

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 24 November 2004

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE 28th Meeting 2004, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Mr Mark Ruskell (Mid Scotland and Fife) (Green)

COMMITTEE MEMBERS

*Rob Gibson (Highlands and Islands) (SNP)
Karen Gillon (Clydesdale) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Richard Lochhead (North East Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Janis Hughes (Glasgow Rutherglen) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

Professor Alan Alexander (Scottish Water)
Cheryl Black (Scottish Water)
Dr Jon Hargreaves (Scottish Water)
Trisha McAuley (Scottish Consumer Council)
Dr John Sawkins (South East Water Customer Consultation Panel)
Ian Smith (Water Customer Consultation Panels)
Alan Sutherland (Water Industry Commissioner for Scotland)

THE FOLLOWING ALSO ATTENDED:

Lewis Macdonald (Deputy Minister for Environment and Rural Development)
David Milne (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

ASSISTANT CLERKS

Chris Berry
Catherine Johnstone

LOCATION

Committee Room 6

Scottish Parliament

Environment and Rural Development Committee

Wednesday 24 November 2004

[THE CONVENER opened the meeting at 10:02]

Water Services etc (Scotland) Bill

The Convener (Sarah Boyack): Good morning. I welcome members, the public and the press to the meeting and remind colleagues and people in the gallery to switch off their mobile phones. I have received apologies only from Karen Gillon.

Agenda item 1 concerns the Water Services etc (Scotland) Bill. Members will remember that, during stage 1, the Minister for Environment and Rural Development said in a letter to us that he wanted to change the role of the water customer consultation panels. In particular, he suggested changes to the procedures for handling complaints about Scottish Water. The committee wanted to take supplementary evidence on that issue, as we did not take evidence on it from the minister at the time. Therefore, we will now hear additional oral evidence, so that we can clarify our thoughts before moving into detailed discussion at stage 2.

Three panels of witnesses are lined up this morning—I think that all the witnesses are here. On panel 1, I welcome Trisha McAuley, who is head of corporate resources at the Scottish Consumer Council. I thank her for her written evidence, which has been most helpful. All members have a copy of it and of the previous written submission, which has been recirculated.

I invite colleagues to kick off the questions.

Maureen Macmillan (Highlands and Islands) (Lab): I have read the latest submission, which rather damns the minister's proposals with faint praise. On balance, would putting complaints to water customer consultation panels be a good move? Does the Scottish Consumer Council believe—as is possibly suggested—that other things could be done, and that complaints could be dealt with by Consumer Direct, for example?

Trisha McAuley (Scottish Consumer Council): We must start from the current position. For the reasons that we outlined in our evidence, which the committee has already put in its report and which I will not therefore go through again, we do not think that complaints should sit with the water industry commissioner's office. We must not forget that it is for Scottish Water to deal with complaints in the first place, because the customers are its customers. The debate is about

where complaints go if they are not resolved by Scottish Water. There is merit in the argument that in principle they should be handled by a consumer body.

You talk about damning the minister with faint praise. First, if one is going to have a complaints-handling function, one needs to get it right, and we have suggestions to make on that. Secondly, complaints are an important part of a consumer organisation's work, but they are a small part. Research that we did for the panels and which MVA did for WaterVoice showed that respondents had little experience of any problems or complaints. They are quite happy with their water service—I am sure that Scottish Water would back that up—so they have given little thought to whom they should contact if they need help. If one focuses too much on complaints, one will not see the balance of the consumer experience.

Consumer Direct was referred to. Evidence shows that bodies such as energywatch and Postwatch are quite well resourced to deal with complaints at United Kingdom level and have offices in Scotland. However, they have become quite inward focused and the complaints function has dominated their agenda. A damning report by the National Audit Office stated that because they have been focused more on fixing problems after they have arisen than on examining the underlying causes of market failure, they have not been able to evaluate the consumer benefit from complaints in a systematic manner. They have not undertaken a comprehensive analysis of all the factors that influence consumer behaviour and they have failed to focus on the wider experiences of consumers. In particular, disadvantaged and hard-to-reach groups were mentioned, which might not be so vocal in making complaints.

We would not have a problem with the panels having that role, because it fits with what a consumer body would want to do, but at the moment there is nothing in the bill to suggest that the panels will have the teeth or the formal intervention powers that are required to have an effect for consumers. At the moment, the only body in Scotland that has those teeth is the Scottish public services ombudsman. I am not saying that it should do it but, unless we build into the bill powers for the panels, I doubt how effective they can be. They need those powers. To balance that, we need to consider ways of building in better powers for the other aspects of their work. That has been done with UK energy and postal services legislation, which I can elaborate on later.

Complaints will keep arising for various reasons. I do not expect Scottish Water's customer service levels to drop, but the industry is changing and is becoming much more complex. Competition is coming in and we are building in increased

accountability. We expect Scottish Water to become more aware and I would want the panels to increase their consumer awareness. Consumers' expectations will be raised and that will generate more complaints. That has happened in other areas and, in a way, it is not a bad thing. The issue is not whether you get lots of complaints, but whether they are resolved satisfactorily.

Maureen Macmillan: Thank you. I do not know whether anyone wants to follow up on those points.

The Convener: I am interested in the idea that there will be more complaints. I can see that having publicity and making people aware of the complaints process might tip them over to make the effort. You say that the industry is becoming more complex, with competition being brought in. However, for domestic customers, the situation should remain exactly the same, so why would there be more complaints from domestic customers?

Trisha McAuley: Panels will deal with complaints for the whole customer base. Domestic customers will become more aware, and I would expect complaints to rise through the increased accountability that we are building in with the commission and through increased awareness of the bodies that are providing services. With the advent of competition, things will continue to develop in that area, and there is a danger that the panels will have a big workload because of an increased number of complaints from the business sector.

The Convener: Would it be appropriate to give business sector complaints to the panels? Not everyone agrees with that.

Trisha McAuley: Whether the panels should also cover business customers is an issue that goes wider than complaints; it concerns the entire remit of the panels rather than just the complaints-handling function. I know that Ian Smith does not agree with me but, as an organisation that represents domestic consumers, we have always said that there are tensions for an organisation that needs to find policy solutions for both consumers and businesses. For example, the policy solutions for unwinding the existing cross-subsidy between the two sectors might be different for each group and it would be quite hard to bring those things together. That is part of a wider debate about the role of consumer organisations in general. If the customer panels are to have a remit that covers both domestic and business customers, I am not sure that it would help matters to split their remit for one particular function. The debate is wider than just complaints handling and is about all the panels' functions.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Why are you not in favour of extending the remit of the customer panels to include the representation of non-domestic customers, given that that might create a level playing field for non-domestic and domestic customers?

Trisha McAuley: We do not agree. Our position is that businesses have more buying power and more resources to voice their feelings, whereas individual consumers are non-homogeneous. Domestic consumers are disparate, are often disadvantaged and are not grouped together in any way. That is why organisations such as ours have been set up. I take the point that some issues that small businesses face are similar to those of domestic consumers, but they might require different solutions.

Probably not all small businesses have a voice, but there are vociferous organisations such as the Federation of Small Businesses and the Forum of Private Business and, for bigger businesses, the Confederation of British Industry Scotland and the Scottish Chambers of Commerce. Given that those bigger organisations are well organised and well resourced, we need to be careful to ensure that the panels' limited resources are not taken up in responding to them at the expense of those who are most in need in our society. As a consumer organisation, that is where we are coming from generally.

