



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 10 November 2010

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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

**26<sup>th</sup> 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)  
Malcolm Chisholm (Edinburgh North and Leith) (Lab)  
Alex Johnstone (North East Scotland) (Con)  
Alison McInnes (North East Scotland) (LD)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Brian Adair (Association of Residential Letting Agents)  
John Blackwood (Scottish Association of Landlords)  
Cathie Fancy (Scottish Borders Council)  
Emma Gray (Scottish Public Services Ombudsman)  
Sarah-Jane Laing (Scottish Rural Property and Business Association)  
Jim Martin (Scottish Public Services Ombudsman)  
Stephen McGowan (Glasgow City Council)  
Alistair Somerville (City of Edinburgh Council)

**CLERK TO THE COMMITTEE**

Susan Duffy

**LOCATION**

Committee Room 4



## Scottish Parliament

### Local Government and Communities Committee

*Wednesday 10 November 2010*

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

### Decision on Taking Business in Private

**The Convener (Duncan McNeil):** Good morning and welcome to the 26<sup>th</sup> meeting of the Local Government and Communities Committee in 2010. I remind members and the public to turn off all BlackBerrys and mobile phones.

Agenda item 1 is to consider whether to take business in private. Do members agree to take item 6 on today's agenda in private?

**Members** *indicated agreement.*

## Scottish Public Services Ombudsman

10:00

**The Convener:** Under item 2, we will take oral evidence from the Scottish Public Services Ombudsman on the SPSO's annual report and then consider the draft statement of complaints-handling principles that was laid before the Parliament on 5 November.

I welcome Jim Martin, the Scottish Public Services Ombudsman; Emma Gray, head of policy and external communications; Niki Maclean, director of corporate services; and Paul McFadden, complaints standards authority manager. I invite members to ask questions.

**David McLetchie (Edinburgh Pentlands) (Con):** Good morning, everyone. I welcome the fact that we are having this review session within a couple of months of publication of the 2009-10 annual report. The timetable is much better for the relationship between the Parliament and the ombudsman's office.

The issue that I want to highlight arises from evidence that was given to the committee back in May, when we looked at the 2008-09 report. In your testimony to the committee, Mr Martin, you referred to the possibility that your office might be inclined to lay special reports before the Parliament in relation to the action—or the inaction, I think it was—of a health board, and a local authority was also mentioned in another context. Will you update us on what happened in relation to those issues? What further process, if any, do you envisage might take place?

**Jim Martin (Scottish Public Services Ombudsman):** The recommendations that we made to the health board and the local authority were ultimately accepted and acted upon, so there is no requirement to lay a special report before the Parliament. As you know, my powers are limited to making recommendations. We have changed our process so that, when we make a recommendation, we now put a time limit on it and state when it should be enacted by. Those two recommendations were outstanding for some time. We managed to negotiate with the bodies and bring them round to our way of thinking by putting discreet pressure on them—let me put it that way. I am content that the recommendations that were made in each case have been acted upon.

The laying of a special report consists of our sending a copy of the report to the Parliament. I am concerned that there is no mechanism or procedure thereafter for consideration of the report and any actions that it contains. The Parliament

needs to think carefully about what would happen in such a case. It has probably escaped people's notice here, but in Ireland a big debate is going on about a special report that was laid by the Irish ombudsman, which has led to some contention and some thinking about the Parliament's role in ensuring that special reports are acted upon. We need to give some careful thought—probably not while a special report is on the table, but in general terms—to the best procedure for me to follow in making the Parliament aware when recommendations that I have made have not been followed through.

I welcome the fact that the committee is considering our annual report so soon after publication. However, I do not think that it would be appropriate for me to bring a special report on, say, health to the committee. The question is whether it is appropriate for committees that have some jurisdiction over a subject area to receive a special report. Should there be a system whereby the ombudsman is held to account for their actions and where a degree of expertise in the work of the ombudsman's office can be built up, so that the handling of any special reports that are published can be better managed? At present, we have a little gap in how the ombudsman is held to account and how the Parliament would deal with a special report.

**David McLetchie:** For clarification, and leaving aside the special reports, you regularly publish reports on complaints that you have handled, although they are not so frequent as they once were because of the new criteria. In the two cases that we are discussing, were the complaints the subject of ordinary reports that your office published?

**Jim Martin:** Yes.

**David McLetchie:** For the sake of the record, will you tell us briefly what they were about so that we are not just talking about anonymous complaints? What recommendation was eventually accepted by the council?

**Jim Martin:** In both cases, the recommendation involved an apology for the poor service that was given to the complainer. In the local authority case, the local authority took the view that, despite a ruling of maladministration, it did not believe that there had been maladministration, so it was not inclined to apologise. That would have been a significant issue, because it would have meant that the ombudsman's ability to make a declaration in relation to maladministration was being challenged.

In the other case, the health board was again not inclined to apologise for the care that had been given to a young patient. I would not want to read too much into the motives for that, but I am always

careful in health cases to ensure that when boards look at our recommendations, they are aware that I do not consider whether litigation might follow; therefore, I expect my recommendations to be followed.

**David McLetchie:** Do you perceive a problem in the interface between health boards and councils, which no doubt will be advised by their lawyers never to admit liability lest a subsequent legal action be founded on that, and you and the complainer, whose natural desire is to receive an acknowledgement that a wrong was done to them, or that there was a failing? How should we handle that problem?

**Jim Martin:** Far be it from me to criticise the legal profession when it is you asking the question—

**David McLetchie:** Everyone else does, so you might as well.

**Jim Martin:** During the time that I have been doing the job, one of my great concerns has been how quickly health boards in particular, and others, will agree with one of my findings when specialist advisers have given me advice. Health boards in particular tend not to acknowledge fault for fear of litigation and the advice that they receive about how a complaint should be handled often comes not from clinical staff but from legal staff. I am thinking of one complaint in particular, from a young man who had an horrific operation performed on him in Stirling. When it came to us, our advisers said that it was an open-and-shut case. The health board said that we were right, but the poor person who was involved had to go through the complaints process, continually being told that he did not have a case.

When the ombudsman says that he has received medical advice, the health boards tend to roll over. That concerns me, because in some cases the fear of litigation is stopping a solution being found. The ordinary complainer is at a disadvantage because, without paying considerable sums of money, they do not have access to legal and medical advice. We can and should ensure that bodies that are under our jurisdiction are aware of their duty to help a complainer to find a solution without necessarily believing that the first thing they have to do is to avoid litigation.

**David McLetchie:** To go back to the circumstances in which you might make a special report about a failure to implement a recommendation and how such a report might be handled by the Parliament, you indicated that, because of the subject matter, it might not necessarily be appropriate for such reports to come to this committee, but they could be considered by other parliamentary committees. In

the limited number of circumstances in which you might feel inclined to lay such a report before Parliament, would an effective procedure be for the Parliamentary Bureau to assign it to an appropriate parliamentary committee, which could undertake some investigation and perhaps invite evidence from you and the public authority concerned? Would that be appropriate?

**Jim Martin:** Some thought needs to be put into that, and the ombudsman should not necessarily be the person who determines what that procedure should be. We should not establish an appeals committee. The Scottish Public Services Ombudsman Act 2002 gives the ombudsman the power to make decisions. The recommendations that follow from those decisions are simply that: recommendations.

A committee of Parliament should not be set up to hear appeals on decisions. If you do that, all the people who come to me will come to you, which I do not think Parliament wants. From time to time, however, the ombudsman may need the support of Parliament to ensure that recommendations are carried out.

One way to avoid such situations is to change the power from one of making recommendations to one of giving directions. Although I see advantages in going down that route, we should do so very carefully and think it through, so that the ombudsman would not be responsible, for example, for the financial consequences of any direction that would be given.

If I was to find that my recommendations were constantly being challenged—which they are not—I might come to Parliament at some future date and argue that we need to do something to strengthen that power.

**David McLetchie:** Presumably, if you directed a local authority or a health board to apologise, that would not be an admission of liability by those bodies, because they would simply be implementing the statutory duty on them.

**Jim Martin:** Yes, but when I ask a local authority or a health board to apologise, I expect them to mean it. I have sent back a number of apologies that I said were unacceptable. Those are the type of letters that say, “I am apologising to you because I believe that you feel hard done by and the ombudsman agrees with you.”

If we find that there has been maladministration or service failure, I expect a genuine apology to go out. I have seen one or two excellent examples from health boards, which understand the need—particularly with grieving families—to explain why they are apologising and what they are doing about it, rather than being mechanistic.

**The Convener:** Patricia Ferguson has a follow-up question on that theme.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** Good morning. Should there be, or have you explored the possibility of, a role for ministers in such situations, given their relationship with health boards and—albeit that the relationship is slightly different—with local government? Have you discussed that with the Government?

**Jim Martin:** I have not discussed that at all with the Government. Schedule 1 to the 2002 act clearly sets a gap between members of Parliament and ministers and the ombudsman. Given that we take complaints about ministers' departments, it would probably be inappropriate for ministers to have that role. The Parliament, acting as a Parliament and not in a party-political way, would be the way to deal with that.

**Patricia Ferguson:** Thank you, that is interesting.

**The Convener:** What discussions, if any, have taken place on these issues, other than your raising the issue—as your evidence states—with the Review of SPCB Supported Bodies Committee, which was set up in 2008?

**Jim Martin:** Those discussions pre-date me. I believe that there was some discussion about the general powers in the 2002 act, and that committee was content that the powers should remain as they are, with the exception of publication of discontinued investigation reports. The committee agreed with my predecessor that there should be some flexibility around the publication of reports.

**The Convener:** But you are content to leave the position as it is at this point and not take it any further.

**Jim Martin:** I say in my report that we need to look more closely at the relationship between the ombudsman and Parliament in general. In peacetime, when there is not an issue before us, it would be good for us all to give some thought to what we would do in the event that something happened. That is the point that I am trying to make.

10:15

**Jim Tolson (Dunfermline West) (LD):** Good morning. Mr Martin, I have read with interest your report and the reports of your predecessors. Generally, the SPSO is a service that is seen to be performing well. However, I am sure that we all recognise that, in any service, there is room for improvement.

I note that, recently, after a work-up period, you have taken on responsibility for handling

complaints from or on behalf of prisoners. You have stated in evidence to the committee:

“We are absorbing prison complaints with no increase to our staff numbers and with significant savings to the public purse”.

