanatory notes. We are talking about a small number of pages—not reams and reams. At the very minimum, it would take a couple of paragraphs for complaints in any format.

**Andy Wightman:** Okay. If you draft something, I would certainly be happy to see it. The Government's view was that it did not have the resources. I know that things are tight and that a lot is going on and that the Scottish Government has its priorities and all the rest of it, but I did not think that a tremendous amount of resources would be needed for this, and then it is just 40 days in Parliament. Although I cannot speak for the rest of the committee, if you wanted to draft something, I would be happy to look at it.

**Rosemary Agnew:** Thank you. That is a very good offer, and I think that we will take you up on that.

**The Convener:** Sending it to the clerks would be the best way to deal with it.

**Alexander Stewart (Mid Scotland and Fife) (Con):** You have talked about the profile and complexity of complaints. I think that Mr Stevenson talked about the change from the social

work complaints review committee, which has meant that, under the new direction of integration joint boards, there has been an increased amount of support for that area. Will you give us more information as to how that has blossomed or grown? We are well aware that, across the authorities, IJBs are struggling with their day-to-day work. However, when it comes to complaints, there may be a bigger problem that you have identified on the horizon.

**Niki Maclean:** I am sorry, but can you repeat the nub of the question?

**Alexander Stewart:** I am asking specifically about your workload and the profile of complaints that you have. You have already identified that the loss of the social work complaints review committee structure has given you more work, and that the introduction of integration joint boards has added to your complexities. It would appear that the number of complaints that you are receiving from them has blossomed.

As I said, we have identified here in Parliament, and others have given evidence, that IJBs are struggling to cope in terms of resources, manpower, workload and so on. It would be good to get your view on how that is progressing, and on whether you are identifying a similar issue of more complex complaints progressing because of the inadequacy, the problems, or the lack of resource or manpower—whatever it may be—that IJBs are facing.

**Niki Maclean:** We are seeing quite a mixed picture. For some complaints, the relationship between health boards and the IJBs is relatively straightforward, and it is quite clear who takes which areas of complaint and which areas of responsibility. However, in other areas, there is still confusion about who has responsibility for which aspect of the complaint, in particular where there are complaints that are partly about healthcare delivery and partly about social care delivery. It is quite a mixed picture and it depends on the local governance arrangements that are in place.

We are very clear that we will follow the delivery of the complaint, and that we will be led by which agency decides to take the lead. If a health board decides to take the lead, and there is an element of social care, we will liaise directly with the health board, because not to do so is very confusing for the complainant. There is a worry that aspects of complaints might be missed or not picked up. However, as I said, how well it is being managed varies from area to area.

**Alexander Stewart:** However, the complainant themselves will have the difficulty—it may be an individual themselves who has made the complaint, or it may be a family member who is

talking about the service and delivery that were received. In the past, they have found that the buck has been passed back and forward between the health board, the council and social care, which simply adds to the complexity for the complainant, who believes that they are being pushed from pillar to post. The introduction of IJBs seems not to have improved the position but to have increased that complexity, and the customer—the service user—is still the one who is suffering through the complaints process.

**Rosemary Agnew:** I will echo and build on what Niki Maclean said. How a complainer might view it is a good point from which to start. For some, it is straightforward—they will go to one person and the complaint will get looked at. However, it is a mixed picture in that I can see how some people probably have been passed from pillar to post. I will make two points about that.

10:30

If you have constituents who are experiencing that, get us involved. We will look at where the most appropriate place is, and we can signpost and support them. It is also worth alerting you to the fact that the complexity will increase from 27 July this year because that is when the independent national whistleblowing officer powers come in. The added complexity then will be not only for complainers but for employees. If it is social care, it is not covered by the new legislation; if it is health, it is covered. Niki talked about governance. That is where the governance arrangements are going to become even more critical, because they need to openly acknowledge that, with complaints and whistleblowing, there should be a protocol for where staff need to go and how they need to inform complainers.

When we look at complaints, we do not just look at the substantive issue; we also look at complaints handling. The more we are learning, the more we will do to approach IJBs as well.

**John Stevenson:** The model complaints procedures for health and for social work and social care require organisations to work together. They require the complainant to be kept at the heart of the process. If that is not happening, that is a complaints handling failing.

