



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 23 January 2013

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE

2nd Meeting 2013, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Stuart McMillan (West Scotland) (SNP)

*Anne McTaggart (Glasgow) (Lab)

*Margaret Mitchell (Central Scotland) (Con)

*John Pentland (Motherwell and Wishaw) (Lab)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

COMMITTEE SUBSTITUTES

Mark McDonald (North East Scotland) (SNP)

Jamie McGrigor (Highlands and Islands) (Con)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Colin Brown (Scottish Government)

Margaret Burgess (Minister for Housing and Welfare)

Emma Gray (Scottish Public Services Ombudsman)

Stephen Jones (Scottish Government)

Stuart Law (Scottish Government)

Niki Maclean (Scottish Public Services Ombudsman)

Jim Martin (Scottish Public Services Ombudsman)

Paul McFadden (Scottish Public Services Ombudsman)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 5

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 23 January 2013

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

Decision on Taking Business in Private

The Convener (Kevin Stewart): Good morning and welcome to the second meeting in 2013 of the Local Government and Regeneration Committee. As usual, I ask everyone to ensure that they have switched off mobile phones and other electronic devices, please.

Agenda item 1 is a decision on whether to take item 8 in private. Do members agree to take item 8 in private?

Members *indicated agreement.*

Subordinate Legislation

Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 [Draft]

Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338)

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339)

10:00

The Convener: Items 2 and 3 are subordinate legislation. Item 2 is oral evidence from the Minister for Housing and Welfare and Scottish Government officials on an affirmative instrument: the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013. In the interests of efficiency, I propose that, at the same time, the committee take evidence from the minister under item 3, which is two negative statutory instruments: the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338), and the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339). Motions to annul both those instruments have been lodged by Margaret Mitchell. Members have papers setting out the purpose of all three instruments, as well as a copy of the instruments.

I welcome Margaret Burgess, the Minister for Housing and Welfare; Stephen Jones, policy manager with the housing supply division; and Colin Brown, senior principal legal officer. Minister, I ask you to speak to the affirmative Scottish statutory instrument and to your motion to approve it, and to speak to the negative instruments and the motions—[*Interruption.*] Oh—I beg your pardon. Just leave it at that first bit.

The Minister for Housing and Welfare (Margaret Burgess): The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 will allow local authorities to impose a council tax increase of up to 100 per cent for homes that have been empty for one year or longer. They will also allow councils to offer a discount of between 10 and 50 per cent for homes that are unoccupied for between six months and a year. The increase will not apply to second homes. The regulations define a second home as one that is not someone's main residence but which is furnished and occupied for a minimum of 25 days a year.

The regulations were drafted following a consultation and dialogue with key stakeholders, including a working group made up of local authorities and the Convention of Scottish Local Authorities. We have listened to stakeholders, Parliament and others and have amended our proposals as the policy has been developed.

Our consultation process revealed that most stakeholders are in favour of the draft regulations but require guidance for local authorities to follow. To help local authorities, we have developed draft guidance, which we will further refine with stakeholders before publishing. I am keen to ensure that the regulations can be enforced to help to tackle the issue of owners deliberately leaving their homes empty and to encourage them to bring those homes back into use. At the same time, I want to leave enough flexibility to avoid penalising those who are genuinely trying to bring their home into use, for example, by renting or selling it. That is why those owners will not have to pay the council tax increase for two years after the property becomes empty.

I recognise some of the administrative challenges that implementing a council tax increase is likely to bring, but I do not believe that the regulations will place an onerous burden on local authorities. The new powers are to be used at councils' discretion and it is for each council to decide whether the benefits of applying the increase outweigh the cost of administering it.

That is the affirmative instrument. Do you want me to stop there, or should I carry on with the negative ones?

The Convener: Carry on, please, minister.

Margaret Burgess: It would make little sense to give councils the power to apply a council tax increase and not give them the tools that they need to implement it. The negative instruments will help councils to apply the council tax increase effectively. They will oblige owners to provide councils with the evidence that they need to identify whether a property is liable for an increase. They impose a maximum penalty of £500 for non-compliance and they include provisions to prevent an owner from avoiding the increase by claiming repeated exemptions.

The Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 place an obligation on owners, residents or managing agents to provide to a local authority, on request, any information that they have that the local authority requires in order to establish whether a discount or an increase in council tax liability should apply. Taxpayers must also notify councils of a change of occupancy status for a property. A penalty of up to £500 can be charged for non-compliance.

The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 will make it more difficult for council owners to avoid paying a council tax increase or reduced discount by repeatedly claiming an empty dwelling exemption. Homes will be required to be reoccupied for at least three months before an owner can receive a further empty dwelling exemption from council tax. At the moment, they can claim another exemption after reoccupying for just six weeks, if the property becomes empty again.

We have consulted widely on the regulations and have amended them in light of comments from the committee and stakeholders. We will continue to work with local authorities to develop guidance and help them to implement the regulations effectively. I am happy to take questions.

The Convener: Thank you very much, minister. I invite Margaret Mitchell to speak to the SSIs and to her motions to annul the negative instruments.

Margaret Mitchell (Central Scotland) (Con): First, the minister has come to the committee to move the motion to approve the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013, which will enact the Scottish Government's policy on unoccupied domestic property rates relief, for which the Local Government Finance (Unoccupied Properties etc) Act 2012 paved the way. I am speaking against the motion to approve the draft regulations and for the motions in my name to annul the negative instruments. Do you want me to give my reasons just now for doing so, convener?

The Convener: Yes, please.

Margaret Mitchell: The Local Government Finance (Unoccupied Properties etc) Act 2012 is a piece of legislation that should never have seen the light of day, as it is based on false premises and questionable propositions. It assumes that the majority of property owners, both domestic and non-domestic, keep properties empty out of choice and it does not acknowledge that they may be empty because of a fundamental lack of demand that is due to the current economic climate.

The Government did not provide any robust evidence to suggest that punishing property owners with ever higher council tax bills would bring properties back into use. Furthermore, the policy to be enacted by the regulations seems to me to be all stick and no carrot; property owners should not be punished for being unable to let their properties. In introducing the policy that the minister brings to the committee, I believe that the Scottish National Party is contradicting one of its key election pledges, namely to

"freeze the Council Tax throughout the next Parliament".

In essence, the regulations will allow local authorities to double the normal council tax rates for certain types of property. By proposing the regulations, the SNP is, in effect, tearing up a cornerstone promise in its own manifesto.

Any additional money that is raised will not be ring fenced. In addition, there seems to be a variation to the policy for those who are able to prove that they are actively advertising or actively trying to let. I would be interested to hear the minister's explanation for that.

The full intent behind the regulations is revealed when we look at the business and regulatory impact assessment and what is said under the heading "Rationale for Government intervention", which is that, as the Scottish Government

"is proposing to give Councils the power to charge an increase, but leave it at Councils' discretion whether or not to use the power at all and, if so, to what extent, this will allow Councils to take account of how much of a problem empty homes are in their area and also—"

this is the key part—

"the level of requirement for additional revenue to support local priorities."

Those are not priorities that are ring fenced for housing.

For all those reasons, I will oppose the motion for approval of the draft regulations and I will move the motions in my name on SSI 2012/338 and SSI 2012/339.

The Convener: Do members have any questions or comments?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): This is an important piece of legislation that incentivises owners of unoccupied properties to make them available to either the rental or the purchase market.

Certainly in the north-east of Scotland, we suffer from a shortage of available property, and any tool that is available to our councils to help them to incentivise the owners of property is likely to be valuable.

Across Scotland, although the market in the buying and selling of properties is certainly not what it used to be, there is a concomitant increase in the rental market because, of course, it remains necessary for people to have a residence.

I can cite one example from an area that used to be in my constituency but is now outside it, as the boundaries have changed. A long-term empty property caused significant difficulties in one of the villages and, after six or seven years' research by a number of people, it was discovered to be owned by a company that is based in Panama. On behalf of my constituents, I corresponded with the owner—in Spanish, which entailed a substantial

cost, as I had to pay translation fees—in an attempt to bring the property back into use. I have to say that we failed.

