



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 26 May 2010

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
16th Meeting 2010, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Patricia Ferguson (Glasgow Maryhill) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Alasdair Morgan (South of Scotland) (SNP)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Margaret Curran (Glasgow Baillieston) (Lab)
Alison McInnes (North East Scotland) (LD)
Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Niki Maclean (Scottish Public Services Ombudsman)
Jim Martin (Scottish Public Services Ombudsman)

CLERK TO THE COMMITTEE

Susan Duffy

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Communities Committee

Wednesday 26 May 2010

[The Convener *opened the meeting at 10:00*]

Interests

The Convener (Duncan McNeil): Good morning, and welcome to the 16th meeting in 2010 of the Local Government and Communities Committee. I ask members and the public to turn off all mobile phones and BlackBerrys.

Our deputy convener, Alasdair Allan, has left the committee. It would be appropriate to thank him for all his hard work on the committee and his assistance to me. I welcome our new member, Alasdair Morgan, and ask him to declare any interests that are relevant to the committee's remit.

Alasdair Morgan (South of Scotland) (SNP): I have no relevant interests to declare.

Deputy Convener

10:01

The Convener: Under agenda item 2, we must choose a new deputy convener. Parliament has agreed that only members of the Scottish National Party are eligible to be deputy convener. That being the case, I seek nominations for the position.

Alasdair Morgan: I nominate Bob Doris.

Bob Doris was chosen as deputy convener.

Decision on Taking Business in Private

10:02

The Convener: Under agenda item 3, I seek the agreement of members to take in private item 6 on today's agenda and also to take in private, at future meetings, consideration of a paper on equal pay in local government.

Members *indicated agreement.*

Scottish Public Services Ombudsman Annual Report

10:02

The Convener: Under item 4, we will hear oral evidence on the Scottish Public Services Ombudsman's annual report. I welcome Jim Martin, the Scottish Public Services Ombudsman; Emma Gray, the head of policy and external communications; and Niki Maclean, the director of corporate services.

I invite the ombudsman to make a brief opening statement.

Jim Martin (Scottish Public Services Ombudsman): Thank you for the opportunity to spend some time with the committee this morning.

As all of you know, I have been in the post of ombudsman for just over a year—it is one year and three weeks, or something. Today, rather than focusing on the annual report of 2008-09, the highlights of which with regard to local government and housing form an annex to the paper that we sent to the committee, I want to give you a feeling for what we have done in the past year. Of course, we will be happy to take any questions that you might have on the annual report.

In the past year, the number of complaints coming to the SPSO has risen by 12 per cent, and we resolved 10 per cent more cases in 2009-10 than we did in 2008-09. That means that we have resolved around 400 more cases this year than we did in the previous year.

When I took office in May, I wanted to assess what our backlog of cases was, because there was a public perception that the backlog was large and that the organisation was prone to delays. I discovered that, at the start of the business year, we had 83 cases that were nine months old or older, which would mean that they would be more than 12 months old or older by the end of June. I set the organisation the objective of removing all of those cases from the backlog by Christmas, and I am happy to say that we managed to do that. All of the backlog was removed in six or seven months, while we maintained our progress on all our other cases.

We have published 123 investigation reports this year, which represent around 134 complaints; we have made more than 400 recommendations on 300 issues; and we have intervened in about 50 to 55 bodies under our jurisdiction.

Our open case load, at 31 March 2009—that is, at the close of the previous business year—was 500. On 31 March 2010, that number was 241. This morning, it is 230. That means that, over the

year, there has been a reduction in the number of cases that are sitting on our desks of 52 per cent. We have taken out more than half of the case load.

We began the year without a director of investigations; our director retired around four days after I took office. I do not think that those two things are necessarily related—I hope that they are not. For four or five months, we had no director of investigations, but we now have one: Steve Carney has more than 30 years' experience of dealing with complaints. When he came to us, I asked him to review all our procedures, as I was not happy that we were structured appropriately. That review has been completed and we are now beginning to implement its findings. The number of investigation teams in the organisation has been reduced. We are giving greater priority to the early resolution of cases, as that is key to giving satisfaction to the public and the bodies under our jurisdiction. We will also be far more careful about the matters that we report to Parliament; we will consider the public interest.

For example, one of the first cases that I dealt with when I became Scottish Public Services Ombudsman had been with our office for two and a half years. It involved planning and legal officials and the chief executive of a local authority. The dispute was about the erection of a 6ft garden fence in a village in central Scotland. I do not think it should take two and a half years to deal with such an issue or that Parliament necessarily wants to have its attention drawn to such issues. Through Emma Gray, we will produce thematic reports in the next period to help parliamentary committees to understand the kind of issues that we are seeing.

