



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 1 April 2015

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
12th 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)

*Cara Hilton (Dunfermline) (Lab)

Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Helen Hayne (Commissioner for Ethical Standards in Public Life in Scotland)

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 1 April 2015

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Kevin Stewart): Good morning and welcome to the 12th meeting in 2015 of the Local Government and Regeneration Committee. If people wish to use tablets or mobile phones during the meeting, please switch them to flight mode, otherwise they may affect the broadcasting system. Some committee members may consult tablets during the meeting, because we provide meeting papers in digital format.

We have received apologies from Alex Rowley.

Agenda item 1 is a decision on whether to take item 4 in private. Do members agree to take item 4 in private?

Members *indicated agreement.*

Petition

Planning (Rights of Appeal) (PE1534)

10:00

The Convener: Agenda item 2 is consideration of petition PE1534, by Clare Symonds on behalf of Planning Democracy, on equal rights of appeal in the planning system.

The petition was lodged with the Parliament on 3 September 2014, and has been referred to us by the Public Petitions Committee. The petition calls on the Scottish Parliament

“to urge the Scottish Government to review the current rights of appeal within planning and other consenting processes which give deemed planning consent, considering the benefits of widening the scope of appeal, and providing an equal right of appeal.”

We have a paper from the clerk setting out the background to the petition and the written and oral evidence that the Public Petitions Committee received before it referred the petition to us.

Do members have a view on the petition?

Cara Hilton (Dunfermline) (Lab): I have a lot of sympathy with the petition, as it is on an issue that needs to be explored further. At the moment it seems that there is a bit of an imbalance in the system and local communities and people are losing out to an extent. We should look at whether we can progress this somehow.

Clare Adamson (Central Scotland) (SNP): Because it is not long since new planning regulations came in, we should write to the Government and ask what the timescale is for a review.

The Convener: I suggest that we write to the Government about the petition and ask what plans it has to review. We will wait for a response from the Government and, if we do not feel that the response is the right one, we should then ask the cabinet secretary to appear in front of the committee. Would that satisfy members?

Members *indicated agreement.*

Commissioner for Ethical Standards in Public Life in Scotland

10:02

The Convener: Agenda item 3 is an oral evidence session with the Commissioner for Ethical Standards in Public Life in Scotland, Bill Thomson. Bill is joined on the panel by Helen Hayne, investigations manager at the commissioner's office. I welcome you both.

Before we move to questions, do you have any opening remarks?

Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland): Thank you for the opportunity to speak to the committee about the annual report for the year to 31 March 2014, and for giving me a little time to settle in to the post before doing so—that is appreciated.

I am accompanied by Mrs Helen Hayne, whose role as investigations manager includes responsibility for our case management system. In addition to being fully up to speed with our current cases, Helen offers a significant degree of continuity, having worked in the role for a number of years. She also has detailed knowledge of the internal aspects of our investigative processes. I hope that between us we will be able to answer any questions that you may have.

Anticipating that you would be as interested in what has happened since 31 March 2014 as in the details that are covered by the annual report, I have submitted updates to some of the tables—I believe that they have been circulated to members. The information has been supplied as at 18 March 2015, so it may be subject to revision before it is published in the next annual report in a few months' time.

I will run through that information briefly. Table 2 shows the total number of complaints received, and gives a breakdown of the complaints against councillors and members of public bodies, as well as those that did not come within my jurisdiction to investigate. The figures have been somewhat distorted by a large number of related complaints that have been dealt with as a single case. It might be more helpful for comparative purposes to look at the final row in table 2, which shows the number of cases considered. There is a further breakdown of complaints in table 3, and members may well have questions on that.

Table 4 details the number of complaints that were received from members of the public, which is the vast bulk of complaints, and the number that were received from councillors. You will see that very much smaller numbers of complaints are

received from officers of a local authority and MSPs and that, in a few cases, they are submitted anonymously.

