

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 5 December 2006

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

31st Meeting 2006, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Dr Sylvia Jackson (Stirling) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Michael McMahon (Hamilton North and Bellshill) (Lab)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
*Tommy Sheridan (Glasgow) (Sol)
*Ms Maureen Watt (North East Scotland) (SNP)

COMMITTEE SUBSTITUTES

Mr Bruce McFee (West of Scotland) (SNP)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Dr Elaine Murray (Dumfries) (Lab)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Tavish Scott (Minister for Transport)

THE FOLLOWING GAVE EVIDENCE:

Bill Brash (Scottish Executive Enterprise, Transport and Lifelong Learning Department)
Professor Alice Brown (Scottish Public Services Ombudsman)
John Froggatt (Scottish Executive Health Department)
Lewis Macdonald (Deputy Minister for Health and Community Care)
Lewis Shand Smith (Deputy Scottish Public Services Ombudsman)
David Stone (University of Glasgow)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Transport Committee

Tuesday 5 December 2006

[THE CONVENER *opened the meeting at 14:00*]

Subordinate Legislation

Bus User Complaints Tribunal Regulations Revocation Regulations 2006 (Draft)

The Convener (Bristow Muldoon): I call this meeting of the Local Government and Transport Committee to order and welcome members.

Agenda item 1 is subordinate legislation. The committee will consider a motion in the name of the Minister for Transport, Tavish Scott MSP, on the draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006. I welcome the minister and his team of Scottish Executive officials. Bill Brash is a policy officer in the Enterprise, Transport and Lifelong Learning Department's local authority and partnerships team; Stuart Forrest is from the Enterprise, Transport and Lifelong Learning Department's bus, freight and roads division; and Jacqueline Pantony is from the transport branch of Legal and Parliamentary Services.

I invite the minister to make introductory remarks on the regulations. Members will then be able to ask questions before we debate them.

The Minister for Transport (Tavish Scott): I will be mercifully brief, as the principles behind the draft Bus User Complaints Tribunal Regulations were debated a number of times by the committee and Parliament during the progress of the Transport (Scotland) Act 2001.

The draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006 will streamline and tidy up the functions of various bodies and revoke the Bus User Complaints Tribunal Regulations 2002 (SSI 2002/199) at the same time as the public transport users committee for Scotland will establish a sub-committee to carry out the functions of the Bus User Complaints Tribunal. I emphasise that the two processes will go hand in hand.

Parliament has approved the Public Transport Users' Committee for Scotland Order 2006 (SSI 2006/250), which provides that the public transport users committee for Scotland will be established on 1 January next year. I expect that that committee will by April 2007 set up a sub-

committee to carry out functions in relation to buses. The convener and members of the Bus User Complaints Tribunal support the transfer of functions to the public transport users committee for Scotland, and my officials are working closely with them to ensure that the transition runs smoothly. The regulations are the final piece in the legislative jigsaw that is required for the public transport users committee for Scotland to carry out its functions properly, as required of it by Parliament. I ask the committee to consider and approve the regulations.

David McLetchie (Edinburgh Pentlands) (Con): You may recall that in a previous committee meeting, you and I discussed whether, for the purposes of complaints by bus users, a tram was to be regarded as a bus or a train. It was established that an Edinburgh tram would be regarded as a train rather than a bus, but whether complaints about tram services should be brought within the machinery for complaints about bus services was to be considered. The view was expressed that a member of the public is likely to regard a tram as being more akin to a bus than a train. Is that matter progressing? Will the new public transport users committee for Scotland have a sub-committee to consider complaints about trams?

Tavish Scott: I thank you for putting your question in such a thoughtful way, but I will invite Bill Brash to answer it. I recall our discussion and think that I wrote to the committee about the issues that were discussed. Perhaps Bill Brash could fill in the details.

Bill Brash (Scottish Executive Enterprise, Transport and Lifelong Learning Department): On 12 September, the minister wrote a letter to the convener in which he stated:

"Although tramways are sometimes included in a wider definition of railway I can advise that the remit of the RPC does not extend to the consideration of tram users' complaints as tramways do not fall within the definition of railway used for that purpose. I will consider in due course whether an order should be made to confer functions to the PTUC in relation to tram users' complaints."

Tavish Scott: By way of tidying up, that is what we are currently considering.

David McLetchie: Thank you.

Paul Martin (Glasgow Springburn) (Lab): The minister said that the Executive had set aside £100,000 from its budget for the organisation's operational costs. Surely there is an argument about which budget it should come from? Should not the money come from the industry itself, as is the case for tribunal settings in other industries?

Tavish Scott: I think that the moneys that Mr Martin mentioned are for start-up costs. I will check on that and, if I am wrong, I will be sure to

correct the point. Not unsurprisingly, I would be very happy to take a contribution from the industry towards costs—we will consider the proposal. The current plan is for the Executive to cover costs from within normal Scottish Executive transport budget heads.

The Convener: As there are no further questions, I invite the minister to move the motion.

Motion moved,

That the Local Government and Transport Committee recommends that the draft Bus User Complaints Tribunal Regulations Revocation Regulations 2006 be approved.—[Tavish Scott].

Motion agreed to.

The Convener: I thank the minister for his attendance.

Tavish Scott: Thank you.

Petition

Home Safety Officers (PE758)

14:07

The Convener: I welcome the Deputy Minister for Health and Community Care, Lewis Macdonald. The minister is supported by David Stone, who is the senior medical officer; John Froggatt, who is the branch head of public health and substance misuse in the public health team; and Annette Stuart, who is the policy officer from the same team. I welcome the officials to the meeting.

Obviously, the minister is aware that our purpose today is to hear evidence from the perspective of the Health Department on petition PE758, which calls for the placing of a statutory duty on local authorities to appoint home safety officers. The minister's perspective should be part of the committee's consideration of the issue. In due course, we will hear from the minister's colleague George Lyon MSP so that we can gain a perspective from the viewpoint of local government. I invite the minister to make some introductory remarks in which he can set out his and his department's views on the petition.

The Deputy Minister for Health and Community Care (Lewis Macdonald): Thank you, convener. I start by acknowledging that the committee might be surprised to find that a health minister is the first minister to address the committee on home safety, but Executive responsibility for it lies within the Health Department. As the convener said, the committee will hear from another minister whose department also has an interest in the petition. That reflects the policy significance of the issue across a number of Government departments and agencies.

I will start with the good news. The trends are positive for the medium to long term. When a comparison is made with the situation 20 years ago, we see that the 2004 figures are an improvement on those for 1985. The rate of deaths from accidents in the home among children has declined by 80 per cent and the overall rate has declined by 60 per cent. The movement is in the right direction.

Clearly, a good deal more has to be done in order to address some of the continuing causes of injury in the home. We look to community safety partnerships as the key agencies to bring together the various bodies that have an interest in delivering on this agenda. I refer to bodies that bring together local government, the police, fire service and health service. There are community

safety partnerships in all 32 local authority areas in Scotland. They usually involve voluntary and community bodies as well as the public agencies to which I referred. We are funding them to the tune of £12 million over three years, in the current funding period. All community safety partnerships are required to produce evidence-based strategies and action plans and to report annually to the Executive. They are supported by a national co-ordinator in the Executive. Most partnerships have home safety as one of their priorities, which reflects our view that it is for local partnerships to set and respond to local priorities.

One of the focuses of accident prevention work in home safety is fire. There is a particular Health Department interest in the causes of fire. The figures suggest that alcohol was a direct contributory factor in more than one third of fatal incidents and an indirect factor in more than 7 per cent of fatal incidents in 2004-05. Again, that is an improvement on the position that pertained in the past. Nevertheless, the figure is unacceptable.