In the next year, we have to deal with the implications for the SPSO of the Public Services Reform (Scotland) Act 2010 and the Scottish Parliamentary Commissions and Commissioners etc Bill. I will briefly highlight three related areas.

First, we have been asked to take on prison complaints. I have asked for that to be brought forward from April 2011 to October 2010, as I think that we could make real savings to the public purse by doing so. The savings between now and the end of the financial year 2012-2013 would be around £375,000 and would be made with a reduced head count. By the time that we take on the work in 2010, our staff will have reduced by around three to three and a half full-time equivalents. A director's post and a manager's post will have been removed and some of our staff will be allowed to work part time.

Secondly, we will prepare to take on water complaints. As everyone in the room knows, there was a close vote in the Parliament—it was 64 to 63—in favour of Waterwatch Scotland work going

to the SPSO. We are preparing for that to happen early in the 2011-12 financial year, but we are wary of the debate that took place and the matters that were discussed in it, and we are not putting anything in place now that cannot be undone later, should Parliament change its mind after the election. We are working closely on all those issues with the Government, Consumer Focus Scotland and Waterwatch Scotland.

Thirdly, we have to establish a complaints standards authority, the aim of which will be to standardise complaints-handling procedures in each sector of the public service. That is a direct outcome of the Sinclair committee. We must lay principles before Parliament for approval. We will launch those principles on 16 June and consult over the summer. I expect the finalised principles to be brought to Parliament early in the autumn.

I am aware that the ombudsman's office is being asked to do something that it has never done before, and I must ensure that I have the necessary in-house skills for that. I have discussed with the Scottish Parliamentary Corporate Body my intention to make some adjustments to the staffing structure of the SPSO office to allow us to accommodate that work. We need to be aware of the current financial context in which we are bringing something new to the public service, particularly to local authorities—I think that we will introduce things there first. These are unsettled financial times to say the least, and I do not want to bring in something that would be an added burden to the public purse. We all need to be certain that any innovation will save money. I am aware that local authorities, like many other parts of the public service, are highly regulated at the moment, and I do not want to add to the regulatory or scrutiny burdens that they face. However, when Sinclair and Crerar looked at the matter, they identified that there could be long-term advantages in getting it right and allowing standardisation to enable savings and a better service to the citizen.

When the Department for Work and Pensions revised its systems to come into line with those used by the ombudsman down south, it was able to reduce the cost of handling complaints from £9 million in 2005 to £6.2 million in 2008. We know that Glasgow City Council has experienced a 60 per cent reduction in complaints cases being escalated to executive level by changing its procedures to enable more solutions to be found at the front line. The National Audit Office estimates that around 2 per cent of all public service administration costs go on handling complaints, so getting this right might give us an opportunity to free up some money that could go towards front-line services in these straitened times.

I am sorry to take so long, convener. The overall message is that, in the past year, our service has improved, our backlog has reduced, our head count has reduced, we are more efficient, we are generating savings for the public purse, and some exciting developments are coming in 2011.

Bob Doris (Glasgow) (SNP): Thank you for those remarks. They were all very positive indeed. I have a couple of brief questions first, and then a more substantive one.

Does bringing forward the implementation of the proposal to deal with prison complaints from 2011 to 2010 signal that you consider yourself to be ahead of the curve on that? Can you give us more information about why you have decided to do that?

Jim Martin: Yes. When I gave numbers earlier, I said that we had an open case load of 500 on 31 March 2009 and 240 open cases at 2010. That frees up capacity, and there are two ways of dealing with that: either we can reduce the head count further; or we can take on extra work.

SPSO will take on prison complaints in October with no additional resources. We will not increase our head count; we will take on the work with our current resources, which are less than the head count that we had at the beginning of 2009-10. I am convinced that we can do that and that doing so will help to generate extra savings for the public purse.

Bob Doris: Restructuring is on-going to take account of your further responsibilities and duties. You mentioned the close vote in the Parliament on the duties around complaints about water and that you want to ensure that any restructuring to implement those can be unpicked should a future Scottish Parliament decide to change those duties. Who knows what will happen at the next Scottish Parliament elections? Things can always change. I seek reassurance from you today that you will not lose focus on dealing with water. I would not like to think that you are half-hearted about taking on that responsibility in the forlorn hope that you might never have to. Are you maintaining focus in preparing to take on that responsibility?

Jim Martin: Absolutely, and I did not mean to give that impression. We have taken the initiative by creating a project group. It has senior civil service representation and SPCB representation, because the SPCB will have to sign off on any possible increase in head count, including that which might result from a merger with Waterwatch Scotland. The project group is also talking to Waterwatch Scotland and Consumer Focus Scotland.

