



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 23 January 2019

Session 5



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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

3rd Meeting 2019, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Alex Rowley (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)

*Kenneth Gibson (Cunninghame North) (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

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 23 January 2019

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning and welcome to the Local Government and Communities Committee's third meeting in 2019. I remind everyone present to turn off their mobile phones.

Under agenda item 1, does the committee agree to take items 5 to 7 in private?

Members *indicated agreement.*

Interests

09:45

The Convener: I invite Annabelle Ewing to declare any relevant interests.

Annabelle Ewing (Cowdenbeath) (SNP): I inform the committee that I have decided to update my entry in the register of members' interests earlier than required, to include the fact that I now rent out a flat in Edinburgh on a normal residential lease basis.

“Scottish Public Services Ombudsman Annual Report & Accounts 2017/18”

09:45

The Convener: The committee will now take evidence on the “Scottish Public Services Ombudsman Annual Report & Accounts 2017/18”. I welcome from the SPSO Rosemary Agnew, the ombudsman; Niki Maclean, director; and John Stevenson, head of improvement, standards and engagement. I invite Rosemary Agnew to make a brief opening statement.

Rosemary Agnew (Scottish Public Services Ombudsman): Good morning and thank you for inviting us. I will highlight a couple of things. To be honest, the session feels a bit odd for us, because the financial year that the report concerns ended almost a year ago. It has been refreshing to read the report in the light of what we have been doing in the current year.

The year 2017-18 was my first full year as ombudsman. My two major priorities for the year were the wellbeing of my staff and my team, in terms of how they were experiencing their work, and the requirement to clear our backlog of complaints, which had built up from a period of exceptionally high volumes.

In dealing with those two things, I reflected on how we operate as an organisation. A lot of the planning that we did, which does not show in the report, resulted in what we are now putting into place and the progress that the organisation is making. I put the report in that context because, although the numbers and the clear messages in it are important, there was very much a focus on keeping business going and planning for the future, which started with the new strategic plan that we laid for this year.

We will do our best to answer all the committee’s questions as fully as we can.

The Convener: Thank you for that update. I am sure that a lot of interesting stuff will come up in our discussion.

In last year’s evidence session, you spoke about groups that do not traditionally engage with the SPSO’s services, such as female prisoners and young people. What work has been done since then to address those concerns?

Rosemary Agnew: What we are doing is part of a wider suite of work on identifying groups and how to reach them and on what we learn from customer feedback. One challenge in relation to groups that do not use us is that we do not know whether they need to. There might be a perfectly

good reason why particular groups do not make complaints or go to the ombudsman, and we are limited in how far we can demand information to find those things out.

We have started work to look more holistically at how we measure impact and how we engage with our stakeholders. A big piece of work at the moment involves mapping out a proper stakeholder framework so that we can target our limited resources in a different way. For example, we recently met Accountability Scotland and an attention deficit hyperactivity disorder group from Perth, because people who have ADHD face particular challenges in engaging with not only the SPSO but all public services. We have started that journey with them.

The group will come in and talk to our staff about the challenges that people face in accessing public services, which translates into the context in which we consider complaints. John Stevenson’s team, which sets model complaints-handling procedures, can perhaps build in some advice.

This is a perennial problem and, if I am honest, I do not know the answer. Rather than trying to do everything, we are being more targeted and looking at specific groups at a time when there might be a large number of complaints.

The Convener: One of the groups that I mentioned was women prisoners. Has any work been done to make it easier for their complaints to be heard?

John Stevenson (Scottish Public Services Ombudsman): Yes. In the past year, we have worked closely with the Scottish Prison Service to look at how its culture can become one that truly values complaints. We developed three e-learning modules for the SPS that are specific to prison rules and encourage complaints to be welcomed and made.

The first module covers front-line resolution of complaints and targets first-line residential managers in the SPS. The second module is about the internal complaints committee and the third is about the role of governors, who look at sensitive complaints and those from vulnerable groups. We took a holistic approach to managing complaints in the SPS and we developed those products, which were signed off nine or 10 months ago.

The Convener: That is great, but are the modules being taken up by the SPS? Have you seen any positive impact from them?

John Stevenson: They are being taken up by the SPS. At this stage, we have not seen any impact, but we will soon be working with the new Her Majesty’s chief inspector of prisons on how the prisons inspectorate inspects prisons in

relation to complaints and vulnerable groups. We will have on-going liaison with that organisation.

The Convener: On another matter, a strategic risk register has been introduced. What does that include, why was it needed and what were the previous risk management arrangements?