Mr Ruskell: That is true, but the panels will become much stronger and will be given more teeth, which is what you want to see develop. In that context, if an organisation that represents big business lobbies the Parliament, surely MSPs can turn around and say, "Sorry, but you need to work through the panels." If the panels are the place where solutions are discussed and put forward for customers of all types, both domestic and non-domestic, might not there be an advantage in getting everyone together to work out solutions?

Trisha McAuley: No. In our experience, big business does not come to the Parliament but meets behind closed doors with civil servants. Businesses can put in much more resources and time. To take an example from another area, I have done a lot of work on the Communications Act 2003 and on media ownership in Scotland, which involves some big business interests. I go along to those meetings on my own, but Scottish Media Group has a team of 20 people. That is the level of resources that SMG can put in for behind-the-scenes lobbying, for example in the current review of public service broadcasting.

Maureen Macmillan: Will you clarify how you think complaints from non-domestic users should be addressed? It cannot all happen behind closed doors. There must be a process.

Trisha McAuley: I have not really given the issue any thought because our remit is to advocate solutions for domestic consumers.

Maureen Macmillan: Are you not bothered how non-domestic customers are dealt with as long as they are not covered by the customer panels?

Trisha McAuley: It is not that we are not bothered but that we have focused our attention on domestic consumers. However, businesses that decide to take on a different supplier from Scottish Water will have recourse to the water industry commission under their licence agreement.

The Convener: My only other question is on whether any powers need to be added to the powers of the water customer consultation panels. Is a requirement to consult the panels before a charging policy is issued the main additional power that the panels would need if they are to be given powers to deal with complaints?

Trisha McAuley: There are other issues, but that is one power that we want to see in the bill, and we are grateful that the committee has put that in its report. The minister has given a commitment to ensure that the panels have adequate resources to do the other parts of their work, so that complaints will not dominate their agenda. I have to say that I have heard that before, when the Water Industry (Scotland) Act 2002 was passed. With the best will in the world, different people saw that the panels needed different resources to get established and to get up and running. If you put other things in to underpin in statute what the panels can do, you are committing the Executive and ministers to resourcing those issues. I am probably not making myself very clear.

10:15

The Convener: Could you give us an example of the specific initial powers that you want?

Trisha McAuley: The panels could be given a statutory role in examining emerging issues, rather than just in dealing with complaints. For example, energywatch and Postwatch have statutory requirements to publish forward work programmes, which the Utilities Act 2000 stipulates must contain

“a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.”

They are required by statute to identify emerging issues, rather than just to react to complaints or to one aspect of the customer experience, and to develop an evidence-based strategy for how they plan to deal with issues in future. That challenges the market to adopt a proactive approach, rather

than to consider just one area of customer experience.

One of the other areas covered in the Water Act 2003 is the identification of both existing and future consumers, so that WaterVoice will have a remit that covers not only customers but how the industry impacts on consumers as a whole, rather than just on customer service.

The Communications Act 2003 concerns the requirements on the Office of Communications, which is a regulator. The act

“requires OFCOM to make arrangements to ascertain public opinion and the experiences of consumers”

across the board. Ofcom also has a statutory requirement to carry out consumer research and to publish the results.

We would probably want the panels to have a remit to increase consumer awareness and to ensure that the panels are accessible, particularly to disadvantaged groups. The last thing that I want to do is to heap more work on the panels, but if we build in statutory balancing powers over and above their complaints function we then put the onus on ministers and on the Executive to resource that work. If those functions are in statute, they are not amenable to political change or to the next round of budgetary cutbacks; the panels will have powers that cannot be taken away from them and which must be resourced.

Rob Gibson (Highlands and Islands) (SNP): I take it that you are talking about sharing information about complaints trends and about the implications for service improvement, which you have highlighted as a starred item in your paper. That has to be spelled out quite clearly.

Trisha McAuley: Absolutely. In that respect, it does not really matter who deals with complaints, as long as someone is dealing with an individual consumer's problem. However, I would expect the trends and issues that come to Scottish Water to be analysed and examined—I am sure that Scottish Water does that. Whoever handles complaints, the information needs to be shared among the customer group, the regulator and Scottish Water. Complaints are not the only aspect of implementing a policy, but they cannot be separated from policy, and it is certainly true that complaints data will generate policy issues.

I reiterate that complaints are really for Scottish Water to deal with. I think that the committee's report mentions the fact that somebody—possibly the panels—could look at every single complaint that Scottish Water deals with. I do not think that that is practical, but I do think that there is a role for the panels in auditing Scottish Water's complaints-handling process by conducting random sampling. That is done in other sectors,

and I know that the water industry commissioner for Scotland has had that role in the past. That seems to me to be one way of providing a safety net, and that is what the National Audit Office says is not happening at the moment with some of the other organisations. They are dealing with complaints and becoming so reactive that they are unable to demonstrate that they are having an impact on consumer benefits.

Richard Lochhead (North East Scotland) (SNP): I apologise for being a few minutes late. I guess that you are really the customers' voice out of today's witnesses. In their submission, the water customer consultation panels say that the set of changes that the minister has proposed

"brings clarity to the process",

but I am slightly concerned about that.

I agree with many of the changes that have been proposed, but Scotland is a wee country. We have our water industry, but it is now being proposed that the office of the convener of the water customer consultation panels has a distinct role, the panels themselves have a distinct role, the water industry commission for Scotland has a distinct role, ministers have a distinct role and Scottish Water has a distinctive role. If all the changes go ahead, there will be five key players in Scotland's water industry. What will consumers make of that? Will customers of Scottish Water understand where to go if they have a complaint? It all seems quite complex.

Trisha McAuley: There are two issues there. First, there is the issue of signposting consumers to the right place and having a clear and simple system, and I will return to that. Secondly, on the water customer consultation panels' evidence, there must be one avenue by which consumers can approach panels. Separating out practical complaints from policy complaints is an artificial distinction. Complaints can result in policy change.

The five panels have done a good job over the years, despite not having the resources that they should have had. They carry out an important local function, but I would like them to have central support so that complaints can be dealt with in a central office, on a one-stop-shop basis. Our research and the evidence of other organisations indicate that consumers need to find an easy, accessible place to go.

That said, consumers should go to Scottish Water first, and there is a responsibility on Scottish Water to ensure that consumers know that. There will also be responsibilities on the panels in the future. Those are key challenges. I hope that that answers your question.

Richard Lochhead: Do you think that there should be a snappy name for where consumers go with their complaints?

Trisha McAuley: Yes.

Richard Lochhead: If I understand this correctly, Scottish Water is saying that if people are not satisfied with what it is doing, it will refer them to the office of the convener of the water customer consultation panels. That does not really get the message out to the Scottish public. There could be a specific, snappily named body that people could approach with their complaints—perhaps waterwatch or something like that.

Trisha McAuley: I would agree with that. Energywatch and Postwatch both have posh names—that is the sort of name that consumers go by. I made a submission to the Executive's transport division a couple of years ago regarding representation and ferries. It went nowhere, but we asked for a consumer body to be called ferrywatch. It is all about public awareness and accessibility. It is only a name, but people need a simple, one-stop place to go to, and it must be accessible to them.

The Convener: Presumably, that is why the organisation in England and Wales is called WaterVoice.

Trisha McAuley: Yes.

The Convener: Thank you very much for coming and for being prepared to be grilled in detail on your submissions. It has been very helpful to us.

We will suspend the meeting for a couple of minutes to let Trisha McAuley vacate the witness box and to allow the next set of witnesses to come forward.

10:23

Meeting suspended.