We are putting together a plan that can be implemented to bring Waterwatch Scotland under the SPSO's jurisdiction, and we are working on the

assumption that that will happen. However, given the nature of the debate in Parliament and the delay that has been sought beyond the beginning of the next parliamentary session, it is prudent to ensure that the costs that we incur at this stage are essential, instead of implementing something that we would like to have but would not be able to unpick. We are being very careful and are trying hard not to spend money unnecessarily, especially given these straitened times.

Bob Doris: So it is a question of prudence and maintaining flexibility in the organisation.

Jim Martin: Absolutely.

10:15

Bob Doris: I have one final question, which is the perennial question about the number of complaints about local authorities that come to you before the complainer has exhausted an authority's internal complaints procedures. Such complaints account for some 60 per cent of local government complaints. I do not know offhand how that compares with the figure in previous years but, more important, what on-going work is there with local authorities to ensure that they are clear about their internal complaints procedures? There is often a feeling among members of the Scottish Parliament that local authorities throughout Scotland do not always make clear and transparent their internal complaints process, which leads to individuals bypassing it through ignorance.

Jim Martin: You are right to highlight the fact that premature complaints about local authorities are an issue for us, particularly in relation to housing. They can be the highest number of prematurities that we get.

The complaints standards authority function that we have been given will, I hope, enable us to set up a standardised complaints-handling procedure across local authorities and other bodies that will have at its core the aim of ensuring that the citizen knows where to go for remedy as early as possible and which will encourage early resolution. I want to remove as many layers from the complaints process as possible to ensure that bureaucracy does not come into play.

Since I came into the job, I have found an anomaly in the Scottish Public Services Ombudsman Act 2002, which set up the SPSO. One provision states that the ombudsman should not look at complaints until the local complaints procedure has been exhausted, but another part of the act states that the ombudsman should not look at a matter that the complainer was aware of 12 months previously. That means that if you have known about it for more than 12 months, I should not look at it; and if you have not exhausted the

complaints-handling procedure, I should not look at it. However, it sometimes takes longer than 12 months to get through the complaints-handling procedure.

We are having to work out the best way to deal with that. The anomaly should go. If local authorities can handle the complaints that they receive in a more timely fashion and make people aware of their procedures, it will also be more cost effective. That involves empowering people to find a resolution, which can often just be an apology, at as early a stage as possible.

Bob Doris: Just to check: are local authorities keen to buy into the common standard for complaints procedures?

Jim Martin: I have had meetings with the Society of Local Authority Chief Executives and Senior Managers and the Convention of Scottish Local Authorities—I addressed the SOLACE branch committee and the COSLA convention—and all the feedback has been positive. However, I am well aware that in the current climate, when we introduce anything that requires resources to be moved, there may be issues. We are talking carefully to local authorities, and when we go out to consultation we will listen very carefully to what they say.

Bob Doris: Thank you.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, Mr Martin. We are formally here to consider your 2008-09 annual report, but you have helpfully given us some information about the work that has been undertaken in 2009-10. When do you expect formally to publish your 2009-10 annual report?

Jim Martin: We expect that to come out in late summer or early autumn.

David McLetchie: Of this year?

Jim Martin: Yes.

David McLetchie: On the process, would it be more helpful if we discussed your annual reports in the year that they are published rather than a year in arrears?

Jim Martin: It certainly would be, because I would like some feedback on it. That would also mean that issues that are current when I publish the report can be looked at by committees.

If I may, I will hijack that question just for a second. One issue that has crossed my mind—I am sure that it has crossed yours—is that, in my annual report, I deal with matters other than local government, housing and communities. It is important that the issues linked to health, further and higher education and Scottish Government departments also get an airing somewhere in the Parliament, preferably with bodies that have

expertise in the area and which could benefit from our findings and experience. It would be very useful to find a way of getting to more committees.

David McLetchie: Thank you—we will bear that in mind in scheduling our work programme.

With regard to premature complaints and the issue of people not exhausting the proper processes, there is perhaps a knowledge and awareness aspect, which we have touched on. However, is the heart of the issue the fact that people have no confidence in the handling of their complaint by an authority that has in the first instance rejected it?

For instance, in relation to planning, you highlight in your submission that where a development has proceeded and is in breach of planning conditions, you often get complaints because the local authority refuses to take or initiate enforcement action, usually on the ground of cost. In the complainant's view, that particular developer or applicant is flouting the law. When that happens, they expect, rightly or wrongly—wrongly in terms of process and rules—that your organisation will say to the council, "Why don't you adhere to the law of the land and the rules that you have set?"

Jim Martin: If you read the commentary that we published this month—I know that most MSPs' offices open our commentary on the day that it is published, which is good—you will see that I make a point about a local authority case in South Ayrshire. Members of the public complained to me that some facilities in South Ayrshire, such as the swimming pool in Girvan, were being closed and asked me to intervene. I had to make the point that there is a difference between policy, which is rightfully the duty of the elected member, and on which people have recourse through the democratic process, and administration and maladministration.