I draw your attention to table 6, which gives comparative figures for the numbers of complaints that were progressed during the year. Because there was a spike—at least, I hope that it was a spike—in the number of complaints that were received during 2013-14, there were still 76 complaints outstanding at the end of that year.

I am pleased to report that, despite receiving a significant number of complaints in 2014-15 and, even allowing for the 524 that were dealt with as a single case, we appear to be heading towards a smaller number outstanding at the year end, although that figure will have to be adjusted to take account of what happened between 18 and 31 March. I have been very impressed by the steady and continuing effort of all the staff involved in progressing the cases over the course of the year.

Finally, table 7 lists the outcome in terms of my findings. As you know, my word is not final. All breach cases involving councillors or members of public bodies are reported to the Standards Commission for Scotland, which generally arranges a public hearing, at the end of which it may or may not agree that there has been a breach of the code. Because of the volume of complaints that were received in 2013-14 and 2014-15, there have been more public hearings than before. Eight were concluded in 2014-15, one of which involved two councillors, and one hearing has been continued until later this month.

That is a summary of the current state of play for the part of my work that falls within the remit of this committee. We are happy to take questions.

The Convener: Thank you very much, Mr Thomson. I have an inkling of the issue to which the 524 complaints relate, but could you please tell the committee what the case is?

Bill Thomson: It is a complaint by a number of members of the public—85, I think—about actions that were taken by a number of councillors in the political administration in Aberdeen City Council. I reported to the Standards Commission that there had been a breach of the code of conduct. The Standards Commission set a hearing that started in February, was adjourned and is to resume on 15 April. For reasons that I am sure you will understand, I cannot go into detail.

The Convener: I would not ask you to go into detail. I realise that it is a live situation. Members should be careful in their questioning to take cognisance of cases that are live.

A large part of the spike in 2014-15 seems to be due to the Aberdeen case. Is that correct?

Bill Thomson: That case accounts for the bulk of the numbers in 2014-15. The spike to which I referred in my introductory remarks was in 2013-14, which is the year that is covered by the annual report.

The Convener: Was the spike the 298, which was up from 181 the previous year?

Bill Thomson: I think that there were 311 in—

The Convener: I beg your pardon, Mr Thomson—it was 311. I was looking at the figure only for the councillors.

Bill Thomson: I apologise that this is potentially confusing. The number of cases is effectively the number of separate issues that we have progressed. I realise that this is not mathematically correct but, in very simplistic terms, between 2011-12 and the following year, there was a roughly 10 per cent increase—I think that it was actually 7 per cent—in the number of cases and then, in the following year into 2013-14, there was a further 20 per cent increase. For 2014-15, we look to be heading back to the sort of levels that we experienced in 2011-12, so that is why I say that I hope that there was a spike and that we are heading back to a slightly lower level.

The Convener: The last time that Stuart Allan appeared before the committee, he was questioned about complaints about folk who sit on arm's-length external organisations. Obviously, councillors are covered by the code of conduct when they sit on ALEOs, but non-councillors—external members of an ALEO—are not. The committee felt that that was a bit of an anomaly—I can never say that word. Has anything been done to try to address that anomaly?

Bill Thomson: The short answer is yes, although I am not sure that it will appear much in published documents.

As I am sure you are aware, the code of conduct for councillors endeavours to cover the situation in which councillors are appointed to other bodies, at least in the specific rules on the registration and declaration of interests, and it gives guidance.

The Standards Commission, which conducts a certain amount of outreach, is aware of the issue of ALEOs that were originally set up by councils and has been involved in discussions, including with one authority that asked it to come and address the issue. The issue was also discussed at a recent meeting that involved members of the Standards Commission and monitoring officers from a fairly substantial number of authorities throughout the country, so it is live.

My impression is that, although there might be concerns in some council areas, there do not seem to be concerns in others. I am sorry, but I do

not have enough information to be able to explain why that is. It might be related to health and social care integration joint boards, which have to be in place from today.