That is a laudable management position to take—such approaches are often very worth while. However, in respect of the work that is coming through for you in July next year, when you will take on Waterwatch Scotland’s responsibilities, you have suggested that

“A key part of that planning will be to ensure that all issues with regard to the transfer of staff and location of offices are considered as carefully as possible.”

There is possibly an inconsistency there. I would be grateful if you could outline to the committee the rationale behind the different approaches and the impacts on your service of having additional staff, where required, or not having additional staff.

**Jim Martin:** The original proposal put forward by the Government was for prison complaints to transfer to the SPSO in April next year. I approached the Government to say that, given the progress that we were making within the SPSO—previously, we had around 500 cases on our desks whereas, today, it is 210, meaning that we have made significant efficiency gains—we could probably absorb the prisons work earlier and without the civil servants working with the Scottish prison complaints commissioner transferring from the civil service to the SPSO. We have managed to do that—we have absorbed that work and it is going well.

Waterwatch is a different proposition. The people who work with Waterwatch are not civil servants; they are employed differently. The proposal, which was supported by Parliament, was that Waterwatch and a significant proportion of its staff would come to the SPSO, with the rest going to Consumer Focus Scotland. That means that I will have to take on four staff from Waterwatch who currently work in Alloa, who will bring water complaints with them. At that point, we will have to decide how to manage those water complaints—whether that requires a separate unit in our Edinburgh office, in Alloa or wherever, and whether we have to set up anything separate for that group. If that goes ahead, we will have a management decision to make. The two situations are different.

In my view, our office can absorb more work than we currently have. I know that that is not the conventional thing for public bodies to say, but I genuinely believe that we have the capacity to do that. I have been very impressed by the way in which my staff have worked with the prison complaints people to bring things across seamlessly. Already, in one month, we have

halved the backlog that we got from there. I am convinced that we are operating efficiently enough to absorb more work, but every time that we absorb more work, the circumstances will differ. Just as every merger in the private sector is different, so every merger in the public sector will also be different.

Does that answer your question?

**Jim Tolson:** That is very helpful, yes. It answers the question and gives more of the background of what has been going on. As I said, the SPSO is seen as an efficient service, and you have been able to give some information that backs that up. I am grateful for that answer.

**The Convener:** On your capacity to absorb additional remits, water complaints are coming to you and you are already dealing with prison complaints. In addition, there has been a 12 per cent increase in the number of complaints that you have received in the past couple of years, and you say that you expect an increased number of complaints due to the implementation of new planning laws and cuts in the housing budget, in local authority budgets and in services. Is it all doable?

**Jim Martin:** I have regular discussions with the Scottish Parliamentary Corporate Body, which is responsible for my budget and head count. I have been telling the SPCB that, when I believe that we need more resources, I will say so. I will not be slow to say so and I will make a very good business case for that.

I do not believe that taking on extra responsibilities should necessarily lead to increased staffing numbers. I know that the corporate body is looking very carefully at office-holders and office-holder budgets, and I fully support its position in considering shared accommodation and services and trying to make real economies in their provision.

Our operation is in a far better place now than it was a year ago. We have improved efficiency, our staffing levels are roughly the same and our budget is roughly the same, so my intention is to get the best value out of the gifted group of people who work with me and what is a substantial sum of money. If I find that the cuts—or, as I was advised to call them the other day, the budget restrictions—begin to have an impact, I will definitely go to the corporate body to make a case for more people or more resources.

**The Convener:** But it is setting the budget now.

**Jim Martin:** Yes. It has asked me to put forward a budget with a reduction of 15 per cent over three years, and we have done that.

**Mary Mulligan (Linlithgow) (Lab):** Good morning. Among the range of complaints, those



about local government are significant, and the number does not seem to be reducing. Could you say a little about those complaints? Is there a pattern? Do we learn from the statements that are made after the investigations take place?

**Jim Martin:** From memory, I think that local authority complaints make up something like 53 per cent of all the complaints that we receive. Of those complaints, housing, planning and other such areas take up a lot of the time.

Local authorities are learning some lessons, but one thing that concerns me is when I begin to see recurring themes. For example, for a wee while we were concerned about one local authority because we were receiving a few complaints about non-application of enforcement orders, but that pattern seems now to have gone away. When we see such cases, we tend to flag up to senior people in the local authority what is happening. In fact—to take the discussion out of local authorities for a second—we recently noticed a recurring theme of service failure in a particular ward in a particular hospital. We asked our nursing adviser to talk to the senior nursing people in that hospital to tell them about it—to say that we may not have been upholding all the cases, but that we were noticing that there was public concern.

We will come on to talk about the principles of complaint handling in a minute, but one issue is that we have 32 local authorities that operate in 32 different ways. One thing that I am looking at, and on which we will lay three reports pretty soon, is how local authorities work differently: for example, how they calculate the amount of time that they take into consideration for the disposal of houses to sons and daughters of elderly people who go into care. I am finding that the periods of time that local authorities take into account can vary dramatically across Scotland. A fairness issue comes up, which I will probably want to highlight at some point.

In cases involving something that goes across all local authorities, we would consider, through Emma Gray's team, putting together a thematic report to try to engage with the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives and Senior Managers. We are looking at ways to put out what has been learned for people to understand and act on, but we are not auditors—we deal only with the complaints that come to us.

**Mary Mulligan:** Clearly, each of the 32 local authorities is a unit and has a legitimacy of its own. Unless it is dealing with a statutory issue, it has the ability to vary how it operates. You have made interesting comments about the different approaches to issues such as housing, where authorities have different rules. How far can you go in persuading them that there should be

consistency and that we should not have a postcode lottery?

**Jim Martin:** I cannot do that at all. The act that I operate under says that I can only investigate complaints where policy matters are concerned if there is evidence of maladministration. When we are dealing with complaints and a general issue arises that throws up policy issues, I do not think that part of the ombudsman's role is to tell local authorities, Parliament or Government that they need to address that issue; I see the ombudsman's role as being to highlight it. It is then for Parliament, Government or local authorities to pick that up. I cannot direct local authorities or anyone else to change their policy.

**Mary Mulligan:** You mentioned COSLA and SOLACE. What is the route when there are recurring issues? Is it to go to individual local authorities or is it to work through the umbrella organisations?

**Jim Martin:** If there was a recurring theme within one local authority—in one department for example—we would probably raise that with the chief executive or the head of that department. If we felt that there was an issue across various local authorities, we would probably raise that with SOLACE and COSLA, or one or other of them, if we felt that that was warranted. We have close links with the Improvement Service, and we would feed into its thinking as well.

**John Wilson (Central Scotland) (SNP):** You indicated in your briefing paper to the committee that you are

“working with the Improvement Service to develop sector-specific models to deliver complaint handling training.”

Will you expand on that? As I understand it, the Improvement Service was established to assist local authorities to improve their services. Is the Improvement Service expanding to provide advice, training and information for other sectors in public life in Scotland?

**Jim Martin:** That is not within my remit, so I will not comment on your second question.

In the past year, we have established a small training unit in the SPSO. Part of its duty is to offer help to any sector to train its own people in good complaint handling and good complaint-handling procedures. We have worked with local authorities in different parts of the country. We are working with the national health service throughout Scotland. How others interpret their role and what they seek to grow into or not grow into is really not a matter for me.

**John Wilson:** You might want to check the wording of your briefing paper, which clearly says that the Improvement Service, along with the SPSO, will

“develop sector-specific models to deliver complaints handling training.”

If you are engaging with the Improvement Service, it would be interesting for me, and perhaps other committee members, to find out how you are doing so when, as I said, my understanding is that the Improvement Service is there to support local authority development through COSLA and SOLACE rather than become engaged in other areas.

**Emma Gray (Scottish Public Services Ombudsman):** Perhaps I can comment on that. The phrase “sector-specific” refers to the sectors, as we call them; in other words, it refers to all the different sectors under our remit. The sector-specific nature of our work with the Improvement Service is the local authority sector.

**John Wilson:** Thank you for that clarification.

You talked about developing a small training unit. I assume that that is within your existing staff base.

**Jim Martin:** Yes.

**John Wilson:** Given that, as Mr Tolson mentioned, you have taken on the additional responsibility of prisoner complaints, can you manage the delivery of the training? Are there any financial benefits in relation to delivery of the training that might offset the 15 per cent savings that you have been asked to make in the next three years?

10:30

**Jim Martin:** We provide the training at cost. For example, we are helping the national health service with a training programme that will help it to train its trainers. The idea is that, if we can disseminate best practice throughout public services in Scotland, that will enable them to operate more efficiently and effectively. It is a demand-led service, so we go where we are asked to go. We do not impose ourselves on people or tell them what they have to do. We are not a training organisation. The training unit comprises one full-time person and a number of our more experienced complaints handlers, who go out to talk to people about the practicalities of how to do things. It does not involve the theory and practice of complaints handling in Scotland; it deals with practical matters.

**John Wilson:** Mr McLetchie raised the issue of the laying of reports, and you have commented on that. You will be aware that, in September, the Public Petitions Committee dealt with nine separate petitions that, among other things, raised concerns about the handling of complaints by the SPSO and called for an independent investigation into its work. Do you wish to make any comment

on those petitions? You have said that, under the procedures that the Parliament has set out for the SPSO, there is some vagueness about how its reports can be dealt with. At the same time, as I said, the Public Petitions Committee has dealt with nine petitions that raise concerns about the SPSO. It might well be that we are finding another route to raise questions about the role and efficiency of the SPSO.

**Jim Martin:** I have to be careful what I say here—I think that you know that. I was disappointed that the Public Petitions Committee handled the petitions in the way that it did. It is right to say that it considered nine petitions, but six or seven of them contained identical wording. We therefore have one petition that was signed separately by different people, but the petitions were considered separately. I believe that that is, if not unique, an unusual approach.

I will be making a response to the Public Petitions Committee. My biggest concern is the public press coverage that it got. My personal competence was particularly questioned in the committee. I think that the phrase that was used is that the present ombudsman is not up to the mark, and there was also a statement that the ombudsman's office is “not worth a farthing”. I would dispute both those statements, obviously. Their impact on my staff was such that they asked me whether the Government had taken a decision to disband the ombudsman's office and whether that was on the political agenda. I am trying hard to retain good people, so that does not help.

I also think that the publicity has probably undermined confidence in the ombudsman's office at a time when I am trying to build it up. To that extent, I was disappointed by some of the things that were said and how they were reported in the press.

