



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 11 December 2013

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CONTENTS

	Col.
SUBORDINATE LEGISLATION.....	2983
Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 [Draft].....	2983
SCOTTISH PUBLIC SERVICES OMBUDSMAN ANNUAL REPORT 2012	2989
EUROPEAN UNION ISSUES	3014

LOCAL GOVERNMENT AND REGENERATION COMMITTEE
32nd 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:

Emma Gray (Scottish Public Services Ombudsman)

Niki Maclean (Scottish Public Services Ombudsman)

Jim Martin (Scottish Public Services Ombudsman)

Paul McFadden (Scottish Public Services Ombudsman)

Stewart Stevenson (Banffshire and Buchan Coast) (SNP) (Committee Substitute)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 11 December 2013

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

Subordinate Legislation

Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 [Draft]

The Convener (Kevin Stewart): Good morning, and welcome to the 32nd meeting in 2013 of the Local Government and Regeneration Committee. I ask everyone to ensure that they have switched off their mobile phones and other electronic equipment.

We have apologies from Stuart McMillan, and we are joined by Stewart Stevenson as a substitute. Welcome back, Stewart.

Before we move on, I advise members that there is a slight change to the published agenda. We will start with items 3 and 4 on the agenda in order to allow the Deputy First Minister to attend the Infrastructure and Capital Investment Committee at 10 am. We will then move on to item 1, which is with the Scottish Public Services Ombudsman.

Item 3 is consideration of an affirmative Scottish statutory instrument, the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013. We have one panel of witnesses to discuss the order. I welcome Nicola Sturgeon MSP, the Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, who is accompanied by Sam Baker, team leader, and Andrew Gunn, FOI officer, from the Scottish Government freedom of information unit. I welcome you all. Deputy First Minister, would you like to make any opening remarks?

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): Yes—thank you, convener.

The order that is before the committee today reduces the lifespan of a number of FOI exemptions from 30 years to 15 years. That continues the Government's evolutionary approach to ensuring that freedom of information legislation remains relevant and responsive to the ever-increasing demand and expectation for information, and it aims to make information publicly available earlier.

Our previous consultation highlighted the need for a more flexible order-making power to allow for the revision of the lifespans of individual exemptions and types of record, and that flexibility was introduced through the Freedom of Information (Amendment) (Scotland) Act 2013, which came into force in May.

Since 2009 it has been Government policy to open preserved files that are held at the National Records of Scotland at 15 years rather than following what was commonly termed the 30-year rule, which dated from earlier legislation. That exercise has resulted in more than 12,000 files being opened 15 years earlier than originally scheduled, which places significant amounts of public information in the public domain at a much earlier date than was anticipated. In line with that policy, information dating from 1998, which was originally scheduled for opening in 2029, will become available in the new year.

In the Government's experience to date, the earlier release of information has enhanced openness and transparency as well as creating interest in the information that is made available. The draft order will, if it is passed, reduce the lifespan of a number of the commonly used FOI exemptions to 15 years so that they can no longer be used for information that is more than 15 years old. That will apply, for example, to exemptions relating to the development of Government policy, free and frank advice and commercial interest.

However, as a result of consultation feedback, the order will keep the 30-year life span for exemptions covering legal advice and information that is provided in confidence. It will also provide for a separate period for the exemption covering communications with the royal family by linking the lifespan of the exemption to the date of the death of the monarch or relevant member of the royal family.

The great majority of respondents to the consultation expressed support for the draft order, and most agreed that it would be unlikely that they would wish to withhold information of the types covered by those exemptions if it was more than 15 years old. However, we have taken care to ensure that the administrative burden on public authorities is kept to a minimum. We have committed to reviewing the impact of the order a year after it comes into force so that we can consider its impact on authorities and see whether any further changes might be appropriate in future.

In conclusion, the order is the third substantial piece of freedom of information legislation to be considered by the Parliament this year. The 2013 amendment act, which was passed unanimously in January, added strength to the original act. The first order, extending coverage of the legislation, which the committee discussed in September,

comes into effect next April. The order that is before us today strengthens the FOI regime considerably.

I am happy to answer any questions that the committee might have.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have three relatively short questions, which I will put to you all together.

First, can you remind us roughly—you do not have to give the exact figure—how many Scottish public authorities are covered by the 2002 act? Secondly, are they under any legal obligation to deposit with the National Records of Scotland records that might be subject to disclosure after 15 years? Thirdly, will the order that we are considering have the effect of creating additional work for the National Records of Scotland if the answer to question 2 is what it might be?

Nicola Sturgeon: I am happy to undertake to give a bit more information in writing on the position with regard to the National Records of Scotland and the implications for its workload. It is obviously up to that body what information it holds.

On your first question, I do not have the precise number here, but it is in the high thousands, numbering approximately 10,000 public authorities. We can find a precise number for you, but the act's coverage is very broad and wide ranging.

With regard to the workload on the National Records of Scotland, the order is not intended to create a workload, and it is not immediately clear to me why that would be the case. The same records are being released—they are just being released a lot earlier. We can certainly provide more information for the committee on the impact on the National Records of Scotland if that would be helpful.

Stewart Stevenson: I was aware that the number of bodies that will be affected is in the thousands. If the records are to be made available to the public, they need to be somewhere. If the time period has been reduced to 15 years, they have to be in that place—which I assume would be the National Records of Scotland—15 years earlier. I just wondered whether there were any implications associated with that, and indeed whether the records from those thousands of public bodies all end up in the National Records of Scotland. Where are the records to be disclosed?

Nicola Sturgeon: The order obviously has an impact on the ability of exemptions in the 2002 act to be relied on after 15 years rather than 30 years. With regard to the National Records of Scotland, there has been a big focus on proactive release over the past few years to reduce the

administrative burden on public authorities from FOI legislation.

In its evidence in response to the consultation on the order, the NRS said:

“In consequence”

of proactive release,

“the number of FOI requests received by the Keeper for access to closed government files has shown a sharp decline”.

It continued:

“it seems likely that administrative savings could be made, as less information may need to be redacted in the future, were fewer exemptions to apply.”

That shows the National Records of Scotland's view of the likely impact on it. However, I am more than happy to reflect on whether further information can be provided to the committee—just for general interest—on the implications of the order for the NRS.

Cameron Buchanan (Lothian) (Con): How do we compare to other countries with regard to the 15-year or 30-year rules? I do not mean just Westminster, but Wales and other countries. Are we more liberal than them?

Nicola Sturgeon: The United Kingdom is also reducing the lifespan of certain exemptions to 20 years. It is clear that other countries will have their own specific rules on the matter.

I will not make definitive claims about whether Scotland's position on FOI is better than any other country's position, but we are known—and seen—to have strong and robust FOI legislation. The changes that have been made during this year through the 2013 amendment act, the order extending coverage of the FOI legislation and the order that is before us today will further strengthen the FOI regime.