In Strathclyde, the fire and rescue service estimates that around 87 per cent of fire fatalities continue to occur as a direct or indirect result of alcohol consumption. One of the initiatives that is being undertaken centrally is the don't fuel fire with alcohol campaign, which is intended to raise awareness of the direct link between alcohol misuse and fire fatalities in the home. Often, the cause of such fires is careless use of cigarettes, matches or lighters, so some of the advertising focuses on those issues and highlights the risks to children who are in a house in which something of that kind takes place.

Those are some examples of the work that is being done to raise awareness of the risks to safety in the home. Raising awareness is one of the key things that we seek to do. To do that effectively across all aspects of life and across all ages is a challenge: we do not believe that it is a challenge that can be met by the Executive or by local government alone; rather, it requires focused action by a range of stakeholders and partners including health boards, the fire service and others.

We welcome the committee's focus on the issue, but we do not think that the petition points the way forward. We do not agree that setting a statutory responsibility for one of the partners in the partnership is the right approach. Our established approach to funding local government services is not to ring fence funds in ways that we do not believe are necessary. We do not believe that the suggestion in the petition is necessary or helpful.

We are interested in the discussion that the committee will have, but our position is that the partnership approach is the right one and is

currently delivering change. We will continue to support community safety partnerships and the partnership approach. That is how we should work to bring down the figures for home accident injuries and deaths.

The Convener: I thank you for those remarks.

14:15

Michael McMahon (Hamilton North and Bellshill) (Lab): There is concern about postcode delivery of services. You said that, in some areas, specific responsibilities are given to officers in community safety partnerships, but that does not happen in all areas and you said that whether it does depends on the priorities that are set by each CSP. Surely we want to get away from that kind of postcode delivery of services.

The Scottish Executive—without having to increase costs or to ring fence local authority funding—could say that it is the duty and responsibility of organisations such as CSPs to ensure that delivery of home safety advice is equal throughout the country. The point behind the petition is that wherever a person lives in Scotland they should be supported by someone who has responsibility for home safety and who ensures that everyone is as aware of safety implications as they can be.

Lewis Macdonald: I accept that there should be a common high standard of provision—that is indisputable—but we must respond to the proposition in the petition. Michael McMahon made a point about postcode delivery of services, but different areas face particular issues that should be given priority. Such issues can best be identified locally by local partners, who bring different things to the table. The Strathclyde fire and rescue service has done work on alcohol-related fires in the home, as I said, but in some parts of the country road traffic accidents are the most pressing cause of concern for local partners. It is right that decisions about setting priorities on accident prevention and ensuring the best deployment of local resources are made as locally as possible.

Michael McMahon: I am sure that there is no difference between the benefit that can be gained from employing a home safety officer in one part of Scotland and the benefit that can be gained from doing so in another part of the country. By ensuring that people were safe in their homes, we would reduce costs on the health service and local authority services and bring benefits throughout Scotland that would outweigh people's concerns that the will to do a particular thing had been imposed on a particular geographical area. The proposed approach would not prevent people in different parts of the country from focusing on

issues that concerned them, such as road traffic accidents. Surely there is evidence from across Scotland that proper attention to home safety can reduce the burden on the national health service and social services in local authorities. That is what we should aim to achieve throughout Scotland.

Lewis Macdonald: I do not disagree with that—perhaps we are debating not the value of improved home safety but how best to deliver it. Our contention is that that is best done by addressing local priorities that are set at the behest of local agencies. By requiring local authorities to make particular provision for home safety, as opposed to other areas of work, we might prejudice discussions that take place locally.

You are right to say that home safety brings benefits throughout the country, but I suspect that a detailed examination of the statistics, which I am sure the committee will undertake if it considers the matter further, might show a big regional variation in the issues that arise in different areas and in the priority that issues are given. That is certainly the implication, given that some community safety partnerships regard home safety as a top priority while other CSPs do not give the issue such a high priority, because they would rather concentrate their resources on other areas of concern.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): In the interests of clarity, would not it be helpful to accept the petitioner's recommendation and impose on local authorities a statutory obligation to employ home safety officers? The public would then know who was responsible for home safety, which would bring massive advantages in tackling problems. The approach would also potentially bring huge benefits, as we heard in evidence from the petitioner, whose evidence to the Public Petitions Committee was so persuasive that the committee referred the matter to the Local Government and Transport Committee, so that we could inquire further into the issue.

Lewis Macdonald: I understand the argument about clarity, but I think that it is posited on the assumption that there is currently a lack of clarity. Again, I would be interested in the committee's findings as it proceeds with its work. The community safety partnership in each local authority area has a clear responsibility and the local authority is involved in its work, as are other agencies. If CSPs have been established to address and take forward the safety agenda, it is appropriate that they continue to have that lead responsibility.

Fergus Ewing: I ask the question because I am aware that knowledge among the public, of which I am a member, is not always very high. That was

shown starkly when I read recently that two thirds of the public could name three celebrity chefs, but only 3 per cent could name three members of the European Parliament. What percentage of the public do you think know what community safety partnerships are and do?

Lewis Macdonald: I would be speculating—as would Fergus Ewing—but I know that the Aberdeen Safer Community Trust in my area and the partnership work that it takes forward are well known in the community. It is for others to judge whether the same is true in their communities. The partnerships bring round the table the agencies that have hands-on responsibility for fire prevention, fire safety advice and the other areas of work that are being taken forward. As Michael McMahon said, a number of local authorities have a full-time officer with responsibility for home safety. Other authorities deliver on the matter through environmental health and some do so through trading standards.

You can argue that the situation would be clearer if everyone did the same, but we might thereby lose local responsiveness to local needs.

Fergus Ewing: Does the Executive have an estimate of the costs that would arise were the petitioner's plea, that local authorities employ home safety officers, to be implemented?

Lewis Macdonald: I cannot give you the costs today, but I am happy to write to the convener with our best estimate. It may be a question for George Lyon, given his overall responsibility for local authority funding, when he appears before the committee. I will certainly give him notice that you will ask that question. Part of the difficulty in arriving at an estimate is that the arrangements that exist in local authorities vary significantly. Therefore, judging what the additional costs in each case is not as straightforward as it would be were we starting with a blank sheet.

Fergus Ewing: Perhaps it is not entirely fair to suggest that you are passing the buck to the minister responsible for local government, but are you really saying that you have no information about costs?

Lewis Macdonald: I am saying that I do not have the answer to the question that you asked. I am happy to ensure that either I or a colleague make the information available to you.

Fergus Ewing: You said that costs are currently incurred by local authorities in performing home-safety functions. Can you share with the committee any information you have been given on the costs that are incurred by local authorities for the existing function and provision?

Lewis Macdonald: I ask John Froggatt to comment.

John Froggatt (Scottish Executive Health Department): We do not have specific information on the costs to local authorities of current provision.

Fergus Ewing: Have you asked them?

John Froggatt: We have asked which authorities have community safety officers, but we have not asked for their individual costs.

Fergus Ewing: You said that there is other provision and that services are delivered other than through employment of home safety officers, in that home safety is catered for in a range of ways by local authorities. Are you really saying that you have not bothered to ask local authorities what costs they incur in relation to the matters about which the minister informed us earlier, and that you have come to the committee without that information?

Lewis Macdonald: I am sure that the committee would want to ask those questions, if Mr Ewing thinks that it is critical to the argument.

We have established from the local authorities which ones currently employ full-time home safety officers or community safety officers. I would be happy to make that information available to the committee.

Fergus Ewing: I hope that the costs of the services that you say are being provided can be quantified. Plainly, in order to reach a decision any committee would want to have the clearest possible idea about current costs and proposed costs. I emphasise that it is the benefits of the measures that the petitioners stress would be paramount. Nonetheless, I am sure that they would agree that we should not neglect to pursue diligently the matter of costs under the existing system.