Rosemary Agnew: That was part of a piece of work to redo our governance systems, which we concluded this year. The arrangements that we had and still use involve looking regularly at a low level at risks that are specific to us and our areas of work. We felt that what was missing was a strategic look at things that come from the outside world in a different way, because we might need to identify different approaches to those risks.

I can publish the strategic risk register, which I wanted to be able to do. A low-level risk register contains a lot of information that is not for general publication, however much we might want it to be. A strategic register has the big things on it—for example, although I hate to say the word “Brexit”, a risk is associated with that, and risks at a macro level are associated with such things as security and data. We wanted to reassure anybody who was looking at our information that our risk management is based on understanding the big issues as well and that we have assurance systems in place to address them.

Alex Rowley (Mid Scotland and Fife) (Lab): Last year, the ombudsman suggested that the SPSO was adequately funded for the level of work that there was. Is that still the case?

Rosemary Agnew: I will always say no to that, will I not? If everybody turned up for work every day and nothing changed, the answer would probably be that we are adequately funded. However, the number of cases that require detailed investigation has increased, which we think is a consequence of model complaints-handling procedures and better complaints handling by public bodies.

At this point in the year, complaint numbers are comparable to those last year, but there has been a 12 per cent increase in the number of cases on which we have to do a lot more investigation work, which is resource intensive. For example, a complex health complaint might require four inputs from different clinicians and experts. We are on a knife edge and we are just about coping.

However, it is important to stress that the answer is not just about throwing resources at things. Throughout the year, we have looked critically at the service that we deliver and the efficiency with which we deliver it. As a new ombudsman, I have, in effect, been doing a review since I started. We are putting things in place—for example, we have had a major structural change in the investigation team. It might not sound a lot,

but we have restructured the team so that, when a complainant is allocated to an investigator, they have the same person for the whole complaint process. We have taken out steps to give customers a better experience and make the process more efficient for us.

Niki Maclean (Scottish Public Services Ombudsman): The other side of the coin is what public bodies are doing in their complaints handling. This year, we have done a lot of work on how we can better support public bodies. We will launch a new support and intervention policy on 1 April, which is very much about identifying where we can target specific public bodies. A significant proportion of our work inevitably comes from the largest public bodies in Scotland, so it is important that we help those organisations to work as efficiently as possible.

Alex Rowley: I realise that, by the time a complaint gets to you, it has been through the complaints procedure of, for example, a large local authority. I note that more complaints have so far been upheld in 2018-19 than in the same period of the previous year—60 per cent as opposed to 54 per cent—which leads me to a couple of questions.

How effective are the complaints procedures and processes in public organisations, given that a person has to exhaust those procedures in order to get to you?

We live in a time of austerity, which has had a major impact on public services. Is there a correlation between the massive job losses and other impacts of austerity on public bodies and those bodies' ability to handle complaints and their provision of services, which leads to the point where people end up complaining?

Rosemary Agnew: There are a number of points in there. The rise in the percentage of complaints that we have upheld reflects the fact that complaints handling is improving and the more straightforward complaints do not reach us any more. We have had a big drop in the number of premature complaints that come us, and we are seeing the consequence of the fact that the simpler complaints do not reach us in the same way or volume as they used to. That tells me that, in the support and intervention work that we do with public bodies, we now need to think about how we support public bodies on the more complex complaints and about developing more guidance.

In some sectors, we are seeing a change in culture and the approach to complaints handling. The local authority sector is a good example, and John Stevenson has a lot of data on that.

10:00

John Stevenson: Alex Rowley asked about the effectiveness of the model approach. Through benchmarking and looking at the complaint numbers, we get a feel for how effective the model is. Over the past three years, there has been a downward trend in the number of complaints that local government has received. In the past year, the number of complaints went down by about 17 per cent—in 2016-17, local government received 75,700 complaints and, in 2017-18, it received 62,800 complaints. When we track that population of complaints through the model complaints procedure, we see that 89.9 per cent of all complaints in the past year were closed at stage 1—within five working days.

The complaints procedure works well for the majority of people who access it. Clearly, there are complex complaints in which the breadth and depth of the issues that have been complained about mean that it is difficult to seek or achieve a resolution. Those complicated complaints come to the SPSO, and we find that all or part of such complaints might be upheld.

If we compare the model complaints procedure with what was in place several years ago, we can see that the current model is, without doubt, effective. However, we are not complacent. We are reviewing the effectiveness of the model complaints procedures to see whether or where they can be improved further. Yesterday, we closed our survey of public bodies across Scotland, which will provide feedback on the procedures.