John Wilson (Central Scotland) (SNP): Can you expand on your comments about the exemption of legal advice from the change in the time period? You said that legal advice to Government will remain under the 30-year rule.

Nicola Sturgeon: Yes. There is no change to the current exemption under section 36 in the 2002 FOI act, which covers legal advice and information that is given in confidence. The definition of “historical period” will remain at 30 years rather than moving to 15 years. That, together with the position on communications with the royal family, reflects the feedback that we received in the consultation.

John Wilson: I am just curious as to why you would leave out legal advice.

You indicated that the UK Government is expected to reduce the time period from 30 years

to 20 years. What will happen with communication between the Scottish Government and the UK Government when there are two different time periods—15 years and 20 years—in the respective pieces of legislation?

Nicola Sturgeon: If we hold the information, our freedom of information rules would apply. If the information is held by the UK Government, its rules would apply. If the information concerns communication between the UK Government and the Scottish Government and we hold that information, our rules and time periods would apply.

There are already differences between Scottish and UK freedom of information legislation. There are some reductions in lifespan in Scotland to 15 years—for example, in section 33 of the 2002 FOI act—whereas in the UK the lifespan will remain at 30 years. The order may lead to some other differences but, for information that is held by the Scottish Government, our rules will apply.

Anne McTaggart (Glasgow) (Lab): You mentioned that you do not foresee any difficulties with the timescales for the authorities involved. Are there any cost implications from the order?

Nicola Sturgeon: Public authorities these days should already be operating in a way that is designed to minimise the administrative burden of freedom of information legislation. They do that principally through the proactive release of information.

The National Records of Scotland made the point that, because there is more proactive release and public authorities are not waiting on FOI requests but releasing information systematically, that reduces the element of burden from the legislation. To point to more evidence from the consultation, the Commission for Ethical Standards in Public Life in Scotland made the point that the cost and resource implications for it would be “insignificant”.

Richard Baker (North East Scotland) (Lab): To follow up on John Wilson’s questions on legal advice, is it the case that a majority of those who were consulted advised that legal advice should remain under the 30-year rule rather than coming under the 15-year rule, as you mentioned earlier?

Nicola Sturgeon: We did not necessarily assess the responses quantitatively; it was more of a qualitative exercise. There is a judgment to be made about whether exemptions are applied, and public interest tests will normally have to be met. Just because there is an exemption for legal advice in the FOI legislation, that does not automatically lead to a conclusion that the exemption will be applied. There are many exemptions in the legislation that exist in perpetuity and do not have a historical time period

attached to them at all, but in most cases the public interest test must still be applied, and public authorities will make that judgment in response to FOI requests.

The Convener: Thank you very much, cabinet secretary.

Agenda item 4 is formal consideration of the motion to recommend approval of the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013, on which we have just taken oral evidence. No members wish to speak in the debate, so I ask the Deputy First Minister to formally move motion S4M-08523.

Motion moved,

That the Local Government and Regeneration Committee recommends that the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 [draft] be approved.—[*Nicola Sturgeon.*]

Motion agreed to.

09:43

Meeting suspended.

09:46

On resuming—

Scottish Public Services Ombudsman Annual Report 2012

The Convener: Our next item of business, just to confuse people, is agenda item 1, which is to take evidence on the Scottish Public Services Ombudsman's 2012 annual report. I welcome Jim Martin, Scottish Public Services Ombudsman; and, from the office of the SPSO, Niki Maclean, director; Emma Gray, head of policy and external communications; and Paul McFadden, head of complaints standards.

I ask Jim Martin whether he has any opening remarks.

Jim Martin (Scottish Public Services Ombudsman): You have our annual report and our local government report, and we gave you answers to some questions that you asked prior to the meeting, which I hope you found useful. My team will be happy to give you more details if any of those questions threw up more questions in your mind or if you have any others that you want to ask.

I want to use this opportunity to record my thanks to the Scottish Parliamentary Corporate Body for recommending to the Finance Committee that the SPSO headcount be increased by two people in the next two financial years. It is a recognition of the pressure that my office has been under, with increasing demand for our services over and above the increase in the number of complaints that you will have seen in the annual report. There has been an increase of 13 per cent in the first six months of this financial year, which is quite high.

It is important to recognise that the increase will have an effect on the service that we can provide. It also has an effect on our people. We have a duty of care to our staff, which is why I decided to relax our key performance indicators between January and March this year. I was concerned about the impact of the increased workload on the stress levels and health of our team. Even with the adjustments of easing up on the KPIs and helping people to reduce stress levels, my team outperformed their productivity increase of the previous year. I want to record that, even allowing for that relaxation, my team did an excellent job. To put that in perspective, last year, the Public Services Ombudsman for Wales had the same headcount as we had, but dealt with more than 1,000 fewer cases and its performance levels are—let me put it this way—nearly at ours.

It might be useful for the committee to know that, at the end of the first six months of 2010-11, we had around 280 open cases on our desks. At the end of the same period, in 2013-14, we have 580 open cases on our desks. The amount of work that is coming into my office is increasing. Perhaps those figures will help people to understand the amount of work that we have, and I am pleased that the corporate body has recognised that.

The second point that I would like to make is about innovation. From reading the *Official Reports* of your meetings, I know that this committee is keen to promote innovation and innovative thinking in public services. I therefore thought that you would be interested to know that, in the autumn, the European Union ombudsman asked all European ombudsmen to flag up innovations in service from which they would like to learn. Scotland received three nominations. The first was for our e-learning materials, which are helping bodies that come under our jurisdiction to train their staff to implement the new standards for complaint handling and to improve their customer service skills. It is interesting to note that those materials are being used by local authorities in New Zealand, which I had not expected to happen, and that the joint work that we have done with the national health service in Scotland in much the same area is now being looked at by the national health service in England, which will try to adapt it for its work. I was quite pleased about that.

The second nomination was for the work of our complaints standards authority, which, as you will remember, comes from the Sinclair report, which required us to set out standardised, simplified complaint-handling procedures across the public sector in Scotland. The complaints standards authority is seen as unique in Europe. During the past month, we have entertained people from Norway and the Republic of Ireland who have been interested in how we have done that.

The third area for which we were nominated was our quality assurance and service improvement work. I was asked to give a presentation on that to the public service ombudsmen European conference, at which all 28 member states were represented. That was one of only two innovations to be highlighted. We were very pleased with that and see it as real recognition of the work that we are doing at the cutting edge.

Lastly, the committee might be interested to know that, yesterday, I gave evidence to the Public Administration Select Committee at Westminster. In its review of the UK parliamentary ombudsmen and ombudsmen services in the public sector in England, the committee shows a real interest in the SPSO model. We are seen as

modern, accessible and allowing direct access for ordinary people to get a resolution.

I thought that it would be good to make that brief statement so that we could begin the meeting on an upbeat and positive note. We will see what happens after that.

The Convener: Yes. We will see what happens after that, Mr Martin.