10:24

On resuming—

The Convener: I welcome the second panel of witnesses, who are from Scottish Water: Professor Alan Alexander, who is the chair; Dr Jon Hargreaves, who is the chief executive; and Cheryl Black, who is the customer service director. I thank the witnesses for their initial and supplementary submissions, which members have in front of them. I invite members to kick off with questions.

Alex Johnstone (North East Scotland) (Con): What are the witnesses' experiences of handling complaints? On an operational basis, what proportion of the complaints that you receive are

you able to deal with? What proportion relates to practical water policy matters?

Professor Alan Alexander (Scottish Water): I will start by giving an indication of the scale of the issue. Scottish Water receives about a million contacts per annum, of which only around 1 per cent eventually become what can be described as complaints. Only a tiny fraction of those complaints have to be referred beyond Scottish Water.

You are right to distinguish between direct service issues and policy issues. If the water customer consultation panels are to be one-stop shops, as we very much hope that they will be, they will act first as the postbox and then as the filter for the very few complaints that we cannot resolve. In other words, the panels will decide what kind of complaint they are dealing with. If it is a service complaint that Scottish Water has failed to resolve to the customer's satisfaction, the panels will take one course of action, but if the complaint relates to a policy issue, the answer might have to come from the regulator or from ministers. It is important to set that context.

I have given you the numbers, but Cheryl Black will respond to your specific points about the split of complaints that we deal with.

Cheryl Black (Scottish Water): The proportion of complaints that relate to policy issues changes, depending on what is happening in the industry. For example, the analysis of complaints that the WIC's office provided indicates that last year there was a dramatic rise in the number of complaints that related to charges. That happened around the time when the way in which business customers are charged changed significantly. Many complainants asked why standing charges were high, rather than about personal bills. There is a standard answer to most of those questions, because they simply raise a policy issue.

I will back up Alan Alexander's point: it is important that there should be one place to which customers can direct their complaints. How issues are dealt with will vary, depending on the nature of the question, but the key point is that there will be a separate body that monitors whether the customer gets a response from the most appropriate source. People will be able to complain to one place, which will ensure that the problem is resolved.

Alex Johnstone: Would it be fair to say that Scottish Water resolves internally most complaints about operational or practical matters relating to the supply of water and sewerage services, but issues relating to policy matters are likely to pass out of your hands?

Cheryl Black: Yes. The vast majority of complaints relate to an issue that a customer has

with their premises or their company's bill. However, in the context of the hot topics of the moment, such as development constraints, a developer might ask why they cannot build a property on a particular site. That issue relates to capital funding for Scottish Water, which is not a matter that we can dictate, so the most effective solution would be to refer the complainant to the policy decisions that relate to our capital investment programme. We do not want to fob customers off by saying, "Sorry, guv. It's not our fault and we can't do anything about it." We want to ensure that people understand who took the decision and why they took it. However, we receive a very small number of such complaints.

Professor Alexander: A large number of policy issues arrive on my desk or Jon Hargreaves's desk. In cases in which we can simply explain the policy, of course we do so. There is a distinction to be made between asking, "Have we handled the matter right?" and asking, "Is the customer happy?" The answer to the first question might be yes, but the answer to the second might be no. At that stage the correspondence needs to be referred to a single body, which will decide what should happen next.

Alex Johnstone: What I am trying to get at is the nature of the material that eventually passes into the hands of those at the next level—the panels that we are talking about taking that role. Are we talking about issues to do with the practical application of services, or is the vast majority of what will be passed to them essentially to do with policy and policy application?

10:30

Cheryl Black: The vast majority of complaints that come into the water customer consultation panels' offices under the proposed scheme would be directed straight back to Scottish Water and we would resolve them. If it is a matter on which, as Alan Alexander described, we felt that it would help the customer to give them further information about policy, strategy or whatever, the customer panels could direct the complaint on to the commissioner's office or wherever else is appropriate. They would ensure that the response got to the customer.

Alex Johnstone: The type of problem that remains unresolved and must be dealt with ultimately by the process that we are talking about will be very different from the typical problem that is reported.

Dr Jon Hargreaves (Scottish Water): You are right. The complaints that end up going all the way and require an investigation—currently by the WIC's office—tend to be about issues such as investment, when somebody does not like the fact

that we are going to build a sewage works somewhere and they want it to be built in Carlisle or somewhere else. We increasingly go and visit customers when we see that a tricky issue is likely to arise. That often defuses the situation as we are able to explain the position much better in person than we can on paper. That is not reflected in the statistics, but we are undertaking more and more such visits.

Occasionally, a customer or a group of customers—even a community—will write to us and we will give fulsome responses, but they will not like the answer. There may be several community meetings and they still might not like the answer. What tends to happen then is that they get the support of MSPs, who will also write to us and we will respond accordingly.

Alex Johnstone: Guilty.

Dr Hargreaves: In a few cases—it is a handful of cases—the matter currently ends up at the WIC's office and in future such matters will end up at a WCCP. What the investigation calls for in effect is our file—we are asked what evidence we have given and what options we have considered. A decision, backed up by that evidence, will be made for or against us. It is inevitable that most of the cases go back to a policy decision in the past. For example, in the case of a treatment plant, it may be the case that the regulatory regime that we operate under was fixed some years ago. The fact may be that we do not have the money to build a tertiary treatment plant and everybody, including the Scottish Environment Protection Agency, is telling us that primary basic treatment will do the trick. That is about providing value for money for customers. Those are the intractable issues.

Where we make an unholy mess, by and large we get in and sort the problem out. That is not to say that we always get 100 per cent resolution of those issues. A classic example of that might be a claim for flooding, where damage has been done to property. We may have gone through a proper process that was agreed by everybody and settled what we believe is a reasonable amount of money, but the customer does not think that it is enough so they continue to go for more. It is totally understandable that they will use any avenue that they can to achieve that.

Such cases are absolutely in the minority. The WCCPs and the WIC act as a frustration relief for some customers. The customers have heard what Scottish Water said and they do not like it, do not believe it or do not want to hear it, so they need to go to somebody else—perhaps to hear the same message. Often the message is the same, particularly when it relates to policy issues—some of which will go back as far as two or three years.

They might not be policy issues that have arisen in, say, the past two weeks.

Alex Johnstone: If there are issues that you cannot resolve, is it fair to say that resolution will often be difficult or impossible?

Professor Alexander: There is a distinction between whether a person is unhappy with the process or unhappy with the outcome. From our point of view, if we are clear that we have done everything that we can to resolve the issue and have explained why we cannot satisfy the customer, the customer's concern is not about the process but about the outcome. Any organisation that deals with complaints finds that there comes a point when what the customer is unhappy about is not what the organisation has done but what it was not possible to do.

The Convener: Or whether you have dealt with a complaint in such a way that they feel that the issues have been addressed effectively.

Professor Alexander: Absolutely.

The Convener: I want to ask you a couple of questions that I asked a previous witness. First, for the domestic customer, should the process be complex, given that nothing is really changing?

Professor Alexander: I do not think that it should be complex, for the reasons that I gave earlier. We need to give the consumer a direct single route for action when we do not resolve their complaints. I have sympathy with the view that Richard Lochhead expressed about the number of bodies that apparently exist. The way to deal with that is to say to customers, "If you are not satisfied with the primary service provider, this is where you go and after that the handling is the panel's responsibility." The panel then has to decide what complaint it is dealing with and act as the primary filter. If it is dealing with a service complaint that Scottish Water ought to have resolved, but has not, it will come back to us, ask for the file, consider it and see whether it can improve matters. If it is dealing with something relating to policy or the tariff structure, the complaint will go elsewhere. The process has to be seamless as far as the customer is concerned. The customer has to say, "That is the box that says 'complaints about water' and that is where we put it. Someone decides the routing after that." The process can be simplified in that way.

