



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 4 December 2013



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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**

**31<sup>st</sup> Meeting 2013, Session 4**

**CONVENER**

\*Kevin Stewart (Aberdeen Central) (SNP)

**DEPUTY CONVENER**

\*John Wilson (Central Scotland) (SNP)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)  
\*Cameron Buchanan (Lothian) (Con)  
\*Mark McDonald (Aberdeen Donside) (SNP)  
\*Stuart McMillan (West Scotland) (SNP)  
Anne McTaggart (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Stuart Allan (Commissioner for Ethical Standards in Public Life in Scotland)  
Sarah Boyack (Lothian) (Lab) (Committee Substitute)  
Councillor Rhondda Geekie (Commission on Strengthening Local Democracy in Scotland)  
Helen Hayne (Commissioner for Ethical Standards in Public Life in Scotland)  
Councillor Drew Hendry (Commission on Strengthening Local Democracy in Scotland)  
Louise MacDonald (Commission on Strengthening Local Democracy in Scotland)  
Geoff Mawdsley (Commission on Strengthening Local Democracy in Scotland)  
Councillor David O'Neill (Commission on Strengthening Local Democracy in Scotland)  
Adam Stewart (Commission on Strengthening Local Democracy in Scotland)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

Committee Room 2



## Scottish Parliament

### Local Government and Regeneration Committee

*Wednesday 4 December 2013*

[The Convener *opened the meeting at 09:30*]

### Decision on Taking Business in Private

**The Convener (Kevin Stewart):** Good morning. I thank members for reorganising their schedules to accommodate the earlier-than-planned start time. As we go through the programme, the reasons for that will become evident. Anne McTaggart has sent her apologies today and Sarah Boyack is substituting for her.

The first agenda item is a decision on whether to take items 4, 5, 6 and 7 in private. Do we agree to do that?

**Members** *indicated agreement.*

## Commission on Strengthening Local Democracy in Scotland

09:30

**The Convener:** We have with us a panel of six folks from the Convention of Scottish Local Authorities to give us evidence on the commission on strengthening local democracy in Scotland. I welcome Councillor David O'Neill, chair of the commission and president of COSLA; Councillor Rhondda Geekie; Councillor Drew Hendry; Louise MacDonald; Geoff Mawdsley; and Adam Stewart, secretary to the commission.

Would you like to make an opening statement, Councillor O'Neill?

**Councillor David O'Neill (Commission on Strengthening Local Democracy in Scotland):** Thanks, convener. We are not a delegation from COSLA; we are a delegation from the commission on strengthening local democracy. I make the point about the commission's title that the commission is about local democracy, not necessarily local government. I will say a bit more about that.

I am grateful to you for allowing us to start a bit earlier. Drew Hendry and I have to get away at about half past 10 or very soon after. We have a meeting with a swathe of cabinet secretaries who could meet us only today. If we could not have met today, it would have been well into the new year before we could have.

It is a really exciting time for me as the president of COSLA and the chair of the commission, because I believe that doing things locally is the most effective way of improving people's lives. As a country, we need to do much better than we currently are doing. Since the end of the second world war, much has been done to improve the wealth and health of our country, but it has all been done through a top-down approach, with national strategies. Although we have seen increases in wealth and undoubted increases in our nation's health, inequalities have grown during that time. In particular, we have seen the gap in wealth increase between the haves and the have nots.

An example of how that gap in wealth manifests itself is the gap in health. Life expectancy has increased across the board, but the gap between life expectancy for those at the top and those at the bottom has widened. Take the example of two kids born today, perhaps just a few streets apart in one of our cities. The first child is born into a community that suffers high levels of intergenerational unemployment and deprivation. The other kid is born a few streets away in a

different postcode and data zone, in a community that does not have high levels of unemployment or deprivation. The kid from the latter community can realistically expect to live well into its 80s. It will have its three score year and 10, and then some extra, and its quality of life during that lifespan will be good. The kid that is born into the community with high levels of deprivation and intergenerational unemployment will be extremely lucky to see its 60th birthday—fact. It is not likely to see its 60th birthday and, with an additional bit of bad luck, it will die before it is 50. That is a gap in life expectancy of 25-plus years, which is unacceptable in a modern, developed western democracy. The commission is partly about how we address the outcomes for our communities and how we address such issues. I believe that, if we continue to try to fix such problems with a top-down approach, we will not improve the situation.

It is clear that local democracy in Scotland is weak in comparison with the rest of Europe. Why do we think that that is important? Because the places that we look to for examples—north European countries such as Germany and the Scandinavian countries—take a bottom-up approach to working with communities and have far better outcomes for their communities. Life expectancy in those places is in a much healthier position than life expectancy in Scotland. The commission is exploring whether a more local approach can transform inequalities and improve outcomes for our communities.

It is no secret that this is a crucial time for democracy. A huge debate is taking place about Scotland's future, but that debate must be about improving the lives of people in our community. That is the crux of the matter. The issue is not so much the constitutional outcome as what it does for our communities and whether it enables people to improve their quality of life.

We brought the commission together because we believe that there is space in the debate for all of us. A lot has been said about decentralisation to Scotland, but much less has been said about decentralisation within Scotland. I am a great fan of devolution—that will come as no surprise to anybody around the table—but the devolution should not stop in Edinburgh and most certainly should not stop at the council chambers; it should go right down to the heart of our communities.

The story from local people is not really about the workings of Holyrood or Westminster but about the local services that communities need. I want the commission to be about that and to give people a real say in what matters locally. It is about libraries, not legal advice. It is about schools, not submarines. It is about care, not currency. Those are the things that matter to people in their communities and in their families.

We need to recognise that Scotland will have new powers. Irrespective of the outcome of the referendum in September next year, Scotland will be a different place. We need to think about where the powers should rest. I believe that decisions should be made as close to communities as possible. Power is not designed to stop at Holyrood or in the council chambers. The commission is thinking about what empowering local services and local accountability could mean.

We want to build on the commitment to local democracy that all councils have already begun to make. Earlier this year, all 32 councils unanimously agreed to a vision, which we called local matters. It sounds grand, but it is essentially about the sort of local government that we want to have in five years' time and what we need to do to deliver it. Councils have put that approach at the heart of their work, but I wanted to test that thinking to find out what delivering on it would mean.

I will describe how the commission is working. The commission is independent; it is not COSLA or Scottish local government. There are no preordained conclusions for the commission. The media have suggested that I have a fixed view and I have been asked what will happen if the evidence proves otherwise. We will follow the evidence; we will not ignore it—to ignore it would be bizarre.

I emphasise that this is not a COSLA commission. It involves equal numbers of local government members and non-local government members, some of whom are here today. We are open to new ideas and our terms of reference are broad. We are supported by an independent secretariat.

We are absolutely not driven by party politics. Members of all political parties and none in local government are represented. However, we are all united in a belief in social justice, improving outcomes and reducing inequality. We all believe that local democracy in Scotland must be stronger, whatever the referendum's outcome.

We understand that there is a difference between local democracy and local government. Our focus is on stronger local democracy, not about grabbing powers for local government. We are open to change. I doubt that the way in which things are done now will always be right for post-referendum Scotland, and doing things more locally involves looking at community representation and participative democracy as well as a representative democracy. The commission is concerned with working through those issues.

For us, it is not good enough to say that democracy means someone coming out to vote every four or five years—that is not participative

democracy. Democracy has to be about much more than that. It must involve engaging with people in our communities so that they have a real say in what happens. That would go a long way towards improving the ownership of local democracy and local services, and would hopefully help to drive up participation.

This is Scotland's first commission on stronger local democracy. We want to put stronger democracy on the map. We are innovative, and ambitious and I believe that we are, indeed, breaking the mould. It is too early to speculate about conclusions, but we believe that the challenges and opportunities in Scotland need local solutions. One size does not fit all. In many cases, what applies in Glasgow will not apply in Orkney and what applies in Edinburgh will not apply in the Borders. We need local solutions.

We are very much aware that there will be a new situation in Scotland, and we want to push power down to the lowest possible level. We realise that better democracy is about Scotland's whole system of government; it is not just about local government.

We will work in an independent, non-partisan and evidence-based way. All our energies are going into setting up that process, and only once we have done that will we consider recommendations.

We hope that the committee will get behind our approach and will help to get the process started. We would be delighted to receive a submission of evidence from the committee by 20 December, all being well.

**The Convener:** I am struck by a number of things that you have said. Obviously, many members of the committee have served in local government, and are therefore aware of some of the things that go on in councils across the country.

Your phrase "schools not submarines" resonated with me—I was particularly thinking about Trident nuclear submarines. You have said previously that you want local government to have a place in the constitution. Could you say how the commission is going to approach that issue? Of course, you would first need to have a constitution. Could you give us some more information on the issue?

**Councillor O'Neill:** Local government, as it exists in the United Kingdom today, exists not as a matter of right but because another sphere of government has decided that it should exist. In England, it exists because the Westminster Parliament has set up a system of local government in that country—it is probably the devolved Administrations in Wales and Northern Ireland that have done it in those two areas. In

Scotland, local government exists because the Scottish Government and the Scottish Parliament have decided that we should have it. No one has said that they want to do away with local government or has talked about a wholesale reorganisation of local government, but we are not protected constitutionally. In other developed western democracies, particularly in northern Europe, local government is contained in their constitutions, and the fact that there shall be local government is in legislation.

