



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 31 January 2018

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
4th Meeting 2018, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Kenneth Gibson (Cunninghame North) (SNP)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rosemary Agnew (Scottish Public Services Ombudsman)

Niki Maclean (Scottish Public Services Ombudsman)

John Stevenson (Scottish Public Services Ombudsman)

CLERK TO THE COMMITTEE

Jane Williams

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 31 January 2018

[The Convener opened the meeting at 10:02]

“Scottish Public Services Ombudsman Annual Report 2016-17”

The Convener (Bob Doris): Good morning, everyone, and welcome to the fourth meeting in 2018 of the Local Government and Communities Committee. I remind everyone present to turn off mobile phones. Meeting papers are provided in digital format, so members may use tablets during the meeting; if you see us doing that, we promise you that it is fine.

We have received apologies from our deputy convener, Monica Lennon, who unfortunately cannot be with us this morning.

Under agenda item 1, the committee will take evidence on the “Scottish Public Services Ombudsman Annual Report 2016-17”. I welcome our new ombudsman, Rosemary Agnew; Niki Maclean, director; and John Stevenson, head of improvement, engagement and standards at the Scottish Public Services Ombudsman’s office. Thank you for coming along.

Ms Agnew, I believe that you have an opening statement.

Rosemary Agnew (Scottish Public Services Ombudsman): It is very short, I promise. I want to put into perspective why we made a written submission to the committee. Given that this meeting is on the 2016-17 annual report, I am conscious that I am here to give evidence on a year for which I was not the ombudsman, so in our submission we have tried to give you a flavour of movement since that report. I am very happy to take any of your questions, but if there are specific points about the 2016-17 annual report, particularly regarding some of the numbers and performance against indicators, I am likely to ask Niki Maclean to comment. However, I am very happy to take supplementary questions about what we are doing in the current year because I am conscious that we are in the final quarter of one year while we are talking about a year that has gone by.

We have tried to be completely open about where we are. As you will be aware from committee meetings such as this, ombudsmen

and commissioners in public life are really good at saying, “Volumes are really high, we can’t cope, we haven’t got enough resources.” We have tried to give you a flavour of where we have enough, where we do not have enough, and what we feel the impact of that is. We will look at the wider context, so this is about not just complaints but our other statutory functions such as the Scottish welfare fund, complaints standards and public sector improvement generally.

Thank you for inviting us. I look forward to the questions.

The Convener: Thank you very much. We will try to get a balance between looking back at the annual report and teasing out how you might take the office forward in the year ahead. On that note, our first question is from Graham Simpson.

Graham Simpson (Central Scotland) (Con): Can you give us a sense of how you are doing things differently from the previous occupant of your post? What have you changed?

Rosemary Agnew: I do not think that there is a wholesale difference, but there are two or three significant things.

As you will see from our submission, we took the opportunity to eliminate our backlog of cases. For the first six months, that was the main operational focus, not simply because having a backlog is unacceptable, but because of its impact on the wellbeing of those in my office; that is equally important, because it can be draining for people to know that they have a backlog. That was the first significant thing.

As a result, we did not do as much in other areas of work such as communications and engagement; we intend to build on those, so we will take a different approach to communication. We have just appointed a new communications manager and I want to take a much more balanced approach not just to how we get the SPSO out there, but to our role in relation to public service improvements, by drawing on not just complaints but practice. That was the second significant thing.

We have just submitted a draft strategy to the Scottish parliamentary corporate body for consultation. In essence, it is about the same functions but it makes it much clearer that although complaints are important in public service improvement, so is all the other work that we do. It is easy to form the perception that ombudsmen just look at complaints, but we do far more than that.

Building on that, the third significant thing is continuing the work on learning and improvement in order to start being more structured in how we gather intelligence and use it to inform wider

debate. For example, Niki Maclean now represents our organisation at the health improvement Scotland intelligence group and we can share information. I refer to the wider context because I believe that it is really important that we put this in perspective. What we learn from our work is the tip of the iceberg. We can take what John Stevenson learns from the standards work, by engaging with complaint handlers across Scotland, and what we learn from statistics, and contribute that to a wider debate. We might have a particular organisation that makes up 5 per cent of all our complaints. Is that a big issue? Well, it might be. When we discuss that and have wider engagement, it might turn out that the issue is just ours and that the organisation needs help and support in complaints training. If, for example, it is a health complaint, we might find through Niki Maclean's work on engagement that other issues are arising. It is about raising our game from simply looking at ourselves to using what we know as part of that wider public debate and looking at service improvement generally.

Graham Simpson: I think that you are right to say that most people would just assume you are there to deal with complaints. However, you see yourself as doing far more than that. Perhaps we can get on record what you think your role is beyond just dealing with complaints.

Rosemary Agnew: I should emphasise that complaints are really important; personal redress for injustice that is caused when things go wrong is really important. Our wider role does not diminish that in any way, but I believe that our wider contribution is through sharing our intelligence, as far as we can, with our own information. It is through developing our own learning improvement work in such a way that we have earlier intervention with public bodies if we think that there is an issue in complaint handling, or if we find that something that appears to be thematic is coming through our recommendations on decisions.