Rosemary Agnew: Alex Rowley asked about resources in a wider sense. We do not see enough complaints to be able to say that there is a direct correlation between resources and the number of complaints. Although dealing with the complaints that we receive is a lot of work for us, it is the tip of the iceberg in terms of what is out there.

Themes and issues come up occasionally that could indicate resourcing issues in public bodies. For example, communication is a constant theme that comes up in health complaints. If ward sisters have a lot of people to look after, and if they have fewer nurses for various reasons, it will be more of a challenge to have the level of engagement that they want.

We have had a few complaints that health boards are not meeting their treatment time guarantees—their waiting times. The obvious question is whether they are not meeting those requirements because they are not trying to or because they do not have the resources. Rather than our saying that we think that there is a correlation, we highlight the issues that come up

and draw them to the attention of others when we issue our reports. I alerted the Government to the treatment time guarantee issue.

Andy Wightman (Lothian) (Green): I draw the committee's attention to the fact that I am a member of the Scottish Parliamentary Corporate Body, which provides resources for the ombudsman.

The SPSO's note to the committee—indeed, this is reflected in your report—says that your biggest concern in relation to resources is the increase in the number of complex cases, which take longer to deal with, as you have indicated. You hinted that the increase might be, in part, because simpler cases are disappearing and you are left with the more complex ones. Do you think that that trend will continue?

Rosemary Agnew: The trend is probably close to running its course. The last sector to adopt the model complaints handling procedure was the health sector, so some things are still bedding in and we are still giving support to that sector. I am not sure whether the adoption of the new procedure will make a huge difference in terms of complexity, because health complaints are often very complex. We need to make the links to help organisations to look at complex complaints, because they are probably already dealing with simpler complaints.

There is another thing that is worth thinking about. We talk about engagement with the complaints process and the complaints system, but we are actually talking about engagement with public service. Ideally, someone's engagement with public service should not end up as a complaint; it should end up with them saying, "I got great public service—thank you." Therefore, we are keen on developing our learning from complaints. If we learn why something went wrong, it will—we hope—not go wrong the next time. That is an area in which there is greater scope for improvement further down the line.

As far as the more straightforward cases are concerned, I suspect that we have reached the limit there. I do not know whether my colleagues have anything to add.

John Stevenson: I agree entirely. I have previously spoken about the indicators that we use across the sector to measure and understand complaints performance, and one of those indicators is what we learn from complaints. The numerical information is easy to record; it has been more of a challenge to record what we have learned. The sectors across Scotland and my team could do more work in that area, and that is on our agenda.

Niki Maclean: I think that the data supports what Rosemary Agnew said. At the moment, the

number of cases that move through to investigation is falling in local authorities but is rising in the health sector, which is relatively new to the complaints handling procedure. The complaints handling procedure has not yet bedded in in the health sector, so I think that the number of cases will continue to rise until it is better established, which will probably happen over the next year and a half to two years.

Andy Wightman: That was helpful.

There has been a reduction in the number of requests for reviews from 309 to 230, which is welcome. Can you say any more about why that has happened?

Rosemary Agnew: I do not know why that is the case. It might partly be a reflection of improvements that we make. We do a lot of work with the team on communication, explaining reasons clearly and use of clear language, and we have had very good customer feedback on engagement, use of clear language and explaining our decisions. If things are explained well, they are understood better. I hope that that is one contributory factor.

We cannot ignore the fact that, when we had the backlog of cases and were very up against it, there were times when we were so focused on getting through the work that we might not always have explained things well. Very few decisions are overturned or cases reinvestigated, but a trend that I am seeing now that work has settled a bit is a lot less re-explaining. The review requests that are coming in are ones that relate to cases where someone fundamentally disagrees with our conclusions and decision.

It is probably worth pointing out something that we are about to do. The way in which complaints are closed once they have been investigated is that there is a full public report that goes to both parties in draft before we make our final decisions about the complaint, after which the report is published. At the moment, when we close cases through decisions that are communicated by letter, we write the letter and we send it to both parties. If they have new information or they think that we have got something factually wrong, they ask for a review. From 1 February, before we make a final decision by letter, we will send our provisional decision to both parties in the same way that we do with reports. That will enable complainers who really want to have a say, who usually have a say afterwards, to have a say at that stage, which should help us to reduce the number of review requests that we get. People will be given an opportunity to engage at a different time.

It will be quite a lot of work for us in the short term because it is a fundamental change in approach, but my experience is that, even when

we do not uphold complaints following a review, we get an equal amount of responses from people who say, "I do not agree with you, but thank you for the explanation." For us, that is a lesson. The three of us have learned a lot from the feedback on complaints.