The set of measures before us is one way of assisting communities that wish properties to be occupied rather than deserted and want property to be available for people who require it. In areas such as the north-east, to where a substantial number of people have moved in order to fill the vacancies in important areas, the measure will be a significant advantage.

Of course, the bottom line is that it will be for the councils to decide whether the legislation gives them the powers that will help them to solve the particular local issues that they face. I have illustrated the issues in the north-east, and I am sure that other areas will have different needs. If they do, councils can make different decisions.

The Convener: Thank you, Mr Stevenson. We seem to have moved into a debate rather than asking questions, but I am not going to stop members from doing that.

Anne McTaggart (Glasgow) (Lab): I do not disagree with the overall principle of the legislation, as something needs to happen to bring properties back into use. During the passage of the bill, I tried to amend the bill to make the charge up to 50 per cent. Are you saying that you aim to put it up to 100 per cent?

Margaret Burgess: Yes. We are saying that councils can apply a charge of up to 100 per cent. That got support from stakeholders. It does not mean that councils have to apply a 100 per cent charge, but they are able to do so.

Anne McTaggart: And that would be at the discretion of each and every local authority.

Margaret Burgess: The local authorities make that decision.

Anne McTaggart: Who would be monitoring that?

Margaret Burgess: Local authorities make that decision based on what they want to do with those properties and what policy they have decided on. It would be up to local authorities to apply a charge that they felt was appropriate for their area, and it is up to their members to monitor those policies.

Stuart McMillan (West Scotland) (SNP): I welcome these instruments and understand that no policy can deal with every possible eventuality.

The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 will replace the 2005 regulations. Under the regulations, will an individual who has a ruling under the 2005 regulations be allowed to continue until the end of the period in which those

regulations are in effect before the new regulations apply to them, or will any ruling under the 2005 regulations stop when the new regulations are passed?

10:15

Margaret Burgess: I will pass that question to the legal team.

Colin Brown (Scottish Government): The new regulations will replace the 2005 regulations in their entirety. The 2005 regulations will therefore apply up to the date that the new regulations come in. The new regulations will take over from that point. If somebody has taken an appeal to a valuation committee, for example, and won an argument against the council under the old regulations, I presume that that will inform what they are entitled to under the new regulations, but they will be dealt with under the new scheme, from the date the regulations come in.

Stuart McMillan: My second question is about the word “occupied”. This may sound pedantic, but I ask for a definition or clarification of that word. My reason for asking is that I have a constituent whose household currently does not live in their house. They live in rented accommodation because a number of things happened, and they have spent a considerable amount of money trying to renovate their property. That has gone on for longer than six months; indeed, it has gone on for a number of years. There have been delays in finalising the work due to ill health in that time. From time to time, one member of the family spends a night in the house, which is not furnished, apart from a couch. That person goes to the house late at night, sleeps in it overnight, and goes to the rented accommodation when they wake up in the morning. There, they get ready, eat and do whatever. Will you clarify what the word “occupied” means?

Margaret Burgess: An occupied dwelling is the sole or main residence that someone lives in, and an unoccupied dwelling is clearly not the sole or main residence that someone lives in. A second home is defined as one that is lived in for 25 days a year and is furnished. On the circumstances that you have outlined, if the property has been unfurnished and unoccupied as a main residence for 12 months or more, it would be defined as an unoccupied dwelling. I think that my definition is correct.

Colin Brown *indicated agreement.*

Margaret Burgess: Obviously, local authorities will determine how they apply a charge or an increase in a charge, but that is what an unoccupied property is.

John Pentland (Motherwell and Wishaw) (Lab): Obviously, we have agreed in principle on unoccupied properties. An amendment was lodged to the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill that related to the variation and the level to which the local authority could charge. As my colleague Anne McTaggart said, that amendment was lodged to make the charge up to 50 per cent. In response to my colleague’s question, you said that the local authority would monitor the variation. Surely it would be in the Government’s interests to have an assessment of how the regulations will work. Will you request that an assessment be submitted to the Government?

Margaret Burgess: The Government will monitor what happens, as it monitors any of its policies. We monitor the council tax, so we will monitor what happens, but it will be up to the local authority to determine what is appropriate in its area. The whole purpose is that the legislation has flexibility in how local authorities apply it so that they can use it to the best advantage in their area. We will certainly be aware of what is happening in every area, and we will consider that.

John Pentland: But if that monitoring shows that the regulations are not working, will the Government review the situation?

Margaret Burgess: I am not sure what you mean by “not working”. It is discretionary for local authorities whether they use the regulations and how they administer them. It is for them to decide the benefit of the regulations to their area. Although we would look at the overall picture throughout Scotland, there is flexibility for local authorities in this legislation.

John Pentland: With regard to the discretion for local authorities, is it an all-or-nothing power? For example, if a house should remain empty for a year or more, and a local authority uses its discretion to apply 50 per cent for the first year, would that continue or can the local authority revisit it and start charging 100 per cent?

Margaret Burgess: Local authorities will look at the legislation and determine the policy that is appropriate for their area. The legislation does not allow them to pick out individual houses and say, “We’ll apply it there and we won’t apply it there.” It allows them to look at areas of low demand and classes of housing and determine how best to use the legislation in their area. There is flexibility and discretion for local authorities, which we envisage them using. They will determine how much of the legislation they want to apply. However, it is not the case that they will apply 50 per cent one week and change it the following week. I think that local authorities are aware of that.

John Pentland: The assurance that you are giving the committee is that, when a local authority sets a variation within the 100 per cent, it will not change from week to week or from year to year.

Margaret Burgess: It should not change from week to week, although there is discretion to change it as a local authority reviews its policies and procedures. Any local authority should review how it applies any legislation and consider whether it should be amended. However, the variation will not be amended weekly or monthly—it should apply for at least 12 months.

John Pentland: After 12 months, the local authority can go back and review it.

Margaret Burgess: It may wish to do that. I think that I am correct in saying that that is perfectly appropriate. Some may leave it longer.

John Wilson (Central Scotland) (SNP): Good morning, minister. A number of issues have been raised by colleagues. Stuart McMillan talked about the 25-days-a-year minimum for the occupancy of a second home. Paragraph 2 on page 2 of the policy note says:

“the definition of a second home will require owners to provide evidence that they have been living in the home.”

It goes on to say:

“It will be for a local authority to decide what evidence is acceptable and in what circumstances it will ask for evidence.”

You said that it will be up to the 32 local authorities how to interpret the regulations. The difficulty is that the policy note says that an appeal may be made to a valuation appeal committee. Many of the valuation boards in Scotland cut across local authority boundaries. North Lanarkshire's definition of evidence of a second home might be different from South Lanarkshire's, but both those local authorities come under the same valuation board. You could have a valuation board making a determination on an appeal based on two different interpretations of the regulations. How would that be resolved? Would it not be better if the Government set out clearly in the regulations what evidence it expected to prove that a second home was in fact a second home?

Margaret Burgess: As we have said, we are providing guidance for all local authorities, which they will be able to use in looking at the issue. In the situation that you describe, the appeal concerns whether a home is unoccupied. If a property was occupied for 25 days and was furnished, that would determine that it was a second home. As you say, any dispute would concern that.

I do not quite see the situation that you describe arising. The valuation board will look not at the evidence as such that local authorities have

gathered but at the evidence overall to suggest that it is right to say that a property is a second home. The board will have to look at all the evidence and the board will determine matters. Whether or not the evidence that comes from different local authority areas is the same, the valuation board will base its decision on what it considers shows that a property should be exempted.

John Wilson: You might want to clarify this but, if I picked you up correctly, you are saying that another determination of whether a second home qualifies as a second home might take place. That determination would be by the valuation appeal board, which might override a decision by a local authority on whether a second home qualified as a second home. Are you saying that, irrespective of the evidence that a local authority asked for to show that a second home was being used as a second home, any appeal to the valuation appeal panel might overturn the council's determination of what a second home is?

Margaret Burgess: We consulted the valuation boards, which were happy with what we put forward.

Colin Brown: The issue concerns the assessment of the evidence that is presented and whether that justifies a decision. If a liable person—a taxpayer—is unhappy with the view that a council reaches, they have a right to appeal that and seek a determination from an appeal body.