Our role is also wider. If we see that there are issues that we think are worthy of more investigation or research, as we did with the informed consent thematic report, we have a role in drawing attention to those matters. It is also about us engaging much more, if we can, with our service users. It is a combination of complaints, sharing intelligence and contributing to other work, using our own intelligence for earlier support and intervention and better engagement with all our stakeholders.

Graham Simpson: You said that you have appointed someone to take on a communications role. Who do you think that you need to communicate with?

Rosemary Agnew: Everybody. There is a temptation for ombudsman-type organisations to focus everything that they do on their website and to say that they will issue guidance and publications. There is almost a drive to get stuff out there. I really want to turn that on its head and look at how we can take the SPSO to stakeholders, because we do not have a particularly diverse complainer profile and I am interested in knowing why. With traditional feedback routes such as feedback forms, response rates are going down across the public sector. We need to know not just whether people are happy with our service, but where they think that we are making a difference and, if we are not, why we are not. It is important that we have contact with the public bodies, because if we help them—either through training support or more robust discussion, shall we say—to improve their complaint handling, that is to everybody's benefit. The best learning and the best complaint handling are at the front line, because that is where lasting change is achieved.

It is also important that we communicate with the wider ombudsman and public sector community. We are quite active through the Ombudsman Association, and through that with European ombudsmen, because we do a lot of quite innovative work in Scotland. Niki Maclean and the others in the office were instrumental in the Ombudsman Association service standards.

I am particularly interested in ensuring that Scotland does not lose its identity as a result of everything else that is going on in the United Kingdom and Europe, and that we retain our identity and reputation for innovation and pushing forward on engagement and including users. We have things such as sounding boards and user forums, which many ombudsmen do not have. That communication is important because we learn from other ombudsmen.

One of the things that is very apparent to me is that we are really good as an ombudsman service—we are creative and innovative, and I believe that we do very well for our complainers. However, we are lagging behind in some aspects of our service. That ties in with the issue of how we contribute to learning and engagement in a wider context. One of the big differences—UK-wide, with the exception of Northern Ireland—is that we investigate only what is brought to us, because that is what our legislation says. Within their basic model, most western European ombudsmen also have powers to investigate things that they think need investigating. We can research things, but having investigatory powers enables them to get information in a different way. We have made a submission on that to the Scottish Government. The Northern Ireland ombudsman has those powers.

10:15

The Welsh ombudsman is part of a bill that is going through the Welsh Assembly. We have learned from our colleagues that a lot of deep-rooted, systemic improvement comes from such investigations. They are not common, but are used quite sparingly. In that context, there are elements of what we do that I would like to modernise and it is important that we are part of that network.

Graham Simpson: Thank you. You have covered that own-initiative question. Other members might also have questions on that.

The Convener: It is almost as if we had planned this, Ms Agnew. Some members have further questions on that and other members have questions on driving forward learning and improvement, so we will have a look at both of those next.

Andy Wightman (Lothian) (Green): I am interested in that question. Your statutory powers are quite clearly that you cannot investigate a matter in respect of which a complaint has not been made. You need a complaint.

First, not everyone complains, as a general rule. A lot of people feel that they should not complain. You mentioned the diversity of people who come to you. What steps are you taking to inform people that it is not about complaints in the everyday sense of the word, but about holding to account public services that are paid for by us all and should operate to high standards?

Rosemary Agnew: That is a really tricky one. I have the advantage of having been the Scottish information commissioner before I was the public services ombudsman; I had exactly the same problem then. I have learned that we often hear the phrases, “We need to target hard-to-reach groups” and “We need to target vulnerable groups” but I believe that there is something more fundamental than that: we need to understand why vulnerable groups do not complain.

There is an assumption that if services are not going well, we have to complain about them. Often, people not complaining can be down to their having a different type of engagement with public services. The first thing that I want to do is to understand properly the reasons why groups do not engage with us. A good example is that we hear very little from female prisoners. Why is that? If I talk to the Scottish Prison Service, it will say that it is because there is a different sort of engagement internally; it approaches things differently and has a different relationship with the prisoners. Although I have no reason to doubt that, I cannot test it.

This is the year of young people. Why is it that although it is possible for us hear to complaints

from children and young people, we do not hear from them and we do not get many complaints on their behalf? That may well be because they have a different sort of engagement with public services, but I do not know.

I want to reassure myself not that complaints are being made to us but that people’s grievances are being properly addressed. It might just be the case that for some groups public bodies are really good at considering their complaints.

I would say that the first part of the journey is really to understand the “Why?”, because when we understand that, we can think about targeting.

I will say this: you would not expect somebody sitting in my seat not to. It also comes down to resources. The learning, improvement, targeting, communication, and engagement work takes resources, but is the most poorly funded part of what we do. We do a lot with what we have, but that work is part of our function that we could do as much as you funded us to do, and do it well.

Andy Wightman: That is very helpful. I declare an interest as a member of the Scottish Parliamentary Corporate Body, which funds the SPSO.