You have talked about your workload increasing. One of the things that can be done to ensure that your workload decreases is to make sure that public bodies take cognisance of complaints at an early stage. In your letter to the committee, you talk about

"Identifying systemic issues—where we see repeat failings".

Obviously, you have ways of assessing to ensure that those issues are resolved. However, on reporting those failings, do you let other bodies know that you have found those difficulties? How do you make sure that other local authorities or health boards are aware of those systemic failings and do not use the same practices? Do you share your findings with other inspection and audit bodies so that they are aware of the issues and can cut failings and complaints?

Jim Martin: I think that the answer to each of those various sub-questions is yes. As far as we can, we report all the decisions that we make about individual cases. We have held back in a few cases to protect anonymity, but otherwise every decision that we take is published.

If you are looking for best practice, I would say that it comes from the national health service. The NHS at the centre looks at our recommendations, our report and our findings on complaint handling, and shares and discusses that information with the various health boards. We have quarterly meetings with the head of the national health service in Scotland at which we discuss all those things and pick up trends and issues. The Prison Service is another very good example. It learns lessons across the whole prison estate from the mishandling of complaints and the systemic issues that can arise.

There is a gap with local authorities, however, because there is no overarching body—as there is in the national health service—that looks after them. That is largely because local authorities are democratically elected bodies. We could look at that gap.

To help to address the issue, we have introduced the complaints standards authority's complaint-handling procedures, setting out how those should be applied and the information that should be gathered. We do not get the information from some local authorities at the moment but,

from the end of 2013-14, each local authority in Scotland will have to report on its complaints handling and, quarterly, each will have to report internally on the trends in complaints that it has found. That means that, for the first time, this committee, members of the public and councillors will have information to hand that will enable them to decide whether they see trends and think that there are issues to be raised. That is in addition to my seeing that information. What I can do is limited to looking at individual complaints when they are brought to me and monitoring the application of complaints procedures. The learning that can come from that is an issue that local authorities need to tackle pretty urgently.

The Convener: If you find systemic failures in local authorities, do you have conversations with the likes of Audit Scotland and the Care Inspectorate to ensure that, in their audits, they check those areas in which there may have been difficulties?

Jim Martin: When we set up the complaint-handling procedures for local authorities in Scotland, we asked Audit Scotland, as part of its annual audits of local authorities, to look at how they apply their complaint-handling procedures and the ways in which they are learning from those procedures. Audit Scotland is in the loop. We have not had discussions with the Accounts Commission on the issue, but we might consider that in the future.

I have also spoken to each local authority chief executive in Scotland—with one exception—and their senior teams to ensure that they all understand the new system, what is expected of them and what they will have to report. We have put the process in place; thereafter, it is the job of regulators and bodies such as this committee to take matters forward. We do not have the resources to police how local authorities are handling most of these things, as we have fewer than 50 people in my office, so we are trying to enable other agencies to undertake that work.

The Convener: We understand that and do not see you as an inspection agency at all. I am glad that you have spoken to others, but I find it a bit surprising that you have not had conversations with the Accounts Commission. I hope that you will have those conversations shortly to ensure that the lessons that can be learned from some of the complaints that you get are dealt with by all the audit and inspection bodies.

Let us move on. You talked about the complaint-handling procedures, and we have received information that, although a number of local authorities are involved in meetings on complaint-handling procedures, some local authorities do not attend those meetings. Why is that? Have they indicated that they intend to do so in the future?

Paul McFadden (Scottish Public Services Ombudsman): The purpose of the network is to enable organisations to voluntarily share best practice, compare performance and, in the initial stages, help us to develop the framework for the model CHPs. We have provided a list of the local authorities that have not attended those meetings, but all the local authorities have been actively involved in the process in one way or another over the past two and a half years. For example, Dumfries and Galloway Council, which has not attended the network meetings, was actively involved in the working group that developed the model CHPs and formed the nucleus of the network. Overall, we have been very heartened by the engagement with and involvement in the initiative across the whole sector.

The Convener: Have any of the authorities that do not attend given reasons for their non-attendance?

10:00

Paul McFadden: No, they have not. As I say, it is not mandatory to be a member of the network. We have very much developed it as a sector-led initiative. We initiated it, but we want it to be led by the sector itself. It is up to the sector to participate—we do not require participation.

The Convener: Would it be best if attendance was mandatory so that everybody shared best practice?

Paul McFadden: There are different reasons why people cannot attend the meetings regularly. We would certainly encourage bodies to be part of the network but, as I say, we are heartened by the fact that all of them have been actively engaged with us in other ways in the development and implementation of their CHPs and issues around training their staff. They are in regular contact with us and are engaged in other ways.

Cameron Buchanan: There seems to be a fundamental misunderstanding about what the SPSO can do. Some public bodies are obviously better than others at improving. Should you not be naming and shaming the ones that do not attend?

Jim Martin: Parliament asked us to set up processes and procedures. We adopted a partnership approach and asked authorities to get involved. Naming and shaming will not really get a positive outcome here. It is far better to work with people, get them on board and get them voluntarily to take on the work that we are doing.

If I thought that local authorities were disregarding the complaints-handling process and that there was no positive intention to do anything with complaints, I would name and shame. However, we want to encourage local authorities

to own the network that we set up. It is really a matter for them.

Cameron Buchanan: There seems to be a misunderstanding about your powers and what you can do for the public. Some of the complaints seem to be rather spurious and you reject them because they are not competent. Could what constitutes a competent complaint be explained a bit better to people?

Jim Martin: We try our best. Every ombudsman office in the United Kingdom has the same issue that we have. People either come to us prematurely—that is, for various reasons they do not go to the authority that they should go to and instead come to us, thinking that we can do something—or they come to us with issues that we are precluded from looking at under the terms of the Scottish Public Services Ombudsman Act 2002. Around half the people who come to us will fall into one of those categories.

Over the past year, we have been trying to work with the bodies that give us the largest volume of complaints to see whether we can help them to reduce the number of people in their areas who come to us prematurely. For example, people come to my office and want to complain about their pension. At that point, my office will signpost them to the Pensions Ombudsman. If it is a financial issue, we will signpost them to the Financial Ombudsman Service or wherever.

We are seeing success because the number of people who come to us prematurely has fallen, in percentage terms, from the mid-50s to the low 40s and probably, by now, into the 30s. We are making some progress. Local authorities in particular are trying very hard to get closer to their public and make people understand that they can go to them for a quick resolution.

In the past, some local authorities had four or five stages to their complaints processes, which could take months to get through. We have put in place a system in which the first stage is normally five days and the second stage is 20 days. It is relatively quick. Once people are aware that a streamlined system is in place, they will be more encouraged to go to their local authority or whichever body as the first stage.

Cameron Buchanan: People seem to consider you as a sort of one-stop shop. They go straight to the SPSO—that is why you are talking about the premature complaints. I am not sure how you can deal with that. Do you have a five-day rule for answering a complaint, saying that you cannot deal with it?

