



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 7 January 2015

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE

1st Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

Clare Adamson (Central Scotland) (SNP)

*Cameron Buchanan (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Anne McTaggart (Glasgow) (Lab)

*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Niki Maclean (Scottish Public Services Ombudsman)

Jim Martin (Scottish Public Services Ombudsman)

Paul McFadden (Scottish Public Services Ombudsman)

John McNairney (Scottish Government)

Alex Neil (Cabinet Secretary for Social Justice, Communities and Pensioners' Rights)

David Reekie (Scottish Government)

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

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 7 January 2015

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Kevin Stewart): Good morning and welcome to the first meeting of the committee in 2015, and a happy new year to you all. Everyone present is asked to switch off mobile phones and other electronic equipment, as they affect the broadcasting system. Some committee members will refer to tablets during the meeting, as we provide meeting papers in digital format.

We have apologies today from John Wilson MSP and Clare Adamson MSP. Stewart Stevenson will be substituting for Clare Adamson—you are very welcome, sir.

Agenda item 1 is a decision on whether to take item 7 in private. Do we agree to do so?

Members *indicated agreement.*

European Union Reporter

09:30

The Convener: Item 2 is consideration of the appointment of a European Union reporter. Does the committee agree to defer this item until the next meeting of the committee?

Members *indicated agreement.*

Subordinate Legislation

Town and Country Planning (General Permitted Development) (Scotland) Amendment (No 2) Order 2014 (SSI 2014/300)

09:30

The Convener: Item 3 is subordinate legislation. We will have an evidence-taking session on a negative instrument. Members have a cover paper from the clerk setting out the background to the instrument. The Delegated Powers and Law Reform Committee did not draw any issues to our attention in relation to the instrument. Cameron Buchanan has lodged a motion to annul the instrument. We will consider that motion after the evidence session.

I welcome our witnesses, who are Alex Neil, Cabinet Secretary for Social Justice, Communities and Pensioners' Rights; John McNairney, Scottish Government chief planner; David Reekie, planning performance division, Scottish Government; and Norman Macleod, director of legal services in the Scottish Government.

Cabinet secretary, do you have any opening remarks about this Scottish statutory instrument?

The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex Neil): Yes. I will briefly try to set the SSI in the context of what we are trying to do. The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No 2) Order 2014 introduces an approach that we think strikes an appropriate balance between the needs of local businesses and the protection of Scotland's environment, amenity and heritage. Following public consultation in 2012, we have listened to industry concerns that the full removal of all permitted development rights for agriculture and forestry hill tracks would be disproportionate at this time. Instead, the order retains existing permitted development rights, subject to the introduction of a prior notification and approval process that allows planning authorities for the first time to intervene where appropriate and to do so proportionately to ensure that the design, siting and appearance of new tracks are acceptable.

We have also legislated to ensure that there will be no fee for prior notification and approval in relation to agricultural and forestry tracks. That is the overall setting for this SSI.

The Convener: Thank you very much. Mr Buchanan, do you have any remarks or questions on the SSI?

Cameron Buchanan (Lothian) (Con): Thank you. Is this where I can come in? Right. Good morning everybody. I lodged motion S4M-18842 to annul this—

The Convener: We will come to that in item 4.

Cameron Buchanan: Oh. I knew I was out of order. Thank you.

The Convener: If you want to ask any questions or make any remarks at this point, feel free to do so.

Cameron Buchanan: I have none. Sorry.

The Convener: Stewart Stevenson has a question.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a couple of questions. The first one is on the provision for prior notification. Is that a provision that is already used elsewhere in the planning system, or is it novel in relation to hill tracks?

Alex Neil: I think that it is used elsewhere in the planning system.

John McNairney (Scottish Government): Yes. It is already used for agricultural and forestry buildings, and the proposition is to extend it to tracks.

Stewart Stevenson: That is helpful. We are not dealing with something that is novel; it is an established procedure that we are applying to a new area.

The second question is one that I do not know whether we can answer. If we cannot answer it, that may inform the way we deal with this. How many kilometres of new hill tracks are constructed each year?

Alex Neil: Before I pass that question to David Reekie, I should say that, having some forestry ancestry myself, I am keen that we get this right for the forestry industry, which, after all, makes a huge contribution to the Scottish economy. Overall, we are trying to strike the right balance between ensuring that we have controlled sustainable development that is done properly and not imposing unnecessary burdens on the sector. Imposing such burdens would be crazy, given the sector's enormous contribution to the Scottish economy.

When we talk about tracks in the forestry industry, we sometimes have the image of temporary roads that run for no more than a couple of miles to facilitate logging and the transport of logs. However, some of these roads are tarmacked. In Dumfriesshire, for example, there is a tarmacked road called the Ae link that is roughly 20 miles long and is named after a community in the area. Given that we are talking

about a very important part of our environment, it seems reasonable to put appropriate and proportionate controls on such developments to ensure that they fit with our general approach to the rural environment.

I do not know whether David Reekie has the specific numbers to hand. If he does not, we will send them to you but, knowing David, I think that he might well have them ready.

David Reekie (Scottish Government): I hate to disappoint the cabinet secretary, but I do not know the exact number of miles that are built every year.

As part of the engagement that we have had with stakeholders throughout the process, we have asked several stakeholders for estimates of the amount of tracks created. The first thing to say is that we are dealing not just with completely new tracks but with extensions to existing tracks. The Cairngorms National Park Authority estimated that there were roughly 800 existing tracks in its area, and it reckoned that roughly 80 new tracks or extensions would be built in a year. The Forestry Commission has estimated that between 1,000 and 2,500 new tracks, track alterations or track extensions are made each year.

Stewart Stevenson: Perhaps I might take that a step further by asking what is a track. In other words, are we talking about something that is designed for use by mechanical vehicles rather than, say, a walkers' track? I want to be absolutely clear about what we are dealing with.

David Reekie: The word "track" does not appear in the general permitted development order; instead, it refers to "private ways", which are defined as being either roads or footpaths. As a result, we are dealing with, at one extreme, footpaths and at the other, as the cabinet secretary has said, roads that allow heavy goods vehicles to extract large amounts of timber.

Stewart Stevenson: Thank you, convener.

The Convener: As there are no more questions, we move to item 4, which is the debate on the motion to annul the order on which we have just taken evidence. Do any members wish to speak in the debate? I call Stewart Stevenson.

Stewart Stevenson: I had not expected to be the first speaker, convener, but I am delighted to be so.