Mr McLetchie is right—one reason for premature complaints is that people do not believe that some of the officials with whom they are dealing will be objective enough in examining their complaints. They tend to bring the complaint to me early on to seek an objective voice. However, another reason is that they do not understand the restrictions on the powers of the ombudsman as set out in the Scottish Public Services Ombudsman Act 2002.

It can be frustrating for people who have come to us to be signposted back to the authority. They ask us what we are here to do, which is usually followed by the phrase "toothless tiger". We have to make it clear to people that we are restricted by the powers that Parliament has given us.

The complaints standards authority role will, I hope, put an onus on local authorities and others

to make the public more aware of how to get a solution to their complaint, what redress is available and what the process and procedures are, because people do not know. I am sure that the contents of members' mailbags are much like the contents of my own; people are taking a punt that you might be the person who can help them to get to where they want.

A large part of Emma Gray's team's job is to signpost people who come to us prematurely to the appropriate place to get their complaint resolved. If we take all that out of the system and become more efficient, we will need fewer people and we can save some cash.

David McLetchie: I understand that. However, I think that people can distinguish between a policy issue, such as whether a council maintains a swimming pool or provides a certain service, which is a political choice about how public money is spent, and other issues. From the complaints that have come to me, I get the impression that, in respect of planning processes, people feel that the law is being flouted and that the council that prescribed the rules is failing to enforce its own rules and conditions.

If more councils enforced their own rules and conditions—to keep everyone else honest, in a sense—rather than allowing a system that tolerates breaches of conditions and lets people away with it, as far as the public can see, there might be fewer complaints about planning.

Jim Martin: If local authorities or any of the bodies that are under my jurisdiction applied their powers appropriately and ensured that people were aware of the powers and why they were being applied in a particular way, there would be fewer complaints, and fewer complaints would come to me. You are right about that.

However, we should never underestimate—I am sure that you do not do so—the disgruntled citizen who will continue to seek a way of finding redress, regardless of how often they are told what the rules are. Good luck to them for trying. I do not think that we will ever take away that aspect; our job is to try to find a system whereby we can manage it.

Mary Mulligan (Linlithgow) (Lab): I am interested to learn that there are recurring complaints in certain areas of local government. In relation to complaints about housing, for example, are there themes that constantly reappear?

Jim Martin: In the annex to our submission we list the top 12 issues, of which the top four do not change. The issues in the national health service that my predecessor, Professor Brown, highlighted three years ago are the same issues that have come up this year. That might just be because

they reflect the areas in which the most contentious decisions are taken.

We can highlight to local authorities the issues that we are encountering and ask whether authorities are appropriately geared up to deal with them. We can ask authorities why so many of those complaints come to us.

In relation to health cases, I have been struck that if a medical adviser tells me something and I go back to the health board, a resolution is sometimes found with the speed of light. The information that I have is hardly new, because it is factual, so I sometimes wonder why the problem was not resolved more quickly.

In some areas in housing, such as neighbour complaints, a more structured approach might lead to faster solutions being found. We hope that the complaints standards authority will be able to capture issues and feed them back more quickly. As we consider the annual report for 2008-09, we must remember that, because of the backlog that we had, the cases that are described in the report could have begun in 2003 or even 2002. The information is out of date. When I arrived in the ombudsman's office, some cases were four and five years old. We cannot identify current trends from past complaints, but I hope that when we have the complaints standards authority, we will be able to introduce a better system.

Mary Mulligan: In a reply to Bob Doris you mentioned discussions with SOLACE and COSLA. How far can you use those discussions to address recurring themes?

Jim Martin: The complaints standards authority will present an opportunity. Until now, the ombudsman has been able to talk to an authority about a complaint or draw the authority's attention to two or three complaints; I hope that the complaints standards authority will enable each authority not only to collate its own information better but to see what is happening across the sector. Whether someone is in Orkney or Dumfries and Galloway, they should be able to get the information that is relevant to them. I hope that that will be a benefit of the new approach.

The approach will also enable me to highlight trends and themes that I see, not only to local authorities but to this committee and other committees, to enable members to have greater scrutiny of what is happening.

Alasdair Morgan: You said in your submission that complaints were up 12 per cent last year, which is a significant increase. Can you give us reasons for that increase?

Jim Martin: I wish that I could.

Alasdair Morgan: I know that you are only two months under the belt of this reporting year, but can you also say whether that trend is continuing?