The Convener: Do you agree with the minister's proposal that all complaints from the domestic and non-domestic sectors would go automatically to the water customer consultation panels should you not resolve them?

Professor Alexander: Absolutely. From our point of view, there has to be a one-stop shop for all customers. I listened to what Trisha McAuley

said earlier. There is a distinction to be drawn between the big customers, such as BP and Caledonian Paper, which have the kind of representative bodies and the muscle that she described and—given how competition is being introduced—a large number of our non-domestic 160,000 customers, who have much more in common with you and me as domestic consumers. The starting point has to be that if there is a complaints procedure, we do not discriminate between our customers; they choose whether they use the procedure.

The Convener: Do the panels have the powers to address those issues? Your submission states that under the current system

“WICS may well suggest a course of action to Scottish Water in order to help resolve an issue. However, the crucial point is that this is always done before responding to the customer”.

That is obviously about ensuring that there are clear lines of communication in dealing with a complaint. The phrase “WICS may well suggest” implies that the water industry commissioner can say, “Here’s what I think should happen,” not “Here’s what you must do.” Have I picked that up right? Under the Executive’s proposals, will the panels have enough power to resolve complaints?

Cheryl Black: The fact that the panels are being given the authority to handle complaints from customers almost implies that power. From our point of view the objective is to end up with a satisfied customer, so Scottish Water is not going to ignore a recommendation from the panels or the commissioner; if it did so, all that would happen is that the customer would continue to complain. Enshrined in the proposals is sufficient authority for the panels to come back and discuss further solutions for the customer. Nothing more is particularly required. I cannot think of any complaints for which the commissioner’s office had to issue any formal instruction for us to change our position. We all share the objective of satisfying the customer as far as is humanly possible.

Dr Hargreaves: What makes us different from England and Wales is that we are talking about public money. Where complaints get really protracted is where compensation is involved. If we give WCCPs the ultimate power to instruct Scottish Water to do something, which inevitably costs money, we have to take into account the fact that we are spending public money, not shareholders’ money or dividend money that is being diverted for service. We see an increasing tendency—as we do throughout society—for people to claim for wrongs that have been done. I am not saying that that is wrong, but we are seeing more and more of it.

A balance has to be struck between the power to instruct a problem to be resolved and the cost of resolving it. We also have to consider the knock-on effect in some cases. If WCCPs are given that power, there must be some counterbalance in relation to the costs, because we are spending public money. A resolution might look effective for a particular incident, but if that became the policy, we could easily get into a position where we spent millions of pounds a year on compensation—flooding is a good example of that. We usually take the insurance route which, by and large, works pretty satisfactorily. Insurance companies are getting more wary of flooding incidents and that will become a bigger issue down the line.

We have to keep that balance in mind. First, if we are instructed to do certain things, it has to be within our powers to do them, and secondly, we have to have the wherewithal to do them. We cannot just nip off to our shareholders and say, “We’ve made a mess of this, can we have some money?” The costs come out of funding that would be used for other things.

The Convener: I presume that an individual complaint of the kind that you describe could be precisely the kind of issue that might kick across to become a general policy issue. The customer panels would want to address that sort of issue. That takes us back to the previous point about how you identify upcoming issues and problems that consumers generally have as opposed to one-off individual issues.

Dr Hargreaves: Yes. It is right that the minister is directing the WCCPs to make that forward-looking issue one for ministers because that is where it should sit. It is not a responsibility for Scottish Water.

Cheryl Black: It is worth adding something about the way in which Scottish Water operates with the customer panels at the moment, despite the fact that they do not yet have any responsibility for dealing with complaints. We share the trend data about complaints with them on a regular basis and we discuss jointly the upcoming issues for customers. We are already operating in that way.

Mr Ruskell: Further to that, one of the concerns that the panels brought up was that there might not be adequate resourcing to look at policy research issues in particular. If the panels are given a strengthened role in scrutinising policy objectives and looking at complaints that have a policy angle, do you foresee implications for Scottish Water in that there might be a mismatch of resourcing and expertise between you and the panels, which might be under-resourced?

Professor Alexander: The answer must be that, whatever happens about the handling of

complaints, Scottish Water must continue to provide the first line of resolution. Therefore, nothing should change from our point of view. If there is then a need for policy considerations to be addressed as a result of the pattern of complaints, it is proposed that that will be a matter for the panels. Common sense suggests that they would have to be resourced to do that if that is what is expected of them.

Cheryl Black: It can only help us and customers if the panels carry out that work. Far from giving us additional work, it is more the case that it will be easier for us to discuss matters with them. They will have the resource and the information to debate some of the issues that we are raising with them at the moment. Their work will be quite complementary.

Dr Hargreaves: It should be made clear to customers where the money to fund this is coming from. We should be transparent because customers will be paying for the panels. Unless someone has an idea to fund them through general taxation, I understand that they will be paid for, as the water industry commissioner's office is, by Scottish Water and therefore by customers. There is an issue of accountability and customers need transparency because this is their body and they are paying for it.

Richard Lochhead: How easy is it for customers to complain, and to what extent do they know where to go to make a complaint? Given that the water bill is also the council tax bill, I assume that a number of people must complain to the local authorities. To what extent do local councils refer complaints to you or do people who want to complain get lost in the ether?

10:45

Cheryl Black: The mark of a successful customer-focused business is that it is easy to complain to. That is something that we are striving for. At the moment, the situation for customers is confused. That said, people can always contact us at Scottish Water. The customer consultation panels are visible in communities, yet, if customers speak to the panels about complaints, they are directed to the water industry commissioner.

Much of the confusion arises because, in the past, the water service was almost invisible to our customers. It is only in the past few years that the service has started to have any sort of profile. Nowadays, our customers are telling us that they expect us to communicate with them in the same way as they are communicated with by companies such as Scottish Gas or Scottish Power. That is not an approach that would have been taken in the days of the old water authorities.

We need to do a lot to ensure that our customers are clear about our responsibilities and about how they can contact us. We get complaints via the local authorities, although they are fewer in number than the committee might expect. That does not mean that we should not make it easy for people to reach us through that route. Our job is to communicate much more effectively the routes, what customers can expect of us and what the next step is if they need to escalate their complaint.

At the moment, the situation is not clear, but it can be made clearer. Obviously, there is a cost on us if we are to communicate with 2 million households. We have to trade spending on that with spending on other things. I accept that customers are confused at the moment, but it would not be difficult to clear up the confusion.

Dr Hargreaves: The suggestion that Richard Lochhead made earlier about having a snappy name is a useful one. In England and Wales, the complaints body had a long convoluted, technical-sounding name—I am sorry, but I cannot remember what it was. Giving the body the name "WaterVoice" helped people to focus on its activities and made it clear what it does. In the recent debates in England and Wales about pricing, WaterVoice has been effective in getting its voice heard on issues such as affordability. It is taken seriously by politicians and the media, and customers—particularly domestic customers—know that there is a voice out there for them.

We should learn from some of the lessons down south, particularly from success stories such as WaterVoice. I do not think that the name change that is proposed for WaterVoice is taking it in the right direction, although that is its decision to make. Richard Lochhead made a good point: there is no point in having all the processes if people do not know how to use them. That is not what we are about.

Professor Alexander: It is worth pointing out that we get one crack at directly addressing our customers. That is when the bill goes out and we can put one piece of paper into the envelope along with the bill. We try very hard to give people as much information as we can about the content of the bill. We set out what the water element is of the bill that they are being asked to pay, how the bill is constructed in terms of what we spend and what someone can do if they need to contact us. We try to maximise the amount of clear information that we give out.