Lewis Macdonald: We are perhaps talking at cross-purposes—you asked what we estimated the costs would be of following through the petition but now you are asking about existing spend on delivering the current services. That is a slightly different question.

You may recall that in my introductory remarks I explained that community safety partnerships are funded to the tune of £12 million over the current three-year spending period. Given that much of the current provision is from community safety partnership funding, that gives you an indication of the envelope of current funding.

The Convener: You mentioned the link between alcohol and deaths in the home due to fire and the current Government campaign on that. Do you have any information about the progress that has been made through the fire service's increased focus on providing information and advice to people about home-fire safety measures in

particular? As well as changing behaviour, obvious ways of tackling the problem is through installation of more smoke alarms and provision of fire safety advice. Do you have any information about, for example, how many homes have been visited, how many people have received advice, and how many additional fire detectors have been installed?

Lewis Macdonald: All fire and rescue services in Scotland provide a home-fire risk assessment service, including visits to people's homes. That may include installation of 10-year-battery smoke alarms, which are clearly important in preventing fire.

The don't give fire a home campaign relates closely to that question. It is aimed principally at providing fire safety advice to children under the age of 14. It targets them as a particular risk group in the same way that adults are targeted in respect of alcohol consumption. If details of the work that fire services have done over a given period will help the committee, I will be happy to provide them.

The Convener: Such statistics would be useful; they would address the question that was raised by Michael McMahon on whether there is consistency of service across the country, and the question about whether the fire service's increased emphasis on prevention and advice is reducing the risk of death from fire in people's homes.

Paul Martin: Do you think that we expect too much of the public sector in community and home safety? Should we expect more from the private sector? For example, I am thinking about the appliances that can be purchased from do-it-yourself chains and whether more effective information could be provided. I am also thinking about packaging and about other items that are purchased by members of the public.

A casualty nurse has told me that a considerable number of patients come to casualty because they injure themselves opening packaging when using a Stanley knife or scissors. Is there a need for the private sector to be more involved in community and home safety?

Lewis Macdonald: It is important that there is proper and effective regulation of matters relating to, for example, the packaging of home improvement tools and kit. We have recently introduced new guidance on bath water under building standards. A chief cause of accidents in the home is scalding, and we have become the first country in the United Kingdom to pass legislation that addresses that. Henceforth, all new and refurbished properties will be required to have a regulator fitted to the hot water system to govern the temperature. That is an example of a measure

that can be taken to ensure that things that are put in homes, whether by those who build them or by the people who want to make improvements to their homes, meet appropriate standards. In the example that I gave, we toughened the standards because we recognised that there was a continuing problem.

Paul Martin: I appreciate that we have worked with industry on that, and that it has been happy to comply. However, what happens if industry says that it does not want to work with the Executive to address home safety? Will there come a time when industry will need to be made to face up to the fact that the sale of appliances needs to be more effectively regulated to ensure that people do not use them in a manner that, in the long run, will have an impact on, for example, the health service?

14:30

Lewis Macdonald: It is striking that several local authorities work on home safety in conjunction with trading standards departments because they recognise that trading standards are important to home safety and that effective regulation is a key part of delivering the outcomes. Trading standards are set across the board and apply across the country, but enforcement is determined locally. Enforcement should always be carried out to ensure that home safety is not compromised.

David McLetchie: As we have heard, some councils employ home safety officers whereas others, often in adjoining council areas, do not. We heard that when we took evidence from Dundee City Council and Angus Council in June. Does the minister have any evidence to suggest that people whose council has a home safety officer sleep more safely in their beds at night than do people who live in a locality where they are deprived of such a service?

Lewis Macdonald: As with Mr Ewing's question about public awareness of community safety partnerships, it would be difficult to give an evidence-based response to that question. Certainly, it would be fair to say that local authorities that have recognised home safety as a priority and have made that resource available will presumably ensure that they get value from that decision and make a difference with the appointment. However, the key issue is that it is for local authorities and their local partners together to determine what will make the most difference and have the most beneficial impact.

David McLetchie: Given that the objective of the petition is to create the post of home safety officer in all local authorities in Scotland, does the minister agree that, before such a Scotland-wide

duty was imposed on authorities, some evaluation would need to be carried out of the effectiveness of different approaches in tackling accidents in the home? Would it not be reasonable, therefore, to try to find evidence as to whether having a team that is led by a home safety officer is more effective than other approaches at raising public awareness and reducing the level of accidents?

Lewis Macdonald: I understand that point. Certainly, if I were a proponent of that kind of statutory duty, I would feel that my case would be greatly strengthened by being able to show evidence that having a home safety officer made such a difference. My view is that, if it ain't broke, don't fix it. That is not to suggest that the problem does not exist but to say that progress is being made under the arrangements that are currently in place. I think that that is the right way to go forward. Simply placing a statutory duty on one partner to employ a full-time officer to address one aspect of the issue would not of itself guarantee a different outcome. The key issue is what difference to the outcome is achieved by different interventions, such as raising awareness and working with partner agencies to improve the position in people's homes.

David McLetchie: Does the minister agree that the call for each local authority to employ a home safety officer proceeds on the basis of an unproven, and perhaps unprovable, assertion as to its efficacy in dealing with accidents in the home?

Lewis Macdonald: I certainly agree that I have seen no evidence that the appointment of an officer with that responsibility would of itself transform the situation in local areas.

Ms Maureen Watt (North East Scotland) (SNP): You said that the number of fires in the home was decreasing, which is to be welcomed. However, given the worrying increase in the number of drink-drivers in the middle-age group, it seems that unless we continually reinforce such messages—whether about drink-driving or fire safety—any lapse in public awareness leads to an increase. We need to keep up public awareness of such issues all the time. If the Scottish Executive were to require councils to have home safety officers and set out a plan of action over a period of, say, four or five years, would that not demonstrate our commitment to keeping these issues in the public eye?

Lewis Macdonald: It would, but that would not be the best or only way to do that. If the power was taken and used, it would send a clear signal, but there are other approaches. I am more interested in ensuring that local partnerships are delivering joined-up strategies that address their priorities in an effective way. I take the point,

however. Sometimes, sending a clear signal can be the right thing to do.

If I thought that the range of different approaches reflected a lack of seriousness in tackling the matter in some areas, I would tend to favour your proposal. However, I have no evidence that that is the case. I have no evidence that the way in which local authorities and their partners approach the issue reflects a lack of seriousness. If there was such evidence, I would be concerned to know about it, but I have no such evidence at the moment.

Ms Watt: Are there any measures or criteria against which community safety partnerships are evaluated?

Lewis Macdonald: Yes. Community safety partnerships have to draw up a strategy and agree it. It is then reported to the Executive and, as I said earlier, there is a community safety co-ordinator for Scotland whose responsibility it is to address with the community safety partnership in question any issues that arise in the process.

Ms Watt: Is there any measurement that can be used to determine whether one partnership is doing better than another? You said that if we compared home safety officers with community safety partnerships, we might opt for having a safety officer, but is there any measurement of how community safety partnerships are doing vis-à-vis one another?

Lewis Macdonald: Given his professional interest in injuries, David Stone may have something to suggest and may be able to say how he assesses the trends from a medical point of view.