Drawing on my experience as planning minister, an office that I demitted more than four years ago, I know that this issue has not arisen in the past few days, weeks or months, and it has clearly engaged quite a wide range of stakeholders. I am delighted that the order has been laid. It is not about our seeking to constrain or restrict the proper use of tracks for a wide range of purposes.

One such purpose is forestry, as the cabinet secretary has pointed out, but there are others. For example, as we have identified, the order will cover tracks for pedestrians, and we should not fail to understand the significant impact that such tracks can have on the environment, particularly on some of our more popular hills. They can, for example, lead to significant erosion. Therefore, the order is a welcome step towards understanding the effects on our environment and the benefits that are derived from the construction of tracks in an area where there are such significant developments. Although they are estimates, the numbers that were provided were larger than I expected, to be candid about it, and indicate how important it is that we understand those points.

The important thing that I took from my questioning of the minister was that, in planning terms, there is nothing novel about the proposed approach. The agriculture sector is already subject to it. That sector has permitted development rights for agricultural buildings and developments and has continued to operate entirely satisfactorily and successfully while subject to the notification requirement.

I am not at all convinced that there will be any downside for those who make their living in the countryside and depend on the tracks, but I am convinced that having a properly recorded database as a result of prior notification of what is going on would have a significant benefit for our understanding of the environmental impacts. Therefore, I will not support the motion to annul and I encourage my colleagues on the committee to take the same position.

Cameron Buchanan: My reason for lodging the motion to annul is that forestry tracks have been lumped together with high-altitude road tracks, which is an unintended consequence of the legislation. There is already enough legislation concerning forestry tracks, and local authorities are consulted on all forestry applications anyway. The order just adds extra bureaucracy, which is not the intention. It should cover only agriculture, not forestry.

Forestry proposals have to go through a 28-day period on the public register before being signed off, so there is due warning, and Scottish Environment LINK said that forest roads have not been a problem until now. It is important not to go through a parallel planning process. Also, the Government promised that it would consult on the matter before the order came into force.

The inclusion of forest roads is an unintended consequence of the order. Therefore, I seek to have it annulled.

I move,

That the Local Government and Regeneration Committee recommends that the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2014 (SSI 2014/300) be annulled.

Alex Neil: Cameron Buchanan and I had a useful discussion yesterday and, since then, I have been doing some work on the points that he has legitimately raised. Even if members accepted everything that he said, to throw the baby out with the bathwater by annulling the SSI would be completely the wrong thing to do because of the huge consequences.

I will go through each of the points that Cameron Buchanan raised and deal with them.

The first concerns consultation. I will make a distinction between the consultation on the order and the consultation on the guidance that will flow from the order once the committee has agreed it, as I hope it will.

We have consulted widely on the SSI with Confor and others. I have checked and can confirm that any commitments to consult on it have been kept. Furthermore, we have already started the consultation on the guidance. There was a seminar on consultation on the guidance on, I think, 11 December that involved Confor and others. Therefore, the commitments that Derek Mackay and Paul Wheelhouse made on consultation have been fulfilled.

The consultation on the guidance is not yet complete or exhausted. There will be other opportunities to contribute to it and I will ensure that every organisation with an interest in the matter has the opportunity to provide its input into the guidance. I am happy that we produce draft guidance before we finalise the guidance so that people can point out to us the unintended consequences in our draft when we give it to them.

I am totally committed to consultation because I want to get the legislation right. As I said at the start, we need to get a balance. We need proper control of our rural environment to ensure that it is sustainable in the long term but, at the same time, I do not want to impose unnecessary burdens on the industry and nor do I want to impose a planning system that is disproportionate to what we are trying to achieve. Therefore, I make it absolutely clear that, before I approve the guidance, I will need to be satisfied that we have given every opportunity for Confor and others to be heard and that any substantive points that they make have been taken into consideration.

09:45

There is already a commitment that we will review the legislation after 12 months from the

date of implementation. I have decided that that will be an independent review and will not just be done by the Government. I will appoint somebody who is independent and who has the relevant qualifications to review how the legislation is working and being implemented after it has been up and running for 12 months. That will allow us to quickly learn where anything is going wrong or where there are unintended consequences that need to be dealt with. I give that absolute commitment to the committee.

The second point that Cameron Buchanan raised related to the administrative burden. Substantial processes are already in place for foresters in relation to the plans that they have to submit to the Forestry Commission. I believe that the additional requirements that arise from the legislation are fairly proportionate, because much of the information is already available in the plans that foresters submit to the Forestry Commission. We have an arrangement with the Forestry Commission that it will make all that information available to the relevant planning authorities so that companies do not need to duplicate or repeat what they have already done with the Forestry Commission. The only additional work will be in providing any information that is required on top of what has already been submitted to the Forestry Commission. For example, companies submit a longer-term strategic plan to the Forestry Commission and, obviously, at some point a company might decide that it needs an additional or extended track that is not in the plan that it submitted. Obviously, that would require to go through the process under the new legislation.

As I have said three or four times, I am keen to ensure that the industry is satisfied that we are not introducing a lot of duplication and putting unnecessary burdens on it, and I will work with Cameron Buchanan and Confor on that—I am happy to involve myself in the process. This morning, I emphasised again to my officials that, when we produce the guidance and implement the legislation, it needs to be proportionate and sensible while achieving the objective of balanced development in our rural communities. We will work with the industry to ensure that there are no unintended consequences. If any arise, we will deal with them through the independent review, which will take place after 12 months, and get them sorted. I hope that the quality of the consultation will be such that no unintended consequences will in fact arise.

The Convener: I ask Cameron Buchanan whether he wishes to press or withdraw motion S4M-18842.

Cameron Buchanan: In view of what the cabinet secretary has said, I seek to withdraw it.

The Convener: Are members happy that the motion be withdrawn?

Members indicated agreement.

The Convener: That is unanimously agreed. I thank members and the cabinet secretary. We will break for a couple of minutes.

09:48

Meeting suspended.

09:49

On resuming—

The Convener: Before we move on, I confirm that now that motion S4M-18842 has been withdrawn, SSI 2014/300 remains in force. That concludes agenda item 4.

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No 2) Regulations 2014 (SSI 2014/301)

Charities Accounts (Scotland) Amendment (No 2) Regulations 2014 (SSI 2014/335)

The Convener: Agenda item 5 is consideration of two instruments that are subject to negative procedure. Members have from the clerk a paper that sets out the purposes of the instruments. The Delegated Powers and Law Reform Committee considered the instruments and has drawn to our attention several issues in relation to SSI 2014/335, which are set out in the cover paper from the clerk. Do members have any comments to make on the instruments or on the comments by the DPLR Committee?