On “own initiative” powers, you say in your briefing that sometimes you get complaints that you cannot follow through because you no longer have contact with the complainant. It is perhaps an obvious area in which such powers would be useful—there is a substantive complaint but you cannot do anything about it. In what other circumstances do you see “own initiative” powers being useful?

Rosemary Agnew: My word! How long is a piece of string?

Complaints that we cannot look at because the complainant has withdrawn or we lose contact would be the first such circumstances, especially if there is a public-interest issue attached. We might also consider themes and areas that we identify through our work. I envisage that there would always be some form of preliminary scoping work: there must be a business case for such things. There might be things that emerge from our work and there might be things that people bring to us. A person might not personally want to make a complaint, but is aware of an issue that they could bring to us. There might be something that another stakeholder raises, or there might be a gap. We might ask why we do not get complaints about something or why there is no public attention on a particular area.

The crucial thing would be how that was set up and implemented. Other ombudsmen, for example, have some form of basic criteria, and there would also have to be wider public interest in

the matter. There would also have to be an opportunity for improvement—it could not just be about going off to look at something that we think is interesting; we would have to be doing something that would contribute. There is a mosaic of things.

It is worth stressing again that my experience of other ombudsmen is that such work is done sparingly and by being done sparingly, it is very effective. It might be about systemic change in a sector or about an issue that we recognise across the board. I cannot give a specific subject because that is not something that we have considered.

Andy Wightman: Thank you for that. You can see that there is potential for the net to be cast very wide.

I note from your briefing, under planning complaints, that you will be responding to us on the Planning (Scotland) Bill, which we obviously look forward to. You say:

“Planning was the third most complained about subject for local authorities in 2016/17 and is consistently in the top five from year to year.”

Is that the top five subjects within local authorities?

Rosemary Agnew: Yes.

Andy Wightman: You say that such complaints are difficult to resolve and that you cannot deal with matters that are the subject of discretionary powers. In broad terms, do you dispose of most such complaints very quickly because they are not within your powers, or do you find that there are grey areas that could be within your powers, but you are not sure? If so, is that why you are interested in exploring further powers?

Rosemary Agnew: There is a bit of both. I will let Niki Maclean have a say: it is her team that has done all the investigations over the past year.

Niki Maclean (Scottish Public Services Ombudsman): One of the first things that we do when complainants come to us is try to establish clearly the heads of complaint and the outcome that is sought. In many cases, the outcomes that individuals seek are simply not things that we can achieve for them, so we manage their expectations out. Quite a high proportion of such cases are closed at what we would call our early-resolution stage. We publish our reports in public, so you can see examples of matters that we would look at and progress to investigation. Poorly worded planning conditions that are therefore unenforceable would be an example: we do not look at professional judgment but at the wording in an application.

Andy Wightman: Thank you. That is helpful.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Thank you, Convener, and good morning to the panel.

I will go back to the line of questioning from my colleague Graham Simpson. Rosemary Agnew mentioned the current proposals to consider with the Scottish Government widening the remit of the SPSO’s investigatory powers. However, the backlog of cases that was recorded last year resulted in what is described in your briefing as “a holding bay”, in which 240 cases were unallocated. Before we look at widening your remit in terms of further powers, has the backlog been resolved and is it being resourced?

Rosemary Agnew: Yes, and yes. This ties in with not taking on a communications manager straight away. On 15 December we used our resources in a different way across the organisation. We let some things go from our business plan—things that we did not do—and put that resource into focusing on the unallocated cases. We engaged as a team on how we were going to do that and how we approached it. Also, over a period of months we made changes to some of our procedures in order to move cases more quickly. Basically, what we put into the backlog was hard graft and resource.

Jenny Gilruth: How did the backlog come about in the first instance? Were you able to identify how it had been created?

Rosemary Agnew: It was a very simple equation. There was a spike in the number of complaints received and a fall in the resources to resolve them. We have also recruited up to complement, we have seen a reduction in sickness levels, which has helped, and we have just very clearly put all our effort into the backlog.

I must put in a word of caution, however. We have made sure that the complaints are allocated and that they are being looked at, but there will still be a period in which the backlog will impact on us and we are carrying that workload. It is fundamentally down to the number of people there are to carry out the work, combined with changes to some of our investigation processes.

With regard to taking on new powers—the “own initiative” stuff—we suggest that we would need a different funding model, such that if we were to identify an area for investigation, we would have a clear scope, a clear brief and a clear business case and we would approach the SPCB for separate funding, either through the contingency fund or through the budgetary planning process, when we would ask for a one-off unconsolidated amount. The work would therefore not impact on our other funding.

We are, I would say, probably funded and resourced adequately now for the current volume

of work that is coming in. I say “probably” because one of our challenges is that we do not know for certain yet how effective are the improvements that Niki Maclean and her team have made in how we process complaints, because we have had the backlog of cases.

For the record, I say that I cannot stress enough what a monumental effort there has been by the team. They always work hard, but they worked exceptionally hard on the backlog and I am very grateful to them.