10:30

Jim Martin: The plan for last year was an anticipated 5 per cent increase, which was based on looking at the previous years. We are still trying to analyse why we had an extra one in eight coming through. The short answer is that I do not know the reason yet, but we are trying to find out. It seems to be across the board. It might just be that people are more aware of the service that we provide and therefore they are coming to us. There is always a danger that, if we publicise the ombudsman service, it will lead to great prematurity. Every time there is an article about us in the newspaper, we expect a small spike, and we often have to send the people who come to us then back down.

We are very much a demand-led organisation, so we have to be aware of current issues and contentious matters. I foresee two areas in the coming year that could well lead to an increase. One factor is the new planning legislation, but that affects us only after decisions have been made and people have taken complaints through the local procedure. I therefore expect any fallout from the new planning legislation to hit us in the late summer or autumn and to continue thereafter, and I expect that there will be an increase in cases from that.

Secondly, if our recent experience with South Ayrshire Council and a couple of other councils holds true, as we reach the point at which public services are cut back for financial reasons, we will find that more people come to us with complaints on the cuts in provision but also on the manner in which communities were involved in the decision making and, in particular, the communication by local authorities.

I therefore expect that, over the next year, there will be an increase in the number of inquiries and complaints that come to us. I am not yet clear whether that will lead to an increase in the number of inquiries and complaints that we can see through to conclusion or whether it will just increase prematurity and mean that more things come to us that are out of our jurisdiction.

Alasdair Morgan: And in the first two months of this year?

Jim Martin: It is about the same trend.

Alasdair Morgan: Which one? The 5 per cent one or the 12 per cent one?

Jim Martin: At the moment, I think that it is probably in between, but it is difficult to tell because we have put a new structure in place.

Instead of having three investigation teams and a gateway team for things that come to us, we have restructured our teams so that we have an early resolution team and a further investigation team. In considering the numbers, we have to be careful to ensure that we are comparing like with like when we compare last year with this year. That will take a bit more analysis. However, my gut feeling is that the trend is going up.

Niki Maclean (Scottish Public Services Ombudsman): We also have seasonal differences. We tend to find that, as you would expect, the Christmas period is quiet, then the numbers increase when people return and during the summer period. We do not see a flat trend month on month. Instead, we have peaks and troughs during the year.

Alasdair Morgan: You budget for a 5 per cent increase in the number of complaints in most years; you have had a spike, which might not be a spike, of 12 per cent; and you have highlighted two areas in which you expect further increases over and above that. What does that do for the rosy picture that you painted of spare capacity in the organisation that could absorb the extra workload?

Jim Martin: If we have the same increase that we had last year and we take on prison complaints, I am convinced that we have enough capacity to maintain our productivity at current levels. That is a big ask for our people and it means that they will have to do some things in different ways, but the introduction of the new structure that we have put in place this month should lead to more cases being resolved quickly and therefore to cases being in our office for a shorter time. That will also help us.

Alasdair Morgan: What about the year after that? Will you be back up to capacity?

Jim Martin: The year after that, we will probably have water complaints, which will mean that people who work for Waterwatch Scotland will come to us. I do not know what my budget will be in 2011-12. The chief executive of the Parliament is talking to all the parliamentary office-holders about significant budget reductions, so we are all looking at what those reductions might mean for 2011-12 onwards. From 2011, I must prepare a corporate plan for the organisation covering the next three or four years. Once I know what money Parliament is prepared to give me to run the organisation, I will know how many people I can afford to have. Then, I will be able to answer your question more directly.

Patricia Ferguson (Glasgow Maryhill) (Lab): By the very nature of your work, you will often deal with people who are dissatisfied, concerned or frustrated by the experience that they have

already had with an organisation. When they come to you, they expect their issues to be resolved. Again, given the nature of your job, you will not always be able to resolve a case to the complainant's liking. How do you control the quality of the work that is done in your office, to ensure that the people who come to you get the appropriate answer, even if it is not the one that they want?

Jim Martin: That point about getting the appropriate answer is absolutely true.

One of the flaws in our previous structure was that we never reached the point at which a final decision was taken. It was difficult to get to that position, as we allowed three different challenges to our decisions to take place. It used to be the case that a letter was sent saying, "I'm sorry, but we have not upheld your complaint." If the person was dissatisfied, they could appeal to someone else. Everybody who had the stamina to get to me would probably go on to the next stage and the next stage after that. We have tried to reduce it to one bite of the cherry.

The price that the organisation has to pay for that approach is that we must get it right first time, so we must have a high-quality output. We have tried to maintain and improve our level of output, and we are about to embark on a review of all our quality assurance methodology in the office.

You are right about it not being possible to please all the people all the time. Judging from my mailbag, I sometimes wonder whether we satisfy many of them. However, we have tried to engage with people who have been unhappy. An organisation called Scottish ombudsman watch was set up some time ago. It appears to be made up of people who did not find satisfaction with the ombudsman's office—they probably did not get the decision that they wanted. I have tried three times to meet representatives of the organisation in order to understand their viewpoint and to get their input about how we do things. It is never very productive talking to people who are happy with the service; it is always productive talking to people who are unhappy with it.