We still get people saying, "I don't agree with you. You haven't looked at it. I am going to write to the papers and tell them all what a terrible shower of people you are." However, the number of reviews is going down because we are not as stretched, although our resources are stretched and we have done work on communication ourselves.

Andy Wightman: That is helpful, thank you. I will move on to complaint handling timescales. The percentage of early resolution complaints that have met your timescale target has dropped from 88 per cent to 85.3 per cent. Were there any particular reasons for that?

Rosemary Agnew: It was due to clearing the backlog. Cases sat for a number of weeks before they were looked at and decided on. By definition, they would take us longer before we started. That is the predominant reason.

We are looking at timescales again and will be setting new performance indicators next year in the light of the procedural changes that we have made. Feedback from complainers shows that they would rather that we took a bit longer and made a good decision in which they have confidence. We are looking at whether we need to allow a bit more time for the early resolution complaints while maintaining current performance on the longer timescale ones. I do not want complaints to take more than a year. Some do, inevitably, but we want to reduce the number of those. Allowing ourselves a bit more time early on would be beneficial for us and complainers.

Andy Wightman: I note that, in your complaint uphold rates, the water sector is significantly higher than other sectors, at 73 per cent. What is wrong with water?

Rosemary Agnew: I am going to let Niki answer that; it is her favourite subject.

Niki Maclean: I would not go that far, but I am happy to answer the question.

A number of new business-to-business provider organisations are coming into the water sector that are less experienced in following a standardised complaints process. That is impacting on the numbers. People are not being properly signposted through the complaints process, and that is largely due to inexperience of working with the complaints process in those businesses.

We are working with the Water Industry Commission for Scotland to address that and work

with those providers so that they get a better grip of the situation. John Stevenson's team has been working on that.

John Stevenson: We scanned the water landscape to see what information was out there for customers. In many instances, either the organisation's information was not there at all or was erroneous, the organisation did not signpost, or the timescales were too long. There is quite a bit of work to do with the water sector to adopt the standardised and simplified approach that values complaints and gets people through the process efficiently.

Alex Rowley: I have a quick question. What has been the impact of the new system of recording inquiries that was introduced in 2016-17? Does that new system have on-going benefits?

Niki Maclean: The new system for recording inquiries was more of a technical change in how we record things and whether they are complaints. Previously, it depended on the way in which someone contacted us, and we simplified and clarified the definition of how we record whether something is an inquiry or a complaint. It was more a technical reporting issue than anything else.

Alex Rowley: Thanks.

10:15

Alexander Stewart (Mid Scotland and Fife) (Con): In your overview, Rosemary Agnew, you talked about the challenge of complaints handling and learning from the process—you talked about some processes in response to questions. You said that you are just about coping, which suggests to me that some public bodies are not coping. That might be because of the demands, stresses and resource issues that they face, all of which have implications—we talked about that.

At the end of the day, training and support are vital. Will you talk about how they are helping? Is there a lack of training and support in some sectors, and is that creating issues? Communication is another issue, and nine times out of 10, a complaint happens because of a communication breakdown.

Rosemary Agnew: Let me unpick a few of those issues. I will come back to the model complaints handling approach, because that has introduced clearer links into governance arrangements. Before that approach was taken, complaints were regarded as something that was done "over there". The aim is not just to introduce complaints handling procedures but to monitor complaints handling and bring it into the governance landscape, because if it is not in the

governance landscape there will be no learning at organisational level. For example, people will see no need to identify that timescales are not being met and consider why that is the case.

The local authority sector is a good example of a sector that has an active complaints handlers network. We are seeing the benefits of that.

As an organisation, we offer training, at cost, and our training is pretty well used. Also, as part of our stakeholder engagement, I am keen to develop more seminar-based training, because if we can deliver more such training within our limited resources, and such seminars result in guidance on complaints handling, we can get over one of the barriers for public bodies, which is the issue to do with how they can prioritise training on complaints above, for example, training on patient safety.

We want to use our resources to contribute to that—and it is very much down to resources. We would love to be able to offer more e-learning packages such as we offered to the Scottish Prison Service. It is about a push to get bodies to invest in good complaints handling and to link that into their governance arrangements, because if they do that they learn from complaints and are more likely to see other improvements.

There is still a long way to go before every sector is at the same point on that journey. Another major piece of work, which Niki Maclean mentioned, is our support and intervention policy. We are making much better use of our data, to monitor and record outcomes from complaints and our recommendations, and to look for themes.