09:45

Why do I feel concerned about that? Well, despite my youthful good looks, I have lived through a period when a Government decided to abolish Scottish local government. Many of you will recall when Strathclyde Regional Council had the temerity to campaign against the privatisation of Scotland's water industry and had the power and strength to prevent that from happening. However, what it did not have was the power and strength to prevent a vengeful Government from doing away with the council by abolishing the regional system in Scotland. I am not arguing that the two-tier district and regional system was right and I am not arguing that it was wrong, but central Government should not have the power to decide whether there should be local government; the people should have the power to decide that. If anyone is going to abolish or change the system of local government in Scotland, it should be done only with the consent of the people and not be done at a whim.

Your contention, convener, that the protection can come only from a written constitution in an independent Scotland is one—

**The Convener:** I did not say that.

**Councillor O'Neill:** Your contention that the protection can come only from a written constitution is one that I reject. The United Kingdom does have a constitution; it is not written but is contained in case law and custom and practice and exists by dint of the role that institutions within the United Kingdom play. I therefore do not think that we need a written constitution.

One of the requests that COSLA made to the Scottish Government was that the European Charter of Local Self-Government should be included in the proposed community empowerment and renewal bill, but the Scottish Government has rejected that at this stage. That is something that the committee could help us with. It would be useful if the bill was amended to include the charter, which would be a very large step in the right direction to ensure constitutional

protection for Scottish local government and local democracy.

**The Convener:** I am sure that we will come back to the constitutional aspect.

**John Wilson (Central Scotland) (SNP):** Good morning. Like Councillor O'Neill, I have lived through two changes to council structures. I remember the old burgh and county councils, which were changed in 1975, and the scrapping of the regional councils, which Councillor O'Neill mentioned, and the formation of the current local government structure. Councillor O'Neill is right that the changes were made by Westminster Governments and not by Scottish Parliaments or Governments. I would argue that they were made for particular political reasons. I think that Councillor O'Neill alluded to one of them, which was Strathclyde Regional Council's referendum on the water industry. However, there was also the wonderful campaign on benefits take-up that Strathclyde Regional Council and Lothian Regional Council were involved in in the late 1980s and early 1990s, which led to the demise of the regional councils as a structure.

To go to the heart of what Councillor O'Neill is saying about the commission on strengthening local democracy in Scotland, I note from the panel that you have pulled together that there is no one representing community councils or residents and tenants associations. Many community councils feel that they are a form of local democracy that goes beyond local government and they sometimes feel that local government is too large a structure and too far removed from the decision making at local community level. Why did you feel that it was unnecessary to invite representatives of community councils or residents and tenants associations to form part of your commission to examine the role of local democracy?

**The Convener:** I will try to get everybody in here, so I would be grateful for brief answers.

**Councillor O'Neill:** The commission has 20 members and half of them are not from local government. We have a very substantial representation from the third sector. Perhaps I could leave it to them to say a wee bit more, but—

**John Wilson:** Sorry, but the third sector does not represent community councils. I think that they would quite rightly reject that. Community councils are bodies that were created after 1975 when the burgh and county councils were scrapped. They were seen as a form of democracy that could interact with local authorities. They were given certain obligations and commitments at the time of their creation, but they feel that they are not being listened to or able to fully engage. Some—but not all—local authorities bypass or ignore community councils. My question is why community councils

or residents and tenants associations were not included in the commission. Irrespective of the commission's size, those democratic bodies, which try to engage actively with local authorities, seem to have been ignored in your commission.

**Councillor O'Neill:** What I was going on to say was not only that we have third sector representatives on the commission but that we have put out a call for evidence to organisations, including community councils and associations. I am a great fan of community associations—they do a power of work in their communities. It is open to anyone who wishes to make a submission to us. We would be happy to sit down with them and discuss their views.

**Councillor Rhondda Geekie (Commission on Strengthening Local Democracy in Scotland):** Every community council has a different view. It would be difficult for us to ensure that they are all represented properly on the commission, so a much better way is to ask them for evidence.

I sit in on community council meetings—I am sure that others do, too—and talk them through what we are doing. In asking for evidence, you would probably get one community council talking against the other. Some wards have more than one community council, so even in one ward it would be difficult to get a representation from those community councils. A much better way is to bring together all their evidence and make a statement on their views rather than to have them, as you suggest, sit on the commission.

I return to what David O'Neill said about areas of deprivation. East Dunbartonshire, which I represent, is always thought of as a leafy suburb, but areas of deprivation exist there too—a fact that is often ignored when deprivation is looked at at the national level, because it is never thought of in that way. We work together with the voluntary and private sectors and community councils in partnership to tackle deprivation through early intervention. Even within a couple of miles in one council area, there can be a 10-year difference in life expectancy. All that must be taken into account, but I take John Wilson's point about community councils. I used to be a community councillor, so I know how they feel. We will not ignore them—they will be brought into the debate—but it would be difficult for them to sit on the commission.

**Councillor Drew Hendry (Commission on Strengthening Local Democracy in Scotland):** It is a well-made point that we must engage better with community councils and tenants groups because they are an important part of the work that the commission should be looking at. I take the point that you always start from an imperfect place. To get absolutely everybody who could



represent local democracy in one room would be a challenge that is probably beyond us at this point.

However, for my part—I am sure that other members would insist on this too—I will take genuine care to ensure that the concerns and, more important, the participation of both community councils and tenants groups are made a critical part of the work given that the general sense and feeling in Scotland about empowering people to take more of their own decisions is about creating more community planning partnerships and doing more with the community across a wider base. Therefore, it is imperative that we be inclusive. If we, at the end of the commission, have failed to be inclusive with community councils and tenants groups, the work will not be worth the paper that our report is written on. We must take that into account and we must do that work.

**Louise MacDonald (Commission on Strengthening Local Democracy in Scotland):** I agree. My day job outwith the commission is chief executive of Young Scot, the national youth information charity for young people aged 11 to 26. Young Scot is a membership organisation for young people and we have more than 520,000 members.

On receiving the invitation to join the commission, I was very keen to ensure that we would not be shutting out anybody from the debate, so John Wilson's point about ensuring that we listen to community councils and tenants associations, as well as a range of other groups, is well made. That is one of the priorities, and I am reassured by the fact that everyone on the commission has a commitment to ensure that it happens. We are at the start of the process, but I have been left in no doubt that there is a willingness to go beyond and to try as hard as we can to reach out, to hear from communities across Scotland and to listen to different voices in the conversation. We are at an early stage and we have mechanisms in place that will allow that engagement to happen, but we are open to other mechanisms, so if we can listen to and engage with people in other ways, we want to hear about them.

**Geoff Mawdsley (Commission on Strengthening Local Democracy in Scotland):** I am director of the think tank Reform Scotland, which has advocated a stronger role for community councils. We did a survey of community councils for a paper that we published last year called "Renewing Local Government". There is a greater role for local government, and one area that I hope that the commission will look at is how we push power down closer to communities. That does not just mean community councils—there are other ways of doing it and of

involving local people—but I would certainly be disappointed if we do not engage seriously with community councils and other representatives of communities, and I will certainly push for that on the commission. You can be assured that we will take a lot of evidence from those groups, because they are absolutely a key part of the process.

**John Wilson:** Given the timing issues, I am happy to leave further questions to a later date, convener.

**The Convener:** In that case, Richard Baker is next.

**Richard Baker (North East Scotland) (Lab):** The terms of reference for the commission state that one objective is to

"Investigate a local approach to service and accountability".

Councillor O'Neill mentioned concerns about a top-down approach. In the Parliament, we have debated for some time the tension between trying to achieve efficiencies through the national delivery of services and ensuring local accountability. The most recent example of that relates to police and fire services.

Do you have any initial thoughts on what needs to be done to achieve greater accountability in delivering local services and what needs to change in the current approach? Councillor O'Neill mentioned concerns about a top-down approach, but what particular areas for improvement inform the concern that the commission seems to have?

**Councillor O'Neill:** I have two points on that. The words "efficiency" and "effectiveness" are not necessarily the same and nor are they necessarily mutually exclusive. For example, down south, the criticism has been made that a 15-minute visit is not enough for a care worker to see that an elderly person is okay and has taken their medication and food. Those visits are certainly efficient, in as much as the job of work can be done in 15 minutes and three or four people can be seen in an hour in that way. However, we have to ask ourselves whether the approach is effective in doing what we want to do, which is to give the elderly person human contact and to give them the confidence to live in their own home and to know that they will be okay, thereby reducing the number of unplanned admissions to hospital, which is a big problem among elderly people. So far, we have not necessarily been very good at getting the balance right between efficiency and effectiveness, and we need to get better at it. That applies across the public sector, rather than just being peculiar to one area of it.

Quite often, we hear the term "postcode lottery" in relation to services. However, local government and local agencies do not necessarily deliver services in exactly the same way across

Scotland—it would be ridiculous to think that they should do so—and nor do individual local authorities necessarily deliver services across their areas in exactly the same way. Councils tailor the services to suit the needs of the community.