Jenny Gilruth: In your response to Andy Wightman, you mentioned inadequate resource for the learning and improvement unit. On complaints that were recorded in 2015-16 and 2016-17, the numbers have remained the same: 37 per cent of all complaints are about local authorities. How has knowledge from the learning and improvement unit helped to inform local authorities about how they are dealing with complaints? Has it helped to drive improvement?

Rosemary Agnew: It is starting to do that in a very real way. There are a number of things that we do. Calling it the learning and improvement unit creates an impression, but it is basically one person. John Stevenson’s team is looking collectively at how we approach engagement, improvement and standards, because they are different facets of the same thing.

10:30

The first major thing that the learning and improvement unit has been focusing on is internal change to how we make recommendations on decisions. If our recommendations are not meaningful and deliverable, they lose their potency. We are very much clearer now about findings, about defining what we want as outcomes, and about what constitutes evidence for an outcome.

More significant, however, is that we now make recommendations in three different ways. There are recommendations that relate specifically to personal injustice, in which we usually ask that an action be taken—for example, an apology or, sometimes, financial redress. Since last April, we also separate out recommendations about service improvement, which represent well over half of our recommendations. There are also recommendations that relate to complaint handling—we give feedback about complaint handling. We will see incremental increases, but we are aware, through engaging with the sectoral network groups, that a large number—something like 80 per cent—of complaints are dealt with at the first stage, in local authorities.

John Stevenson (Scottish Public Services Ombudsman): Last year, 88 per cent of

complaints that were made directly to local authorities were closed at stage 1—within five working days—which is an excellent performance locally.

Your question was about how the learning and improvement unit is adding value to local government, in particular. Rosemary Agnew is right in saying that it goes wider than just learning and improvement; it is about the help, support and guidance that we give, through the networks, in relation to benchmarking, comparing and contrasting performance, looking at good practice and sharing that practice. Every sector has a complaints network, and the local government sector’s is the longest running and the best attended. There is a real drive and commitment among people who are dealing with complaints locally to learn and improve.

Rosemary Agnew: We are also gathering and analysing our own information to identify public bodies that might need some support, and we provide support directly to those bodies. In time, we want to make all our recommendations available through our website as a searchable database, so that other public bodies and complainers can see what we have asked people to do.

It is also a way in which we can be smarter about them ourselves. If we have made a recommendation to a public body within the past three months, for example, but the issue comes up again, how do we help that public body to use its resource more efficiently? It is about having much more joined upness as much as about learning and improvement for their own sake.

The Convener: I want to follow up on some of that. I am going to look at some themes that have been raised in recent correspondence with you, Ms Agnew. I would not dream of raising an individual case, because that would be highly inappropriate. However, I am conscious that my constituents will be watching this, and, if I did not mention the fact that there had been correspondence with you, they would think there was a lack of transparency. That is my only reason for referring to that correspondence.

MSPs and others struggle with the idea of public bodies—in this case a local authority—having statutory duties. They have internal complaints processes and can handle complaints to the required standard, but that does not mean they have done it well—those are two very different things. That leads us to the difference between maladministration and a public body just bumping along, ticking the boxes it has to tick and jumping through the hoops that it has to jump through.

Sometimes, the outcomes that constituents or service users want are not things that you can rule

on, make decisions on or take enforcement actions on. I am not clear whether you should be able to do that, but there is an expectation that you should or that those complaints should drive change at local level. That is why I am particularly interested in the idea of a learning and improvement team.

Where is the balance in relation to the expectations that people have at the outset of a complaint? We have all heard of cases in which the national health service or the council did what it had to do, but it just did it—it did not cover itself in glory. The matter goes through a complaints process and maybe a review, then it comes to the ombudsman and, because there is, technically, no maladministration, there is no outcome for the complainer.

Any of my constituents who are watching will get the point that I am trying to make. I would like some general thoughts on how we can square that circle or on how that situation relates to learning and improvement and how we can drive up standards. In this case, that would happen at local-authority level.

Rosemary Agnew: I wish that there was an easy answer to that question. The first thing to think about is the person who is making the complaint. They are at the heart of what we do—people should be at the heart of public services. We understand why they are making the complaint and why it is important. We understand the scale of the impact that the incident may have had, even if we cannot always understand the experience because we have not been through it, as we can see how it is affecting them or their family. It is, therefore, very difficult for us to say to them—even though we understand all of that—“This will be the limit of what we can look at for you,” because we are basically nice guys and we want to put everything right.

We have to manage expectation from the outset, and we try to be realistic from the outset. Once we have understood the outcome that somebody is looking for and we have told them that we will look at achieving one thing but that we cannot do something else, it is then dependent on the approach that we take and the relationship that the complainer has with the public body. There will then come a point at which we make a decision, and it may not be exactly what the complainer wants. I can see that, when we say that that is as far as we can go, it might look as though we are hiding behind what our legislation says.

I hope that learning and improvement can add to that by picking up some of the issues that are not necessarily part of the complaint. For example, what was the communication like? That issue may not have been within the complaint. Could we

reassure people by looking at a different issue, which might help?