Last week, I had the opportunity to ask one of the Government solicitors whether any consideration had been given to the position on the integration joint boards that have councillors on them as well as representatives of health boards. My understanding is that, if the Government has not already done so, it intends to add integration joint boards to the list of bodies that are covered by the Ethical Standards in Public Life etc (Scotland) Act 2000, under which I conduct investigations, which would mean that, by the time that they come fully into operation in a year's time, they will have to have their own codes of conduct.

That solves one problem, in that all the members of the integration joint boards will be covered by the same code of conduct. However, it leaves open the issue that councillors will be covered separately by the code of conduct for councillors, so I hope that the way that the new codes are drawn up will not result in there being any awkwardities—as a former Presiding Officer used to call them—between the two.

The Convener: That is interesting. Even though there have not been many complaints about non-councillor members of ALEOs, would it be wise to extend your regime to cover them, too, in case there were a spate or spike of complaints about them?

10:15

Bill Thomson: That is a difficult question to answer. I am not trying to be evasive. One thought that I have is that, if there does not appear to be a problem at the moment, there would be little point in trying to fix it. On the other hand, I can appreciate that there may not be a problem at the moment because there is no code for those people to breach. In the year that I have been in post, I have had very few complaints that relate to the behaviour of anybody on ALEOs, so it certainly appears to me, on the evidence available, that it is not a particular problem. My suspicion is that it is more likely to become a problem, particularly in terms of conflicts of interest, as the resources that are available to councils and therefore to bodies that are funded by them are further constrained. That may well bring councillors into a position in which they have a problematic conflict of interest.

John Wilson (Central Scotland) (Ind): I want to go back to the issue that the convener raised on ALEOs. You tried to assure us that things were working well with ALEOs and you said that you had not received that many complaints. However, I

heard a story last week that one local authority committee had to take a vote three times because it was unsure whether committee members—councillors—sitting on it could participate in the vote, as they were members of various boards and ALEOs that were established by the local authority. It took three attempts before the committee thought that it had got it right in terms of who should be participating and who should not.

If council officials and councillors are unaware of whether they can participate in the decision-making structures of the local authority when it comes to ALEOs, how assured are you that mistakes are not being made throughout local authorities in Scotland that have ALEOs? I put it that way, because not every local authority has them in place. My concern is that, if council officials and councillors are unaware that they might be breaching the code of conduct, how do we know that such breaches are not taking place on a daily basis?

Bill Thomson: I do not know—it is as simple as that. I am not presuming or assuming, but the answer that I gave to the previous question included a reference to the problems that may occur with conflicts of interest, which is precisely the issue that troubled the local authority to which Mr Wilson referred. The provisions in the code on registration and declaration of interests are actually quite complex, particularly for councillors who are involved in other bodies. The issue does not arise just in relation to ALEOs, by the way; it has arisen even in hearings and situations where councillors are involved in different sorts of bodies, including bodies that were not actually set up by the local authority. The whole business of registration and declaration is possibly the most complex and difficult part of the code.

Assuming that Mr Wilson's description of that situation is accurate, it may not be completely unusual. However, I do not go looking for trouble; I will deal only with complaints that come to me. Despite having had discussions with monitoring officers recently, I cannot say whether there are problems in other parts of the country, but there may well be.

John Wilson: I understand that you do not go looking for trouble but, when trouble comes to you, you need to assure everybody concerned, including the public, that the standards are being applied across the board. Given that you said that the code is complex, has there been any discussion about simplifying it so that not only council officials and elected members but the public understand what is expected of elected members when making decisions on local authorities' behalf while they are members of economic development forums, ALEOs and other

public bodies that may derive income from a local authority?

Bill Thomson: That is a fair point. I am not aware of any such discussions.

John Wilson: Would you undertake to have such discussions, particularly with the Standards Commission? Although you do not go looking for complaints, my fear is that people may be making complaints to the same council officials who do not understand the code and therefore cannot advise the public or elected members whether there are good grounds for a complaint to be made.