The whole idea of the support and intervention policy is that there is a journey. If we identify an organisation that we think needs help, we will offer help, as far as we can do within our resources. Ultimately, we have powers under the Scottish Public Services Ombudsman Act 2002, and if an organisation has not improved by the time things have reached a very senior level, we need to think about how we use those powers. However, for me, the prize comes in the support. We have just developed the policy, and it will be launched and in place from 1 April.

We have some examples of where we have worked with specific organisations—such as NHS Lothian—and seen palpable results and improvements. Once organisations realise that they can improve and start to do so, it is quite energising for them. People say, "Actually, it wasn't as bad as we thought to do that."

I do not know whether either of my colleagues wants to add to that. John Stevenson might want to comment, given the experience of his team.

John Stevenson: A question was asked earlier about resources. To put the matter in context, I note that, although we have a very effective training unit, the resource is essentially one full-time equivalent. It is a training officer who gets ad hoc support from the organisation throughout the year. Given the scale of the sector, we cannot deliver training alone.

One of the other things that we do in my team is to develop tools to help complaint handlers. Those tools, which are around quality assurance, decision making, complaint improvement and the culture in the organisation, all lend themselves to the creation of an environment that values complaints as well as valuing quality, learning and so on. There is a certain responsibility on bodies to take those tools, which are freely available, and use them.

From a resource point of view, we would love to deliver many more training courses, training products and so on, but there is a cost benefit analysis around that.

Alexander Stewart: The bodies have a duty to try to provide training internally so that their staff are up to speed. You have talked about culture. When people are taking on a health board or have a difficulty, they sometimes feel that the organisation is vast and that, rather than giving the right information and supporting the customer or the complainant, it tries to protect itself. We see and hear that regularly. How should the culture be managed for the future to give people confidence in putting forward complaints and avoid their having to deal with a culture of secrecy in the communications?

Rosemary Agnew: There are a number of approaches. Niki Maclean can comment on how we respond to the complaints that we investigate, but because we see a top slice of complaints, we see different practices and standards in different organisations, and that is not always sectoral. Part of monitoring our own work is to try to identify those so that we can become directly involved.

On how we tackle the bigger issue within organisations, we start with the obvious questions. Is it clear on the organisation's website how people can give feedback and make a complaint? If people have to go through three different web pages and the information does not pop up easily, in my view the organisation is not being even vaguely helpful.

In addition, that should run alongside the giving of feedback. How can the organisation have a culture whereby it wants to put things right before they become complaints? That is a journey, and some public bodies are really good at it. We see examples where organisations have meetings even after they have answered complaints in order

to try to help people understand where it went wrong, and they try to engage. However, we also see cases where organisations, to be frank, do not answer the question. Those are the ones that, when they come to us, we do something about. I ask Niki Maclean to comment on that.

Niki Maclean: It is really important that, where we see poor communication, not necessarily from a technical perspective but at an interpersonal level, we call that out. We now record where there are complaints handling issues in cases where the complainant has not raised that as an issue, and that includes the language that has been used in the complaint responses.

We also record and give feedback on how the public body has engaged with us, because, culturally, that sends a very clear signal. It is not just us that does that; other regulatory and scrutiny bodies do that, too. It is really important that we are open and transparent about that interaction, because it tells you about the culture in an organisation.

We are now gathering that intelligence. As Rosemary Agnew said, although we see only a small number of cases, it is really important that we build up a picture of not just the complaints that people bring, but the interaction during the complaints process. We monitor and track that.

Alexander Stewart: You have identified that a number of organisations handle complaints well, but there is also a number that do not. We have to make sure that their governance is scrutinised, to ensure that they improve. The reason behind their lack of improvement may well be that they do not have the resource, the time or the staff to make that happen. It is very difficult for you to manage that situation. You can point them in the right direction, but if they are not able to cope—and they are not coping—with the situation, it will only get worse.

The Convener: I think that Alexander Stewart has put in a bid to be your public relations officer. *[Laughter.]*

I remind everybody that you do not need to get everybody to answer every question. I would have thought that that was more a statement than a question, to be honest with you, but feel free to respond if you want to.

Rosemary Agnew: I will just say that I note that point.

Alexander Stewart: I am content with that.

Annabelle Ewing: The SPSO has the role of independent reviewer of decisions under the Scottish welfare fund—2017-18 was your second year of carrying out that role. As I understand it, crisis grant reviews have increased by more than a third in the past year; they have increased by

about 36 per cent. At the same time, we are seeing a number of things, such as austerity, which has been referred to, and the roll-out of universal credit. In Fife, the number of crisis grants awarded in 2017-18 increased by about 14 per cent, and universal credit is being rolled out there.