There is also something about the way in which we interact with complainers. When we have an incredibly large workload, it is very difficult to give every person every minute that we want to give them on the phone or by meeting them. We try to talk to people on the phone or meet them, but there are occasions when the sheer volume of what my officers have to work on means that they will send a factual email. There is nothing wrong in that, but I can see how, had I received it, feeling as emotional as a complainer would, I might wonder whether they really cared. Well, yes, we do really care.

We are going through a period of reflection about how we communicate. Since I took up office, I have decided that, when we have particularly challenging complainers or public bodies, far more personal contact is needed, and I give out my personal email address—I am happy to do that. Ultimately, it is about not just improving relationships but people recognising that there comes a point at which, however good we may be and however far we have gone, we can go no further. It is sometimes hard for people to accept that, and those are the cases in which the relationship breaks down most. We and the public sector are still working on that.

The Convener: That is interesting. I am increasingly finding that complainers are not looking for a lot. They are looking for someone to say, “Sorry. We could do better,” even if the public body has met all of its statutory duties and obligations in terms of process and administration. Sometimes, what complainers want is very simple and straightforward.

Occasionally, I correspond with the NHS or with one housing association in particular—Glasgow Housing Association happens to be the largest housing association in Glasgow—when there has been a complaint. A constituent comes to me after their complaint has been through a complaints process and to the SPSO, and they say to me, “Something still really irks me. I think something is wrong in how the systems are operating.” I will then correspond, and I quite often get a blanket return that says, “This has been through a complaints process,” or, “This has been to the SPSO.” The attitude is pretty much, “We will not correspond further with you on this.”

As MSPs, we sometimes look at a person’s experience and have our own specific constituency interest in asking certain questions. I sometimes feel that, just occasionally, when there has been a specific complaint, public bodies use the fact that it has been through the complaints process and to the SPSO as a shield or a cloak to hide them from further public scrutiny. That is my

experience, particularly with the housing association but also occasionally with the NHS. Do you have any perspective on that?

Rosemary Agnew: Encourage your constituents at the outset to give you explicit permission to disclose their personal data. If we do not have permission from complainers to discuss their complaints, we are limited in what we can say to you.

The Convener: Sorry. That is not a reflection of the SPSO. I am talking about me going back to the public bodies.

Rosemary Agnew: It is a general point that, when you can give only a depersonalised account, you tend to stick to the facts.

There is then a step then beyond that, when the complainer says that they feel that we are giving them the brush-off—that we have done what we have done but we have not answered their question. I hear that a lot. I would say that, if the complaint has been through the SPSO process, you have every locus to engage with us for yourself and for your constituents.

I am a strong believer in narrative. We learn as much from listening to narrative as we do from looking at the detail of complaints. That is how some of the learning and the standards work can help—if we do not hear about it, we cannot listen to it. If a complaint has been through a complaints process and has come all the way to the SPSO, you should engage with us as well, because I will be interested. Rather than just tell the complainer to go back and complain again, I can just as easily ask whether there is something that we can look at in the wider context, even if it was not part of the complaint.

I was asked earlier about the sort of changes that we want to make to engagement, and I want far more face-to-face engagement. When your constituents bring cases to you, the right answer will sometimes be that the complaint has been through the complaints process. However, if there are unresolved issues, it is a matter of judgment whether there needs to be a different conversation, because the complaint—as a conversation—was obviously not the right one.

The Convener: That was very helpful. I am conscious of the resources that your office has. I might be looking for some specific bit of information from a housing association that I believe is vital, but it might stonewall me, saying, “The constituent whom you’re referencing has been through the complaints process. The matter is finished.” In such circumstances, my default position is to invoke freedom of information legislation to get what is basic information. Given your background, you will be very aware of that,

and it becomes quite burdensome. However, I will leave that there.

We talk quite often about the polluter-pays principle. I know that your office is funded by the Scottish Government—indeed, Mr Wightman has a role in that respect—but might something be done about resourcing your office under the polluter-pays principle if a local authority, health board or whatever is the subject of unduly huge amounts of complaints to you? Why should the poor administration of, or service provided by, one public body receive undue central funding for a complaints process vis-à-vis others? Could we, in that respect, incentivise local authorities and others to improve what they do?

10:45

Rosemary Agnew: Possibly, but the potential pitfall is that the focus will be on the issues that come to our attention, when what we often find is that an issue that has arisen in one organisation is similar to that in another organisation in the same sector.

The polluter-pays principle is very aggressive and gives the impression of blame. Often, though, this is not about blame or fault; it might well be that the public body in question has a resource issue or a different type of problem. I would rather take an initial look at whether there is any “pollution” and then use the different powers that I have to raise the profile with regard to the things that can be done.

It all comes back to my reporting powers, which are a bit disconnected. I can report on things by laying reports before Parliament, but I can also influence things by saying to an organisation, “We’ve found an issue here. We can provide you with minimum support. What are you going to do about it?” After all, putting things right is what costs the most, and that, I think, is very clearly the public body’s responsibility. The support and intervention approach that we are developing is all about using our resource carefully to identify issues and then engaging with public bodies to ensure that they put things right and are accountable for doing so.