Stewart Stevenson: I will make a brief comment on SSI 2014/301. The making of regulations on fees for applications and deemed applications is an annual event. The subject that I am about to raise is one that I first raised in 2003 and in which I continue to take an interest. The committee might care to consider it in some aspect of its future work.

I am not clear in my mind why local authorities are told centrally what they should be charging by way of planning fees. From a legal point of view, I know why that is the case—the relevant legislation requires the Government to set the fees—but there is nothing in the legislation to stop the Government setting the fees as a range from, for the sake of argument, 1p to £1 million. In an environment in which we want to ensure that our local authorities have maximum power to do what they decide is appropriate, it might be appropriate for the committee to include in its future work programme consideration of whether planning

fees should be set centrally or by local authorities. If local authorities set them, the more efficient authorities would have a competitive edge and the less efficient authorities would have an incentive to improve.

The Convener: I welcome your input. That issue has been touched on previously by the committee and I think that it is one that we should look at the next time we consider planning. I imagine that other members agree that it would be appropriate for us to do so at that juncture.

Does the committee agree not to make any recommendations to Parliament on either instrument?

Members indicated agreement.

Scottish Public Services Ombudsman Annual Report 2013-14

09:53

The Convener: Agenda item 6 is our annual meeting with the Scottish Public Services Ombudsman and his staff, on the SPSO's annual report. I welcome to the meeting the ombudsman, Jim Martin. He is accompanied by Niki Maclean, who is the director, and Paul McFadden, who is the head of the complaints standards authority at the SPSO.

Members have a fair amount of supporting paperwork. I am keen that we have a constructive session. Our principal purpose is to consider how the SPSO is performing in the exercise of its ever-expanding remit, and the extent to which it is fulfilling the difficult tasks that are set for it by the legislation. We are also keen to hear how our public services are performing in the eyes of the SPSO, which will have an insight into their operation through its work. It may have information that it can share with us that will alert us to good practice in particular areas, or to difficulties that might be caused by pressures on public services.

In addition, we have questions that have been submitted by members of the public, a number of which we will undoubtedly ask during the meeting. Those that we do not ask will be passed on to the SPSO for written responses. It is worth mentioning that it is not the role of the committee to act as an appeals body for people who are unhappy with the outcome of complaints. The ombudsman's decisions are final unless a judicial review is undertaken. We have invited members of the public to submit questions: the purpose of that is to give us a general awareness of their views and to supplement our thinking on corporate matters. We also need to be mindful that the questions that are received from the public may not be representative of all the people who have used a service, because those who are satisfied with it are unlikely to submit questions.

Finally, we will continue consideration of petition PE1538 at today's meeting, so members are grateful to the SPSO for its comments. The petitioner has been given sight of the comments and has submitted thoughts thereon. We may probe the position on that further, although we are aware that the SPSO was subject to a review in 2009 during which section 19 of the Scottish Public Services Ombudsman Act 2002 act was considered.

Would you like to make brief opening remarks, Mr Martin?

Jim Martin (Scottish Public Services Ombudsman): No. I think that we can make best use of the time by—

The Convener: You are happy for us to batter on.

Jim Martin: Yes.

The Convener: Thank you. I start with a question about your expanding remit. You will deal with aspects of the Scottish welfare fund in the near future. How will you cope with that? Will extra resources be forthcoming to ensure that that additional burden does not impact on your current workload?

Jim Martin: I have been greatly heartened by the Scottish Government's attitude on the matter. It seems to be very open to the argument that our being given more work will require us to consider having more resourcing, and the Scottish Parliamentary Corporate Body is currently discussing with the Scottish Government what form that should take.

As you will know from your membership of another committee, convener, one of the difficulties that we have in planning is that we are uncertain about the volume of work that will come with the Scottish welfare fund. The old fund was administered at UK level, and about 6,000 people a year would take appeals to the independent review service. In Scotland last year, the number of appeals that came through was fewer than 200. We are trying to get to the bottom of why that was the case—whether it was a question of signposting, or whether local authorities are doing a better job, which I tend to think is true in many cases. However, for planning purposes, that makes it difficult to work out whether the work will be a small addition to our work or whether we will have to create a separate unit. We are working closely with the Scottish Government and the SPCB on how we can plan for the new work.

I have given another committee my view that the initial set-up should be reviewed pretty soon after we have taken on the powers, in order that we can ensure that we are, on the one hand, resourced well enough to deal with cases that involve vulnerable people who need quick answers to questions and, on the other, that we are not overresourced for demand that does not really exist.

The planning stages are well advanced and I am content that everyone is approaching the matter in a positive manner.

The Convener: Thank you, Mr Martin. We have had a number of questions from members of the public about reviews of decisions. You have stated:

"I am very pleased to report we have seen a reduction for the first time in requests for reviews of our decisions. All customers—complainants and organisations—can request a review if they are unhappy with a decision that is not made personally by me but is delegated to one of our complaints reviewers."

There has been an indication that requests for reviews are not necessarily granted. Do you have any comment to make about that?

Jim Martin: When complainants come to us, we are very open about the process that we go through. As soon as they do, we inform them of the process, which includes the right to seek a review. A review cannot be sought of a report that we lay directly with Parliament. When my decision is that a report meets the criteria to come to Parliament, the complainant and the body that was complained about would see a draft report and be able to comment on it.

10:00

The vast bulk of the decisions that we take are communicated through a decision letter, and the review process is available to everyone—a body under jurisdiction or a member of the public.

The highest rate per annum of cases in which people have sought review is 7 per cent—if I am wrong, I will correct that later. Currently, the rate is just over 3 per cent, so reviews are not sought in terribly many cases.

If a review is to be conducted and a case reopened, the criteria for review need to be met. Largely, that is about whether new and material evidence can be produced to show that the decision was taken without all the appropriate information being available; when that happens, we reopen cases. As you would expect, we reopen a very small number of cases.

We are pretty open about the process. The numbers are quite small and I am pleased to say that we now give people far more information about why we are not reopening cases. We contact people by telephone, which seems to be helping people to understand the process better.

The Convener: It would be useful if we could have the accurate figure. You said that the rate was about 7 per cent—

Jim Martin: I can confirm that the highest rate was 7 per cent, in the first six months of 2013-14.

Niki Maclean (Scottish Public Services Ombudsman): We publish all those data on our website, so people can access all the detailed statistics if they are interested in doing so.

The Convener: That is grand. Thank you.

Will you comment on the time bar for bringing complaints?