I will give two examples from my council. Seven or eight years ago, North Ayrshire Council built a brand-new secondary school on the island of Arran. Arran has a population of 5,000, while the mainland of North Ayrshire has a population of 130,000, but Arran is half the landmass of North Ayrshire. We would not dream of building a secondary school for 300 pupils on the mainland, but it was appropriate to do so on the island of Arran, so we did it.

North Ayrshire does not configure its care services for the elderly at home on the island of Arran in the same way as we configure them on the mainland—it would be bizarre to do that. We tailor them to suit the needs of the communities and the people whom we serve. That is not a postcode lottery; it is local decision making, local priority setting and tailoring the services to what is needed.

10:00

**The Convener:** You are telling us what happens at the moment in terms of local councils making the appropriate local decisions for certain areas, but Mr Baker was trying to get to the concerns about having a top-down approach rather than hear about the flexibilities that you have within the current system.

At the beginning, you talked about life expectancy in certain areas. One of the main reasons for a shortened life is poverty, yet the tax and benefits system is controlled by Westminster. We have no say in it here and local government has no say in it either. How should we deal with that situation? I think that that is the thrust of Mr Baker's question.

**Councillor O'Neill:** That is a relevant point. We have made similar points to the UK Government in our discussions on welfare reform. There needs to be more local flexibility.

I will give you another example from North Ayrshire. The Department for Work and Pensions spends almost as much on North Ayrshire as North Ayrshire Council spends. If North Ayrshire Council were able to influence even a few percentage points of that spend and allocate it to local priorities—for example, youth unemployment is a terrible problem in North Ayrshire—we could make a tremendous difference and there would be less need for the DWP to pay out in benefits.

In England, under the city deal, cities have been allowed to have a treasury function so that the

entirety of public expenditure in a city is controlled from one centre within that city. If the city is able to reduce the spend that the DWP needs to make—for example, by getting people back into work—a percentage of the money remains in the city instead of it all going straight back to the UK Treasury. There is then almost a self-fulfilling prophecy as the city is able to do more and more within its area.

The city deal, which has been rolled out for the large cities in England and is currently being rolled out for some of the smaller cities, would be of great interest in Scotland. It would require a tripartite discussion between local government, the Scottish Government and the UK Government, but I think that it would be worth having.

**The Convener:** Does anyone else want to comment on that point? We are pretty short of time.

**Councillor Hendry:** As was pointed out earlier, there are different views on the commission about the constitutional issue and the effect of tackling the top-down approach. I would like all the money, rather than a few percentage points, to be controlled in Scotland, but that is a point of difference between me and other members of the commission. I think that we should have control over welfare here.

The key point is how we challenge the top-down system that we have at the moment. There is an opportunity for us to consider not only how we might gain additional powers, but how we might re-examine the powers that we have. There is a real deficit within local government, in communities and across the piece in that we probably do not understand what powers we can use just now. If we look at how we could enhance that position with future opportunities to have greater responsibility within Scotland, we see that there is a massive opportunity for change to ensure that communities can build up.

Some good work is going on on the ground, through communities, to tackle the inequalities that exist. I can give you examples of where we are working with communities to do that. In my local authority, Highland Council, we have collaborated on community planning partnerships. Good work is going on, but there is an awful lot for us to look at. I hope that we get a thorough examination of how we can challenge the existing models.

**Geoff Mawdsley:** There is an important link between taxation, representation and expenditure, as has been said. Obviously, we have done a lot of work on how fiscal powers could be devolved from Westminster to Holyrood, but it cannot stop there. The same arguments that apply to that must apply to the relationship between Holyrood and

local government. We should be looking at pushing the powers further down.

I accept the point that it does not require independence, but it certainly requires a major transfer of fiscal power to enable us to give local government the ability to raise at least the majority of its own revenue. That would be a huge boost to the autonomy of local government, and I am certainly keen to explore as part of the commission how we might do that and test that proposition.

**Sarah Boyack (Lothian) (Lab):** My question, which is about funding, follows on neatly from that. Currently, local government controls just less than 20 per cent of its income. My question is about the variety of funding opportunities.

There are new schemes, such as tax increment financing schemes and the business rates incentivisation scheme, but fundamentally both the council tax and business rates are not under your control. To what extent is that on your agenda? If you are taking a more localised view of expenditure, what about income generation?

The Scottish Parliament is already going through quite significant changes as a result of the Calman commission, and it will have more control over its resources in the future. How are you constructing a parallel discussion at the local level?

You started off correctly by talking about social justice, outcomes and services. That is a parallel discussion that relates to solidarity and how to spread income across the country. That is a huge issue, but it would be really useful to get a sense of the principles that you are looking at in local government funding.

Once you have established the principles for local government funding, or in parallel with doing that, will you consider the community level? We have talked a little bit about community councils but, if you are looking at a more locally driven agenda that is not, as David O'Neill said, just about local councils, what are the funding issues?

**Councillor Geekie:** I want to go back to what was said about welfare reform and what has happened there. You are absolutely right—

**The Convener:** Will you be brief, please, as a number of other folk want to come in and we have only a few minutes left?

**Councillor Geekie:** I was going to make a comparison. Sarah Boyack is absolutely right: we currently have no control over our council tax and the amount that we set that at. We have to manage all the issues related to welfare reform and we have less funding to do that with, but the expectation is higher because of all the issues. We have to manage that situation.

If we have to look after all our citizens and be responsible for them, we should have some sort of tax-raising power. We should not have that taken away from us. I am sure that, in every council area, people have a huge expectation of what we should be able to deliver, and that is getting higher and more difficult for us to deal with because of the reforms that are happening. We therefore have that expectation but very little control locally, and what control we have is being eroded year on year by the different things that are coming in. That is a big concern for us, and we would like it to be resolved.

**The Convener:** Ms MacDonald, do you have a view on that?

**Louise MacDonald:** I am thinking about the question. Some of the questioning is on how technical a lot of the debate is and how quickly the debate can become quite technical. I am thinking about how we can have such a conversation at a local level. When the commission goes out and has evidence hearings, how can we have such a conversation and discuss the issues, and get an understanding of what that process means, looks like and feels like?

I am not a councillor and I do not work in local government—that is not part of my background. My position on the commission involves thinking about how we can have that conversation in a youth centre—for example, along the road in the 6VT youth cafe on Victoria Terrace. How can we have that conversation there? What would it look like? Sarah Boyack's question and the questioning this morning are making me think about how the commission might explore those issues.

**The Convener:** I will let Ms Boyack back in briefly.

**Sarah Boyack:** That is why I asked about the principles that will underpin local government finance. Rather than getting into the technicalities of different types of funding, I am interested in what those principles are, in the same way that you set out that issue clearly for the commission. It would be useful for us to find out what principles you think should drive the funding of local government finance and community finance, and how you might get that discussion going.

I was keen to tease that out. Issues such as stability, certainty—

**The Convener:** I said “briefly”, because three other folk have questions and we have only a short time.

Would you like to comment on stability and all the rest of it, Mr Stewart?

**Adam Stewart (Commission on Strengthening Local Democracy in Scotland):** Only to confirm that the issue of resources and

raising local revenue is one of the elements of the terms of reference for the commission. We will be looking at that quite closely. As Louise MacDonald mentioned, we have already begun that process by gathering public opinion on the visibility of how money is spent locally and whether that needs to be improved.

The issue is definitely on the agenda. At this stage, it is too early to draw conclusions, but we will be looking at it.

**The Convener:** Grand. Stuart McMillan is next.

**Stuart McMillan (West Scotland) (SNP):** Who decided on the membership of the commission? How was it set up?

**Councillor O'Neill:** As I said, the commission comprises 20 members. We had to get a balance by having a wide range of members. I think that we have been reasonably successful in doing that. We have 20 members, who are there to challenge; no one is there to sit meekly by.

We could have made the commission bigger, but we wanted to get the right balance and size and we settled on 20 members. I think that we have a fairly good range of members.

**Stuart McMillan:** It struck me that the commission's 20 members are made up of 16 men and four women, and that none is from an ethnic background. In what way is that a balanced membership?

**Councillor O'Neill:** Sadly, I think that that reflects the reality of Scottish public life, particularly when it comes to local government elected representatives. We saw the introduction of the single transferable vote, which—

**Stuart McMillan:** Can I stop you there? I accept your point about local government, but 10 of the members are not from councils.

**Councillor O'Neill:** I am coming to that.

It was claimed that the single transferable vote would increase diversity, but it did not—more than ever, Scottish local government is dominated by white middle-aged men such as me.

If we had tried harder, could we have got more women on the commission from sectors outwith local government? I am sure that we could have done, but we were limited to what we thought was a workable number. I do not think that we have a perfect mix of members, but I am confident that every one of the 20 members is on the commission because of their skill set. They are not there to sit and keep quiet; they are there to challenge.

**Cameron Buchanan (Lothian) (Con):** Your submission is very bullish, but I am concerned about the timescale. How will you do all the work

that you have set out, which includes the setting out of local approaches and the identification of long-term characteristics, in three months? That seems extremely tight. If you are to consult everyone, how will you be able to do that in such a short time?