David Stone (University of Glasgow): The first thing with this kind of evaluation is to look for correlations between trends and arrangements at a local level or, for that matter, at national level. However, it is extremely difficult, methodologically, to draw conclusions from time trends. Using public health or epidemiological methodology, in an ideal world we would try to conduct an experiment comparable to a clinical trial for drugs: we would randomly allocate home safety officers—or community safety partnerships, for that matter—to some local authorities but not others. In the real world, we cannot do that, so we are left looking at time trends for the arrangements that have been put in place. We have tried to draw some sort of conclusions on cause and effect. It is extremely difficult to do that, especially when the numbers are small. We are fortunate that, in Scotland, the numbers have now come down to a fraction of what they were even 20 years ago. However, from a statistical point of view, that presents a problem, as it means that there is much more random, year-by-year variation. When we start looking at

specific parts of a small country such as Scotland, the methodological problems are further increased. I do not know if that is a helpful response, but it is extremely difficult from an evaluation or research point of view to do the sort of work that has been suggested.

Lewis Macdonald: I might add that the community safety partnerships will report again in February as part of a regular process.

The Convener: Before we continue, I should mention that I was wrong to say that we have George Lyon scheduled to come and give evidence on this issue. We do not, I believe. We might wish to pursue some of the areas on which the minister was not able to give us precise figures in correspondence. It will be up to committee members to consider whether we wish to take oral evidence from the Deputy Minister for Finance, Public Service Reform and Parliamentary Business. Initially, we might wish to pursue some answers in correspondence.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Why do you think that the petitioner brought the petition?

Lewis Macdonald: My answer to that very much reflects the last question from Maureen Watt. From the perspective of those who are fully engaged in this area, a clear signal can be sent to local authorities and everybody else that the issue should be given higher priority. My response to that would be the same as my response to Maureen Watt. I am sure that that is what lies behind and motivates the petition.

Mike Rumbles: Is the issue only that people who are involved in the matter want to give it a higher priority, or are there gaps in the system?

Lewis Macdonald: I am interested to know whether the committee has found evidence of gaps, as I would be concerned about that. Certainly, no evidence has come to me to suggest that local authorities are failing in their responsibility to deliver the services and advice, with partners. However, if there is evidence to the contrary, I would be interested to know about that.

Mike Rumbles: I am pursuing the issue because, with every petition, part of the reason why the petitioner raises it is that they feel genuinely that the issue is seriously important and they want to ensure that it is right up there. If you think that that is the only reason why the petitioner has brought the petition, you are not likely to want to change the current system. Am I interpreting you correctly?

Lewis Macdonald: From a Government perspective, one of the extremely helpful aspects about committee inquiries into such issues is that they will undoubtedly explore sources of evidence

and cast fresh light on the evidence. We will pay close attention to whatever conclusions the committee comes to. I have described our starting position, which is that the current system delivers what we want it to do. On that basis, we would need to be persuaded that there is a case for significant change.

Mike Rumbles: Basically, you are content that the system delivers what you want it to deliver.

Lewis Macdonald: Broadly speaking, yes. We can always do better, but we are going in the right direction.

The Convener: That brings us to the end of our questions. I thank the minister for his evidence. I ask him to take on board some of the issues and to get back to us in writing on the questions on which he did not have all the relevant information. We will also pursue a couple of questions in correspondence with his colleague the Minister for Finance and Public Service Reform or his deputy. In due course, we will consider whether that correspondence will suffice or whether we need direct evidence from one of those ministers.

Scottish Public Services Ombudsman

14:43

The Convener: Item 3 is evidence taking from the Scottish public services ombudsman. I welcome Professor Alice Brown, the Scottish public services ombudsman, and Lewis Shand Smith, a deputy Scottish public services ombudsman.

We have taken evidence in previous years on your role. In part, we will address issues arising from your annual report for 2005-06, but I am also content for you to expand on that into other current work that you think it would be useful for the committee to be aware of. I ask you to make any introductory remarks, after which we will move to questions and answers.

Professor Alice Brown (Scottish Public Services Ombudsman): Thank you for accepting our offer to give a presentation to the committee. As you say, we were at the committee last year, when we enjoyed the discussion that we had and the wide range of issues that members raised with us. Following that meeting, we followed up some of the specific questions with individual members, either through correspondence or with meetings. We would be happy to do that again, because I know that time is limited and that we cannot cover all the issues that might arise. We prepared a short briefing paper—I hope that members found it useful and have had the opportunity to read it, because it highlights some of the specific issues in the annual report. We provided other documents, which contain further information on guidance and a copy of the British Columbia legislation on how to make an apology, as we had a good range of discussion on that issue at last year's meeting. I will not repeat a lot of that information, but it might be helpful to emphasise one or two points and some linkages between some of the issues that are raised in our annual report and the briefing paper.

14:45

I will start by saying a bit more about our new reporting process. When we met the committee last year, we highlighted the fact that we were moving to a new process. Our reason for doing that was not only to improve the accountability of our office and the bodies under our jurisdiction, but, crucially, to allow a greater facility for people to learn from complaints in order to improve the delivery of public services. Ultimately, our aim is not to look at complaints per se but to consider how we can improve generally in carrying out that job.

We discussed the new process with the sectors that are involved, especially the local government sector, which accounts for more than half the complaints that come to our office. I am delighted that Lewis Shand Smith is with me today, as he takes the lead responsibility in the local government field. He visited all 32 local authorities—I visited almost all of them. We met all the chief executives and council leaders, where appropriate, as well as other members. Also, when asked, we gave presentations to staff and officers, trying to get across some of the reasons for changing our process.

We received wide support for the change, partly because it was linked to a greater culture of openness and transparency in council processes, but also because what we were talking about was linked to what councils were being asked to do anyway by way of the duty to achieve best value and the power to advance well-being, and through being more user focused in the delivery of their services. In a sense, they saw it not as an additional thing that we were asking of them but as a way in which they could demonstrate that they are doing those things anyway.

The committee is probably aware of our monthly commentaries. We now lay reports to Parliament on a monthly basis and issue commentaries that summarise the key cases, which allows people to follow up cases that are of particular interest. So far, the commentaries have been dominated by health cases that raise big issues that do not just concern individual complaints about a certain health board but have resonance across Scotland—for example, for policy on eating disorders or guidance on deep vein thrombosis. A lot of that is linked to improvement across the board.

Last month, we had a key case to do with free personal care, which takes us directly into the territory that we are exploring today and its overlap with the Health Department. The free personal care case highlighted where the ombudsman can add most public value in looking into a complaint. There is a rising trend of complaints coming to us, and we are still seeing too many cases that really should not be coming to the ombudsman. That raises issues to do with the need for good complaint handling at source to resolve complaints early before they escalate.

When we went round the different councils, we got some good examples of good practice in how councils are addressing that issue and in the ways in which they feed back to the community about what they do with the complaints that they receive. Stirling Council has a talkback system that we thought was very effective. That is just one example of many. More generally, there is much more dialogue about the need to change the

culture and the way in which people approach complaints.

That leads me to the other initiative that we talked to you about last time. We were considering issuing advice on a model complaints procedure, recognising the complexity and difficulties that are faced by individual members of the public who wish to raise a concern. As you know, we have 32 councils with 32 different complaints procedures, and there may be different procedures within a council—for example, for social work complaints and education complaints. The process can be confusing, so we highlighted the need for a model.

We worked closely with the Society of Local Authority Chief Executives and Senior Managers and the Convention of Scottish Local Authorities and got feedback from them on our drafting. We started with a very long document, but we took a lot of the detail out and ended up with a small leaflet, which is available on our website. I think that members have copies of it. It is targeted at different levels of an organisation such as a local authority or health board. It talks about the responsibilities of the chief executive and others at the top of an organisation; the responsibilities of middle management; and the responsibilities of front-line staff, who are most likely to deal with and handle complaints on a daily basis. There is a lot of different supporting information on the web, so each line of the leaflet, although simplified, is supplemented with other information. That is the way in which we are trying to move forward with the sector. Local authorities have welcomed that very much and we have received positive feedback from individual authorities.