John Wilson: I am sorry for labouring the point, which relates to a difficulty in having 32 local authorities. The issue arises particularly when local authorities border each other and are under the same valuation board's jurisdiction but the evidence that one local authority determines that it requires differs from that which a neighbouring local authority requires.

I am trying to get at the determination that the valuation board's appeal panel would make. Would it come up with an alternative determination and assessment from those of the neighbouring local authorities? Would the appeal panel make the final decision, which I understand would not be bound by the regulations for local authorities?

Margaret Burgess: We are saying that the valuation panel will look at the evidence that the home owner provides and at the evidence that the local authority provides and requires. The panel's assessment will be based on that evidence.

The valuation boards were happy with what we propose and they have looked at the policy notes and do not see a problem. However, we will certainly look at the question that you have raised. I do not see it as a huge issue, either; I see the valuation board performing its role and looking at

what was asked for and whether what was provided met the requirement in considering whether a property is unoccupied.

John Wilson: I seek clarification about the properties that will be exempt from full council tax. Paragraph 10 on page 2 of our cover note on the regulations gives a list of reasons for exemption. I readily accept exemptions for people who are

“in long-term residential care, in hospital long term”

and

“in prison”,

but will you clarify how long the exemption will last

“where a dwelling has been repossessed by a lender”?

Surely part of the objective of changing the legislation is to try to bring as many empty properties as possible into use.

10:30

Margaret Burgess: When a lender repossesses, until the property is sold or auctioned, the original owner of the property is still liable for the council tax for that property. The liability does not transfer the minute the property is repossessed. From my previous experience, I think that I am correct in saying that, until a property is sold, the liability remains with the original owner. If there is equity in the property, any liabilities would be paid out of that. Generally, when properties are repossessed, there is negative equity in them. If you are suggesting that the lender should perhaps pay the council tax, I do not know whether we can do that, but we certainly might look at it.

Colin Brown: There are separate regulations that deal with dwellings that are totally exempt from council tax, but I do not have them with me. As the minister suggested, there are two types of repossession situation. One is where a lender is working with someone to try to sell a property and another is where a lender physically takes over a property for sale, perhaps because the person has disappeared or because the situation has not been resolved. There is certainly provision in the existing exempt dwellings regulations that take such properties totally out of the council tax system for a period. However, I am afraid that I simply do not have the details of those regulations with me, because the new system does not affect the existing exemptions that underlie the council tax system. The existing regulations, which are from 2005, sit on top of that.

John Wilson: Minister, thank you for your insight into where my question was leading. Many people who have their homes repossessed continue to be liable for the council tax that accrues. It would have been useful to tidy up the

situation through this subordinate legislation to remove the burden of further debt on people who have already had their homes repossessed. Although we cannot change the legislation that is before us, I would like to think that you will take that point on board and will try to remedy the situation as quickly as possible, to ease the burden of on-going debt when a person is not using a property.

The Convener: A number of members are waiting to ask a question. Stuart McMillan has a supplementary question.

Stuart McMillan: It relates to John Wilson's earlier questions. I seek clarification from my colleague and from the minister. My understanding of their discussion was that it was about the criteria that are to be laid down for the local authority and the valuation board. That is my take on what was discussed, but I am not sure whether that is the case. Are the criteria for the local authority and the valuation board to be the same when deciding on whether a property has been occupied for 25 days?

Margaret Burgess: Yes.

Stewart Stevenson: I want to pick up on the minister's use of the word “sold”, which of course implies that there is a transfer of value between seller and purchaser. I wonder whether, in fact, the minister was seeking to tell us that the clock returns to zero when there is a transfer in the registration of who owns a particular property—when the ownership of a heritable asset transfers from one person to another, without consideration of whether that is by selling, the application of a charge over the property or whatever. I just want to be clear about what triggers changes in the circumstances around the property and whether the clock starts again on transfer of ownership. The word used was “sold”, but I do not think that that was correct.

Margaret Burgess: Perhaps I used “sold” when I should have used “transfer”. As John Wilson said, when the property transfers, the original owner has liability until the property is transferred to a new owner, not necessarily the lender that repossesses it.

Stewart Stevenson: Yes, whereas, of course, the continuing liability for council tax that the previous owner—not the current owner—might have under the terms of their standard security is entirely another issue, and one that has been explored thoroughly by John Wilson.

Margaret Mitchell: I ask the minister to clarify the impact on rates relief of the ability to provide proof of actively marketing to sell and proof of actively marketing to rent.

Margaret Burgess: In terms of council tax?

Margaret Mitchell: Yes.

Margaret Burgess: If a property is being advertised through the normal procedures that are undertaken by someone who is trying to sell their home, that would be taken as evidence that the home was being actively marketed.

The guidance will cover that. Local authorities will consider the evidence that they require to ensure that a house has been put on the market or put up for rent. In some instances, the owner might be working with the local authority's empty homes officer, and I think that that would be absolute evidence that a house was actively being marketed for rent or was being brought into a state in which it could be put up for rent.

The matter comes under the discretion that local authorities have. I think I am correct in saying that that will be part of the guidance that we are developing with local authorities and COSLA.

Margaret Mitchell: Just to be clear, it is not the case that relief is triggered automatically when someone is marketing to sell but is discretionary in cases when someone is marketing to rent.

Margaret Burgess: No. If you are actively marketing to sell or to rent, the relief should be triggered. I think I am correct in saying that—

Colin Brown: Yes.

Margaret Burgess: I was beginning to doubt myself.

Margaret Mitchell: One of the regulations moves the point at which eligibility for exemptions kicks in from six weeks after a rental period or period of occupation begins to three months. Does that not provide a disincentive to people to accept short-term rents and, therefore, does it not work against the stated policy intention?

Margaret Burgess: We do not think that that is the case. Most short assured tenancies would run longer than three months—six months would be usual.

Margaret Mitchell: But would someone not be more likely to refuse a six-week rental in the hopes of getting one that was longer than three months, as they could find themselves in a worse position? If that happened, that would go against the policy intention.

Margaret Burgess: I do not agree with that. At the moment, if a house has been unoccupied and is then occupied again for a period of six weeks, the owner can get the exemption again. What we are saying is that, if it is occupied for three months, the exemption applies.

Margaret Mitchell: But it would not apply after six weeks, so people would be looking for a longer

period of rental and would perhaps reject the six-week rental.

Margaret Burgess: If it were rented out for six weeks, whoever it was rented to would be liable for the council tax on that property, as it would be their sole or main residence.

Margaret Mitchell: But thereafter the exemption would not apply.

Margaret Burgess: It would not apply for three months.

Margaret Mitchell: That seems to me to be a disincentive, but I think that we will agree to differ on that point.

Margaret Burgess: Yes.

John Wilson: You indicated that the guidance that will be issued to local authorities will advise them how to measure whether someone is actively marketing to sell or rent. How will the guidance instruct local authorities on determining whether someone is genuinely actively seeking to rent or sell a property as opposed to trying to avoid doing that by setting a property value or rental value way above what would be expected in the market?

Margaret Burgess: Colin Brown will respond to that.

Colin Brown: That situation is covered in the regulations, which provide that one of the factors to be considered in determining whether the property is being appropriately marketed is the proposed price or rent. Knowing the local circumstances, the authority will need to consider that point and assess what would be reasonable in the local market.

John Wilson: Thank you for that clarification.

John Pentland: Further to John Wilson's and Margaret Mitchell's questions, would there be a difference between someone trying to sell their property through an estate agent and someone trying to sell their house on their own to avoid paying an estate agent? I think that an estate agent might sell a house quicker than someone trying to sell a property on their own.

The Convener: I know that many folk would disagree with you.

Margaret Burgess: The test is whether someone is genuinely seeking to sell. We are not suggesting that the sale would need to be via an estate agent or some other agency. The requirement is that the house is genuinely on the market. Some people who are advertising their house themselves can show that they genuinely have the house on the market, although most people eventually revert to an estate agent to get their house sold. There is no hard-and-fast rule on

that. The issue is whether the owner is genuinely trying to sell the house or property.

The Convener: I will ask the final question, which is on the attitude of COSLA and local authorities to the proposals. Are COSLA and local authorities happy with the flexibilities that the Government is providing in the legislation?