Jim Martin: I will tackle that from another angle. This week, there are more adverts for the Public Services Ombudsman for Wales on the backs of buses as part of an effort to raise awareness and

to give people who want to complain a place that they can find. The Welsh Assembly gave the Welsh ombudsman £1 million to set up a signposting body, which I think is called Complaints Wales, to which people can go and be farmed out to the various bodies. That is one way of doing it, but we do not have the resource to do that.

The other way of doing it is to ensure that the individual understands where in the process everything fits. I think that the national health service is getting some things right with its can I help you? programme, which is about learning from complaints, concerns and feedback. The NHS is actively promoting what people can do and where they can go. My view is that complaints should be resolved as closely as possible to the incident that occurred by people who were as close as possible to the decision that was taken. I think that getting people to come to the ombudsman would take away from local authorities, health boards and others some of the responsibility to resolve complaints quickly, and I do not want to put in place anything that would encourage that.

The Convener: We have asked you a number of questions, to which you have responded. You say that 50 per cent of the complaints that are received are premature complaints and around 70 per cent of the inquiries to the advice team are premature. How quickly do you get back to the individual who has made the complaint or the inquiry to tell them that there are other parts of the process that they must go through before they come to you?

Niki Maclean (Scottish Public Services Ombudsman): At the advice stage, that would happen very quickly—within three days. It is not just a matter of notifying the individual that their complaint is premature; it is about signposting them to the relevant body and supporting them in making contact with it, if necessary, to help them navigate their way through the body's complaints process. We put a lot of work into providing such advice and support.

If a complaint looks as if it might be mature, it will be passed to our early resolution team. The maximum time that it would take to establish whether a complaint was mature would be around 10 weeks. It can be quite unclear whether some complaints are mature, and exchanges with the relevant body are sometimes necessary to establish whether the specific matters that the complainant would like to be investigated were those that were considered by the body. Sometimes the complainant thinks that they have raised certain matters, but the body says that it considered other, slightly different matters. That can take some untangling.

The Convener: So you signpost them to the complaints procedure of the organisation that they are complaining about.

Niki Maclean: That is right.

The Convener: Do you let the organisation know about that complaint?

Niki Maclean: Yes.

The Convener: Do you ask the organisation to get in touch with the person to ensure that their complaint is dealt with properly?

Niki Maclean: No, we would notify the body that we had been contacted by the complainant and that they would be approaching it with their complaint. If that individual required additional support to make that complaint, we would find that for them.

The Convener: How many of the folk who make premature complaints or inquiries end up coming back to you guys after the organisation to which they have been signposted has not dealt with their complaint properly?

Niki Maclean: I do not have that statistic.

Jim Martin: I do not think that we record the information in that way. I can go back and ask my people to provide whatever information we have in writing. We do not track people once they have gone back to the local authority, the health board or whatever.

The Convener: It would be useful and interesting for me and, I think, others to get an understanding of how many of the folk who come to you and are signposted back to the organisation that they are complaining about to go through its entire complaints procedure end up back at your office because that complaints procedure has not worked properly.

Emma Gray (Scottish Public Services Ombudsman): We did a short piece of research on precisely that topic a number of years ago—in 2008 or 2009—and it is available on our website along with the rest of the research that we have carried out. In that piece of research, we found that most people do not return to the SPSO. They eventually find their way through the complaints process and, we hope, find a resolution there.

Now that the new model complaints-handling procedures are in place, I hope that organisations will take a different approach and that people will be able to get through the local complaints processes better. It could be another really interesting piece of work for us to compare what the systems were like before the model complaints-handling procedures were in place and what they are like now.

The Convener: Okay, but a number of local authorities are still not involved in the network, which bothers me. The committee should write to them and ask them why they have chosen not to be in it. I see nods of approval from committee members.

Richard Baker: Mr Martin, you said that, at least at the centre, the NHS was good at corresponding with you and working with you on complaints processes but that your experience with local government was not so happy. However, we see from your evidence to the committee that there has been a big rise in complaints to the NHS and a decrease in complaints to local government. Is that because the NHS is taking proactive steps to make people aware that they can complain or are there broader reasons?

Jim Martin: I think that, in the next year, the national health service will review its current complaints-handling processes and its can I help you? guidance. We will help it to do that, because we want to find out the answers to exactly the questions that you ask.

A number of things have happened in the health service that make it special. The health disasters in England, such as in the Mid Staffordshire NHS Foundation Trust, have raised people's awareness of what can happen when they complain—or do not complain. That is a factor.

The publicity that is given to many of the complaints in the national health service encourages people to bring more complaints. We had a 23 per cent increase in health complaints last year and we have another increase this year. That worries me. Probably something like 8 per cent of all the complaints that go to the national health service come to our office at some point. That is a big number.

At the moment, local authorities represent the largest single sector of complaints that we see, but health is fast catching up and I can envisage circumstances in which it might overtake local authorities in the next couple of years. I am concerned about that.

My other concern is that the number of health complaints that we have upheld over the past two years has consistently been more than 50 per cent, and in the first six months of this year, it was more than 50 per cent again. That means that those complaints have been through health boards, assessed and not upheld and then people have brought them to us and we have upheld them. There are issues there.

Local authorities are going in much the same direction. The local authority number was up in the first six months of this year. It may come down again as we go through the rest of the year.

I am concerned about the number of complaints from different sectors that have been through local complaints procedures and not been upheld but which we then uphold. As you said in your letter to me, convener,

“justice delayed is justice denied”.

That is perfectly true. In cases in which families have gone through some real anguish, to prolong it and come to wrong decisions is unacceptable.

Richard Baker: Does the rise in upheld complaints highlight the fact that all public sector bodies have a long way to go in learning from those complaints? I certainly hear that mentioned in connection with the health service as well as local authorities. We hear about people who have made complaints to the health service feeling that it does not have the right learning process to ensure that, when complaints are made in a number of areas or are upheld, the right systemic action is taken to ensure that incidents are not repeated. Do you have any views on that?

Jim Martin: In the past two or three years, we have made progress on understanding the importance of learning. In a number of sectors, we are making real progress. The work that the complaints standards authority has done has helped that.

I have just finished doing a series of meetings with chief executives and non-executives of health boards on the impact of complaints on governance. I want to ensure that people at the top levels of organisations, whether health boards, local authorities or whatever, understand that an important element of governance is listening to the people whom they serve and taking seriously any complaints that they bring. The Robert Francis report on Mid Staffordshire NHS Foundation Trust highlighted the fact that the chair of the trust devalued complaints and their impact but, more important, did not think that real learning was possible from them.

It is therefore important to work with health boards, prisons, local authorities and others on the learning aspect of complaints, but it is equally important for the governance process at the top of organisations to signal its responsibility for responding to complaints.