Bill Thomson: I am happy to give the undertaking to take up the matter with the Standards Commission, which I know is aware of the issue. I would be deeply concerned if local government officials were not clear on the code of conduct.

John Wilson: In my earlier example of the three attempts to take a vote, the officials could not advise the members on whether they were taking the vote correctly and whether the members could participate.

Table 7 in your submission shows a total of 291 complaints and 146 cases in 2013-14. Roughly half the complaints that were received were progressed and dealt with as cases. Is there a reason for that?

Bill Thomson: I need to explain that a bit better. If I could take the committee back to table 2—I am not avoiding the issue; this is an attempt to explain it—members will see a footnote with an asterisk and one with two asterisks. The procedure that we operate means that every complaint against an individual councillor is treated as a single complaint. Convener, you asked about the 254 complaints that are being dealt with as a single case.

The Convener: I think that the figure is 524.

Bill Thomson: I am sorry—the numbers are going round in my head.

That is the prime example of the difference between the number of complaints and the number of cases. It is why I suggested that, for comparison purposes, it is probably better to look at the number of cases.

Table 7 indicates two separate things. The total number of complaints was 291. They were all dealt with but, because of the multiplication exercise in which some complaints are taken together, the total number of cases was only 146. I am sorry that that has not been wholly clear.

John Wilson: I asked the question because table 7 makes it look as though less than 50 per cent of the complaints are being progressed. I know that you referred us to table 2 and made the

distinction, but the reporting mechanism might need to be reconsidered. Someone scanning the report might think that, of nearly 300 complaints, fewer than 150 had been dealt with. It is important to get the clarification on the record.

Bill Thomson: I am aware of the confusion and I am trying to find the best way to resolve it. If I can go back to table 7, the position is even more stark than Mr Wilson suggests. The 2013-14 figures show that 200, or two thirds, of the 291 complaints did not proceed beyond initial investigation. That is because my predecessor and the team reached the view that those complaints could not indicate a breach of the code of conduct. That tends to be the pattern: we receive many more complaints than the number in which we find breaches—which, on one view, is good news.

John Wilson: I know that there is a crossover between the Commissioner for Ethical Standards in Public Life and the Standards Commission in relation to the code of conduct. An issue that I have raised in the past is how up to date elected members' entries in registers of members' interests are. Mr Thomson will be well aware of the procedures that are in place in the Parliament to ensure that MSPs keep their entries in the register of members' interests as up to date as possible, but I have heard that some local authorities' registers of elected members' interests are well out of date and are seldom updated. Indeed, I have heard that, in some areas, when elected members try to update their entries, it can take several months before the updated version appears on the council website.

Bill Thomson: I do not have a composite picture of the whole country, but I am certainly aware that that has been a problem in some areas. A statutory instrument from 2003 sets out the rules on registers of interests for councillors. It requires councillors to update their entries within a month of any change, which is the same as the position for members of the Scottish Parliament, but I am not sure how widely that is appreciated. The guidance issued by the Standards Commission refers separately to annual reviews and the issuing of six-monthly reminders to councillors. I am not convinced that that is adequate.

The Convener: Before I bring in Clare Adamson, I will ask about monitoring officers, whom you have mentioned. How many of the complaints that you have received have come from monitoring officers?

Bill Thomson: A handful. The tables in the submission record the number of complaints received from council officials. They tend to come from chief executives, who tend to work with

monitoring officers to put them together. The figure has been two or three a year for some time.

The Convener: So it would be fair to say that you do not receive a substantial number of complaints from monitoring officers.

Bill Thomson: I heard one of the monitoring officers at the meeting that I referred to, which took place last week, describe making a complaint to me as the nuclear option. It is very much a last resort for council officials to complain to me.

The Convener: Could it be that the nuclear option is not taken very often because there is a bit of fear among certain officials about taking it?

Bill Thomson: I do not know, but it is self-evident that, if someone has a role in which they have to work with elected members for the period between elections, they will not resort readily to reporting to the standards commissioner. I am sure that most senior officials—I have been one—would seek to deal with such a matter by agreement or at least behind closed doors rather than report it, with the risk that it would come to a public hearing.