From your perspective as someone who looks at the crisis grant decisions that are made from the other side, do you see any connection between those issues and the increase in the number of reviews? Do you foresee that, as long as the other two constants remain—in other words, if austerity and the roll-out of universal credit are not halted—we will see a further increase in the number of crisis grant reviews in the year ahead?

Rosemary Agnew: I am not sure that we will. On the links to benefit and waiting—particularly in terms of waiting for benefits—we are seeing issues to do with the lack of clarity in the Government's statutory guidance on handling the reviews. Just this week, we have sent back our comments for the annual review. I suspect that it is one of those areas where a link will always be maintained. However, it might not be to do with austerity—an increase in crisis grants might be specific to a particular area. There will always be a link to demographics as well. When you look at the areas that have the highest number of grants, you find that they tend to be areas where there are those who are most in need.

On whether the proportion will change, I do not really have a feel for that. Has anything come through the team?

Niki Maclean: We have been providing the function for only two years, but it is interesting that the uphold rate remains constant. There is no indication that decision making is getting poorer. I think that there is some evidence to suggest that there is a link with the roll-out of universal credit, because of some of the delays that that can inevitably cause, but I do not think that we have a big enough data set to be able to say that for definite.

Annabelle Ewing: Yes. When you come before us next year, you might have a bit more information on the experience that you will have gained by that stage.

Niki Maclean: That is the case. It is also the case that, as with complaints, the data sets from local authorities would be a bigger indicator. That is where the analysis would give you a better picture.

10:30

Annabelle Ewing: So it is a case of watching that space.

With regard to the Scottish welfare fund review role that the SPSO now performs, unlike with your other roles, the complaint can be made by telephone. I understand that you are seeking to have that be the position with respect to all complaints. What is your experience, though, of telephone access for reviews of community care and crisis grants? Do you feel that you would be able to seamlessly extend that telephone access facility across the board, or would other things need to happen before that could be done?

Rosemary Agnew: It would have to be seen in the context of it being another way of making a complaint. We try to get round this as far as we can but, ultimately, there has to be a complaint in writing, unless there are exceptional reasons. The unfairness of that is that it is the complainer who has to demonstrate exceptional reasons. We cannot universally say, "Oh, everybody from that sector can just make complaints by phone now." Having that option would give us the flexibility to adapt access to the way in which it is needed.

There will always be a predominance of filling in a form on the website or what have you. However, for me, this is part of the journey towards being able actively to put the message out there to advocacy groups or Citizens Advice Scotland that if somebody wants to make a complaint but finds the written way of doing that a barrier, there is now the telephone option. At the same time, thanks to our office move, we have a new telephony system that means that we will have the ability to record calls. That is important, because it is a way of being able to capture the information easily. That is something that we are looking at now; obviously, we have data protection considerations.

I do not think that we could ever move to the position of every complaint being taken by phone without there being significant resource increases. We must look at being as accessible as possible by phone, but that needs to be put in the context of what we can do with what we have.

The Convener: Graham Simpson has some follow-up questions, but Annabelle Ewing has one more question.

Annabelle Ewing: In terms of the general accessibility position, I note that the SPSO is looking at accessibility for British Sign Language users. Perhaps you can update us on where that work is.

Rosemary Agnew: We have already made some changes to our website and we have a wider British Sign Language plan. We are also doing some joint work with other office-holders to see whether we can make use of certain resources. We do as much as we can on BSL, but we still have a journey to go on it. The most important

thing in terms of accessing our service is that BSL is now available on our website.

Graham Simpson (Central Scotland) (Con):

My questions follow on from Annabelle Ewing's. You have been asking for legislative changes in a couple of areas, the first of which relates to accessibility, which Annabelle Ewing touched on. It does seem absurd that people have to prove that they are in exceptional circumstances in order to be able to make a complaint by phone. The other area is having the ability to launch investigations at your own initiative. In your written submission to us earlier this month, you stated that you were

"concerned about the lack of progress"

following discussions with the Scottish Government, and that you had

"not yet had a definitive or final response"

from the Government.

Can you tell us a bit about the discussions that have been going on and why there has been a lack of progress, given that you have been talking about the issue for some time?

Rosemary Agnew: The issues were there shortly after I took up office. We put together a case for those with the policy responsibility, in which we set out the various points. The discussion was really positive and we were told, "Yes, we think that we can do this by an order; we think that that might take primary legislation," but then there was a change in staff and it felt as though we had to start all over again. Despite having made a comprehensive case, we were told that more was needed. Basically, we had to re-engage because of a change in staff—

Graham Simpson: A change in staff where?