Having said that, I genuinely believe that one of the great benefits of the Parliament is the Public Petitions Committee. It is a terrific innovation and one of which we should be proud. However, the Local Government and Communities Committee is receiving and rightly questioning me on my annual report, and the Scottish Parliamentary Corporate Body is responsible for examining my performance and how I manage my budget. There is a rigorous assessment programme in that regard. It is not fair that heads of public organisations should be accused of incompetence in a committee in the way that happened. I think that the next ombudsman or group of public servants will be wary of statements that have been made elsewhere, when they are in no position to defend themselves.

I have reflected long and hard on my reaction to what happened and I sometimes think that I went too far in the response that I made publicly.

However, if I had not responded in the way that I did, at the time when I did, I think that an unchallenged view of the ombudsman's office would have been extremely damaging, not only to staff in my office but to public confidence in the office. I hope that that answers your question.

**John Wilson:** Thank you.

**Alasdair Morgan (South of Scotland) (SNP):** When your office absorbs the complaints function of Waterwatch Scotland, two new aspects will be introduced into your organisation. You will take complaints from business bodies, as opposed to the public, and you will potentially deal with complaints against private suppliers of water—in other words, business bodies. In a sense, there will be a move away from being a public services ombudsman. I guess that the implications for your organisation will depend somewhat on the decision about whether people in Alloa will be absorbed into it, which you said has not been taken. What are the implications for your organisation of the changes?

**Jim Martin:** Because of the way in which we were set up and are structured, we have no background in corporate law, so we will have to get up to speed on that. I hope that the people who come across to our organisation from Waterwatch Scotland will bring that expertise with them. It will be important to build a good relationship with Scottish Water early on, to ensure that everyone understands our new role and what the powers are and are not.

It is easier to absorb the prison complaints function, because the prison complaints system was largely modelled on the SPSO model for complaint handling in the public sector. Paul McFadden, who led that work, is leading on our work on Waterwatch Scotland. We have begun to look ahead to next July, to identify gaps in our knowledge and personnel and consider what we need to put in place to fill them. We are giving the matter serious thought.

My aim is to have in place by Easter either a shadow model or an internal working model that takes account of any information technology, legal or process links that need to be built. Thereafter, as we wait for the Parliament to decide whether to go ahead with the commencement order, we want something that we can run through, trial and put in place by July. That will be a challenge for us.

**John Wilson:** In your submission, you said that some responsibilities of Waterwatch Scotland will be transferred to Consumer Focus Scotland. Will what has happened to Consumer Focus down south have an impact on the transfer of responsibilities in Scotland?

**Jim Martin:** I do not think that it will impact on the ombudsman's office. As I understand it, the

impact on Consumer Focus Scotland will not be felt until 2012. I think that Waterwatch Scotland's consumer aspects will still transfer to Consumer Focus Scotland and its complaints function will transfer to the SPSO. At the point of transfer, I think that Consumer Focus Scotland will still be in business, so there should not be an impact on the transfer.

**The Convener:** With your agreement, we will move to the consideration of the draft statement of complaints-handling principles. I have in front of me an e-mail from David Sillars, senior investigating officer at the office of the chief investigating officer and the Standards Commission for Scotland. I would like to get your response to it on the record. Having read your submission, he expresses concern

“that the issues raised by the Chief Investigating Officer as part of the consultation process highlighting the significant differences between service user complaints and the determination of regulatory complaints undertaken in terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (circumscribed by strict legislative and quasi judicial considerations) have not been acknowledged. This may simply reflect the further sectoral work to be undertaken which is of course alluded to in the SPSO submission but is a point, I think, of sufficient importance for me to draw to your attention at this stage.”

I would appreciate your response to that.

**Jim Martin:** There are two issues. The first is that I am required by an act passed by Parliament to bring forward principles for your approval. That is one aspect. I may, under those provisions, bring forward complaints-handling procedures. You have some idea of the consultation responses that we have had to that, one of which was from the chief investigating officer, and we have indicated that we will take two months to consider the responses on the complaints-handling principles.

We have done some work already. For example, we have met Universities Scotland and asked it to look at how complaints-handling procedures might impact on the very diverse universities sector. We have also met the chief executive of SOLACE and asked for its support in bringing forward the local authority complaints-handling processes in partnership. I am pleased by the co-operation that we have had from SOLACE. One of the issues that we will get to in the course of the next two months is to ask what the implications are for regulatory bodies—one of which is the chief investigating officer. I appreciate David Sillars writing to the committee on the issue.

**The Convener:** Work is on-going.

**John Wilson:** In your report on the complaints-handling procedure, you indicate the number of responses that you have received. You received 27 responses from local authorities. Can I clarify

that you received a joint response from SOLACE and COSLA?

10:46

*Meeting suspended.*

**Jim Martin:** Yes.

**The Convener:** You alluded to the on-going work on the next financial year. Can you add to that, not specifically on the Standards Commission for Scotland but more widely, by saying what further consultation needs to take place? You alluded to universities, but I take it that the process is going on across the public sector. Are we getting buy-in?

**Jim Martin:** Yes, we are. I have been heartened by the degree to which people have accepted not only the principles that we have set out but the model complaints-handling procedures and are seeking to get them to work in their area. Given that there are 32 local authorities with 32 different systems, it will take a bit of time to get people to agree on a standardised system, and the same is true in the health sector and in universities, where the ancient universities, the Robbins universities and the post-1992 institutions all have different ways of working.

I think that Douglas Sinclair and his committee thought that the first area to start with should be local authorities, and we have taken his advice on that. We are starting with local authorities and universities, but the rest of the public service will follow. The model in our complaints-handling procedures is very close to the current procedure in the NHS, which is further down the line for us. We think that it is already there.

We hope that, in the next 18 months, everybody will have helped to design a standardised system within their own sector. I do not want to set up a complaints-handling regulator within the SPSO. I would far prefer that the sectors regulate themselves, with the SPSO sitting above, and that the effectiveness of their complaints-handling procedures be measured and monitored, particularly in the case of local authorities, by Audit Scotland through processes such as the best value 2 approach.

We are in the process of trying to put something in place, but we want the people who will manage the procedures to own them, although how they go about that will be at my direction.

**The Convener:** So it is a softer approach—getting people to buy in rather than making them adhere to something.

**Jim Martin:** It is out of fashion now, but I am looking for a light touch in the knowledge that, in the background, I have legislation that allows me to enforce measures.

**The Convener:** As there are no other questions from the committee, I thank the witnesses for attending.

10:48

*On resuming—*

## **Private Rented Housing (Scotland) Bill: Stage 1**

**The Convener:** I welcome Stephen McGowan, housing strategy manager at Glasgow City Council; Alistair Somerville, head of section, houses in multiple occupation inspection team at the City of Edinburgh Council; and Cathie Fancy, group manager, housing strategy and services at Scottish Borders Council.

In the interests of time, we will proceed straight to questions.

**Bob Doris (Glasgow) (SNP):** I thank the witnesses for coming along. I attended a really good event in the garden lobby last night with the Scottish Association of Landlords. Many landlords were there who do a fantastic job of maintaining their properties, keeping tenants informed and meeting the social need for housing. They, of course, are the good landlords. The unregistered landlords whom the bill seeks to tackle would not go to such an event.

I will have questions for our next panel of witnesses about the fact that the good landlords go along as normal, perform and jump through the hoops that they are required to jump through, but that there is an underbelly of unregistered landlords that give the sector a bad reputation. What are the barriers to prosecuting unregistered landlords? No unregistered landlord has ever been prosecuted in Scotland, never mind prosecuted successfully, since the power to do so was introduced.

**Stephen McGowan (Glasgow City Council):** I will start with the Glasgow context. Many of the hurdles that we have to clear are to do with the rules of evidence, how the local authority's officers gather evidence and whether it is strong enough for the procurator fiscal to take to court. There may well be a number of reasons for evidence not being strong enough. There are particular pockets of serious problems in Glasgow, such as in Govanhill, where there are migrant workers, and language barriers and so on make it very difficult to communicate. Those workers are distrustful of authority, including local authorities, and are transient. They may move quickly and they may fear their landlords. Those are a number of the hurdles that might present challenges for council officers when they try to build up cases that are strong enough for the procurator fiscal to take to the criminal courts.

**Cathie Fancy (Scottish Borders Council):** I echo Stephen McGowan's comments. There is a lack of evidence and also a lack of clarity about

what evidence we need to gather and about the protection of tenants who would often be required to submit and corroborate some of that evidence. Those are the main barriers in Borders.

**Alistair Somerville (City of Edinburgh Council):** We have successfully prosecuted an unregistered landlord; it happened only last month.

**Bob Doris:** Congratulations.

**Alistair Somerville:** I confirm my colleagues' comments that the problem has been gathering evidence. The person in the case that I mentioned pled guilty. They had seven properties and he was found guilty of failing to register three of them. The fine was £65 for each property. That is one of the problems: a fine of £65 does not really act as a deterrent.

There are a range of reasons for the problems in getting successful prosecutions. First, not all enforcement is formal, so a significant amount of enforcement work is undertaken that is not formal and does not result in a prosecution but still results in compliance. The fact that a lot of time is taken up in processing tasks in the landlord registration function probably takes a bit of time away that could otherwise be dedicated to enforcement.

There are difficulties in getting evidence from tenants. Often the reason why cases do not go to prosecution is that the tenants are no longer around by the time it gets to the hearing and the trial date. There are intermediate diets, a pleading diet, more intermediate diets and then the trial date, so it takes a fairly significant length of time to get the case to a trial date and the nature of such properties means that the tenants are quite often no longer around—they are away.

**Bob Doris:** I will come back on the level of fines shortly, but for now I will stick with the evidential requirements. I should perhaps say that I have been in correspondence with Gordon Matheson at Glasgow City Council, who has been very helpful and is keen to push this forward. I recall from the depths of my memory that one issue that he referred to was the corroborative aspect of evidence gathering and prosecution. He seemed to hint that the local authority could have substantial evidence on file but, unless the tenant was willing to testify against the landlord, it could all fall down, which would certainly be a disincentive for local authorities. That was quite illuminating, but I would like to clarify whether that is based on legal advice—Mr McLetchie is the lawyer, not me. Is corroboration necessary in the criminal process, and is it the case that the corroboration must be from the tenant? Have local authorities had legal advice not to prosecute unless they can get a tenant to step forward?