The Convener: That was helpful. I should say that Mr Wightman has drawn my attention—and rightly so—to an issue with my earlier statement: you are actually funded by the Scottish Parliamentary Corporate Body, not by the Government, and that independence with regard to funding is very important, too.

Finally—you might not have this information to hand, but I think that it would be quite helpful to have it—do you monitor the number of complaints that you get per local authority, health board or housing association on a basis relative to their

size and the populace that they cover to see whether there are any outliers? If there are, that might not flag up that anything is wrong; instead, it could flag up a resource issue and, indeed, a variety of other things, and you might be able to use that kind of intelligence in exercising some of these investigatory powers or in new pieces of work. Do you do that kind of data analysis?

Rosemary Agnew: We do so up to a point. Obviously, we monitor complaints by sector, but our starting point is the recommendations that we make. We might look at those recommendations and see that although the majority might be against public body X, for example, it might have a very large catchment or have received a large number of complaints itself. We need to take lots of things into account. I would say that, with regard to our analysis, it is still fairly early days, but we definitely take other factors into account in that respect. It is not just a case of the biggest number coming out on top.

The Convener: That is really interesting. After all, you might expect Glasgow to have the highest number, but proportionately speaking it might be doing very well—I have no idea. That is the kind of trawl that would need to be done.

Rosemary Agnew: Something that has come out of other areas such as the complaints standards work is the need for every public body to keep complaints statistics. That might seem very minor, but when we know how many complaints that bodies are getting, it puts the complaints that we get into perspective. Glasgow City Council might have the highest number of such complaints among local authorities, but you need to look at the number of complaints that it actually gets. The data is beginning to come through from the whole public sector, and it is becoming more reliable.

In health, for example, I would highlight the contribution with regard to health improvement services, and we are playing a much more constructive part in the wider discussion about taking a more holistic look at public services and public service improvement. It is also worth stressing that, as a result of complaints, we pick up immediate improvements that might affect only one or two people or one department in one hospital but which are equally important.

The Convener: I suspect that it all adds to the case for having a learning and improvement unit instead of the matter being left more to individuals.

Rosemary Agnew: I think that you should just let us choose a number.

The Convener: If only that were in my gift, but it is not. Thank you for that.

Alexander Stewart (Mid Scotland and Fife)

(Con): You have already highlighted the pretty impressive statistic that over 80 per cent of complaints are managed at the first stage, which shows that organisations are getting better at managing the process themselves. You have also touched on the trends that are coming through. For example, if someone makes a complaint, they want a recommendation; they want to feel that they have been listened to and their concerns acted upon. Last year, you said that some of the recommendations were taking longer to enact in local authorities and that there was a feeling that they were taking longer to manage the process. Has that trend continued?

Rosemary Agnew: I do not think so, but I will let Niki Maclean answer that.

Niki Maclean: From my memory of the conversation that we had last year, I think that a particular case was causing concern. However, with Rosemary Agnew as the new ombudsman, we have now resolved that matter, which was probably at the forefront of the discussion and on people's minds at that time. I have certainly not felt that compliance with recommendations has been a significant issue over the past 12 months.

Alexander Stewart: So things have developed and progressed, and the process in question has had a good and happy outcome.

Niki Maclean: Yes.

Rosemary Agnew: I would not say "happy", but I think that there has been a good outcome.

Alexander Stewart: The situation has been resolved to some extent.

Rosemary Agnew: Yes.

Alexander Stewart: The process that you are looking at covers the whole culture of complaints, people's belief in their rights and the view that organisations should be held to account. You have talked about communication; I think that it is vital that you get across the message that you play a supportive role in trying to get people through some of the difficulties that they have faced and which they have not managed to get resolved at the initial stage. The issue is managing that next stage to ensure that what you are achieving and doing is actually making a difference.

Rosemary Agnew: I completely agree. This is, if you like, part of the longer-term game. We have seen short-term gains—the statistics for everybody, the early analysis, the work on recommendations with regard to the learning and improvement side and the direct intervention with some organisations—but over the next few months, I will be looking at consolidation so that we can get some continuity and a bit more of a

settled environment in my own office with regard to complaints.

We also need a stepped and considered approach to support and intervention. Very often, you go for the big things when, in fact, a lot of intervention actually happens with investigators, who will say, “You could have improved that letter, or you could have done this or that.” It is crucial that, as part of that work, we identify some form of impact analysis, but I do not yet know exactly what that will look like.

What I do know, though, is that this is not just about numbers. Increases in the number of complaints can often be an indicator of success rather than an indicator of continued failure. It is what happens to those things that interests me. Do the same issues keep coming up about the same public bodies? If we identify such an issue and do something to stop it, that might be one indicator, but you cannot do a piece of research and then just leave it. We need to find a way of going back to it.

I am thinking in terms of years. I do not have eight years left in this post any more, but if anybody has any really good suggestions on how we measure impact, I would like to hear them. We need more holistic feedback on how complaints are being treated at local level; indeed, the reason why the network groups are so important is that that is where we learn more about the particular issues that complaints handlers face.