10:15

Mark McDonald (Aberdeen Donside) (SNP): I am interested in the process. As a councillor and as an MSP, I have had cause to refer constituents to your office. How involved is an individual in the process once they have made a complaint to your office? How many contacts from you can they expect? Or is it the case that they make their

complaint, then hear back from you when a decision is arrived at?

Niki Maclean: It depends on the type and complexity of the complaint. I will take you broadly through the process. As we have discussed, at the initial stage the complainant will make contact with the advice team, which is frequently done by telephone. They will have an initial discussion about whether, on the face of it, we can consider the complaint. The next stage is for the complainant to go to our early resolution team. The complainant will be contacted within two weeks by the complaints reviewer who is dealing with their case, which will normally be done by phone. We try to establish within the advice team whether the complainant wishes to have telephone contact—as you might imagine, some complainants do not want that. Some cases are incredibly sensitive and people do not necessarily want telephone contact.

The early resolution team will have an initial discussion with the complainant to establish the nature of the complaint. We will then seek to gather evidence from the body that is being complained about. We will normally provide an update for the complainant in writing and we will decide within a 10-week period, although it can be much shorter than that, whether the case requires further investigation. If it does, the case will be moved to our investigation team. Again, the complainant will be contacted by the complaints reviewer in the investigation team who is handling their case.

The level of contact thereafter depends on the type of case and whether we need to clarify any points with the complainant. We will often provide update letters about the evidence and how the investigation is progressing. Prior to issuing a decision, we will again make contact with the complainant to inform them that the decision letter is being issued and that if they wish us to discuss the case with them prior to that we will do so. However, in our decision letter we always offer the complainant the opportunity to come back to us to discuss the decision that we have reached once they have had an opportunity to absorb the decision's details.

Mark McDonald: Your role is to monitor the way in which local authorities and health boards deal with complaints. How is the way in which you deal with complaints monitored? Is there scrutiny of your processes?

Jim Martin: The ombudsman was set up to be the final stage of the system. Local authorities and health boards take decisions and the next stage is the ombudsman's decision. There is no next stage after the ombudsman's decision, but we have put in place a review process for individuals who ask for their case to be reviewed. That is done internally by people who have not been involved in

the case, and I will see every review that goes out of the office.

We also have a quality assurance programme that looks at how we handle cases. Niki Maclean can tell you a bit about that.

Niki Maclean: We spoke about the quality assurance process with the committee last year. We developed the process ourselves, but it has been audited by our independent internal audit function. We sample 10 per cent of all cases quarterly against a set of established criteria, such as whether the decision was sound, whether the communication was appropriate and whether any delays occurred in the system. We have worked hard to develop that QA process and we have been involved in a number of activities to establish best practice with other ombudsmen and the Ombudsman Association. I can talk more about that if the committee is interested.

The Convener: Please do.

Niki Maclean: As Jim Martin said, we are keen to mirror best practice in other ombudsman schemes. We have organised a conference on Thursday across the Ombudsman Association, which represents all ombudsman schemes in the UK, to have a best-practice seminar on QA.

A number of ombudsman schemes have asked us whether they can adopt and model our QA process. There is no ISO standard QA process for ombudsman schemes. That is right and proper, because it is a niche area of work. The next best thing that we can do is ensure that we share best practice and our ideas about how to continue to scrutinise our work.

Mark McDonald: I realise that any process must have an end point; otherwise, it would continue in perpetuity. However, do you accept that there might be a perception that the ombudsman is not the appropriate person to police the decisions that the ombudsman takes? Might there be a role not necessarily for a new body but for another body to ensure that the processes and procedures are up to spec? That might remove questions about self-policing.

Jim Martin: Every ombudsman office that I know of—particularly those in Europe and also those in Australia, New Zealand and Canada—operates in basically the same way as we do. Ombudsman offices are created for a number of reasons. One reason is to avoid people having to use the courts to get justice. Another reason is, as you said, to get an end point—a closure point. Every jurisdiction that I know of where the issue has been discussed has agreed not to pursue the line that you are taking, because it would inevitably lead to putting in an extra stage, so we would not get finality.

I had my biggest mailbag of discontent—I have had a few—when I became the ombudsman and started saying at the bottom of letters, “This decision is final.” That led to a number of people asking how the decision could possibly be final and where else they could go.

We care passionately about the quality of decision making, ensuring that processes are right and ensuring that people get a fair deal. That is why we are taking the lead in the UK in getting people together to find out what the best practice is that we can put in place to reassure people.

I caution against opening the door to another appeals body or someone looking at decisions again, because that would end up creating another layer. That might not be the design, but that would be the consequence.

The Convener: I have a question to ask before I let Mr McDonald back in. I understand that there was a Westminster review of that particular subject. It was an external review that looked at the system down south, and I understand that you were involved in it. Do you want to tell us something about that, Mr Martin?

Jim Martin: Do you mean the evaluation of the effectiveness of the Local Government Ombudsman in England?

The Convener: Yes.

Jim Martin: The local government select committee at Westminster—I have forgotten its name—decided that it wanted the Local Government Ombudsman in England, which it had some concerns about, to get an external evaluation of its practice. The committee asked the British and Irish Ombudsman Association to be involved in that, and I was asked to be one of three people who would carry out the review of its effectiveness.

The Local Government Ombudsman in England was set up with three ombudsmen in a commission, so it is not a single ombudsman service. The committee at Westminster was concerned that the three ombudsmen could look at cases in different ways and take different timescales, for example. The key question that we were to look at was whether having a single ombudsman might be the best way forward, for consistency. We were also charged with looking at how that organisation operated and how effective it would become. We did that work over a period of time, and the report is in the public domain.

The Convener: Has any external review like that ever been done for your office in Scotland?

Jim Martin: I think that the Parliament has looked at the effectiveness of my office three times in the past 10 years. The Review of SPCB Supported Bodies Committee, which your clerk

served, looked at the ombudsman's work. Various issues were considered at that time—for example, whether the ombudsman should have own-initiative powers and look at whether there is a systemic issue when something has emerged from two or three complaints. Such issues were discussed, and I think that the committee's findings were incorporated in the Scottish Parliamentary Commissions and Commissioners etc Act 2010. So, the ombudsman's office has been looked at relatively recently.

The Convener: I am sorry to have interrupted your questioning, Mr McDonald.

Mark McDonald: Just to be clear, I was not suggesting that individual cases should be open to a right of appeal; I was asking whether, in the scenario that you explained, in which you internally review your decision-making processes and procedures, internal review is the best means to get a fair evaluation, and whether you might be willing to open that up to a critical friend to examine internal procedures and ensure that everything that is done in the ombudsman's office is absolutely at the top.

Jim Martin: We have had our procedures and quality assurance looked at. Our procedures were looked at by external consultants, who took a view and gave it to us. They gave us a clean bill of health. Our internal auditors have looked at our quality assurance programmes and so on. We are going out of our way to ensure that we are not reading our own press and liking it but are getting challenged, and we will continue to do that.