The Convener: Might there be an argument for taking monitoring officers out of the normal council executive set-up and creating independent monitoring officers to take an overview? It is normally the person who is in charge of legal services who takes on the role.

Bill Thomson: I am not sure that I would immediately support that suggestion; I am not sure that you are asking me to.

In my experience, it is better if things are handled by the people who are there. It would put a chief executive in an odd position if an independent monitoring officer could—I realise that this is a value judgment—interfere with however a difficult situation was being dealt with. I do not imagine that local authority officials would welcome that.

The Convener: As usual, I am playing devil's advocate.

Clare Adamson: Good morning. I will ask about the public perception of how the complaints system operates. I go back to the position with ALEOs. Because most ALEOs are set up as charities, would members of the public make their complaints to the charities commissioner rather than the standards commissioner? Do you have any interaction with the charities commissioner about complaints to it that might involve councillors who sit on ALEOs?

10:30

Bill Thomson: I have not had any such interaction. I confess that it had not occurred to me

until you asked the question, but it might be a good idea for me to do so.

Clare Adamson: My second question is about publication of the complaints process when a complaint is made against a councillor. I understand that, as soon as a complaint is made, that fact is published on your website. Is that correct, or is it published only after investigation?

Bill Thomson: I will ask Helen Hayne to answer that.

Helen Hayne (Commissioner for Ethical Standards in Public Life in Scotland): What Clare Adamson described is not the process. The process during our investigation is as follows. When we receive a complaint, we inform the respondent as soon as possible, to give them an opportunity to respond. It is not until the decision is made by the commissioner that the complaint is published on the website.

Clare Adamson: If there is a decision to take no further action, is that still published on the website?

Helen Hayne: We publish all decisions when the commissioner thinks that it is in the public interest to do so. If the matter was trivial and not of public interest, it would not go on the website, but anything of substance that would be of interest to the public is published.

Clare Adamson: I wanted to clarify that point because I know that, in an online search for a councillor's name, sometimes the first thing that comes up is the standards commissioner, and very often it is a "no further action" result, as you have shown in your statistics. I wondered whether that might give a perception to the public that significant complaints had been made against particular councillors. Do you have any concern about how the information is published?

The Convener: Mrs Hayne?

Bill Thomson: I would rather answer that—I do not think that it is fair to ask Helen Hayne to answer. Clare Adamson outlined a possible perception. However, even if there were multiple complaints against a particular councillor, if none of them was found to have amounted to a breach of the code, I do not see how that could reasonably be portrayed as a slur on that councillor's character. Not all the complaints that we receive are politically motivated, but some of them are. Some councillors appear to be more prone to such complaints than others—I will leave it at that.

Clare Adamson: I will leave the matter there as well, convener—thank you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will risk asking another question about

table 7 in the extra information that you provided. It shows 540 as the number of outcomes that were deemed to be a breach of the code. Do they all relate to the one case that involves multiple complaints, or are they individual breaches?

Bill Thomson: Of those outcomes, 524 relate to the one case that has been referred to already, which is public knowledge because it is down for a public hearing.

Helen Hayne: I can add to that—the 540 complaints relate to eight cases. The case that Bill Thomson mentioned as involving 524 complaints is one case; the remaining complaints relate to a further seven cases.

Willie Coffey: If 100 people complain and the complaints are upheld, is that 100 breaches, even if it is all about one councillor?

Bill Thomson: This takes us back to the confusion that Mr Wilson referred to and which does bother me.

Technically, if there is a complaint and it is found to be a breach it is one, and if there are two and they are found to be breaches there are two. Therefore, that is correct; there would be 524 breaches if that is what the ultimate decision is in this case—we have not arrived at that yet.