**Stephen McGowan:** My understanding is that the rules of evidence require that there must be

corroboration in a criminal case, and that evidence in court from a third party representing a tenant who is directly affected by a rogue landlord is not sufficient to carry the day. Hearsay evidence basically cannot stand up in court in a criminal case.

**Alistair Somerville:** The fiscal's office has made it clear that tenant evidence is required. If we say that a property was let as an HMO or a private rented sector let, the tenant must verify that they were a tenant there. If the tenant produces a witness statement, the defence has the right to cross-examine that evidence, so the tenant is required to be there.

One way of dealing with a tenant not being there would be to have a different type of offence and additional powers to obtain information from landlords and agents. If we requested information from the landlord or agent, that would give the local authority additional information about the status of the let of the property, and if the landlord gave or refused to give information, a tenant would not be required. There would be an offence, but a tenant would not be required.

**Bob Doris:** We will certainly have to look at that in much more detail. I understand that the Government has a strategy group to consider ways of removing barriers to prosecution. Do local authority representatives sit on that group? Have you had an input into it?

**Alistair Somerville:** Yes. We are members of the strategy group.

**Cathie Fancy:** All three of us are members of it.

**Bob Doris:** So the minister is well aware of it. Is progress slow? I imagine that there is no disagreement and that it is a case of—*[Interruption.]* I do not think that that noise is coming from my BlackBerry, but I will put it off anyway. That distracted me slightly.

Is there consensus among ministers and those on the strategy group on finding a solution to the issue? How far forward are we?

**Alistair Somerville:** There is a difference between what can be done in legislation and what comes down to judicial procedures, the criminal courts and how they have to operate. If an offence requires tenant evidence, it will always require that evidence, but there could be additional offences that may not require tenant evidence which might help to control the private rented sector.

**Bob Doris:** I am mindful that many local authorities and housing associations have professional witnesses for antisocial behaviour, for example. If a tenant has an issue and does not want to say that the person upstairs is doing X, Y or Z, they can phone a number and the professional witness will come out, observe and

take notes. That can provide the corroboration in a court case. However, that is not possible under the current legislation for unregistered landlords.

**Cathie Fancy:** Not that I am aware of. The landlord legislation does not operate in the same way as the antisocial behaviour legislation. There is great protection for reporting antisocial behaviour and the involvement is not directly with the landlord on whom they are dependent for their home and the roof over their head.

**Alistair Somerville:** The bottom line is that an offence must be proved. If the offence is letting a property as an HMO or a private rented sector let, that must be proved by proving the relationship between the tenant and the landlord. There must be evidence to support that beyond reasonable doubt.

**Bob Doris:** Okay. I turn to fine levels. I admit that the successful prosecution that Mr Somerville mentioned passed me by. I assume that it was the first.

**Alistair Somerville:** It was just in the past month.

**Bob Doris:** Okay. The person had seven properties and was fined £75 for each.

**Alistair Somerville:** It was £65 for each.

**Bob Doris:** I am sorry—it was £65 for each. The maximum that the court could have levied was £5,000. Do you think that the court levied the fine that it did because it did not take the matter seriously enough, even within the current constraints of fine levels?

**Alistair Somerville:** From an enforcement officer's point of view, there is a feeling that the courts do not give weight to the landlord registration and HMO licensing schemes. Our impression is that they are simply seen as licensing and registration schemes, not as systems for controlling safety in properties and antisocial behaviour. The proposals to increase the fine levels would, I hope, get the message across. We are talking about safety in properties, how tenants are dealt with, and neighbours who have to endure problems.

11:00

**Bob Doris:** We have to move on shortly to another line of questioning, so my final questions to you will be about the cost of taking forward such prosecutions. I have been calling for local authorities to be able to keep the money that comes in from fines. A local authority might have spent a significant amount of money seeking a prosecution, but if by some quirk of fate the authority got a successful prosecution and a significant fine was passed down by the courts—

perhaps the proposed maximum fine of £50,000—all that money would go to the United Kingdom Exchequer and none of it to the local authority.

Do you support the significant increase in fines? How much of a driver, an incentive and a help would it be if local authorities could keep the money that came in from fining unregistered landlords?

**Stephen McGowan:** We support the increase in fines to the levels that are mooted in the bill. That will act as a deterrent and it might also signal to the courts how serious the issue is. The idea that local authorities should keep the proceeds from fines is new to me and I would have to think about it. I do not think that Glasgow City Council has a position on that yet.

**Bob Doris:** I think that Mr Matheson said in his letter that he is supportive, but—

**The Convener:** Bob, let the witnesses answer your questions.

**Stephen McGowan:** Two aspects spring to mind. We want to tackle rogue landlords and we want to have sufficient resources to do that properly, but from a strategic housing authority point of view, we have to bear in mind all the sectors—owner occupied, social rented and private rented—and the representatives of those sectors, and I wonder whether there might be a perception of a conflict of interest. That is my initial thought on the matter. The leader of the administration would be clearer on that, though, and obviously his view is crucial.

**Cathie Fancy:** We have given some consideration to the matter. We agree with the increase in the fine, and we believe that we should get a proportion of the fine back to neutralise the cost. The money that we would get would cover the cost of taking the case to a prosecution. We do not see that as a conflict of interest.

**Alistair Somerville:** I probably have a different view again. It is important to get the level of fine correct so that it acts as a disincentive. I would be fundamentally uncomfortable about a fine being linked as a sort of incentive to generate income. My view is that local authority enforcement decisions should be based on objective, independent enforcement decision making. If the decision was seen to be incentivised by income, that would put us in a difficult position. Decision making on appropriate enforcement action should be made on a case-by-case basis, taking into account the enforcement concordat and enforcement policies. Decision making should be seen to be linked solely to that and not to income.

I also believe that the level of income from fines would be pretty much insignificant in terms of budgeting. Much as local authorities would like to

have any source of income at the moment, I would caution against the proposal.

**The Convener:** On the specifics of Mr Doris's question, you had a disappointing outcome with the £65 fines, but what did it cost the authority to bring the prosecution?

**Alistair Somerville:** It cost a significant amount. It would be in the thousands. There was significant work by enforcement officers.

**The Convener:** Tens of thousands?

**Alistair Somerville:** It was probably between £2,000 and £3,000.

**The Convener:** Would an increase in the fine to £50,000 encourage local authorities to take out more prosecutions? How would it help with enforcement at a lower level?

**Alistair Somerville:** We certainly do not want to discourage enforcement officers, but the main incentive for taking prosecutions is probably having high calibre private rented service enforcement officers who are well trained and experienced in prosecution work. We would hope that they would not be discouraged, but Scottish Government guidance on enforcement policies and activities is a more appropriate way in which to ensure that prosecutions take place.

**Stephen McGowan:** The increase in fines would help local authorities to prioritise resources, because another aspect of winning a court case is that it sends signals throughout the sector, particularly if it is a prominent case. That might help to raise standards in the sector.

**Cathie Fancy:** I agree with Stephen McGowan's view. Increasing fine levels would act as a deterrent. If local authority enforcement officers felt that they could prosecute, cases would be taken forward. There is a disincentive just now, because we have had only one court case since registration was introduced. Local authorities put a lot of work into getting to that point, so a higher fine would incentivise them.

**Mary Mulligan:** Will you explain how each of your local authorities performs its role in landlord and HMO registration?

**Cathie Fancy:** We have a landlord registration team that gives landlords a lot of advice and prompts them when renewal comes up. We also have a dedicated enforcement officer—he is an ex-policeman—who is very up on the legislation and good practice. Having that dedicated officer has been invaluable to the authority in pursuing unregistered and rogue landlords.

**Stephen McGowan:** We have separate teams for the HMO sector and landlord registration. Both are located in the council's development and regeneration services, where I am also based.

**Alistair Somerville:** We have two teams that deal with the inspection and enforcement of property standards under HMO licensing. They also deal with the applications. We have a separate enforcement team that investigates complaints about unlicensed properties and standards of tenancy management. Dedicated enforcement officers deal with that side of matters as opposed to property inspection. We also have a separate landlord registration team that deals with the applications for and approvals of landlord registration and the enforcement of that.

**Cathie Fancy:** Our HMOs are dealt with by our legal department; landlord registration is in the housing department. We also have a landlord forum where we provide legal training on good practice and all the new legislation that comes out. It is well attended and landlords get newsletters, so they are kept up to date with what has changed and what is expected of them or the tenant.

**Mary Mulligan:** Do Glasgow City Council and the City of Edinburgh Council have landlord forums?

**Stephen McGowan:** We have landlord forums that meet periodically. They give us an opportunity to engage with representatives of the sector.

**Alistair Somerville:** We have regular landlord training events that are undertaken by a separate entity called Letwise. We also organise separate events for landlords to come to. We had one last month, for which we targeted landlords and agents with more than a certain number of properties to get the biggest hit through the impact that they could have on the sector in Edinburgh.

**Mary Mulligan:** I commend the work that your units do. I was at the same meeting as Mr Doris last night and spoke to landlords who have properties throughout Scotland. I must tell you that not every local authority operates in the way that yours do. I was told that one local authority—it is not any of yours—has one officer, who is presently on maternity leave. Therefore, it has nobody enacting landlord registration, which concerned me somewhat. I will pursue that elsewhere.

How will the bill assist you to ensure that landlords know that they need to be registered and are registered timeously? How will it assist you in working with them to ensure that we have a quality private rented sector?

**Alistair Somerville:** The proposed amendment to landlord registration that provides for the landlord registration number to be put on advertising information is a good way of getting the message out. That will make a significant difference.

The landlord registration proposals make up a sum total that will heighten the profile of landlord

registration and, taken collectively, they will act as a driver for the landlord registration process. Our current problem is that landlords perceive being engaged in the process as a disincentive because they feel that no enforcement activity is being undertaken. If enforcement activity were seen to be undertaken, the good landlords would engage in the process. That will probably have the net result of compromising the bad landlords.

**Stephen McGowan:** I agree with Alistair Somerville's comments and add some of my own. The additional powers proposed in the bill will mean that local authorities can take more effective action against unregistered landlords. For example, having to put a registration number on adverts will help in the daily business of identifying unregistered landlords who are advertising. We can chase them down and engage with them so that they register and begin the process of meeting required standards. Having information about a landlord who requires a criminal record certificate is an addition to our armoury in dealing with landlords who should not be registered because they are not fit and proper.