Jon Hargreaves is right. There is no question but that if there were a body with a snappy name and we could say, "This is where you go with your complaint," that would be helpful.

The Convener: I want to pick up on Jon Hargreaves's comment about the proposed change to WaterVoice's name. Can you clarify what is going to happen? Was your reference to the consumer group that was mentioned by the first panel?

Dr Hargreaves: Yes. WaterVoice is changing its name to one that makes it sound like it has a consumer council activity. It would appear to be distancing itself even further from Office of Water Services, which is the water industry commissioner equivalent down south. Perhaps Alan Sutherland can give the committee a better answer. To be honest, I cannot remember the details.

WaterVoice was born out of the way in which the WCCPs started off as Ofwat's eyes and ears for customers. There were 10 chairs and 10 panels around England and Wales and they dealt with some of the issues around complaints. The WCCPs evolved into WaterVoice, which had more independence from Ofwat. I think that everybody would agree that the transition from one to the other has been beneficial.

To take the debate a stage further, the idea behind calling something "WaterVoice" is a good one, as it is pretty clear what it is. If WaterVoice becomes a consumer panel or a consumer something or another, its role will not be as clear. WaterVoice's powers may be strengthened in terms of making determinations on behalf of customers, but there is a need to have a clear focus.

We have to accept that a large number of our customers continue to think that they get their water from the council—and not even a council that has existed since the last reorganisation. The fact is that customers contact us only rarely at the moment. They have cause to complain to us, or even contact us, once every nine years—I think that that is the figure. Most of the contacts come from people who are moving house or because of a change in their circumstances.

We are not like a normal retail business whose customers would be constantly in contact with it. The fact that people have cause to contact us only rarely is a sign of success; we do not want to have people ringing us up every day.

Nora Radcliffe (Gordon) (LD): I want to get some sort of feel about the current way in which complaints come in and are dealt with. You said that you have 1 million contacts and that most of the complaints that are resolved are operational ones. The WIC's office will redirect stuff to you about operational matters and a tiny amount of contacts—which, by and large, will be operational in nature—are redirected to you by the local authorities. How is all that contact logged,

accounted for, audited and passed on? Who is it passed on to? Are there formal mechanisms for doing that?

Cheryl Black: Contacts that arrive at Scottish Water by telephone, e-mail or letter are logged on our customer management system. The vast majority of issues are resolved through the normal process and the customers are satisfied. For the small percentage of contacts—1 per cent or whatever—that turn into complaints, either a customer writes directly to say that they are unhappy about something or, in the course of the phone call, a resolution cannot be achieved. There is then an escalation process; we have a customer relations team whose role is to handle and record the next stage of those cases.

For a complaint that has come to us via the WIC's office or when someone has written, as they often do, and the case has escalated to the next level, we appoint a case officer. As Jon Hargreaves described, we have a team of people who visit the customer and seek a resolution. All the steps in that process are recorded in our systems. The number of contacts and complaints is reported to the commissioner's office as part of our quarterly and annual reporting. The volume of contacts is recorded, as is the nature of complaints according to a set of descriptions that are set by the WIC's office. That is all fed through to him.

In the past, there have been quality auditing processes whereby somebody from the WIC's office would come and listen to calls, for example, or take away a sample of letters to ensure that there was external monitoring not just of the quantity but of the quality of the resolutions. That was a fairly comprehensive process.

Some complaints get to the point at which we simply cannot find a resolution. In many cases, one of us will speak to the customer, who may have involved their elected representative—either their MSP or their local councillor—on matters of policy decision. We know that, sometimes, the customer is unhappy with the answer. However, we can demonstrate that we have gone through a lengthy process to ensure that the customer feels that we have dealt with their complaint in the most effective way.

I am not saying that there are not times when we get the handling of complaints wrong; we still do, and that is something for all of us in the business to focus on. However, by and large, complaints are handled with empathy.

Dr Hargreaves: Believe it or not, we get a number of thank-you letters. Perhaps we should have brought some.

Cheryl Black: We get more thank-you letters in this industry than in any other industry that I have worked in before.

Rob Gibson: It is relief.

The Convener: If it is so awful, it must be nice when it stops.

Nora Radcliffe: I have another question on the idea that domestic and non-domestic complaints should all be referred to one source. There was some debate about whether that would level the playing field. To me, it seems that doing that would take out the unfair advantage of extra resourcing that some players have. Would you see it as levelling the playing field if domestic and non-domestic complaints were directed in one way?

Professor Alexander: At the risk of repeating myself, I would say that, from our point of view, they are all our customers and, if they have a problem, we should try to resolve it. After that, it is important to keep the process as simple as possible for the customer, whoever the customer is. The process involves a combination of the customer's response and what the postbox—which, under the present proposal, would be the WCCPs—decides to do with it. That keeps it as simple as it needs to be for customers without depriving individual customers of other routes if they wish to take them.

Dr Hargreaves: The main difference between business and domestic customers is the billing. We bill businesses ourselves and bill domestic customers through councils. Through the process of harmonisation, there has been quite a lot of concern in that area. If those issues are stripped out—they have died down significantly in the past six to 12 months—the sort of complaints that we get from domestic and non-domestic customers are about the same things. We might, for instance, get a complaint about flooding in a street from the owner of a corner shop and from householders in the same street. We might, similarly, get a complaint about odours from a sewage works from a pub on a street corner that is near a sewage works and from householders in the same street.

It is not that business customers want special favours; the lobbying that goes on behind the scenes happens when there is a big event. For example, at the moment, the Scottish Executive is considering restructuring the tariff baskets for business customers. Business customers will always use as many avenues as they can. If they know that the one that really counts is the WCCP, or whatever we are going to call it, they will use it, although they will still use other methods of getting an answer.

Nevertheless, 99 per cent of the complaints that we get from business customers are pretty similar to the ones that we get from domestic customers.

If we tried to separate them, we would end up causing unnecessary frustration to our business customers. As was suggested earlier, our business customers are capable of looking after themselves. We do a lot of work with the chambers of commerce, the FSB and other organisations, which provide us with a ready access to the voice of those customers. We do not have such access to the voice of domestic customers, so domestic customers need to take slight priority. However, separating complaints from domestic and non-domestic customers would—to return to Richard Lochhead's point—lead to a lot of confusion. Business customers are also domestic customers and it is not always easy for people to remember which one they are when they go home at night.

Maureen Macmillan: Let us return to the process and the points that were raised by Richard Lochhead and others. When you talk about people contacting Scottish Water to make complaints, are you talking about Scottish Water's head office or about the local office as well? People often pick up the phone and call their local office. If they do that and are not satisfied, are they told what they can do next?

Cheryl Black: If one of our customers speaks to anybody at Scottish Water—whether it be at our headquarters or elsewhere—the member of staff should own that problem and create the link back to the customer service department to ensure that we record it as a case and follow it up with the customer, rather than ask the customer to go and find their way into the organisation. By and large, contact is made via our main helpdesk or through letters to our head office. We now have very few local offices that are equipped to handle those contacts. We would either direct the customer or own the case ourselves.

Maureen Macmillan: I suggest that we should not call the new contact "Watergate".

Professor Alexander: I counsel against calling it "Waterpan".

The Convener: Let us move swiftly on. I thank our three witnesses for answering our questions this morning. That has been very helpful. We will take a couple of minutes' break before we welcome our third panel.

10:58

Meeting suspended.