**Alexander Stewart:** You have identified that there is sometimes a trust issue when it comes to who is giving the right advice. The complainant may not feel confident, or may feel that they do not understand because of their lack of experience or knowledge. They can be bamboozled by individuals who try to progress or develop things that they do not understand, and they then have a wrong attitude or behave wrongly. That can all

become complex. My feeling is that there is more complexity because of the IJBs, rather than the process being streamlined. Have you seen that, or is the situation being improved?

**Rosemary Agnew:** There is more complexity, but how that is handled by IJBs varies.

**Alexander Stewart:** That seems to be the case. One size does not fit all and we do not seem to have the same standard in all IJBs across the country. Some are very professional; others seem to need a bit more training, guidance or governance on the process.

**John Stevenson:** It is important to say that we have the same standard, although it might not be applied consistently.

**Alexander Stewart:** The standard is there, but it is not being applied.

**Sarah Boyack (Lothian) (Lab):** I would like to tease this out a bit further. You have made points about getting to the right person early and about ensuring that when someone comes to you that is not premature but that they have been through a process. Somebody might complain about the rationing of a service, the quality of delivery of a service or about access to the right person in an organisation.

Whether those organisations are health boards, IJBs or local authorities, do you have a ranking of who would be the right person to signpost someone to? You talked about there being fewer premature cases because the handling service has improved. Where do IJBs sit in that process? Is the fact that they are relatively new organisations part of the complication?

**Rosemary Agnew:** It is a combination of things. The model complaints handling procedure says that there must be somebody to make a complaint to. We expect every organisation to make people aware of how to make a complaint. I am not convinced that every IJB has taken that on board. As we find issues, we will tackle them.

In the current year, we have put in place a support and intervention policy. We have set out our legal framework, which is aimed at public bodies. At levels 1 to 4, we will advise them and try to support them. We will then contact them directly at a senior level. Ultimately, the ombudsman will get involved and if we need to report to Parliament, we will. In the first eight months of the year, we have seen some progress in terms of direct interventions with public bodies. We are seeing improvement. That is a way for us to channel our resources to where we think that we can add best value.

With IJBs, the picture is so mixed that sometimes it is difficult for us to identify where to go, or to find out whether the issue is with the IJB

or with staffing. We gather information about recommendations and about the feedback that we give in complaints handling. We look at complaint handling when we are looking at complaints, and as soon as we identify something that we think is a problem, we go to the IJB. The fundamental thing in any organisation, regardless of whether it is a public service, is that the organisation should make it clear how people can make a complaint. That is crucial. If we find that public bodies—IJBs included—are not doing that, we take action with them under our complaints standards authority powers.

**Sarah Boyack:** These are relatively early days. In the past, in the context of health and local government, you have commented about model complaints, removing premature complaints and dealing with issues better on the ground. Are you saying that we are not at that point yet with the IJBs?

**Rosemary Agnew:** I would say not. However, the situation is probably more complex than it was for local government and health, because IJBs are not just learning about being an organisation and complaints and so on; it is about how they, as IJBs, operate. That is probably at the heart of the matter. Not all IJBs are the same and, as Niki Maclean said, this is about their governance arrangements and how they work together.

**Sarah Boyack:** You commented on how people make contact—you talked about how complaints are started off and you mentioned access to freephone numbers. Are IJBs going where local authorities go? Who would people phone? If we think about the kind of people who need to start the process, is there a freephone for them to get into the system? I am thinking of basic stuff.

**John Stevenson:** There is no requirement.

**Rosemary Agnew:** I do not think that we know that level of detail. There is not a specific requirement, but we suggest it as good practice when we come across it. Sorry—I do not know that level of detail.

**Sarah Boyack:** It sounds like detail, but it relates to Kenny Gibson's point about how an organisation deals with someone who contacts it. What is their starting point? Is it with an email or a letter, or by phone? How do people find the right person to complain to on the ground before they even come to you? There is a point about efficiency and fairness.

**Rosemary Agnew:** We look at the way in which a complaint has been handled. If something like that arises in a complaint, we can follow it back. If someone says that they did not know who to go to and that they were passed from one person to another, we will look at the process that they were put through. If a reasonable model complaints

process was not followed and the complaints handling service that should have been provided was not, including the point of entry, we will pick that up.