Stewart Stevenson: It is said that in politics there are three kinds of questions: the brave, the heroic and the suicidal. I think that my question is brave. Could we, as a committee, do better in our role of holding you to account for your processes and outcomes? What advice can you offer us on how to ensure that our role is better undertaken in dealing with the question: quis custodiet ipsos custodes?

The Convener: Somebody in this room still has a mobile device on—I heard it through the microphones. Can people ensure that all mobile devices are switched off? They interfere with broadcasting.

Jim Martin: There are three types of questions and a couple of different kinds of answers, one of which is whether to accept a poisoned chalice.

Stewart Stevenson: Drink deeply.

10:30

Jim Martin: When I was at the select committee at Westminster yesterday, my view was sought on whether the ombudsman needed a supporting committee, as the system that supports the

Parliamentary and Health Service Ombudsman in England involves the Public Administration Select Committee both scrutinising and supporting it. That means that the ombudsman has a committee that it can go to when it has a difficulty with Parliament. I said that we do not need a supporting committee. You can read in *Hansard* that I said that the Local Government and Regeneration Committee's job is to interrogate what we do, and that it is important that that is done and is seen to be done.

In Richard Baker's questioning, we got into areas such as the NHS complaints system. I would love to discuss that with the Health and Sport Committee, but my annual report comes to this committee and it is difficult for you to be expert in matters of health. Something that this committee could usefully do to help me would be to signpost other committees to such issues in the annual report, which I am trying to do by preparing sectoral reports.

As I left the select committee yesterday, someone said, "It looks a bit strange. Are you the local government ombudsman for Scotland? Your annual report goes to the local government committee." It took a bit of explaining that there are historical reasons why it is that way and that I have to report to a committee of the Parliament. It should not be a supporting committee, but a committee that makes us think. Meetings such as this should be about how we can help you to scrutinise the performance of others with the information that we have.

The Convener: I am sure that we can signpost your findings for other committees and take back to you questions from them.

As you know, this year we sent you a huge amount of written questions so that we could get the answers to things that crop up often. Beyond that, we have asked members of the public to submit questions, some of which I hope to get to later, although some of the points have already been covered.

Anne McTaggart: Good morning. Mr Martin's letter to the committee and evidence mentioned multi-agency delivery and the holistic approach to complaints resolution. You also mentioned that in October the Cabinet Secretary for Health and Wellbeing had been very supportive of that new venture. Can you give us an update on that?

Jim Martin: No; the matter is with ministers.

I am very keen, particularly when we talk about health and social care integration, to build an approach from service users upwards, rather than try to fit individuals to structures. In a number of key areas, two or three agencies might provide aspects of an individual's care, often not in a public place but in the individual's home. It is

important to me that those individuals, many of whom are very vulnerable, have as simple and easy a task as possible to get things put right when they go wrong.

My powers are different in different services. In health, I can look at the clinical judgment of a nurse, doctor, dentist or whoever. I cannot, however, examine the professional judgment of social workers because social work is a local authority matter. I can look at issues in which a local authority has discretion only if I can show that there has been maladministration. A complaint about social care homes, for example, should go to the Care Inspectorate. I can look at how the Care Inspectorate handled the complaint, but I cannot look at the complaint at the point at which it was initially made.

How does an individual—usually a vulnerable individual—work their way through that system? Once they get into that system, how do we make sure we get a balanced view of the care proposition that requires to be addressed if different systems and processes are in place? The cabinet secretary has taken on board the fact that we really need to look from the individual's point of view at how we get everyone together to get it fixed. That is what I am pressing for at the moment.

Anne McTaggart: You have taken that idea to the cabinet secretary along with some of your recommendations.

Jim Martin: I mentioned it to the Health and Sport Committee, and I was followed into that committee meeting by the Cabinet Secretary for Health and Wellbeing, who said on the record that he thinks that it is sensible way forward.

The Convener: We could perhaps write to ask the cabinet secretary where he is with his deliberations on that issue, if the committee agrees.

Anne McTaggart: Thank you, convener.

Cameron Buchanan: I turn to education. Your predecessor sought advice from solicitors Anderson Strathern about whether staff were eligible, but not headteachers. Do you think that headteachers should have a separate body, rather like the police? Has the position changed? Are you now allowed to receive complaints from headteachers?

Jim Martin: I must be very careful here because I am not allowed to discuss individual cases, and this sounds like it might be very close to a case that we have looked at recently.

Cameron Buchanan: No.

Jim Martin: Let me take the question of legal advice first. When I take legal advice, it is just that.

It is advice. My predecessor may have taken advice on a related matter. If the case is not identical—they very rarely are—I have to weigh up the advice to decide whether the distance between the new case and the old case is such that that advice is still valid, whether I have to get more advice, or whether I do not need any advice.

The SPSO act says that I cannot look at what were at the time called personnel issues. The question is whether an officer, a headteacher or someone who is in a body, in doing what they are doing, is a member of the public—those whom the act says I should give access to—or whether they are acting in a professional capacity. The other thing that I need to look at is whether there are alternative means of resolution.

As the committee knows, education is close to my heart and there are many routes for people who are involved in education to resolve issues, particularly those who are in positions of authority in education. Those routes are, I argue, not open to the public but might be appropriate for people in authority to use. That might sound a bit coded, convener, but I think that—

The Convener: That is fair enough; there could have been identification of an individual.

I want to move on a little bit to a question that is related to legal advice. This is one of the questions from a member of the public. Are there circumstances in which the SPSO would override legal advice that it had sought and received? If that did occur, would you inform Parliament? If not, why not?

Jim Martin: Legal advice is private to me. It would not normally be put into the public domain. If the legal advice that I received gave me options, I would decide on those options. If they were that I could either take course A and the consequence would be this, or I could take course B and the consequence would be that, I would make a reasoned judgment. It would then be open to someone who thought that I had acted wrongly or recklessly to challenge that. However, I would not make public legal advice in case I am required to investigate in private.

Cameron Buchanan: You did not answer the question about whether there should be a separate body as there is for the police for those who do not come under your jurisdiction. There seems to be a bit of a dichotomy there; is that right?

Jim Martin: What I was trying to say was that members of the public can come to me, but those who are not members of the public have other routes available to them. In your example of a headteacher, that route might be through the local authority or an external education body. I think such routes exist.

John Wilson: Earlier you quoted the convener's letter to the effect that

"justice delayed is justice denied".

In one of the written questions that we asked, we highlighted that implementation of almost a quarter of recommendations had been delayed beyond the agreed time. Given that that is a delay for the individuals and families who are seeking redress in matters that they have brought to the SPSO, what are you doing to ensure that complainants' expectations are not raised unduly and that they get timely redress and resolution of the issues that they have raised?