11:00

On resuming—

The Convener: I welcome our third panel of witnesses, who are Alan Sutherland, the water

industry commissioner for Scotland; Ian Smith, the convener of the water customer consultation panels; and Dr John Sawkins, the deputy convener of the south east water customer consultation panel. I thank them for their written submissions, which members have read.

Nora Radcliffe: People are concerned that if the complaints function is handed over to the customer panels, there will be blurring with their present work. My understanding is that there will be a discrete office to handle complaints, under the chairmanship of the person who also happens to be convener of the customer panels. I do not see a danger of blurring, but I am interested in the witnesses' views on that.

Ian Smith (Water Customer Consultation Panels): I say up front that we welcome unequivocally the minister's proposals. Panel members would not welcome having to deal with complaints, individually or collectively—doorbells would ring on Saturday nights, which would not be terribly convenient. It is important that there be a clear one-stop shop for complaints, so the best way to do that within the Scottish structure is to create a central office to which complaints can be referred. That office can operate as the mechanism for pushing complaints to Scottish Water or for putting complaints about policy issues alongside the ingathering of information, which the panels do anyway.

Dr John Sawkins (South East Water Customer Consultation Panel): I endorse that. It is essential for consumers that there be a one-stop shop. To pick up on what Alan Alexander said, the office will act as a filter.

Richard Lochhead: Alan Sutherland is obviously keen to keep putting the boot in to Scottish Water and to make what are—to some people, including me—unfair comparisons with the water authorities south of the border. I ask him to describe any comparisons between authorities that he has done in respect of handling and definition of complaints and the various processes.

Alan Sutherland (Water Industry Commissioner for Scotland): I can comment on the information that is available on the number of complaints that are handled within the timescales that are set out in the codes of practice in Scotland and in England and Wales, which are identical. We audit the qualitative aspects of Scottish Water's performance in handling complaints, such as clarity of answers and responsiveness to and empathy with customers. Obviously, we do not carry out a qualitative analysis of companies in England and Wales and therefore cannot make comparisons on that basis. It is important to understand that customer service reports draw comparisons in respect of where we are at present and that, in so doing, it is important to set a

baseline. How else would we know whether the situation is getting worse, better or going sideways? It is important to have an objective baseline, which is what the report on Scottish Water's first year established. I hope and expect that the situation will improve.

Richard Lochhead: My next question is for Ian Smith and John Sawkins. There are five key players in the water industry in Scotland, which I suggest is a complex system for a small country, and there is a debate about whether the proposed changes should go ahead. Are there too many players or, to get round that complexity, do we simply have to ensure that, in the public eye, there is a one-stop shop to which people can go with a complaints?

Finally, what should we call you if these changes go ahead, given that your current acronym is COWP, which I suspect you do not want to be called?

Ian Smith: I do not know how appropriate COWP might be.

There is a perception among various customers that the system is complicated. However, under the proposals, it would not be as complicated as it is at the moment. One of the frustrations that panel members have suffered over the 18 or 20 months of the panels' existence is that they have had to refer matters to the water industry commissioner or to Scottish Water and the impression has been given to domestic and business customers that we are not much more than a letterbox. The proposals are welcome, in that they would ensure greater clarity and provide a better comparison with England and Wales.

The brand name has troubled me a great deal. "Water watch" would be nice, but someone got there before us—I think that that is the name of an environmental group that examines water quality issues. "Water voice in Scotland" has potential sensitivities connected to it. However, we agree that the water customer consultation panel is a bit of a mouthful and does not sell the idea of what we are about.

If there is to be an effective one-stop shop for complaints, we will need a tag that gives clarity about how people would complain. We must develop something like that; any good ideas would be welcome.

Dr Sawkins: Richard Lochhead mentioned five key players, but I think that there are a good deal more than that. It is important that customers are clear about where they go if there is a complaint or if something cannot be resolved by Scottish Water in the first instance. They do not need to know about the functioning of the drinking water inspectorate, the Scottish Environment Protection Agency and all the rest of it. If I turn on my tap and

discover a problem, I will go to Scottish Water in the first instance. However, where would I go if the problem was not resolved at that stage? There must be a clear answer to that question.

The helpful thing about the Water Services etc (Scotland) Bill is that it encourages a move to a situation in which everyone's role will be clear. In the past, people have not been clear about their roles and have had to work out what they were doing in an ad hoc way. However, the bill will make it clear who does what and where they do it. From the consumer's point of view, there must be a one-stop shop for all customers of Scottish Water.

On the name, given that I toyed with calling Alan Sutherland's office "OfScotwat", I think that I should not make any bright suggestions about the name of the consumer panel.

Ian Smith: To underline what John Sawkins said, I will quote from the foreword to WaterVoice's programme for this year, which was written by its chairman, Maurice Terry. He captures in a few words what we would want the panel's role to be. He talks about

"a credible and effective one-stop shop for customers, with strong powers to obtain and publish information and to resolve complaints."

We see that public information dimension as being absolutely crucial.

Rob Gibson: On the WIC, you say that a recently agreed consultation code has been drawn up between WCCP and Scottish Water but that you had no role in that process. Given that you have a responsibility for dealing with customer complaints, do you think that you should have been more proactive?

Alan Sutherland: That code was something that ministers asked the panels to draw up; we were not given a role in the process. When we sought clarification of the situation, we were told that because it is unclear who should deal with any complaints about consultation, we should be working on something in this regard but that the Water Services etc (Scotland) Bill would clarify the situation.

Rob Gibson: That is interesting. In that case, I would like the other witnesses to say whether they think that the consultation code should be produced in a firm form that people can understand and, perhaps, be written into the bill.

Ian Smith: The current consultation code is statutory under the Water Industry (Scotland) Act 2002. It has been brought about through Scottish Water's initiative but we have the responsibility of working with Scottish Water on approval of the code.

We are taking a sensible step together and using real collaboration to pilot the code. Between now and March, we are working with Scottish Water at different activity levels, to understand how the consultation process has developed. We are looking at pretty low capital investment levels but big schemes. We are considering the impact of different aspects of consultation on Scottish Water's customers. We will trial the code, after which we will see how effective it has been in practice.

I add the rider that many of the arrangements between the five players in the water industry can be dealt with effectively in the future by clearer memoranda of understanding and other methods. The new arrangements provide scope to have behind the defined roles defined arrangements for consultation and internal discussion.

Rob Gibson: Is Dr Sawkins happy with that?

Dr Sawkins: Yes.

Mr Ruskell: My question is to the WCCPs—or Cowpwatch or whatever the organisation will be called in the future. Through the bill, ministers will give panels a more central role in examining policy objectives when they are being drafted. Will you be concerned primarily with social justice policy objectives, the economy or the environment?

Ian Smith: We have tried to give appropriate and almost equal weight to all the policy dimensions. We have probably taken a stronger role on environmental issues than was expected. We spent much time on considering social justice dimensions in relation to the inclusion agenda. Much of the work that we undertook early doors has awoken a United Kingdom debate about the affordability of water charges. We seem to have influenced WaterVoice to examine affordability across the piece.

We have undertaken much work on charging principles for the business community. The simple answer is that we need to be vigilant enough to consider the different impacts of water policy on customer groups and to have sufficient resilience not to advance one customer group's view to the exclusion of others. We must represent all customers.

Mr Ruskell: The economic concerns will be reflected in more depth when you work with non-domestic customers.

The factors that I mentioned are the three aspects of sustainable development. The minister sets policy objectives that relate to that and Scottish Water has the function of delivery. We will have to see what happens, but the WIC could have regard to the matter. How will you implement the sustainable development function? You described how you have worked on those themes

in the past year or so. Would it be useful for the same policy framework to apply to your work?