When I say that I do not know the detail, I mean that we have not done a survey of IJBs to see whether they all provide freephone numbers. However, it is certainly a practice that we would suggest as quite good to do.

**Sarah Boyack:** I am thinking about the nature of our questioning today. Other organisations are much further down the line, so there is something about feeding back what is good practice, what is not such good practice and what will incur your wrath because it is just not acceptable. It is about how people step up.

**John Stevenson:** Perhaps it is important to say that the model CHP that applies across the public sector applies equally to IJBs. It is also important to say that, as part of the suite of model complaints handling documents, there is a requirement to have a standardised public-facing document and information that tells customers that they can complain in any way that they want—verbally, in writing, online and so on. It allows for the organisation to adapt and adopt the process to deliver its local information.

You asked how people know who to go to. The model CHP places a responsibility on bodies to amend that public-facing information to give specific details about how they access the complaints handling service. It applies to IJBs, although they are still relatively new and immature in their life cycle, in the same way that it applies to every other organisation.

**Rosemary Agnew:** The question, then, is how we pick that up. We do that through complaints. It is not something that we have specifically surveyed—I hate to come back to resources, but we do not have the resource for that. However, as soon as we identify it, and if we identify it as part of a complaint, we will make a recommendation for change.

**Niki Maclean:** Public bodies have a statutory duty to signpost to the SPSO once they have completed their complaints process. Again, as Rosemary Agnew has said, if we were reviewing a case and could see that someone had found their way to us without being signposted as required by statute duty, we would pick that up.

**Rosemary Agnew:** That is why I say that, if your constituents are having difficulty, it may well be that we signpost them, but it would be to a specific place. We would take on board the fact that they had had that difficulty, and make sure that someone looked at their complaint. The more we can detect it, the more we can do something about it.

**Annabelle Ewing (Cowdenbeath) (SNP):** Good morning, panel. I will pick up on a few points that have been raised thus far.

Going back to the budget issue: how much do you want, then, in terms of where you are now and where you want to go? Further to the detailed discussion on what you would like to achieve, concretely, what is the figure that you feel you need, in order to do that?

**Rosemary Agnew:** It is probably worth updating the committee on the budget in the current year and in the year coming up.

We are taking on the independent national whistleblowing officer functions. We are also the leaseholders for the shared office at Bridgeside House, so part of our budget reflects that shared service.

We will have an increase for the independent national whistleblowing officer functions. As part of taking on those functions, we have agreement for two extra members of staff within our main organisation, to help us build capacity, because we are taking on an extra team, but not an extra ombudsman or an extra leadership team. We have been given two extra staff at team manager level, to help us organise and build that capacity.

That is not about volumes. Given the number of complaints coming in, in an ideal world, if you asked how much I wanted, I would say probably another couple of hundred thousand pounds, so as to have three or four more investigators.

It is not just about how much case load an investigator holds. It is also about how quickly we can look at the cases. Trying to resolve a case for the complainer, and not having it hanging over the heads of those concerned, is at the heart of it. As a minimum for investigation of those public sector complaints, if you could give me £200,000, I would be very, very happy compared with where I am now.

I must stress that this is not just about money, and it is not just about service. As is characteristic of Scotland's public sector and the way that we are trying to organise and do business, there is also a very strong push towards an understanding of wellbeing. Wellbeing is not just about complainers. It is not just about those being complained about. It includes the wellbeing of my own team. That goes beyond me saying, "I have a statutory duty."

I would love it if the committee came to visit us. One of the things that I hope you would appreciate—I think that you probably do, from what you have said—is that it is relentless. The in-tray is never empty. We deal with difficult complaints. We deal with people who themselves are going through challenging times. We have that

vicarious stress of what they are going through. We are an incredibly caring organisation. It is stressful for us if we are not delivering the service at the speed that we want. I get concerned for my own team.

It is not just about money for volumes; it is also about delivering a better outcome for everybody.

**Annabelle Ewing:** Thank you—I am sure that Mr Wightman has been noting that down for the SPCB.

This might seem an odd question, but how is customer satisfaction measured? What steps do you take to find out whether the individual citizen feels that you are all doing a good job?