**The Convener:** Mr Mawdsley, would you like to have a crack at that?

**Geoff Mawdsley:** Adam Stewart will be able to comment on the process, but although we have a heavy work programme, everyone on the commission is committed to it. We have lined up stakeholder sessions to discuss matters with the key players and to ensure that we take evidence from all the relevant bodies.

It is a two-stage process. The initial report will come out in that three-month period, but there will be a later report, too. We are all confident that we can meet the timescale, but we accept that it will take quite a lot of time to take the necessary evidence.

**Cameron Buchanan:** What will happen if you overrun?

**Adam Stewart:** I confirm that we are doing our work in two stages. We have already begun a great deal of work on the initial part. The first stage involves asking people what they think about local democracy at the moment and what it could look like in the future. We have a range of mechanisms to collect that information, which include opinion surveys, focus groups, stakeholder sessions and listening events with a range of different demographics.

By March, we hope to be able to say what people told us in response to the questions that we asked, which should give us some principles that we can work on. In the light of what people tell us, we will be able to think about what the future looks like from the point of view of recommendations for change. It will be the summer before we have the report on what the landscape will look like in the future.

The timescale is very tight, but there is a power of work going on at present. In January and February commission members will meet almost twice a week to take evidence to allow all that to happen by March in the first instance.

10:15

**Mark McDonald (Aberdeen Donside) (SNP):** I have two questions; the first follows on from what Stuart McMillan said. I spoke to some of my community groups about the commission's appearance before the committee today, and I showed them details of the membership. One of the points that they raised was, "Why are there so

few women?", and another was, "Why are there so many politicians?"

Did you consider the possibility of having a commission without political input that could report back to COSLA? That might avoid the potential for the recommendations to be challenged as having a political motivation.

**Councillor O'Neill:** I started by saying that the commission is on local democracy and not on local government, but local government obviously plays a substantial and significant role. One cannot ignore the fact that local government is there; it would be a bit bizarre not to have local government involved.

**The Convener:** Councillor Geekie, you are one of only four women on the commission. What is your view?

**Councillor Geekie:** I made the point about female representation early days—

**Councillor O'Neill:** Often.

**Councillor Geekie:** Often and loudly. As one of only two women leaders in Scotland, I make that point often.

I am sorry—I have missed the point of your question, Mr McDonald. I beg your pardon.

**Mark McDonald:** With there being 10 councillors on the commission, is there a risk that the recommendations could be seen by some as having a political motivation rather than being about the delivery of local democracy?

**Councillor Geekie:** As David O'Neill has said, it would have been very strange if local councillors had not been represented. We wanted to ensure that all parties were represented, but—as some of the other commissioners have said—the people who know best what happens in local government are obviously the leaders of councils and political groups. If we had not been part of the commission, we would have been criticised for that. People might have said, "You don't want to spend the time and do the work to be part of it."

It is difficult—we take your point, but it would have been a very strange situation if we had not been part of it.

**Councillor Hendry:** I am on record at COSLA as saying right at the beginning that we had the balance wrong in terms of gender and ethnic mix. That was a clear concern for me when we started out.

As I mentioned earlier, the commission is imperfect because of the representation that we do not have. However, the key point, which has already been made, is that the commission is a starting point. Local government is pulling the work together and driving it forward. It is the first stage

on our journey together, and it is appropriate that we take that step. That probably explains the natural imbalance that exists whereby the commission has a large degree of council representation while other areas are not so well represented at this point.

There is an opportunity in the next few months to take into account those issues and problems as part of our workload. Our work should not exclusively be about how we come to our opinions; it should also be about how we take on board other views as part of the journey.

As I have said previously, if we do not get it right, we cannot get it right at the end of whatever timescale we have; it will not be worth it. We need to make sure that the issue is thoroughly examined.

**The Convener:** Ms MacDonald, do you want to comment as one of the independent members?

**Louise MacDonald:** Yes, I have a couple of points. I understand the issue, but I hope that I am not on the commission just because I am a woman. That is my first comment.

On all such matters, there are always interesting discussions to be had. On the groups that we are all on, do I represent every 40-something woman in Scotland? No, I do not. I think that we are there because we have diverse experience—

**The Convener:** Are you there representing young people in your capacity?

**Louise MacDonald:** I would have a route for engaging young people. Part of our work is to create that opportunity and the space for that conversation to happen with different groups, as is the diversity of the grouping. We have Pam Duncan and others on the commission who can reach out to different groups.

The other point is: rather than us going off into separate rooms and having separate conversations—councillors in one room and local government officials in another—are we not always asked and encouraged to have those conversations and to do that work together? It is a sign of healthy democracy that we are able to challenge, and that has already been clear from the meetings that we have had. We also need to bring in that diverse grouping. I agree that the situation could be better, but we can build on the diversity that is required.

**Geoff Mawdsley:** You are never going to get a perfect grouping of 20 people, but, as we have discussed, the evidence sessions can bring in other groups that need to be consulted.

From our point of view, the attraction of getting involved is that there is an opportunity to discuss issues that we have done a lot of work on and

which we think are important, but which do not get the same level of publicity as other issues do. It also gives us a chance to test some ideas and put them out for greater scrutiny from the sort of people you are talking about, in the wider community.

On the question about politics, the commission's work is not necessarily that political. If you are talking about local democracy, you can agree on where the powers should lie without necessarily agreeing on how those powers should be used. That is the whole essence of local democracy, and that is why the commission is important. It is about local democracy and enabling people to shape their own lives and their communities' lives. That is what is important to us as an organisation—we have done a lot of work on it—and that is what we want to discuss and debate in the course of the commission.

**Mark McDonald:** I will come back to the idea of healthy local democracy. Right now, if they want to, people can log on to the internet and watch this committee proceeding. Later, they will be able to read everything that has been said at this committee meeting. When I was a local councillor, if one of my constituents wanted to look up a decision at a council meeting, they could see the motion that was tabled, the amendment to that motion and the vote that was taken, but they could not see a single word that was said or watch the proceedings unless they attended the meeting at the town house. Is the commission looking at how we strengthen accountability and transparency of decision making in local government?

**Councillor O'Neill:** I used the phrase "participative democracy", and part of that participation is being able to scrutinise representative democracy. I spent 13 years as the leader of North Ayrshire Council and seldom did we take any items in private—we would do that only if we were talking about an individual—but I am also conscious of the fact that seldom did members of the public come along. That happened only when some sort of controversial decision was being taken, so I take your point.

**The Convener:** Will the commission itself be looking at that aspect of televising, webcasting and recording much better what goes on—not just the decisions, but also what happens in council chambers across the country?

**Adam Stewart:** I can confirm that that point has been raised by commission members, and we are keen to ensure that the commission leads by example with those processes. We have mentioned a few elements of data collection or evidence panel sessions. We are working with a number of people at the moment to try to do some webcasting, podcasting and interaction through social media and a whole host of other areas,

trying to make that work as successful as possible. Our papers are public and are available on the website as a starting point.

**Mark McDonald:** If we are going to have the serious discussion that we are likely to have about additional power devolving down to local government, people need to have some assurance that they will be able to effectively scrutinise the way in which local government is operating. I know that some councils do webcasting, but verbatim reports of council meetings, which are not currently produced, might be one thing that should be considered.

**Councillor Hendry:** It is vital that we are transparent in all aspects of the process, because we are talking about local communities being able to participate in what we are doing. The only way to get that kind of reach is to let people see and hear what we are doing.

**John Wilson:** On the issue of power and who makes decisions, some of the answers that we have heard today almost predetermine the outcome of the commission, which will be that local government makes decisions about how it raises and spends its money.

If the commission is truly about local democracy, how do we ensure that we get the power to the communities to make the decisions? We already have that in some community planning partnerships, and the area management committees throughout Scotland have been established by local authorities to allow local area and community organisations to make decisions along with elected members at local budget-setting levels.

How do we get to a stage where power has genuinely been devolved not just to local government but to local communities so that they can decide how local authority funding is spent in their areas?

**The Convener:** I think that we have got the gist, Mr Wilson.

**Councillor Geekie:** We do a huge consultation on that point at budget time. Given the pressures that we are all under, we ask people how they want us to determine our funding for the following year. We are involved in that all the time, working with local people. The other thing is that a lot of our funding goes out to the very organisations that you talked about, as we provide part of the funding of organisations in the community that deliver for local people. Meaningful involvement is important.

**Councillor O'Neill:** It is certainly about much more than devolution to local government; it has to be about devolution to communities.

I will give an example. The man or woman who runs the local boys or girls football team is doing

much more than just running a football team. They are engaging the kids in diversionary activities, lifestyle choices and health activities. I do not know anything about running football teams, so why am I sitting in the council chambers taking decisions about that? It is the people who are involved—the people at the grassface, if you like—who should be doing that. We need to be careful not to place on people a burden that they do not have the skill set to manage, but we should absolutely have them involved.

**The Convener:** I am sure that we will deal with a lot of those issues during our discussions on the community empowerment and renewal bill. Power devolved is power retained, some folk have said, and there was lots of talk of devolution there.