Ian Smith: We assume that we have that policy framework. It is fair to say that the panels have not tired of reminding Scottish Water of its sustainability obligations. One of our panel members is active in Scottish Water's sustainability group and he reports to all the panels. We have tried to take as broad a view of sustainability as we can and to ensure that it influences everything that we consider. I do not think that much more needs to be done to focus our role on sustainability in the three aspects that you described.

Mr Ruskell: You would prefer the system to remain voluntary—you do not want anything to be put in the bill.

Ian Smith: Changing the law would add nothing to the present position. We have a sound basis for what we do. In that, we reflect several key interests among Scottish Water customers and the wider community.

The Convener: I have a couple of questions about who takes up complaints. I have concluded that sending everyone to the same person to complain would provide clarity. That is straightforward. However, we have the possibility of retail competition for non-domestic customers. Should complaints in that market take the same route? Could it be argued that they need a slightly different route? I am hoping for an answer from Alan Sutherland or Ian Smith—or Dr Sawkins, if you have all thought about this. The issue of switching suppliers was raised, and whether a complaints system should kick in at the point at which there is a licensing regime.

11:15

Ian Smith: To give the others time to think about the best answer, I shall give a glib answer, which is that there are two things to consider. There are complaints about the customer service aspect of what you described, and there are complaints about the policy aspects. I think that we can take those through the same route. However, there are also complaints about licensing arrangements, which are probably more appropriate for the commission. I do not know whether that opens up a can of worms for the other witnesses.

Dr Sawkins: I do not like thinking on my feet on this issue. Presumably, trying to explore the issue of complaints about the way in which the licensing regime is run and the licences are given out and so on—

The Convener: It was suggested at the first stage of evidence that the proposed system would not be sufficiently robust, and that if somebody did

have a complaint about the licensing process and the allocation of licences, there was not a clear route for them to complain. I am trying to pick that up, because it is a complaint. I would like to be clear about whether we have got that right in the bill, before we debate the detail of the bill.

Ian Smith: I think that the grey matter has worked a bit better. There is something in the minister's proposals that is very powerful and that we have not discussed at all this morning. One of his proposals is that I will be under an obligation to come back to Parliament every year with a report that will analyse how the five different complications work. The way in which the licensing regime works could be a heading in that report. There would be joint preparation of such a report with the commission.

Dr Sawkins: As a point of principle, the new commission must be very clear about what its job is and is not. There is a temptation to draw any office of this sort into the day-to-day micromanagement of the body for which it is supposed to be the economic regulator. If some sort of pseudo-complaint role were given to it, it might be tempted to be drawn into micromanagement, and we would take our eye off the ball again. Perhaps—again, I do not like making such things up on the hoof—the first point of complaint should be the commission for the licensing regime. Stage 2 of the process would have to involve some other body.

Alan Sutherland: Are we talking about a complaint about how a license is issued or administered, or are we talking about a customer's experience as a customer of that licensed new entrant to the market?

The Convener: I was thinking of both situations. I was thinking about my experiences in the energy market as a consumer, but not from the non-domestic point of view. I am just trying to work out where each kind of complaint would go.

Alan Sutherland: The second example should be fairly straightforward. I cannot see any reason why a business customer who chooses to switch their supplier should have less right than a private customer to complain or to make representations about the level of service that they are getting. If that person has complained to their supplier and is still not happy, they should be able to go to someone else. I suggest that the panels—or whatever they will be called in the future—would be appropriate. I do not think that that is a particular problem.

On the process of issuing licences, I think that I explained to the committee previously that we are planning a four-stage consultation process between now and the issue of the first licence to the first new entrant, and two stages of

consultation before a licence is issued to the retail business of Scottish Water in April 2006. That will cover the process by which applications on licensing will be made. It will also have to take full account of ministerial guidance under the proposed legislation that will set out for the commission the process of issuing a licence and the criteria that we will have to bear in mind.

Clearly, the experience in the independent energy sector ought to teach us some lessons, particularly about ensuring that the entities that come into the market are properly resourced to provide a reliable service to the customer and to avoid the kind of debacle that marred the early days of electricity supply competition.

The Convener: I simply wanted you to put that on the record. Unless we delve into the matter, it will not be 100 per cent clear.

Our first witness this morning made a strong point about resources. The water industry commissioner's paper makes it absolutely clear that the cost for handling complaints will be about £75,000, or 5 per cent of the office's total budget. I am trying to work out how that squares with the WCCP's current budget. After all, the Scottish Consumer Council estimates that the office can expect to spend about 45 per cent of its resources on that function. Have ministers assured you that you will receive sufficient resources? If so, will those resources be based on the current level of complaints or do you accept the claim that you will receive more complaints when a formal complaints system is introduced and publicised?

Ian Smith: On the first question, I have been assured by ministers that once the function is clear, the form will follow from it and will be adequately resourced.

The second point is that we are not simply looking at inheriting an existing system. Instead, we will take the precaution of thinking through complaints management from first principles and we will base what we think we require on that analysis. That is the only proper way forward.

The Convener: So you are not necessarily considering the cost of the current system. You are doing everything from scratch.

Ian Smith: I am sure that those who give advice on the customers' levy to ministers and to Scottish Water on behalf of the customers will, for comparative purposes, consider existing expenditure. However, it would be quite wrong simply to take the current situation and assume that that is how things will be in the future. It is only right to examine the situation properly.

Richard Lochhead: If the panels' successor will be funded by a levy on customers, how will that work for non-domestic customers?

Ian Smith: The levy is on Scottish Water for all customers. You must appreciate that we already carry out a great deal of activity with non-domestic customers. That area is not new to us.

The Convener: I think that we have exhausted our questions. I thank all the witnesses for attending the meeting and for making advance submissions. The evidence session has been very useful; indeed, I am interested to see that everyone sat through it all. I hope that it has cleared some matters up—it has certainly allowed the committee to go into the matter in some depth.

Now that we are about to go on to stage 2 of the bill, I should highlight one or two pieces of information. The first day of stage 2 proceedings on the bill is likely to be 8 December, which means that the deadline for lodging amendments for consideration on day 1 is 2 pm on Monday 6 December. As ever, the clerks will provide advice and guidance on lodging amendments and other procedures. Given that we are still on the record, I should say that I have agreed not to go any further than the end of section 11 on day 1. I have just come back from Wales and have given the matter and the clerks' advice a great deal of consideration. I hope that we have got that right.

I suspend the meeting briefly to allow the final set of witnesses to leave.

11:24

Meeting suspended.

11:26

On resuming—

Subordinate Legislation

Draft Agricultural Holdings (Right to Buy Modifications) (Scotland) Regulations 2004

The Convener: I welcome the Deputy Minister for Environment and Rural Development, Lewis Macdonald, and his officials. We will consider an affirmative instrument—the Draft Agricultural Holdings (Right to Buy Modifications) (Scotland) Regulations 2004—which the Parliament must approve before it can formally be made. The committee is invited to recommend to the Parliament that the instrument be approved, and the minister is here to move motion S2M-1973, in the name of Ross Finnie, the Minister for Environment and Rural Development. The Subordinate Legislation Committee considered the instrument and indicated that it had no comment to make.

We will follow our usual practice and have a session to clarify any purely technical matters and allow explanation of details while officials are at the table. When we move to the formal debate, the minister will be on his own. I invite Lewis Macdonald to introduce his officials and make opening remarks. We will then move to clarifications and factual questions from members.