**Cathie Fancy:** I agree with my colleagues. The certificate provision is a good addition to the bill and shows that we are serious. Having to put the landlord registration number on let boards is another good addition. We said that we wanted a light touch in the bill, but that meant that the word was out to landlords that there was to be a light touch. Those provisions will firm things up, create consistency across the sector and support local authorities to do their job. We welcome the changes, which will enable us to deal better with those difficult landlords.

**Mary Mulligan:** Thank you; that was really helpful. I have a further quick question. The bill proposes that to let boards will be exempt from displaying the registration number. Do you understand that?

**Cathie Fancy:** I felt that there was some ambiguity about which boards the number should be on. We thought that it referred to the home board near the property. There might be an increase in such boards if they were exempt from the provisions in the bill and we were concerned about what constitutes a for let board. However, perhaps the fact that agents have to register and give notice will strengthen the position.

**The Convener:** I do not know whether non-registered landlords and housing benefit have been discussed, but should non-registered landlords benefit indirectly from tenants who are being paid housing benefit?

**Cathie Fancy:** In our council, the housing benefit department contacts directly any landlord who makes a claim. Where housing benefit is paid



to a landlord, they are screened to find out whether they are registered.

**The Convener:** What if they are not registered?

**Cathie Fancy:** The enforcement officer would follow it up to the letter of what is currently in place and give the landlord the opportunity to register and rectify their position.

**The Convener:** How successful is that scheme?

**Cathie Fancy:** Very successful.

**The Convener:** I suspected that it would be. What happens if the landlord just says no? That would be difficult, in that it would impact on the person who lived in the house.

**Cathie Fancy:** We have not had experience of people just saying no. They use delaying tactics or excuses, but no one has said no. We have good results from our approach. Tenants know that if they are concerned, they can check whether their landlord is registered, so the word is out there. The benefits department checks up on them all the time.

**The Convener:** Are there any other such schemes in place?

**Stephen McGowan:** In Glasgow, our housing benefit department runs a similar scheme to the one that Cathie Fancy described.

**Alistair Somerville:** Likewise. We check on housing benefits.

**The Convener:** It would be interesting to know more about such schemes, the difficulties of prosecuting and so on.

11:15

**David McLetchie:** From what I have heard, I have no great confidence that increasing the present maximum penalty from £5,000 to the £20,000 that was originally proposed in the Housing (Scotland) Bill or to £50,000 will actually have anything like a deterrent effect, given the attitude to prosecution. We have had one successful prosecution, in which the court levied derisory fines. I do not see the logic of saying that raising the maximum penalty will deter people, if we remain in a situation with wholly inadequate enforcement and a disappointing response from the courts even to a conviction.

Mr Somerville referred to the Edinburgh case. I think that it is not putting words in his mouth to say that he suggested that the courts do not take registration offences seriously. Assuming that that is a fair representation of his view, and perhaps that of his colleagues, I suggest that we should consider not ratcheting up a maximum fine that will never be levied in any prosecution, but introducing

a minimum fine per property to which people should be subject. Then we would not have a situation in which somebody with seven houses pays £65 for each, with a total fine of £455. People should be charged £500 or £1,000 a house—something that approximates a month's or two months' rent and is a serious penalty for breaking the law. Would that not be a more reasonable or sensible approach than ratcheting up a maximum fine that will never be levied?

**Alistair Somerville:** The prospect of a minimum fine has been considered by the lawyers. You might have a precedent for that, but we have not found a precedent for a minimum fine following on from a prosecution. My understanding is that the level of fine that is levied for a first offence is a percentage of the maximum, so if the maximum fine is fairly low, for a first offence, a low fine will be levied. Therefore, the higher the maximum, the better the outcome and the more of a disincentive there is to operating illegally.

There is a package on enforcement. You rightly point out that, if nobody is prosecuted or enforcement does not happen, there is no point in having a fine. The package must include the improved enforcement powers that are available along with the significance that is given to the offence through the level of the fine and, we would hope, a better response from the courts to the indication in the legislation of the seriousness of the offence.

**David McLetchie:** In the case that you described, there was a maximum fine of £5,000, but the person paid barely 1 per cent of that as a fine. It will take the courts a long time to ratchet that up for anybody, even to the present maximum fine, never mind a larger one.

**Alistair Somerville:** My concern is about the number of cases that do not even make it to prosecution and the ability of the courts to deal with cases timeously. We still have an appeal hearing for a refusal of a licence that happened two years ago. There is constant deferring of actions. Various pleading diets have to be held before we get to a trial date. We still have a case that is to be heard this month that started more than a year ago. Those are the kind of issues that arise. Far and away the most significant issue is to do with the ability to go through the system, get a case into the courts and achieve a successful prosecution. The level of fine is an indication from the Scottish Parliament of what it feels about the offence, so it is important.

**David McLetchie:** We are all familiar, from road traffic legislation, with the concept of minimum fines. With parking and speeding offences, we are all subject to minimum penalties if we transgress the law. Why cannot we apply the same concept to people who fail to register their properties?

**Cathie Fancy:** Raising the fine would actually be a disincentive. It is not about the fine; it is about the message that goes out. A lot of the good work that the fine does involves keeping matters out of court as a deterrent, and getting the landlords to be fit and proper and to behave in the way that we want them to rather than having to go through the court process. If we can avoid that because a landlord turns around their management style, behaviour and properties, that is a successful outcome. We have done a lot of that through the enforcement officer.

Although we have had no prosecutions, we have had very high success rates in turning landlords around and achieving improvements for the tenants.

**Alistair Somerville:** Minimum fines for traffic offences are the result of fixed-penalty notices being issued. By paying such a fine, people are buying a discharge of their criminal liability. If that concept was applied to landlord registration or HMO licensing, once people had paid the minimum fine that could not be used as evidence of any criminal misbehaviour by them. There is a fundamental difference between a minimum fine, which is in effect a fixed-penalty discharge of criminal liability, and a fine that is meted out following a prosecution.

**John Wilson:** Much of what has been said so far has concentrated on landlords, but I want to focus on letting agents, particularly in Govanhill, which was mentioned earlier. Govanhill has a relatively large number of private landlords, but a large number of letting agents also operate in the area; surprisingly, just about every street corner in Govanhill has a letting agent.

Does the bill as it is currently drafted go into enough detail on how we deal with letting agents? Many landlords or owners of properties transfer powers to letting agents to let out and maintain those properties. How can we tackle the issue of letting agents, and does the legislation go far enough in dealing with that issue?

**Stephen McGowan:** In a Glasgow context, we certainly think that the proposals in the bill will help in terms of being able to identify letting agents and get information about them, so that is a step forward. As you pointed out, letting agents play a particular role in the sector, especially in certain parts of the city. The legislation will be helpful in getting a better handle on managing letting agents.

**John Wilson:** Should any penalties be imposed on letting agents? Are any such penalties proposed in the bill?

**Stephen McGowan:** My understanding is that the penalties would be the same as those for landlords.

**John Wilson:** We will clarify that at a later date. One provision in the bill concerns the tenant information pack that landlords or letting agents must provide to new tenants. Is that a good step forward? The information packs would surely assist the enforcement officers in finding out how properties are being let, the conditions that they are in and the nature of the tenancy. Does that provision go far enough? Does it adequately cover the type of information with which landlords should provide tenants?

**Cathie Fancy:** I welcome the introduction of the tenant information pack. It clearly sets out the responsibilities on the landlord and the tenant, so there should be no ambiguity. It will also give consistency across the private rented sector if similar templates are used for landlords.

**Stephen McGowan:** I agree with Cathie Fancy. The information packs are a useful addition to the sector. They will help to clarify the rights and responsibilities for landlords and tenants and give a measure of improvement in standards for enforcement officers. A better informed tenant in the private rented sector will help the enforcement activities of local authorities.

**Alistair Somerville:** The information packs are a significant step forward. The way in which the measure is being introduced should allow the packs to develop over time. The content of the packs can be adjusted and made to fit circumstances as they arise by regulation. The packs are a welcome addition to the overall control of the sector. The more information that tenants have, the more they can inform local authorities of issues that require to be dealt with. Hopefully, with more information, landlords and tenants may engage more with one another, thereby avoiding the need for enforcement action.

**John Wilson:** When enforcement action results from overcrowding, what is the local authority's responsibility in tackling the issue? If a landlord is found to be letting a property that is overcrowded, who picks up the eventual responsibility for ensuring that the tenants get a property where they will not be overcrowded? Will the bill's enforcement provision place an additional liability on local authorities to provide adequate housing for families who find themselves in that situation?

**Stephen McGowan:** That is a key issue for all local authorities, and for Glasgow City Council in particular. We do not want to solve one crisis only to create another. The overcrowding statutory notice has to be regarded almost as a last resort. The various services that operate within the local authority would co-ordinate their activities regarding landlords whose properties have been demonstrated to be overcrowded and work together on a solution to rehouse the families in question. The intention in Glasgow is not to take a

blanket approach, but to focus on where to take action. Such action would also be the result of a long process of engagement with the landlord and the families involved and with the respective support services such as homelessness services and the local community. We would work out a solution. On that basis, we would move to rehouse successfully individual families who are in that situation.

**Cathie Fancy:** I absolutely agree with Stephen McGowan. Overcrowding is also an issue for us in the Borders, in the social rented sector as well as the private rented sector, on which we depend. There is overcrowding and there is overcrowding, however. In some cases, there is a blatant disregard for the legislation. We would adopt the same approach as that which Stephen McGowan outlined for Glasgow City Council.

**Alistair Somerville:** It is important to recognise that the powers are discretionary. The local authority is best placed to consider all aspects in the interests of the tenants and their neighbours. The local authority will have to justify any action that it takes in terms of the health effects that are connected specifically to the overcrowding. The power is necessary in the interests of the occupants, neighbours and others in the locality, but it would be used sparingly. As I said, it would be used only when health effects are associated with the overcrowding.

**John Wilson:** I am interested in your responses on how local authorities intend to deal with overcrowding. Let me paint the scenario of a landlord who has two small properties that have been identified as overcrowded. Because the maximum penalty that can be imposed on the landlord is £1,000 and because of what we heard earlier about the penalties that the courts have imposed, we could end up with the landlord deliberately allowing the property to become overcrowded because they know that, eventually, the local authority will intervene and resolve the problem by taking on the responsibility for those tenants in its own social rented sector.