Jim Martin: The time bar issue is probably one of the most difficult with which I have to deal. The legislation is quite clear that people should bring a case to me within 12 months of their first knowing about the thing about which they are complaining. We try to interpret that in a way that allows as many people as possible to bring cases to us.

My understanding is that in 2002, and under the previous local government ombudsman rules, the intention was not to allow people to resurrect cases that were years old, for which evidence might no longer be available and which would be very difficult to reopen.

I have discretion on the time bar, which I apply. For example, I used it in a health case in which an incident had happened and the family had spent an awful long time talking to a health board without reaching a conclusion before coming to me. It was put to me that the 12-month time bar meant that they would not be able to have their case heard. I took the view that the system was at fault, because prolonging the people's stay in the system was, in effect, denying them the right to come to the ombudsman.

Very early on I made it clear to all the health boards that I would take the view that if a board was looking at a case, in most instances that case would probably be suitable to come to the ombudsman, regardless of when it began.

Those are the most difficult cases with which we have to deal. Whether the time bar should be 12 months, six months—as I think it might soon be in Northern Ireland, and which I think is far, far too short a time—two years or three years, at some point my successor will have to take a view on how to use their discretion. That is one of the very difficult decisions that an ombudsman has to make.

The Convener: But you have that discretion.

Jim Martin: Yes I do.

Stewart Stevenson: Rather than have the clock start ticking—in relation to the ombudsman's activity—at the beginning of the complaint, should the clock start ticking once all the procedures with the public body in question have been exhausted? Given that you have discretion, is that how you look at discharging your responsibilities in practice, in general?

Jim Martin: I tend to take the view that if a body under jurisdiction has allowed a complaint to enter and go through the process, and a final decision has been arrived at, that is a very important factor for me in considering whether to use my discretion on the time bar. We cannot lay that down rigidly—that would be wrong. However, in using my discretion I would take into account whether the body on whose decision I was taking a view had

deemed that it could take the complaint. That is important.

One thing that we do that other ombudsman offices in the United Kingdom do not do is start the clock running on all our performance data and so on when first we make contact with a complainant. Most of, if not all, the other ombudsmen in the UK start the clock when they have all the paperwork that they need in order to begin to investigate a complaint. My view is that we should measure the citizen's time, not the ombudsman's. Similarly, if a citizen has been allowed into the system by a body that is under jurisdiction, it is difficult to see why the process should be closed off after they have entered the system if I am the final decision maker.

Cameron Buchanan: On question 17, I am interested in why you sought help from the Samaritans in order to improve your treatment of a complaint. What did you learn from that organisation? Has it helped you in any way?

Jim Martin: That example has helped us immensely. I say to Parliament and bodies that are similar to mine that that was an exceptional way to learn more about how to deal with people who are under great stress and are at risk of self-harming. I know that the question from that member of the public suggests that we had to seek help in order to improve our treatment of complainants, which was maybe a pejorative way of putting things. Our staff wanted to know how best they could help people who come to them in a distressed state. My team members tell me that of all the training that we have laid on for them in the five years that I have been ombudsman, that has been the best and has had the biggest impact on how they work day to day. On two, three, four or five occasions, it has been put to good use when people have been in really dire circumstances. We have been able to assist them and to deal with them appropriately, and we have managed to send them to places where they can get help. I recommend that course of action to Parliament and other bodies that deal with members of the public who might be distressed.

Cameron Buchanan: Question 19 is:

"How many cases in the year involved corruption or deliberate malpractice"

and do you have any examples of that?

Jim Martin: Corruption is a criminal offence.

Cameron Buchanan: Perhaps you could emphasise malpractice.

Jim Martin: Yes. What lies behind the question is a question about how often we see deliberate actions of that type. I am pleased to say that they are quite rare, although we have seen some. For example, in a particularly difficult health board

case it was suggested that the national guidance on how to deal with a specific condition had not been followed because the health board had a local protocol in place. Rather than just accept that, we pressed and pressed until we found out that there was no local protocol, and that a clinician who had been involved in the original complaint had signed off that there was such a protocol. I argue that that was deliberate malpractice. I am pleased to say that we see such cases rarely.

The Convener: Question 9 asks:

"Are the SPSO's SLA's available to the public thus allowing them to judge for themselves if they have received the expected level of service or not?"

Niki Maclean: We have very few service level agreements in place. The primary SLA is with the Parliamentary and Health Service Ombudsman to provide clinical advice to us. Obviously some of that is commercially sensitive, but it could be made available with relevant redactions if members are interested in seeing it. The key issue is whether people can make a judgment about whether they are receiving the service that they should be receiving. That SLA requires the PHSO to provide clinical advice to us; it is for us to decide how we use that advice in our decisions. In that sense, the service that individuals receive comes from the SPSO, not the PHSO. I hope that that helps.

The Convener: Given that you are attempting to be as transparent as possible, would it be possible to have that agreement on your website, with the redactions that would be necessary in relation to commercial sensitivity?

Niki Maclean: We could certainly do that.

Alex Rowley (Cowdenbeath) (Lab): Jim Martin made an interesting point in his answer to the question about the Samaritans. I am interested in the training that front-line staff in local government and elsewhere get on mental health issues and other issues that people are experiencing in these difficult times. Do you share best practice or make recommendations on those things?

Niki Maclean: One of the most common questions that we get from bodies under jurisdiction concerns how they can work with people not necessarily in the arena of mental health but in the arena of unacceptable actions, when there is a persistent and on-going relationship. We publish a lot of guidance and advice and we also deliver training to bodies under jurisdiction on that.

Alex Rowley: It might be good if we could get some links that would enable us to look at some of that.

Question 33 in our papers says that caseworkers have no medical training yet they are tasked with going through medical records in order to submit a request for clinical advice. From a local government point of view, in relation to cases on planning that go to the ombudsman, for example, it could be argued that planners are part of a profession that tends to throw back various pieces of planning legislation at people, who then feel that they never get an answer. How do you deal with the need to have expertise in all those areas? Do you deal with it?

Jim Martin: We do. You are right to say that planning officials throw planning acts at people—sometimes it can feel like a blizzard.

We deal with a range of issues across the public sector and have different powers in different areas. In health, we can look at clinical judgment, and we keep a number of advisers in Scotland. I have a nurse adviser, two general practitioner advisers, a medical consultant, a psychiatrist, a mental health nurse and various others who work with our complaints reviewers on medical cases.

We also use a bank of advisers on medical matters, which is maintained in London by the Parliamentary and Health Service Ombudsman. I have made no secret of the fact that I think that, as the health service goes in different directions across the United Kingdom—frankly, I believe that we do not have a national health service any more; we have at least four national health services in the United Kingdom—we need to think about having a Scotland-based bank of health advisers. For example, the rules in England on how accident and emergency units decide to admit people are different from those in Scotland. We have to be careful about that.