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): David Milne, on my left, and Graham Fisher, on my right, are the officials who are here to deal with any technical points that arise.

The regulations are fairly straightforward, and members who were involved with or took an interest in the Agricultural Holdings (Scotland) Bill will be familiar with the concept. Others who have a close knowledge of Scottish agriculture will also be familiar with the circumstances in which the requirement for the regulations arises. Their purpose is to make clear how the pre-emptive right to buy a farm, which the Agricultural Holdings (Scotland) Act 2003 gives certain tenants, should apply in certain cases, particularly at the stage when tenants have to register their interest in acquiring a farm.

The regulations apply to cases in which the tenant is a limited partnership and the beneficiary of the right to buy is a general partner in the partnership. As I said, some members will be familiar with that situation, but for those who are not I point out briefly that a limited partnership may be formed by the landlord as limited partner and the de facto tenant as general partner. That

device, which has been employed in some tenancies in recent years, has the effect of limiting the tenant's security of tenure when compared with a direct individual tenancy. We are keen to ensure that the provisions of the 2003 act that confer the right to buy on tenant farmers should apply also to those de facto tenants whose legal status is that of a general partner in a limited partnership. That, in essence, is the purpose of the regulations.

The detail of the right to buy is set out in part 2 of the 2003 act and the provisions are the only remaining provisions in the act to be brought into force. We consulted on the proposals behind the draft regulations and the other instruments that are required to bring part 2 into force.

The convener mentioned the response of the Subordinate Legislation Committee, and members will see from the Executive note that accompanies the draft instrument that there was broad support for our proposals. We have made one change in response to a suggestion that was made by the Law Society of Scotland and the Scottish Agricultural Arbiters and Valuers Association in amending the draft instrument that we consulted on; the change makes it clear how the instrument will apply when there is more than one general partner in the partnership. For example, if the general partners were a husband and wife who were the de facto tenants, we have made specific provision in order to allow for that. That provision reflects exactly the same provision that is in the act where a husband and wife are the direct tenants of the landlord.

The regulations speak for themselves, and I would be happy to answer questions before we move to the formal debate.

The Convener: Thank you. Having a sense of how you consulted on the statutory instrument is useful. Does any member have any points of clarification or questions that they want to ask?

11:30

Alex Johnstone: I want to cover the same ground that the minister has covered, but I would like further clarification. The impact of the regulations will extend not to any relationship in respect of full tenancies under the Agricultural Holdings (Scotland) Act 1991, but exclusively to the limited partnerships that, as we are all aware, were created in essence to circumvent the 1991 act. The Executive has chosen as a matter of policy to include them in the legislation as de facto tenancies. Therefore, there will be no impact beyond that specific policy intention, and the regulations are designed to implement that policy intention in so far as the right to buy is concerned.

Lewis Macdonald: That is correct.

Alex Johnstone: You mentioned husbands and wives. How would things operate between fathers and sons, or between generational relationships?

Lewis Macdonald: I should be clear. I mentioned husbands and wives as an example, but the regulations refer to cases in which there is more than one general partner. That could include any relationship in which there is more than one general partner who is part of the legal tenancy, which is the limited partnership. It is the same application.

Alex Johnstone: Such a person would require to have been associated in business terms with the partnership when it was created. We are not talking about something that could be inherited by someone who might have a right to heritable property, but who is outside the business arrangement.

Lewis Macdonald: The right extends to general partners within the partnership. I think that that answers the question.

The Convener: It is a business relationship.

David Milne (Scottish Executive Environment and Rural Affairs Department): We are dealing with a partnership that is a contractual arrangement, so the normal rules of inheritance that would apply to a full secure tenancy under the 1991 act would not apply to a partnership arrangement. Partners could be added into the partnership by contractual agreement, but the normal rules of inheritance that apply under agricultural holdings legislation do not apply directly to the partnerships themselves.

The Convener: As there are no other questions or points of clarification, we will move to the debate on the motion. I invite the minister to move motion S2M-1973, in the name of Ross Finnie.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft Agricultural Holdings (Right to Buy Modifications) (Scotland) Regulations 2004 be approved.—[*Lewis Macdonald.*]

The Convener: Do any colleagues want to say anything about the motion or to make any statements?

Alex Johnstone: I am in a slightly difficult position, given that the Conservative party and I took a view that the measure should not have been included in the 2003 act when it was passed by the Parliament. However, I am fully aware that the change is desirable under the terms in which the bill was passed. Consequently, I find myself in a quandary as to whether I should give my support or abstain. I will therefore reserve judgment until the convener asks whether we agree to the regulations.

The Convener: We have up to 90 minutes for the debate. We will see how long you have before you must make that judgment call.

Richard Lochhead: I will try to take up at least 90 seconds of the 90 minutes.

I welcome the regulations. It has been clear for some time that there has been a campaign in Scotland—which many of my constituents support—to ensure that the pre-emptive right to buy includes as many tenant farmers as possible, and that any measures that are taken by landlords to circumvent that right should be overcome through the legislation.

It would be helpful to have the minister's comments or views, and any feedback that the department has received since Parliament passed the bill, on the measures that have been taken by landlords to try to circumvent the legislation. Is the minister confident that the regulations that we are considering will address all those measures, or will other legislation have to be introduced?

Nora Radcliffe: I welcome the fact that the regulations tidy up an anomaly that needed to be sorted out.

The Convener: Minister, would you like to respond to any of the points that have been raised?

Lewis Macdonald: I would like to help Alex Johnstone to resolve his quandary and persuade him that, as it now stands, the spirit of the law clearly reflects the will of Parliament. It would be unfortunate if tenant farmers in one set of contractual relationships did not enjoy the same rights as tenant farmers in others. On the basis of equity within the farming community and to avoid any ambiguity or sense of inequity, it is sensible to apply a consistent provision to general partnerships and limited partnerships for tenant farmers.

On Richard Lochhead's query, we have no evidence of any pattern of landowners seeking to avoid the implementation of the pre-emptive right to buy by selling. If there was any such evidence, we would be interested to see it but we have none. Partly because of other matters arising from the reform of the common agricultural policy, there has been relatively little movement on the agricultural land market in recent months.

It might be worth noting the provision that we have made for situations in which there are two or more general partners. Each of those partners should consent at the outset to the registration, so whether the partners are a father and son or a husband and wife, the second partner should consent to the first partner registering an interest in acquisition. However, we have excluded from that definition of two or more general partners a

general partner who might be an associate of the landlord, such as the landlord's agent or a member of the landlord's family. If that person is included in the partnership as a partner, the provision requiring their consent would not apply. That regulation should preclude attempts to evade the purpose of the regulations.

On those points, I rest my case.

The Convener: The question is, that motion S2M-1973, in the name of Ross Finnie, be agreed to. Are we agreed? I am happy to take a division if we need to.

Alex Johnstone: My comments are on the record.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Agricultural Holdings (Right to Buy Modifications) (Scotland) Regulations 2004 be approved

The Convener: I thank the minister and his officials and invite them to leave.

**Marketing of Fruit Plant Material
Amendment (Scotland) Order 2004
(SSI 2004/471)**

**Nature Conservation (Designation of
Relevant Regulatory Authorities)
(Scotland) Order 2004 (SSI 2004/474)**

**Conservation (Natural Habitats, &c)
Amendment (Scotland) Regulations 2004
(SSI 2004/475)**

The Convener: We have to consider three instruments under the negative procedure. The Subordinate Legislation Committee has considered all the instruments and had no comment to make on any of them. As members have no comment on the instruments, are they content to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: I thank colleagues for their hard work this morning.

Meeting closed at 11:39.

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