Margaret Burgess: Yes, local authorities and COSLA have welcomed the flexibility. A number of local authorities have indicated to me that they are happy with the flexibility that they will have in using the legislation.

The Convener: Thank you very much.

Agenda item 4 is the debate on the motion to approve the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013, on which we have just taken oral evidence. I ask the minister to move motion S4M-05273.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (SSI 2013/draft) be approved.—[*Margaret Burgess.*]

The Convener: As no member wishes to speak in the debate, we will move to the vote.

The question is, that motion S4M-05273 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McMillan, Stuart (West Scotland) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

McTaggart, Anne (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

Motion agreed to.

The Convener: Agenda item 5 is the debate on motion S4M-05393, which seeks to annul the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338), on which we have just taken oral evidence.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338) be annulled.—[*Margaret Mitchell.*]

The Convener: As no member wishes to speak in the debate, we will move to the vote.

The question is, that motion S4M-05393 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mitchell, Margaret (Central Scotland) (Con)

Against

McMillan, Stuart (West Scotland) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: Item 6 is consideration of motion S4M-05394, in the name of Margaret Mitchell, which seeks to annul the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339), on which we have just taken oral evidence.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339) be annulled.—[*Margaret Mitchell.*]

The Convener: The question is, that motion S4M-05394 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Mitchell, Margaret (Central Scotland) (Con)

Against

McMillan, Stuart (West Scotland) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Wilson, John (Central Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: I thank the minister and her officials for their time and suspend for five minutes to allow for a changeover of witnesses.

10:46

Meeting suspended.

10:51

On resuming—

Scottish Public Services Ombudsman Annual Report

The Convener: Agenda item 7 is an oral evidence-taking session with the Scottish Public Services Ombudsman on his 2011-12 annual report. Members have a copy of the report and a Scottish Parliament information centre briefing paper. I welcome to the meeting the ombudsman, Jim Martin and, from the SPSO, Emma Gray, head of policy and external communications; Paul McFadden, head of complaints standards; and Niki Maclean, director.

Mr Martin, do you wish to make an opening statement?

Jim Martin (Scottish Public Services Ombudsman): I will be very brief, convener. After all, you have my annual report and we have also sent you a note covering items of interest that I have lifted from it.

I want to cover a couple of points in these remarks. We project that in 2012-13—in other words, in the current year—we will receive somewhere around 4,100 to 4,200 complaints; in 2009-10, we received 3,307. Indeed, in the period between 2009-10 and the publication of our last annual report the number of complaints coming to my office increased 23 per cent, mainly because of additions to our jurisdiction. In that time, we have taken over responsibility for complaints about the prison service, prison health complaints, complaints about Scottish Water and other water complaints, including those about Business Stream, Scottish Water's commercial arm. The increase in 2011-12 alone was 12 per cent. The point is that demand for our services is increasing.

Like other public sector bodies and bodies that are funded by the Parliament, we have been asked to reduce our spending. If we strip out the additions to our jurisdiction, we will have achieved a 15 per cent reduction in spend over that period. In fact, we will be spending less cash in 2012-13 than we spent in 2010-11.

My organisation has two core parts—the part that deals with complaints, and the complaints standards authority, which sets up complaints-handling procedures in public services. The headcount in the first part has been reduced by two full-time equivalents. We are not a big organisation and such a reduction is going to have an impact. That said, my office's productivity in the year covered by the annual report increased by 12 per cent, at a time when a significant number of staff were off on long-term—but not, I am pleased to say, work-related—sickness.

I am going through this litany because we—like all public sector bodies—are trying to do more with less. Because we are a demand-led organisation, it is difficult to meet expectations about service levels when faced with both an increase in demand and a reduction in resources. Had we not changed our working methods in 2010, we would have been in serious trouble. We are far more efficient now than we were then and that has got us through.

In my note, I highlight that, in the coming 12 months, four or five different areas might be brought in that might impact on my organisation. The impact is unquantified because the decisions have yet to be taken. However, I want to put down a marker with the committee: the one thing that seems not to be stopping is the increase in demand. In the current financial year, we reckon that we will be somewhere between 5 and 7 per cent ahead of where we were last year, which you will remember was a 12 per cent increase on the previous year. Something will have to give if the resourcing remains the same, with the two most likely areas being the timescales in which we deal with things and the quality of our work. I am very reluctant to touch quality. Those of you who have had a chance to look at our external survey of stakeholder views and complainant views will see that people want us to maintain quality and rigour—they put those ahead of timescale. We will try to do that, but it will be increasingly difficult. That is the first point.

Secondly, I pay tribute to the work of the complaints standards authority team in my office, which is trying to deliver standardised complaint-handling procedures across the public service. By the end of this financial year, all local authorities and housing associations will be operating under the new model complaint-handling procedures, and by October the procedures will also apply to all further and higher education establishments. We are beginning to look at the Government and its agencies—around 100 bodies—which will be our target for the next financial year.

The fact that we have got so far so quickly, and with so much co-operation and partnership working with so many bodies, is a tribute to my team, which is led by Paul McFadden, who is here today. The complaint-handling procedures will have a real impact on local authorities. The committee may want to explore that, which we would be happy for you to do.

A spin-off from that work is that Audit Scotland has agreed to check compliance with the complaint-handling procedures. I hope that we will soon—if not in 2013-14 then certainly in 2014-15—bring to the committee a view on where complaints are arising in local government, how they are being dealt with and what the outcomes

look like. That may be good data for the committee to use in its work.

Finally, if I may, I would like to suggest two or three corrections to the SPICe briefing that I know the committee has had. I think that there are one or two errors in it. The SPICe briefing states that, in 2011-12, we did not lay in Parliament any reports pertaining to local authorities. In the annual report, you will see that in fact we laid 11 reports—almost one a month—on local authorities.

The SPICe briefing also indicates that reports relating to decision letters were not found anywhere. The reason for that is that we are not permitted by statute to publish our decision letters in full. In 2010, we sought and gained permission from Parliament to publish summaries of our decision letters, so the briefing is slightly misleading. In fact, I think that 77 summaries of decision letters that go back to December will be laid before Parliament today.

The briefing says that we claim, but cannot show, that we publish positive actions by bodies under my jurisdiction, such as local authorities. We do; that is on the website, and we would be happy to sit down with officials from SPICe and talk them through where to find that information. I just wanted to put that on the record.

The Convener: Thank you, Mr Martin. When you gave evidence to the committee last year, a lot of what you had to say was based on your strategic plan, which was quite new at the time. I have looked through a number of the bits and pieces that we have, including your annual report, but there does not seem to be much in those documents about your strategic plan. Can you tell us why that is the case? I hope that your strategic plan is not like many others that we have come across from other bodies over the years—plans that are put together, but are then put on a shelf to gather dust.

11:00

Jim Martin: Apart from anything else, we are lacking shelf space, so that is not the case.

I think that I have explained to the committee previously that the strategic plan that we produce is approved by the Scottish Parliamentary Corporate Body. The way in which the plan is implemented is contained in our business plan, which is also approved by the corporate body. We have therefore been engaged with it in discussing the strategic plan, progress against it, and our business plan. My director, Niki Maclean, and Paul McFadden meet the corporate body monthly to talk through where we are in relation to our business plan, strategic plan and budget. All those things are in place.

The corporate body is asking us to change the content of our annual report to better reflect the strategic plan. Next year's annual report will do that. The strategic plan is a living document and scrutiny of it is undertaken by officials of the corporate body on a regular—monthly—basis.

The Convener: It is all fair and well, Mr Martin, that the corporate body and your staff are reviewing the strategic plan on a regular basis, but members of the public should be able to see exactly what is going on vis-à-vis the plan and its implementation. From the documents that we have, which are the documents that members of the public would have a look at, and a number of other things, it does not seem to me that the strategic plan is a living and breathing document. It might well be that to Ms Maclean, Mr McFadden and members of the corporate body, but to members of the public it seems that it is slightly amiss. Since so much emphasis was put on the strategic plan when you gave evidence last year, I ask you to ensure that members of the public who pay close attention to the SPSO can actually see what is happening with implementation of the plan.