Niki Maclean: Although we set an expectation with bodies that recommendations will be fulfilled within the timescales, that does not happen in a percentage of cases. As I think I told the committee last year, we might set timescales and work very hard with the bodies in question to ensure that they implement our recommendations but, ultimately, implementation is very much a matter for them. Perhaps the committee could support us in our efforts in that respect.

Sometimes there are genuine reasons why recommendations take longer to implement or are not implemented within timescales; they might turn out to be more complex or wide-ranging and require more changes in the body than was first thought.

Jim Martin: Perhaps I can give Mr Wilson an example of such a case.

The Convener: Please do.

Jim Martin: We had a case of a local authority that for many years had not maintained a road. That was having an impact on the value of people's houses and so on, so we required the authority to make a substantial sum of money available to the people there to fix the road. We spent a bit of time with the local authority, discussing how it could do that, how it was allowed to do it and the legal position. We argued and negotiated with it and ensured that it understood that at the end of the day it would have to follow the recommendation. Eventually the authority implemented it. That kind of thing, which is what I think John Wilson alluded to, is the exception.

When we make a simple recommendation that someone should apologise and that does not happen within the timescale, we are very firm. After all, the issues might seem to be trivial to the body in question but are very important to the families concerned.

In any case, we try to ensure that we listen. If a local authority or health board tells us, "Doing this is going to take far more time than you think", that is fine as long as we are convinced by the argument and the recommendation is

implemented within what we consider to be an acceptable period. Otherwise we are very firm with people. All the bodies that are under my jurisdiction know that if we make a recommendation and they decide not to follow it, we will lay a special report before Parliament. I have never had to do that.

John Wilson: I have a particular question about special reports that I will ask later.

I still think that 22 per cent is an excessive percentage of successful complaints in which implementation of recommendations was delayed. As for Ms Maclean's comment that some issues turn out to be more complicated than was expected, surely such discussions should take place before any timescale for implementing recommendations is agreed and reported to the complainant. The point was made in response to an earlier question that some people do not consider it to be worth their while to complain. If 22 per cent of complainants feel that the resolution to their case was not dealt with in the time that was set out by the ombudsman and the body about which the complaint was made, individuals might just say, "What's the point of complaining? They don't deliver on the timescales that have been set out anyway."

10:45

The Convener: Who is going to take that question?

Jim Martin: First of all, if we think that a recommendation is going to be delayed, we talk to the people involved and explain why the delay has come about.

Secondly, you need to remember that we are making recommendations, not giving directions. I have the power only to recommend; I have no power to make the recommendation happen. Instead, things happen because of the force of our office's reputation.

Occasionally we get a recommendation wrong; it might, for example, turn out to be impractical. However, that will happen only in a handful of cases each year—we are talking about only two, three or four recommendations out of the 1,000 that we make—and at that point, we will readily say that we got it wrong.

However, coming back to a word that was used earlier, we tell the authorities and boards that we will not negotiate on the recommendations before they go out. Instead, we will take advice, make the recommendations and expect them to be carried out. We do not reach a decision and then negotiate the recommendation. We simply make the recommendation.

John Wilson: I thank Mr Martin for that response.

Coming back to a point that I said I would return to, I note in your response that there might be a review of special reports. I was a member of the Local Government and Communities Committee in the previous parliamentary session and we discussed the value of such reports, which brings us back to the point that you have just made about how the SPSO's recommendations can be enforced. Does the SPSO have sufficient enforcement powers at the moment and, if not, should its powers be reviewed urgently?

Jim Martin: For a number of reasons, I have always been very nervous of the power to direct. For a start, I do not think that I should direct the budgets of bodies that are under my jurisdiction, but an outcome of the power to direct is that you set priorities for bodies.

I might have cited this example before. I once received advice from medical advisers on the back of a pretty horrendous multiple-birth incident in a hospital in which I think both babies died and the mother herself nearly died. The advice was that all multiple births should take place in an operating theatre. That might sound sensible when you say it quickly, but if you think it through you will realise that, in effect, you would be tying up resources and taking away mothers' right to choose where and how certain things can happen. Moreover, you would not be taking into account the impact on rural communities, and various other matters.

Had I simply accepted that advice and made that recommendation, and had I the power to direct, it would have created serious problems for effective management of the health service and it would almost certainly have ended up in court for judicial review. We have to be wary about the power to direct.

As for where I think my powers are weak, I cannot, for example, look at matters that are at the discretion of local authorities. That approach was intended to reflect how local authorities operated 50 years ago. When Richard Crossman set up the ombudsman's office in the UK Parliament and when, three or four years later, local government ombudsmen came in, the intention was not to let an unelected official—the ombudsman—cut across the right of democratically elected councillors to take decisions. However, the current position in local authorities is that more and more decisions are taken not by elected members but by officials operating on their behalf. In huge areas in local authorities, administrative decisions are being made by a source outwith the local authority that citizens are unable to challenge.

That means that the service that I can offer to citizens who are dealing with local authorities, as

opposed to health bodies, for example, is diminished. If the Government decides to change the rules and bring social work to us, the same will apply to social work. That area is worthy of examination by this or another committee, because I believe that citizens might not be getting the best deal.

John Wilson: Earlier, you said that the last line in any letter that your office sends out is, "This decision is final." Is the decision final, or is it subject to judicial review?

Jim Martin: My final decision might be subject to judicial review. That review can examine only how I arrived at the decision, to see whether I followed an appropriate process.

I will give you an example from outwith Scotland. In Northern Ireland, the ombudsman has said that a general practitioner practice should pay a £10,000 consolatory payment to the widow of a man who got poor treatment from a GP. A judicial review of that decision is under way. It concerns not whether the ombudsman's decision to uphold the complaint was correct but the factors that the ombudsman weighed when he decided that there should be a payment of £10,000 rather than £5,000 or £15,000. He is having to justify the decision-making process, rather than the decision. If that process is found to be faulty, the decision will fall and will have to be considered again. That is the way in which judicial review would work.

John Wilson: If a complainant is not happy with the way in which the SPSO arrived at its decision, do they still have the right to deal with that complaint through the courts rather than rely solely on the SPSO's decision?

Jim Martin: Yes, they do. However, if the issue is to do with how we have dealt with them—

John Wilson: I am not asking about that. I am asking whether, if they are unhappy with the SPSO's final decision, they can as an alternative course of action pursue the issue through the courts.

Jim Martin: Anyone who has a decision from me can go to judicial review, and it is for the courts to determine whether the approach is competent.

John Wilson: Mr Martin, you misunderstand me. I think that Ms Gray has picked up on where I am coming from.

Emma Gray: If someone has completed our process and got a final decision from us, they can of course still go to court with the same matter.

John Wilson: That is the answer that I was looking for.

The Convener: I would like to move on to questions that the public have submitted to us. We

will probably seek further answers from you after this session.

Once an investigation report has been presented to Parliament, it cannot be changed. What would you do if you discovered subsequently that the judgment was wrong? Would you, for example, take it to judicial review?