As I said, our inquiry and complaint numbers may be growing, but that does not necessarily mean a decrease in the service from local authorities. However, we highlight the fact that some cases should not have escalated to us or come to us before they had gone all the way through the process in a local authority.

We have done a little in-house research on why what we call premature cases come to us early. We have still to do a full analysis of the data, but the first point is that many people become fed up waiting and find that the process takes too long. They feel that they have had a negative experience, so they want to approach an independent person, or they have made comments about staff attitude, so they are disinclined to continue with a local authority process and they approach us too early. That raises a big issue for us about how early we can take a case. I can exercise discretion, but it is always best for the body that is involved to try to resolve the problem. As I said, perhaps it is the most significant, difficult and complex cases that should come to us.

We are encouraging the sector to move towards a much more simplified process that is akin to that in the health service, which has a two-stage process before the ombudsman. We want the sector to think about how the process feels from the user's perspective. We make the point forcefully that if people handle complaints well, they can increase trust and confidence in the delivery of public services. However, if they handle complaints badly, they increase dissatisfaction, and people tell lots of other people what has been done—that is a negative spiral.

Linked to that, we stress good complaints process design and simple steps and processes. A complaint should come to the ombudsman only when it involves an issue that is not easily resolved, such as free personal care. That raises the question of the social work complaints process. We are asking whether that should be revised and whether we should follow the health sector again by removing the complaints review committee stage, just as the independent review panel stage was removed in the health service to allow people to go more speedily through the internal process and on to us, should a complaint warrant that. Lewis Shand Smith is taking that initiative forward.

Our outreach activities have been based on working with the sectors that are under our jurisdiction to prevent complaints from escalating and reaching us in the first place. In that sense, we do not advertise our service directly. One of my concerns is that we raise public awareness indirectly through other agencies such as citizens advice bureaux, advocacy agencies and bodies that are under our jurisdiction, because other public awareness-raising exercises have high costs.

I will put all that in a much wider context. Developments that have dominated our time in the past year have been the Finance Committee's accountability and governance inquiry and the Crerar review. We have been positive in welcoming those reviews, because we are in a new stage in the evolution of devolution, when we consider not just the Parliament and the Executive, but the governance structures that underpin a lot of matters. We have contributed to those debates and I hope that members have had a chance to look at some of the design principles that we have proposed. We continue to engage with the Crerar review on some of that.

What are the big issues that are coming up for the sector? Developments in free personal care are likely. The Planning etc (Scotland) Bill will have an impact on us and we have tried to give a flavour of that in our briefing paper. Lewis Shand Smith can talk more authoritatively about that. Raising awareness of human rights and how

public services are supposed to integrate human rights into delivery will also have an impact.

Those are the key issues that face our organisation in relation to local government. We are happy to answer members' questions.

The Convener: Thank you for your introduction. We move on to members' questions and I will kick off with a couple of questions. You mentioned issues with local authorities' differing interpretations of the legislation on free personal care—I use that as an example, although I do not want to go into great detail on that. When you come across an individual complaint that could be applied to a range of local authorities and could have implications for the Executive in terms of clarifying and interpreting the law, how do you ensure that everyone who needs to be aware of your findings is made aware of them and subsequently changes their practices?

Professor Brown: That is where we see the power in reporting proportionately depending on the type of issue that comes to us. The commentary also allows us to draw trends from the issues that come up. It also allows us to take up the issues with the bodies concerned.

I will leave free personal care for a moment and move to another sector by way of illustration: the health cases of eating disorders and deep vein thrombosis. We had conversations with the Minister for Health and Community Care, the head of the Health Department, and NHS Quality Improvement Scotland, which is the agency that can follow up some of the issues that are raised once we have raised the awareness of the key people involved. They can then ask the right questions of the different boards that are delivering the services.

NHS QIS is another agency whose job it is to follow up issues in a different way. Our work therefore complements its work, rather than overlapping with it. It has a top-down perspective of issues from inspections such as those that Audit Scotland carries out, for example. We take the user's perspective. What does the user tell us and how do we feed that information into the system? The trick is not to pass each other on parallel lines but to join up at the centre. Our reporting should inform its inspections or regulation.

I can talk about the particular case of free personal care because it is now in the public domain, although I cannot reveal the identity of anyone involved. We found that the local authority involved was not guilty of maladministration because it followed the guidance that it had before it. Nonetheless, it was our interpretation that there was a service failure. One of the important things about the ombudsman legislation is that we can

examine service failure as well as maladministration.

Although the local authority was not guilty of maladministration, we found that it had failed to deliver a service to a person who had been assessed as needing it and who was in a care home. There was a funding gap. We did not think that when the Parliament passed the free personal care legislation, it intended that free personal care should be rationed in this way, and certainly not rationed differentially across Scotland.

We went back to look at the guidance because there were two aspects to the complaint. There was a complaint about the authority not delivering the service, and a complaint about the Executive not forcing the authority to deliver the service. The committee will know that, constitutionally, the Executive cannot do that directly, so technically we could not uphold that aspect of the complaint. However, we emphasised that the Executive had to revisit the guidance that it was giving and support the review of the delivery and implementation of the free personal care policy.

The guidance was written on the basis of a judgment that predated free personal care and which focused on waiting lists and when they might be appropriate and so forth. We asked whether we could rely on guidance that was based on a judgment that predated the policy and that clearly had a different intent. In the particular circumstances of this case—we have to be careful because each case has its individual aspects—it was not that there had been no provision of care; the care was being provided but it was not being paid for. That is different from the matter that Lord Hardie had considered, so we think that the Hardie judgment is out of date in the circumstances in which Scotland now finds itself.

To answer your question more directly, we will follow that up with the Health Department. We will raise again the point about the guidance, comment and take the issue forward that way. Obviously it is up to members and the Parliament to raise such issues in different ways, but I would like to see new guidance being issued that means that there will be no future ambiguity for other members of the public and, of course, for people of a particular age where time is a critical factor. Our point is that it is unacceptable for a member of the public to be caught up in the dilemma of one public body saying that it is the other one's fault and the other body blaming the first one. That is just not acceptable. The judgment is quite important in that respect, but I hope that it is a constructive contribution to the debate and will allow us to have greater clarity in future.

15:00

The Convener: I want to ask one more question before bringing my colleagues in. You referred to the fact—and it is mentioned in the annual report—that many complaints about local government are about discretionary decisions. That is to say, there has been no maladministration in the way that the councils or other public bodies have made those decisions; it is simply that people do not like the decisions. When you receive such complaints, is it often obvious that the issue is simply that the person who is making the complaint does not like the result of the decision? If so, do you communicate to that person at an early stage that their complaint is not appropriate for your consideration?

Professor Brown: Yes and no. The relevant section of the Scottish Public Services Ombudsman Act 2002 states that we cannot question a discretionary decision that is made without maladministration. We always have to ask whether there was maladministration in the way in which a decision was reached. We have gained experience through looking at cases and deciding whether to investigate them on the basis of the information that we have in front of us. However, we sometimes have to test whether the bit leading up to the decision was done properly. That is where the investigation comes in.

It is interesting to compare the work of the local government ombudsmen south of the border. These days, most of the challenges that they receive are about the decision not to investigate a case rather than the result of an investigation leaving people feeling that their case has not been properly investigated.

A key principle of our work, which we try to get across to our staff, is that we must act proportionately in relation to the issue that is in front of us. Given our wide jurisdiction, you can imagine the type of complaints that we receive. We want to have the same standards, the same approach and the same rigour in dealing with all those complaints. Nonetheless, we must be proportionate in how far we pursue certain issues. Clearly, that is a judgment call.