Jim Martin: To be clear, the strategic plan begins in 2012-13. The annual report that you are asking me about is the annual report for 2011-12. The annual report for 2012-13 will reflect the strategic plan as agreed and in the way that the corporate body asked. If you like, I am between two masters. One is the corporate body.

I agree with you that the public should see that, and I hope that you agree with me that we publish as much information as we possibly can, but it would not be possible to show progress against a strategic plan that does not kick in until after the annual report that we are discussing has ended.

The Convener: But we should have an indication in the documents of how the strategic plan is going to be implemented when it becomes a live document. I think that this is remiss, to be honest with you. There is quite a lot of criticism of your organisation out there, much of which you will come across on a daily basis. As happened last time you came before the committee, we had a flurry of communications before your coming here, although it has to be said that that is to be expected in the game that you are in.

Can you provide the committee with a written report on the implementation of the strategic plan? We would like to see such a report and I think that it would make your life a lot easier if it was available to the public as well.

Jim Martin: I am happy to do that, convener. However, I stress that the corporate body is currently asking us to report on that strategic plan in a particular way. Can I ask the clerks of the two committees to discuss whether the format is

suitable for both committees? I do not want to meet this committee next year with a report that is appropriate for the corporate body but that is not appropriate for this committee. If the clerks could get their heads together about that, we will happily comply with your request.

The Convener: I am happy to have a written report on what is being given to the corporate body at this moment in time. I do not want to create any more work for you. If we could have that, I would be immensely grateful.

To move on to the role of the SPSO, you describe the organisation as a “model complaints service” and as a “final tier complaints resolver”. That is quite different from being an appellate body. Can you explain the difference and elaborate on what you do? Do the public understand the difference? If not, what steps are you taking to address that?

Jim Martin: The abolition of the Administrative Justice and Tribunals Council in England—and, therefore, of the Scottish committee of the AJTC—has brought this issue to the fore. I know that the Government and others are considering what the administrative justice landscape in Scotland should look like.

We are a complaints body. My powers are set out in the Scottish Public Services Ombudsman Act 2002, as approved by Parliament. That act brought together four different ombudsman offices, each with slightly different powers and different areas of jurisdiction. For example, the health powers that I have include being able to look at clinical decision making. The powers that I have as regards local authorities allow me to look at matters on which local authorities do not have discretion, except where there is maladministration or service failure.

When people believe that the services that they have received from bodies that are under my jurisdiction are not up to scratch, they can bring their complaints to me. We have structured our office so that, at the front end, we listen to people when they come in and then signpost them to the appropriate areas. Some of those areas might be what you describe as appellate bodies—perhaps tribunals or perhaps other bodies—but our aim is to ensure that the citizen gets to the point where a decision can best be made on the issues that they have raised.

I have seen definitions that suggest that tribunals and appellate bodies deal with cases where there is a clearly defined benefit that people can get, whereas complaints over maladministration or service failure do not fit easily into that model. I think that the public generally are confused about where to go with complaints and about their rights of appeal in a number of areas.

We try to signpost them to the appropriate body to deal with their appeal or complaint or whatever it might be.

If this committee and other committees want to look at the administrative justice system and how it should go forward post the abolition of the Scottish committee of the AJTC, that should be done. However, it should be done in concert with the Scottish Government and with the United Kingdom Government, because UK bodies also operate in Scotland. It is a confused landscape.

The Convener: We have talked about timescales. When a complaint comes into your office and you have no jurisdiction, how quickly do you get back to the complainant and do you offer them advice about where to go next?

Niki Maclean (Scottish Public Services Ombudsman): That is exactly what we do. If the complaint is obviously out of our jurisdiction, our advice team deals with it pretty much as soon as somebody calls. Part of that service is about redirecting the person and signposting them to the correct route. If the complaint requires more in-depth review, it would normally be dealt with within two weeks, unless it is a complex case that needs legal advice, for example, around jurisdiction. The individual would be signposted to the correct service.

Anne McTaggart: Mr Martin, what defines high-quality service in the eyes of your customers and how do you measure it?

Jim Martin: You will see in the Craigforth survey of complainants that views on quality of service are often guided by the outcome of our decisions, which is the same for all ombudsman offices that I know of.

We are trying to find a quality assurance system that allows us to look at the quality of the work that is being produced across our organisation and the quality and speed of our decision making, to test those things and to learn lessons from that. We have not reinvented anything; we brought in a new quality assurance methodology a year or two ago. We have run it and it has been externally tested by our internal auditors, and we are constantly trying to learn how to improve quality.

Niki Maclean looks after quality assurance, so she might be able to answer your question.

Niki Maclean: We look at a number of quality assurance aspects including, fundamentally, whether a decision was correct, whether the decision was communicated in a way that was clear to the complainant and whether, if something was out of our jurisdiction, the complainant was clearly signposted elsewhere. As Jim Martin said, we also look at things such as the timescales that were involved in handling a complaint.

Anne McTaggart: If, as Mr Martin mentioned, inquiries and complaint numbers are rising and you are reducing your budget, how will you deliver quality service to your customers?

Jim Martin: Quality is the thing that goes last. Those of you who know the history of the SPSO will know that two or three years ago it took forever to get a decision. The office had cases that were three, four and five years old. We do not have such cases now—we have that under control.

Given that other areas may soon be added to my jurisdiction and given the demand that is coming in while we are having to cut resources, I am concerned that one of two things will have to go: the timescales that we operate to or the quality of our work. Everything tells me that timescales rather than quality will be sacrificed. From the Craigforth survey and from talking to people, we know that the quality of decision making is the thing that matters.

People have sometimes complained that we take decisions too quickly, whereas in the past we have been criticised for not taking decisions quickly enough. Culturally, what we are trying to drive into the organisation is quality, quality, quality.

John Wilson: How many people were contacted for the Craigforth survey and what percentage is that of the number of complaints that you deal with over a given period?

Jim Martin: At Craigforth's suggestion, we changed the methodology this year. I will let Emma Gray deal with your question, as she was the architect of the survey.

Emma Gray (Scottish Public Services Ombudsman): As we outlined in our briefing, for the past six years, we have sought customer feedback. For the first four or five years, we did a postal written questionnaire, which was quantitative. Craigforth said that we were getting the same kind of feedback every year and that there would be nothing new to learn from continuing that type of survey, so on its advice we moved to a qualitative survey.

Craigforth wrote to everyone who had received our service and asked them to join focus groups. Thirty-three people came to the two focus group sessions that Craigforth set up, which was a very small percentage of complainants, but we have no control over who wishes to be involved in a focus group. The findings of the focus group discussions constitute the current survey.

11:15

John Wilson: My calculation is that that amounts to less than 3 per cent of the total

number of people who used the service in the given period. How does that method of surveying users of the service compare with the previous method of conducting surveys, whereby you wrote to all the users and asked them for their views?

Emma Gray: I think that it has brought us tremendously valuable information. We can get only so far with a questionnaire in which we ask people how satisfied they were with the service on a scale from "Very" to "Not at all". We wanted to probe what it is about our service that people are not satisfied with. We wanted to know whether it is how we communicate with them, the timescales or the decision that we made, or whether there was something that we could have done better to communicate what we can and cannot do. That was what the Craigforth data gave us. We found that people prefer to have more face-to-face contact and more time on the telephone. There were exceptions but, by and large, people would prefer to have a more informal means of speaking with our complaints reviewers than to go through formal written channels.

In response, as you will see from the SPSO management response to the findings, we have rolled out a much greater emphasis on face-to-face and telephone contact, especially when the circumstances of the complaint are highly distressing. We have done two sessions of telephone skills training, which we approached the Samaritans to run, because many of the people who come to us are extremely stressed or distressed about the circumstances of their complaint. We wanted to get people who had a real handle on how to deal with those who are, in some cases, extremely emotionally traumatised, so that we could help our reviewers to deal with the issues that people bring us. The Craigforth survey has given us a feel for what people have not been happy about and an opportunity to change what we do and to implement training in the areas in which people are telling us that they would like us to improve.

John Wilson: There are other questions that I want to ask, but other members are waiting, so I will examine the issue further later in the questioning.