We keep planning advisers, a social work adviser who we use occasionally, water advisers and an adviser on equality and diversity. Our complaints reviewers work with those people as the cases come through and take the professional advice that is given to them. That is important because, as you probably know from your experience in local government, it can be difficult when someone simply says that the town and country planning act of such-and-such a date says something or other. Our advisers often say to us, “Yes, the act says that, but it also says something else,” and that enables us to come to a balanced decision.

The Convener: How do you ensure that your advisers have no interest in the cases that investigators are dealing with?

10:15

Jim Martin: My nursing adviser, for example, is based in Lothian, so she does not see Lothian

cases. My GP adviser is based, I think, in Milton of Campsie, so she does not see cases in the Glasgow area. We try to keep them apart.

One reason why my predecessors used a bank of advisers at the Parliamentary and Health Service Ombudsman in London was that it was less likely that those advisers would have any links to the national health service in Scotland. The argument runs that, if Scotland is a small place, can we possibly get people to take objective decisions? My view is that we can.

When I spoke to the Government's previous chief medical officer about whether we should move to a Scottish adviser, Sir Harry Burns warned me that I should be concerned about not whether the advisers would know the case but whether they would have a view about the practitioner and perhaps too strong a view against the practitioner. We have to be very careful to ensure that no one has any conflict of interest when it comes to decision making.

The Convener: You think that you have got the balance right.

Jim Martin: I think that we have. I cannot think of any cases in which I have had to take a step back and wonder whether that was the case.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will ask about the adoption of quality management standards, particularly ISO 9001. In a past job, I had experience of using quality management standards, so it was a wee bit of a surprise that the ombudsman does not think that the ISO 9001 family applies to public service complaints handling and so on. I know that ISO 10003 might be applicable, because it deals with complaints that are not resolved by an organisation. I first want to pick your brains about your thinking on that issue. I would also like you to tell me a wee bit about the internal self-assessment framework that you are developing.

Jim Martin: Niki Maclean has been dealing with that.

Niki Maclean: Elements of ISO 9001 relate to commercial interactions with customers, which we did not feel were relevant for public services. That put us on a journey of considering what we might use internally.

Elements of work that ombudsman schemes undertake are unique to that animal. That is reflected in the principles that the British and Irish Ombudsman Association adopts for all ombudsman schemes. We felt that it was important that we reflected those principles in the quality framework that we use, which is why we pursued the idea of developing our own service standards through consultation and discussion with other ombudsman schemes, with the

possibility of developing standards that could be used by all ombudsman schemes and possibly other second-tier complaints-handling bodies. That is the route that we are on. We have developed a set of service standards that the BIOA has endorsed and we are looking to build a quality framework around those standards.

Those service standards have passed our customer sounding board, which represents a range of advocacy agencies throughout Scotland. We feel that we now have a reasonable set of service standards that clearly link into and reflect the specific work that ombudsman schemes carry out.

Willie Coffey: That is encouraging. Will the scope of the internal framework that you are developing affect the number of premature complaints that you still get? You said that 37 per cent of cases are still prematurely presented to you. Will the self-assessment framework try to influence that and bring it down, which is one of your stated aims?

Jim Martin: Over the past two or three years, we have been trying to tackle what we call premature complaints, which happen when people who have a complaint about a body under our jurisdiction come to us before they go to that body.

We have done a number of things. We are looking at service standards, but we are also tackling the issue at source. The complaints that are premature for us are missed complaints for the bodies under our jurisdiction, and we are encouraging all those bodies to think about why that happens.

The committee will see from the information that we sent it that we went to 10 or 11 organisations that represent the bodies that bring about 40 per cent of the business to our office. We identified them using three main criteria: the volume of complaints coming in, the volume of upheld complaints and the number of premature complaints. We engaged directly with them and said, "These are the numbers that we are seeing."

For example, 60 per cent of the people who brought a social work complaint to our office came to us prematurely. That is a big number when one considers that the overall total is running at about 37 per cent. Why is that happening?

With the introduction of the new complaints-handling procedures—which have been designed largely by Paul McFadden, who is here today—one would expect the number of premature complaints to fall. It is beginning to fall, but we are targeting the bodies from which we get the highest volume of premature complaints. The people involved are lost in the system and do not understand it. That sends a message to the bodies for which we take cases—if people are not coming

to them, they are not getting their message out clearly enough. We are focusing strongly on that aspect.

Willie Coffey: People are engaging with certain organisations and then bringing complaints to you prematurely. Do those organisations have any quality management standards? If both sides of the scale adopted complaints management standards, you would probably see a further drop in the number of complaints coming to you prematurely.

Jim Martin: I think that you and I are both addicted to the same stuff. I genuinely believe that, if bodies look at the quality of the service that they are offering and the quality of their customer contact—in inverted commas—the element of quality must come into play. They have to look at it.

We discuss with bodies what we are doing and encourage them to follow that through. You must remember that we deal with a range of bodies across the public sector. We are the ombudsman, not the quality control unit for the public sector in Scotland.

Willie Coffey: I have one last question. At the tail end of the process, you make recommendations with timescales. Will your framework encompass that so that you can do follow-up verification work? In my previous role as a member of the Public Audit Committee, I always felt that Audit Scotland did not have the ability to undertake follow-up verification to ensure that organisations were acting on its recommendations. Will your framework encompass that element of your work to allow you to do it much more efficiently?

Niki Maclean: As part of our current quality assurance process, we look at how well we have followed up on recommendations and ensured that the evidence that the body has provided is robust and meets our criteria.

The Convener: Mr Martin, you just said that the ombudsman is not the quality control unit. I think that we understand the situation. However, when you come across best practice, do you ensure that the bodies whose practices are not quite so good are aware of what other bodies are doing to deal with complaints more effectively, so that those complaints do not come to you prematurely?

Paul McFadden (Scottish Public Services Ombudsman): The complaints standards authority's work has focused quite a lot on complaints handling alongside the implementation of the new model complaints handling procedure. One of the main ways in which we have done that—as we have discussed with the committee in previous years—has been through the development of complaints handlers networks.

The networks are an excellent forum for allowing us to identify good practice, which does not benefit only the sector in question. The local authority network is the most established network, so we can identify good practice in that sector and share it.

You mentioned the Samaritans training earlier and how we help to share the focus on front-line public service delivery. We put bodies in touch with the Samaritans and give them our lessons from that training. That allows us to share the information that we have received across the whole sector. It is one of the main ways in which we do so, in addition to using the guidance and website forums that we have established in the past three years.