We have quality assurance systems in place, whereby Lewis Shand Smith and the other deputies take a sample of cases and give feedback. It is always a learning process. If it was easy to solve the complaints, the public bodies would have done it themselves. We often deal with grey areas, and something that starts off looking quite innocuous and fairly unimportant can suddenly develop into something with a lot more aspects to it once we start to look at the evidence.

The Convener: Most MSPs would sympathise with that. Our case loads are often complex and difficult, too, and they include problems that people have been unable to resolve successfully.

Professor Brown: Indeed. You handle a lot of complaints about councillors, and you are often people's first port of call.

Fergus Ewing: The annual report that you have presented to us states that your office handles health service complaints, the majority of which relate to clinical treatment. I have received several complaints—none of the details of which I can properly divulge—relating to cases in which a husband, wife, parent or child has died. As you say in your report, in general,

"health professionals ... adhere to the highest standards of care."

Nevertheless, mistakes are made. In the cases that have been brought to me, there has been difficulty in establishing the facts and whether clinical judgments were soundly based. Those are extremely difficult issues.

How do you investigate such complaints? In particular, in what circumstances do you decide to commission an opinion from an independent expert, for example a consultant surgeon operating in the specialism in which the death occurred? It is not clear to me how, as laypeople, your staff can make such judgments. When you do not have the expertise, in what circumstances do you seek outside advice? What input does the complainer have into the decisions about whether and from whom an independent report is obtained—that is, from which consultant in which hospital? How do you persuade a complainer that such a report is truly independent of the personnel involved? I am sorry that that is such a complicated question, but it troubles me a great deal.

Professor Brown: That question is fundamental. As will be evident from our commentaries, clinical judgment is part of the complaint in many cases.

Stepping back a bit, I should inform members that the previous health service commissioner was given the power to look at clinical judgment, as well as maladministration and service failure, just over 10 years ago. That is an important power. Working with the health sector—in conjunction with the Health Department, the Scottish health council and others—we ran learning events in different parts of Scotland earlier this year to try to get the message across that, in 10 years' time, a future ombudsman should not be saying the same things that I have said this year. When I quoted from what was said 10 years ago, I could see that we were facing some of the same problems in 2006. The important message that we tried to get

across to the sector was that we need to learn from complaints, acknowledge when things go wrong and share evidence with each other.

On how we go about the process, all complaints about the health service, especially those that involve the death of a child, clearly must be handled sensitively. In the first instance, we tend to look at whether the complaint is about clinical judgment. Some health complaints are about communication problems. For example, if a failure to pass on information resulted in a clinician not realising that the patient had to be treated within three months, the issue would not be clinical judgment but a breakdown in the administrative system. Health complaints can also be about failure to inform the family properly, for example, about the patient's treatment or the likely outcome of an operation.

We screen a lot of the health complaints when they first come in. In the first instance, we try to understand the issues and ask the right questions. That is part of the skill and training of our investigators. They need to probe the issue and ask the right questions in analysing the complaint that is in front of them. The first issue that we try to sort out is whether a complaint is about clinical judgment or other matters. A complaint about being struck off from a general practitioner's waiting list will not usually be about a clinical matter, but we need to ask whether the GP followed the processes properly.

For health complaints that are not put aside in that screening process, we employ on a part-time basis someone to help our investigators. They can run cases past her and, because she used to be the chief nursing officer for Scotland, she can provide another view and some security in saying what kind of expert might be needed for a case. Clearly, our budget does not allow us to employ experts to sit and wait in our office to give their judgment on a particular case, so we screen complaints to some extent to decide what we need and who we need to ask.

Since the office was established, we have used a panel of advisers who are appointed through the office of Ann Abraham, who is the United Kingdom parliamentary ombudsman and the health service ombudsman for England. The Welsh ombudsman, the Northern Ireland ombudsman and I all use that panel, because in small countries it can be difficult to get independent advice. Knowing the education system from my former work with the University of Edinburgh, I am aware that medics tend to know each other and that it can be difficult to get advice that is as independent as possible, especially in subjects that are highly specialised, therefore we use people from that United Kingdom pool. That has proved to be the most cost-effective way of getting independent advice.

Clearly, our investigators cannot judge whether the correct cancer treatment or the right paediatric treatment was given, but they can access those experts, whom we use in an appropriate way. Ann Abraham's office also employs internal advisers. We can use that in-house expertise as well as the external advice. Quite often, we might need more than one piece of advice if, for example, the patient's journey involved treatment by a GP and referral to different specialists. In such cases, we might need to seek advice from several people about where responsibility for the problem lies. It very much depends on the case.

Providing assurance to members of the public is important. Clearly, on some issues, we could keep bringing in different experts in an endless pattern, but that would not be particularly helpful. One of our jobs is to try to bring matters to a conclusion, so that the person can move on from the complaint. We try to reassure members of the public that we look at matters independently, that we are not on anyone's side, that we take advice from people who are also independent and who, as far as we can ensure, do not know the individuals involved—if they did, that would be made explicit—and that we go to recognised experts in the field.

One of the difficulties is that medical opinion varies, and not everyone agrees, but we have a test of reasonableness. We consider whether what someone did in the circumstances was reasonable, given that different options were open to them. One person might say, "But I wanted X drug," but we have to ask whether it was unreasonable that they were given another drug, given the whole picture of their condition, so there will always be a judgment. We are rarely challenged on the expert advice—as far as I can recall, that is rare—because we try to make it as rigorous and independent as possible, so that there is another view of the matter.

Of course, there is a big difference between saying that someone may have made an error, saying that they were within the bounds of reasonableness but that actually there is some doubt about their decision, and saying that they were negligent and are not fit for practice. That takes you into quite different territory, and we would rarely get a case like that. If we did, we could report it to the General Medical Council, which provides another route for people who are dissatisfied about the judgment of a particular clinician.

Have I covered all the points that you raised?

Fergus Ewing: You have answered virtually all of what I asked, except perhaps one point. Where a case plainly involves consideration of the clinical decisions that were taken—assessing symptoms, ordering or not ordering tests, interpreting

information from tests, or deciding to operate or not to operate—and where a clinical decision is plainly the predominant issue, does the complainant have the right to require you to instruct an independent report from an expert, or do you have the decision-making power? If it is the latter, to what extent are the complainant's views and wishes taken into account?

Professor Brown: It is the latter. It is a matter for my discretion whether to get independent expert advice. We tend to lean more towards getting that independent advice than not getting it in most health cases, for obvious reasons. If a complainant particularly wanted something, I would certainly take that into account, but at the end of the day I have to make the judgment call, considering the resources of the office and the competing demands of other complaints.

Fergus Ewing: I have one final question following from that. In cases where there is a fatality, an almost bewildering array of options might—theoretically, at least—be available, including a fatal accident inquiry, legal action for reparation, a complaint to the GMC about medical personnel and a complaint to the ombudsman or to the health board's initial complaints procedure. There are at least five options, and probably more. If a report is obtained through your good offices, can it be used for one of the other routes, such as litigation? Have you thought through the ramifications of that?

Professor Brown: We have certainly thought of that. As you say, there are different routes, and it may be that some people want to come to the ombudsman and then go on to court, although that is unusual. I cannot be called to give evidence in a court on the basis of a report, so a report could not be used formally in that sense, although if you were supporting someone taking a case you might wish to refer to the report. However, it cannot be lodged as evidence in court and I cannot be called to give evidence in litigation cases.

Fergus Ewing: But presumably a consultant could allow the report that he or she gave to you in relation to a complaint to be used in subsequent litigation.