Actually, I am going to contradict myself, if I may be permitted to do so. The confusion arises because the number of people who have lodged a complaint has an impact on the total number that we report. We have to do that, because it shows how many people have submitted complaints. However, there are only seven councillors involved in the 524 complaints, so even supposing that, at the end of the process, the Standards Commission agrees with me that there has been a breach—of course, it may not agree with me—the maximum number of breaches would be seven.

Willie Coffey: I think that that clarifies that.

I want to pick up on the point that the convener introduced in relation to ALEOs. As we all know, many councils are in the process of transferring substantial publicly owned assets to communities. The community groups that are taking on those assets are not ALEOs, but they are in effect independent groups that will now run substantial facilities. Is there any guidance or code of practice for members of the public who serve on or run such bodies? I am pretty sure that they will not be covered by the code that we are discussing, but are they covered by any code?

Bill Thomson: I am not aware of any such discussions and have not been involved in them, although I hope that some are taking place.

Before I came here, I was asked to consider what I might say about the Community

Empowerment (Scotland) Bill, and my rather glib answer was that I did not think that it would impact very much on the work of my office. Of course, one of the reasons for that is that the community bodies to which assets might be transferred are not covered by any code that I have a remit to investigate.

You make a fair point, and I am sorry that I do not know the answer.

Willie Coffey: I am fairly sure that, in assisting communities to take ownership of assets, there will be some discussion on that issue. Perhaps it is something that we would be interested in having a look at in the future, convener.

Is any distinction drawn between a councillor who honestly forgets to declare something and a councillor who acts improperly? Is there any distinction in the sanctions that can be imposed on someone for failing to declare an interest?

Bill Thomson: The sanctions are the preserve of the Standards Commission. Both of those situations would, as far as I am concerned, involve a breach of the code. If I had the information to show that the first councillor had been involved in a breach through an honest mistake, I would include that in my report to the Standards Commission. I would be fairly unlikely to report that I thought that a councillor had behaved dishonestly, unless it was very blatant, because I would need to be clear that there was evidence of that. I do not set out to defame anyone in a report.

In both cases, if the Standards Commission holds a hearing and agrees that there has been a breach, it will invite the councillor or whoever is representing them to make a statement in mitigation if they wish to do so. At that point, I would expect the two different situations to come out. It is reasonable to assume that that might be reflected in any sanctions that are imposed, although that is not my responsibility.

Willie Coffey: Lastly, is there anything that local authorities can do to help councillors who might honestly forget to declare certain things from time to time? Is there anything that we can do to help mother them and constantly remind them that they have to be aware of the code? Is there any other way to influence that?

Bill Thomson: I am sorry, but I do not have any bright ideas on that.

John Wilson: To go back to the issue of the 524 complaints, I want to drill down into how those complaints were received.

If a vexatious character decided to take umbrage at a particular elected member and went out and got all their neighbours and family to sign a petition complaining about that elected member, would their petition be taken as one complaint, or

would the total number of signatories to the petition be listed as complainants?

Bill Thomson: That raises an interesting question. The legislation under which I operate requires, where possible, complaints to be made in writing and to be signed by the person who is complaining. We are trying to move to a position in which we will accept online complaints, which would take us closer to the situation of online petitions, with which people are already familiar.

It is fair to say that we have not had any as yet, although we have had some complaints where, effectively, a standard letter has been made available and has been signed and submitted by a number of different people. We would treat each of those as an individual complaint.

However, the number of people who complain about something does not influence my decision as to whether I investigate and, assuming that I investigate, it does not influence my decision as to whether there has been a breach of the code. It is the facts that matter, not the number of people who complain or the motivation of the person or people who complain.

John Wilson: On that point, you say that you will take a decision or decide to take a complaint forward based on the facts. Recently, a complaint was made against a particular councillor—I will not go into the details—and the facts relied on what was said at a full council meeting because the allegations were made about particular comments. In a situation like that, who would you rely on for the facts, given that there would be one councillor who is complained against and another who makes a counterclaim?

Bill Thomson: The short answer to that is that I would rely on the witnesses, but I am sure that that is not what you want to hear from me.