We are trying hard to engage and learn, but we can do only so much. When people come to the ombudsman, they expect a decision. The title of one of our new leaflets sums it up: "Your Complaint, Our Decision". I now send out letters telling people that my decision is final. Some people take exception to that, but that is the case. We are trying hard to learn from people who are disgruntled.

Patricia Ferguson: On a practical level, if I have complained to you about my local authority closing a facility, for instance—if I am a member of the public who feels aggrieved and I do not feel

that the council has followed policy correctly—what happens if you write back to me to say that the office has considered the matter but does not think that it can do anything more, and that the local authority has observed the letter of the law? How could I be reassured that you had taken into account all the possible factors? The perception is that someone lifts up a piece of paper, looks quickly at the file and signs the case off. How would I be reassured that that is not the case, and that your organisation uses a methodology to ensure that proper consideration is given? I also want to know about that speaking as an MSP.

Jim Martin: We put our procedures on our website and on leaflets, explaining to people how we do things. When a complaint is brought to us, the first stage is to look at it to see whether it is competent. That involves a couple of things. Has it been through the local complaints procedure? Has it been submitted within time? Is it in an area that we can consider? Does it concern a body within our jurisdiction?

When I came into the office, I found that we had had one case for more than a year and had not taken a decision on whether it fell within our jurisdiction. That is completely unacceptable. Now we try to make such decisions quickly. When we have decided that a case falls within our jurisdiction, a complaints reviewer makes contact with the individual concerned, to try to understand not only what is written down on the piece of paper but what the individual believes their complaint to be and what remedy they are seeking. If the remedy is that they want the chief executive of Glasgow City Council to be sacked, as is frequently the case, we must write back to them to say that that is not within our powers.

Then we assess all the written material from the complainer and the local authority. Nothing goes out to the complainer without being checked by someone relatively senior in the organisation. I insist on seeing in draft any investigation report that will be laid before Parliament. I see draft reports before they are sent out for comment to the complainer or the local authority. That is made clear to both parties. However, regardless of what we do or say, some people will not believe that. They say that we cannot have had more than a cursory glance at the file, as they sent us 75 sheets of paper but our reply has only 15 paragraphs. That will always be a factor. However, I am determined that, no matter who brings a case to us and no matter what it is about, it will be scrutinised fully before we take a decision. I will not put my name to a report that is to be laid before Parliament unless I am satisfied that the decision is the right one.

Patricia Ferguson: Those comments are helpful.

John Wilson (Central Scotland) (SNP): Good morning. I will follow up on Patricia Ferguson's question. When you refer to cases that have been resolved, do you mean cases that have been resolved, cases that have been referred back to local authorities, or just cases that your office has signed off because you believe that there is nothing that you can do with them?

Jim Martin: I mean all those things. If someone comes to us with a case, we try to look at it from the complainer's point of view. We must bear in mind that most people think that a case has been resolved if they are happy at the end of it. Previously, our performance indicators were based on cases that had been closed, which meant that an investigation report had been published or a determination letter had been issued. However, it could take a long time to get to that point. It could take a year after a draft report had been produced for the various parties to be consulted and to agree on the way forward.

I have decided that, once we issue a draft of a report that is to be laid before Parliament, local authorities and other bodies under jurisdiction will have four weeks within which to respond to it. If they do not respond within four weeks, we will assume that they have no comment to make on the report and will publish it. However, complainants will have six weeks within which to respond, as they do not have at hand officials to give them advice and what have you, and may have to take advice from someone else. Once the six-week period has passed, we will publish the report and lay it before Parliament on the first available date. That is an attempt to bring resolution and closure quickly.

Most of the cases on which we decide are resolved not by reports to Parliament but by decision letters. In all our decision letters, we make clear what stage of the process has been reached. At that point, we have looked at the case, assessed all the evidence from the complainer and the body concerned and taken a decision, which is set out in the letter. Unless someone brings something to me that is new, that we have not considered before and that is material, the decision will stand. I must be firm about that because the main cause of our big backlog of cases was an inability to close cases. We now do that, even though people are not always happy with the way in which that is done.

I hope that I have answered your question.

John Wilson: You have answered it in part. You mentioned the premature cases that come before you, which you refer back to local authorities, for example. Do you do any follow-up work on those cases? You have indicated that, when a case comes before you, you expect the local authority to respond within four weeks. I am

trying to home in on the cases in which people make a complaint prematurely and come to your organisation to get a resolution because they feel that they will not get one through the local authority. Do you do any follow-up work on those cases?