10:45

**Rosemary Agnew:** We have customer service standards, which are published. We are doing some things as part of our on-going plan to consider how we can improve. We ask for individual feedback on casework. We get unsolicited feedback on casework, including some not very nice things, to put it bluntly. We also get some extremely good feedback. We look at customer service complaints that come to us, and we consider any other areas that might provide some feedback. I often get feedback when we go to meetings. We get feedback from all sides, but we particularly get it from complainers. One thing on the agenda is to consider how we can have a different sort of engagement with complainers and others who come to us. We also take feedback, if we can, from people who support the third sector.

I will say something about this year—not last year. Last year, we considered how we handled complaints about our own service. We follow the model complaints handling process, with the exception that it is not possible to go to an ombudsman with such complaints, so we have a contract with an independent complaints reviewer. Internally, we have tried to sharpen up on the complaints that we record.

On paper, it seems as though we have had more complaints about our service this year than last year. For some things, we have had more complaints because there has been a greater delay, which is because we are not able to allocate cases as quickly as we would like. As for why we are so keen on capturing complaints, I would pretty much say the same as what we say to public bodies—we can feed them back into changes that we might make.

The unallocated cases provide examples of where, based on feedback, we have been much more proactive in keeping people updated and trying to give them realistic timescales and expectations. We measure that through a range of

feedback. Some cases are almost reactive. I would like us, within the resources that we have, to be able to be more proactive.

We also get feedback from you, and we are always happy to take it.

**Annabelle Ewing:** I wish to pick up on a point that was raised earlier on the complaints handling process, individual cases and so on. As we go forward, many of the issues will be the same. In your process of dealing with the individual, at what stage does the generality kick in for the organisation concerned? For example, you might get a complaint in year 1 and the complaints handling process is not very good so you make representations. Two years later, you get a similar complaint, and so it goes on across all the organisations within your remit. What is the process whereby, to save a lot of time, you suggest how things might be done instead? How does that work? Who is in charge? Is it the relevant cabinet secretary? What is the process? It seems likely that there is a lot of duplication, in that the organisations are not changing the way in which they deal with complaints sufficiently. You have all the information. How does the process work to ensure that organisations make the necessary improvements?

**Rosemary Agnew:** I will start from our end.

**The Convener:** Please make your response as brief as possible.

**Rosemary Agnew:** In reality, we see only a small fraction of complaints, but we monitor all the recommendations that we make and all the feedback that we provide. If we see the same issue recurring and we have made the same recommendation before, we take a different sort of intervention action.

Health complaints provide good examples of things that, in practice, we think of as a generality, so we write to the appropriate person—the chief medical officer is a good example. We do not just leave things so that they keep happening. When we find something, we follow it up.

**The Convener:** How do you expect to change the SPSO's key performance indicators? How will doing that better reflect the increasing complexity that you have described?

**Niki Maclean:** We have amended the key performance indicators this year to reflect the fact that, last year, one of the changes that we made was to introduce an additional process whereby we share our decisions earlier, as Rosemary Agnew said. We have reflected that in our PIs, because it means that the amount of time that is required to conclude an investigation has been extended.

We are still closing the majority of our investigations within a year, which, within the world of ombudsmen, is a positive achievement. We have not played with the PIs very much, but we have adjusted them slightly to take account of that fact; we hope that that is an improvement in service.

**The Convener:** There has not been a major change; there has just been some tweaking in order to recognise the complexity.

**Niki Maclean:** Yes.

**The Convener:** I thank the ombudsman and colleagues for attending today's evidence session.

**Rosemary Agnew:** You are very welcome.

10:51

*Meeting suspended.*

10:54

*On resuming—*

## **Subordinate Legislation**

### **Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/438)**

**The Convener:** Agenda item 3 is consideration of a negative instrument. I refer members to paper 4. The regulations have been laid under the negative procedure, which means that their provisions will come into force unless the Parliament agrees to a motion to annul the instrument. No motions to annul have been laid.

As is set out in the associated paper, the Delegated Powers and Law Reform Committee considered the regulations on 21 January and drew our attention to a drafting error. The Government has committed to rectifying the error with an amending instrument, and the DPLR Committee has welcomed that course of action.

Members have no comments to make on the instrument. I invite the committee to agree that it does not wish to make any further recommendations in relation to the regulations.

**Members indicated agreement.**

10:55

*Meeting continued in private until 12:04.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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