Professor Brown: That is always an option, but we have little experience of that happening. In our experience, when there has been a fatality, especially of a child, people basically want to know what happened and why. They want an apology if an apology is due, if a mistake has been made. I have some materials that illustrate that, which I will leave with members.

We opened the learning events with a hard-hitting interview with a complainant who wanted to be interviewed. His son died on Christmas day, and he just wanted to tell his story about what

happened after his son died and about the way in which the system closed down so that no one would give him answers. He kept saying, "All I wanted was an answer. I didn't want to be forced down a legal route to get the answers. Every door closed to me when all those people should have been trying to explain to me why I lost my son." There was a powerful message for the sector and many things to learn. The more serious the incident, the more doors tend to close, because people fear litigation. That happens particularly if there has been a death.

15:15

Helping to change that culture is a big job for us. We are working directly with the health service unions—in fact, I recently gave a presentation to them—so that they will support us in advising their members that it is much better to be open and explicit with people and simply to be a human being when things go wrong. If people are not, suspicions will arise and people will be much more likely to go down the litigation route.

My submission refers to our campaign for legislation to allow for apologies without admission of liability. We have carried out research on what has happened in Australia in that context. The feedback that we received from a questionnaire survey was that the number of litigation cases there has decreased as a result of such legislation. The culture of handling complaints and being honest with people when things go wrong are the most important things. I know that there can be difficulties and that everyone will be anxious when things have gone wrong, but there can be a much more litigious culture if people are not open and will not sit down with a person who has lost a child and explain to them why that has happened.

Fergus Ewing: I am grateful for the evidence that you have given and I hope that managers throughout the national health service will have the chance to view the DVD if they have not already done so.

Professor Brown: NHS management took part. Indeed, what Kevin Woods, who is the head of the Scottish Executive Health Department, said was powerful and very much in line with what has been said about valuing complaints. Those at the top of an organisation should set the tone and the culture for handling complaints. He powerfully said that knowing more about how users receive services, what has gone wrong and why provides crucial management information. Complaints are not an inconvenient extra—they are fundamental to understanding how users receive services and how things can be put right for the future. Kevin Woods spoke at one event, and the chief nursing officer and a deputy chief medical officer spoke at

other events. There was a good collaborative approach to changing the culture. No one is saying that the process is easy or that things will happen overnight, but we must start somewhere.

Fergus Ewing: Perhaps members of the Scottish Parliament could have access to the DVD. It might be useful for us.

Professor Brown: We thought that it would be useful to produce something similar for other sectors. It would be good to do something similar for local government, for example. Many of the issues that it must deal with are not as sensitive, but some are.

Mike Rumbles: I would like to return to your almost landmark finding on free personal care for the elderly. Before I joined this committee, I was a member of the Health Committee, and I took part in its examination of the issue. I want to ask about your findings and conclusions and how they are being dealt with.

Understandably, you considered one complaint in specific circumstances, relating to the provision of free personal care for the elderly, and you clearly found that a service failure had occurred. You recommended that Argyll and Bute Council pay to the individual concerned the money that they were due according to the law. The Health Committee found that around two thirds of councils in Scotland were doing the same thing that that council was doing, so many hundreds—if not thousands—of people are in exactly the same circumstances as that individual was in.

What is the status of your findings and recommendations? You made a finding—as the Health Committee did—about what needed to be done. How will that finding affect the other people who are in exactly the same situation as that individual was in?

Professor Brown: For the moment, I will put aside the proviso that individual circumstances must be considered.

You are right: we are not talking about an isolated case. The issue clearly affects other councils, and perhaps it was unfortunate for Argyll and Bute Council that the first case that came up involved it. The message is not only for Argyll and Bute Council; it is for the sector.

We want to take up the issue with COSLA. We did not do so prior to making our final decision because that would have been inappropriate. It is clear that COSLA has an interest. It has commented to the committee and the Health Department on the delivery of free personal care and it has a particular view on funding. We have a meeting next week with COSLA as well as the Improvement Service, and we will discuss with the

sector how that case will impact on other local authorities throughout Scotland.

We want to follow the case up with the Health Department, because there must be major changes to the guidance that is issued. We will also ask for a meeting with Kevin Woods. We tend to meet the Minister for Health and Community Care once a year, and we met him relatively recently, so another meeting might not be necessary. We want to work with them all to ensure that the guidance reflects the intention of the legislation.

You asked me about the status of my recommendation. Although I have no direct enforcement powers, I have the power to lay a special report before Parliament if a recommendation that I have made in a report has not been implemented by the body under jurisdiction. That body is democratically accountable to you as parliamentarians, who should ask it why it did not act on the recommendation of the ombudsman. The answer could be that it wants to test the recommendation, take it to judicial review and wait to find out what the judge says. Another answer might be that the body agrees with me and will implement my recommendation.

We have only indirect enforcement powers. In the four years in which we have operated, we have never yet had to issue a special report, although we have come close a couple of times. Mike Rumbles's question is interesting, because it shows that our powers are limited. We fulfil our job, but much broader issues have been raised by the Argyll and Bute case.

Lewis Shand Smith (Deputy Scottish Public Services Ombudsman): When one of our complaints investigators makes a finding and a recommendation such as the one that we have been discussing, it is important that they are well aware that it does not necessarily apply to only one person in one authority area, but has much wider reaching implications. At the end of the day, it is over to MSPs. We have done our job, and now it is up to you to decide what happens next. However, there are wide-reaching implications from the free personal care case for all local authorities and the Executive. As Alice Brown said, we are following it up with COSLA, the Improvement Service, the Scottish Executive and the council involved in the case.

Mike Rumbles: When do you expect Argyll and Bute to take action on your findings?

Professor Brown: We expect it to act more or less immediately and make the payment, unless it plans to challenge the recommendation, which it could do through judicial review.

Mike Rumbles: Has the council challenged the recommendation?

Professor Brown: Not as far as I am aware.

Ms Watt: I want to ask Alice Brown about measures that councils have put in place. For example, more and more councils are using neighbourhood dispute mediation. Has the number of complaints to you gone down as a result of such processes?

Professor Brown: Again, not as far as I am aware. However, the numbers with which we deal are relatively small. That could be a plus or a minus. It could be great news, because disputes are being resolved at a local level and are never escalating to us, which would be right and proper, but we do not know of any evidence to support that.

Lewis Shand Smith: The numbers are tiny, because councils that are currently using alternative methods of dispute resolution are still few and far between. As part of our valuing complaints initiative, we will give advice to councils on alternative means of dispute resolution, such as mediation. I hope that that will bear fruit in time, but it is early days at the moment.

Professor Brown: We would certainly support any mediation initiatives, as we have done in other sectors. If a matter can be resolved, it should be and we should be the last resort—a dispute should escalate to us as an alternative to the court. Going back to Fergus Ewing's question, in some senses we can do more than a court, because we can get more explanation, if that is what people want.

Fundamentally, it always comes down to what people want out of raising an issue. Do they just want it to be resolved quickly? Have relationships broken down and they need a mediator to bring them closer together to obtain a resolution, or have relationships broken down to such an extent that an independent person is needed to examine the situation? When people come to an ombudsman, they hand over responsibility for the judgment to the ombudsman and move out of the process at that stage. In the ombudsman sector, there is a big debate about whether we should mediate or whether mediation is a different function that should be exercised by other people. Clearly, mediation skills are extremely helpful.

Ms Watt: My next question is unrelated. You mentioned planning in your introductory remarks. I thought that you would think that, because the Planning etc (Scotland) Bill has been passed, the number of planning complaints would go down, but I did not get that impression from what you said. I think that all MSPs are finding that planning issues feature more prominently in their mailbags. Will you expand on why you think that the number of planning-related complaints that you receive

might not go down as a result of the new planning law?