**Councillor Hendry:** On how we can ensure that the process works and how we can get that engagement, one of the challenges for us throughout the process, both in the commission and day to day, is to act as a proper enabler—not just as an organisation that says, “We’ll help you to do this”, but as an organisation that gives people the ability and opens up opportunities for them to participate properly.

I agree with what has been said about consultation and so forth, but we have to start to look at what communities want to do, in terms of building a local plan from their community council ward level up to other levels, and what their priorities are. We need to start to work in that way. It is a matter of being open minded and ensuring that we have used all our existing thinking and our existing powers. It is about looking at what we need to enhance that work and making sure that we have properly opened all the doors and provided support and training—becoming a proper enabler, as I said.

**Stuart McMillan:** Point 5 of your remit mentions the current landscape of democracy in Scotland. Are you going to look at the CPPs, arm’s-length external organisations, community health and care partnerships and other such bodies as well?

**The Convener:** Mr Stewart is the secretary of the commission.

**Adam Stewart:** We are looking across the whole system of government. I think that it was made clear in Councillor O’Neill’s opening statement that we realise that local government is only one element. The whole system of government is really about pushing power down to local levels.

We have not had specific discussions on partnership arrangements, whether they are ALEOs or CPPs, but as part of the evidence-gathering process we will look at a number of themes early in the new year, one of which is partnership and integration. We are inviting in a

host of people to scrutinise that issue in more detail. It is clearly a little early to say anything about the conclusions, but it is certainly part of the work programme.

**The Convener:** Mr Mawdsley, do you have a view?

**Geoff Mawdsley:** We have done a lot of work on democratic accountability and how we can look at quangos more generally. That is certainly something that we should explore as part of the commission. There is a question mark over how democratic they are, and if we are looking at local democracy we have to look at the accountability of organisations. I would certainly push for us to look at that.

**The Convener:** In your opening statement, Councillor O’Neill, you mentioned local government in Germany and Scandinavia. Will the commission take evidence from local government and local bodies in places such as those?

**Councillor O’Neill:** We hope to be able to do that. One of our commission members is a past secretary-general of the Council of European Municipalities and the Regions, so there is experience on the commission. We certainly want to be able to look at what other places are doing.

10:30

**The Convener:** Does anybody else have a view on whether you should talk to folk elsewhere to find out their experiences in their constitutional positions?

**Councillor Hendry:** Absolutely. It is vital for us to take a look out of Scotland into other countries where these things are working and have been proven to work. It is common sense for us to do that, and for my part I would certainly be looking for us to do it.

**Geoff Mawdsley:** Definitely. There is a huge amount to learn from other countries about community participation. Many countries have much lower tiers of local government that are much closer to their communities and have significant powers. We can learn a lot about how we can make the system more flexible and more responsive to local communities from countries such as Norway, where local authorities at a very local level have quite significant financial powers as well as powers over other issues.

**Adam Stewart:** I confirm that point. We are pleased that the commission is making its presence felt in Europe and particularly in Brussels. We understand that a number of submissions are coming in from some of our sister organisations across Europe as part of our first evidence-gathering process. We have also commissioned some desk-based research on the

charter of local self-government and how the UK and Scotland compare against it. Some steps are in motion that may lead to further discussions, probably early in the new year.

**The Convener:** Thank you very much for your evidence this morning. I realise that we had quite a short time to fit everything in, and we may get back to you on certain points. I wish you success with your meetings later today.

**Councillor O'Neill:** Convener, it would be really useful if the committee made a submission to the commission.

**The Convener:** We are not in the business of making a submission, but without a doubt we will keep a close eye on what you are doing and consider a number of the points that you made today.

**John Wilson:** On that point, convener, it may be useful for the committee to take further evidence from the commission at a later date once it has gathered some information. At that time, we will be able to have a further discussion on the commission's progress.

**The Convener:** Yes. We will certainly discuss that later.

10:32

*Meeting suspended.*

10:54

*On resuming—*

## **Commissioner for Ethical Standards in Public Life in Scotland (Annual Report)**

**The Convener:** Agenda item 3 is an oral evidence session on the Commissioner for Ethical Standards in Public Life in Scotland's annual report. I welcome Stuart Allan, public standards commissioner for Scotland, and Helen Hayne, investigations manager for the Commissioner for Ethical Standards in Public Life in Scotland.

**Stuart Allan (Commissioner for Ethical Standards in Public Life in Scotland):** I thank the committee for inviting us this morning. I have circulated a brief statement, so my opening remarks will be very short.

The annual report for 2012-13 covers the business of the Commission for Ethical Standards in Public Life in Scotland, including the public standards commissioner and public appointments commissioner. As a result of public services reform, the commission and the commissioners' functions were merged into the new office of Commissioner for Ethical Standards in Public Life in Scotland as of 1 July 2013. It is in the latter capacity that I am statutorily responsible for writing the report on the work of the former commission and commissioners.

During the year, the two distinct offices of public standards and public appointments worked together particularly effectively. The natural synergy of their work has meant that it has been a short step to continue the work of both offices in the responsibilities of a single commissioner. The single office has not only worked well in practice, but facilitated significant savings.

During the year in question, 192 public standards complaints were received. The outcomes of the investigations, including the comparatively limited number of breaches of the code and the minimal number of cases relating to members of public bodies, have meant that councillors and public body members have generally applied high standards of conduct in undertaking their official responsibilities.

The circulated note gives details of some of the key statistics. I do not propose to go through that, but I will mention the completion timescales that we endeavour to achieve. We have targets to complete 50 per cent of investigations within three months, 75 per cent within six months and 95 per cent within nine months. The actual figures for investigations completed were 87, 97 and 99 per



cent respectively. Comparative years are also indicated in the circulated table.

I will touch briefly on matters that are still current for the commissioner's office. Local authorities must continue proactively to promote as a significant priority high ethical standards as part of their arrangements for corporate governance. Some areas require continuing attention: registration of interests, declaration of interests, planning issues and conduct towards fellow councillors.

Authorities in the main are very receptive to our approach during investigations of councillors and are open to discussion and guidance on the code. The framework has been shown to work efficiently and cost effectively in improving member behaviour.

Outreach is particularly important in preventing inappropriate conduct and raising standards generally and that will continue to be a major priority. I also propose to continue to work closely with Audit Scotland, in line with our protocol to fulfil our respective statutory responsibilities as effectively and efficiently as possible.

11:00

The model code of conduct was before the committee last week and has now been approved. I am grateful to the cabinet secretary for taking on board a number of the comments that I submitted to the consultation. For my part, I consider that the new model code is robust, proportionate and fit for purpose. The ethical standards framework, which we should remember was a priority in the new Parliament's first legislative programme, has impacted on standards in public life and the regulatory regime must continue to be applied fairly, effectively and proportionately to ensure that it remains a facilitator of, rather than an obstacle to, high standards.

As this is my last annual report before I demit office, I want to thank the committee for the unfailing courtesy that it has extended to me whenever I have attended. It is very much appreciated. I also put on record my appreciation of all my fantastic staff who have shown such commitment over the years. I am indebted to them.

**The Convener:** Thank you for those comments, Mr Allan. I understand that this morning Bill Thomson, the Parliament's assistant clerk/chief executive, has been nominated as your successor. Of course, that nomination will have to be ratified by Parliament at some point. Given your retiral and the fact that a successor is coming into place, what advice would you give your successor in taking on this role? What can be done to improve the work that you and your office carry out?

**Stuart Allan:** First, I put on record my delight at Bill Thomson's nomination. He will be an excellent commissioner and I wish him all the best in the post.

As for advice, I think that Mr Thomson will be his own man. However, there are some lessons that can be learned. First, you have to look a little bit at the context. As I said in my opening remarks, the Ethical Standards in Public Life etc (Scotland) Act 2000 was one of the new Parliament's very first pieces of legislation. The fact that the Parliament itself put a stamp on high standards as a pre-eminent factor and ethos for those in public life was very important, because that ethos has cascaded to the tier of government below the Parliament that includes local authorities and public bodies.

The 2000 act has provided a measured, tempered and strong ethical foundation. I have had the benefit of helping to shape the development of the ethical standards landscape and, when carrying out my responsibilities, I have tried to be proportionate, to be educative where I can and to apply sheer common sense, which is a commodity that on many occasions is sadly lacking these days. I commend that continuing approach to my successor. It is important for all those in public office to embrace ethical standards because at the end of the day we want the public to continue to have trust and confidence in their elected members.

As I have said, regulators must be proportionate, avoid unnecessary regulation and focus on improvement. I think that you have to be very willing to outreach into the local government community and the public bodies community, discuss with them the principles in public life that the Parliament wants to be applied in practice and assist them in ensuring that their members meet them in the best possible way.

I am pretty content that such sentiments will be shared—to some extent, anyway—by my successor.

**Mark McDonald:** Before you arrived, we had an evidence session with the COSLA commission on strengthening local democracy. When I asked its representatives whether the commission would examine issues of transparency and accountability, I made the point that the Parliament's proceedings are recorded not only in the *Official Report* but on television and webcasts. That does not happen in many council chambers. Would it strengthen the commissioner's role in investigating breaches of the code of conduct if, instead of having to rely on he-said, she-said evidence, he or she had a verbatim report or televised or webcast proceedings?