It is also important to try to identify trends that are emerging because of a particular incident or issue rather than some underlying systemic matter. At the moment, it is all about monitoring, intelligence gathering and then figuring out some really strong measures for dealing with the issue.

Alexander Stewart: Have you examined how organisations in the private sector deal with service and support, manage their clients and all of that? Do you think that you can gain anything—or, at least, find a way of managing some expectations—by taking on board some of their advice with regard to what has been successful in their sectors and then replicating it in ours?

Rosemary Agnew: It is really interesting to look at the private sector versus the public sector. We are actively engaged in the Ombudsman Association, which has groups looking at particular issues on a cross-sectoral basis. However, the comparison between the public and private sectors becomes more interesting when you consider that a lot of the public sector complaints-type approaches are very transactional—they are about delivering a particular product or service—whereas the delivery environment in the private sector is much more complex. One really good

example in that respect is healthcare, which does not come from just the one place.

What we try to absorb through our contact with the Ombudsman Association are some really good practical tips and advice on how to manage difficult telephone conversations, what it is helpful to monitor or look at and so on and then we try to put those into a public sector environment. However, I tend to engage more with my public sector ombudsman colleagues across the UK; indeed, we all do that, because of the things that we share.

We could learn some things about the impact of communication, but unlike most of the private sector, our user base—for want of a better phrase—has no choice, which changes the balance of the relationship between those accessing services and those delivering them. I think that that is probably where the private sector could learn from us, not the other way round.

The Convener: We have a couple of final questions.

Kenneth Gibson (Cunninghame North) (SNP): A constituent contacted me on Monday about whistleblowing in the NHS. I note that from November 2018 the SPSO will be the independent national whistleblowing officer for NHS Scotland. How did that come about? Who does that job at the moment?

Rosemary Agnew: The role does not exist in that way at the moment.

Kenneth Gibson: I did not think that it did.

Rosemary Agnew: You asked how that came about—actually, I feel that I am doing enough of the talking. We are all involved in this, so which of my colleagues would like to start?

John Stevenson: I will. The idea came from the Francis review on speaking up and speaking out. Scottish ministers responded by consulting on the introduction of an independent national officer on whistleblowing. In that consultation, the SPSO was seen to be the most appropriate place for the officer to be hosted, based on the perception of independence and impartiality.

The national officer post does not exist at the moment, although there is a local requirement within boards to handle whistleblowing disclosures. However, when someone has gone through that process and come to a conclusion, at the moment there is nowhere else for them to go. Many, many people are left in limbo and feel that they have not had any form of appropriate resolution.

Work has started already. The ombudsman is engaged personally with the sector and with the Government, and we have set up a working group,

which met as recently as yesterday. We had a really interesting workshop with people who had been through the whistleblowing process. It is important that we learn from their experience to identify how the standards that we will develop can be fit for purpose for those who are journeying through that process.

11:00

I hope that that answers your question about where the idea of having an independent national officer came from and where we are in the process. You are right to say that the target date is November, so our timeline is very demanding; we will have to have the standards in place by August, probably, to give the boards sufficient time to plan for implementation.

Kenneth Gibson: I presume that there is quite a variance in how whistleblowing is dealt with at the moment. I am not asking who might not be doing it well, but is there a gold standard that you are looking to?

John Stevenson: That might depend who you ask—if you ask whistleblowers, there is probably not. There is not much variance at the moment; the big issue is that there seems to be nowhere to go at the end of the process. The SPSO's previous work on simplification and standardisation, and on getting people through a process as quickly as possible while all the time focusing on quality and thorough, robust investigations, will add value. Many of the principles that were approved by the Scottish Parliament some years ago for complaints handling fit nicely with how we would look to handle a whistleblower disclosure and how we would look to care and support people who are going through that process.

You asked about a gold standard. There might not be one at the moment, but we hope that by November there will be.

Kenneth Gibson: Excellent. I am pleased to hear that. Convener, may I make another point or two on this issue?

The Convener: Of course.

Kenneth Gibson: I note from your written submission that in April 2017 the Parliamentary and Health Service Ombudsman withdrew the clinical adviser service that had been provided to the SPSO and many other public service ombudsmen. In response, the SPSO built its own bank of independent Scotland-based professional advisers and now has 20 internal advisers and 37 external advisers. You said earlier that you had the resources to deal with things as they are now. What are the future resource implications, given that provision of clinical advice and the

whistleblowing service that you will provide from November? Is there a need for additional resources? I note that Andy Wightman is listening.

Rosemary Agnew: We are negotiating the whistleblowing with the Government, and that will be resourced because it is a new function.

At present—and in the past—it has not just been a matter of how many people Niki Maclean needs in her team to investigate cases; it carries through to other areas of the organisation. What support is needed for training? What is the on-going impact on learning and improvement work? We cannot just take on another sector without having the resource to do that. We are building that into the model.

One thing will be a real challenge and will fall on those who are doing the investigating. Of all the things that we look at, whistleblowing will be the most unpredictable in terms of numbers. We do not know what the capacity out there really is, partly because the process will be different from what went before, but also because we really do not know whether, if we have a better, standardised and time-limited approach—cases cannot go on for years and years in a public body—that will give more people more confidence to come forward, or whether there is nothing much out there to come forward.