I am concerned that, because of the low maximum penalty, landlords may flout the legislation and see to it that overcrowded tenants eventually become the local authority's responsibility, despite the fact that local authorities do not have the properties to deal adequately with their own overcrowding.

11:30

**The Convener:** I do not know whether there was a question in there. We will move on to questions from Patricia Ferguson.

**Patricia Ferguson:** Section 1(a) expands the list of offences that a landlord has to declare under

section 85 of the Antisocial Behaviour etc (Scotland) Act 2004 to include firearms and sexual offences. Section 1(b) also increases the number of issues that local authorities should consider before granting a landlord registration certificate. For example, they would have to consider antisocial behaviour orders. Will the new lists that will exist after the bill is enacted contain the right amount of information? Will they address the issues that matter when local authorities make their deliberations?

**Alistair Somerville:** They will provide a useful focus and direction to local authorities' deliberations. In a sense, those matters could always be taken into account. The landlord register operates in conjunction with a review list. Local authorities compile a review list of issues that other agencies refer to them for whatever reason. They then take account of all those to form a view on whether a landlord should be approved or removed from the register.

The bill provides a useful focus and direction to local authorities on what issues they should take into account, but the important point of which we should be aware is that the lists are not exclusive. Other issues may arise that should also be taken into account. Therefore, a landlord's fitness and propriety will be assessed against not only the issues that are listed in the bill but, potentially, other issues as well. The registration officer who makes the decision will ultimately decide, taking everything into account, whether a landlord is fit and proper.

**Stephen McGowan:** I agree with Alistair Somerville's comments. In the consultation, Glasgow City Council identified those provisions as ones that it would like to see in statute.

**Cathie Fancy:** Likewise, Scottish Borders Council supports that. We also agree with the power for a local authority to ask for a criminal record certificate, because it verifies the information. Otherwise, there is little point in asking for the information.

**Patricia Ferguson:** As I understand it, the particular, identified issues in the bill are issues that you will have to take account of, not just something that you might take account of in the future. Is the list right? Are there other issues that you would want to be similarly identified?

**Cathie Fancy:** The Scottish private rented sector strategy group agreed to consider in the next months whether there are any other such issues but, at the moment, those that are in the bill are the most pertinent ones. We all agreed that we have to take them into account and consider them.

**Stephen McGowan:** I agree with that.

**Alistair Somerville:** Local authorities will have to put systems in place to ensure that they gather the information that is relevant to those issues and to enable other officers within the local authority and external agencies to supply such information. If the issues were not listed, there would not be a focus on setting up systems to gather that information.

**Patricia Ferguson:** You have answered my third question, Mr Somerville, so well done.

**The Convener:** As there are no other questions from the committee, I thank the witnesses for attending and for their valuable evidence.

We will suspend for a moment to allow us to set up the next panel of witnesses.

11:34

*Meeting suspended.*

11:37

*On resuming—*

**The Convener:** We move to our second panel of witnesses on the Private Rented Housing (Scotland) Bill. I welcome John Blackwood, director of the Scottish Association of Landlords; Sarah-Jane Laing, head of policy with the Scottish Rural Property and Business Association; and Brian Adair, former chairman of the Scottish district of the Association of Residential Letting Agents and a national council member of the association. We will move directly to questions, if that is okay.

**Bob Doris:** Good morning, panel—it is still morning, just—and thank you for coming. The previous panel of witnesses, who were from local authorities, gave evidence on their support for increasing the maximum fine that is available for unregistered landlords. Do you support increasing the maximum fine to £50,000? A second strand is that all the previous witnesses thought that, if fines were forthcoming, some of the money should go back to local authorities, to help them cover the cost of prosecuting—successfully, we hope. We have just had the first successful conviction of an unregistered landlord in the past month. If there were more such convictions, should local authorities get some of that revenue to cover the costs of enforcement in the sector?

**John Blackwood (Scottish Association of Landlords):** We have no objection to the proposed fine level. Our concern is about whether enforcement will take place. Moving it from £5,000 to £50,000 might not make a difference. If local authorities do not chase people for £5,000, they might not chase them for £50,000, or perhaps there will be a greater incentive to chase them. We

are keen on any proposed action against unregistered landlords. If an increase in the fine will have an effect, we support it.

On the second question, it probably would be appropriate for the fine to be remitted to local authorities to use for enforcement action. We hear from authorities that they have difficulty getting enough people out there to take enforcement action. That is where the majority of the income that they receive from the fees goes. If anything can be brought into the authorities to boost their expenditure and to help alleviate that difficulty, we would be delighted to have that and to support it.

**Sarah-Jane Laing (Scottish Rural Property and Business Association):** I echo John Blackwood's comments. We are comfortable that the maximum fine of £50,000 would be used only for the minority who continued deliberately to flout the law. We fully support the idea that enforcement action must be taken. We said at the outset that we would rather see 10 landlords in an area being fined £5,000 each than one landlord being fined £50,000, because that would send a stronger message.

On the point about the money from fines going back to local authorities, we have some concerns about how the money would be protected for use in enforcement, because ring fencing of any money in local authorities is difficult. We support the idea as long as the money could be used for enforcement measures.

**Brian Adair (Association of Residential Letting Agents):** I do not think that ARLA was very impressed by the proposal for fines of £50,000. I wonder whether we would ever get to the stage of fining a landlord. Presumably, there would be a chance for the landlord either to register or to withdraw from the market. I think that the proposal will get headlines and possibly put landlords off entering the market.

**Bob Doris:** That is an interesting view. To move the discussion on slightly, another aspect of the bill is that there will be an obligation on landlords to display their registration number when they advertise. I believe that there will be an exemption for to let boards. One of the penalties for a landlord's failure to display their registration number could be deregistration. I do not think that this is contained in the bill, but should a newspaper be able to print an advert without a registration number? Many unregistered landlords might use newspapers to get tenants. Would that be another trick or another tool for newspapers to have in the box?

**John Blackwood:** It would indeed. When registration came in, the larger newspapers in the country, such as *The Scotsman* and *The Herald*, introduced a policy of not taking adverts from

unregistered landlords, so they actively asked for landlords' registration numbers. I do not use that medium, but I believe that that policy has been relaxed in recent times simply because they feel that it is safe enough not to ask any more, given the lack of enforcement in some areas. However, there was certainly such a policy, and most of those in the printed press who publish adverts take their responsibilities seriously.

As part of the private sector strategy group, we have discussed whether there should be enforcement to make those who publish adverts do so responsibly. For example, in their to let columns, they could have a section that states that landlords should be registered, what registration means and where people can go to check out a landlord. That brought us on to another idea. At one of the public consultation groups in Glasgow, somebody suggested that it would be more appropriate to have a little symbol next to the advert rather than the registration number, as long as the publication stated what the symbol meant and how people could find out about the scheme. If we do not have such a system, we will just have a number next to the advert. For those who have not seen it, the registration number is like a credit-card number. It is a long series of digits. It will not mean anything to a member of the public unless they are told what it means. In fact, a false number could be put in. Would anybody—whether the publication or the tenant—actually check it out?

A bigger concern is that two or three people could own a property, such as a husband and wife or various members of a family. Does that mean that every registration number would need to be printed against the advert? That has not been decided on yet. An advert could appear in a newspaper that said "Two-bedroom flat, £450", with a phone number to call, then the next three lines would just be registration numbers. People would pay more to include the registration numbers than they were paying to tell prospective tenants about the property.

We have more concerns about the practicality of the proposal than about the principle. We believe that a symbol or some annotation would be a better approach and that those who publish adverts should be required to inform people about what landlord registration is and how people can take action against landlords.

**Sarah-Jane Laing:** I echo John Blackwood's points. We have always said that the proposed provision is laudable, but we have real concerns about whether it is workable in its current form.

On the use of registration numbers in advertisements, an unregistered landlord who sees a number routinely appearing in the paper could use that number when he applies to the newspaper to put his advert in. There may be no

check; even if there is, the number would simply go through a system, with the answer, "This is a valid registration number," popping out. We suggested the use of a symbol that would show that registration had been checked, and which could then be used in the advert instead of the registration number.

11:45

**Brian Adair:** Yes, I agree. I do not understand why it takes so long to register landlords; I am not sure whether the technology is working to maximum efficiency. I wonder why housing benefit claims cannot be dependent on the confirmation of the landlord registration number. For landlord registration to work, there should be an inclusive approach.

**Bob Doris:** Thank you for your answers. Having heard about what *The Scotsman* used to do, I wonder whether a voluntary best practice scheme in the newspaper sector might be better than legislation. It was interesting to hear your comments.

**The Convener:** The majority of witnesses on the previous panel raised concerns about the link between local authority income and prosecutions, as the subsequent fines go back to the councils. Just to clarify your position, do you share those concerns?

**Sarah-Jane Laing:** My only concern is whether that money could be ring fenced and used for enforcement. If it could be ring fenced, we would support it going back to councils.

**The Convener:** But you do not have concerns about prosecutions being linked to income.

**Brian Adair:** I would be concerned, because it encourages local authorities to start chasing landlords who might need encouragement rather than threats.

**Mary Mulligan:** Good morning. Let me take you back a step, prior to the questions that you have just answered. Is a register an effective means of regulating landlords and HMO owners? Do you think that the register has made a difference since it was introduced?

**John Blackwood:** The Scottish Association of Landlords had high hopes for landlord registration in weeding out the rogue landlords. I have to be honest and say that we have not seen that happen, much to the dismay of our members, who I appreciate are probably the best out there in the sector. They say that they are paying their fees, and that they can give the names and contact telephone numbers of the unregistered landlords to local authorities. We have a hotline to those teams, and we willingly and happily phone the local authorities to say, "We've got another

unregistered one for you". The issue with local authorities—which I appreciate is to do with resourcing—is that they turn round and say, "Sorry, but we don't have the time to chase them up". To us, as consumers in the sector, that is not acceptable. If you go to the online public register to try to search for a landlord, it is difficult to get the system to work. The site has been down for some time; I believe that there have been technical problems with it.

How publicly accessible, and how effective, is the register? Prosecutions are not happening, and local authorities have had limited success in engaging with bad practice. It has worked in some areas; I refer members back to the report that we provided to the committee earlier this year about the pros and cons of landlord registration. However, the bottom line is that the system needs to have teeth and we need to see it working. We are in favour of anything that supports the system, but I am afraid it is up to local authorities to get out and enforce it.