John Wilson: It is what I expected you to say, but the issue goes back to your earlier point about the council monitoring officer. If the council monitoring officer is the senior legal officer of the council and—to paraphrase what you said—they might not want to be seen to be upsetting anyone, they may err on the side of discretion and not provide any evidence to verify the facts when councillors have conflicting stories in relation to a complaint.

Bill Thomson: I am very reluctant to impute such motives to any monitoring officer who is a witness to something that has become the subject of a complaint. What I come back to is the standard of proof—which I have to observe and which is relevant in any public hearing—which is on a balance of probabilities. If the only available information is that councillor A says that councillor B said something that councillor B denies saying,

on a balance of probabilities I cannot make a decision that councillor B did say anything.

The Convener: Modern technology may help, given that some councils are now webcasting and so on. Have you taken that into account during investigations?

Bill Thomson: Yes. Sometimes we are given a transcript. Even where there is no webcast available, some proceedings are recorded.

The Convener: But they are not verbatim.

Bill Thomson: Sadly, they are not the same quality as the *Official Report*. I will spare the blushes of the official reporter Janet Foster, but the transcripts are not of that quality.

The Convener: And now she actually is blushing. Let us move on.

John Wilson: The problem is not just councillor A versus councillor B, but the fact that something can be said in a public forum, such as a full council meeting or a committee meeting, when there is no verbatim record of what is said and we have to rely on other witnesses. As you said, the issue is how you ensure that you are dealing with the facts rather than dealing with a group of elected members who might decide to make a complaint against another elected member of a different political persuasion because they said something derogatory. There is difficulty in how you deal with the facts of that case and the circumstances around it.

Bill Thomson: I have no argument with what you are saying. It is one of the challenges of my job and I do my best to exercise my judgment. I am not claiming that I will always get it right, but I can only try to be impartial and to do the job to the best of my ability.

The Convener: As technology moves on, your job may be made a little easier.

I remember a case, long before the days of the Standards Commission, in which one north-east councillor accused another councillor of calling him a baboon, and the other councillor stood up and said, "For the record, I called him a buffoon, not a baboon—I would never insult baboons in that manner." In those days, there was a verbatim record but no Standards Commission. Now we have no verbatim records, per se, but a Standards Commission. Webcasts and radio broadcasts may be helpful in the future.

Bill Thomson: The other very important thing that they are helpful with is the context in which remarks are made.

The Convener: Indeed. That judgment must also be difficult at certain points.

Bill Thomson: Indeed.

Cameron Buchanan (Lothian) (Con): In view of what you said earlier, are you concerned about anonymous complaints? How do you judge whether they are anonymous? You said that there are very few, but anonymous complaints would seem to defy the whole system.

Bill Thomson: Some people are unwilling to put their name to a complaint, and those complaints are, quite simply, anonymous. You will appreciate that there is no way in which we can get in touch with the person who submitted a complaint if they do not disclose their identity. They have to remain anonymous, as far as I am concerned, and there would have to be exceptional circumstances for me to progress a complaint of that nature.

Cameron Buchanan: The answer is that you tend not to progress the anonymous complaints.

Bill Thomson: That is the rule.

Clare Adamson: I have a supplementary on the technology issue. Obviously, different councils have adopted different policies. Is that something that you can have any influence over, and would you suggest that best practice should be that full council meetings, for instance, are recorded in a webcast of some kind?

Bill Thomson: That is really not for me to say; it is a matter for councils. We have even had YouTube video evidence used; there are all sorts of technologies that may be relevant to particular circumstances.

The Convener: I will stick to the technology aspect. Many more folk are now using social media—Twitter, Facebook, Instagram and lots of other things that I do not understand. We have seen circumstances in which complaints have been made about comments that individual councillors have made to constituents on social media. I suppose that you have the difficulty of deciding whether somebody is being insulting in an official capacity, as in my story, or as an individual. In terms of social media, how difficult is it for you to make judgments over whether there have been breaches or whether somebody is acting in a personal capacity?