Professor Brown: In the past, investigators who dealt with planning cases were frustrated, because they often felt that there was little that they could do to help people, because they were really complaining about the decision. That goes back to an earlier question. We very much support many of the ideas behind the new legislation, as we said in our submission on the bill to the Communities Committee. However, some of the new systems that have been set up—not least to do with consultation—will have implications. Consultation is a big issue throughout Scotland. There has been an increase in complaints about consultation processes, whether they are on school closures or hospital closures, and there could now be an increase in complaints about consultation on planning. I will hand over to Lewis Shand Smith, because he has been more active in that area.

Lewis Shand Smith: There is a good side and a bad side. As you spotted, we think that the number of complaints in our mailbag will increase as a result of the passing of the Planning etc (Scotland) Bill, but that will not necessarily create a great deal more work for us, because the complaints that we get about planning will be much more straightforward. They will be to do with whether there has been proper consultation or whether neighbour notification has taken place properly. Such complaints will be much easier for us to deal with than has been the case with planning complaints.

We will still get complaints that are unofficial third-party right of appeal complaints from people who are objectors and who feel that their viewpoint has not been properly listened to. In addition, we will get complaints from people who have had an unsuccessful appeal in the council system, after which there is no further appeal. They will come to us and say that their appeal was not properly heard, or words to that effect. As Alice Brown has said, we cannot question the merits of a decision unless there has been maladministration. We look behind such decisions to find out whether all the procedures were followed properly when the appeal was heard.

Given that issues to do with hearings will arise, I admit that I am keen for advice to be issued on how to conduct hearings, because people's human rights are affected, as they are with a variety of planning issues. How hearings are held could vary considerably throughout Scotland. Another issue is how delegation is handled. We could—and probably will—get quite different delegation schemes in different parts of Scotland. People will ask us about that, as they do at the moment, and say, "My neighbour across the

border got planning permission to do X, but I did not. Why is that?" The answer is that the two councils concerned have completely different planning policies.

The fact that everything will be development-plan based will make our job easier, because we will be able to measure proposals against development plans. However, the fact that we will never be able to overturn a planning decision will frustrate people who complain to us.

Professor Brown: I would like to add that our two key messages to the sector are that it should provide members of the public with good information about the new legislation and the impact that it will have on the delivery of the planning service in council areas, and that it should train staff well in giving advice to members of the public who walk through the door and ask, "What do I do about X?" In other areas in which new legislation has been brought in, there has sometimes been a time gap between the passing of the legislation and the provision of the accompanying advice, training, guidance and support. That is understandable, given that local authorities are under a great deal of pressure and have many things to do. If the sector takes on board those two key messages, it will avoid complaints arising in the first place.

15:30

David McLetchie: I was interested in your advice leaflet "SPSO guidance on apology", which recommends that fulsome and meaningful apologies be given to complainers if a measure of fault is found. Many of the complaints on which you report are only partially upheld: there might be an element of fault on the part of the public body, but there might also be large areas in which there is little or no justification for the complaint, which might have been pursued unduly or to an inappropriate extent. Is it your position that if you find any fault, an unqualified, sackcloth-and-ashes apology must be given? Is the person against whom the complaint is made entitled to say, "I put my hands up, because I might have done one of the 10 things that were complained about incorrectly, but let me point out that we got 90 per cent of it right"?

Professor Brown: They absolutely are entitled to say that. As with anything else, the approach must be proportionate. The guidance was written by one of my deputies, Carolyn Hirst, and emerged as a result of a difficult, serious and very distressing health case involving the death of a child. As part of the resolution of the case, the parent wanted an apology from a particular consultant. She needed to hear an apology from that man in order to move on. The health board did a lot in trying to help to write the apology. It

thought that it had done a good job and it sent the apology to the woman, but she sent it back, saying, "This is not a real apology; it is an insult to my child, who died"—Fergus Ewing raised the issue last year.

The health board telephoned us, because it did not understand what it had done wrong. We analysed the apology with the board and pointed out that it is not appropriate to say something like "We apologise for any distress that may have been caused" when someone has died. Of course there has been distress when someone has died. The guidance note therefore emerged from our attempt to help the board to get the apology right. We asked the woman to help, too, by telling the board what she had expected to hear. As a result, we achieved a resolution of the case.

Apologies must be proportionate. What we expect in circumstances such as I described is quite different from what we expect after a minor infringement of a regulation, procedure or process. We are real people who live in the real world and we expect apologies to be fit for the circumstances. The guidance is intended to assist, particularly in sensitive cases in which people sometimes get it very wrong, even though they have the best intentions.

Lewis Shand Smith: An organisation that is into sackcloth and ashes big style is likely to operate a blame culture. We have been at pains to tell organisations not to operate a blame culture. Organisations that have a blame culture are never open to complaints or to learning from errors, because people close things down and hide things. There should be as much openness as possible, but if there is a sackcloth-and-ashes approach, people are much more likely to hide things, because they think that they will face retribution for whatever they have done, even if it is a minor mistake.

Professor Brown: We have to put things in perspective when a mistake is fairly minor.

Tommy Sheridan (Glasgow) (Sol): A small number of councils appear to have developed proactive intervention in neighbourhood disputes and antisocial behaviour in communities. Glasgow Housing Association has established a proactive unit, which it says has had a great deal of success. Is that an accurate description? You might not be in a position to comment.

Lewis Shand Smith: It is very early days, and I do not think that we have evidence that the approach has improved things or meant that fewer complaints come to us. However, it would be useful to keep an eye on the situation, and we would be happy to do so. We are trying to do more research into what is going on and to work with organisations to assist them, so it would be

interesting to follow up the approach that you describe.

Professor Brown: Tommy, an important question to ask of any organisation is how they handle their internal complaints processes. Rightly, we see only a small proportion of complaints. The big question to ask is, what are the complaints that come to the organisation? We need to know what the complaints are about and what the organisation does with them.

When we went round the country, we saw some good examples of what people are doing. We found that people are being more proactive and open about some of what is happening. We were told that making a complaint was worth while, as the result was that change was made to the service. When we go round the country doing our visits, we are now more inclined to ask organisations how they handle their internal complaints processes. Tommy, that question is the kind of question that you—or any individual—could ask of an organisation. As I said, we should see only a small proportion of complaints, some of which are reasonable and some of which are unreasonable.

Lewis Shand Smith: As part of the valuing complaints initiative, we are saying to organisations that they need to keep a record of the complaints that they receive, including how they handled them and what the outcomes were. We say to organisations that they should be open about the complaints that they receive and report back on them to whoever is in charge, whether that is a board, a council or whatever. We say that they should also make the record available to the public. That lets members of the public see that taking their complaint to the organisation was worth while—the organisation took it seriously, acted on it and changed its policy as a result. Some councils do that very well. We are trying to spread that message among all the organisations that come under our jurisdiction.

Professor Brown: From the evidence that we receive, we know that people who depend most on public services are the least likely to raise a complaint—they feel that there is no point in doing so. We are trying to get across to councils that complaints are an excellent form of customer feedback. I know that that is easy to say but more difficult to operate in practice. Nonetheless, councils should want to know that their services are working well.

The Convener: We have no further questions. I thank Professor Alice Brown and Lewis Shand Smith for appearing before the committee this afternoon. It has been a useful session, and has added to our understanding of the important role that the Scottish public services ombudsman

plays. It has also been useful to examine how people in Scotland experience our public services.

Lewis Shand Smith: Thank you.

Professor Brown: Thank you for your time. If you have any follow-up questions, please get in touch directly with me. I will leave a copy of the DVD for the committee.

The Convener: Thank you.

15:37

Meeting continued in private until 15:49.

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