The Convener: I will go back to social work, which is an area where you get complaints very early—indeed, before you should get them. It is one of those complex areas where, if a complainant is not aware of the road map or where they should go or if things are not signposted properly, their complaints cross your desk before due process has been fully carried out. Are more early cases coming from particular authorities?

Jim Martin: I would not say that we could identify a culprit. Social work is an extremely complex area and is very difficult for the layperson to work their way through, and I am pleased that the Government is beginning to look at how we might streamline the process and make it easier for people to manage. The work that Paul McFadden has been doing on putting in place simple, standardised complaints-handling procedures should help.

More bodies could do more to ensure that vulnerable people in particular understand, first, that there are routes and, secondly, what those routes are. They should enable those people to find not only those routes but the advocacy agencies that will help them to articulate their case and navigate their way through the system. It is not sufficient to assume that every citizen has the same ability and knowledge to work the system and, if we see health boards, local authorities, housing associations, prisons and so on going the extra mile to help people, we are very quick to pass that good practice on to others.

The Convener: Advocacy, which you have mentioned, is extremely important for some folks. With the integration of health and social care, which will change the landscape again, is your expertise being called on to look at how we deal with complaints in that respect to ensure that we do not create a minefield for folks who have genuine complaints to make?

Jim Martin: I will let Paul McFadden say something about the mechanics of what we are doing, but I note that, in 2008, Douglas Sinclair said in what is called the Sinclair report, which came out of the Crerar review, that the difficulties of working one's way through social care and social work complaints processes need to be addressed. I have been saying the same thing since 2009, when I became the ombudsman.

We have to make things easier for people. As I have said to as many committees as will listen—I say it to this committee, too—when healthcare and social care are integrated and when local authority and health board systems are brought together to create new bodies, we will need to have a simple process for dealing with things that go wrong, to recognise that the system is there to help vulnerable people and to ensure that things are done in that context.

I am pleased that some progress has been made, but I am not yet convinced that we will have in place a unified complaints system that will be easy to use and which will be the same for everyone across Scotland. As I have said, Paul McFadden has been working on the mechanics of that.

Paul McFadden: On whether our expertise is being used, I point out that we offer through our complaints standards authority advice, support and guidance to public sector bodies and, with regard to the integration of health and social care, we are increasingly being asked for advice on how the complaints procedures can be brought together. Over the past few years, we have raised issues about conflicting statutory processes, but people are realising only now, as they pull together integration schemes and seek to fulfil the requirements on publicity and so on, that bringing together the complaints procedures will be difficult. In fact, NHS Highland's experience of integrating services is that problems have arisen and the process has been confusing with different numbers of stages, timescales and all the rest of it.

Where we can, we provide advice about existing statutory processes, but the first thing that we have seen is that the issue is outwith our control. In all other sectors, we have had control of the model complaints-handling procedures, and we have been able to improve, simplify and streamline things, but we cannot do the same thing in this respect.

As the ombudsman said, things are moving in relation to social work complaints and the complaints process under the Patient Rights (Scotland) Act 2011. We are in discussion with the Government and partners about how the processes can be brought together and

standardised as much as possible, so that a simple process is created.

That is good, but the work is taking time. The current estimate is that the social work process will be amended in late 2016. The issue is what happens in the interim period, when non-standardised and complex processes are being brought together, and when staff as well as customers are struggling to understand the system. We provide expertise as much as we can, but we are restricted by the legislation.

10:30

The Convener: We posed written questions for you on the area, and in your response you said that the new integrated boards might cover areas that fall outwith the SPSO's jurisdiction. That might create difficulties. Which areas did you mean?

Jim Martin: We are unclear as to whether the bodies themselves will fall within our jurisdiction. There are parts of Scottish public services that currently do not fall within our jurisdiction, such as a lot of social work.

We are trying to discuss with the Government and others how we can ensure that people who have complaints about integrated boards can have their complaints appropriately heard. I am happy to go through individual issues, if the committee would like me to do so, but, broadly, we want to understand the status of the bodies vis-à-vis the ombudsman and people who have complaints about them.

Currently, I think that bodies are free to set up their own complaints processes. It strikes me that this is an opportunity to bring clarity to what could otherwise become a very complex system. The simpler we make things, the better. My view is that integrated boards are public bodies and should fall within the ambit of the Scottish Public Services Ombudsman. A citizen who has a problem should be able to raise it with the body and then bring it to us.

The Convener: Have your discussions with the Government been positive? You said that discussions about the Scottish welfare fund were pretty positive.

Jim Martin: I am trying to choose my words carefully. The main issue that I have is the length of time that it is taking to get decisions on important issues to do with health and social care integration.

I look only at the part of the issue that might fall on my desk. Is a clear, simple, visible complaints process in place for when things go wrong for an individual? Is something in place for complaints about the newly created bodies? I know what answer I would like to those questions, but we

must have an answer soon. We cannot go on not having an answer.

The Convener: It would be useful for the committee to get further information from you on the issue. We have had a brief outline from you but we would be grateful for a fuller response, in which you might talk about where the pitfalls are likely to be. I think that the committee will want to pursue the matter, to ensure that, in the context of integration, a pretty robust complaints procedure is in place from the start, with folks knowing their rights and you knowing what you have responsibility for.

Jim Martin: I will be happy to provide a fuller response.

Anne McTaggart (Glasgow) (Lab): I listened with interest to what you said in response to the convener. I am all for making the system simpler for lost customers, as you might call them, to use. This might be a question for Mr McFadden. What are you putting in place to ensure that our lost customers get to use the system? People who are articulate and who know the system will be able to get through it, but I am thinking about the lost customers.

Paul McFadden: From a general point of view, we have helped organisations to put in place a very accessible complaints-handling system. For example, it allows complaints to be brought into the system in any form, whether orally by telephone or through the more traditional written form.

The big focus has been on empowering front-line staff to deal with and respond to complaints quickly and confidently. That is a big part of allowing people access to the system, making it as easy as possible for them to make their complaint and making the response as quick as possible so that they do not have to trudge through various stages of four or five different appeals of various lengths, which we have now removed from other sectors.

In relation to health and social care integration, we want there to be a single point of entry and a standard quick turnaround with a strong focus on empowering front-line staff to deal with complaints quickly.

Anne McTaggart: I will move on to one of the questions that was submitted. Can the SPSO investigate complaints about Education Scotland inspection reports?