Rosemary Agnew: In the Government, in the particular area that we were dealing with. Each time that we have had discussions, they have always been positive—I am not at all critical of the engagement itself, but it does not seem to go anywhere. I do not know whether the process is stalled because of a lack of interest or whether it is too low down the order of priority, but we just feel that we keep saying the same thing. I will try to find a different way of saying it—to Parliament, I think.

Graham Simpson: It sounds a bit absurd that the Government stalls on something just because there has been a change of staff; that does not seem acceptable.

Rosemary Agnew: I do not want to be hypercritical—I do not know enough about how the Government works—but I am very frustrated that there has been no progress on the issue of being able to make a complaint in any format; I do not

think that a change in primary legislation is required. How much does it take to put an order through Parliament for something that will self-evidently benefit everybody?

Graham Simpson: I was going to ask about that, because one of the changes that you are looking for might well require legislation. However, the change with regard to accessibility is probably quite simple; the changes probably do not need to happen at the same time.

Rosemary Agnew: No, they would not have to happen at the same time.

Graham Simpson: So it is your view that the accessibility change could be made quite quickly and easily; it just needs the will to do it.

Rosemary Agnew: That is what we think.

Graham Simpson: You are also looking for the power to take the initiative and launch your own investigations. That power exists for ombudsmen in other countries, and in your letter you point to the example of Ireland, where such investigations have been

"very effective at raising issues faced by vulnerable groups—a voice for the voiceless."

That takes us right back to the first question that the convener asked, about hard-to-reach groups. It seems that what you propose would be a positive thing to do.

Rosemary Agnew: There are two sides to this. We are increasingly using the phrase "public value investigations", because there has to be a public value in doing them. However, it is a bit hit and miss to rely on a complaint coming in that is exactly about the issue that you want to look at. Fundamentally, it is a question of having an ombudsman who can look at an issue that they would have looked at if a complaint had been made.

There is another point—this will sound as though I have had my happy pills for the morning. I am really proud to be the Scottish Public Services Ombudsman; I think that Scotland leads the way in many things, and I want us to lead the way with a modern ombudsman service. However, we do not lead the way even in the UK. Both Wales and Northern Ireland have the powers that we are talking about; in fact, the Northern Ireland Public Services Ombudsman has just launched its first investigation. I look at things that my European colleagues and the Irish ombudsman have achieved. Inevitably, they have added value at a far lower cost than if they had looked at 15 or 20 complaints about something. We have a real opportunity to use the skills that we have and the understanding of public services that the role of ombudsman gives us to build in improvements or highlight issues.

I come back to my earlier point that people engage with a public service not to make a complaint but to get the service. It is unlikely to be a one-off—after all, you get your bins emptied regularly, not just once—so if we can highlight things that might improve the situation at that end, not after the complaint has been made, that will have huge benefits.

I add that that would not be the main or the only thing that we would do. Complaints are and always will be important.

Graham Simpson: In your letter to us, you say that you

“intend to lay a report before Parliament with proposals for legislative change.”

When might we expect to see that?

Rosemary Agnew: We are doing our business planning for the next financial year but, ideally, I would like to get something to you before the summer recess, because the issue is important to me and needs to be looked at early. We are still looking at all our priorities, but that is my aim.

Graham Simpson: Where will the report go?

Rosemary Agnew: I think that I will lay it before Parliament in general, but I will send it specifically to the committee in the first instance.

Graham Simpson: Okay.

The Convener: We must have friendly faces.

Graham Simpson: We do, convener.

Annabelle Ewing: Can you update the committee on progress with regard to the SPSO becoming the independent national whistleblowing officer?

Rosemary Agnew: Do you want to take that, John?

John Stevenson: Yes. The work falls out of the freedom to speak up review that was chaired by Sir Robert Francis. Over the past year, we have collaborated on the issue with the Scottish Government, the national health service, whistleblowing organisations and whistleblowers themselves, and I established a project steering group and a project working group to develop a draft set of whistleblowing principles, guidance and standards. That draft work has been completed, and the next stage is to go out to public consultation, which we aim to do in parallel with the Scottish Government’s consultation on the draft order. However, the draft order has not yet been completed; we are waiting for the Scottish Government to finalise it, and then the two consultations will run in parallel. We are meeting the Government next week to look at the timescales, but we hope that things will progress early this year.

Rosemary Agnew: The timescale for the whistleblowing officer coming into operation has slipped a little, because the original focus, which was on boards, has been extended to include primary care. Obviously, that will involve a lot more work. At the moment, I understand that we are talking about a date that is likely to be closer to the autumn than April, but we were not concerned about the reasons for the slippage. It is such an important measure that I want it to be as right as it can be. The difference between whistleblowing and complaints is that the former is a very personal thing, and we must ensure that the system supports everybody, especially whistleblowers.