10:45

Jim Martin: The most common reason for prematurity is that people are not aware of the procedure that they have to go through with the local authority before they can go to the ombudsman, or that, although they know they can go to the ombudsman following the conclusion of the procedure in the local authority, it is taking a long time.

I am not allowed to look at any case unless it has been fully through the local authority complaints-handling procedure. Emma Gray's old team would signpost people to the local authority. In cases in which we felt that the local authority was dragging its feet or we believed that someone had a legitimate cause, we would draw it to the attention of the authority that we had given that advice. Under the Scottish Public Services Ombudsman Act 2002, that is about as much as I can do with premature complaints.

John Wilson: That leads me on to the existing powers of the ombudsman, to which you have made a number of references. I am picking up that, in some cases, you feel hindered by the existing powers. What processes are there to enable you as the ombudsman to say to the Scottish Government that you have taken a case so far but that you are frustrated because you do not have the powers to take it any further? Do you envisage additional powers being granted to the ombudsman to deal with particular cases that you have identified?

Jim Martin: I am not seeking extra powers—that is not why I have come here.

"Ombudsmanry" is a word that I did not know existed. Apparently, the powers of an ombudsman are seen to relate to recommendations, persuasion and publicity. The ombudsman has the power to make a special report to Parliament, should the recommendations that he or she makes not be followed through by a body. Since 2002, that power has never been required to be used. I am at the stage at which I am very close to having to produce such a report, certainly in relation to health and perhaps on one local authority, but I am unclear that Parliament has a procedure set down for what would happen were I to do so. It may be that a special report is laid before Parliament, just lies there and nothing happens, or it may be that Parliament picks it up and runs with it, but I do not think that anyone has thought

through that stage. I certainly have not, although I will form a view at some point.

Parliament would be required to take a view if the ombudsman—who is one of its office-holders—finds that they have to make a special report on a health board or a local authority because, on an important issue, a recommendation has not been accepted or has been flouted. At that point, as the powers that Parliament had given to the ombudsman were being challenged, it would become a matter for parliamentarians, rather than just the ombudsman, to take on.

John Wilson: Thank you for that response. You have given me what I was looking for. I want us to get to a situation in which anyone who makes a complaint can have confidence that that complaint can be dealt with and that the ombudsman who is in a position to review that complaint can take the appropriate action against the relevant body.

You mentioned that some complainants might want the head of a local authority chief executive because they felt that they had been unfairly treated by an official of that authority. We need to build and strengthen the confidence of people who complain to the ombudsman that the ombudsman has the powers to deal with their complaint. You indicated that you were close to making a special report on one local authority. I am not asking you to name that authority, but if it comes to the stage at which you feel you have to make a special report on that authority to Parliament, that will help to create more confidence in the system.

In dealing with local authorities and other public bodies, people are looking for confidence that any complaint that they make will be handled in a manner that is appropriate to it. However, unfortunately, all elected members around the table see and hear every month—if not every week—complaints about the way in which things have been dealt with at local level by local management. In many respects, what people are looking for is someone who can come in to adjudicate on the complaint to find out whether it is justified. There is a need to build up that confidence.

As well as the additional responsibilities that the ombudsman will take on later this year, I am aware that the new planning procedures that were put in place last year now allow local authorities to hear their own appeals on the planning decisions that they have made. Has there been an increase in the number of complaints about appeals on planning decisions because those appeals are dealt with by the local authority instead of by a Scottish Government reporter?

Jim Martin: I would not have expected such an increase to come through as yet, as I expect that

such complaints will take a bit of time to come through the system. However, I will certainly keep an eye on the issue and I will let the committee know of any trends when I come back next year.

On the first point, it is quite remarkable—and a great testament to my predecessor—that the special report has never had to be used, because authorities and health boards, whatever they might have thought, have always accepted our recommendations. However, we might be getting to the position where, culturally, that might be about to be challenged. Watch this space.

Jim Tolson (Dunfermline West) (LD): Good morning. I want to ask about the recent revaluation of non-domestic rates that has been carried out by the valuation joint boards. Have you, like parliamentarians, received any complaints about the revaluation? Do you anticipate any complaints about that?

Jim Martin: I do not know how many, if any, such complaints we will receive, but I am unaware of a serious trend in that regard just now. We will take a note of the issue and come back with some numbers.

Jim Tolson: I would appreciate that. However, that answer surprises me slightly, although it is perhaps understandable that the lead-in time means that such complaints have not come to the ombudsman as yet. Certainly, members from across the parties have received many complaints about the recent revaluation. A key point that has been highlighted to us is that the changes in non-domestic rates were not phased in. Would it have been better if the changes had been phased in? Would that have reduced the potential for complaints?

Jim Martin: That is not really a question for me at this stage. I would love to pontificate on what I think about many things that cross my desk, but I bite my tongue.