Jim Martin: Yes, but my favourite answer to *Sunday Post* quizzes when I was wee used to be "sometimes, but not always", which is the answer in this case. We can investigate some things and not others, depending on who brings the complaint and what it is about. My powers are not complete

over all areas. For example, in education, I am not allowed to consider curriculum or discipline matters but I can consider policies on bullying and whether they have been applied. It is a complicated area.

Anne McTaggart: Thank you. My next question is fairly open. You have been extremely forthright about some of your concerns, but what worries you the most about moving forward with all the new remits that you will receive?

Jim Martin: Let us set aside the new remits, because I have to be confident that the corporate body and the Scottish Government will give me the appropriate resourcing to deal with them.

When we surveyed our staff last year, we had an exceptionally good response from them. They indicated only two areas that were a concern to them: workload and resourcing. In the first six months of the year, we had a 14 per cent increase in the number of cases coming to us. In each of the past five years, we have had an increase in the number of cases coming to us. Today, there are 30 per cent more cases on desks than there were in 2011. At 1 December, there were 647 cases on desks, which compares to 477 in 2011. However, my resource base is static.

I understand the financial pressures and I understand from the autumn statement that it does not look as if things will get much better, but I cannot continue to offer the level of service that we offer if the demand continues to increase at the rate that it is going and the level of resource that I have remains static. My team has given me productivity increases in each of the past four years but we are reaching the point at which that cannot be relied on to deliver the quality of service that I want to give to the people of Scotland. Therefore, my biggest concern at the moment is whether, in the coming year, I will have sufficient resources to give the high-quality service that my team offers now.

Anne McTaggart: Your concern is the productivity of your team, but what measures have you put in place to ensure that some of the cases are dealt with before they come to you?

Jim Martin: The work that Paul McFadden has done on the complaints-handling processes will help that because it will make sectors deal with complaints better. The 10 or 11 bodies that we have identified that come with high volumes of complaints and high uphold and premature rates represent 40 per cent of my business. If I can reduce that number, I can reduce the demand.

However, a cultural change is happening in Scotland whereby people not only are more willing to complain but expect results from complaints that they bring. Although that is a great development for public services in Scotland, there

are consequences for how the system copes with the numbers. I am the tip of an iceberg; at the very end of the process, I get the backwash.

Anne McTaggart: How can we reduce that 40 per cent? Do you foresee that the work that Paul McFadden is doing will enable that 40 per cent to be reduced?

Jim Martin: Let me take the example of Greater Glasgow and Clyde NHS Board. I always expect to see a high volume of complaints being made about a body that deals with millions of people and that has so many interactions with the public. That health board is doing good work in that it is beginning to ask how it can reduce the number of complaints. We are working with bodies to encourage a culture that is about reducing the number of complaints that are made.

Good work is being done out there. Scottish Water is reducing the number of complaints that we receive year on year, although I have to say that its commercial arm, Business Stream, is not doing that; I hope that it will in the future. When an organisation attacks the issue from a cultural perspective, enables its front-line staff to take decisions quickly and enables a quality response to be provided to people, that not only reduces the number of complaints but increases the standing of the service in the eyes of its customers.

The Convener: That is very interesting—I am sorry to cut across Ms McTaggart. You mentioned that Scottish Water is responding extremely well, whereas the business arm of the organisation is not doing as well. Do you have other examples of cases in which parts of public bodies are dealing with complaints extremely well while other parts are not? Are there specific areas in local government or the health service where you are finding such situations?

Jim Martin: To be fair, Scottish Water and Business Stream are operated as two different businesses within the same conglomeration, so they are, if you like, the same but separate.

The Convener: But, in many cases, there will be folk from the two organisations who are sitting next to each other. Why is one not learning from the good practice of the other?

Jim Martin: We are trying to raise such issues with people. I ask the committee to remember that, as I said to Mr Coffey, we are not the quality control unit for the public services in Scotland. We can flag things up, but it is for public sector bodies such as the Convention of Scottish Local Authorities, the Society of Local Authority Chief Executives and Senior Managers, the national health service in Scotland and the Scottish Prison Service to drive the process of addressing such issues. We can give them the tools and the

encouragement, but that is about all that we can do.

The Convener: It is useful for us to know where there is good practice and where there is bad practice, because it is our duty to follow up on such situations. It would probably be good for us to be given examples of good and bad practice.

Jim Martin: I would be quite happy to offer a brief seminar for the committee by members of my team, who could talk you through examples of good practice and bad practice, if you think that that would be helpful.

The Convener: I think that we would welcome that.

Jim Martin: The committee would hear from the people who deal with the cases rather than the ombudsman.

The Convener: That would be extremely useful.

Anne McTaggart: As a Glasgow MSP, the example that you used—Greater Glasgow and Clyde NHS Board—saddens me. What have you ensured that it has put in place in an effort to make improvements?

Niki Maclean: As Jim Martin indicated, because of the size of Greater Glasgow and Clyde NHS Board, it is inevitable that high volumes of complaints will be received compared with other public bodies across Scotland. There are some good examples of work that the board is doing on complaints handling. I would say that it is ahead of other health boards in some of that work. We have talked about quality assurance processes. I know that the board is considering how it can further develop and implement such processes. There are examples of good practice there and in other boards.

Paul McFadden and I, along with others, look at how we can ensure that we share that learning and how we can create tools. We do a lot of training with organisations to ensure that best practice is disseminated. Paul McFadden might want to add to that.

10:45

Paul McFadden: I will answer on a more general level by talking about what we put in place and how we help bodies to improve the quality of their complaints handling and their responsiveness on the back of what they learn from complaints. I will set aside the health sector and come back to it in a second but, with all the other sectors that we have worked with in relation to the model CHPs and the networks, the key thing that we are aiming for is more quality, consistent and transparent information on how they handle complaints. That relates to the process as well as to the outcomes,

such as what they have learned, what the trends are and how they are sharing that learning. We are getting to the point at which local authorities are about to get that information together. At sector level, it will be of benefit to share the lessons on how authorities can handle complaints better and how they can improve.

We are keen to share that benchmarking approach in the health service and put in place all those building blocks as we turn in the next year or so to working more closely with health boards.

Niki Maclean: To add to that, it is important to remember that this is the first year in which all local authorities and health boards have published all their complaints data. That is and will be a powerful driver to push up standards, because those bodies can now properly benchmark against one another.

Willie Coffey: Where do the public take complaints that they may have about the service that they get from the ombudsman?

Paul McFadden: Page 55 of our annual report outlines the report from our independent and external complaints reviewer. That is a non-statutory role that we put in place in 2007—I think that we were ahead of most other ombudsmen in doing so. We realised that we are the watchmen and that somebody needs to watch how we are looking at things. We therefore put in place an external reviewer.