That is a particular challenge for Niki Maclean's team. Our investigators are skilled at what they do, but a person does not just walk into an investigation-type job, or a complaints reviewer job, and become fully efficient from day 1. When we are planning the investigation side, part of the challenge will be for us to say, "This is what we will start with, but we will put up our hands and say that if we need more, we will have to come back for more. If we have too many, we will put up our hands and say so." That will be a direct negotiation with the Government because, although our funding comes through the SPCB, initial funding for this is from the Government.

Niki Maclean: As Rosemary Agnew said, very little data is available on the whistleblowing-type complaints, even from a low level—for example, the number of concerns that are being raised—up to what kind of cases are going through the full public disclosure process. The numbers will be difficult to predict. It will also be difficult to predict the level and type of investigation that we will need to adopt in our approach. We have a lot of discretionary power about how we choose to investigate, which is a good thing, but these investigations might need a slightly different approach from our work on complaints. We will have to think about that in preparation for taking on the new power.

Kenneth Gibson: Thank you.

Andy Wightman: In your annual report, you say:

“In 2016-17, we began to record early resolution and investigation cases that contained a complaints handling issue, and found that this applied to an overall 19.5% of these cases.”

Can you clarify that? Is it about how complaints are handled, as distinct from a complaint about a public authority?

Niki Maclean: This is possibly a bit geeky, but I will give it a go anyway. Technically, we can only look at matters that individuals bring to us. When we are agreeing the heads of complaint, if somebody explicitly wanted to complain about the complaints handling, they would bring that as one of their heads of complaint that we were formally investigating. We fully recognise that that means that you are losing the intelligence that you referred to earlier in terms of the complaints handling of that public body.

We are trying to ensure that we also capture very clearly our view of the body's complaints handling, whether or not the person has complained about it, against the standards that we work to so that we can then also feed that back and record it systematically. We have not previously recorded that information. It will provide a better sense of the cases that are coming to us, and of how many of them raise significant concerns for us about the complaints handling as well as the matters that the complainant wished to bring to us.

Rosemary Agnew: We also look for good practice so that we can share that with others. It is not just about what goes wrong.

Andy Wightman: To be clear, are you looking at how complaints were handled only when the complainant complains about how complaints were handled, or are you now looking at that systematically across every complaint?

Rosemary Agnew: The latter.

Andy Wightman: That is helpful. I just noticed that the percentages in each sector add up to 101.5.

Niki Maclean: My statistician tells me that that is to do with rounding.

Rosemary Agnew: Yes. I think that it happens when you use a spreadsheet and limit the number of zeros after the decimal point.

Andy Wightman: Okay.

The Convener: I am sure that when Mr Wightman is looking at funding for the SPSO he will give you 101.5 per cent of your funding.

Andy Wightman: In your annual report, you do not actually have a list of the public authorities that

have been the subject of complaints. The list of public authorities is quite broad reaching, from Creative Scotland to the British Wool Marketing Board. I presume that you have those statistics. Do you ever consider publishing them?

Rosemary Agnew: I will answer a slightly different question. I would consider publishing such a list, because I bring to the job of ombudsman my own view on how things can be communicated. You hear the phrase, “name and shame”—it is not about that; it is about constructive dialogue. However, we also have to shine a light on this area. I have not looked into it but I will make a note to consider whether to include such a list in the next annual report, if you would find that helpful.

Andy Wightman: It was just a question. I think that it would be interesting.

In the very final bit of your report, you talk about the 939 inquiries that you signposted to other bodies in 2016-17, such as the bus passengers' platform and the Dental Complaints Service. You only list two years, 2016-17 and 2015-16, and in 2016-17, the number of inquiries that you referred on is quite significantly higher than in 2015-16—there were 939, as opposed to 755. Do you get the impression that people are as confused as they have always been about where to go with complaints, or is that changing?

Niki Maclean: I think that because of our complaints standards authority work, people who are meant to end up with us are getting to us far more quickly. It is a much quicker process. There is a statutory duty to signpost to the SPSO, which is a really good thing. Somebody made the point earlier about the amount of time that people spend in complaints processes. It is a really positive thing that people are getting through complaints processes quickly and getting to the right place.

Where people need support and advice, we provide that as far as we can. One of the common referrals is to the Financial Ombudsman Service. That is really a matter for it in relation to how it gets its brand and its name out there to ensure that people understand where to go.

Andy Wightman: That is helpful, thank you.

The Convener: Time is upon us. Ms Agnew, I thank you and your team for coming. It has been very helpful. I hope that we got the balance right between looking back at the annual report and at how you may take the office forward.

Before we move into private session, are there any final comments that you would like to add?

Rosemary Agnew: If you have any additional questions, you are very welcome to send them to us. If you would like to find out more about who we are and what we do, there is an open invitation.

The Convener: Brilliant. We might just take you up on that. I thank you and your team once more. We will now move to agenda item 2, which we previously agreed to take in private.

11:11

Meeting continued in private until 12:42.

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