**Stuart Allan:** With regard to complaints about misconduct in the council chamber, a recording of those events would certainly be beneficial. Indeed, there have been a number of cases in which the recording has materially helped us to reach a conclusion on the matter.

However, a wider issue is whether local government in the wider sense is best served by the full glare of the publicity occasioned by having television cameras in the council chamber. Would it limit debate? Would debate be less robust? Would people play to the gallery? Of course, the same considerations apply to the Parliament and have not detracted from its work. The one major difference is that local authorities are always making decisions about individuals' planning applications, housing applications, social work cases, road schemes and other issues that have an immediate impact on their electorate. Although I can see the benefit in promoting openness and transparency, there has to be a wider debate before any such measure is applied, certainly on a mandatory basis, to local authorities.

**Mark McDonald:** I have a couple of follow-up questions. First, given your obvious interface not only with local government but with other aspects of local democracy, have you or your office been invited to make a submission to the commission on strengthening local democracy?

**Stuart Allan:** No.

**Mark McDonald:** Would you welcome the opportunity to make a submission?

**Stuart Allan:** I would be happy to provide information to the commission that was appropriate for the task. If the Parliament were to invite me to make a submission, I would do so unhesitatingly.

**The Convener:** That is not up to us. It is the responsibility of the commission, which I hope will invite you to make a submission for its deliberations.

**Stuart Allan:** That is appreciated.

**Mark McDonald:** My final question is about the issue of conduct at meetings. As a former local councillor, I really should know the answer to this question, but I will ask it anyway. Do you have to wait for a complaint to be made for activity to be triggered, or are you able to be proactive on the basis of something that has occurred? I am thinking in particular of a recent, fairly critical Audit Scotland report on the conduct of meetings of Aberdeen City Council and the impact of that conduct on the decision-making process. Would such a report cross your radar, or do you require a complaint to be instigated before you can take an interest in that sort of thing?

**Stuart Allan:** I would draw a distinction between conduct that relates to a specific complaint and broader issues about conduct. In respect of a specific complaint, that has to be sent to me, in law, by a complainer. I have no power to go out and investigate anything off my own bat. Such powers exist in other jurisdictions, but not in Scotland. That applies with regard to councillors, members of public bodies and MSPs.

In my opening remarks, I explained that I am very keen on working with, for example, Audit Scotland. Without going into the example from Aberdeenshire—

**Mark McDonald:** It was Aberdeen City Council. I do not want Aberdeenshire Council to look at the *Official Report* and wonder what was being said about it.

**Stuart Allan:** Very much so; thank you for the correction.

As part of its audit process, Audit Scotland will submit a report, and there will be occasions when it sees issues of corporate governance that are affected by the conduct of elected members. We try to work closely with Audit Scotland—there is a statutory obligation on us to work together. Audit Scotland has made a number of criticisms of Argyll and Bute Council, corporately, regarding the conduct of elected members. The council and Audit Scotland have asked us to assist in that situation, and we will do what we can to try to encourage the raising of standards in that authority.

I pay tribute to the council for coming to us to ask whether we can help. As I said, we knew about the situation because we were consulted by Audit Scotland as well. However, that is a good example of people working together to create a better environment and to promote higher standards generally.

**The Convener:** Ms Hayne, please indicate if you want to contribute at any point. I am conscious that I am turning to Mr Allan all the time.

Mr Allan, was your organisation conscious that there were problems in relation to Aberdeen City Council and Argyll and Bute Council before they were highlighted by Audit Scotland?

**Stuart Allan:** Generally speaking, I would say that we were alert to there being an issue in those cases. That is usually reflected in the complaints that are received. Individually, they may not amount to breaches of the code—they are perhaps not severe enough for that—but the number of complaints received will, on occasion, indicate that there is a wider issue, which we will often discuss with the chief officers of the local authority, such as, often, the chief executive and the monitoring officer.

**The Convener:** Do you have a role in alerting other organisations about any difficulties?

**Stuart Allan:** I think that the overview that is taken of the work of the office is set out in the annual report. I state there whether there are issues that have to be addressed by the wider local government community.

In the current annual report, I stress again the importance that I attach to the responsibility of local authorities to promote high standards and provide more detailed advice to elected members on matters such as registration and declarations of interest, planning and so on. I therefore try to alert local authorities to such current issues.

11:15

**John Wilson:** I want to follow up on what you said about Argyll and Bute Council and identification of issues. You used the term “council”. Can you clarify whether council officials made the approach or was it made by elected members and council officials collectively?

**Stuart Allan:** I am satisfied that the council corporately wishes to make an approach to improve its performance. As I understand it, the council as a whole has committed to doing what it can to improve performance. I am quite satisfied that that is the correct approach to the matter.

**John Wilson:** I asked the question because when I was an elected member of a local council a number of years ago, I had occasion to report a council official to their line manager and the executive director of the department. It was identified at the time that as an elected member I was subject to a code of ethical standards but there was no such code for council officials in respect of how they carry out their duties, other than the council’s internal disciplinary structure.

I asked whether it was senior council officials who were involved in the Argyll and Bute Council issue, but you said that it was the corporate entity. I am trying to get down to what the corporate entity of Argyll and Bute is. I understand that everybody within the council—elected members and officials—would want to try to resolve the issue. However, my question is about whether the initial approach was made by the chief executive and the council officers.

**Stuart Allan:** In the normal course of events, I think that all contact is made by officers on behalf of the authority.

Mr Wilson has already commented on this, but I emphasise that we must give some credit to Argyll and Bute Council for collectively being willing to address the problems that have been identified, in particular by Audit Scotland.

**John Wilson:** You referred to the model code of conduct for members of devolved public bodies. The committee discussed that last week, and we had the Cabinet Secretary for Finance, Employment and Sustainable Growth giving evidence on legislation and on guidance. I suggested at the meeting to the cabinet secretary that we should extend the code of conduct to ALEOs and other bodies that local authorities have established to provide local government services. Do you agree that the code of conduct should be extended to ALEOs and other such bodies?

**Stuart Allan:** That is a very important question; it is a matter that deserves proper public scrutiny. I would not like at this stage to say simply that, yes, the code should be extended in that way. However, I think that there is an issue. I would not like to make a—

**The Convener:** Can I interrupt? I think that there is an important point to be made here. Obviously, councillors on ALEOs are still covered by their code of conduct.

**Stuart Allan:** Yes.

**The Convener:** However, others on the ALEOs are not covered by the code. During the course of any investigation in which there has been difficulty in dealing with a councillor who might have broken the code and in which you have known that others might also have done so, have you ever been unable to deal appropriately with the matter because of circumstances?

**Stuart Allan:** The short answer to that question is no. As you rightly point out, councillors who have been appointed by their councils to ALEOs—and, indeed, members of public bodies who have been appointed to similar organisations—are caught by the respective codes for the work that they do on those bodies, whereas the non-council, non-public-body members are not. Nevertheless, the answer is that I have not come across that problem, otherwise, I would have come to Parliament to say that and that the regime must be extended to apply there.

It is interesting that the number of complaints that we receive about public bodies generally is significantly lower than the number that we receive in respect of local authorities—notwithstanding the fact that public bodies spend as much public money as local authorities do.

**John Wilson:** That could be to do with the number of people who are covered by the code; 1,222 councillors are covered by the code, at present.

Let us move on to the conduct of elected members. An issue that has been raised with me by several councillors is conduct in the council

chamber. Mark McDonald referred to the televising or verbatim reporting of council meetings. Going into a meeting of one particular council—I will not name it—has been described to me as being like going into a bear pit because of the language that is used. The concept of councillors being courteous to their colleagues goes right out of the door as soon as they walk into that chamber—that is how members are treated. Has the commission visited a council chamber during a full council meeting, or during a particularly contentious committee meeting, to sit in the background and observe the conduct of local authorities?

A number of years ago, certain local authorities in Scotland were always in the headlines because of members' conduct at meetings and on a couple of occasions the police removed members from council chambers. Has the commission ever thought of cold calling on a full council meeting to observe the behaviour in a local authority when a number of complaints have been received about the conduct of elected members?

**Stuart Allan:** Again, the short answer is no. I am not convinced that doing that would really be in the overall public interest. I have to respond to complaints that are formally submitted to me. I do—

**The Convener:** Can I stop you there, Mr Allan? The fact is that you have to be reactive in such situations. At the beginning of your evidence, you said that common sense should apply; I am a great believer in common sense and gumption. Would not it be better if you and your investigations team could do such cold calling and be much more proactive? Might that send a shot across the bows of the folk who behave inappropriately?

**Stuart Allan:** I would go so far as to say that that approach merits serious consideration. As I said, other jurisdictions' commissioners have the authority to carry out that type of function and there is merit in it. However, I would not like to overstate the argument for it. We have general duties to work alongside Audit Scotland and public bodies where we think that there are issues. That is done, although perhaps more subtly than by our sitting in a public gallery and listening in on what is happening.