We have recently appointed a new reviewer with experience in the area for a period of three years. That is where people can go. Once we have dealt with someone's complaint about the service that they have received, they then have the opportunity to approach the external reviewer.

We are pleased that, last year, there was a significant reduction in the number of complaints that were brought to the reviewer of, I think, a third. The reviewer's report, which is in our annual report, contains the figures. Only eight complaints about our organisation were taken to the reviewer, which we think is an indication of the better internal complaints procedures that we have put in place as well as better responses to such complaints.

Willie Coffey: So you can review as a result of a request from the public and, also, the public can access directly the external review body to look at your decisions.

Paul McFadden: The external reviewer does not look at decisions; he looks at service delivery—in essence, he considers whether we have lived up to our service standards. For example, the issue might be a delay in processing a complaint, how we communicated elements or whether we followed our process. The question is

whether the person has had a good-quality service. As you rightly point out, decisions go through the separate process that Jim Martin talked about earlier, which involves a request for a review. Ultimately, that is dealt with by the ombudsman.

Cameron Buchanan: To take up that point, is the external reviewer publicised widely?

Paul McFadden: Yes, the process is publicised widely on our website and the reviewer has their own information for people who are interested. At the end of every complaints response, we give full information on how the person can contact the reviewer.

The Convener: Just to make this completely and utterly clear, the external reviewer does not go back to reinvestigate complaints and review decisions.

Paul McFadden: That is correct—he does not look at decisions.

The Convener: The only way that that can be dealt with is by judicial review.

Cameron Buchanan: My other question is question 2 from the public. To paraphrase, what percentage of requests for reviews have been rejected?

Jim Martin: Earlier, we discussed the number of requests for review. The numbers that come to us are very low. The figure has come down from 7 per cent to 3.4 per cent last year.

We changed the way that we record the requests for review in 2012-13, so we can give you good comparisons for the past two years. In 2012-13, we closed 223 requests for review and, in 2013-14, the figure was 276. We maintained the original decision in, respectively, 96 per cent and 98 per cent of those cases, which means that we revised the original decision in 4 per cent and 2 per cent of cases.

You look confused.

Cameron Buchanan: So 98 per cent of the requests were rejected, in effect.

Jim Martin: Yes.

Cameron Buchanan: Okay. Thank you.

The Convener: I will turn to some issues that have been generated by petition PE1538. In your response about the sharing of information, you stated:

“Our lawyers have assessed our general approach to the release of information and they have agreed that we are acting in a way compatible with the rules of natural justice.”

Obviously, the petitioners have the opposite view.

Those issues were looked at as recently as 2009 and some changes were made. I ask for your general comments on the release of information. Is there a danger in releasing everything that you may not be able to get to the bottom of some complaints because some folk will be wary of giving you the information that you require?

Jim Martin: That is one risk, but there are a number of risks. Niki Maclean has been dealing with the matter in detail. I have to say up front that I would not want to put any barrier in the way of people bringing things to us in confidence.

Niki Maclean: The important starting point is that our powers are very similar to those in other ombudsman schemes. Parliament rightly decided that we needed strong protections in place around what information is and is not shared during the course of the investigation.

The reality is that anything that we rely on in reaching a decision is released either in the course of the investigation or in the decision. That relates to the reference to natural justice principles. It is clear that we cannot put out any decisions that are not properly evidenced and supported through the documentation that we release.

Your point is right, though, convener. There are proper protections in our legislation to ensure that we do not release information. It must be remembered that we have Court of Session powers to gather evidence, so we can obtain evidence that would not otherwise be obtained through either the freedom of information or data protection legislation. We have an obligation to protect the information that is provided to us and to take care in how we share it, and we take that very seriously.

On the petition, we are currently fulfilling our statutory obligations on what we can and cannot release. If there is a desire or wish for us to do something else, that would require our legislation to be revisited.

The Convener: Can you give us an indication of information that you can gather but which is not available by the use of data protection or freedom of information legislation?

Niki Maclean: Yes. In prison cases, we quite often receive information on complaints from prisoners, for example. The SPS feels that it is necessary for us to see background information, but obviously we are unable to release that for security reasons.

The Convener: Okay.

We want to ensure that your service is as open and transparent as it possibly can be. If you had any concerns about areas in which you thought

that it would be of benefit to be able to release further information but you could not do that under current legislation, would you call for a further review, such as the one that was carried out in 2009?

Jim Martin: If I felt that I could not administer the office fairly, I would say so. I will take legal advice when I want to be able to release something, and I will not release it only if my lawyers tell me that I cannot. That is the basic default position. We will try to give people as much as we possibly can.

The Convener: How often do your lawyers advise you that you should not release information?

Jim Martin: We go through a standard process, so that would come up only in exceptional cases. Lawyers are very expensive, so we tend to go to them only when we feel that we really have to. If we think that the answer is clear, we do not.

The Convener: You say that you do not go to a lawyer when you think that the answer is clear. One would imagine there has been some testing in that respect, and there must be some guidance that you follow. Can you indicate what that would be?

Niki Maclean: We provide guidance to staff about when and how to release information during the course of an investigation. We can certainly provide that information to the committee if you are interested in seeing it.

Jim Martin: The advice that we give to our staff has been approved by our lawyers. It is not something that we have decided; it is what our lawyers tell us that we can do.

The Convener: Absolutely.

Niki Maclean: We discussed earlier the number of requests for review that we receive. I can think of only one, or possibly two, cases in the past two years in which people have raised the release of information as an issue. My perception is that for the majority of individuals, where they have concerns about the decisions that we reach, which we hear about through a request for review, it is not a common issue. I hope that is useful for context.

The Convener: It would be extremely useful for us to get a copy of the guidance that staff are given. Is it publicly available?

Niki Maclean: Yes, I believe so.

The Convener: Would it be quite easy for a member of the public, if they requested a copy of the guidance that you give to staff on those issues, to access that information?

Niki Maclean: Yes—we would release it.

Jim Martin: There is no reason that I can think of why we would not release it. If I do think of something, I will come back to you.

The Convener: That is extremely useful.

I see that colleagues have no further questions. We have asked for written answers to the outstanding questions from members of the public—we would be grateful if we could get them by the end of January. Would that be possible?

Jim Martin: That is fine.

The Convener: Beyond that, we have asked for a number of other things from you today, and the clerks will be in touch about them. I thank you very much for your attendance today. We now move into private session.

10:58

Meeting continued in private until 11:27.

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