**Sarah-Jane Laing:** I agree with John Blackwood. The other point is that the benefits from landlord registration have tended to be ancillary. The system has increased engagement with the good landlords, who have benefited from landlord forums, but it has not delivered on the aims that were set out.

We originally opposed landlord registration, not because we did not believe in raising standards but because we believed that the proposed system would not deliver. We have worked with the Scottish Government to try to address some of those problems, but, as John Blackwood said, our members continue to tell us that the good landlords have reregistered and the bad ones are still out there.

**Brian Adair:** Our firm does not advertise or market properties unless the landlord is applying for registration or has a registration number. I cannot say whether landlord registration is working, except to echo the comments about the fact that the online system does not seem work, so I am not sure how one finds out who is registered and who is not.

**Mary Mulligan:** Mr Blackwood reminded us that we have had this discussion before. Particularly in relation to the answers to Mr Doris's questions, it was beginning to feel like we had been here before.

To pursue the point further, I think that you accept the principle of registration but are flagging up the point that there are some issues with it. Will the bill address those issues or are there other measures that we need to take as well?

**Sarah-Jane Laing:** Because there is constant tinkering with landlord registration provisions,

some of the proposed legislation may add to the problems for those landlords and local authorities that are already trying to enforce the system. The full review of landlord registration has only just started. We have concerns that the system will be tinkered with through the bill and then real changes might come out of the review's recommendations. I have concerns about whether the bill will address some of the problems.

**Mary Mulligan:** Is there anything that would help to address some of the problems that you have identified?

**Sarah-Jane Laing:** We support the inclusion of consideration of firearms offences and sexual offences. The other information that is listed can already be taken into consideration so, if local authorities feel that it helps them to have that information included in primary legislation, we have to accept that that is where it is needed.

Other changes that are not included in the bill, such as the application of registration to properties on tenanted farms, have caused widespread confusion. We have had some discussions about those, but the difficulty is knowing whether to address them as part of the review or as yet another tinkering amendment to landlord registration through the bill.

**John Blackwood:** It is easy for us to recommend changes to legislation and for the Parliament to implement them. On paper, they often look fantastic, but the question is whether they are translated into action on the ground and implemented. My fear is that that is not happening.

Given the state that we are in with local authority cuts, there are questions about what resources local authorities will have to implement any legislation in future. Does that mean that landlord registration will suffer as a result? I feel that, in some areas, that might well be the case.

It is all very well our coming up with ideas and changes, but the question is whether they will have an effect. If landlords hear that fines have been raised, will they feel that they must go down and register? I am not convinced that it will make any difference.

One reason why I feel that is that we are three years down the line now with some local authorities, so we are coming up to a period of reregistration and we know that, in some local authority areas, only 50 per cent of landlords who are already in the system are reregistering. Landlords—non-members as well as members—say to us, "Nobody seems to do anything about it anyway, so why should we bother?" That means a greater burden on local authorities, which will have to chase not only unregistered landlords but those who refuse to reregister.

The issue is the practicalities of implementation rather than the legislation itself.

**Mary Mulligan:** You said earlier that your members have taken the opportunity to flag up to local authorities some landlords who were not registered. Will anything in the bill encourage local authorities to pursue them, or are you saying that the issue is resourcing them to do that?

**John Blackwood:** It is a resourcing issue. The fines in the bill are maximum fines. As we know, the sheriff can decide to fine an offender £100. That is demoralising for the wider sector and for local authority staff, who think about how much effort, time and money they have put into the case for the landlord to be fined only £100. We constantly see that with HMO licensing.

The bill might encourage sheriffs to increase the fines that they impose, which might have a greater effect on unregistered landlords. However, the issue is the process of getting to the court.

Many landlords genuinely do not know about landlord registration. Where is the advertising for it? We do not see local authorities telling landlords—or the wider community—that they should be registered. Often, advertising involves a telephone call to a landlord to ask them whether they know that they have a legal obligation to register. Many register at that stage.

That is what happened in the past. However, my concern is that those who are registered will now think, “What’s the point? I was sent a letter three years ago with a number and that’s all I’ve heard. I paid my money for that. Why should I do it again?”

**Sarah-Jane Laing:** I add that, although a number of members have been disappointed when they have phoned local authorities, some local authorities have been very proactive. It does not just come down to resources but is about the attitude of the local authority. In that regard, there has not been consistency throughout Scotland. Some have given us much more priority, politically, than others. It is clear to see which ones those are, because the engagement with the good, registered landlords is much more positive in those areas.

**Brian Adair:** May I add to what John Blackwood said? When our staff go out to see potential landlords and tell them that they have to be registered, the majority know nothing about it. I remember that, when we were on the committee that discussed landlord registration, a pamphlet was produced with Victorian wallpaper on it. That was to be issued and advertising was to be carried out, but we have not seen much advertising, so the public do not know much about landlord registration. You could spend more on advertising, but it is likely that you do not have the money.

**Mary Mulligan:** Thank you for that.

**Alasdair Morgan:** I just want to check something, given some of the negative comments that have been made. Am I right in thinking that none of you is suggesting that it would be better if, instead of tinkering with or fine tuning landlord registration, the bill abolished it.

**John Blackwood:** From our perspective, we believe that it has not worked, and what is the point of having it if it is not going to work? We advocate abolishing it.

**Sarah-Jane Laing:** I agree with John Blackwood.

**Brian Adair:** You should get the thing to work before you bring in more legislation on it.

**Jim Tolson:** Good morning. I am sure you are all aware that, last week, the Parliament completed its deliberations on the Housing (Scotland) Bill. As part of those final deliberations, significant sections were moved from it to the Private Rented Housing (Scotland) Bill. I would be interested to hear the panel’s views on that, particularly as many of the provisions that have been moved are of great concern to—or are certainly pertinent to—your organisations. They include fees for the appointment of agents, the penalty for acting as an unregistered landlord, local authorities’ powers to obtain information, and additional categories of HMOs. I am sure that the committee would also be interested to hear your views on those issues. Will those provisions in the Private Rented Housing (Scotland) Bill be pertinent and helpful to your provision of services in the housing sector?

**Sarah-Jane Laing:** We supported the movement of the private sector provisions from the Housing (Scotland) Bill to the Private Rented Housing (Scotland) Bill largely because, although ignorance is no defence, many of our members have said to us, “I’m not sure which housing act refers to me. Which one do I have to look at?” We therefore thought that the movement would add clarity for the private rented sector.

I was fairly supportive of most of the provisions in the Housing (Scotland) Bill that have been carried forward. We made minor suggestions in relation to a couple of them, but we support their aims.

**John Blackwood:** I echo that. Anything that enforces or strengthens the current legislation is useful and we have no objection to any of the proposals.

**Brian Adair:** Does your question concern the changes to tenant charges?

**Jim Tolson:** It is about much more than just tenant charges. I outlined a few provisions that

have been moved across: I am interested to know whether you believe that it is helpful to have them in the Private Rented Housing (Scotland) Bill, as your colleagues seem to believe, or whether—as some people have said—the movement of the provisions to that bill has delayed their implementation. Is that delay an issue for ARLA?

**Brian Adair:** The issue that I would like to clarify is the charges that are made to tenants before they take a lease. Can we talk about that?

**The Convener:** Yes.

**Brian Adair:** The proposal to make pre-tenancy charges lawful is welcome, because it is a grey area. Reputable agents incur costs before a tenancy is taken in obtaining references, carrying out credit checks and so on, so it is only reasonable that such costs be charged to tenancy applicants. The payment of an admin charge removes the property from the market, and in the event of the tenant's references not being up to standard, they get their money back—certainly, in our case.

12:00

Unless a charge is made, tenants can reserve properties from various agents who are put to abortive expense in processing the applications. That is neither fair nor does it help tenants. It is noted that Scottish ministers will consult on charges. Our concern is that regulations should be introduced at the same time as the bill is enacted. If that does not happen, we will be left in limbo.

**Jim Tolson:** I am grateful to you for the point, Mr Adair. Indeed, I am grateful to all panel members for their evidence, the focus of which seems to be that the provisions were not retained in the Housing (Scotland) Bill, where they would have been implemented more quickly, but moved to the bill that is before us. At the time, many of us felt that that was not the proper long-term course of action to take. I am glad that we now have this clarification from the people who are most closely involved in implementation.

**Patricia Ferguson:** Is landlord registration worth while? We have heard that the picture of how well landlord registration is carried out across Scotland is a mixed one. Certainly, what we heard in the previous evidence session suggests that some local authorities are doing a particularly good job. Without talking about specific authorities, if the system were to operate throughout Scotland to the highest standard, would you consider the scheme to be worth while? With amendment, could you support it not only in principle but in terms of the practicalities?

**John Blackwood:** If there was a consistent approach throughout Scotland, registration would

be worth while. Part of the problem is that properties that landlords own and manage are spread over local authority boundaries. Landlords say, "The scheme is great in this authority, but a mile away, over the boundary, nothing is happening." In a sense, it is worse when a really good authority interacts a lot but the neighbouring authority does nothing. It shows up that authority and makes the landlord think, "Hang on a minute, why am I paying all of this to that authority?" Of course, that is not what this is about; we need to consider the bigger picture. There are positives and negatives.

From the very beginning, we have felt that, if we are to have a scheme, it should be a national scheme that is administered nationally with local authority input. In essence, we now have 32 different registers, all of which do the same thing. Is that cost effective? Is it the best way to run a scheme? In an ideal world where everybody does exactly the same thing and every local authority puts the same political will behind it, the scheme would be a great idea

**Sarah-Jane Laing:** As long as landlord registration continues to be based with individual authorities, some of the problems are insurmountable. As John Blackwood said, many landlord associations asked for a national landlord registration scheme. We felt that only a national scheme would work. We will support a scheme that is as pain-free as possible for landlords—by which I mean pain-free in terms of administrative burden and costs—and that targets and penalises unregistered landlords. I fail to see how that can happen with the scheme in its current format where the duty lies with individual local authorities.

**Brian Adair:** Landlord registration is a good thing in so far as there should be some vetting of landlords. That said, I agree with John Blackwood that the scheme should be administered nationally, just as the driving licence is administered. During the discussions at the start of the process, an MSP—luckily, I cannot remember her or his name—said that they wanted a light touch. I expect that it is difficult for bureaucrats to administer legislation lightly. They have to cover everything. A light touch was asked for, but that is not our experience.