**The Convener:** It would be an eye-opener, I assure you.

**Stuart Allan:** It might be an eye-opener; I am not quite so sure. However, I very much understood Mr Wilson's point.

**The Convener:** I wonder whether Ms Hayne has a view on that.

**Helen Hayne (Commissioner for Ethical Standards in Public Life in Scotland):** I concur

with what Mr Allan said. Consideration must also be given to our remit and to the fact that we are spending public money. If our remit does not allow us to do anything about something that we encounter, we have to give consideration to that.

**The Convener:** Is your remit too restrictive?

**Stuart Allan:** You have raised an important issue that merits further consideration. I am not shouting from the rooftops asking for such powers, but a broader range of powers might help in raising standards.

**John Wilson:** It is not just about wider powers and about dealing with complaints, but about sending a message to local authorities and elected members that they could be observed and their behaviour could be monitored. Some elected members feel that they are going into a bear pit. I have spoken to members of the public who observed a recent council meeting and could not believe the conduct of members and the language that they used in the chamber.

That leads me to the issue of formal complaints. I have heard it stated that some elected members will not make complaints because they feel either that the commissioner's office does not deal with complaints seriously or that it would be a waste of their time to approach the commissioner with a complaint, given that only 10 per cent of the complaints that are received by the commissioner lead to formal proceedings. What is your assessment of the comment that there is no point in making a complaint because it will not go anywhere?

**Stuart Allan:** Those views have not been put to me in the manner or on the scale that Mr Wilson suggests. Every complaint that comes in is investigated initially. We identify a percentage of complaints as being either unlikely to involve a breach of the code or too trivial to be investigated and so can be dealt with on that basis. Nevertheless, each complainer receives a reasoned letter explaining why the matter does not involve a breach of the code or giving another reason why it is not being taken to a full investigation. Only in a quarter of our cases is there a full-blooded investigation that involves interviewing witnesses and so on. Those complaints are at the higher end of our responsibility. That is as it should be because we must approach our functions in a proportionate and reasoned way.

**John Wilson:** I accept that any commission should deal with issues proportionately. However, you say that only 25 per cent of the complaints that you receive go to a formal investigation. How do you get the message out about the role of the commissioner's office? Apart from through the annual report, how do you publicise the work that

you do? How do the public get to hear how they would go about making a complaint against a member of a public body?

11:30

**Stuart Allan:** The office does not rely on its annual report to communicate with local authorities. We encourage the promotion of roadshows with local authorities, which can involve individual or regional meetings with councils. We frequently hold such meetings jointly with the Standards Commission for Scotland. We endeavour to meet all local authorities individually or regionally to deal with current issues and to address any questions that they have.

Those meetings are extremely positive. Just last month, I was down at a local authority in the south and was delighted to see that 95 per cent of elected members came to the session on promoting ethical standards. In that way, we can communicate best—one to one, from the office to the local authority. That gets the message through. When roadshows are diluted into national or regional conferences, I am not sure that the impact is so great. It takes more time to see authorities individually, but there is a great deal to be said for going down that line—and further.

**John Wilson:** My question was about how you get over to the public the message that the commissioner's office exists. It is fine to do roadshows to advise elected members of how they should conduct themselves in public life, but how do we translate that to the public? Some members of the public have told me that they have had horrendous experiences at the hands of elected members whom they have approached at surgeries or in public places. How do we get the message out to the public that elected members and members of public bodies are accountable?

**Stuart Allan:** We provide the public with a range of leaflets, which are on our website and so on—I would like Helen Hayne to tell you about that in a moment.

Overall, the reason why the public are unwilling to come to my office is not that they do not know about it. They might not come to my office because they feel that they are fighting the machinery of public service, which is a matter of regret. We endeavour to be as positive as we can be with people who make complaints and with people who phone or write to us to say that they are considering making complaints.

**Helen Hayne:** As the vast majority of our complaints are from the public, I think that the message is getting out there to the public. We make our information available in libraries, council facilities and public bodies. The most important medium is the internet—people use that to find out

information. The information about how to complain about a councillor or a member of a public body is available on our website.

**John Wilson:** Does the office receive complaints that it cannot investigate because they are outwith its scope?

**Stuart Allan:** Yes. I think that five or six complaints this year have been outwith our jurisdiction; that is a typical figure. Helen Hayne will confirm that.

**Helen Hayne:** The most common types of complaint that we receive that are outwith jurisdiction are usually against an official or a community councillor.

**John Wilson:** When you refer to “an official”, I take it that you mean an official of a public body.

**Helen Hayne:** I mean, for example, the chief executive of a public body.

**John Wilson:** You will be glad to hear that this is my final question, which is about the register of interests. I am aware that there is a duty on elected members and board members to make appropriate declarations of interests and for that register to be kept. There have been complaints—this is usually heightened prior to an election or immediately following one—that local authorities do not update the registers as often as they should. Has there been any discussion with local authorities, at official level and elected member level, about ensuring accuracy in registers and timely updating of registers on councils' websites?

**Stuart Allan:** I agree with the thrust of what Mr Wilson is saying. Local authorities could do more to assist elected members in filling out registration forms and giving them advice when it comes to issues relating to declaration of interests at committee meetings, which can sometimes be difficult.

As far as registration of interests is concerned, local authorities generally invite elected members periodically to update their register of interests. However, that can be a tick-box exercise. I am not convinced that they could not go the extra mile and discuss the register periodically with elected members.

We have had some cases of a failure to register, which have gone to breach and been reported to the Standards Commission for Scotland, in which the failure to register was, in my view, inadvertent. There is a question as to whether it is appropriate to submit a formal report to the commission, which is currently required, if the matter is trivial and the elected member has made a full and immediate apology.

In summary, local authorities could do more to assist elected members in carrying out their statutory responsibilities regarding registration.

**John Wilson:** I am sorry, but I have one more question about declarations of interests at committee meetings or full council meetings. One Central Scotland local authority has established a number of ALEOs and various members of the council sit on those ALEOs. In the case of one council committee, the convener and other members of the committee sit on three ALEOs that report to that council committee. In those circumstances, what declarations would be appropriate in that committee? Should elected members make a declaration at any committee meeting at which matters relating to an ALEO on whose board they sit relate to an item at that meeting?

**Stuart Allan:** As a matter of generality, the new code that was approved by Parliament in December 2010 took that very much on board and made it clear that an elected member's being appointed to an ALEO does not of itself create a conflict of interests. Therefore, when matters relating to an ALEO come back to the local authority, there is no obligation on elected members who have been appointed to that ALEO to refrain from attending that discussion. In certain circumstances, such interests would have to be declared, as is pretty fully set out in section 5 of the code, which was drafted with the intention to provide greater clarity on that issue.

**John Wilson:** I accept that, but given that three years is a long time in politics, and given that we have seen an increase in the number of ALEOs being created, the question is whether it is permissible for elected members not to make declarations, in particular when the local authority is deciding whether to allocate additional finance to an ALEO in pursuance of the objectives of that ALEO.

**Stuart Allan:** There is a broad principle. The code allows elected members to participate in such meetings because it is appropriate and in the public interest to allow a member of an ALEO still to take part in decisions by the local authority on financing that ALEO, to use John Wilson's example, because to preclude such members from taking part in the debate in the council chamber would be a disproportionate response. At the end of the day, it is for the Government and Parliament to decide how they want the code to be regulated, but at the moment I am satisfied that the balance is entirely appropriate.

**The Convener:** On the 2010 changes, some local authorities interpret the guidance differently from others. In my last wee while on Aberdeen City Council, we were told that, if we declared an interest, we had to leave the room, whereas

before the 2010 changes a member could declare an interest and remain in the room. I felt much more comfortable about being able to say that I belonged to such-and-such a body. The public then knew that, and people could choose to come to me about the issue. However, now, because of interpretation of the code, folk just do not declare any more because they are told that if they do so they have to leave.

**Stuart Allan:** The 2010 code makes it clear when there is a financial interest. It sets out the circumstances in which a member can still participate, such as in the case of membership of an ALEO or another devolved public body. It also says when members have to declare an interest and whether they have to leave the room. There are various stages that have to be gone through.

**The Convener:** I think that the problem is interpretation of that guidance.

**Stuart Allan:** Yes—but the code itself is fairly neatly structured and was designed to facilitate the process of going through it for elected members and officials so that they come to the correct conclusion. I accept that there might be difficulties with interpreting the code at some stages, but the code does a good job of making clear what should and should not be done.

**The Convener:** Okay. Mr Buchanan is next. I am sorry to have kept you waiting so long, Mr Buchanan.

**Cameron Buchanan:** That is okay.

I will change the subject. I note that there were a lot of complaints about breaches of confidentiality, including several multiple complaints. However, you did not provide any detail about what "breach of confidentiality" means. Could you explain that in a bit more detail?

**Helen Hayne:** I would need to consult the database to identify the cases to which that refers and what the subject matter was. I am happy to provide that information to you.

**Cameron Buchanan:** The number of complaints about confidentiality went up from one to 25 and there were several multiple complaints. Does that mean complaints by the same person or something else?