The Convener: We will stay with the Craigforth report, which I have in front of me. I would be interested to know how you are using its findings to make improvements. Its conclusion states:

"Based on the people spoken to as part of this study, it is fair to say that taking a complaint to the SPSO is unlikely to result in indifference or ambivalence towards the organisation. It is unusual to speak to a group of people who are so clearly and significantly divided about an organisation as was the case for *Listening to Complainants 2012*.

Unsurprisingly, people's views were largely coloured by the final outcome in their case. Those that did not achieve the outcome they had hoped for—either because the SPSO was not able to take on their complaint or because their complaint was not upheld—tended to be dissatisfied. Very understandably, their strength of feeling was often linked to the nature of their complaint, with those that had made a complaint relating to very difficult and personal events often left very disappointed by their contact with the SPSO."

My colleagues and I are often unable to resolve cases for people. However, if we talk that through with them, most folk understand the reasoning behind that. It seems that, in the SPSO's case, many people do not understand why you cannot deal with their complaint any further. Can you explain why that is the case? In this life, I find that the vast bulk of people are pretty reasonable: if you give them an explanation of why you cannot do something, although they might not like it, they normally understand it.

Jim Martin: We try to give as full an explanation as possible of why we reached a decision. One of the richest pieces of information to come out of the Craigforth survey is that people are least happy when we explain the restrictions on our powers. People bring local authority planning issues to us and we tell them that there are areas that we can and cannot look at. For example, we cannot overturn a planning decision. People are often angry and upset that we cannot do that. Members have brought their own cases to me and I have had to explain to them that, under the 2002 act, I am precluded from looking at some issues. Some members are very annoyed, too. So one issue is the powers.

Secondly, it is important to remember the stage that we come in at, which is after the complaint has been aired and rehearsed. Until now, there might be four or five stages in the local authority, although that will not be the case in future. The matter has been rehearsed, and people have firm views and come to us as a last resort. At that point, we are the ones who say that there is no further route for them to go down, which can upset people.

In health, we deal with cases that are heart-rending for the families involved. We often have to tell them that, although their case is difficult—it involves a death or whatever—we have found that the practitioners, or whoever, acted appropriately. People react emotionally to that. As we are at the end of the line, we have come to expect that.

I have discussed the issue with my colleagues in other ombudsman offices in the United Kingdom, to see if anybody is getting it right. I have to tell you that it is par for the course for an ombudsman's office that people who get decisions that they agree with and like tend to think that the organisation is marvellous, and people who do

not, tend not to. I am afraid that it comes with the turf.

The Convener: Many of us round the table, and fellow parliamentary colleagues, are not in a dissimilar position. Sometimes we have to tell folk, "This is as far as we can go with this case." Cases can often be heart-rending, like some of the ones that you deal with.

If somebody came to my office who had not got the decision that they wanted but who was as deeply unhappy as some of the folk who have come to you, I would be worried about the way in which I had communicated with that person. I think that the Craigforth findings will help you to improve in that area. In the run-up to our sessions with you, we receive correspondence from people who, if they had been communicated with a bit better, would not be in the position that they are in.

Jim Martin: That may be your view, convener. In our quality assurance, we look at how we respond to people when we are breaking news to them that they do not like. We are trying hard to learn lessons on how to do that. I concede that, in some cases, we do not get it right—we are a normal organisation—but by and large we do. If the committee were to take soundings from other parts of the UK and other ombudsman offices, it would find that a similar thing happens when other ombudsmen come before committees such as this. Committees have people who write to them. I would hazard a guess that few people who are satisfied and who think that we have done a good job write to the committee to praise us. As I think I said when I was here last year, we try to treat everyone fairly and in the same way. However, people will come to the committee and the committee must make its judgments from that.

Stuart McMillan: Mr Martin, you are upholding more complaints. I am interested to establish what redress complainants are receiving. Do you have adequate powers of enforcement? What follow-up action do you take to ensure that your decisions are implemented?

Jim Martin: We monitor carefully all the recommendations that we make. Every recommendation that leaves our office is accompanied by a timescale for implementation, which is followed up and checked to ensure that it has happened.

When I came to the committee last year, I mentioned two authorities that I thought were possibly on the brink of telling me that they were not going to implement my recommendations. In the end, they did, and I think that one of the reasons for that was the fact that we had that conversation in this committee, which concentrated some minds.

I am beginning to get increasingly concerned about the redress that we offer. In the main, we try to see whether we can put someone in the position that they were in before whatever it was that went wrong happened. Often, that involves an apology. Looking around my colleagues in the rest of the United Kingdom, I note that a judicial review in Northern Ireland in December upheld the practice there of the ombudsman offering consolatory payments to members of the public in situations in which he believes that the actions of a body that is under his jurisdiction are such that that action is required. For example, in the case that was taken to judicial review, he asked that a general practitioner pay £10,000 to the family of a patient that he had been dealing with.

We have not gone down that route in Scotland, but I am beginning to think that we should think about the powers that I have in that area and see whether people in Scotland are at a disadvantage compared to people in the rest of the UK. That should be addressed in the next year or so. We have got to the position that we are in today through a process of the evolution of what happened in the four offices that were brought together and what has happened in the SPSO, and it might be time to take stock of that.

In respect of the health service, it is sometimes not possible to put people back in the position that they were in before whatever went wrong took place. However, the national health service and the Scottish Prison Service are good at learning lessons from things that have gone wrong. People who come to me say most often that they hope that the outcome of our examining the issue will be that what happened to them does not happen to someone else. We are having a real effect in the health service.

I mentioned that we have produced 77 summaries of decisions. We produce a number of them every month. Those summaries are there to be learned from. Increasingly, across local authorities, housing associations, health and universities, people are taking up that opportunity. One of the impacts that we are having is ensuring that people learn from the mistakes of others.

I am thinking quite hard about the question of redress.

Stuart McMillan: Have you raised with the Scottish Government the possibility of amending the law in order to give you more powers?

Jim Martin: Not yet, because I want to get my thinking clear first. I wanted to wait until I could see the outcome of the judicial review in Northern Ireland.

Bear in mind the fact that, four or five years ago, the Parliament reviewed my office's powers and decided that they should stay the same. For

example, one of the areas in which other ombudsmen's offices can be effective is with regard to own-power initiatives. If an ombudsman sees a number of things happening, they can instigate an investigation into areas such as aspects of care of the elderly, or issues around how planning has been dealt with in a particular council. At the moment, I have no powers to do that. I can react only to individual complaints as they are brought to me.

11:30

Another point that is put to me is that instead of having the power to recommend I should have the power to direct. I am less sanguine about that because I am not convinced that the ombudsman should have the power to direct budgets of bodies under their jurisdiction. I might have used this example at previous meetings—if so, I apologise for repeating it—but I once received advice from a medical adviser that multiple births should take place in an operating theatre. In the end, I chose not to accept that and set it out as a recommendation; after all, it sounds fine until you work out what its impact would be on the health service in Scotland. Making such a recommendation for consideration is one thing; directing a health board to do it is quite another. Directing spend is a very important function that should be kept as democratic as possible and be undertaken by people in local authorities, the Government or wherever. It should not be part of an ombudsman's role. I simply do not think that ombudsmen should have the power to direct.

Stuart McMillan: It was good to hear you say that the NHS and the prison service are very good at learning lessons and moving forward. I note, however, that there are 14 health boards. When you make a recommendation and a health board agrees to follow it and make certain changes, what follow-up work does your office undertake to ensure that that has happened?

The Convener: Or, indeed, how do you liaise with audit bodies to ensure that they are aware of your decisions and that they can do the follow-up work with health boards, local government or wherever?

Niki Maclean: Boards are notified of our recommendations through investigation reports or decision letters. In all cases, they are given a timescale that they must meet and must provide adequate evidence to demonstrate that they have fulfilled the recommendations. Of course, the evidence that we would expect them to produce depends on the type of recommendation.

Jim Martin: For example, we might say—as we indeed did say to Glasgow southern general hospital at one point—"We need you to reassure

us that you have an action plan for a particular area to deal with elderly people's pressure sores" and, in response, NHS Greater Glasgow and Clyde produced an action plan and evidenced that it was in place. We certainly follow up these things.