Jim Martin: If someone produced information that we had not considered or something that made me believe that our decision was unsound, I would reopen the matter and submit another report to Parliament. We want to ensure that justice is done. It is as simple as that.

The Convener: That is grand.

The new CHP is helpful, but could contact between bodies under jurisdiction and SPSO officers in the training sessions make some investigations less impartial? What safeguards do you have in place to prevent that?

Paul McFadden: Those questions relate to the activities of the training unit, which has undertaken a programme of training with bodies under jurisdiction to support the implementation of the CHPs as well as good complaints handling in general. We have a small training unit of one person, who is supported by complaints reviewers from our office who deliver the courses.

As for safeguards, no individual cases can ever be discussed, as is the case in any forum in which we would speak. We uphold to the highest degree the impartiality of our investigators as they conduct their reviews. There would be no discussion with bodies about individual complaints.

The Convener: Why are complaints not accepted from organisations?

Jim Martin: That question could mean two or three different things. We were put in place to take complaints from members of the public and, in some circumstances, an organisation can be a member of the public. For example, if an NHS board wanted to complain about Healthcare Improvement Scotland, that would not be appropriate, but if the same NHS board wanted to complain about the approach of Scottish Water or Scottish Water Business Stream, we could—under the 2002 act—accept such a complaint. Under the act—section 5 of it, I think—there are certain circumstances in which an organisation may be construed to be an individual.

Under section 2(2) of the act, we can be approached by an organisation to look at a complaint that it has received about itself if someone has said something about it publicly. There are a number of circumstances in which an organisation can be a member of the public, but I assure you that a member of the public can never become an organisation.

The Convener: I found that answer quite confusing, so I can imagine how confusing some punters out there would find it.

Jim Martin: We will give you it in writing.

The Convener: That would be extremely useful.

What explanations are given when the SPSO uses its discretion to delete cases?

Jim Martin: I do not think that we delete cases—do we?

Niki Maclean: We have an archiving policy.

Jim Martin: We archive cases, but we do not delete them.

The Convener: Okay. That is grand.

Mark McDonald: There are data protection guidelines on the retention of personal information. You say that you have an archive. I assume that you comply with data protection requirements on the retention of files. Might some historical cases have been destroyed to meet data protection requirements?

Niki Maclean: Yes.

The Convener: Thank you, Mr McDonald—that was useful.

Is there a presumption that public officials and their records are more likely to be trustworthy than complainants?

Jim Martin: No.

The Convener: Rulings should not be arbitrary or illogical, nor should they contradict rulings that have been made on similar cases in similar circumstances. Are full explanations given in all cases?

Jim Martin: Yes, they are. It is clear from the decisions that we issue and the summaries that we publish that every complainant who comes to us gets a full answer.

The Convener: Are complainants given all the reasons for SPSO rulings?

Jim Martin: Yes, they are.

The Convener: What opportunity did the public have to input into the standardised complaints-handling procedures?

Paul McFadden: We consulted on the framework for the model CHPs in 2010. That included consultation on the principles, which were subsequently approved by Parliament, and consultation on the general guidance on the model CHPs, which formed the basis for them. That was a full public consultation.

In addition to accepting responses from anyone—bodies, stakeholders and members of

the public—we sought specific views from Consumer Focus Scotland. It undertook a written survey and held a number of focus groups with its consumer network, which consisted of a collection of consumers from across Scotland. It provided a full and detailed report on its views on the CHPs, which is available on our website. We also consulted in other sectors. For example, we consulted the Tenant Participation Advisory Service on housing complaints. That was all factored into the CHPs, along with a number of individual responses from members of the public.

The Convener: If folk were to write to you now giving suggestions for improvement, I take it that you would take due cognisance of that and let folk know how you were going to respond.

Paul McFadden: Of course, and we would feed that into planned reviews of the CHPs in future years. However, if a suggestion was about the practice of complaints handling, we might feed it in through the network of complaints handlers.

11:00

The Convener: There are a number of questions from the public that we have not got to. We will write to you with those questions, and any answers that we get back will appear on the committee's web pages.

Mr Martin, you said earlier that one part of the legislation governing you, about matters for local authority discretion, was worthy of examination. Would you like changes to any other parts of your governing legislation in order to improve your performance? What are they and why would you want them to be changed?

Jim Martin: I would like to think about that. There are one or two issues that relate to how we were set up, as an amalgamation of a number of existing UK bodies, in which, while the legislation is silent, in our practice we have operated differently. I will take you through one of those.

My office does not as a matter of course offer financial redress, yet other ombudsman offices in the UK do. I have asked Emma Gray to research what the practice elsewhere is and whether we should be thinking about that in Scotland.

I am a bit concerned that we might have operated in a particular way in Scotland that has seemed fine until now but might have disadvantaged citizens of Scotland in comparison with citizens in other parts of the United Kingdom. As a kind of acronym, I would say that it is the CCC—the Cardiff-Carlisle-Carlisle—question. If someone is in Cardiff or Carlisle and something goes wrong—such as a health matter or the non-enforcement of a planning matter—the ombudsman in those areas can say that the

financial redress should be £X. Why should that not happen in Carluke?

There might be a good reason for that historically, but I wonder whether, in 2013, we should continue to maintain that position. We will have a look at that and if, when we have done that, I think that legislative change is required to implement any change, I will happily come back and discuss that with the committee.

The Convener: That would be extremely useful. You said that you need to think about the issue. If anything else comes into your head, please write to us and let us know. Thank you for your evidence.

11:03

Meeting suspended.

11:07

On resuming—

European Union Issues

The Convener: The next item of business is consideration of a response to correspondence that we have received from the European and External Relations Committee and the Standards, Procedures and Public Appointments Committee on EU issues. We have a draft response before us to consider. Members will see that I propose that the committee respond to both pieces of correspondence jointly, as the subject matter of the requests is linked.

The draft response has been considered and endorsed by our EU reporter, Stuart McMillan, who unfortunately cannot be here today. Annex A to the paper before us is a response to the request from the Standards, Procedures and Public Appointments Committee on its review of standing orders relating to proposed EU legislation. It sets out the committee's experience to date on that issue.

Annex B sets out our reply to the European and External Relations Committee on our EU strategy and engagement in 2013. The response sets out the work that the committee has undertaken to scrutinise EU issues over the past 12 months. Do members wish to comment on either of the responses?

Stewart Stevenson: I draw the committee's attention to my potential conflict of interest as the convener of the Standards, Procedures and Public Appointments Committee were I to participate in the discussion of a letter to me in that role. I therefore make it formal that I shall take no part in any such discussion.

The Convener: Thank you. As there are no further comments, do we agree to send the letter and the attached responses to the conveners of the European and External Relations Committee and the Standards, Procedures and Public Appointments Committee?

Members *indicated agreement.*

11:09

Meeting continued in private until 11:21.

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