Bill Thomson: Some cases are very clear, but some are very unclear. In some cases, it is very difficult, and it is an area in which, at the very least, further guidance would be helpful. I have discussed it with the Standards Commission. I know that the commission is aware of it being a developing problem area. I think that Helen knows the number of cases.

Helen Hayne: We have had 20 complaints this year in relation to social media.

The Convener: How many of those have been deemed to be breaches thus far and how many are still under investigation?

Helen Hayne: We have not concluded a case deemed to be a breach in that area. I cannot give the exact figure for how many are under consideration. I can certainly provide that for you if it is of interest to the committee.

The Convener: That would be extremely useful, and it would also be useful for us to be kept up to speed with any policy decision of the commission on dealing with social media cases. I recognise that on social media a certain rough and tumble goes on but, as a casual observer of Twitter, I sometimes feel that some of what is happening is a bit beyond the pale.

Bill Thomson: I really cannot say anything in response.

The Convener: Obviously, you cannot.

Bill Thomson: Article 10 of the European convention on human rights may well have an impact on or be relevant to some of the complaints.

The Convener: For the record, could you tell us what article 10 provides?

Bill Thomson: In effect, article 10 defends the right to freedom of speech. As I understand it, it is interpreted more liberally in the context of political debate and, for that matter, reporting through the media than it would be for any of us who just happened to have a private discussion outside this room. Quite offensive comments have been held by the courts to be protected under article 10 of the European convention.

The Convener: Thank you. As I said, it would be interesting for us to be kept up to speed with what decisions are made in relation to social media. Certainly, given some of the things that I have seen and some of the comments that have been made to me by members of the public, I think that the issue is a matter of concern for some people.

I return to a discussion that we had previously on community empowerment. I think that participation requests and asset transfers might create some tensions, particularly in the initial stages as the provisions bed in. Are you prepared to deal with any spike in complaints when those provisions come into play?

Bill Thomson: It depends what you mean by "prepared". For the reasons that I gave before, I am not expecting a spike in that I am not convinced that there will be, at least in the short term, a relevant code of conduct under which complaints can be made to me. However, I am hoping that there will not be a further spike for any reason. Frankly, a spike is quite uncomfortable to deal with.

John Wilson: On that, the figures that you gave us were for 2011-12. My understanding is that there were a number of complaints just before the 2012 local government elections. Are you not expecting a spike in complaints just prior to the 2017 elections? For example, the number of complaints about the misuse of council resources in Aberdeen has already been publicly highlighted, and that case could be replicated in other authorities with complaints against the incumbent majority party or individual councillors.

Bill Thomson: I have not been worrying unduly about the period before 2017, simply because it is a little further away. Most of us would expect it to be more likely that complaints, and particularly politically motivated complaints, will be generated at times of heightened political awareness or tension. What has surprised me is that the level of complaints does not seem to correspond directly with the periods before elections, which suggests to me that the majority of complaints come from members of the public, whatever the reason that motivates them. That is a more important factor in terms of the total number of complaints that we receive.

The Convener: Do you think that elected members have stopped coming to you about other elected members because so many of the cases in the past have been dismissed and deemed to be political?

Bill Thomson: I need to be careful how I answer that. I have not dismissed any complaints on the grounds that they were political. I do not know why the number of complaints from councillors has reduced. I am happy to see that the number has gone down, but I cannot tell you why it has gone down.

The Convener: But you would say that a complaint from a councillor would have the same effect as a complaint from a member of the public.

Bill Thomson: Absolutely.

The Convener: Thank you. Members have no further questions, but would you like to add anything?

Bill Thomson: No, thank you.

The Convener: We would be grateful if we could get updates on certain aspects of what we have discussed, particularly as things progress in relation to social media, because there seems to be a certain amount of interest in that area. I thank Mr Thomson and Mrs Hayne for their evidence today.

10:55

Meeting continued in private until 11:18.

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