An important point for those who bring complaints is that authorities are getting better at apologising appropriately. Complainants now rarely get letters saying, "The ombudsman has told me that I have to apologise to you. Here is a letter of apology." If we can get better at apologising earlier for things that have gone wrong, my case load might go down. Acknowledgement and apology are very important parts of redress and very often they are all that people are looking for.

Emma Gray: I also point out that the Scottish Government always logs our recommendations with regard to health complaints and follows them up with boards by asking for evidence that they have fulfilled them. One of the reasons why lessons are so well shared in the NHS and the Scottish Prison Service is that, in addition to our own checks, what you might call the umbrella organisation for those bodies co-ordinates activity and follows things up, which adds extra impetus to the recommendations.

Stuart McMillan: Your fifth key performance indicator is to measure how quickly organisations implement your recommendations. Your target in that respect is 95 per cent, but what has the percentage been thus far?

Niki Maclean: It was around 88 per cent for 2011-12. The interesting point about that measure is that ultimately it is down to the board or body to ensure that it meets the timetable. Jim Martin has already highlighted what our statutory powers are in that regard. We work hard to ensure that boards and bodies meet the timescales, but ultimately it is a matter for them.

The Convener: You talked about the parliamentary review of your organisation that took place a few years back. Obviously, some of us were not parliamentarians at that time, but my understanding is that the review was more about increasing your powers by bringing in new bodies, rather than about a full review of what you did. Can you give us some detail on that?

Jim Martin: It is true that that was what was looked at, but in the course of that review areas such as own-initiative powers were considered by the body that undertook the review, which I think was called the RSSB.

Niki Maclean: Yes, it was the Review of SPCB Supported Bodies Committee.

The Convener: Perhaps we will have a further look at that at a later date.

John Pentland: Following your previous appearance before the committee, which was last year, your comments were well analysed. Some people who have been in touch with us have re-affirmed that they do not think that your organisation is fit for purpose. Can you comment on that?

Jim Martin: I think that that goes to the exchange that the convener and I had earlier. After I spoke to the committee last year, a number of ombudsmen in the United Kingdom had freedom of information requests about or requests to confirm that what I said to the committee was accurate regarding the number of UK ombudsman bodies that were coming to us to study how we were doing things: our processes, our quality assurance and that kind of thing. I think that my office was still receiving FOI requests in that regard 10 months after my appearance before the committee. I expect that that will probably happen again after this visit to the committee.

I am sure that the committee's mailbag about my office's activities will tend to increase when I come to the committee. I know from discussions between my office and the committee clerks that there is on-going correspondence about my office between a number of people and the committee clerks. I suspect that for many of those cases there is not a lot that I can do to make that situation stop or to improve it. After checking with other ombudsmen's offices in the UK, I am reassured—that is perhaps the wrong word, but it certainly makes me happier—to know that their appearances before parliamentary committees puts them in much the same position as I am with regard to the situation that I have described. As I said to the convener earlier, I expect that that will continue.

John Pentland: You highlighted in the introduction to your annual report the complaints trends and said that the number of complaints that you receive could be reduced if local authorities, for example, tightened up their complaints processes. Can you expand on that point?

Jim Martin: Paul McFadden will say a word or two about what we are doing with local authorities on their complaints handling processes. I will just say that, when a complainant raises an issue, the quicker that it is resolved—and the closer to them the resolution is geographically—the better. Issues that are allowed to fester in systems lead to entrenched positions, which make it difficult to get solutions that can satisfy both parties.

I ask Paul McFadden to talk to you about the work that we have been doing with Scotland's

local authorities to try to improve processes and procedures.

Paul McFadden (Scottish Public Services Ombudsman): Jim Martin said in his opening remarks that by the end of March all local authorities will have committed to have in place a model complaints handling procedure that is in line with the standardised model that we have outlined for all public sector bodies. We are ahead of expectations in that regard. As of September last year, over a quarter of local authorities had confirmed to us that they were already operating the streamlined, two-stage model across all their services, which we regard as great progress and a testament to how seriously they take the issue.

The core of what we are trying to achieve is to have a standardised model across all 32 local authorities, so that there are two stages to a complaint—as opposed to the four or five that occur in some local authorities, to which Jim Martin alluded—with timescales of five and 20 days for each stage. There will therefore be a clear standard for both processes and timescales, with the aim of resolving complaints more quickly.

Going beyond that, however, there is a cultural element with regard to resolving complaints and reducing the number that come to us, which is very much about a focus on empowering front-line staff and trying to formalise the initial interaction with customers in order to resolve complaints as close to the point of service as possible. The vast majority of issues that people complain about are relatively straightforward to resolve close to the point of service. However, if staff are not trained or authorised, for example, to apologise for a service failure, a complaint can escalate through all the stages that I have indicated and come to us, by which point it will have grown arms and legs and another 10 heads of complaint. There is therefore a strong focus on face-to-face and telephone contact for resolving complaints as close as possible to the point of contact in the service.

The second part of the cultural element is about getting it right the first time. Many of the appeal stages that previously assisted in complaints processes were used or regarded as a safety net that provided another chance to consider a complaint before it got to the ombudsman. The onus now will be on having a one-off investigation of 20 days before there is an opportunity for a complaint to come to us. The culture of getting it right the first time will be achieved through individual training and awareness raising, including learning about the complaints that we uphold. In addition, local authorities and their departments must try to learn lessons from the complaints that they resolve.

John Pentland: So I must assume that the learning curve is still a work in progress.

Paul McFadden: Yes. As I said, though, we have seen a move by over a quarter of local authorities to adopt the new model. No doubt it will take time to achieve some of the cultural elements, but councils are taking the issue seriously. We therefore expect to see quick progress in improving their complaints handling.

John Pentland: In your introduction, Mr Martin, you gave us figures for the complaints that you have received over the past four years. Can you tell us how many of those complaints were about the SPSO?

Paul McFadden: I will take that one. We have a process for service delivery complaints about our own service. We received 32 complaints for 2011-12. We have an independent service delivery reviewer, who is currently David Thomas, former deputy ombudsman of the Financial Ombudsman Service. Of the 32 complaints that we received, 13 went on to David Thomas to handle.

John Pentland: Do you not think that it would be good for the committee if your annual report included information about the complaints that were made about your organisation?

Paul McFadden: That information is in the report. A whole section is dedicated to the independent service delivery reviewer. It outlines not only the number of complaints but some of their key themes.

John Pentland: Okay. I turn now to the budget. Mr Martin, you said that your budget had been squeezed and that you had had to make efficiencies and so on. Given those circumstances, do you think it wise for you to extend your jurisdiction to a number of other areas? Will doing that reduce your level of service?

11:45

Jim Martin: The extent of my jurisdiction is out of my control; it is a matter of decisions by Parliament and Government. For example, the creation of revenue Scotland was based on a decision that was taken for pretty sound reasons, but the fact that that body will come into being automatically means that it will come into my jurisdiction. There is nothing that I can do about that.

The abolition of the mechanism for handling the social fund by the UK Government means that each of the jurisdictions in the United Kingdom must find a way of administering the fund. I believe that there will be in a two-tier system that local authorities will administer, which means that their work in that area will automatically come under my jurisdiction. There is nothing that I can do about that. If the responsibilities of local authorities or

other public bodies that are under my jurisdiction are changed, it has an impact on me.

Before prisons and water complaints came over, there was careful discussion about what resources would come, too—whether people or cash or both would come. That transfer was carefully thought through, and it is a really good model for new areas coming into my jurisdiction that involve complaint handling.

On the impacts on other areas, I hope that, by raising issues here and with the Government and others, people will understand that there will be knock-on effects on bodies such as mine.

Health in prisons is an area that shows the difficulty in planning. Until a year ago, the Scottish Prison Service provided health services in prisons. The decision was taken that those services would go to the national health service. In the last year of its operation, the number of appeals in the Scottish Prison Service outwith prisons to the Scottish ministers was 511, and a reasonable calculation would have been that a similar number would be the maximum that we could expect to come to us. In effect, we found that 46 came to us in the first year. I suspect that that is because the system is not working terribly well yet and that the number will increase.