John Stevenson: On the issue of slippage—if we want to call it that—it is, as the ombudsman has made very clear, about giving boards and primary care providers sufficient time to plan and prepare for implementation. I do not think that it would be appropriate or fair to say to them, “Here’s a new procedure that you need to implement in two or three months.” The timescales now reflect the involvement of primary care in this work and the fact that primary care providers and boards need sufficient time to plan and prepare for effective implementation, and that will be taken into account when we meet the Scottish Government next week.

Annabelle Ewing: It is eminently sensible to involve primary care to that degree, and one can understand why it is important to get right what is a very significant change.

Do you have any idea of how long the consultation will be? Will it be the standard three months? I presume that the SPSO office intends to ensure that there is proper awareness raising at the time of the consultation to get as many views submitted as possible. Will you take the necessary steps to ensure that?

10:45

John Stevenson: We will contact all the appropriate organisations that are under our jurisdiction.

I should have said earlier that, in the last week or so, we have worked with the Scottish Government on workshops on the once-for-Scotland policy approach to the partnership information network—PIN—procedures that it has adopted. We attended the workshops to give some advice on the whistleblowing procedure.

I was very encouraged by the fact that, when we asked people from the sector what they thought a whistleblowing procedure should look like and what it should contain, the feedback covered everything that is already in the draft procedure, such as a clear definition, support for staff, support

for people in the wider context who are involved in the procedure, timeliness in getting through the procedure in good time, given that there could be a patient safety issue, and keeping the person who raised the concern at the heart of the process.

All the feedback that we are getting at the moment is already reflected in the draft products, which we are ready to consult on.

Annabelle Ewing: At the relevant stages, would you keep the committee advised as to what is going on?

Niki Maclean: We would be happy to do that.

The Convener: You decided to update the strategic plan midway through the usual four-year cycle. Was that to change direction in your strategic aims or was there another reason?

Rosemary Agnew: The intention was to put more focus on developing some things further, specifically having a more direct and explicit focus on the importance of learning from complaints and on making a contribution to public service, because it is not just about complaints. We also wanted to have a plan that was really well rooted in our values, such as being people focused, because that influences the decisions that we make and the approaches that we take as an organisation. Something as simple as saying that we are going to restructure our teams so that someone who comes to us will have one investigator throughout the life of the complaint is rooted in the value of being people focused, because that is what helps the complainer. The fact that it helps us is good, but the point is that it is about helping people.

That principle means that we have a focus on our own people, too. We have some lovely people, with strong values, who are trying to do a really good job. Most of the time we do a good job, but every now and again we need support, because it is hard work listening to some of the things that we listen to daily.

The update was all about vision and values. It was not just about the direction; it was about who we want to be in following that direction.

The Convener: Thank you all for your evidence this morning. That was very useful.

10:48

Meeting suspended.

10:50

On resuming—

Subordinate Legislation

Redemption of Heritable Securities (Excluded Securities) (Scotland) Order 2018 (SSI 2018/376)

The Convener: Agenda item 3 is consideration of a negative instrument, which is listed on the agenda. I refer members to paper 3.

The instrument has been laid under the negative procedure, which means that its provisions will come into force unless the Parliament agrees to a motion to annul it. No motion to annul has been laid, and the Delegated Powers and Law Reform Committee has not drawn the instrument to the Parliament's attention on any of its reporting grounds. Do members have any comments on the instrument?

Kenneth Gibson (Cunninghame North) (SNP): I have a question about the consultation. Paragraph 5 of the committee's paper on the instrument says:

"Since October 2014, Scottish Ministers have undertaken a number of public consultations on the proposal to exempt certain heritable securities from 'the 20 year security rule'."

I wonder why progress was not made at the time. Have we any idea? The paper is not specific in that regard. It simply goes on to say:

"the formal consultation was completed several years ago and the Order could not be pursued at this time".

Do we know why it could not be?

The Convener: We have no idea. The matter has been dealt with by the Delegated Powers and Law Reform Committee, and I suspect that, if there were any questions, they would have been asked at that point. I am happy for the committee to write to the Government to find out the answer.

Kenneth Gibson: It just seems that there has been an inordinate amount of time between consultations.

The Convener: Given that the Delegated Powers and Law Reform Committee had no issues with the instrument, I invite the committee to agree that it does not wish to make any recommendations in relation to the instrument. Is that agreed?

Members indicated agreement.

The Convener: That concludes the public part of today's meeting.

10:51

Meeting continued in private until 11:49.

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