11:45

**Helen Hayne:** It is the latter; for example, one complaint was against nine members. Because there were potentially nine different outcomes there were, in effect, nine complaints, but those were dealt with as one case. Such examples can inflate the figures

**Cameron Buchanan:** That is what it means. Thank you.

On complaints that have been initiated by councillors, the outcomes show that the majority were considered within three months and the complaints were rejected. That has been commented on. What is your view on the situation? The thoroughness of the investigation might be at fault.

**Stuart Allan:** I said that every complaint that comes into the office is subjected to an initial investigation. That investigation is thorough. However, a view must be taken of whether further investigation involving interviews would serve any useful purpose. Over the years, we have learned which cases will go no further and do not involve a breach of the code. Sometimes the complaints involve matters of trivia and are not appropriate for further investigation.

The complaints that are sent out for further investigation are studied extremely rigorously; they are more likely to be considered as possible breaches. That is not to say that they are concluded as having been breaches. Last year, for example, we concluded that there had been breaches in something like five cases.

**Cameron Buchanan:** Okay. Thank you.

**The Convener:** Often complaints about elected members come from other elected members, and others come from the public. How do you protect from any backlash a member of the public who makes a complaint and who may then be a witness? I have heard of a situation in which, during the course of one of your investigations, a member of the public received communication from lawyers. How do you protect them from such intimidation?

**Stuart Allan:** That is an important issue. First, if the complaint is from a member of the public, when we advise the elected member of the complaint the complainant's identity is limited under data protection—the name will be given but not their contact details. However, at the end of the day, the elected member must be told what the complaint is. Our practice is to say, "There's the complaint. What have you got to say about it?" We do not paraphrase or summarise it. If there has been contact between the complainer and the elected member prior to the submission of the complaint, the elected member will know fine the identity of the complainer. That cannot be helped.

**The Convener:** I understand that fully and that that is the way it will always be. However, during the course of your investigation, if there is communication between the elected member or their representative, whether that be legal communication or otherwise, and a member of the public, is that not a little bit intimidatory? How can we stop such situations?

**Stuart Allan:** That is a very important point. We do not want to see any shape or form of intimidatory conduct by respondents against members of the public, although I must say that I have not come across that. There must be, on occasion, continued contact between an elected member and a complainer.

**The Convener:** Do you think that maybe you have not seen that because members of the public are too scared to come forward and tell you that it has happened during the course of your investigation?

**Stuart Allan:** With respect, that is a different matter. Are you asking whether, if a complainer has complained about an elected member, it is acceptable that the elected member intimidates the witness? It is absolutely not—I agree entirely with that approach.

What I am saying is that, when an investigation is in course, the spotlight is on the elected member, and in my view the elected member is careful about what he or she does vis-à-vis contact with witnesses. I do not have much knowledge of there being any form of undue pressure on witnesses.

**The Convener:** That is very interesting. Ms Hayne, do you want to add to that?

**Helen Hayne:** I do not have any further information on that. I agree with what Stuart Allan said.

**The Convener:** Perhaps we can follow up on the issue later.

**Stuart McMillan:** In the interest of transparency, I say that I was subject to a complaint in the current year.

My questions are on the annual report. Is it a fair assumption that the number of complaints against councillors or MSPs increases after an election because of the number of new people who are elected to a particular body?

**Stuart Allan:** That is a very interesting question, which I have been frequently asked. The answer is that there is no pattern. First, most councils have an induction programme for their new elected members immediately after an election. Councillors are elected in May and they then go into recess, so for the first six months it is unlikely that a lot of complaints will come in, because they have been bombarded with advice about how to act properly and because they have been in recess. There is not usually an appreciable rise in the number of complaints after elections. Of course, new members are extremely keen to become aware of what the code of conduct is all about.

The other side of the coin is whether there are more complaints in the period prior to an election. That can happen, but it tends to be localised. Where there are conflicts in particular local authorities, those can come to the surface. However, I have always been surprised that there has not been a great overall increase in the number of complaints in the period prior to an election. It will be interesting to see whether we receive more complaints in the period between now and the referendum in September next year.

**Stuart McMillan:** The annual report shows that the number of outstanding complaints had increased from 36 in the previous year to 56. Is there any particular reason for that increase?

**Helen Hayne:** There is no particular reason for that. A few more multiple complaints were received prior to the end of the financial year, and if they took the normal time of three months to complete, they would have been carried forward to the next year. There was a higher number of complaints at the end of the year.

**The Convener:** Obviously, there are times when complainers are very unhappy at your decisions, Mr Allan. A lot of folk who would argue that they are not vexatious complainers do not feel that they have been treated fairly in having their complaint dealt with. Sometimes that is down to communication. How do you communicate with complainers to let them know exactly why you have reached the decisions that you have?

**Stuart Allan:** First, every complainer is given the best of attention. Any complaint is treated with utmost seriousness and is addressed as such.

Where a complaint has been subject to an initial investigation and the decision has been taken that there is not a breach of trust or any purpose in investigating the matter further, the complainer will receive a reasoned letter explaining why a decision has been taken not to proceed with a further investigation. That should articulate fairly clearly what the principal reasons are. That is not to say that the complainer necessarily agrees with those points. In the case of complaints that are subject to a fuller investigation, there will be a note of the decision that will set out the complaint, the response, the investigation process that was undertaken, the full facts of the investigation and the findings and conclusions. That should be sufficient to allow any party—the complainer, the respondent or a member of the public—to fully understand the reasons for the decision.

**The Convener:** Obviously, we are not here today to deal with individual complaints, but I have here a copy of a letter that a complainer has received back from your offices. To be quite honest with you, the language is not particularly helpful. You should maybe review the way in

which you respond to folk. Perhaps you should use what we might call plain language rather than bureaucratic speak, if you will excuse the expression. I realise that you have to spell out parts of the code and so on in that correspondence but, sometimes, I think that we in public service make a rod for our own backs by using bureaucratic speak rather than the plain language that folk would expect.

**Stuart Allan:** I am happy to take your comments fully into account.

**The Convener:** Thank you.

Would you deal with complaints from organisations differently from the way in which you would deal with complaints from individuals? Would you deal with complaints in which there is a whistleblowing element differently?

**Stuart Allan:** I do not think that we deal with complaints about organisations any differently—

**The Convener:** Complaints from organisations.

**Stuart Allan:** Yes, sorry. I do not think that we deal with complaints from organisations any differently from the way in which we deal with complaints from individuals. We occasionally get complaints from organisations because there is a corporate issue such as a planning application in which the applicant is a corporate body. There is no reason why we should not consider such a complaint, and I do not think that we would treat it differently from the way in which we would treat a complaint that was submitted by anyone else.

**The Convener:** Are you careful about how you handle cases in which a whistleblower is involved? Are they treated in a different manner? If the evidence from a whistleblower is confidential, how do you deal with that?

**Stuart Allan:** The whistleblowing legislation relates to the employer/employee situation. A whistleblower is not a whistleblower to me; he is a complainer—

**The Convener:** Let me give you a—

**Stuart Allan:** Let me finish please, convener.

**The Convener:** Sure.

12:00

**Stuart Allan:** When someone submits a complaint to us, our primary focus is whether there has been a breach of the code by the respondent councillor. To ensure that we deal with the matter fairly and thoroughly, it is essential that the respondent is afforded access to the totality of the complaint. I mentioned that we do not provide the address or telephone number of individuals, but that is all that we can withhold. Often, it will be relevant to the preparation of a defence against a



complaint that the councillor is apprised of the totality of the complaint. That is the major consideration.

If a complainer says to us that their complaint is confidential and cannot be handed over to the councillor, we will explain to them why we think it appropriate that it should be made available to the councillor so that he or she can comment on it. If the complainer declines that, it is explained to him that not as much value can be attached to his evidence as could be if he were willing to expose it to examination by the councillor.

**The Convener:** In some cases, whistleblowing—let us use that term—can be very difficult and people can be intimidated to a huge degree. Is there a way in which you can ensure the safety of the identity of someone who is prepared to put their head on the block to expose something? Maybe we should ensure that by changing the legislation and guidance.

**Stuart Allan:** I cannot recall a case in which we have not been able to explain successfully to a complainer that it is in the interests of justice that they make the complaint available to the councillor so that he or she can submit a response. That is important.

**John Wilson:** Although I understand that Mr Allan is referring to councillors, there are 13,000 representatives on other bodies. Some of those bodies are boards such as the national parks authorities, further education boards, national health service boards and regional transport partnerships. What happens if an employee of one of those public bodies wishes to register a complaint with some anonymity? How would the commissioner deal with that type of complaint? Would you give an employee anonymity or would you refer them to the whistleblowing legislation?

**Stuart Allan:** I think that I have answered that. When a complainer writes to us and says that they want us to regard their complaint as confidential, we explain why that is inappropriate. I also said that I have no experience of complainers then declining to proceed with the complaint on that basis.

If an element of criminality is involved, the matter will be passed to the police for further investigation.

**The Convener:** That is quite useful.

Maybe now is the time to bring the meeting to a close. I thank you for your evidence, Mr Allan and Ms Hayne. I know that you have a little while to go in post, Mr Allan. I wish you all the best for the next few months and all the best with your retirement after that.

12:05

*Meeting continued in private until 12:34.*



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