The difficulty in planning ahead for such impacts is in trying to work out whether the impact will be the same, increase or reduce. When things have come under our jurisdiction that were not there before, we have often found that there is an initial spike of people wanting cases that have already been looked at elsewhere to be reopened, and that the demand then tends to fade away. I am trying to highlight the fact that, if we are going to increase the areas of jurisdiction within the SPSO framework but resources do not follow, given our budgetary constraints the quality of service that we can offer may not be as good as I would like it to be.

Niki Maclean: The start is the fundamental principle of whether you want a one-stop shop for complaints handling. I know that that issue has previously been discussed in committee. Our perspective is that a one-stop shop is the sensible approach for the users of public services as it simplifies the landscape for them so that they can easily access complaints services. There might be complications in resourcing that in the back office, but I think that that is fundamentally the way that things should go.

The Convener: We are running out of time, so questions should be brief and answers should be concise, please.

John Pentland: I have brief questions about the budget. In your budget report, you say that you have spent £163,000 on professional fees. Will

you briefly tell us why that was the case? Could that service have been delivered in-house?

Niki Maclean: We require expert advice in certain areas of complaint. We have discussed that before. For example, we obviously do not have the expertise in-house to look at health complaints in which the clinical decision that was reached can also be considered, so we procure medical expertise and advice from the Parliamentary and Health Service Ombudsman down south, which contracts its own medical advisers. The majority of that spend relates to professional advice in the different areas in which we work.

John Pentland: Finally, you accrued £93,000 in other income. Where did that come from?

Niki Maclean: One area of work that we have been running in support of the complaints standards authority is to deliver cost-recovery training to bodies under our jurisdiction. That involves training front-line staff and complaints-handling staff in, for example, investigation skills. The majority of income came from that source.

The Convener: Before I bring in Mr Wilson, I have a question on the chapter in the annual report on “Independent Service Delivery Review”, which includes comments from those who acted as reviewer over that period. What is the process by which a complaint is sent to the independent reviewer? Who decides that?

Paul McFadden: The complainant will decide that. In line with the model that we are introducing across the public sector, we follow a process that provides two opportunities to resolve a complaint, either as a front-line complaint or as a stage 2 complaint that I would deal with as head of complaint standards. After stage 2, we will inform the complainant that, if they remain dissatisfied, they have the opportunity to approach the independent service delivery reviewer, who will then make a decision on whether to accept the complaint. Complaints go to the ISDR at the complainant’s behest.

John Wilson: Once again, I should put on record that I have known Mr Martin for a number of years. I will not say how many exactly, but it covers a period of up to three decades.

You have referred to two authorities that you felt were not prepared to implement your recommendations. From a discussion on a previous SPSO annual report that was considered by the then Local Government and Communities Committee, of which I was a member in the previous parliamentary session, I recall that we discussed whether the SPSO’s powers might be enhanced so that, in those circumstances, it could lay a special report before Parliament. Has there been any further movement on giving the SPSO a

power to lay before Parliament a special report, which would have the effect of forcing the agency or authority concerned to implement the SPSO's recommendations? Has there been any movement on introducing a legislative change to ensure that further issues of that nature are not repeated?

Jim Martin: I am grateful to this committee for referring that matter, after my previous appearance here, to the Standards, Procedures and Public Appointments Committee, which has engaged with us on that. I think that we are due to get back to that committee by the end of this month, so discussions are on-going. I am grateful to this committee for its intervention on that.

John Wilson: Thank you very much for that, Mr Martin.

I also have a question on the Craigforth review, which you said was based on a focus group in which 33 people participated. For clarification, were those 33 individuals self-selecting? If so, given the amount of correspondence and emails that we receive from dissatisfied customers of the service, surely there is a danger that the focus group will have reflected only the views of those individuals who were aggrieved by the organisation's service delivery rather than those of the satisfied customers that Mr Martin referred to earlier?

Jim Martin: Emma Gray worked with Craigforth to ensure that a valid survey was put together, so I will ask her to respond to that.

Emma Gray: Given that the focus groups were to involve complainants with fresh experiences of our service, Craigforth wrote to everyone whose complaint had been closed in the previous three months to ask them whether they would like to participate. I do not know whether the people who have contacted the committee were included in that group, but Craigforth wrote to everybody. The individuals were self-selecting, as those who wished to be involved put themselves forward to attend the focus group meetings. I am not sure what else I can say on that front.

Niki Maclean: That is a really good point. Jim Martin and I see such casework letters every day, but we also see letters each week from people who are satisfied with the service. Those include, for example, a letter this week from someone whose complaint we had not upheld following a very complex investigation but who thanked us for the investigation's thoroughness and level of detail. There is a challenge about how we then reflect that back publicly.

John Wilson: I appreciate Ms Gray's response that it was individuals who had a complaint closed in the previous three months who were asked to participate in the survey. How do you measure

individuals' satisfaction levels in relation to continuing case-handling work by the SPSO?

Jim Martin: Paul McFadden mentioned service delivery complaints, but I will describe what we try to do when we are handling complaints.

It is not as if a complaint simply comes into the building, is dealt with and goes out again with no contact. We try to ensure that there is regular contact between the complaint reviewer and the complainant as we go. When we are going to look at a complaint, the first stage is a conversation with the complainant to determine exactly what he or she is complaining about. We agree a head of complaint and we then write to the complainant and say, "This is what we think we are about to examine on your behalf. Please sign to say that you agree." Their response comes back to us, and we engage from that point on.

Complainants often contact us under their own initiative to discuss how things are progressing and so on, but our complaints reviewers have set timescales within which they have to go back and tell people about the progress that we are making, so it is an interactive process.

What we tried to do with Craigforth this time was to see whether we could get qualitative feedback that would help to add to the quality assurance work that we are doing and the new process that we have brought in to ensure that the journey for our customers is as good as it can possibly be.

John Wilson: Thank you for that. I take on board the point that you made earlier about your having two masters but, looking at the situation, I think that you have more than that. You have a number of masters all of whom are demanding their pound of flesh from the SPSO. They include the Government, the corporate body, this committee, parliamentarians and the public.

Given the issues that have been raised by the committee today, by the focus group and by individuals who have complained to elected members, how do you intend to move forward to get the message across about exactly what the SPSO can do for individuals who make complaints against agencies or local authorities?

Jim Martin: One of the significant figures in the annual report is the percentage of premature complaints that come to the SPSO. It has reduced from 52 or 53 per cent to about 42 per cent. One issue that we are trying to deal with is how we can get people's complaints resolved as quickly as possible without their coming to the SPSO. My colleague in Wales tells me that he is going to have his face on the back of buses in Cardiff. I fear for the people of Cardiff. The danger of that approach—I hope that he does not read the *Official Report* of this meeting—is that people will come to the ombudsman rather than, perhaps, to

the local authority. We are not geared up to deal with that front-end approach.

If you remember—you probably will, Mr Wilson, because you were at the committee meeting—Douglas Sinclair suggested that we should have a single signposting area for all complaints in Scotland, but it was decided that that would be too costly. They now have that in Wales. Perhaps we should revisit the idea, but at present I believe that our strategy of getting ownership of complaints and resolving them, as far as possible, through empowered staff in the public service and efficient, quick complaint handling procedures is the best way in which to deal with the real problem, which is not that I am under so much pressure from many different masters but that the people of Scotland need a sure way of resolving their complaints as quickly as possible.

Anne McTaggart: What action do you take to measure progress towards delivery of the first part of your vision? I quote from page 55 of your annual report:

“Our vision is of enhanced public confidence in high quality, continually improving public services in Scotland which consistently meet the highest standards of public administration.”

Jim Martin: You are seeing it in action through the work that is being done to improve the process in the complaints standards authority. We produce monthly a compendium that shows a distillation of the decisions that we have taken in the previous month, such as the 77 that we are issuing today and the two publicly laid reports. We engage with the Society of Local Authority Chief Executives and Senior Managers, COSLA and local authorities. At present, I am meeting the chief executive of every health board and local authority in Scotland to go through their body's performance and get feedback on the SPSO's performance and how we can improve. We are looking to engage with people more and more to deliver that vision.

If we are to help improve the delivery of public services in Scotland, we must use the learning from what we see—put in context, because we only see where things go wrong or where people perceive that things go wrong.

The Convener: As members have no further questions, I thank you for your time today, folks.

We now move into private session.

12:01

Meeting continued in private until 13:00.

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