**Patricia Ferguson:** I turn to the issue of registration numbers versus registration marks. In the debate, I suggested to the minister that we should have something like the kite mark, so I have a great deal of sympathy with the argument that is being made. If we go forward a little to the time when adverts will appear in the newspapers, should it be the responsibility of landlords and not newspapers to ensure that the advert complies? It might be that there should be an element of the legislation that considers whether a landlord has



used the registration mark improperly. That would make the issue something that the landlord, rather than the newspapers, would be responsible for. That is a small point, but do you have any thoughts on it?

**Sarah-Jane Laing:** I think that the offence would lie with the landlord rather than the newspaper. Of course, we are not just talking about newspaper adverts; we could also be talking about adverts in the local Co-op, for example.

The problem, of course, would be how to resource the checking and enforcement of that. I know that a couple of local authorities are proactive and go through the local papers every week to check up on such matters, and I am sure that they will continue to do that, but difficulties arise in other local authorities due to factors such as the wide areas that they cover and the fact that local papers do not fit neatly into local authority areas. I would be quite concerned about who would be doing the checks, but I agree that the offence would lie with the landlord.

**Brian Adair:** If you look through the papers, you will not see many adverts for properties. We do not advertise in papers; everything is online.

**Patricia Ferguson:** Another thing that there appears to be some ambiguity about with regard to the bill is whether to let boards would carry the registration mark or number. Do you have a view about what should happen in that regard, in order to make the legislation as effective as possible?

**John Blackwood:** We discussed this at the private sector strategy group when we went through the pros and cons of the principles behind that part of the bill. We felt that it would be completely impractical to have the registration number on to let signs, especially when the sign is put up by an agent. The landlord registration number is specific to a particular landlord, not to a property or an agency, and it is also specific to the local authority, which means that a landlord who got a few to let boards printed would potentially have to have different numbers on different boards—for an agent, that would be horrendous. We felt that the proposal was not practical, and that the kite mark system would be a far better way of doing it.

The situation with landlord registration is a bit like the situation with energy performance certificates. Are potential tenants looking at EPCs? If you have an EPC, you are keen to show that you do. Similarly, a landlord who is registered is keen to point out that they are—they have paid for it and the number proves it—and there is value in that if it makes them stand out against a landlord who is not registered. Our concern was about putting the huge registration number—it is not a three-digit number—or more than one huge

number, if there is more than one person involved, on a sign. For a start, it will look horrendous. Also, will it mean anything to the consumer—the potential tenant? Will they know that they can go to a landlord registration website and check out the landlord using that number? Even if they tried that, the website does not work, so they would not be able to check out the landlord anyway. Do they know who they should phone? We get a lot of calls from tenants and landlords who want to know how they can find out about landlord registration.

The question comes back to the basics of marketing and ensuring that the information is accurate and accessible to all.

**Patricia Ferguson:** In answer to a previous question, Ms Laing said that she is keen that the administrative burden should not be overly taxing. Do you have views on tenant information packs? Will they protect landlords, in terms not only of their responsibilities but of those of their tenants?

**Sarah-Jane Laing:** We are supportive of the introduction of tenant information packs, but we would like there to be a duty on Scottish ministers not only to specify what goes into the packs but to provide the statutory standard information, so that the administrative burden on the landlord is reduced. A landlord could still produce property-specific information, such as advice on how to use a septic tank, but the statutory standard information would be provided by Scottish ministers. That would also ensure a consistent approach.

**John Blackwood:** We, too, support the introduction of the packs. There is a practical element behind the matter, with regard to all the pieces of paper that need to be issued prior to the signing of a lease. The situation is different in England; In Scotland, the process is quite complicated. That is to do not only with housing legislation but with issues around EPCs, making people aware of landlord registration and so on.

We thought that it would be far better to have just one pack for all the documents, which already exist. That would ensure that landlords know that they need to have all those elements, because many say, “I don’t know what bits of paper I need to issue to my tenants.”

**Sarah-Jane Laing:** Some legal-profession members of the SRPBA have pointed out that the timing of the provision of some notices is important. If all the documents are in one pack, landlords must ensure that the pack is provided to the tenant at the appropriate time.

**Brian Adair:** The liabilities and responsibilities of landlords and tenants are laid out in leases—they already exist—so I hope that what will be produced is bullet points and brief comments

about rights, timing and so on. The information is already in the 20-page lease.

**David McLetchie:** Good afternoon. I was interested to hear of your organisations' membership of the Scottish private rented sector strategy group. I will ask about the bigger picture and about where the legislative framework fits into the bigger picture. In the past 10 years or so, the private rented sector has made a growing contribution to satisfying housing demand and need in Scotland, and the buy-to-let market has grown. From what the Government has said not just in relation to the Housing (Scotland) Bill, which the Parliament passed last week, but in "Housing: Fresh Thinking, New Ideas", it appears to have a desire to encourage further investment—or institutional investment—in the private rented sector. When property prices in the housing market are static or—in some areas—falling, many people might think that it makes eminent sense to rent a house for a period rather than to make a commitment to investing in an asset that might fall in value and leave them in negative equity.

Where do you see your sector going? Where does all the legislation fit in? The Private Rented Housing (Scotland) Bill will make amendments. Tenancy deposits, for example, are being discussed. The committee is considering property factoring issues, although they do not relate directly to you. We have created and are creating quite a big legislative framework around the sector. Is that framework contributing positively or negatively to the sector's direction of travel?

**Sarah-Jane Laing:** We always hold legal seminars in the autumn for our members, but we have had to cancel three housing seminars this autumn across Scotland because of a lack of interest from our members. I was surprised by that. When I canvassed several members who always go to such seminars, the resounding message was, "We are fed up." That really concerns me. They said that they did not want to hear about yet more regulation of the sector and that they want to get on with providing housing in their communities. I am concerned that the continuing legislative changes are having a negative impact, even on current landlords.

I believe that the Scottish Government and all parties want the private rented sector to flourish. We have had discussions in the strategy group, but we were tasked to deliver—dare I say it?—quick wins that could fit into a bill in this parliamentary session. There are many discussions to be had about security of tenure. Some people would like the six-month short assured tenancy to be abolished, whereas we say that the six-month short assured tenancy would not be used in almost every case if landlords were confident that they could recover possession of

their properties in the case of rent arrears or other issues.

Hard decisions and heated discussions might have to happen to ensure that the sector can fulfil people's vision for it, but the constant introduction of legislation that landlords have faced in the past few years has had a detrimental impact on the sector.

**John Blackwood:** We have gone from being a largely unregulated sector to what I believe is a quite heavily regulated sector in 10 years since the introduction of HMO licensing. I have to be honest and say that that move has been to the detriment of the sector. I have seen many good landlords and housing providers leave the sector. More and more are now doing that. Perhaps that is because of the stage that they are at in their business plan—they feel that they have had enough and want to move on. Essentially, those landlords have been providing a worthwhile service. My concern is about when they go: what will we be left with in the sector?

12:15

We often talk about getting the rogue landlords. They are the people who do not register. They do not put their heads above the parapet and they do not pay their taxes. Let me tell you: they will not use tenancy deposit schemes either. They will always operate. They will be marginalised in some areas, but some tenants will be forced to rent from them as the pressures on housing stock grow. There is a greater demand than ever for the private rented sector, which will grow. I am concerned about who will meet that demand. Perhaps that is why the Government is looking at institutionalised investment and away from individual landlords—the cottage industries in this country—which has merits. Nevertheless, we are losing good-quality accommodation and well-managed properties, which is a concern.

**Brian Adair:** I doubt whether the legislation has done very much to help the private rented sector. Some things are good, such as the gas safety certificates that have come in and the electrical requirements. However, I asked our staff today how much it costs a landlord who comes into the market to meet all the requirements before he starts getting rent. I suspect that if I asked you, you would not realise that it costs £900 to £1,000. If the landlord was renting a property at £500 or £550 a month, which is about the average, he would not get any money in until the third month.

You want to encourage the private rented sector, but the things that are being suggested are not going to do so. It is depressing that under the bill a landlord will have to apply to the private rented housing panel to get access to his property

to carry out a repair, because the tenant will not let him in. Furthermore, the landlord will have to pay the fee. Why on earth should the landlord be landed with paying a fee to get in to carry out a repair to his own property, which is very likely to help the tenant and the property? I am sorry to say that that does not send the message that you are encouraging the private rented sector.

**David McLetchie:** Thanks very much.

**The Convener:** While some of my colleagues were at a meeting with representatives of the private rented sector last night, I was watching some of the debate at Westminster about housing benefits and how the Government hopes that its plans will affect the private sector market. How does the Scottish legislation fit with the impacts of the changes in housing benefits? Will the changes exacerbate some of the problems that we are trying to address through the bill?

**John Blackwood:** I think that they will, particularly with regard to the provision of accommodation in the future and certainly in meeting the 2012 homelessness target, which is going to be incredibly difficult because of the recent and proposed changes. We had our national landlord day conference yesterday in Our Dynamic Earth. The resounding feeling that we were getting from people was that we will not in the future be able to afford to take people who are in receipt of benefits. Given that the sector will become more pressured to take more people, there will be more choice in some areas. If a landlord has a choice between taking somebody who is earning an income and somebody who is on benefits, you know exactly what is going to happen. People who are in receipt of benefits will become more marginalised in some areas.

A lot of landlords actively work within those areas at the moment. They do not have an issue with the tenants per se, but with the system. We think that that could get worse in the future. Many will opt to get out of that market, which is fine as long as there is another market for them to rent their properties. What we are seeing is rents going up again and greater pressure in some areas in Scotland to provide accommodation, so there is certainly a market for it.

**The Convener:** Are there any other observations? I know that the question was very general.

**Sarah-Jane Laing:** I have nothing to add. I agree with everything that John Blackwood said. I think that the changes will cause accessibility issues for the very people whom we are trying to help through the private rented sector, and they will really impact on our ability to deliver the 2012 homelessness target.

**Brian Adair:** It does not help the private rented sector for tenants to receive housing benefit direct—it does not go to the landlord or the agent. In a recent case that we had to take to court it cost the landlord £5,000 or £6,000 before he got his property back, because the tenant got the money direct and did not pay the rent. It does not encourage landlords if they cannot get the rent direct from the local authority.

**The Convener:** Thank you very much for your attendance today and your evidence.

We move to item 4, which we previously agreed would be in private.

12:20

*Meeting continued in private until 13:27.*



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