The Convener: That was worth waiting on.

Before finishing—we have gone on for some time, but your evidence and attendance this morning are appreciated—I want to ask about the discussions with COSLA and SOLACE that were mentioned. Given the level of complaints in housing, have parallel discussions taken place with the Scottish Federation of Housing Associations and others about the standardisation of complaints, building up skills and complaints handling?

Jim Martin: Yes. This year, we established a training unit that is working closely with the SFHA, the Scottish Housing Regulator and housing associations generally. One issue that my organisation will face in introducing a complaints standards authority for the whole of the public

service is that, if we are to help people to get to standardisation, we will need to do that in stages. At the moment, our plan is that we will deal with local authorities first and then, possibly, with housing associations, as the NHS's procedures are already relatively standardised. We talk with the Scottish Housing Regulator before inspections about complaints that we have picked up. We have a very good relationship with both those housing bodies. Because there was previously a housing ombudsman, we have some well-skilled people within our staff base, so that gives me confidence that we are on top of housing issues.

The Convener: I wonder whether that outreach work could, where you think it appropriate, extend to parliamentary offices to ensure that the people there know the basics of and what to expect from those organisations. After all, they deal with a lot of these complaints, and you might well learn from some of our very valued case workers, who have been doing this work for a considerable number of years. Do you have any plans to take in that network?

Jim Martin: That would present a good opportunity for two-way learning; it would be useful for my people to see what comes into the mailbags of MSPs' offices and it would be good for MSPs' case workers and officers to see how our organisation works. Very often we have to coach people through these things, but I would imagine that, on such occasions, we would probably waive our usual training fee.

The Convener: Probably?

Jim Martin: Or perhaps not. *[Laughter.]*

The Convener: With regard to the very practical issue of complaints handling, the committee in its recent local government finance inquiry raised the issue of communicating with citizens about the challenges that are being faced and the possible impacts on them. We heard that in East Ayrshire—I think it was—there was a consultation to endorse the budget that was being processed, but I do not think that we had any evidence of other councils taking the same approach. Have there been any discussions with COSLA on effective communication and consultation about the current crisis and challenges and the decisions that are being taken in council chambers throughout the country to ensure that we do not get so many complaints and that citizens are engaged in the process?

Jim Martin: When it is published, we intend to take our 2009-10 report to SOLACE, COSLA, the chief executives of health boards and the SFHA and discuss the very issue that you have raised. The most common theme in complaints across the whole public service is poor communication. In the case involving South Ayrshire Council, the report

on which came out this month, we found that, although its budgetary process had been fine, it really needed to get to grips with its handling of communication and the populace's expectations. I advise local authorities and their chief executives to read that report. After all, it is all very well simply to sit down over the balance sheet as the budgetary impacts begin to hit, but the explanation for decisions needs to be conveyed to people appropriately if passage through this period is to be made a wee bit easier.

I am always wary of saying to people that their communication is poor, because I am not certain that my own office's communication in the past has been above criticism. However, the feedback that we have been getting from bodies under jurisdiction last year and this year is that we are getting that just about right. I am happy to share what we have done with local authorities and others and I am sure that Emma Gray's team will be prepared to work with people on that matter.

The Convener: But your discussions with COSLA have not extended to producing guidance on how to communicate and consult effectively, where possible. As you say, that is not always possible. However, given that the cuts or efficiencies that are being introduced now are forecast to last until 2017, there may be possibilities to improve communication and consultation.

Jim Martin: That will be a feature of the principles that we will bring to Parliament to underpin the complaints standards authority and what we want people to do. Moreover, communication will be a key part of the model complaints-handling procedures on which we are consulting with local authorities and others. I can help bodies through that phase, but helping them to manage the communication of their own decision making is probably a wee bit beyond my remit.

The Convener: You say that your annual report will be published in September or October.

Jim Martin: That is right.

The Convener: We appreciate your evidence this morning. I think that, going back to Mr McLetchie's point, we will try to align our work programme better to give you a chance to come back to the committee at or around the time of the publication of your annual report.

Jim Martin: Indeed. By that time, I should also have the principles ready to lay before Parliament. The committee might also find it interesting to hear where we are going structurally with the complaints standards authority, the position with prisons and so on.

The Convener: We would appreciate that and I hope that we can work with your organisation to make that happen. Thank you very much for your attendance, your time and your evidence.

Subordinate Legislation

Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2010 (SSI 2010/171)

11:00

The Convener: Item 5 is consideration of subordinate legislation. Members will have received a copy of the regulations. As no motions to annul have been lodged, do members agree not to make any recommendations to Parliament on the regulations?

Members *indicated agreement.*

The Convener: Item 6 is in private. Good. Charge your cups.

11:01

Meeting continued in private until 13:07.

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